Royal Commission
into Institutional Responses
to Child Sexual Abuse

REPORT OF CASE STUDY NO. 11

Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School

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December 2014

CHAIR

The Hon. Justice Peter McClellan AM

COMMISSIONERS

Mr Bob Atkinson AO APM
Professor Helen Milroy

Contents

Preface

The Royal Commission

The Letters Patent provided to the Royal Commission into Institutional Responses to Child Sexual Abuse require that it 'inquire into institutional responses to allegations and incidents of child sexual abuse and related matters'.

In carrying out this task, the Royal Commission is directed to focus its inquiries and recommendations on systemic issues but also recognise that its work will be informed by an understanding of individual cases. The Royal Commission must make findings and recommendations to better protect children against sexual abuse and alleviate the impact of abuse on children when it occurs.

A copy of the Letters Patent is at Appendix A to this report.

Public hearings

The Royal Commission is aware that sexual abuse of children has occurred in many institutions, all of which could be investigated in a public hearing. However, if the Royal Commission was to attempt that task a great many resources would need to be applied over an indeterminate, but lengthy, period of time. For this reason the Commissioners have accepted criteria by which Senior Counsel assisting will identify appropriate matters for a public hearing and bring them forward as individual 'case studies'.

The decision to conduct a case study will be informed by whether or not the hearing will advance an understanding of systemic issues and provide an opportunity to learn from previous mistakes so that any findings and recommendations for future change that the Royal Commission makes will have a secure foundation. In some cases the relevance of the lessons to be learned will be confined to the institution the subject of the hearing; in other cases they will have relevance to many similar institutions in different parts of Australia.

Public hearings will also be held to assist in understanding the extent of abuse that may have occurred in particular institutions or types of institutions. This will enable the Royal Commission to understand the way that various institutions were managed and how they responded to allegations of child sexual abuse. Where our investigations identify a significant concentration of abuse in one institution, it is likely that the matter will be brought forward to a public hearing.

Public hearings will also be held to tell the story of some individuals, which will assist in a public understanding of the nature of sexual abuse, the circumstances in which it may occur and, most importantly the devastating impact that it can have on some people's lives. A detailed explanation of the rules and conduct of public hearings is available in the Practice Notes published on the Royal Commission's website at www.childabuseroyalcommission.gov.au. Public hearings are streamed live over the internet.

In reaching findings, the Royal Commission will apply the civil standard of proof which requires its 'reasonable satisfaction' as to the particular fact in question in accordance with the principles discussed by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336:

> it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent likelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal ... the nature of the issue necessarily affects the process by which reasonable satisfaction is attained.

In other words, the more serious the allegation, the higher the degree of probability that is required before the Royal Commission can be reasonably satisfied as to the truth of that allegation.

Private sessions

When the Royal Commission was appointed, it was apparent to the Australian Government that many people (possibly thousands of people) would wish to tell the Royal Commission about their personal history of sexual abuse in an institutional setting when they were a child. As a consequence, the Commonwealth Parliament amended the *Royal Commissions Act 1902* to create a process called a 'private session'.

A private session is conducted by one or two Commissioners and is an opportunity for a person to tell their story of abuse in a protected and supportive environment. At 30 November 2014, the Royal Commission had held 2,724 private sessions and more than 1,000 people were waiting for one. Many accounts given in a private session will be reported in a de-identified form in later reports of the Royal Commission.

Research program

In addition to public hearings and private sessions, the Royal Commission has an extensive research program. Apart from information gained in public hearings and private sessions, the research program draws upon research undertaken by consultants to the Royal Commission together with the original work of its own staff. Significant issues will be considered in issues papers and discussed at roundtables.

This case study

This is the report of the public hearing that examined the experiences of 11 men who lived at four residential institutions run by the Congregation of Christian Brothers (Christian Brothers) in Western Australia. The institutions were Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School.

The case study also examines the child protection policies and procedures that applied to the institutions, the handling of complaints of abuse and the disciplining of offenders. Evidence was heard about how the Christian Brothers and the relevant Western Australian state authorities responded to allegations of child sexual abuse at the institutions.

This hearing was identified as appropriate for a case study for a number of reasons. In a number of previous inquiries, submissions have been made and evidence given about the abuses suffered at the institutions. Some of the perpetrators, who were in teaching and non-teaching roles at the institutions, were the subject of criminal charges. The case study gave an opportunity to examine how the Christian Brothers and the State of Western Australia responded to claims of child sexual abuse and how claims for compensation were conducted through a number of different avenues, including a state redress scheme (Redress WA), class action and/or directly to the Christian Brothers.

The scope and purpose of the hearing was:

a) the experiences of a number of men who were resident at one or more of the following residences operated by the Christian Brothers in Western Australia:

   i. Castledare Junior Orphanage

   ii. St Vincent's Orphanage Clontarf

   iii. St Mary's Agriculture School Tardun

   iv. Bindoon Farm School

b) the response of:

   i. the former Province of Western Australia and South Australia and the current Province of Oceania of the Christian Brothers

   ii. relevant Western Australian state authorities

   to complaints made about any member of the Christian Brothers who was engaged in teaching or other activities at each of the institutions

c) the conduct of the claims made through Towards Healing, Redress WA, civil action and/or directly to the Christian Brothers for compensation or assistance by each of the residents and the experience of each in the relevant process

d) the evidence and findings of other inquiries as to the Christian Brothers' institutions

e) any other related matters.

Executive summary

The Christian Brothers is a Catholic religious organisation.

The organisation is divided into areas known as provinces. Until 1953 there was one Australia wide province of the Christian Brothers. This was divided into two in 1953. In 1957 there was a further division into four provinces.

Each province was supervised by a Provincial Council. This supervision took the form of annual visits to communities by a member of the Provincial Council. A visitor would stay with the community for a number of days and would speak to and observe the Brothers in the community as well as others who were in contact with the community. The visiting member would then write a 'visitation report'.

One of the four provinces that existed in Australia in 1957 was the Holy Spirit Province, based in Perth, which covered Western Australia and South Australia. The Holy Spirit Province was responsible for the four children's homes in Western Australia:

- Castledare Junior Orphanage
- St Vincent's Orphanage Clontarf
- St Mary's Agricultural School Tardun
- Bindoon Farm School.

The four children's homes operated from the late 1920s and closed down between the 1960s and 1980s.

The conditions at each home were basic. The food was often of a poor quality. The boys were given clothing but no shoes or underwear. The boys were involved in building work – for example, constructing a railway – and they also did landscaping and farm work.

- **Finding 1**: In taking children into care, the Christian Brothers were obligated to provide for them and educate them. This was not done properly in all cases. Many of the children did not have any real education and instead were put to physical labour.

- **Finding 2**: The visitation reports focused on the community of the Brothers and the finances and religious observance of each Brother, not on the welfare of the children. We agree with Brother Anthony Shanahan, a former Provincial of the Holy Spirit Province, that, although the Western Australian Child Welfare Department conducted inspections, the department had significantly less responsibility for the children than those within the institutions who were caring for the children on a daily basis.

- **Finding 3**: The boys living at the institutions had little contact with those outside of the homes because many were child migrants or orphans and did not have families to visit them. The boys living at Tardun and Bindoon in particular were geographically isolated.

- **Finding 4**: The state authorities played a limited role at the time. This contributed to the lack of access that the boys had to adults outside the institutions to whom they may have disclosed their conditions, including the abuse.

- **Finding 5**: The physical conditions at the institutions permitted no privacy and required the boys to be naked in front of the Brothers and each other. The boys were in dormitory-style accommodation, with Brothers sleeping in rooms off the dormitory, or boys and Brothers slept together on the verandah. This created a physical environment where the boys had no privacy from the Brothers. The boys were required to make up Brothers' rooms, which meant that Brothers were able to be alone with boys in their rooms.

- **Finding 6**: The Christian Brothers failed to provide all boys at the institutions with an opportunity to obtain an education.

Eleven men gave evidence and made allegations of sexual abuse against 16 named Brothers.

The sexual abuse involved being observed naked in the showers by some of the Brothers; and being abused in the dormitories, in Brothers' rooms, during movie screenings and in the grounds.

They spoke of sexual abuse by other boys.

They also told of emotional, physical and psychological abuse by some of the Brothers.

Most of the boys did not report the abuse; one of those who did received a belting.

- **Finding 7**: The evidence at the hearing included many allegations of boys being sexually, physically and emotionally abused.

- **Finding 8:** In each of the decades from 1919 to the 1960s, the relevant Christian Brothers Provincial Council knew of allegations of sexual abuse against some Brothers in Christian Brothers institutions around Australia:

    - In each decade from the 1930s to the 1950s, allegations of child sexual abuse were raised against Brothers who had also been the subject of earlier allegations.
    - By the 1950s, communication between one or more of the then Superior General and the then Provincial reveals:
        i. an understanding that sexual abuse can have ongoing impacts on children
        ii. that sexual abuse of children was viewed as and referred to as a 'moral lapse' or 'weakness'
        iii. an understanding that those lapses had a tendency to reassert themselves
        iv. an understanding that there was a danger that an abused may become an abuser
        v. an understanding that the administration of an institution may be at fault when a Brother was an abuser

vi. that at least one Brother was transferred to another Christian Brothers institution where he had contact with children after being the subject of an allegation that concerned children; however, in some cases, some Brothers were transferred to institutions where they would not have contact with children.

- **Finding 9:** The leadership of the Christian Brothers during the period 1947 to 1968 failed to manage each of the institutions so as to prevent the sexual abuse of children living in those institutions.

The Christian Brothers published an apology to ex-residents in 1993.

Between 1989 and 1993, the Christian Brothers:

- gave financial and other support to the Child Migrant Friendship Society
- funded assistance for family tracing services
- set up a trust fund to give financial assistance to child migrants so they could travel to the United Kingdom to meet family members
- facilitated access to counselling services.

The Christian Brothers funded a full-time qualified researcher in the United Kingdom to help former child migrants with searches and they also established a helpline.

In mid- to late 1990s the Christian Brothers developed a computerised national index (known as the Personal History Index) that identified all of the child migrant records held by the Catholic Church around Australia.

In 1995 the Christian Brothers established the Christian Brothers Ex-Residents Services (CBERS). CBERS provided a range of services, including counselling, a no-interest loan scheme, literacy and numeracy assistance and advocacy services.

In 1996 the Christian Brothers commissioned a study of child abuse within its own congregation. The report was published in April 1998 and was titled *An initial report on Child Sexual Abuse*.

- **Finding 10**: In the 1990s, the Christian Brothers took a number of actions on the issue of child sexual abuse and related matters within its Order by:

- issuing an apology to ex-residents of the institutions in 1993
- giving financial and other support to the Child Migrant Friendship Society
- funding assistance for family tracing services
- setting up a trust fund to give financial assistance to child migrants
- facilitating access to counselling services
- establishing Christian Brothers Ex-Residents Services (CBERS) in 1995
- commissioning a study of child abuse within its own congregation in 1998.

In the 1970s, 1980s and 1990s, the Christian Brothers made changes to the way that members of the Order are recruited and trained. The organisation discontinued the practice

of taking people into the Order before they finish secondary schooling. Candidates must now have a tertiary qualification. In addition, candidates are vetted and they must complete a psychological assessment. In Christian Brothers boarding schools today, house masters and their families live in the boarding houses to promote a family atmosphere.

Brother Julian McDonald, Deputy Province Leader of the Oceania Province, gave evidence that, where allegations against Brothers are established, they are usually dismissed from the Order. The Christian Brothers has current child protection policies in place.

The government department that oversighted the institutions no longer exists.

There have been comprehensive and significant developments that have altered the way that the current Western Australian Department of Child Protection and Family Support cares for and monitors children in residential care. The subject of oversight of children in out-of-home care will be dealt with in further case studies.

Civil litigation

In August 1993, law firm Slater & Gordon commenced proceedings in New South Wales for some 240 claimants seeking damages from the Christian Brothers and other defendants for physical, sexual or psychological abuse at the institutions in the 1950s, 1960s and early 1970s. In November 1993, Slater & Gordon commenced similar proceedings in Victoria for 23 of those claimants who lived in Victoria.

Slater & Gordon faced several issues in bringing the claims, including:

- the amount of time that had passed since the time of the incidents – this was an issue because of the limitation on the amount of time that can pass before an action is brought (limitation period issues)
- the difficulty in establishing who was the proper person or body to sue (proper defendant issues)
- the different legislation that applied in the various states.

In mid-1996, the proceedings were settled by the establishment of a trust fund of $3.5 million for payments to claimants, with provision for limited lump-sum payments and other needs-based payments.

In addition, $1.5 million was paid towards Slater & Gordon's legal costs and disbursements. The Christian Brothers' legal costs and disbursements totalled about another $1.1 million.

The trust fund operated for three years. It made lump-sum payments to 127 men for child sexual abuse as well as other needs-based payments. Payments to individual men ranged from $2,000 to $25,000 depending on the severity of the abuse or its impact.

Some men proceeded through Towards Healing, an assessment process applied by the Catholic Church to deal with complaints of abuse, and received payments of up to $40,000.

- **Finding 11:** The minutes of the meeting of the Christian Brothers Provincials and their lawyers on 7 December 1993 show that:
  - the meeting was not focused on settling the proceedings
  - the concern was the cost of the proceedings to the Christian Brothers
  - there was no sentiment of recognising the suffering of the survivors.
- **Finding 12:** We accept Mr Harrison's evidence that there may have been a misplaced prejudice that people seeking compensation in the civil courts were somehow not deserving and that the Christian Brothers might have been feeling hurt or affronted that a class action had been taken against the church.
- **Finding 13:** We accept Brother McDonald's legal advice was to take technical points in the litigation and that he accepted this advice, although he did not feel totally comfortable with it.
- **Finding 14:** Brother McDonald did not give instructions to enter into early settlement negotiations because of the legal advice he was given.
- **Finding 15:** On 14 August 1996, the proceedings were settled by a Heads of Agreement that provided for:
  - discontinuance of all proceedings
  - execution of the trust deed to establish the Western Australia Institutions Reconciliation Trust (the trust) and deeds of release by the claimants
  - payment of $1.5 million to Slater & Gordon for costs
  - waiver by the Christian Brothers of orders made in the litigation requiring the claimants to pay the Christian Brothers' costs, which were around $750,000
  - participation in a reconciliation process, which was set out in an Explanatory Memorandum dated 14 August 1996 and essentially reflected the main elements of the trust fund
  - issuing of a joint press release.

Redress

Redress WA was set up by the Western Australian Government in response to two Senate reports and a Human Rights and Equal Opportunity Commission report. Redress WA was open to adults who as children were abused in state care before 1 March 2006.

At the time it was announced, the scheme allowed for payments of up to $10,000 for abuse or neglect and up to $80,000 where there was evidence that abuse or neglect resulted in physical or psychological harm. In 2010, Redress WA was restructured to reduce the maximum amount payable to $45,000 and to set various payment levels beneath that amount.

Over 5,000 people received offers of payment between $5,000 and $45,000.

Applicants could have their matters referred to the Western Australia Police if they wished.

Between 1 January 1980 and 1 June 2013, the Christian Brothers paid over $20 million to complainants who alleged sexual abuse or a combination of sexual abuse, physical or psychological abuse. Of that, $3.34 million was paid to complainants who had been at the four institutions. Complainants who had been at the four institutions and who received a monetary settlement were paid an average of $36,700 each.

- **Finding 16:** Of the 775 allegations made, 196 allegations related to abuse at the four institutions. The 196 allegations were made by 101 complainants. Of those 101 complainants, 96 complainants received a monetary settlement. The total amount paid in compensation in response to those allegations was about $3,341,000, giving an average payment of about $36,700 per complainant who received a monetary settlement.

This case study identified the following issues relevant to civil litigation:

- the use of group or class proceedings
- the conduct of related litigation in three different legal jurisdictions (that is, New South Wales, Victoria and Western Australia)
- different approaches to limitation periods in different jurisdictions and their impact
- whether there is a proper defendant to sue in the circumstances
- use of mediation or neutral independent evaluation
- the absence of a hearing on the merits of the claimants' allegations of abuse
- the timing of settlement negotiations and the time taken to reach a settlement
- the amount of the settlement
- the legal costs incurred
- the structure of the settlement
- the adequacy of the settlement.

These issues will be considered in further reports of the Royal Commission.

By considering Redress WA, the case study identified the following issues relevant to redress schemes:

- the design of a government redress scheme
- the eligibility criteria
- the communications strategy used to target difficult-to-reach groups
- the application period and the extension of that period
- the adequacy of the allocated budget to meet the announced scale of payments
- the reduction in maximum payments and changes to the payment scale
- the timing of the reduction and changes
- the views of applicants on the reduction and changes
- the processes used to assess and quantify claims
- numbers and amounts of payments offered

- interaction between the redress scheme and police through referral of allegations
- the time taken to process applications and make offers to applicants.

These issues will be considered in further reports of the Royal Commission.

Criminal justice

In 1993 and 1995, the then Director of Public Prosecution for Western Australia (DPP) decided not to prosecute over allegations of child sexual and physical abuse by some Christian Brothers up to 40 years earlier.

The reasons for the DPP's decisions included the following:

- The prosecutor was not able to join together several charges against an alleged perpetrator involving different complainants into a single prosecution. This was because of special rules that applied in criminal trials.
- There was virtually no confirmatory or corroborative evidence.
- In criminal trials for sexual offences a special rule applied where there was no evidence to corroborate the complainant's allegations and there had been a long period of delay since the offence was alleged to have been committed. The Judge would be required to give the jury particular directions about the evidence, which would make convictions less likely.
- There was a lack of particularity as to when alleged offences occurred.

The case study identified the following issues relevant to criminal justice:

- the circumstances in which multiple charges relating to different complainants can be joined in a single prosecution
- in child sexual abuse cases, the circumstances in which directions and warnings will be given about delay in complaint and an absence of corroboration
- the influence of the above circumstances on decisions to prosecute or not to prosecute
- changes in the above circumstances over time and their impact on decisions to prosecute or not to prosecute
- the availability and use of an offence of persistent sexual conduct.

These issues will be considered in further reports of the Royal Commission.

1 The four institutions

The Christian Brothers is a Catholic religious congregation. It was founded by Edmund Rice in Ireland in 1802.

The Christian Brothers Order was established primarily to provide academic education, vocational training and care for poor boys.[1]

The Christian Brothers organisation is divided into areas known as provinces. Until 1953 there was one Australia wide province. This was divided into two in 1953.

There was a further division into four provinces in 1957:

- the Holy Spirit Province, based in Perth, which covered Western Australia and South Australia
- St Patrick's Province, based in Melbourne, which covered Victoria and Tasmania
- St Mary's Province, based in Sydney, which covered New South Wales and Papua New Guinea
- St Francis Xavier's Province, based in Brisbane, which covered Queensland and the Northern Territory.[2]

In 2007 the four former provinces joined to form the Province of Oceania.[3]

The leader of a province is known as the Provincial. The Provincial is assisted by the Provincial Council. Between 1947 and 1968, the Provincial Council had five members: the Provincial and four advisers, who were referred to as consulters.[4]

The Provincial Council was responsible for supervising communities within its province. This supervision took the form of annual visits to communities by a member of the Provincial Council. A visitor would stay with the community for a number of days, during which the visitor would speak to and observe the Brothers in the community as well as others in contact with the community. The visiting member would then write a visitation report, which was sent to the Provincial Council.[5]

1.1 Castledare Junior Orphanage

Location

Castledare (also known as St Vincent's Boys Home and Castledare Special School) was in Queens Park, Wilson, three kilometres from Perth in Western Australia, near the Canning River.

Purpose

Castledare was established by the Christian Brothers in 1929 as a residential school for boys with learning difficulties. From 1934 its purpose changed – it began to house boys aged

from around five to 10 years of age, including wards of the state, child migrants and private admissions.

Castledare closed in 1983.[6]

Staff and students

According to visitation reports on Castledare, there were five Christian Brothers on staff at Castledare in October 1952 and 115 students. In June 1962 there were five Christian Brothers on staff and 117 students.[7]

Living conditions

The boys' living conditions were described in some visitation reports and by the witnesses who gave evidence before us.

There was very little privacy for boys. The showers held between 10 and 20 boys at a time.[8]

Food

The food at Castledare was scarce.

Mr John Wells, a resident at Castledare, recalls always being hungry, while the Brothers ate well. He states that the Brothers sat at a beautifully laid table up the front of the dining hall, while the boys worked as kitchen hands so that they could chew the Brothers' leftover bones.

'VI' recalls that the food was of an atrocious quality, but, if the boys did not eat it, the Brothers would beat them.[9]

Clothing

The boys' clothing included ex-army shorts, which were tied with a piece of rope. They wore no shoes or underwear.[10]

Physical work

The boys were required to undertake unpaid work at Castledare.

There was a farm on the property. Boys carried out farm work, milked cows, cleaned the yards and fed slops to the pigs.[11]

Boys were also involved in the construction of a railway that carried trains around Castledare.[12]

Health care

Castledare had its own infirmary and its own matron. VI gave evidence that this meant 'anything that happened in that school, stayed in that school'.[13]

1.2 St Vincent's Orphanage Clontarf

Location

Clontarf (also known as Clontarf Boys Town and Clontarf Orphanage Industrial School) was near the Canning River in Perth.

Purpose

Clontarf was established in 1901 and housed Australian-born wards of the state, private admissions and child migrants. From 1929, residents were 12 years or older.[14]

Clontarf closed in 1984.

Staff and students

According to visitation reports on Clontarf, in 1951 there were seven Brothers on staff and 179 students. By July 1959 there were eight Brothers on staff and 184 students.[15]

Living conditions

The boys slept on the verandah in the summer months.[16]

Physical work

The boys did physical work, including landscaping the grounds and sports ovals and building work.[17]

1.3 St Mary's Agricultural School Tardun

Location

Tardun (also known as Tardun Farm School, Tardun Boys' Farm and Tardun Agricultural College) was 430 kilometres north of Perth.

Purpose

Tardun was established in 1928 as a working farm. It housed Australian-born state wards, private admissions and child migrants. The boys at Tardun were aged between 12 and 16.[18]

Tardun closed in 1967 and was later developed as an agricultural college for fee-paying students.

Staff

An extract from a visitation report on Tardun lists 20 Brothers at the Tardun community from 1960 to 1965. In 1960 there were 10 Brothers and in 1965 there were 11 Brothers.[19]

Living conditions

As with Castledare, there was very little privacy for the boys. There were no doors in the showers.[20] The Brothers had a room that was part of the dormitory.[21]

Food

The food the boys were given included fatty cuts of meat. The boys often stole eggs and chickens from the chicken yard for food.[22] The boys drank milk that was made of concentrated milk mixed with water. They ate porridge that contained weevils. They ate offal.[23]

Clothing

Most of the clothes the boys were given at Tardun were hand-me-downs from old army stock.[24]

Physical work

'VG' recalls another boy telling him that they did not go to school; that they were working boys.[25]

The boys had to do most of the work to maintain the farm. The work the boys did included moving heavy superphosphate and wheat bags, clearing land, cutting down trees, burning off, constructing fencing, milking cows, shearing sheep and baling wool. They also had to help other farmers around the Tardun area.[26]

Mr Raphael Ellul was taken out of school at Tardun when he was 13 and put to work on a farm. After learning skills of a farm labourer, he was hired out to work on local farms.[27]

The boys were not paid for the work they did.[28]

Health care

Mr Ellul had only one dental check when he was at Tardun.[29]

1.4 Bindoon Farm School

Location

Bindoon (also known as Bindoon Boys' Home and St Joseph's Farm and Trade School, Boys Town) is in the Chittering Valley, 87 kilometres north of Perth, in a remote location. About 17,000 acres of land near Bindoon was left to the Christian Brothers by Catherine Musk in her will in 1936. It had over 7,000 sheep and other livestock.[30]

Purpose

Bindoon was run as a residential institution from 1936 to 1966. Bindoon housed Australian-born wards of state, private admissions and child migrants.[31] Bindoon was intended to house boys from age 10 to 16; however, some children were sent there before they reached the age of 10.[32]

Brother Shanahan gave evidence that Bindoon was not so much a school as a place to house boys and prepare them for working life.[33]

Staff and students

According to various visitation reports on Bindoon, in 1947 there were seven Brothers on staff and by 1962 there were 11.[34]

There were few women at Bindoon. There were some women working in the infirmary, the laundry and the kitchen. There were four Spanish nuns, most of whom could not speak English.[35]

Living conditions

The conditions at Bindoon were basic. About 30 boys slept in three small dormitories and other boys slept on exposed verandahs.[36]

'VV' recalls that, when he arrived at Bindoon, boys slept on old army mattresses that were stuffed with horse hair or coconut fibres and they did not have sheets.[37]

A visitation report on Bindoon in 1943 noted that there was overcrowding, so the boys were sleeping on the verandah, giving them 'very little privacy'.[38] There were no doors to the showers. There were no separate toilet cubicles; children would sit beside each other in a row.[39]

Food

The food at Bindoon was of poor quality.

Mr Edward Delaney recalls being fed porridge with weevils in it, fried bread and kangaroo tail soup.[40] The food that the boys were given also included stale bread dipped in dripping.

Mr Gordon Grant recalls that the meals at Bindoon were frugal and that it was common for the boys to go and search in the pig bins for food scraps.[41]

Mr Clifford Walsh said that at Bindoon he was starved and desperately undernourished. One of the meals was 'saps', which was bread soaked in milk with sugar on it. He recalls Brother Angus asking him if he wanted some molasses, which was normally fed to the cows. The 'thought of molasses was a real treat' for him.[42]

Clothing

When boys arrived at Bindoon their clothes were taken from them and they were issued with a rough shirt and loose baggy shorts. They were given no shoes or underwear.[43]

Physical work and education

Bindoon was intended to give the boys practical skills through working and training so that they would be able to get a job when they left the institution. It was not set up to run a conventional school program with classrooms and lessons.[44]

VV recalls that his education virtually ceased after arriving in Bindoon. From the age of 11 he received no formal education. He recalls being removed frequently from class in his first year to collect rocks to build the main building on the farm. He also helped to build the new school building, which was completed in 1956.[45]

Mr Walsh recalls at the age of nine, when he was at Bindoon, being handed tools, including a crowbar, and being told that he was building a fence.[46] Mr Delaney was pulled out of school full time when he was 13. He did not receive a decent education. He was made to work 'in the dairy with chickens and other farm labour'.[47]

The boys were also involved in domestic chores, including cleaning the Brothers' bedrooms.[48]

A visitation report concerning Bindoon dated April 1948 stated that 'the boys should not be allowed to make up a brother's bedroom'.[49]

1.5 Government inspections of the institutions

The children who lived in the institutions came under the provisions of the Western Australian child welfare legislation because, among other matters, there was government funding for the institution.[50]

Inspectors monitored the institutions by doing unannounced site inspections. However, inspectors did not create comprehensive progress reports on the institutions after the inspections. Inspections did not address the welfare of the children in the institutions in an individual way;[51] the primary concern of the inspection was with the cleanliness and physical environment in which the children were being kept.[52]

A visitation report on Bindoon in November 1947 records an inspection by a Child Welfare Department inspector, who accompanied the Christian Brothers visitor on his visitation, and quotes the department's view that:

> the conditions at Bindoon are not good. As a matter of fact, the educational facilities provided for the boys are most inadequate and I fail to see how they can receive proper schooling. Furthermore, the conditions generally do not conform to those at other Institutions, or for that matter the provisions of the Child Welfare Act.[53]

Another visitation report from the same month noted that:

> The classrooms are dull, dingy and dirty, and appear to lack facilities for teaching. One room is fitted with standard type desks, but no other facilities exist; it is even lacking a blackboard.
>
> Bindoon was never fitted out as a school and was never intended to take boys who should be really under a woman's care.[54]

A letter from Under Secretary for Lands to the Minister for Education dated November 1947 stated that:

> I have no doubt when I next visit in 3 or 4 weeks' time, there will be a decided improvement along the lines I wish and more particularly in the educational facilities … I must say that when I visited Bindoon on the 29th ultimo [October] the educational facilities for the boys were negligible and I think you will agree that as Minister for Education that boys of school age being brought out from England under the Migrant Scheme must at least be given a chance to be decently educated.[55]

1.6 Residents of the institutions

The institutions took a large number of child migrants under the British and Australian governments' child migration schemes between the world wars and after the Second World War. A large proportion of the child migrants arrived in Australia in the 1940s and 1950s.[56]

The arrangement was that the Catholic Episcopal Migration and Welfare Association would bear all responsibility for the care and welfare of the children and comply with the relevant provisions of the Child Welfare Act.[57]

Brother Shanahan gave evidence that he thought the wider church was interested in child migration partly because of a desire to increase the Catholic population of Australia.[58] The children who came to the Christian Brothers institutions came from Catholic-run institutions in the United Kingdom.[59] Children also came from Malta under the Child Migration Scheme.[60]

After the Second World War, the Brothers were not involved directly in encouraging the migration of children. The formal arrangement was between the federal government, the Western Australian Government, the Archbishop of Perth and the Abbot of New Norcia.[61]

VG, a former child migrant from Malta, recalls that after his father died in 1959 a parish priest visited his mother in Malta and told her about a scheme that allowed a child of a sole

parent to get a free education if they had a good school record. The priest told his mother that the child would be sent to Australia under the care of the Catholic Church and the child would return when he finished secondary school.[62]

Mr Ellul recalls being told as a child in Malta that he was going to Australia to get a better education and a better life.[63]

Many child migrants were coming to Bindoon in the late 1940s and early 1950s. However, Brother Shanahan stated that 'the place was overcrowded and still had not been properly completed in regard to its facilities'.[64]

Brother Shanahan gave evidence that, from all the information he has had access to and from the evidence in the public hearing, 'the schooling side of it seems to have been fairly – well, token and incidental, unfortunately'.[65]

A state inspection report of Bindoon dated December 1947 stated that the inspector 'cannot recommend that any more boys be admitted to the institution until such time as an improvement is made in the general standard of clothing and cleanliness and better facilities for education provided'.[66]

Brother Shanahan gave evidence that the working conditions and the overcrowding and understaffing in the institutions may also have contributed to the abuse. Many of the offenders had not had the opportunity to study and were not teachers. In addition, many of the offenders had spent many years in the same institution working morning, noon and night. They had very few holidays and little time off, and there were very few other human interest, recreation or leisure activities.

- **Finding 1:** In taking children into care, the Christian Brothers were obligated to provide for them and educate them. This was not done properly in all cases. Many of the children did not have any real education and instead were put to physical labour.
- **Finding 2:** The visitation reports focused on the community of the Brothers and the finances and religious observance of each Brother, not on the welfare of the children. We agree with Brother Shanahan that, although the Western Australian Child Welfare Department conducted inspections, the department had significantly less responsibility for the children than those within the institutions who were caring for the children on a daily basis.
- **Finding 3:** The boys living at the institutions had little contact with those outside of the homes because many were child migrants or orphans and did not have families to visit them. The boys living at Tardun and Bindoon in particular were geographically isolated.
- **Finding 4:** The state authorities played a limited role at the time. This contributed to the lack of access that the boys had to adults outside the institutions to whom they may have disclosed their conditions, including the abuse.
- **Finding 5:** The physical conditions at the institutions permitted no privacy and required the boys to be naked in front of the Brothers and each other. The boys were in

dormitory-style accommodation, with Brothers sleeping in rooms off the dormitory, or boys and Brothers slept together on the verandah. This created a physical environment where the boys had no privacy from the Brothers. The boys were required to make up Brothers' rooms, which meant that Brothers were able to be alone with boys in their rooms.

- **Finding 6:** The Christian Brothers failed to provide all boys at the institutions with an opportunity to obtain an education.

2 The experiences of the boys at the institutions

Eleven men gave evidence at the hearing of the abuse they experienced at the hands of the Brothers and others while they were at the institutions.

They made allegations of sexual abuse against 16 named Brothers at one or more of the institutions. Eight Brothers were named as perpetrators at more than one institution. The perpetrators were named as follows:

- three Brothers were named as perpetrators of sexual abuse at Castledare – Brothers Murray, Murphy and Dick[67]
- two Brothers were named as perpetrators of sexual abuse at Clontarf – Brothers Murphy and Angus[68]
- one Brother was named as a perpetrator of sexual abuse at Tardun – Brother Synan (also referred to as Brother Simon)[69]
- 13 Brothers were named as perpetrators of sexual abuse at Bindoon – Brothers Marques, Angus, O'Neill, Boulter, Keaney, Moore, Wise, O'Doherty, Tuppin, Quilligan, Dick, O'Sullivan and Parker. [70]
- Two priests who were not Brothers were also named – Fathers Sullivan and William.

Some of the visitation reports list the Brothers who were on staff at Bindoon. These visitation reports record that in 1947 and 1948 there were 11 Brothers on staff at Bindoon, in 1953 there were 12, in 1959 there were 11 and in 1962 there were 11.[71]

The 11 Brothers on staff at Bindoon in 1947 and 1948 include five Brothers who were named by the men who gave evidence as perpetrators of sexual abuse at Bindoon – Brothers Angus, O'Neill, O' Sullivan, Wise and Keaney.[72]

The 12 Brothers on staff at Bindoon in 1953 include five Brothers who were named by the men who gave evidence as perpetrators of sexual abuse at Bindoon – Brothers Angus, O'Sullivan, Keaney, Parker and Tuppin.[73]

The 11 Brothers on staff in 1959 include six Brothers named by the men who gave evidence as perpetrators of sexual abuse at Bindoon – Brothers O'Sullivan, Parker, Quilligan, O'Neill, Tuppin and Dick.[74]

The 11 Brothers on staff in 1962 include four Brothers named by the men who gave evidence as perpetrators of sexual abuse at Bindoon – Brothers O'Sullivan, Tuppin, O'Neill and Marques.[75]

The witnesses' experiences in the different institutions had much in common: the circumstances of the emotional, physical and/or sexual abuse were similar and so were their descriptions of the way that Brothers perpetrated it. Similar evidence was also given about why they did not report the abuse and the difficulties that some had when they tried to report the abuse at or around the time it occurred.[76]

The physical abuse at the institutions contributed to a culture where boys were reluctant to report abuse for fear of consequences for them.

2.1 Emotional and physical abuse

Mr Albert McGregor described being psychologically abused by Brother Murphy at Castledare. The abuse first started when he was about eight years old and continued until he was about 12 years old, when he had a nervous breakdown.[77]

Brother Murphy was 'very dominant and possessive, and had complete control' of a group of about 30 boys. Mr McGregor stated that Brother Murphy was 'abusive in his possessiveness, verbal quips, emotional blackmail' and was also sexually abusive.[78]

VI recalled that a number of other Brothers at Castledare were physically abusive, but none more than Brother Dick. He said that Brother Dick had a leather strap that he called 'Waddy' that he hit the boys with. He said that Brother Dick also hit the boys with belts and his fists. He would also would pick boys up and throw them over beds and kick them.[79]

Mr Wells also recalled that some of the Brothers used to bash the children at Castledare. He recalled being bashed by Brother O'Doherty in particular. He said that the Brothers picked on orphans who had no connections outside the institution. They also seemed to pick on bigger children to make them submissive and frightened – doing this made the smaller children 'more controllable'. Mr Wells also recalled that the Brothers seemed to specifically pick on children who misbehaved.[80]

Mr Oliver Cosgrove recalled being beaten often during his time at Castledare and that the Brothers used the strap indiscriminately.[81] The physical punishment he received at Castledare also continued at Clontarf. Mr Cosgrove gave detailed evidence about an event that took place in the hall every Sunday: boys were punished by the Brothers with the strap or sometimes the cane for various offences.[82]

Mr Wells said that he and his brother were physically abused at Clontarf. He recalled being punched by Brother Mohen one day when he and some other boys were swinging on the steel towel rails.[83]

VG told of being physically assaulted when, on his first day at Tardun, he tried to explain to a Brother that he was sent there from Malta to finish his secondary school education rather than do farm work.[84] VG also recalled indiscriminate beatings by Brothers using leather straps.[85]

Mr Ellul said that he lived in fear of the use of straps and fists to inflict 'extreme, arbitrary and severe physical punishment' at Tardun.[86]

Mr John Hennessey said that he 'lived in constant terror of physical violence' at Bindoon. He recalled that the Brothers, including Brother Keaney, frequently carried out punishments and floggings with canes and straps as public spectacles. Mr Hennessey said he was publicly flogged many times.[87] He said that on one morning, after he had raided the vineyard for grapes to eat the night before, Brother Keaney called him out in the dining room, belted him over the head with his walking stick, beat him with his fists and the stick and then booted him out of the dining room, leaving him bleeding, bruised and in pain. Mr Hennessey gave evidence that he was psychologically affected and left with a stutter as a result of the violent assault.[88]

Mr Grant said that he was violently physically assaulted the first time he met Brother Keaney.[89] Mr Grant said that, on another occasion, Brother Keaney thrust the sharp metal point of his sporting stick into Mr Grant's rectum, causing serious injury.[90] He also recalled physical abuse by Brother O'Neill at Bindoon.[91]

Mr Walsh said he was physically assaulted from just his second day at Bindoon, when he was only nine years old. He recalled being punched mercilessly by Brother Moore, who he noted was also liberal with the strap and cane. He also recalled that Brother Tuppin punched him on one occasion. He saw Brother Quilligan beating children in front of others.[92] He was also beaten by Brother Doyle, who forced him to confess to having had sex with another boy.[93]

A visitation report on Bindoon dated October 1953 noted that Brother Tuppin was believed to have methods that are 'too sharp' with the boys, with at least one instance of 'very active antagonism'.[94]

Mr Delaney said he also suffered at the hands of Brother Doyle. Brother Doyle broke fingers on both of his hands with a leather strap when he was 10 or 11 years old. Brother Doyle also flogged him when he tried to run away from Bindoon on two occasions when he was 12 or 13 years old.[95]

2.2 Sexual abuse

Showers

Evidence was given that at Castledare Brother Dick used to 'look over the partition wall and stare at the boys' while they were showering.[96] Mr Wells said that his brother also recalled being leered at by the Brothers while the boys showered at Clontarf.[97]

VG and Mr Ellul both recalled Brothers watching the boys as they showered at Tardun.[98]

At Bindoon, Mr Hennessey said that the Brothers inspected the boys closely when they were showering. He recalled that the Brothers would 'help' the boys, including him, to wash properly, commenting on their genitals and 'lifting [their] testicles with their finger or a cane'.[99]

Mr Grant recalled Brothers O'Neill and Wise looking at the boys in a 'lustful way' when supervising them in the shower room at Bindoon.[100]

Dormitories and Brothers' rooms

Evidence was given that at Castledare during the evenings, before bed, Brother Dick used to sit VI on his knee, cuddle him and bounce him up and down. VI said that Brother Dick wore 'nothing under his habit and his penis was hard against my body'. VI said that Brother Dick would come to his bed at night, take his pyjamas off and rub himself up and down against VI. VI recalled that it 'seemed like it was almost every night' for four years that Brother Dick would get into bed with VI and lie against him.[101]

Mr Cosgrove described Castledare as a place where the Brothers used to come to the boys' beds at night. Mr Cosgrove recalled that one night, when he was about eight years old, he was woken up and Brother Murray was sitting on his bed fondling his genitals.[102]

Mr McGregor described being sexually abused by Brother Murphy when he was at Castledare and Clontarf. At Clontarf, he said the abuse occurred in Brother Murphy's room, where Mr McGregor would be taken after being woken in the dead of night.[103] He said that Brother Murphy threatened him to keep the sexual abuse secret.[104]

Mr Wells recalled sitting on a Brother's knee at Clontarf and having the Brother rub his thigh and slide his hand up his shorts. He also recalled a Brother fondling one of the boys while they swam in the Canning River.[105]

Mr Cosgrove recalled that, at Clontarf, Brother Angus would come up behind him, put his hands on his shoulders and started rubbing himself up against Mr Cosgrove's back and buttocks. Mr Cosgrove stated that this would happen anywhere, even in the company of other boys. He said that it happened to him about four or five times before he 'became a bit savvy' and got out of the way when he saw Brother Angus in his peripheral vision.[106]

Evidence was given that Brothers at Clontarf would also select boys to take to their rooms. Mr Wells described this as being, 'pretty much a nightly occurrence or at least it occurred more often than not'.[107] Mr Wells recalled that boys who were selected to go to a Brother's room were teased by the other boys, suggesting that the boys knew what was about to occur.[108]

Mr Wells recalled that one night at Clontarf Brother Murphy attempted to sexually abuse him in his room.[109]

VG also said that at Tardun he saw boys being taken to the Brothers' rooms at night. He recalled that they would often be very upset. He often saw that the boys' beds were soiled with blood and sometimes faeces the following morning.[110]

VG's evidence was that he was sexually abused by Brother Simon when he was moved from the main dormitory to the working boys' section after being at Tardun for about six to 12 months. He described one night being taken to Brother Simon's 'den' and anally penetrated. When he got free he said he hit Brother Simon with a chair. The Brother responded by violently assaulting him with a strap. The attack left VG unconscious and he ended up in hospital.[111]

Mr Hennessey stated that each night at Bindoon the dormitory would be visited by the Brothers, 'who either took individual boys into their room, or molested them in front of us'. Mr Hennessey said that he had personally witnessed and experienced Brothers O'Sullivan, O'Neill, Parker, Wise, Angus, Murphy, Tuppin, Moore, O'Doherty and Keaney doing that.[112]

Mr Hennessey also described in detail how Brother Keaney used him as a 'pet' for sexual gratification. He said that Brother Keaney sexually abused him for five years from the age of 11 to 16. As a result of this, he said that he 'became a sexual target for many others, both Brothers and older boys' at Bindoon.[113]

Not long after Cliff Walsh arrived at Bindoon he was called to Brother Angus's room. Mr Walsh recalled Brother Angus standing behind him, putting his hand over his shoulder and down his pants and playing with his penis. Mr Walsh recalled that this happened about three times over a period of about two weeks.[114]

Mr Walsh recalled that he was also taken into Brother Parker's room and sexually abused. On another occasion, he recalled that, while he was in Brother Parker's room, Brother Parker attempted to anally penetrate him.[115]

When he was 13 years old, Mr Delaney said he was sexually abused by Brother Parker in his room.[116] VV said he was sexually assaulted by Brother Parker in his room on six or seven occasions over two years. He said that Brother Parker had initially groomed him and promised him his own land to farm after he left Bindoon.[117]

VV recalls that other Brothers knew that Brother Parker was abusing him. Brother Dick used to say to him, 'You're Parker's little girl', and Brothers Dawe, O'Neill and Moore made comments about him and Brother Parker.[118]

Mr Delaney said that Brother Parker admitted his involvement in sexual abuse at Bindoon. As a result, Brother Parker was sent to Tasmania.[119]

Outside of dormitories and Brothers' rooms

The evidence is that not all of the sexual abuse occurred in the boys' dormitories or the Brothers' rooms; it also happened in other parts of the institutions.

VI said that Brother Dick would touch and cuddle VI in the projector room while movies were being screened at Castledare.[120]

VG gave evidence that Father Sullivan forced himself upon VG one day in the chapel at Tardun. This happened not long after he had told Father Sullivan during confession what had occurred at the hands of Brother Simon. At the time, he said Father Sullivan tried to make VG touch his penis, but VG escaped and spent the night in the bush.[121]

Mr Ellul gave evidence that not only was he was sexually abused by Brother Synan in Brother Synan's room and on several occasions when Brother Synan came to his cubicle at night; Brother Synan also sexually abused Mr Ellul when they were alone on the farm at Tardun, which happened frequently. The abuse occurred over a two-year period.[122]

During the day, when the other Brothers at Bindoon were occupied on the farm or at the orphanage and the boys were also occupied, Brother Parker would approach Mr Delaney anywhere on the grounds of Bindoon and tell him to 'go to his room, get undressed and lay face down on his bed'. He said the abuse, which involved anal penetration, happened at least once a month for over 18 months.[123]

VV said that Brother Angus anally assaulted him at the farm hay shed at Bindoon. At that time he had only been at Bindoon for about two weeks.[124] When he reported the incident to Father William, he said that Father William applied cream to the scratches on his legs and then began to fondle his bottom and genitals. VV fled from Father William and remained in

his bed for four or five days.[125] VV recalled that Father William later attempted to grope him again when he was an altar boy.[126]

Mr Hennessey said that Brother Angus anally assaulted him at the piggery at Bindoon. When he screamed in pain, Brother Angus belted him over the head and told him to 'shut up and take it like a man'.[127]

Mr Hennessey said that Brother Wise sexually abused him in the vineyards at Bindoon. Father William also sexually abused him on several occasions when he was 'put in charge of Father William's garden, outside his little flat and away from the main building'.[128]

Abuse by other boys

A number of the men gave evidence that they were sexually abused, or were threatened with sexual abuse, by other boys.

VI said that, after he was transferred to Clontarf, a couple of older students made sexual advances towards him and that he 'was terrified of being sexually abused by either the boys or the Brothers'. At the time, he thought it was because they knew that Brother Dick had sexually abused him at Castledare.[129]

Mr Ellul said that older boys sexually abused him at Tardun on two occasions.[130]

Mr Hennessey said that another boy at Bindoon frequently raped him when they would 'clear off into the bush after church'. The boy was the same age as Mr Hennessey but much bigger. Although it 'started off as mutual masturbation', the boy would track Mr Hennessey down in the bush, hold him down and anally penetrate him.[131]

VV also gave evidence that a number of older boys sexually assaulted him at Bindoon.[132]

A state inspection report on Castledare dated December 1950 noted that a student at Castledare was caught acting 'unnaturally' with a dog and that he learnt the behaviour at Castledare. The report noted that the boy said that older boys at the school used to make him take off his clothes and 'do rude things' to him. The report also noted that 'Brother McGhee apparently punishes these lads with a "stick across the bottom" if he catches them'.[133]

Abuse at locations outside the institutions

There was evidence that on some occasions boys were sexually abused by people at locations outside the institutions and by visitors to the institutions.

VG said he was abused by a farmer – an old boy of Tardun who was good friends with the Brothers, including Brother Synan. VG said he was sent to help the farmer, who lived nearby. The farmer touched VG's private parts many times despite VG's protests. One day the farmer grabbed him and tried to have sex with him. The farmer's advances finally stopped when VG threatened the farmer with a loaded shotgun.[134]

VV said he was sexually assaulted by a photographer – a regular visitor to Bindoon – during a picnic that Brother Dick arranged.[135]

What the boys did about the abuse

VI did not report the abuse he suffered at Castledare to anyone. Although he went home every month or two, he did not have a relationship with his mother; he said that she 'had her own problems', and he 'didn't have anyone that I could tell'.

VI also did not think to tell anyone because 'it was a way of life' and he 'didn't know any better'. He also remembered thinking that if he said anything he 'would get the blame'.[136] VI did not doubt 'that other Brothers at Castledare knew the abuse that was going on' because it was 'so obvious' and Brother Dick could easily be seen coming into VI's bed at night. VI felt that Brother Dick was not worried about getting in trouble and 'didn't care'.[137]

Mr McGregor said that he also did not report the abuse by Brother Murphy at Castledare and Clontarf. Mr McGregor felt that Brother Murphy 'sort of grew into paedophilia over the years as he knew he could get away with it'.[138]

Mr Cosgrove also did not report the sexual abuse he suffered to anyone. There were a number of reasons:

- The boys were told that children should not complain and were taught to be grateful for even being at the institution.
- It would have been difficult to speak about the abuse because he assumed he was at fault.
- He was unaware that anyone else was being sexually abused and that it was not something that the boys spoke about.
- Even if he had wanted to complain he did not know whom he could have turned to. He could not have reported it to the Child Welfare Department because he did not know who they were or when they were coming; even if he did, it would have been impossible to speak to them in any event.[139]

Mr Walsh told Father Gerard some of what Brother Parker did to him, after which he was called to Brother Quilligan. When Brother Quilligan questioned him, he got scared – he thought he was in trouble, so he backtracked and retracted what he had told Father Gerard. A few days later, Mr Walsh was sent to the monastery at New Norcia. He thought that the Brothers wanted to get him out of the way after what he had said about Brother Parker. He stayed at the monastery for about 21 months, after which he was sent back to Bindoon. He remained at Bindoon for a further year but was not sexually abused.[140]

Other than saying what happened with Brother Parker, Mr Walsh did not complain about the abuse he suffered when he was at Bindoon. He knew no other life, so he had no life to compare his treatment at Bindoon to. He was too terrified to report the abuse because of the fear that was instilled in all of the boys.[141]

Mr Delaney said that, when he was 13 years old, he confessed to Father William that Brother Parker had been sexually abusing him. Father William told him to say three Hail Marys and pray, after which he would be forgiven. Mr Delaney 'never bothered telling

Father William again' when he realised that it was not going to do any good because Father William could not divulge what he had been told in confession.[142]

After Mr Ellul was sexually abused by Brother Synan, he tried to escape from Tardun. He tried to report the abuse, but the police did not believe him. He was returned to Tardun, whereupon Brother Morgan belted him as punishment. Soon after Mr Ellul returned, Brother Synan came to his cubicle and fondled him, just like he had before, but Brother Synan stopped after that.[143]

VG reported the sexual assault by Brother Synan to the nurses when he was in hospital and repeated the complaint to Matron Barden. He also told two shearers who were also in hospital at the time.[144] On his return to Tardun Brother Synan gave him a severe belting with the strap for talking to the nuns. He says that Brother Synan continued to strap him at 'every opportunity'.[145] VG later confessed to a priest. Not long afterwards, he again received the strap from Brother Synan.[146] He also later confessed to Father Sullivan, who told him that he 'had a dirty mind' and that he must do penance for his purification.[147]

After the farmer's attempts to have sex with him, VG said that he felt that he had 'no one to turn to', that the police would not believe him and that there was 'no one else in a position of authority I could contact'.[148]

In or around 1967, a delegation from Malta visited Tardun. VG said that he gave the man heading the delegation a letter that explained what had happened to him. Although the man, a Minister in the Maltese government, was very nice and gave him a lot of encouragement, VG said that nothing changed after the delegation left.[149]

Other than reporting it at hospital and telling the Minister, VG said that he did not tell anyone else about the sexual abuse 'because it was too scary' and because he 'felt like it was my fault and I felt ashamed'. He was also discouraged from telling other Brothers because of the physical abuse he received. He felt that there would be no use telling the nuns because he got into trouble when he asked them if they could send him back to Malta.[150] VG also never spoke to other boys about the abuse. He thought that everyone knew what was going on but, like him, they were too scared to talk about it.[151]

- **Finding 7**: The evidence at the hearing included many allegations of boys being sexually, physically and emotionally abused.

2.3 One Brother convicted

In the early 1990s, Brother Dick was charged and ultimately pleaded guilty to having unlawfully and indecently dealt with a number of unknown boys under the age of 14 years at Castledare between 1 January 1960 and 31 December 1965. While Brother Dick admitted to fondling the genitals of five boys aged about eight or nine and to rubbing his penis against the anus of a boy aged between eight and 10, he denied putting his penis in the mouth of a boy aged about eight or nine, who was asleep at the time. Brother Dick received sentences that amounted to 3½ years imprisonment. His appeal was dismissed in November 1994 and the sentences were upheld.[152]

In the early 1990s, a number of former residents of Christian Brothers institutions in Western Australia made complaints to the police about sexual and physical abuse by Christian Brothers some 50 years earlier. Around November 1993, the then DPP for Western Australia issued a media release setting out his reasons for deciding not to institute prosecutions in response to the allegations.[153]

More former residents made complaints to the police and the then DPP again recommended against instituting prosecutions in 1995.[154] The decisions not to prosecute raise issues that are particularly relevant to one of the systemic issues identified in the case study – that is, the effectiveness of the criminal justice system in providing justice to victims of child sexual abuse. This is considered further below.

3 What the Christian Brothers knew

3.1 The rules

The Provincial Council was charged with the administration of the province, which meant that it had overall responsibility for the schools, institutions and projects operated by the Christian Brothers and had pastoral responsibility for the communities of Brothers who lived in the province.[155]

The Provincial Council reports to the Congregation Leader, formerly known as the Superior General. The Congregation Leader is the head of the whole congregation worldwide.[156]

The Common Rules and Constitutions of the Congregation of the Brothers of the Christian Schools of Ireland (the Constitutions) applied during 1947 to 1968. The duties of the Provincial and the Provincial Council are set out in the Constitutions and Statutes.[157] The Constitutions provided guidance on the relationships of individual Brothers with students.[158]

The Constitutions contained rules about Brothers not having particular friendships, not speaking to pupils privately, not touching them on the face or otherwise fondling them and not allowing a boy to enter their room.[159]

Rule 208 of the Constitutions stated that, in the case of grave external scandal or of serious imminent injury to the community, the religious may be dismissed immediately.[160]

The *Directory and Rule* was in place from 1932. It contained detailed and specific regulations and procedures for the life and work of the Brothers.[161]

The *Directory and Rule* gave a list of 'grave causes entailing dismissal from the Congregation of Brothers of temporary and perpetual vow'. These included 'grave faults against morals'.[162]

According to Brother McDonald, Deputy Province Leader, Oceania, the message in the *Directory and Rule* was that Brothers were to treat pupils with respect and dignity and there was a clear implication that it was a crime to invade a child's sexuality.[163]

Canons 646–662 of the *Code of Canon Law* and Constitutions 211–224 of the Constitutions defined the conditions to be observed regarding departure or dismissal from the congregation.[164]

The process for becoming a professed member of the Christian Brothers is known as formation. Formation is the personal and spiritual preparation of someone to undertake the life of a Christian Brother. It goes beyond academic preparation. The initial stage of formation involves becoming a novice. A novice officially becomes a Brother once they have taken vows.[165] A Brother continues to take vows year by year for at least six years. This is known as temporary profession. Once a Brother has reached the age of 25, a Brother can take vows for life. This is known as perpetual profession.[166]

A Brother of temporary profession who was accused of grave moral fault could either be dismissed mid-year if the allegation was proven and very serious or his vows could be allowed to lapse and not be renewed at the end of the year.[167]

In the case of a Brother of perpetual profession who was accused of grave moral fault, the sanctions available were reprimand, canonical warning, advice to the Brother to seek a dispensation from vows or advice that the procedures for expulsion would be set in train. A canonical warning was a formal warning that, if the Brother's conduct persisted, he could be expelled.[168]

Brother Shanahan said that during the period 1947 to 1968, if a complaint was made about sexual misconduct, a common procedure was to put the complaint to the offender. If the offender did not admit to the complaint, the word of the Brother was usually taken over the word of the child unless there were other indications that would lead to the Brother's denial being doubted.[169]

In cases where the Brother admitted to conduct, where direct evidence of misconduct was available or where there were several allegations made against a Brother, action was often taken. For minor incidents such as fondling, a Brother was likely to receive a warning and might be transferred from a position in a residential institution or school to a day school. In more serious cases, the Brother might be asked to seek a dispensation from vows. On very rare occasions the Brother would be dismissed.[170]

The Christian Brothers had no written policies on child protection in the period 1947 to 1968.[171]

Brother Shanahan said that it was expected that any concerns about the behaviour of members of the community or other staff would be shared with and observed by the visitor and would be reported back to the Provincial Council and discussed.[172]

From 1947 to 1953 the Provincial Council with oversight of the communities within Australia was in Strathfield, New South Wales. From 1953 to 1968, it was in Melbourne, Victoria. Brother Shanahan gave evidence that the supervision of the communities at the institutions was not as tight as it could have been had the supervision been out of Perth.[173]

3.2 The records of the Christian Brothers

A number of documents contained evidence of what successive Provincials and members of the Provincial Councils knew about child sexual abuse allegations.

Lawyers for the Christian Brothers prepared summaries from documents they located for the litigation referred to below. Those documents included minutes of the Provincial Council meetings held between 1923 and 1934; a Generalate Correspondence file for 1921 to 1946; and other records, including visitation reports held by the Christian Brothers.[174] The Royal Commission located other original documents, including additional visitation reports.

Brother Shanahan gave evidence that information contained in the minutes of the Provincial Council are matters that were considered by the Provincial Council. He stated that

somebody in the Brother's community would have had to raise the matter for it to reach the Provincial Council.[175]

The four institutions

The first reference to one of the four institutions appears in a letter from the Under Secretary of the Colonial Secretary's Office dated 21 February 1919. It refers to 'grave allegations of misconduct' that had been made against a teacher at Clontarf. Investigations revealed that the misconduct extended over a period of at least 18 months and it was reported that 'a number of innocent boys have been corrupted'.[176] The teacher involved, Brother Carmody, was arrested and charged for indecent dealings with minors. He pleaded guilty to the charges and received a jail sentence of three years.[177]

The letter from the Under Secretary suggested that there had been 'very lax administration by the resident officer and the rest of his staff'.[178] The Archbishop of Perth responded to the allegations by letter dated 3 March 1919. He stated in the letter that he had consulted with Brother Noonan, the Superior of the Christian Brothers for Western Australia, and that it had been concluded that a new Superior and new staff would be placed at Clontarf.[179]

The next relevant reference was in 1934. Brother Sebastian from Bindoon was identified in a visitation report as being 'not the correct type to be in charge of a Government subsidised Institution which is so closely watched by the Child Welfare Dept. and so much under the notice of the public …'.[180] No allegation of sexual abuse was made against Brother Sebastian in the document.

In 1943, a scrutiny book extract recorded that Brother Murphy was transferred to Strathfield in 1943 to 'live down gross accusations by evil boys'.[181] Brother Shanahan accepted in evidence that the suggestion was that the accusations were made against Brother Murphy and they were not believed.[182] Reference is also made to Brother Murphy having been removed from Clontarf. Brother Shanahan thought that occurred in the late 1950s.[183]

In 1944, a parent made a complaint to the police that Brother Foy was interfering with their son at Castledare. The Brother denied the claim but was transferred to Leura (a retirement home and also a residence for Brothers under investigation), where he had no more contact with boys.[184]

In 1946, Brother Beedon was transferred to Adelaide from Clontarf for handling a boy's private parts and fondling him.[185]

A visitation report for Bindoon in 1948 stated that the Superior 'cannot get out of his head an opinion he formed of Br Lambert [Wise] when he was at the stage of being a big boy amongst the boys, and still fears his judgment regarding familiarity'. The report also stated that Brother Wise 'was given very definite and serious advice during the Visitation regarding correct attitude and demeanour towards the boys'. The report also cautioned that boys 'should not be allowed to make up a Brother's bedroom'.[186]

In 1950 allegations of misconduct were made against Brother Boulter at Bindoon by a 'boy of dangerous character'.[187]

A 1951 visitation report on Clontarf recorded that: 'Brothers should be most careful at all times to preserve the greatest reserve with the boys. Special care is called for in the dormitories. The hands-off Rule is our safeguard.'[188]

A visitation report on Bindoon dated April 1952 stated that the practice of sending boys to Brother Wise's room for attention to bruises and similar complaints is 'dangerous and unnecessary with the Nuns available'.[189]

A visitation report on Castledare dated 1952 stated that Brother Harnetty made complaints about the 'harsh treatment of the boys by the superior and sub superior'. The report stated that little boys were sent out from the Chapel for 'unsatisfactory conduct, left standing in the cold for long periods, even on frosty winter mornings, and were given no breakfast'. The Superior's method of correction is stated to often be 'a smack on the face; even though the children are between 5–10 years of age'.[190]

A visitation report on Bindoon dated October 1953 stated that Brother Parker was beset with 'inner troubles' relating to his vows. It noted that Brother Parker had great trouble with the second vow, although there was no individual involved. He was said to be gentle and kindly and the boys looked to him as their friend. The report stated that it was in this that Brother Parker should be on his guard; however, no incident of any kind had taken place. The recommendation was that 'in his own interest his contact with the boys ought to be reduced to the minimum'.[191]

Mr Delaney gave evidence that in 1954, when Mr Delaney was 15 years old, Brother Parker admitted to Brother Doyle that he had been involved in sexual abuse at Bindoon. At the time, Mr Delaney was called into Brother Doyle's office and asked to tell him what Brother Parker did to him, which he did. Brother Doyle explained to Mr Delaney that 'because of his [Brother Parker's] actions' Brother Parker had 'been sent to Tasmania'. Brother Doyle told Mr Delaney that he would be punished if he told anyone about it.[192]

Brother Wise was mentioned in correspondence from Brother Duffy to Brother Carroll dated 7 January 1954. In that correspondence Brother Duffy stated:

> You will be well advised to let Brother L O'Doherty (Brother Superior of Castledare) know, during the next visitation, of the desirability of keeping Brother Lambert Wise away from all supervision of the boys except perhaps when they are in the field. His relations with the boys have given rise for concern, before, and for everybody's sake, the greatest care should be taken to protect both him and the boys.[193]

The Castledare house annals note that Brother Wise was transferred to Melbourne on Christmas Eve and was ordered to leave as soon as possible. He had been at Castledare for four years.[194]

In a visitation report on Clontarf dated July 1957 it was recorded that Brother Angus was 'found at fault in permitting boys to enter his bedroom and was given to understand that a serious view is taken of such conduct'. The same visitation report also stated that:

> Fault was found at Visitation with the manner in which the boys wander through those parts of the house that are reserved for the Brothers and the Superior was directed to see that the rule regarding the enclosure is strictly observed. There appears to have

> been serious violation in this matter in the recent past and boys have been known to enter a Brother's room, singly and in groups, and to spend considerable time there[195].

Another visitation report dated July 1959 said about Brother Angus:

> The charge of interfering with boys came up a couple of years ago … Recently a similar charge of dealing immorally with a boy at Clontarf came to the notice of the Superior. The incident is said to have taken place last year. Br Alonso [Angus] denied the charge to both the Superior and to me. There the matter rests at present …[196]

Brother Wise was later the subject of a letter from the Superior General in Dublin, Brother Clancy, to the Provincial in Melbourne dated 27 August 1957. In that letter Brother Clancy stated:

> I notice that Brother Lambert Wise is a member of your teaching staff at Rostrevor – a Boarding College. Perhaps you do not know that there was some reason in the past to believe that contact with boys constituted a danger to him. If the weakness really was there, it is the kind of thing, unfortunately, that does not easily die, but has the habit of unexpectedly reasserting itself … My only reason for mentioning it now is lest you may not be aware of the position, and because I have good reason to know what unfortunate happenings have occurred with others in the past.[197]

In a letter dated August 1959, Brother Angus wrote to the Provincial Brother Garvey about an allegation made against him. He stated that 'I wish to repeat as I did at the time of the visitation that the boy is telling an untruth'.[198]

In October 1959, in a letter from an Assistant to the Superior General in Dublin, Brother Duffy, to the Provincial in October 1959, Brother Duffy referred to Brother Angus and another Brother:

> it seems to me, if my memory serves me correctly, that similar charges were preferred on some former occasion … I find it difficult to accept the claim of the young Brother that he did not realise that his conduct in Clontarf was very dangerous, and very unseemly. His very instincts would surely warn him. In any case it would seem that he has a most dangerous weakness, to say the least.[199]

In a letter from the Superior General to the Provincial in 1959 the following was said about Brother Smith at Castledare:

> I am sorry that you have had that trouble with Br B. Smith. Unfortunately that sort of trouble never seemed to be very far away and it does so much dreadful harm – especially to the boys concerned and to others who may hear of it … I am glad that you have given the C.W [canonical warning] I believe that there is no other course to follow but to impress upon transgressor the seriousness of the fault and the scandal that accompanies it …[200]

A visitation report on Bindoon dated 1959 stated that an interview with the chaplain led to allegations of 'immoral behaviour among the boys'. It is noted that 'often nothing is done other than sending the boy guilty of the immoral deed to the Chaplain for confession'. Further:

> The Abbot learned of immorality among the boys and the failure of the Superior to take drastic measures to eradicate it …
>
> … the whole trouble lay in the type of men the Provincial Council had given him – men who could not supervise boys. If he had picked men, there would be no trouble. So the matter was left there.[201]

In 1960 the Provincial wrote to the Superior General about Brother Jordan's appearance in court for making obscene telephone calls to a woman. The Provincial notes that 'we have not been happy about his relationship with the boys and for that reason removed him from Tardun in February 1957'.

3.3 Allegations elsewhere in Australia

In the 1920s, eight Brothers were reported for immorality with boys or accused of impropriety with boys or immorality/abuse of children. The conduct occurred in several places, including Geelong and Queensland. The consequences for those Brothers are not known. However, it is known that it was considered that there was not enough evidence against one of the Brothers to prove guilt. One of the Brothers was immediately expelled and another received a reprimand. One was referred to General Council in circumstances where the charges did not warrant application of Canon 653.[202]

In the 1930s over a dozen Brothers were reported for similar conduct to that raised earlier in this case study. One received a dispensation, one was rebuked and given penance and one was returned to Ireland. Of these, one Brother was from Bindoon and one was from Tardun. Others were located in Geelong, Brisbane and Melbourne.[203]

In a letter dated 1937 from Provincial Brother McCann to the Superior General in Dublin, the Provincial states that the 'frequency of moral lapses is alarming'.[204]

In 1936, Brother Traynor was the subject of correspondence to the Brother Superior concerning his immoral dealing with boys.[205]

In the 1940s, 17 Brothers were reported, again for similar conduct, including fondling and 'interfering' with boys. Their consequences included canonical warning, verbal advice and transfer to another institution. Brothers from each of the four institutions were named.

In addition, allegations were made against Brothers in Strathfield (NSW), Geraldton (WA), Brisbane (Qld), Kalgoorlie (WA), Tamworth (NSW) and Lewisham (NSW).[206]

In April 1940, a letter from the Christian Brothers Training College in Strathfield, New South Wales, to the Superior General in Dublin states:

> I regret to have to report adversely about this Brother [Brother Keenan]. Several years ago he wrote to me about the difficulties he had of a moral nature and asked me whether I thought he should seek a dispensation. I told him that if he observed his Rule … and was faithful in prayer he should not hesitate about continuing. He did not keep the Rule … and offended. Two Religious priests some time ago advised him to apply for

> the dispensation … The information at my disposal leads me to endorse his application.[207]

In a letter to Superior General Noonan dated 15 May 1941, the Provincial, Brother Hanrahan, reported that Brother Keenan had admitted to a charge of immoral action involving a boy in Manly.[208]

In 1946, a further letter to the Superior General reported:

> [Brother Keenan is in] serious trouble again, interfering with a boy at Lewisham … He says that when we has in trouble before he made as strong a resolution as possible to avoid trouble, but still lapsed. He thinks and I am inclined to agree that the probability is against him … I am putting these things before you in a preliminary fashion only …[209]

The Royal Commission is satisfied that it can be concluded from this letter that Brother Keenan was not removed from contact with children despite his disclosure in 1941.

In 1945 Brother McSweeney was referred to in a letter from Brother McCarthy, an Irish Brother who was an Assistant to the Superior General in Dublin. Brother McCarthy wrote:

> His is a really bad case … He merits the most severe penalty but as you say there are circumstances which make one hesitate before passing sentence. He must be kept out of any danger of relapse and never in contact with the young … He must not be idle and he must be made feel that he has to atone for his offences.[210]

In the 1950s, 24 Brothers were reported. Some were given a censure, others a canonical warning and some were recommended for dismissal. Again, each of the four institutions was named, as well as Castle Hill (NSW), Rostrevor (SA), Tasmania and Melbourne (Vic). [211]

In 1953 Brother Duffy sent a letter to the Provincial Brother Garvey about allegations against Brother Marcian Quaide, Brother Superior of Launceston, during his period at Christian Brothers College on Victoria Parade in Melbourne, Victoria. The allegation against him related to 'hands on private parts of boys'. It states:

> If he is still being troubled in the same way, he will need a pretty straight talk. If he has gone astray in the matter in Launceston, you will have to consider transferring him ... I have good reason to believe that it happened, and that kind of weakness does not easily die ...[212]

In November 1953, a letter from Brother Duffy to the Provincial stated:

> For anyone with the tendency there is always the danger of further outbreak, and we are bound to protect both the boys and the good name of the Institute ... [we are] bound to do all that we can to remove every possible danger of any recurrence.[213]

Brother Shanahan gave evidence that the 1953 letters from Brother Duffy suggested that the executive of the Christian Brothers understood that sexual abuse of children was not necessarily a one-off matter and there was concern that relapse may occur.[214]

In May 1954, a letter from the Superior General in Dublin to the Provincial about a Brother from Tasmania stated:

> You will find that that particular weakness is difficult to root out. It is remarkable how it tends to break out time after time … One of the greatest troubles with the weakness is the harm that it does to the boys. Boys seem to find it hard to forget anything of the nature, especially on the part of one whose office it is to deplore such conduct, and there is the danger that the same weakness may manifest itself in the boys when they are later placed in somewhat the same circumstances.[215]

By the 1960s, these matters appeared less often in the minutes and five Brothers were reported, including Brothers from Castledare and Bindoon.

The last report in the Provincial Council minutes was in 1959. The summaries prepared by lawyers for the Christian Brothers stated:

> It should be noted that following the last report in the Council minutes in 1959 there were approximately 150 pages left in that particular volume in the minutes in which there is no mention of any report of abuse of children or immorality involving children. This suggests that these cases are no longer reported in the Council minutes and there may well have been some decision made in the late 1950's not to record these matters.[216]

3.4 Submissions by Christian Brothers to previous inquiries about their knowledge of abuse

The Christian Brothers made submissions to a number of previous inquiries where the question of knowledge of allegations of sexual abuse was raised.

Brother Shanahan was the Convenor of the Catholic Church's Joint Liaison Group into Child Migration. The joint liaison group made submissions to the Senate Community Affairs References Committee inquiry *Lost innocents: Righting the record – Report on child migration* in 2001. Brother Shanahan also gave evidence on behalf of the Catholic Church at that inquiry.[217]

The submission stated that government authorities regularly inspected all of the institutions and that these reports are on the public record. The submission also stated that the policies and practices of the time on child protection and abuse would be seen nowadays as inadequate, but they reflected the generally accepted standards and attitudes on care and supervision at the time.[218]

The submission stated that the joint liaison group believed that the standard of care in the Catholic institutions was generally within the bounds of what was safe, proper and lawful. It stated that they were now aware that abuse did occur, but these abuses did not seem to have come to the notice of congregational, diocesan, federal or state supervising authorities.

Brother Shanahan gave evidence that he was now embarrassed by that reference and agreed that it was certainly the case that the abuses did come to the notice of the leadership of the Christian Brothers during the 1920s, 1930s, 1940s, 1950s and 1960s.[219]

The Senate Community Affairs Reference Committee report *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children* concluded that the Christian Brothers must have known about illegal practices. Brother Shanahan gave evidence that he agreed with that proposition.[220]

Brother McDonald, Deputy Provincial of the Province of Oceania at the time of the public hearing, accepted that, on the basis of the chronology table tendered in the public hearing,[221] the Christian Brothers executive that was in place knew in the 1920s, 1930s, 1940s, 1950s and 1960s that there were allegations of child sexual abuse within the Order.[222]

Brother McDonald made a submission to the Victorian Parliament Family and Community Development Committee's Inquiry into the Handling of Child Abuse by Religious and Other Organisations in 2013. His submission stated that, in the early 1990s, allegations that a number of Christian Brothers had sexually abused children came to the attention of the province leadership team. He said in his submission that there was evidence of some offending before this time, but the archives revealed that those 'reports were isolated and few in number'.[223]

Brother McDonald gave evidence that the work he did on those archives to satisfy himself that 'reports were isolated and few in number' was limited to Brothers who had offended in Victoria. He did not do a lot of detailed work himself.[224]

Brother McDonald gave evidence that, having sat through the evidence of the 11 men, he does not now maintain that incidents of offending were isolated and few in number.[225]

- **Finding 8:** In each of the decades from 1919 to the 1960s, the relevant Christian Brothers Provincial Council knew of allegations of sexual abuse against Brothers in Christian Brothers institutions around Australia:
  - In each decade from the 1930s to the 1950s, allegations of child sexual abuse were raised against Brothers who had also faced earlier allegations.
  - By the 1950s, communication between one or more of the then Superior General and the then Provincial reveal:
    i. an understanding that sexual abuse can have ongoing impacts on children
    ii. that sexual abuse of children was viewed as and referred to as a 'moral lapse' or 'weakness'
    iii. an understanding that those lapses had a tendency to reassert themselves
    iv. an understanding that there was a danger that an abused may become an abuser
    v. an understanding that the administration of an institution may be at fault when a Brother was an abuser
    vi. that at least one Brother was transferred to another Christian Brothers institution where he had contact with children after being the subject of an allegation that concerned children; however, in some cases, some Brothers

were transferred to institutions where they would not have contact with children.

- **Finding 9:** The leadership of the Christian Brothers during the period 1947 to 1968 failed to manage each of the institutions so as to prevent the sexual abuse of children living in those institutions.

4 Actions taken by the Christian Brothers

Brother Shanahan said that the issues of treatment of ex-residents of the institutions had been brought into public awareness through media stories in the late 1980s and 1990s. Around this time he was aware that Brother Gerald Faulkner, the then Provincial of the Holy Spirit Province, had been liaising with representatives of former child migrant groups.[226]

Also around this time, at the 1990 General Chapter of the Congregation of Christian Brothers in Rome, one of the issues discussed was the discovery that child sexual abuse occurred in a residential boys' home in Newfoundland in Canada. On returning from the General Chapter, Brother Faulkner sent a circular to the Brothers in the Holy Spirit Province. In the circular he stated that child sexual abuse was a serious matter that needed to be dealt with and that the Brothers should contact him immediately if they had committed any offence or had concerns about such conduct.[227]

In the 1990s, the Christian Brothers took a number of actions on the issue of child sexual abuse within its Order.

4.1 The engagement of Brother Barry Coldrey

Brother Barry Coldrey was a member of the Christian Brothers and a professional historian. Brother Coldrey was based in the St Patrick's Province in Melbourne.

In 1991, Brother Coldrey was commissioned to write a history of the institutions. Brother Coldrey was required to 'combine historical soundness with balance and sensitivity in the treatment of aspects of these institutions' history that are controversial'.[228]

Brother Shanahan agreed that the 'controversy' was a reference to the allegations of child sexual abuse and physical assault at the institutions.[229] He also agreed that the source material for Brother Coldrey's book would include archived material held by the Christian Brothers in the relevant province and also in Rome.[230]

Brother Coldrey was given access to the Christian Brothers archives, which included visitation reports; the Community Annals, which contained annual reports written by the Superior of each community; the personnel files of the Brothers; and various correspondence files.[231]

Brother Coldrey spoke to victims of abuse at the institutions. He made contacts with various ex-residents.[232]

The Provincial Council 'learnt from Brother Barry Coldrey that there had been sexual abuse of residents of the Institutions'.[233] Brother Shanahan accepted that there was reference to sexual abuse in the Christian Brothers' own records and that the contents of those records were brought to the Provincial Council's attention through Brother Coldrey's research.

Brother Shanahan gave evidence that the Provincial Council came to the conclusion, based on the number and consistency of the complaints that had been made, that there had been sexual abuse of residents at the institutions.[234]

Brother Coldrey gave a manuscript to congregation leader Brother Colm Keating titled *Reaping the Whirlwind – The Christian Brothers and Sexual Abuse of Boys in Australia – 1920 to 1944 – A Secret Report for Congregation Executives* in January 1994.[235]

Brother Shanahan recalls that the Provincial Council was surprised to receive it, as it had not asked Brother Coldrey to prepare the report.[236]

Brother McDonald does not recall that the St Mary's Province, of which he was province leader in 1994, treated the manuscript as secret. It was produced under subpoena to Slater & Gordon and was produced voluntarily to the Special Commission of Inquiry into Child Protection Services in New South Wales (the Wood Royal Commission).[237]

4.2 Apology

Brother Shanahan said that in 1993 he felt that the one of the first things the Christian Brothers had to do in response to allegations of abuse at the institutions was to admit that there had been abuse at the institutions and apologise. He was involved in drafting the apology, which was published in July 1993.[238]

The apology encouraged men to come forward for practical assistance.[239]

Brother Shanahan said that the immediate impetus for the apology was the breakdown of the relationship between the Christian Brothers and VOICES in mid-1993.[240] VOICES, the Victims of Institutionalised Cruelty, Exploitation and Supporters, was a group representing ex-residents of the institutions.

Mr Hennessey gave evidence that the apology by the Christian Brothers in 1993 was not a personal apology. He did not receive a letter or any personal contact. The apology made him feel cold.[241]

4.3 Services

Between 1989 and 1995 the Christian Brothers were involved in a number of actions with former residents at the institutions.[242]

Brother Faulkner held discussions with representatives of former child migrant groups on allegations of physical and sexual abuse at various institutions.[243]

Brother Shanahan said that Brother Faulkner passed on to Brother Shanahan a range of complaints from former child migrants that were raised at those discussions. The most prominent complaint was the separation from family. There were also complaints about the work the former child migrants had to do at the institutions, the food, the lack of education, the physical harshness, physical abuse and sexual abuse. Brother Shanahan does not recall the stories of sexual abuse being prominent at that point.[244]

The Christian Brothers:

- gave financial and other support to the Child Migrant Friendship Society
- funded assistance for family tracing services
- set up a trust fund to give child migrants financial assistance so they could travel to the United Kingdom to meet family members
- facilitated access to counselling services.[245]

Brother Shanahan said that during the 1990s the Christian Brothers funded a full-time qualified researcher in the UK to help former child migrants with searches.[246]

The Holy Spirit Province established a helpline in October 1993. The helpline was a telephone and counselling service funded by the province.[247] The province also established a travel assistance fund in 1993.[248]

On 6 October 1993 the Holy Spirit Province appointed Ms Jane Brazier to convene and be chairperson of an independent advisory panel. Brother Shanahan said that the purpose of the panel was to profile the needs of ex-residents of the institutions and make recommendations on how the Christian Brothers could respond to those needs. The panel's process and the services delivered under its direction were known as ISERV (Independent Support for Ex-Residents and Victims).[249]

Brother McDonald said that the ISERV panel consisted of six professionals with backgrounds in social work, psychology, counselling and medicine.[250] The Terms of Reference for the ISERV panel were to:

- collect information about the former residents of the institutions
- develop a profile of those in need of support services
- give advice about the helpline, which would offer counselling and information about existing services
- provide referrals to determine the nature and scope of services required by former residents.

It was also to make recommendations on the range of services that former residents might need and to give the Christian Brothers a report on those matters.[251]

The ISERV panel final report was issued in October 1994.[252] Brother Shanahan gave evidence that the findings in the final report were addressed by either the Christian Brothers or on their behalf by CBERS.[253]

Another action taken by the Christian Brothers was the development of a computerised national index (known as the Personal History Index) that identified all child migrant records held by the Catholic Church around Australia.[254]

The Christian Brothers established CBERS in 1995 after the final ISERV report in October 1994. CBERS provided a range of services including counselling, a no-interest loan scheme, literacy and numeracy assistance and advocacy services.[255]

Some of the witnesses before the Royal Commission gave evidence about their experiences with CBERS. Mr Walsh said he did not want to seek assistance from CBERS because it was

too closely associated with the Christian Brothers.[256] VG had some involvement with CBERS and it helped him in paying for an airfare to visit his family in Malta.[257] VV received counselling from CBERS and found that to be quite good.[258] Mr Cosgrove received counselling from CBERS, but he stopped seeing the CBERS counsellor because the counsellor had trained as a Christian Brother, he lived very near to Mr Cosgrove and Mr Cosgrove was not happy with his advice. Mr Cosgrove then saw a private counsellor and sent the bills to CBERS. Mr Cosgrove said that CBERS was too close to the Christian Brothers.[259]

Ms Maria Harries, the director and chair of the management committee of CBERS from the time of its establishment, gave evidence about concerns of the Child Migrant Trust and VOICES about CBERS and its independence from the Christian Brothers. She said that the CBERS management committee discussed these concerns with the Christian Brothers.[260]

4.4 Brother Faulkner's report on child sexual abuse

At the 1996 General Chapter a direction was made that the Christian Brothers commission a study of child abuse within its own congregation.[261] Brother Shanahan said that the purposes of the study were:

- to discover and understand their own truth about child abuse
- to minimise the possibilities of recurrence
- to be more effective through ministry and others to contribute through learning to the resolution of problems of child abuse in society.

Brother Faulkner was selected for that task because of his significant involvement in the preceding years in the area of child abuse.[262]

The report was published in April 1998 and was titled *An initial report on Child Sexual Abuse*.[263]

Brother Shanahan said that the report made a number of points but did not provide any new insights, because the Christian Brothers were already addressing many of the points made in the report.[264]

- **Finding 10**: In the 1990s, the Christian Brothers took a number of actions on the issue of child sexual abuse and related matters within its Order by:

- issuing an apology to ex-residents of the institutions in 1993
- giving financial and other support to the Child Migrant Friendship Society
- funding assistance for family tracing services
- setting up a trust fund to give financial assistance to child migrants
- facilitating access to counselling services
- establishing CBERS in 1995
- commissioning a study of child abuse within its own congregation in 1998.

5 Current policies and procedures

Brother Shanahan said that there have been changes to the way that members of the Order are recruited and trained since the period 1947 to 1968. Changes began to occur in the 1970s and continued through the 1980s and 1990s.[265]

At one time, people were taken into the Order before they finished secondary school. That practice has been discontinued.[266]

Brother Shanahan said that before new recruits enter residential training there is usually a period of extended contact with the Brothers. There is often a trial live-in period so that the recruit can get a taste of community life. As part of formation, the recruits are given significant help to reflect on what they are learning and what they are experiencing.[267]

Brother Shanahan said that the Vatican has issued guidelines about formation. The guidelines are usually very broad and underline the importance of proper assessment before receiving people into the residential stage of formation. The congregation or the local diocese is responsible for the way that these guidelines are taken up and applied in any particular situation.

The current policy on formation is that candidates:

- are vetted by a province committee
- must have a tertiary qualification
- must complete comprehensive psychological assessment with a registered clinical psychologist.[268]

Brother McDonald said that professional advisers have been used in formation work in recent years to do both psychosexual development and screening. The screening is carried out by Vitality Psychology and Consulting Services.

Brother McDonald said that, when new novitiates join the Order, they are told directly that there has been a history of Brothers offending and that, because of this, they must have psychosexual assessment.

Brother Shanahan said that psychological assessments would typically be done before someone enters a novitiate but at a stage when it appears that they are seriously interested in becoming part of the congregation.[269]

Brother Shanahan said that, in boarding schools run by Christian Brothers today, usually the house master of a boarding house and his family live in the boarding house to promote a family atmosphere.[270] Brother Shanahan said that staffing in the boarding sections is very different now compared with before the 1970s. The boarding staff are now separate from the teaching staff to ensure that teaching staff are not overstretched and run down. Mainly lay people run boarding houses today and not members of the Christian Brothers.[271]

Since the 1990s there has been a national association of vocation directors. These people are concerned with recruitment for religious Orders.[272]

There have been efforts to treat offenders. Brother McDonald recalls sending two members of the Order facing allegations of child sexual abuse to the Saint Luke Institute in the United States for residential treatment. The period of treatment lasted between three and six months. The treating doctors provided reports on the members, and the reports required follow-up monitoring of behaviour and ongoing therapy with psychologists in Australia.[273]

Brother McDonald gave evidence that anyone he knew to have offended or had serious allegations of child sexual abuse made against them was withdrawn immediately from contact with children.[274]

Brother McDonald said that other Brothers who faced allegations of child sexual abuse were referred to Encompass Australasia. Encompass Australasia was a treatment program that was established and funded by the Catholic Church for treatment of child sex offenders. It was jointly funded by bishops and the leaders of religious congregations. The Order or diocese that was responsible for the offending Brother or priest paid for treatment.[275]

Brother McDonald said that a resolution was made in 2014 at the Christian Brothers Congregation Chapter that, after 31 March 2014, Brothers with established allegations of abuse will usually be dismissed from the congregation.[276] Brother McDonald said that the intention of the resolution is to capture Brothers with recent rather than historical allegations of abuse.[277]

In his statement, Brother McDonald said that, due to the decline in the number of members of Christian Brothers in Australia and elsewhere, a view was taken that a structure would need to be set up to have the schools administered by lay people. Christian Brothers schools across Australia were consolidated into a single entity that was granted public juridic person status in 2013. That entity is named Edmund Rice Education Australia (EREA).[278] Brother McDonald gave evidence that EREA has separate legal status.[279]

The Christian Brothers currently follow the complaint-handling policy and procedure in *Towards Healing: Principles and procedures in responding to complaints of abuse against personnel of the Catholic Church in Australia* (Towards Healing).[280] The Towards Healing protocol is a set of principles and procedures established by the Australian Catholic Bishops' Conference and the Australian Conference of Leaders of Religious Institutes for a person who wishes to complain of having been, relevantly for this Royal Commission, sexually abused by a priest, religious or other Catholic Church personnel.

In addition to the policies and procedures in Towards Healing, the Christian Brothers have developed specific guidelines for complaints-handling processes within schools and other ministries.[281]

Current child protection policies include:

- *Safeguarding Children and Young People* – a resource document on child protection and guidelines for the Oceania Province of the Christian Brothers[282]
- the Child Protection Policy dated May 2013[283]
- the Code of Conduct Policy[284]
- the Code of Conduct for Interacting with Children and Young People.[285]

6 Current oversight

This public hearing forms part of the Royal Commission's broader inquiry into the system of out-of-home care in Australia.

The government department that had overall responsibility for the institutions no longer exists and the legislation under which those institutions operated has been repealed.[286]

During the public hearing, Ms Emma White, Deputy Director General of the Western Australian Department of Child Protection and Family Support, gave evidence about the operation of the current system of out-of-home care in Western Australia.[287]

Ms White said that there have been comprehensive and significant developments that have advanced child welfare generally and have also radically altered the way that the department cares for and monitors children in residential care. Those changes involve:

- the attitude towards children in care
- children's rights in general
- child employment
- disciplining of children
- arrangements for monitoring of the safety and wellbeing of children in residential care.[288]

Ms White gave evidence about changes in record-keeping practices. Records are now required to focus on the individual child.[289] Other relevant changes include:

- the regulation of child care protection workers and care providers
- changes to the arrangements for contact between children in care and family, friends and the community
- support for children leaving care. [290]

There is an existing protocol that sets out processes for addressing any concerns for the safety and wellbeing of children in care, as well as the department's current policy and processes for managing allegations of abuse, including sexual abuse.[291]

Ms White gave evidence that she acknowledges that the institutions at the time did not have the benefit of contemporary knowledge and understandings that now underpin child protection legislation and policies and guide the practices and management of residential care facilities today.[292]

7 Civil litigation

7.1 Summary of the litigation and settlement negotiations

In August 1993, on the instructions of VOICES, law firm Slater & Gordon commenced proceedings in New South Wales for some 240 claimants seeking damages from the Christian Brothers and other defendants for physical, sexual or psychological abuse at the institutions in the 1950s, 1960s and early 1970s.[293] In November 1993, Slater & Gordon commenced similar proceedings in Victoria for 23 of those claimants who lived in Victoria.[294]

From 1994 to 1996, these New South Wales and Victorian proceedings, sometimes referred to as 'the Slater & Gordon class action', involved interlocutory, or preliminary, hearings in New South Wales, Victoria and Western Australia; one appeal to the New South Wales Court of Appeal; and three applications for special leave to appeal to the High Court of Australia. The underlying claims of abuse were not heard or determined on their merits on any of these occasions.

In mid-1996, the proceedings were settled by the establishment of a trust fund of $3.5 million for payments to claimants, with provision for limited lump-sum payments and other needs-based payments.

In addition, $1.5 million was paid towards Slater & Gordon's legal costs and disbursements. The Christian Brothers' legal costs and disbursements totalled at least another $1.5 million.

The trust fund operated for three years. It made lump-sum payments to 127 men for child sexual abuse as well as other needs-based payments.

7.2 Limitation period issues

In mid-1993, Slater & Gordon began to research and consider the causes of action for damages it might pursue on behalf of the men. It became apparent early in their research that the *Limitation Act 1935* (WA) would be likely to prevent the men from bringing their claims in Western Australia.[295]

In 1993, the Limitation Act required that a claim for damages must be brought within six years after the date of the tort. In these cases that meant within six years after the date of the abuse. At the time Slater & Gordon received instructions, the men were already decades outside the limitation period for bringing a claim.

Further, in 1993, this six-year time period could not be extended to allow the men to bring their claims (*Limitation Act 1935* (WA)).[296] At that time limitation legislation in New South Wales and Victoria was potentially more generous to claimants because it gave the courts various discretions to extend time. This could be done for latent injuries and where the claimant had only recently discovered material facts about the cause of action – for example, the identity of the defendant, the extent of the injury or that the injury was caused by the negligence or breach of duty.[297]

In New South Wales, however, legislation had been foreshadowed that would have the effect of requiring the limitation period in Western Australia to be applied in the claims if they were litigated in New South Wales.[298] The new legislation – the *Choice of Law (Limitation Periods) Act 1993* (NSW) – introduced this requirement from 3 December 1993.

7.3 Proper defendant issues

The other issue that became apparent early in Slater & Gordon's research was the difficulty of identifying the proper defendant or defendants to bring the claims against. Slater & Gordon had to identify a body or persons that could be held accountable for the alleged abuse, including identifying the relevant legal entity that made decisions about managing the institutions.

Mr Hayden Stephens, a solicitor at Slater & Gordon, acted for the claimants in the litigation and served as a trustee representing the claimants' trust fund. He gave evidence to the Royal Commission that it was very difficult for the Slater & Gordon legal team to understand the complex organisational structure of the church.[299]

He also said that it was important for Slater & Gordon to try to attach liability to a body of persons that could have some form of liability, even though the individuals in office in 1993 were not in office at the time the abuse occurred, and who had access to assets to satisfy any court decision.[300]

Slater & Gordon learned that the Trustees of the Christian Brothers was a body corporate established under the *Roman Catholic Church Communities' Lands Act 1942* (NSW) for the purposes of holding land and it was based in Strathfield, New South Wales.[301]

In addition to the Trustees of the Christian Brothers, the other major defendant in the litigation was the Roman Catholic Archbishop of Perth. The 'Archbishop of Perth' is a natural person. However, the 'Roman Catholic Archbishop of Perth' was created as a corporation sole under the *Roman Catholic Church Property Act 1911* (WA) for the purposes of holding land. This put the 'Roman Catholic Archbishop of Perth' as corporation sole in a similar position to the Trustees of the Christian Brothers – the Roman Catholic Archbishop of Perth was then a separate legal entity that could have some form of ongoing liability, including for the period before the then Archbishop of Perth had taken office, and that held the land vested in the Roman Catholic Archbishop of Perth as corporation sole.[302]

Slater & Gordon asked the Christian Brothers for assistance in identifying the proper or correct defendants, but they did not assist in clarifying the organisational structure of the church bodies.[303] Mr Howard Harrison, a solicitor at Carroll & O'Dea who acted for the Christian Brothers in the litigation in New South Wales, and Mr Peter McGowan, former Trustee of the Western Australia Institutions Reconciliation Trust, could not recall and does not believe that there was ever any substantive response from Carroll & O'Dea to Slater & Gordon's request.[304]

Slater & Gordon also considered that the Australian Government might have some liability to children who came to Australia under the Child Migration Scheme. Slater & Gordon

believed that the Australian Government might have delegated some of its duties to those children to the Western Australian Government.[305]

7.4 Initial steps in the New South Wales proceedings

On 31 August 1993, Slater & Gordon commenced proceedings in the Supreme Court of New South Wales by filing a summons on behalf of each plaintiff against 21 named defendants. The defendants were:

- the Trustees of the Christian Brothers
- the three persons who were then Provincials of the Christian Brothers provinces
- nine persons who were then Archbishops or Bishops, including the then Archbishop of Perth
- the person who was then Provincial of the Marist Brothers
- the Commonwealth of Australia
- the State of Western Australia
- the Western Australian Ministers for Education, Health, Lands and Community Services.[306]

Slater & Gordon commenced the proceedings in New South Wales so that it could avoid the Western Australian limitation laws. They commenced the proceedings in great haste to avoid the new *Choice of Law (Limitation Periods) Act 1993* (NSW). If that Act commenced, it would have required a New South Wales court to apply the limitation laws of Western Australia in the proceedings.[307]

Slater & Gordon's intention was to protect the rights of the claimants by filing proceedings in New South Wales before the change in law took effect but then to defer serving the summonses until Slater & Gordon had had a chance to properly investigate the cases.[308] Slater & Gordon had a period of 12 months from 31 August 1993 in which to serve the summonses on the defendants.[309]

On 3 or 4 September 1993, a report of the proceedings was published in the media. The Christian Brothers became aware of the proceedings as a result of that report.[310] Mr Stephens gave evidence that Slater & Gordon did not initiate the media contact and that a partner of Slater & Gordon made some comments in response to a media approach.[311]

At the time of filing the summonses on 31 August 1993, Slater & Gordon did not know precisely how many of the men were alleging that they had suffered sexual abuse. They did not file individual pleadings, or statements of claim, for each man at this time.[312] It emerged that some men did not wish to make claims and had been included in the group of claimants in error. Slater & Gordon took steps to discontinue the proceedings in respect of those men.[313]

Mr Harrison gave evidence about the difficulties that the Christian Brothers faced at this time in not knowing the names of the claimants (which had been supressed by the Supreme Court of New South Wales) or details of the specific allegations of abuse and injuries that the claimants made.[314]

However, Mr Harrison also gave evidence that, when the allegations first came to him, leaders of the Christian Brothers told him that there would be truth in the allegations.[315] Mr Harrison was also aware of the terms of the apology given by the Christian Brothers in July 1993, including that the Christian Brothers had apologised for sexual abuse at the institutions.[316]

Brother McDonald gave evidence that, at the time the litigation commenced, he understood that the Christian Brothers had been responsible for injuring a significant number of people, although he was not familiar with all the details of what had happened in Western Australia.[317]

7.5 Victorian proceedings

On 22 November 1993, Slater & Gordon commenced proceedings in the Supreme Court of Victoria on behalf of 23 of the men by filing statements of claim seeking damages. The defendants were the Trustees of the Christian Brothers, the then Provincial of the Christian Brothers and the then Archbishop of Perth.[318]

These proceedings were commenced in Victoria in order to avoid the Western Australian limitation laws. The 23 men then lived in Victoria and had received treatment in Victoria for injuries they allegedly suffered when they were at the institutions in Western Australia. After the Victorian proceedings commenced, Slater & Gordon discontinued the New South Wales proceedings for these 23 men.[319]

In January 1994, each of the three defendants applied to the Victorian Supreme Court for orders that the Victorian proceedings be stayed or 'cross-vested' – meaning transferred – to the Supreme Court of Western Australia.[320]

In June 1994, the Supreme Court of Victoria ordered that the proceedings be transferred to Western Australia.[321]

Mr Stephens gave evidence that the Judge was persuaded by the argument of the defendants that, if he transferred the proceedings to Western Australia, the Western Australian court would have a discretion to apply the limitation law of Victoria.[322]

Mr Stephens also gave evidence that the plaintiffs sought an undertaking from the defendants in court that, if the proceedings were transferred to Western Australia, they would support an application that the Western Australian court apply the limitation law of Victoria. The defendants refused to give that undertaking.[323]

In July 1994, Slater & Gordon filed applications in the High Court of Australia seeking special leave to appeal against the Victorian decision to transfer the Victorian proceedings to Western Australia. In December 1994, the High Court heard and refused the applications for special leave to appeal from the Victorian decision.[324]

7.6 Western Australian proceedings

In August 1994, after the transfer of the Victorian proceedings to Western Australia, Slater & Gordon applied to the Supreme Court of Western Australia for orders that that court would apply the procedural laws of Victoria, including the Victorian *Limitations of Actions Act 1958*, in the proceedings.[325]

On 1 November 1994, the Judge dismissed the applications and ordered that Western Australian procedural laws should apply to the proceedings.[326]

On 18 November 1994, Slater & Gordon filed applications in the High Court of Australia seeking special leave to appeal against the Western Australian decision to apply the Western Australian procedural laws.[327]

On 8 December 1994, at the same time that it heard and refused the applications for special leave to appeal against the Victorian decision to transfer the Victorian proceedings to Western Australia, the High Court also heard and refused the applications for special leave to appeal from the Western Australian decision.[328]

Mr Stephens gave evidence that Slater & Gordon recognised that the chances of success in seeking special leave to appeal to the High Court were very small. But, faced with the 'death knell' of the proceedings given by the Victorian and Western Australian decisions, they saw no alternative but to give it a go.[329]

7.7 Continuation of the New South Wales proceedings

By the end of 1994, only the New South Wales proceedings remained on foot.[330]

On 11 July 1994, nine of the 21 defendants – the various Archbishops and Bishops – had filed applications to be removed from the New South Wales proceedings or to have the proceedings stayed or transferred to Western Australia.[331]

On 5 December 1994, the Trustees of the Christian Brothers filed a similar application to have the proceedings stayed or transferred to Western Australia and to remove 13 defendants from the proceedings.[332]

On 15 December 1994, Justice Levine in the Supreme Court of New South Wales dismissed the defendants' applications to transfer the proceedings to Western Australia.[333]

Shortly before the December 1994 hearing, through a discovery process, the defendants had given Slater & Gordon a copy of Brother Coldrey's report, *Reaping the Whirlwind – The Christian Brothers and Sexual Abuse of Boys in Australia – 1920 to 1944 – A Secret Report for Congregation Executive*.

Mr Stephens gave evidence that that report was a significant advantage for Slater & Gordon in the December 1994 hearing because Slater & Gordon used it to show that decisions about complaints of abuse at Christian Brothers institutions were made by the executive of the Trustees of the Christian Brothers.[334]

Mr Stephens gave evidence that referred to knowledge held by the provincial leaders of the Christian Brothers, that these provincial leaders were also the Trustees of the Christian Brothers and that the people who held office as Trustees of the Christian Brothers were the people responsible for the management and control of the Christian Brothers' Western Australian institutions.[335]

On 16 and 20 February 1995, Slater & Gordon applied to the New South Wales Supreme Court to amend the summonses filed on 31 August 1993 and to remove 19 of the 21 defendants, leaving only two defendants: the Trustees of the Christian Brothers and the Archbishop of Perth.

From 20 to 22 February 1995, Justice Levine heard Slater & Gordon's applications in relation to the defendants.[336]

During the hearing, Slater & Gordon also sought to substitute 'the Roman Catholic Archbishop of Perth' – that is, the Archbishop as corporation sole – for the 'Archbishop of Perth' – that is, the natural person – who had been named in the original summonses in his personal capacity.[337] Counsel for the Archbishop argued that the Archbishop should be removed from the proceedings because he could not be a corporation sole under the terms of the legislation and he could not be liable in tort because the corporation sole was created only for the purpose of holding land.[338]

On 10 March and 16 March 1995, Justice Levine delivered two judgments. Justice Levine:

- refused the Archbishop's application to be removed from the proceedings but did not decide whether the Archbishop was a corporation sole
- granted Slater & Gordon's application to substitute 'the Roman Catholic Archbishop of Perth' for the 'Archbishop of Perth' in his personal capacity as the defendant
- refused Slater & Gordon's application to amend the summonses
- ordered that all defendants other than the Trustees of the Christian Brothers and the Roman Catholic Archbishop of Perth be removed from the proceedings.[339]

On 20 April 1995, the Archbishop filed an application for leave to appeal to the New South Wales Court of Appeal against Justice Levine's judgment of 10 March 1995.[340]

On 28 September 1995, the New South Wales Court of Appeal heard the Archbishop's appeal. On 12 October 1995, the Court of Appeal set aside Justice Levine's order allowing the 'Roman Catholic Archbishop of Perth' to be substituted for the 'Archbishop of Perth' and ordered that the claim against the Roman Catholic Archbishop of Perth be struck out.[341]

The New South Wales Court of Appeal held that:

- the Archbishop of Perth as a corporation sole could not be sued in actions of tort
- the corporation sole was for the purpose of holding land only
- there was no 'successor liability' – the corporation sole was not responsible for the conduct of earlier Archbishops of Perth.[342]

As a result of the New South Wales Court of Appeal's decision, the Archbishop of Perth was removed from the proceedings. The only defendant remaining in the New South Wales proceedings was then the Trustees of the Christian Brothers.[343]

On 2 November 1995, Slater & Gordon filed an application in the High Court of Australia seeking special leave to appeal against the New South Wales Court of Appeal's decision.[344] On 4 March 1996, the High Court heard and refused that application.

In his statement, Mr Stephens said that the High Court judges who heard the application were not satisfied that the argument that an archbishop as a corporation sole might be liable for the torts of his predecessors would have sufficient prospects of success to justify the grant of special leave to appeal.[345]

7.8 Settlement negotiations

In his statement, Mr Stephens said that, on numerous occasions before and during the litigation, Slater & Gordon invited the Christian Brothers to resolve the claims quickly and efficiently in the interests of the men.[346] In evidence, Mr Stephens agreed that Slater & Gordon had not made this invitation before the litigation commenced on 31 August 1993, but invitations had been made on numerous occasions during the litigation.[347]

Mr Harrison gave evidence that his view, and counsel's advice, was that the Christian Brothers should take a 'hard' legal line in the litigation, at least in the short to middle term.[348]

From as early as 24 November 1993, Mr Harrison noted in his advice to the Christian Brothers the need for them to confirm a strategy that, among other things, 'incorporated any necessary balance between legal–pastoral–ethical considerations'.[349]

Mr Harrison's letter of 24 November 1993 contained a number of matters that would be considered at a meeting of the Christian Brothers Provincials and their lawyers in December 1993. The legal matters included whether 'the Brothers should take a "hard" legal line in respect of initial claims or softer settlement approach'.[350]

Mr Harrison gave evidence about the meeting, which took place on 7 December 1993. In his evidence, Mr Harrison accepted that the minutes of the meeting show that:

- the meeting was not focused on settling the proceedings
- the concern was the cost of the proceedings to the Christian Brothers
- there was no sentiment of recognising the suffering of the survivors.[351]

Mr Harrison also gave evidence that there may have been a misplaced prejudice that people seeking compensation in the civil courts were somehow not deserving and that the Christian Brothers might have been feeling hurt or affronted that a class action had been taken against the church.[352]

- **Finding 11:** The minutes of the meeting of the Christian Brothers Provincials and their lawyers on 7 December 1993 show that:
  - the meeting was not focused on settling the proceedings
  - the concern was the cost of the proceedings to the Christian Brothers
  - there was no sentiment of recognising the suffering of the survivors.[353]

- **Finding 12:** We accept Mr Harrison's evidence that there may have been a misplaced prejudice that people seeking compensation in the civil courts were somehow not deserving and that the Christian Brothers might have been feeling hurt or affronted that a class action had been taken against the church.[354]
- **Finding 13:** Brother McDonald's legal advice was to take technical points in the litigation and that he accepted this advice, although he did not feel totally comfortable with it.[355]
- **Finding 14:** Brother McDonald did not give instructions to enter into early settlement negotiations because of the legal advice he was given.[356]

Slater & Gordon first suggested settlement in conversation between Mr Gordon and Mr Harrison at some time before December 1994. Slater & Gordon suggested settlement at around $30 million.[357]

On 1 December 1994, Slater & Gordon wrote to Carroll & O'Dea suggesting settlement at a total cost of $18 million to $20 million.[358]

Mr Harrison gave evidence that, by February 1995, he was turning his mind, and that of the Christian Brothers, to settlement.[359] By letter dated 14 February 1995, however, Mr Harrison's advice remained that the Christian Brothers should continue their then current defensive strategy.[360]

On 19 June 1995, Mr Harrison advised the Christian Brothers that 'the consensus seems to dictate preparations now with a view to putting a realistic proposition to Slater & Gordon following the outcome of the hearing in the Court of Appeal'.[361]

On 1 February 1996, Mr Harrison advised the Christian Brothers that any formal approach to Slater & Gordon in relation to settlement should not take place until after the hearings in March 1996 before the High Court and Justice Levine.

Mr Harrison also gave advice on settlement structures and options, including a pastorally orientated assistance scheme to provide help to those who need it, desirably providing direct assistance rather than any form of financial payment, and, if necessary, with payments in relation to the 'limited cases of verifiable and serious sexual assault'.[362]

By early April 1996, Slater & Gordon had suggested settlement at $9.5 million. By letter dated 15 April 1996, Mr Harrison advised the Christian Brothers that settlement at this level would 'amount to an inappropriate capitulation on behalf of the Christian Brothers'.[363]

By letter dated 30 April 1996, Mr Harrison advised the Christian Brothers that Slater & Gordon's proposed settlement at $9.5 million would involve:

- $2.5 million for cash payments to individual claimants who had significant and serious alleged injuries
- $4.5 million for a trust fund to provide non-cash assistance
- $2.5 million for Slater & Gordon's legal costs and disbursements.[364]

In that letter dated 30 April 1996, Mr Harrison also advised the Christian Brothers that an overall settlement of $5 million would be a very good outcome for the Christian Brothers.[365]

On 3 May 1996, the Christian Brothers' National Committee on Child Abuse Issues authorised Mr Harrison to make a settlement offer of $4 million with a ceiling of $5 million.[366] Brother McDonald gave evidence that he does not know why he agreed to start at $4 million when Mr Harrison had already advised the Christian Brothers that $5 million would be a good outcome for the Christian Brothers.[367]

Mr Stephens gave evidence that the opening offer from the Christian Brothers for settlement was that the plaintiffs pay the Christian Brothers' legal costs and disbursements.[368] Mr Stephens agreed that this was not a formal offer put in writing.[369] Brother McDonald gave evidence that he did not instruct Mr Harrison to make that offer. Mr Harrison gave evidence that he does not believe that he made that offer. He said that it is possible that he has forgotten making it, but he does not believe so.[370]

On 13 May 1996, Mr Harrison made an offer on behalf of the Christian Brothers to settle for $3.75 million, with $3 million for a trust fund and $750,000 for Slater & Gordon's legal costs and disbursements. This was the Christian Brothers' first settlement offer in the litigation.[371] Brother McDonald gave evidence that he authorised this offer on the advice of the Christian Brothers' lawyers.[372]

On 20 June 1996, the Christian Brothers' National Committee on Child Abuse Issues met and agreed to settle the proceedings. The terms involved a payment of $3.5 million into a trust fund. One-third of that sum was to be for cash payments and two-thirds was to fund services.[373]

- **Finding 15:** On 14 August 1996, the proceedings were settled by a Heads of Agreement that provided for:

- discontinuance of all proceedings
- execution of the trust deed to establish the Western Australia Institutions Reconciliation Trust (the trust) and deeds of release by the claimants
- payment of $1.5 million to Slater & Gordon for costs
- waiver by the Christian Brothers of orders made in the litigation requiring the claimants to pay the Christian Brothers' costs, which were around $750,000
- participation in a reconciliation process, which was set out in an Explanatory Memorandum dated 14 August 1996 and essentially reflected the main elements of the trust fund
- issuing of a joint press release.[374]

Mr Stephens gave evidence that Slater & Gordon sought to keep open the option for the claimants to pursue other civil claims. But, as part of the settlement, the Christian Brothers required deeds of release, under which each claimant undertook not to commence any further proceedings.[375]

Catholic Church Insurances Limited made an ex gratia payment of $2.5 million to the Christian Brothers. This was half the amount necessary to fund the settlement – the other $2.5 million was funded from the Christian Brothers' reserves.[376]

7.9 Legal costs of the civil litigation

Slater & Gordon acted for the men on a 'conditional fee basis' – that is, the men would only be required to pay Slater & Gordon's professional fees if Slater & Gordon successfully resolved the claims. Slater & Gordon also agreed to pay disbursements or expenses during the litigation, including barristers' fees, and only to recover them from the claimants if there was a successful resolution of the claims.[377]

In settling the litigation, the Christian Brothers agreed to contribute to the claimants' legal costs by paying $1.5 million to Slater & Gordon. In his statement, Mr Stephens said that Slater & Gordon agreed with its clients to accept this amount paid by the Christian Brothers notwithstanding that the total legal costs incurred far outweighed the amount recovered.[378]

In his statement, Mr Stephens said that, of the $1.5 million paid to Slater & Gordon, about $1 million was reimbursement for amounts paid by Slater & Gordon to third parties for disbursements, such as court fees, barristers, fees, travel and medico-legal reports.[379] Slater & Gordon therefore recovered only some $500,000 for its legal fees.

In his statement, Mr Harrison said that he estimated that the Christian Brothers' legal costs and disbursements would not have been less than $1.5 million.[380] In addition to Carroll & O'Dea and New South Wales counsel retained by St Mary's Province of the Christian Brothers, St Patrick's Province of the Christian Brothers also retained solicitors and counsel in the Victorian proceedings.[381] Mr Harrison and the Christian Brothers agreed to give the Royal Commission the total amount of the legal costs and disbursements that the Christian Brothers had incurred in the Slater & Gordon litigation.[382] After the public hearing, Carroll & O'Dea told the Royal Commission that their best estimate on the Christian Brothers' total costs and disbursements was $1.1 million.

7.10 Description of the Western Australia Institutions Reconciliation Trust

The Western Australia Institutions Reconciliation Trust was established under a trust deed dated 14 August 1996 between the Trustees of the Christian Brothers as Founder, Mr Barry Mackinnon, Mr Stephens and Mr McGowan.[383] The charitable purpose of the trust fund was described as 'the promotion of welfare for those beneficiaries in need, the relief of their poverty and/or illness and/or injury and/or hardship by providing effective practical needs based, and in certain limited cases direct financial help'.[384]

The Christian Brothers as Founder provided funding of $3.5 million in three instalments.[385]

There were three categories of potential claimants:

- Category 1: ex-students of the institutions who alleged abuse; had agreed to resolve their claim by the date of the trust deed; and had delivered executed deeds of release. There were 200 potential claimants listed in Category 1
- Category 2: ex-students of the institutions who alleged abuse; who had not agreed to resolve their claim by the date of the trust deed; but who might subsequently agree to resolve their claim and deliver an executed deed of release. Seventy-nine potential claimants were listed in Category 2. Others could be added, by agreement between Carroll & O'Dea and Slater & Gordon, by 1 November 1996
- Category 3: two named persons who were 'deemed ex-students' who alleged sexual and/or psychological abuse and who may agree to resolve their claims and deliver executed deeds of release, plus no more than eight other persons (to be agreed by Carroll & O'Dea and Slater & Gordon by 1 November 1996) who were ex-students of other Christian Brothers institutions apart from the four in Western Australia.[386]

Under the trust deed, to be eligible for benefits under the trust, potential claimants had to apply to the trust in writing before 1 November 1996.[387] The trustees extended the application period to 1 May 1997.[388]

When considering any application for assistance, the trustees were to be guided by the statement of principles in the trust deed, which said that:

> '(i) The purpose of the Trust Fund is to provide effective practical needs based help to injured ex-students on an individual basis.
>
> (ii) The Trust Fund is not to be utilised for cash payments except in the limited circumstances set out herein.
>
> (iii) The usual process will be that the Trustees will identify the assistance which is appropriate to the claimant and make this assistance available …'[389]

The trust deed also described the 'primary purpose of the Trust' as being 'to provide therapeutic help and help in kind'.[390]

7.11 Serious sexual abuse payments

The trust deed permitted $1.16 million – about one-third of the initial funding – to be used for lump-sum cash payments for cases of serious sexual abuse. In order to be eligible for a serious sexual abuse payment there had to be evidence that a claimant had significant psychological impairment that was severe enough to warrant ongoing therapy or treatment.[391]

The maximum amount that could be paid to a person who suffered serious sexual abuse was $25,000. Under the trust deed, a maximum of the 30 most seriously affected claimants would be paid $25,000 and a maximum of 25 of the next most abused and affected claimants would be paid $10,000. These claimants were to be selected by Slater & Gordon and Mr Rush QC, the Senior Counsel who represented the claimants in the Slater & Gordon litigation.[392]

These 55 lump-sum payments would account for $1 million of the $1.16 million allocated for lump-sum payments. This left $160,000 for any additional lump-sum payments determined by the trustees. The trust deed also permitted the trustees to allocate one-third of any income of the trust to making additional cash payments.[393]

Mr Stephens gave evidence that the maximum numbers that were decided on for serious sexual abuse payments – 30 and 25 – were arbitrary. He said that there were many more than 55 of the claimants who had suffered sexual abuse and deserved those payments. But the Christian Brothers resisted this and suggested that there should be fewer persons eligible for the payments.[394]

Mr Harrison gave evidence that, by April 1996, he thought that there were some 25 claimants who had suffered seriously and, by 30 April, he thought that the number who might fit the criteria of 'significant and serious alleged injury' was closer to 30 than 50.[395]

When Slater & Gordon explained the settlement offer to the claimants in the civil litigation, it informed the claimants that all claimants under the trust would have an opportunity to apply for the serious sexual abuse payments.[396]

On 16 December 1996, the trustees approved payments of $25,000 to 11 men recommended by Slater & Gordon and Mr Rush QC. Two further payments of $25,000 were recommended and approved in the following months.[397]

By 6 March 1997, 117 men had claimed a payment for serious sexual abuse. On 6 March 1997, the trustees resolved that no claim for a serious sexual abuse payment would be considered unless it was supported by a psychological/psychiatric assessment. Also, no further payments would be made under this category until all claimants had had an opportunity to provide a supporting report. If the claimants did not already have the necessary psychological/psychiatric assessment, the trust would pay for the report to be obtained under the needs-based categories of assistance.[398]

Throughout 1997, the trustees continued to discuss how the serious sexual abuse payments should be determined.[399] The trustees sought legal advice on whether they could vary the trust deed to increase the amount that could be spent on lump-sum payments over the $1.16 million that was allocated by the trust deed. After the trustees received the advice, they resolved (on 28 November 1997) to vary the trust deed so that they could determine, in their discretion, a reasonable sum to be used for lump-sum payments.[400]

On 28 November 1997, after the resolution to vary the trust deed, the trustees noted the additional 16 men selected to receive payments of $25,000 and the 25 men selected to receive payments of $10,000. The trustees also noted that Slater & Gordon and Mr Rush QC had identified that there was a very fine line between the 30 men who were to receive $25,000 and seven of the men who were only eligible for $10,000; those seven were receiving the $10,000 payments only because others had been selected for the $25,000 payments. Slater & Gordon and Mr Rush QC had also identified an additional 12 men who satisfied the criteria for a payment of $10,000 but who could not be selected because 25 other men had been selected to receive $10,000. Also, Slater & Gordon, Mr Rush QC and Mr Mackinnon had identified a number of other men who they recommended should receive payments for serious sexual abuse.[401]

The trustees then resolved to make the following serious sexual abuse payments:

- 16 payments of $25,000 (in addition to the 14 already approved)
- 25 payments of $10,000
- 12 payments of $9,750 to the men identified by Slater & Gordon
- 50 payments of $6,750
- six payments of $2,000. [402]

Ultimately, of the 130 claims for serious sexual abuse considered in this process, 124 men received lump-sum payments. The total value of payments was $1,473,250.[403]

The trustees later approved an additional payment of $9,750 and two additional payments of $6,750. By 31 December 1998, the trust had spent a total of $1,489,750 on lump-sum payments for serious sexual abuse.[404]

For the seven men who were on the wrong side of the 'fine line' for payments of $25,000, Mr Mackinnon proposed that the Christian Brothers should be requested to pay each man an additional $15,000 to increase their payment from $10,000 to $25,000.[405] The men were eventually given these top-up payments as part of the winding-up of the trust in 1999.[406]

7.12 Needs-based payments

The trust deed provided for assistance to be given to claimants under categories listed in the trust deed. Under the trust deed the trustees could add further categories provided they were consistent with the charitable purpose of the trust.[407]

One category of assistance was 'a broad reimbursement discretion' for 'costs–expenses incurred by individuals in the past'. Under this category, each claimant was entitled to receive $2,000 'as reimbursement for miscellaneous expenses incurred by each Claimant in relation to the claims, including medical or the like expenses not recoverable through Medicare or any similar fund, travelling expenses, time off work, telephone calls …'. Claimants could seek more than $2,000 reimbursement, but they would need to apply and provide proof of the expenses. If the initial $2,000 had already been paid, it would be deducted from the further reimbursement.[408]

The other categories of assistance under the trust deed were:

- therapy
- treatment
- rehabilitation
- retraining
- adult literacy classes
- family reunification
- housing and accommodation
- emergency relief
- low- and/or no-interest loans
- finding employment

- assistance for spouses and children who need treatment
- transportation
- treatment for alcoholism, drug dependency and substance abuse.[409]

If claimants wanted assistance under these categories or additional reimbursement of past expenses beyond the initial payment of $2,000, they had to apply to the trust and provide any necessary evidence or additional information.[410] In addition, the trustees adopted policies on some of the categories of assistance, guiding what was available and how assistance would be provided.[411]

By 31 December 1998, the trust had spent a total of $1,140,776.37 on needs-based assistance. In order of size, expenditure on the categories of assistance was as follows:

Category	**Total ($)**
Initial entitlement of $2,000	464,000.00
Travel reimbursement	232,382.52
Future travel	145,872.60
Past medical reimbursement	73,191.56
Report fees for serious sexual abuse claims	52,540.32
Transportation	40,539.70
Emergency relief	39,978.18
Housing/accommodation	35,398.97
Employment, business establishment	33,980.00
Current therapy	29,976.95
Literacy classes	8,694.35
Therapy for spouse/child	5,584.00
Current medication expenses	4,530.58
Reimbursement schooling	4,200.00
Alcohol/drug rehabilitation	2,728.00
TOTAL	**1,173,597.73**[412]

7.13 Winding-up of the trust

The trust deed provided that the trust was to be wound up when either the trust fund was exhausted or the trustees reasonably determined that the purposes of the trust fund had been fulfilled or 30 June 1999, whichever came first.

Under the trust deed any surplus on winding-up was to be returned to the Christian Brothers as Founder of the trust, to be used by the Founder for the relief of hardship, poverty and distress of those who alleged sexual and other abuse in Christian Brothers institutions in Australia.[413]

The trust was wound up as at 30 June 1999, with a surplus of about $700,000 remaining.[414]

The trustees made a request to the Christian Brothers as Founder of the trust to vary the requirement that any surplus be returned to the Christian Brothers if the trustees wanted the surplus to be available for the claimants under the trust.[415]

The Christian Brothers agreed with the trustees that the funds in the trust should go to the benefit of the claimants who had participated in the settlement of the Slater & Gordon civil litigation.[416]

At the request of the trustees, the Christian Brothers agreed to use the surplus funds in the trust as follows:

- $105,000 was used to top up the lump-sum payments of seven men from $10,000 to $25,000
- $85,000 was transferred to a new trust to provide ongoing assistance to up to 15 claimants who require continuing long-term psychological therapy and medication
- some $40,000 to $50,000 was set aside for the administrative costs of winding up the trust
- the balance was distributed equally between all claimants under the trust, resulting in a payment of $2,000 to $3,000 each.[417]

7.14 Views of the effectiveness of the civil litigation and the trust

A number of the men gave evidence that they were dissatisfied with the civil litigation and settlement.[418] A number of the men said that they did not understand the litigation or the settlement. A number of them were concerned about the small size of the settlement, the legal costs and the Christian Brothers' use of the limitation period defence.[419] A number of the men were concerned that the deeds of release they were required to sign might prevent them from making further claims against the Christian Brothers.[420]

Mr Stephens gave evidence that the settlement reached in the civil litigation did not fairly reflect the suffering of the claimants, but it was the best that Slater & Gordon could achieve after three years of litigation.[421]

Mr Stephens gave evidence that the Christian Brothers 'had their knee on our clients' throat, and there was little opportunity for our clients to flex their negotiation muscle, or us

on their behalf, faced with the judicial decisions that had preceded this negotiation'.[422] At the time of settlement, the claimants faced the possibility of losing the litigation, receiving no compensation or other assistance and facing a liability to pay the Christian Brothers' legal costs and disbursements.[423]

Mr Stephens gave evidence that the trust was complex and that it lacked respect and integrity for the victims for several reasons, including:

- the claimants were required to sign deeds of release
- there was no apology or acknowledgment as part of the settlement scheme
- the funds were distributed 'on the drip where, yet again, these men were asked to go cap in hand in order to seek help' from the Christian Brothers.[424]

Mr Stephens gave evidence that he did not think that the trust's provision for 55 lump-sum payments for serious sexual abuse would be sufficient and that there were more than 55 claimants who had suffered serious sexual abuse.[425]

Mr Stephens gave evidence that he believed the decision making of the trust was impartial, but the claimants' perception was that the foundation of the trust was a fund directed by the Christian Brothers.[426]

Brother Shanahan gave evidence that he now thought the Christian Brothers had got the settlement wrong in terms of the amount and that it should have been a more liberal settlement.[427] Brother McDonald gave evidence that he now considers that the $5 million settlement was inadequate.[428]

Brother Shanahan gave evidence of the Christian Brothers' fear of the future waves of litigation, concern about the cost of litigation to the Christian Brothers and concern to maintain resources to fund the ongoing work of the Christian Brothers.[429] Brother McDonald also gave evidence of his concern for the viability and future of Christian Brothers schools.[430]

Brother Shanahan gave evidence that there were moneys available within the Christian Brothers Order to contribute to a fund and expressed regret that, when they did settle, they were looking at their own interests more than the gravity of the offences against the claimants.[431]

Mr Harrison gave evidence that there was no suggestion made to him through the course of the litigation that the Christian Brothers could not afford to make a proper financial response to anyone's claim.[432]

Brother Shanahan gave evidence that, if the litigation were to occur now, the Christian Brothers' response would be different – there would be more vigorous early efforts to try to find a non-litigious outcome and they would try to reach a settlement earlier.[433]

Brother McDonald invited those who are dissatisfied on the grounds of justice with the amounts they have received from the Christian Brothers, including those who participated in the Slater & Gordon civil litigation, to contact the Professional Standards Office in Victoria and that their settlements will be revisited.[434]

7.15 Towards Healing

Towards Healing was not introduced until after the Christian Brothers had settled the Slater & Gordon civil litigation. Generally, men who participated in the settlement of the litigation could not get financial assistance through Towards Healing because of the deeds of release they had signed.

VI gave evidence that he registered to participate in the litigation but that his registration form had been lost and he was not formally included in the settlement. Although he received some $2,000 from the settlement, he was not eligible for further payments from the trust fund. However, Brother Negus, who the Archbishop of Perth (and described as the Christian Brothers' representative in matters of abuse) later relied on VI's receipt of the $2,000 to refuse further financial assistance under Towards Healing.[435]

Some of the men who were not part of the Slater & Gordon civil litigation gave evidence about their experiences with seeking assistance through Towards Healing. Mr Wells said that the process was not explained, he did not feel anyone was on his side, he felt the amount was predetermined and his 2013 request to reopen his complaints was refused.[436]

VV said that the Christian Brothers initially offered him $20,000, which he found insulting. He accepted $40,000 because he was financially desperate and he was told that $40,000 was beyond what the Christian Brothers had ever paid out. He did not understand his rights or the consequences of signing the deed of release.[437]

Mr Ellul said that Towards Healing was an awful process. He said that he felt bullied and they used big words that he could not understand. Initially he was offered only $1,000 but he eventually accepted $35,000. He said that he did not know how to argue back, he was not told to get legal advice and he did not understand the documents.[438]

Brother McDonald gave evidence that he now invites those who are dissatisfied on the grounds of justice with the amounts they have received from the Christian Brothers to contact the Professional Standards Office in Victoria and that their settlements will be revisited.[439]

8 Redress WA

8.1 Operation of Redress WA

Redress WA was announced on 17 December 2007.[440] Its objectives were to:

- make ex gratia payments to applicants
- acknowledge their experience through an apology and by erecting a memorial
- provide support and counselling services
- report alleged perpetrators to Western Australia Police.[441]

Redress WA was the Western Australian Government's response to the Senate Community Affairs Committee's report *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, the Human Rights and Equal Opportunity Commission's report *Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* and the Senate Community Affairs References Committee's report *Lost innocents: Righting the record – Report on child migration*.[442]

Redress WA was intended to be a compassionate scheme that was directed to acknowledging abuse, but it was not intended to provide financial compensation for that abuse in the same way as a court would assess damages in a civil claim.[443]

Redress WA was open to adults who, as children, were abused in state care before 1 March 2006. State care included facilities that were subsidised, monitored, registered or approved by the Western Australian Government, including foster homes and other residential settings and institutions such as group homes, hostels or orphanages.[444]

The media statement announcing Redress WA said that eligible applicants might receive an ex gratia payment of up to $10,000 if they experienced abuse or neglect and up to $80,000 in cases where there was evidence that abuse or neglect resulted in physical or psychological harm.[445]

Applications for Redress WA opened on 1 May 2008. Initially, applications were to close on 30 April 2009, but this period was extended to 30 June 2009 for those who had registered their details by 30 April 2009. Initially, it was expected that claims would be resolved by December 2010, but the assessment process continued until 30 June 2011 and offers of payment were made by 30 September 2011.[446]

Redress WA was established with a budget of $114 million. Some $24 million of this budget was set aside for administration. The remaining $90 million was allocated to payments to eligible applicants. On 29 August 2011, the government approved further funding of $30 million, with $1.5 million for administration and $28.5 million for payments to eligible applicants. Under Redress WA, a total of almost $118 million in payments was offered to eligible applicants.[447]

Redress WA adopted a communications strategy that was designed to reach as many people as possible who might be eligible for the scheme. Its strategies included targeting regional and remote Aboriginal communities and prison inmates.

About 10,000 people expressed an interest in Redress WA, and 5,917 people applied to the scheme for redress. Some people who expressed interest did not apply because they were not eligible or they decided not to make an application for other reasons.[448]

Redress WA made 5,325 offers of payment. Some applicants were not offered payments because they were not eligible for the scheme.[449]

A number of changes were made to the Redress WA guidelines in February 2010. This coincided with the start of payments under the scheme.[450]

The assessment process was restructured to account for the large number of applications demonstrating severe abuse and neglect.[451]

During the early stages of preliminary assessment, it became evident that a higher than expected proportion of applicants would be assessed as having suffered very severe abuse. Therefore, the initial budgeted amount of $90 million for payments would not be sufficient if the maximum payment remained at $80,000.[452] On 26 June 2009 the Western Australian Government noted that the budget only allowed for a maximum payment of $45,000 and asked the department to restructure the scheme within the original funding allocation.[453]

The restructure was approved on 4 January 2010. It was reflected in the February 2010 revisions to the Redress WA guidelines.[454] The maximum payment was reduced from $80,000 to $45,000 and additional payment levels were fixed so that there were four payment levels set at:

- Level 1 (moderate abuse and/or neglect) – $5,000
- Level 2 (serious abuse and/or neglect with ongoing symptoms and disabilities) – $13,000
- Level 3 (severe abuse and/or neglect with ongoing symptoms and disabilities) – $28,000
- Level 4 (very severe abuse and/or neglect with ongoing symptoms and disabilities) – $45,000.[455]

The Redress WA *Manual of Internal Standards for Assessments: Assessors and Independent Review Panel Members* (January 2010) contained an assessment matrix that was used to assess a sample of applications. This sample was then analysed by an actuary. Based on the actuarial analysis and the size of the pool of funds available for the scheme, the maximum payment was then set at $45,000 with four levels of payment.[456]

The original budget for payments was increased from $90 million to about $118 million. Applicants who received $13,000 or $28,000 under the restructured scheme might only have received $10,000 under the original scheme. Some 74 applicants who received payments of $5,000 under the restructured scheme would not have received any payment under the original scheme. However, many applicants were greatly disappointed by the decrease in the maximum payment from $80,000 to $45,000.[457]

After the assessment process was restructured, applicants no longer needed to give evidence of physical or psychological harm. Also the original process of conducting formal

conferences with applicants was replaced by informal telephone conferences to finalise applications by ascertaining whether the applicant had provided all the information they wished to provide.[458]

Several other changes were made to the Redress WA guidelines in February 2010:

- applicants were no longer required to enter into a deed of settlement and release before they were paid, so applicants would be able to pursue civil litigation even if they accepted a payment from Redress WA[459]
- provisions were introduced that allowed a payment of $5,000 to be made to the family of an eligible applicant who died during the application and assessment process[460]
- the 60-day time limit on accepting offers of payment was removed[461]
- an expanded review and complaints management process was introduced.[462]

8.2 Payments by Redress WA

Once the assessment process was completed and proposed payments were approved:

- 866 applicants were offered $5,000
- 1,868 applicants were offered $13,000
- 1,478 applicants were offered $28,000
- 1,113 applicants were offered $45,000.[463]

Applicants were sent a Notice of Decision and a Statement of Decision with the offer of payment. They also received a letter of apology from the Western Australian Premier and the Western Australian Minister for Community Services.[464]

Twenty applicants refused or did not respond to their offers of payment. About $137,000 for those applicants is held as unclaimed money and is available to be paid to the applicants if they accept their offers.[465]

8.3 Police referrals by Redress WA

Redress WA referred all matters to Western Australia Police unless an applicant indicated that they did not want the information they provided about their abuse to be referred to the police. The Redress WA application form asked applicants to indicate if they did not want their matter to be referred.

Redress WA made 2,233 referrals to Western Australia Police. There was also an obligation to report any allegations against current public sector employees to the Western Australian Corruption and Crime Commission.[466]

8.4 Views of the effectiveness of Redress WA

Each of the 11 men applied to Redress WA and received the maximum payment of $45,000. Some of the men were very critical of the reduction in the maximum payment from $80,000

to $45,000.[467] Some of the men commented on the length of time it took to receive a response.[468]

Some of the men said that they found the process traumatic or onerous,[469] while others were not critical of the process or said that it had assisted them or other applicants, including through the provision of counselling.[470]

The department did not ask applicants to provide feedback on the Redress WA scheme because they recognised that it might traumatise some applicants further.[471]

Some applicants to Redress WA found it beneficial that the Redress WA scheme gave them the opportunity to tell their story; others found the process difficult.[472] Some applicants to Redress WA found the apology they were given helpful and some applicants took up the offer of counselling through Redress WA and found that helpful.[473]

There was a delay in processing applications because the applications took longer to process than had been anticipated. A period of 18 months between application and receiving a payment was not unusual. This was due in part to the time it took for assessors to confirm details because of the age of the records. It was also necessary to allocate enough time to each application, to give all applications due consideration and to not rush assessments, so as to be fair and consistent.[474]

The department prepared a draft report on Redress WA for internal use, which was not finalised. An officer of Redress WA also drafted a document recording his views of the scheme.[475]

Under the Redress WA complaints process, 342 applicants lodged 398 complaints. Of the 398 complaints, 192 related to the payment that the applicant was offered. Applicants could not appeal about the amount of payment offered under the scheme. The remaining 206 complaints related to decisions about ineligibility, delays in offering payments, concerns about support for applicants and other issues with the process. Most of the complaints were made by telephone to the Redress WA helpdesk.[476]

9 Compensation paid by the Christian Brothers

The Christian Brothers provided data about claims for compensation for physical, psychological and sexual abuse made against the Christian Brothers in Australia from 1 January 1980. The data included payments made by Catholic Church Insurance for claims against the Christian Brothers. The data did not include compensation paid following the settlement of the Slater & Gordon class action.[477]

The data indicated that, for the period 1 January 1980 to 1 June 2013, the Christian Brothers received 775 allegations of sexual abuse or a combination of sexual abuse, physical abuse and psychological abuse against either members of the Christian Brothers or visiting priests, lay staff or other personnel who were not Christian Brothers but who worked at a Christian Brothers institution.[478]

The data indicated that there were 775 allegations made by 531 complainants. Of those 531 complainants, 424 complainants received a monetary settlement from, or on behalf of, the Christian Brothers. The total amount paid in compensation in response to the allegations was about $20,885,000, giving an average payment of just under $50,000 per complainant who received a monetary settlement.[479]

- **Finding 16:** Of the 775 allegations made against the Christian Brothers, 196 allegations related to abuse at the four institutions. The 196 allegations were made by 101 complainants. Of those 101 complainants, 96 complainants received a monetary settlement. The total amount paid in compensation in response to those allegations was about $3,341,000, giving an average payment of about $36,700 per complainant who received a monetary settlement.[480]

Other services funded by the Christian Brothers were addressed earlier in this report.

10 Systemic issues

This case study raised the systemic issues of civil litigation and redress.

This case study identified the following topics relevant to civil litigation:

- the use of group or class proceedings
- the conduct of related litigation in three different legal jurisdictions (that is, New South Wales, Victoria and Western Australia)
- different approaches to limitation periods in different jurisdictions and their impact
- whether there is a proper defendant to sue in the circumstances
- use of mediation or neutral independent evaluation
- the absence of a hearing on the merits of the claimants' allegations of abuse
- the timing of settlement negotiations and the time taken to reach a settlement
- the amount of the settlement
- the legal costs incurred
- the structure of the settlement
- the adequacy of the settlement.

By considering Redress WA, the case study identified the following topics relevant to redress schemes:

- the design of a government redress scheme
- the eligibility criteria
- the communications strategy used to target difficult-to-reach groups
- the application period and the extension of that period
- whether the allocated budget was adequate to meet the announced scale of payments
- the reduction in maximum payments and changes to the payment scale
- the timing of the reduction and changes
- the views of applicants on the reduction and changes
- the processes used to assess and quantify claims
- numbers and amounts of payments offered
- interaction between the redress scheme and police through referral of allegations
- the time taken to process applications and make offers to applicants.

11 Criminal justice

11.1 1993 decision not to prosecute

In or around November 1993, the then DPP for Western Australia issued a media release setting out his reasons for deciding not to prosecute over allegations of child sexual and physical abuse by a small group of Christian Brothers 40 years earlier.[481]

Mr Bruno Fiannaca made a statement as the Acting DPP and gave evidence as the Deputy DPP on the principles, practices and polices underpinning the DPP's decision in 1993 not to initiate prosecutions and the current practices and policies of the DPP on prosecuting historical cases of child sexual abuse. Mr Fiannaca joined the Office of the DPP at its commencement in 1992 and was a State Prosecutor in that office in 1993.[482]

Decisions on whether or not to prosecute were made separately for each case. In making those decisions the DPP considered the strength of the available evidence, the law that a trial Judge would apply and the *Statement of Prosecution Policy and Guidelines* (1992), which were made under the *Director of Public Prosecutions Act 1991* (WA).[483] The *Statement of Prosecution Policy and Guidelines 2005* sets out the current policy and guidelines. It includes a number of revisions to earlier statements of the policy and guidelines.[484]

The DPP's 1993 media release said:

> In ordinary experience, a number of allegations against the same person may suggest that probably that person has committed offences. However, special rules, to ensure fairness, apply to criminal trials.[485]

Some of the special rules that applied to criminal trials were relevant to the DPP's decision not to initiate prosecutions in these cases.

11.2 Joining charges in a single prosecution

One of the special rules applying in criminal trials restricted the prosecutor's ability to join a number of charges against an alleged perpetrator involving different complainants in a single prosecution.

In his statement Mr Fiannaca said that, as the law applied in 1993, under section 585 of the *Criminal Code* (WA) charges against an alleged perpetrator involving different complainants could be joined in a single prosecution if, relevantly, they were part of series of offences of the same or a similar character. However, if a court considered that the accused was likely to be prejudiced by having the charges joined together then it could order separate trials.[486]

In his statement Mr Fiannaca said that in cases of sexual offences where the allegations by more than one complainant were prosecuted together, the accused was considered likely to be prejudiced if a jury might engage in improper 'propensity' reasoning. Propensity reasoning would occur if the jury reasoned that, because there was more than one

allegation against an accused, the accused had probably committed the offences. However, if the evidence of each of the complainants was admissible in respect of the charges concerning the other complainants – for example, because it constituted 'similar fact evidence' – then the charges could be joined.[487]

In his statement Mr Fiannaca said that following the High Court's decision in *Hoch v The Queen* (1988) 165 CLR 292, evidence would be 'similar fact evidence' if it:

- revealed 'striking similarities', 'unusual features', 'underlying unity', 'system' or 'pattern' such that it raised, as a matter of common sense and experience, the objective improbability of some event having occurred other than as alleged by the prosecution
- was not reasonably explicable on the basis of concoction, which required an examination of whether there was a possibility of a relationship between the complainants and the existence of an opportunity and motive for concoction.[488]

Mr Fiannaca gave evidence that, in the 1990s, the experience in Western Australia was that the courts would order separate trials of the different charges unless the complainants' allegations contained striking similarities in the offending and there was no reasonable possibility of concoction.[489] He said that the fact that the complainants had been at the same institution and each alleged a sexual assault was not enough for the offending to be considered strikingly similar. There would need to be something more specific about the alleged acts that was strikingly similar in all of the different allegations.[490]

In his statement Mr Fiannaca said that the law on joining charges into one prosecution has changed in Western Australia since 1993. It is now more feasible to join charges in one prosecution in cases of sexual offending, including historical cases.[491]

Mr Fiannaca gave evidence that under section 31A of the *Evidence Act 1906* (WA), the bases on which the complainants' evidence might be admissible for charges that involve other complainants have been broadened beyond the similarities needed for similar fact evidence and relationship evidence – that is, evidence of the attitude or conduct of the accused towards a person or a class of persons, including, for example, children or children in a school, may be admissible.[492] Further, the court cannot use the possibility of collusion, concoction or suggestion to rule against the joining of charges.[493]

Mr Fiannaca gave evidence that he thought a conviction was now more likely to be obtained as a result of the increased ability to join a number of charges in one prosecution, and that joining charges would show that each complainant's allegations were not matters that occurred in isolation.[494]

11.3 Longman directions

Another special rule applying in criminal trials applied to charges for sexual offences where there was no evidence to corroborate the complainant's allegations and there had been a long period of delay since the offence was alleged to have been committed.

In these circumstances, the Judge would be required to direct the jury that it would be dangerous to convict the accused without scrutinising the evidence with great care. The

Judge would also need to direct the jury about the disadvantages to the accused resulting from long delay in the making of the complaint.[495] A long delay can disadvantage the accused particularly because they cannot properly investigate the allegation.[496] These directions are referred to as 'Longman' directions or warnings after the High Court's decision in *Longman v The Queen* (1989) 168 CLR 79.

Mr Fiannaca gave evidence that the need to give a jury these warnings, together with the need for the jury to be satisfied of the accused's guilt beyond reasonable doubt, meant that the prospects of conviction were fairly small. This was a consideration in the 1993 allegations not being prosecuted.[497]

The nature of the Longman direction that the Judge would be required to give to the jury has changed since 1993 following more recent decisions and particularly the decision in *FGC v The State of Western Australia* [2008] WASCA 47. The nature of the Longman direction that is now required will depend on careful scrutiny of the facts of the case. If there has been a lengthy delay since the alleged offending, a strong form of the Longman direction may be required, although this is not necessarily the case.[498]

11.4 1995 decision not to prosecute

On 8 May 1995, the DPP wrote to the Assistant Commissioner of Police in Western Australia about additional allegations made against certain Christian Brothers. The DPP again considered that there were no reasonable prosects of conviction if charges were laid and again recommended against prosecuting.[499]

In the letter, the DPP wrote that some of the complaints were about incidents that happened later in time than the complaints considered in 1993, but there was virtually no confirmatory or corroborative evidence. The DPP wrote: 'Worst of all there is almost a complete lack of particularity as to when alleged offences are supposed to have occurred.'[500]

11.5 Offence of persistent sexual conduct

Mr Fiannaca gave evidence that an offence of 'persistent sexual conduct' (previously called 'maintaining a sexual relationship') was introduced in 1992 in Western Australia, but it applied only prospectively to conduct that was alleged to have occurred after the offence was introduced.

This offence can assist where complainants cannot recall precisely when alleged acts occurred. It requires proof of at least three occasions of sexual offences against the complainant within a particular period, but without the need to prove precisely when each offence occurred.[501]

Mr Fiannaca gave evidence that, in his experience, the offence has been prosecuted successfully on a number of occasions. Initially, a persistent sexual conduct offence could not be charged together with specific offences, but now they can be charged together. If a

complainant can be specific about some periods of time but not about others, specific offences and a persistent sexual conduct offence can be prosecuted together.[502]

12 Systemic issues arising from criminal justice

This case study identified the following issues relevant to criminal justice:

- the circumstances in which multiple charges relating to different complainants can be joined in a single prosecution
- the circumstances in which directions and warnings will be given in child sexual abuse cases where there is delay in complaint and an absence of corroboration
- the influence of the above circumstances on decisions to prosecute or not to prosecute
- changes in the above circumstances over time and their impact on decisions to prosecute or not to prosecute
- the availability and use of an offence of persistent sexual conduct.

APPENDIX A: Terms of Reference

Letters Patent

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO

The Honourable Justice Peter David McClellan AM,
Mr Robert Atkinson,
The Honourable Justice Jennifer Ann Coate,
Mr Robert William Fitzgerald AM,
Dr Helen Mary Milroy, and
Mr Andrew James Marshall Murray

GREETING

WHEREAS all children deserve a safe and happy childhood.

AND Australia has undertaken international obligations to take all appropriate legislative, administrative, social and educational measures to protect children from sexual abuse and other forms of abuse, including measures for the prevention, identification, reporting, referral, investigation, treatment and follow up of incidents of child abuse.

AND all forms of child sexual abuse are a gross violation of a child's right to this protection and a crime under Australian law and may be accompanied by other unlawful or improper treatment of children, including physical assault, exploitation, deprivation and neglect.

AND child sexual abuse and other related unlawful or improper treatment of children have a long-term cost to individuals, the economy and society.

AND public and private institutions, including child-care, cultural, educational, religious, sporting and other institutions, provide important services and support for children and their families that are beneficial to children's development.

AND it is important that claims of systemic failures by institutions in relation to allegations and incidents of child sexual abuse and any related unlawful or improper treatment of children be fully explored, and that best practice is identified so that it may be followed in the future both to protect against the occurrence of child sexual abuse and to respond appropriately when any allegations and incidents of child sexual abuse occur, including holding perpetrators to account and providing justice to victims.

AND it is important that those sexually abused as a child in an Australian institution can share their experiences to assist with healing and to inform the development of strategies and reforms that your inquiry will seek to identify.

AND noting that, without diminishing its criminality or seriousness, your inquiry will not specifically examine the issue of child sexual abuse and related matters outside institutional

contexts, but that any recommendations you make are likely to improve the response to all forms of child sexual abuse in all contexts.

AND all Australian Governments have expressed their support for, and undertaken to cooperate with, your inquiry.

NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and under the Constitution of the Commonwealth of Australia, the *Royal Commissions Act 1902* and every other enabling power, appoint you to be a Commission of inquiry, and require and authorise you, to inquire into institutional responses to allegations and incidents of child sexual abuse and related matters, and in particular, without limiting the scope of your inquiry, the following matters:

a. what institutions and governments should do to better protect children against child sexual abuse and related matters in institutional contexts in the future;

b. what institutions and governments should do to achieve best practice in encouraging the reporting of, and responding to reports or information about, allegations, incidents or risks of child sexual abuse and related matters in institutional contexts;

c. what should be done to eliminate or reduce impediments that currently exist for responding appropriately to child sexual abuse and related matters in institutional contexts, including addressing failures in, and impediments to, reporting, investigating and responding to allegations and incidents of abuse;

d. what institutions and governments should do to address, or alleviate the impact of, past and future child sexual abuse and related matters in institutional contexts, including, in particular, in ensuring justice for victims through the provision of redress by institutions, processes for referral for investigation and prosecution and support services.

AND We direct you to make any recommendations arising out of your inquiry that you consider appropriate, including recommendations about any policy, legislative, administrative or structural reforms.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to have regard to the following matters:

e. the experience of people directly or indirectly affected by child sexual abuse and related matters in institutional contexts, and the provision of opportunities for them to share their experiences in appropriate ways while recognising that many of them will be severely traumatised or will have special support needs;

f. the need to focus your inquiry and recommendations on systemic issues, recognising nevertheless that you will be informed by individual cases and may need to make referrals to appropriate authorities in individual cases;

g. the adequacy and appropriateness of the responses by institutions, and their officials, to reports and information about allegations, incidents or risks of child sexual abuse and related matters in institutional contexts;

h. changes to laws, policies, practices and systems that have improved over time the ability of institutions and governments to better protect against and respond to child sexual abuse and related matters in institutional contexts.

AND We further declare that you are not required by these Our Letters Patent to inquire, or to continue to inquire, into a particular matter to the extent that you are satisfied that the matter has been, is being, or will be, sufficiently and appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to consider the following matters, and We authorise you to take (or refrain from taking) any action that you consider appropriate arising out of your consideration:

i. the need to establish mechanisms to facilitate the timely communication of information, or the furnishing of evidence, documents or things, in accordance with section 6P of the *Royal Commissions Act 1902* or any other relevant law, including, for example, for the purpose of enabling the timely investigation and prosecution of offences;

j. the need to establish investigation units to support your inquiry;

k. the need to ensure that evidence that may be received by you that identifies particular individuals as having been involved in child sexual abuse or related matters is dealt with in a way that does not prejudice current or future criminal or civil proceedings or other contemporaneous inquiries;

l. the need to establish appropriate arrangements in relation to current and previous inquiries, in Australia and elsewhere, for evidence and information to be shared with you in ways consistent with relevant obligations so that the work of those inquiries, including, with any necessary consents, the testimony of witnesses, can be taken into account by you in a way that avoids unnecessary duplication, improves efficiency and avoids unnecessary trauma to witnesses;

m. the need to ensure that institutions and other parties are given a sufficient opportunity to respond to requests and requirements for information, documents and things, including, for example, having regard to any need to obtain archived material.

AND We appoint you, the Honourable Justice Peter David McClellan AM, to be the Chair of the Commission.

AND We declare that you are a relevant Commission for the purposes of sections 4 and 5 of the *Royal Commissions Act 1902*.

AND We declare that you are authorised to conduct your inquiry into any matter under these Our Letters Patent in combination with any inquiry into the same matter, or a matter related to that matter, that you are directed or authorised to conduct by any Commission, or under any order or appointment, made by any of Our Governors of the States or by the Government of any of Our Territories.

AND We declare that in these Our Letters Patent:

child means a child within the meaning of the Convention on the Rights of the Child of 20 November 1989.

government means the Government of the Commonwealth or of a State or Territory, and includes any non-government institution that undertakes, or has undertaken, activities on behalf of a government.

institution means any public or private body, agency, association, club, institution, organisation or other entity or group of entities of any kind (whether incorporated or unincorporated), and however described, and:

i. includes, for example, an entity or group of entities (including an entity or group of entities that no longer exists) that provides, or has at any time provided, activities, facilities, programs or services of any kind that provide the means through which adults have contact with children, including through their families; and

ii. does not include the family.

institutional context: child sexual abuse happens in an ***institutional context*** if, for example:

i. it happens on premises of an institution, where activities of an institution take place, or in connection with the activities of an institution; or

ii. it is engaged in by an official of an institution in circumstances (including circumstances involving settings not directly controlled by the institution) where you consider that the institution has, or its activities have, created, facilitated, increased, or in any way contributed to, (whether by act or omission) the risk of child sexual abuse or the circumstances or conditions giving rise to that risk; or

iii. it happens in any other circumstances where you consider that an institution is, or should be treated as being, responsible for adults having contact with children.

law means a law of the Commonwealth or of a State or Territory.

official, of an institution, includes:

i. vi. any representative (however described) of the institution or a related entity; and

ii. vii. any member, officer, employee, associate, contractor or volunteer (however described) of the institution or a related entity; and

iii. viii. any person, or any member, officer, employee, associate, contractor or volunteer (however described) of a body or other entity, who provides services to, or for, the institution or a related entity; and

iv. ix. any other person who you consider is, or should be treated as if the person were, an official of the institution.

related matters means any unlawful or improper treatment of children that is, either generally or in any particular instance, connected or associated with child sexual abuse.

AND We:

require you to begin your inquiry as soon as practicable, and

require you to make your inquiry as expeditiously as possible; and

require you to submit to Our Governor-General:

first and as soon as possible, and in any event not later than 30 June 2014 (or such later date as Our Prime Minister may, by notice in the *Gazette*, fix on your recommendation), an initial report of the results of your inquiry, the recommendations for early consideration you may consider appropriate to make in this initial report, and your recommendation for the date, not later than 31 December 2015, to be fixed for the submission of your final report; and

then and as soon as possible, and in any event not later than the date Our Prime Minister may, by notice in the *Gazette*, fix on your recommendation, your final report of the results of your inquiry and your recommendations; and

authorise you to submit to Our Governor-General any additional interim reports that you consider appropriate.

IN WITNESS, We have caused these Our Letters to be made Patent

WITNESS Quentin Bryce, Governor-General of the Commonwealth of Australia.

Dated 11th January 2013

Governor-General

By Her Excellency's Command

Prime Minister

APPENDIX B: Public hearing

The Royal Commission	Justice Peter McClellan AM (Chair) Justice Jennifer Coate Mr Bob Atkinson AO APM Mr Robert Fitzgerald AM Professor Helen Milroy Mr Andrew Murray
Commissioners who presided	Justice Peter McClellan AM (Chair) Mr Bob Atkinson AO APM Professor Helen Milroy
Date of hearing	28–30 April 2014; 1–7 May 2014
Legislation	*Royal Commissions Act 1902* (Cth)
Leave to appear	• The Christian Brothers • The Truth Justice and Healing Council • State of Western Australia • Witness VV • Witness Gordon Grant
Legal representation	Gail Furness, Senior Counsel Assisting the Royal Commission, Ms S Kelly, Ms L Sanderson and Ms J Dymond J Needham SC, Mr Kelleher and Mr Woods, Gilbert + Tobin, appearing for the Truth Justice and Healing Council and for the Christian Brothers J O'Sullivan, Ms Glancy and Ms Pedersen appearing for the State of Western Australia R Royle and Ms Scanlon, Kelso's Lawyers, appearing for witness VV M Cuomo appearing for witness Gordon Grant
Pages of transcript:	794 pages
Summons to attend issued under *Royal Commissions*	4 summons to attend producing 4,688 documents

Act 1923 **(NSW) and documents produced:**	
Summons to Attend and Summons to Produce Documents under the *Evidence (Miscellaneous Provisions) Act 1958* (Vic) and documents produced:	9 summons to attend producing 15,542 documents
Notice to Produce issued under *Royal Commissions Act 1902* (Cth) and documents produced:	26 summons to attend producing 9,950 documents
Number of exhibits:	31 exhibits consisting of a total of 425 documents tendered at the hearing
Witnesses	1 **Albert McGregor** Former Castledare & Clontarf resident 2 **John Hennessey** Former Bindoon resident 3 **John Wells** Former Castledare & Clontarf resident 4 **Clifford Walsh** Former Castledare & Bindoon resident 5 **Witness VV** Former Castledare & Bindoon resident 6 **Witness VG** Former Castledare & Tardun resident 7 **Oliver Cosgrove** Former Castledare & Clontarf resident 8 **Raphael Ellul** Former Castledare & Clontarf resident 9 **Witness VI** Former Castledare & Clontarf resident 10 **Gordon Grant** Former Bindoon resident 11 **Edward Delaney** Former Castledare & Bindoon resident 12 **Hayden Stephens** Partner, Slater & Gordon Solicitors 13 **Howard Harrison** Partner, Carroll & O'Dea Solicitors 14 **Narrell Lethorn** Director, WA Department of Local Government and Communities

15 **Dr Maria Harries**
Former Chairman, CBERSS

16 **Emma White**
Acting Director General, WA Department of Child Protection and Family Support

17 **Bruno Fiannaca SC**
Acting Director of Public Prosecutions WA

18 **Brother Anthony Shanahan**
Former Province Leader of Christian Brothers Province of Western Australia and South Australia

19 **Brother Julian McDonald**
Deputy Province Leader of Christian Brothers Province of Oceania

Endnotes

[1] Transcript of A Shanahan, WA2135: 33–38.
[2] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 19 and Transcript of A Shanahan, WA2046: 25.
[3] Exhibit 11-0029, Statement of R McDonald, CTJH.500.21001.0001_R, at para 33.
[4] Transcript of A Shanahan, WA2046: 39–WA2047: 3.
[5] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 31.
[6] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 23.
[7] Exhibit 11-0001, Castledare Visitation Report, CTJH.056.11102.0271 and Exhibit 11-0001, Castledare Visitation Report, at CTJH.056.15008.0103.
[8] Transcript of VI, WA1663: 46–47.
[9] Transcript of VI, WA1668: 23–24.
[10] Transcript of J Wells, WA1565: 27–34.
[11] Transcript of J McGregor, WA1547: 3–30.
[12] Transcript of VI, WA1668: 1–4.
[13] Transcript of VI, WA1666: 39–WA1667: 2.
[14] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 23.
[15] Exhibit 11-0001, Clontarf Visitation Report, CTJH.056.15010.0093; Exhibit 11-0001, Clontarf Visitation Report ,CTJH.056.15010.0117 and Exhibit 11-0001, Clontarf Visitation Report, CTJH.056.11086.0021.
[16] Transcript of J Wells WA1567: 30–33.
[17] Transcript of J McGregor WA1547: 3-30.
[18] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 23.
[19] Exhibit 11-0001, Table of Brothers present at Tardun from 1960-1965 (extract from Visitation Report), IND.0022.001.0002_R.
[20] Transcript of VG, WA1599: 27–28 and Transcript of R Ellul, WA1651: 25–31.
[21] Transcript of VG, WA1601: 38–39.
[22] Transcript of VG, WA1600: 41–45.
[23] Transcript of R Ellul, WA1648: 27–47.
[24] Transcript of VG, WA1600: 19–20.
[25] Transcript of VG, WA1599: 32–40.
[26] Transcript of VG, WA1600: 22–38 and Transcript of R Ellul, WA1648: 5–12.
[27] Exhibit 11-0010, Statement of R Ellul, STAT.0235.001.0001_R, at para 16.
[28]Transcript of VG WA1600: 37–39.
[29] Exhibit 11-0010, Statement of R Ellul, STAT.0235.001.0001_R, at para 20.
[30] Transcript of G Grant, WA1704: 14–19.
[31] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 23.
[32] Transcript of A Shanahan, WA2136: 3 and Transcript of VV, WA1619: 5.
[33] Transcript of A Shanahan, WA2135: 22–42.
[34] Exhibit 11-0001, Bindoon Visitation Report, CTJH.056.11102.0063_R; Exhibit 11-0001, Bindoon Visitation Report,CTJH.056.11102.0073; Exhibit 11-0001 Bindoon Visitation Report, CTJH.056.15005.0087; Exhibit 11-0001, Bindoon Visitation Report, CTJH.056.11102.0137; and Exhibit 11-0001, Castledare Visitation Report, CTJH.056.15005.0124.
[35]Transcript of VV, WA1620: 15.
[36]Transcript of G Grant, WA1704: 21–30.
[37] Transcript of VV, WA1620: 12–14.
[38] Exhibit 11-0001, Bindoon Visitation Report, CTJH.056.11102.0023.
[39] Transcript of G Grant, WA1704: 35–42.
[40] Transcript of VV, WA1619: 42 and Transcript of E Delaney, WA1694: 30.
[41] Transcript of G Grant, WA1704: 44–WA1705: 1.
[42] Transcript of C Walsh, WA1585: 20–24.
[43] Transcript of J M Hennessey, WA1527: 1; Transcript of C Walsh, WA1589: 35; and Transcript of VV, WA1619: 11–14.
[44] Transcript of A Shanahan, WA2134: 39–WA2135: 5.

[45] Transcript of VV, WA1619: 10–40.
[46] Transcript of C Walsh, WA1587: 8–22.
[47] Transcript of E Delaney, WA1695: 3–9.
[48] Exhibit 11-0007, Statement of VG, STAT.0229.001.0001_R, at para 20.
[49] Exhibit 11-0001, Bindoon Visitation Report, CTJH.056.11102.0073.
[50] Exhibit 11-0018, Statement of E White, STAT.0241.001.0001, at para 28.
[51] Exhibit 11-0018, Statement of E White, STAT.0241.001.0001, at para 23.
[52] Transcript of E White, WA1769: 30–32.
[53] Exhibit 11-0001, Bindoon Visitation Report, CTJH.056.11102.0069.
[54] Exhibit 11-0001, Bindoon Visitation Report, CTJH.056.11102.0069.
[55] Exhibit 11-0001, Memo attaching copy of report by Institution Officer at St Joseph's Farm School Bindoon, WA.009.001.0172.
[56] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 25.
[57] Exhibit 11-0001, Letter from Secretary to Commonwealth Migration Officer for Western Australia, CTJH.056.11085.0049.
[58] Transcript of A Shanahan, WA2198: 36–41.
[59] Transcript of A Shanahan, WA2199: 1–5.
[60] Exhibit 11-0007, Statement of VG, STAT.0229.001.0001_R, and Exhibit 11-0010, Statement of R Ellul, STAT.0235.001.0001_R.
[61] Transcript of A Shanahan, WA2199: 24–36.
[62] Transcript of VG, WA1598: 1–7.
[63] Transcript of R Ellul, WA1646: 14.
[64] Transcript of A Shanahan, WA2135: 5–16.
[65] Transcript of A Shanahan, WA2135: 26.
[66] Exhibit 11-0001, Bindoon Visitation Report, CTJH.056.11102.0063_R.
[67] Exhibit 11-0003, Statement of A McGregor, STAT.0237.001.0001_R; Exhibit 11-0005, Statement of O Cosgrove, STAT.0230.001.0001_R; and Exhibit 11-0012, Statement of VI, STAT.0234.001.0001_R.
[68] Exhibit 11-0003, Statement of A McGregor, STAT.0237.001.0001_R; Exhibit 11-0005, Statement of O Cosgrove, STAT.0230.001.0001_R; and Exhibit 11-0004, Statement of J Wells, STAT.0231.001.0001_R.
[69] Exhibit 11-0007, Statement of VG, STAT.0229.001.0001_R and Exhibit 11-0010, Statement of R Ellul, STAT.0235.001.0001_R.
[70] Exhibit 11-0002, Statement of J Hennessey, STAT.0236.001.0001_R; Exhibit 11-0015, Statement of G Grant, STAT.0233.001.0001_R; Exhibit 11-0014, Statement of E Delaney, STAT.0240.001.0001_R; Exhibit 11-0008, Statement of VV, STAT.0238.001.0001_R; and Exhibit 11-0006, Statement of C Walsh, STAT.0232.001.0001_R.
[71] Exhibit 11-0001, Bindoon Visitation Report, CTJH.056.11102.0063_R; Exhibit 11-0001, Bindoon Visitation Report, CTJH.056.11102.0073; Exhibit 11-0001, Bindoon Visitation Report, CTJH.056.15005.0087; Exhibit 11-0001, Bindoon Visitation Report, CTJH.056.11102.0137 and Exhibit 11-0001, Castledare Visitation Report, CTJH.056.15005.0124.
[72] Exhibit 11-0001, Bindoon Visitation Report, CTJH.056.11102.0063_R; andExhibit 11-0001, Bindoon Visitation Report, CTJH.056.11102.0073.
[73] Exhibit 11-0001, Bindoon Visitation Report, CTJH.056.15005.0087.
[74] Exhibit 11-0001, Bindoon Visitation Report, CTJH.056.11102.0137.
[75] Exhibit 11-0001, Castledare Visitation Report, CTJH.056.15005.0124.
[76] Exhibit 11-0010, Statement of R Ellul, STAT.0235.001.0001_R, at para 45 and Exhibit 11-0006, Statement of C Walsh, STAT.0232.001.0001_R, at para 52.
[77] Exhibit 11-0003, Statement of A McGregor, STAT.0237.001.0001_R, at paras18 and 21.
[78] Exhibit 11-0003, Statement of A McGregor, STAT.0237.001.0001_R, at para 21.
[79] Exhibit 11-0012, Statement of VI, STAT.0234.001.0001_R, at paras 18–23.
[80] Exhibit 11-0004, Statement of J Wells, STAT.0231.001.0001_R, at paras 8 and 9.
[81] Exhibit 11-0005, Statement of O Cosgrove, STAT.0230.001.0001_R, at para 7.
[82] Exhibit 11-0005, Statement of O Cosgrove, STAT.0230.001.0001_R, at paras 13–16
[83] Exhibit 11-0004, Statement of J Wells, STAT.0231.001.0001_R, at para 18.
[84] Exhibit 11-0007, Statement of VG, STAT.0229.001.0001_R, at paras 18 and 19.
[85] Exhibit 11-0007, Statement of VG, STAT.0229.001.0001_R, at para, 29.
[86] Exhibit 11-0010, Statement of R Ellul, STAT.0235.001.0001_R, at paras 21–26.
[87] Exhibit 11-0002, Statement of J Hennessey, STAT.0236.001.0001_R, at para 25.
[88] Exhibit 11-0002, Statement of J Hennessey, STAT.0236.001.0001_R, at para 26.

[89] Exhibit 11-0015, Statement of G Grant, STAT.0233.001.0001_R, at paras 25 and 26.
[90] Exhibit 11-0015, Statement of G Grant, STAT.0233.001.0001_R, at para 27.
[91] Exhibit 11-0015, Statement of G Grant, STAT.0233.001.0001_R, at para 28.
[92] Exhibit 11-0006, Statement of C Walsh, STAT.0232.001.0001_R, at paras 24, 25 and 26.
[93] Exhibit 11-0006, Statement of C Walsh, STAT.0232.001.0001_R, at paras 16, 17, 21 and 22.
[94] Exhibit 11-0001, Bindoon Visitation Report, CTJH.056.15005.0087.
[95] Exhibit 11-0014, Statement of E Delaney, STAT.0240.001.0001_R, at paras 11–13.
[96] Exhibit 11-0012, Statement of VI, STAT.0234.001.0001_R, at para 24.
[97] Exhibit 11-0004, Statement of J Wells, STAT.0231.001.0001_R, at paras 12–15.
[98] Exhibit 11-0007, Statement of VG, STAT.0229.001.0001_R, at para 17 and Exhibit 11-0010, Statement of R Ellul, STAT.0235.001.0001_R, at para 30.
[99] Exhibit 11-0002, Statement of J Hennessey, STAT.0236.001.0001_R, at para 32.
[100] Exhibit 11-0015, Statement of G Grant, STAT.0233.001.0001_R, at para 16.
[101] Exhibit 11-0012, Statement of VI, STAT.0234.001.0001_R, at paras 27 and 29.
[102] Exhibit 11-0005, Statement of O Cosgrove, STAT.0230.001.0001_R, at para 8.
[103] Exhibit 11-0003, Statement of A McGregor, STAT.0237.001.0001_R, at para 19.
[104] Exhibit 11-0003, Statement of A McGregor, STAT.0237.001.0001_R, at para 20.
[105] Exhibit 11-0004, Statement of J Wells, STAT.0231.001.0001_R, at para 13.
[106] Exhibit 11-0005, Statement of O Cosgrove, STAT.0230.001.0001_R, at paras 17 and 18.
[107] Exhibit 11-0004, Statement of J Wells, STAT.0231.001.0001_R, at para 20.
[108] Exhibit 11-0004, Statement of J Wells, STAT.0231.001.0001_R, at para 19.
[109] Exhibit 11-0004, Statement of J Wells, STAT.0231.001.0001_R, at paras 19 and 20.
[110] Exhibit 11-0007, Statement of VG, STAT.0229.001.0001_R, at paras 31–34.
[111] Exhibit 11-0007, Statement of VG, STAT.0229.001.0001_R, at paras 37 and 38.
[112] Exhibit 11-0002, Statement of J Hennessey, STAT.0236.001.0001_R, at para 33.
[113] Exhibit 11-0002, Statement of J Hennessey, STAT.0236.001.0001_R, at paras 35-42.
[114] Exhibit 11-0006, Statement of C Walsh, STAT.0232.001.0001_R, at paras 7 and 8.
[115] Exhibit 11-0006, Statement of C Walsh, STAT.0232.001.0001_R, at paras 7–11.
[116] Exhibit 11-0014, Statement of E Delaney, STAT.0240.001.0001_R, at para 15.
[117] Exhibit 11-0008, Statement of VV, STAT.0238.001.0001_R, at paras 39–42.
[118] Transcript of VV, WA1627: 35–40.
[119] Exhibit 11-0014, Statement of E Delaney, STAT.0240.001.0001_R, at paras 19 and 20.
[120] Exhibit 11-0012, Statement of VI, STAT.0234.001.0001_R, at para 28.
[121] Exhibit 11-0007, Statement of VG, STAT.0229.001.0001_R, at para 50.
[122] Exhibit 11-0010, Statement of R Ellul, STAT.0235.001.0001_R, at paras 30 and 33.
[123] Exhibit 11-0014, Statement of E Delaney, STAT.0240.001.0001_R, at paras 15 and 16.
[124] Exhibit 11-0008, Statement of VV, STAT.0238.001.0001_R, at paras 27–30.
[125] Exhibit 11-0008, Statement of VV, STAT.0238.001.0001_R, at paras 31–33.
[126] Exhibit 11-0008, Statement of VV, STAT.0238.001.0001_R, at para 35.
[127] Exhibit 11-0002, Statement of J Hennessey, STAT.0236.001.0001_R, at para 43.
[128] Exhibit 11-0002, Statement of J Hennessey, STAT.0236.001.0001_R, at paras 44–46.
[129] Exhibit 11-0012, Statement of VI, STAT.0234.001.0001_R, at paras 44 and 45.
[130] Exhibit 11-0010, Statement of R Ellul, STAT.0235.001.0001_R, at para 28.
[131] Exhibit 11-0002, Statement of J Hennessey, STAT.0236.001.0001_R, at para 47.
[132] Exhibit 11-0008, Statement of VV, STAT.0238.001.0001_R, at paras 53–55.
[133] Exhibit 11-0001, State Inspection Report regarding Castledare and relevant correspondence, WA.0009.001.0058.
[134] Exhibit 11-0007, Statement of VG, STAT.0229.001.0001_R, at paras 53 and 57.
[135] Exhibit 11-0008, Statement of VV, STAT.0238.001.0001_R, at paras 56 and 57.
[136] Exhibit 11-0012, Statement of VI, STAT.0234.001.0001_R, at paras 34–36.
[137] Exhibit 11-0012, Statement of VI, STAT.0234.001.0001_R, at para 37.
[138] Exhibit 11-0003, Statement of A McGregor, STAT.0237.001.0001_R, at para 20.
[139] Exhibit 11-0005, Statement of O Cosgrove, STAT.0230.001.0001_R, at paras 19–23.
[140] Exhibit 11-0006, Statement of C Walsh, STAT.0232.001.0001_R, at paras 12–15.
[141] Exhibit 11-0006, Statement of C Walsh, STAT.0232.001.0001_R, at paras 41 and 43.
[142] Exhibit 11-0014, Statement of E Delaney, STAT.0240.001.0001_R, at para 18
[143] Exhibit 11-0010, Statement of R Ellul, STAT.0235.001.0001_R, at paras 33 and 34.

[144] Exhibit 11-0007, Statement of VG, STAT.0229.001.0001_R, at paras 39 and 40.
[145] Exhibit 11-0007, Statement of VG, STAT.0229.001.0001_R, at paras 44 and 45.
[146] Exhibit 11-0007, Statement of VG, STAT.0229.001.0001_R, at paras 47–48.
[147] Exhibit 11-0007, Statement of VG, STAT.0229.001.0001_R, at para 49.
[148] Exhibit 11-0007, Statement of VG, STAT.0229.001.0001_R, at para 54.
[149] Exhibit 11-0007, Statement of VG, STAT.0229.001.0001_R, at paras 59–66.
[150] Exhibit 11-0007, Statement of VG, STAT.0229.001.0001_R, at paras 67 and 68.
[151] Exhibit 11-0007, Statement of VG, STAT.0229.001.0001_R, at para 69.
[152] Exhibit 11-0013, Reasons for Decision of the Criminal Court of Appeal in relation to Brother Dick, WA.0007.001.1294.
[153] Exhibit 11-0001, Media release re allegations against certain Christian Brothers, WAPF.0003.001.3625.
[154] Exhibit 11-0001, Letter from Director of DPP to Assistant Commissioner (Crime Operations), WAPF.0003.001.2841.
[155] Transcript of A Shanahan, WA2046: 39–WA2047: 3.
[156] Transcript of A Shanahan, WA2092: 42–47.
[157] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 29.
[158] Exhibit 11-0028, Prevention or Perversion, REPT.0007.001.0001.
[159] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 29 and Transcript of A Shanahan, WA2061: 19–WA2065: 33.
[160] Transcript of A Shanahan, WA2066: 1–10.
[161] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 29 and Exhibit 11-0029, Statement of J McDonald, CTJH.500.21001.0001_R, at para 232.
[162] Exhibit 11-0028, Prevention or Perversion, REPT.0007.001.0001.
[163] Exhibit 11-0029, Statement of J McDonald, CTJH.500.21001.0001_R, at para 233.
[164] Exhibit 11-0028, Prevention or Perversion, REPT.0007.001.0001.
[165] Transcript of A Shanahan, WA2043:31 and WA2048: 18-24
[166] Exhibit 11-0028, Prevention or Perversion, REPT.0007.001.0001.
[167] Exhibit 11-0028, Prevention or Perversion, REPT.0007.001.0001_R.
[168] Exhibit 11-0028, Prevention or Perversion, REPT.0007.001.0001_R.
[169] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 34.
[170] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 37.
[171] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 26.
[172] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 32.
[173] Transcript of A Shanahan, WA2067: 23–27.
[174] Exhibit 11-0001, Summary of Christian Brothers documents inspected by Carroll O'Dea, CTJH.056.11091.0063_R.
[175] Transcript of A Shanahan, WA2109: 32–36.
[176] Exhibit 11-0028, Letter from Under Secretary to the Most Reverend Archbishop Clune, CTJH.056.11044.0083.
[177] Exhibit 11-0001, Executive summary of Christian Brothers documents, prepared for Carroll O'Dea, CTJH.056.11120.0018_R.
[178] Exhibit 11-0028, Letter from Under Secretary to the Most Reverend Archbishop Clune, CTJH.056.11044.0083.
[179] Exhibit 11-0028, Letter from Archbishop of Perth to F. H. North, Esq., CTJH.056.11044.0084.
[180] Exhibit 11-0001, Bindoon Visitation Report, CTJH.056.11102.0012.
[181] Exhibit 11-0001, Memorandum of advice to the Trustees of Christian Brothers, CTJH.056.11094.0175_R.
[182] Transcript of A Shanahan, WA2121: 23–33.
[183] Transcript of A Shanahan, WA2122: 28–40.
[184] Exhibit 11-0001, Memorandum of advice to the Trustees of Christian Brothers, CTJH.056.11094.0175.
[185] Exhibit 11-0001, Memorandum of advice to the Trustees of Christian Brothers,CTJH.056.11094.0175.
[186] Exhibit 11-0001, Bindoon Visitation Report, CTJH.056.11102.0073.
[187] Exhibit 11-0001, Memorandum of advice to the Trustees of Christian Brothers,CTJH.056.11094.0175.
[188] Exhibit 11-0001, Clontarf Visitation Report, CTJH.056.15010.0097.
[189] Exhibit 11-0001, Castledare Visitation Report, CTJH.056.11102.0271.
[190] Exhibit 11-0001, Castledare Visitation Report,CTJH.056.11102.0271.
[191] Exhibit 11-0001, Bindoon Visitation Report, CTJH.056.15005.0087.
[192] Exhibit 11-0014, Statement of E Delaney, STAT.0240.001.0001_R, at paras 19 and 20.

[193] Exhibit 11-0001, Memorandum of advice to the Trustees of Christian Brothers, CTJH.056.11094.0175_R.
[194] Exhibit 11-0001, Executive summary of Christian Brothers documents, prepared for Carroll O'Dea, CTJH.056.11120.0018_R.
[195] Exhibit 11-0001, Clontarf Visitation Report, CTJH.056.15010.0117.
[196] Exhibit 11-0001, Clontarf Visitation Report, CTJH.056.11086.0021.
[197] Exhibit 11-0028, Letter to Br. T. B Garvey, Provincial, CTJH.056.11095.0125.
[198] Exhibit 11-0028, Letter to Br. T. B Garvey, Provincial, CTJH.0566.11044.0115.
[199] Exhibit 11-0001, Letter to Br Provincial, CTJH.056.11095.0132
[200] Exhibit 11-0028, Letter to Br Provincial, CTJH.056.11102.0149.
[201] Exhibit 11-0001, Bindoon Visitation Report, CTJH.056.11102.0137.
[202] Exhibit 11-0028, Christian Brothers Chronology, EXH.011.028.0001.
[203] Exhibit 11-0028, Christian Brothers Chronology, EXH.011.028.0001.
[204] Exhibit 11-0028, Letter from Rev. Br. J. P. Noonan, CTJH.056.11044.0190.
[205] Exhibit 11-0028, Handwritten Letter, CTJH.056.11044.0170.
[206] Exhibit 11-0028, Christian Brothers Chronology, EXH.011.028.0001.
[207] Exhibit 11-0028, Letter to Br. Superior General, CTJH.056.11044.0200.
[208] Exhibit 11-0028, Letter from Rev. Br. J. P. Noonan to Br. Superior General, CTJH.056.11044.0205.
[209] Exhibit 11-0028, Letter to Br. Superior General, CTJH.056.11044.0219.
[210] Exhibit 11-0028, Letter to Br. Provincial, CTJH.056.11044.0214.
[211] Exhibit 11-0028, Christian Brothers Chronology, EXH.011.028.0001.
[212] Exhibit 11-0028, Letter from Carroll & O'Dea to Brother Julian McDonald re: Slater and Gordon, CTJH.056.17127.0130.
[213] Exhibit 11-0028, Letter to Brother Provincial, CTJH.056.11102.0278.
[214] Transcript of A Shanahan WA2132: 2–8.
[215] Exhibit 11-0028, Letter to Br. T. B. Garvey, Provincial, CTJH.056.11102.0117.
[216] Exhibit 11-0001, Summons for VI and Trustees of the Christian Brothers & ORS, NSW, CTJH.056.11091.0068_R.
[217] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 202.
[218] Exhibit 11-0030, Senate Community Affairs References Committee Inquiry into Child Migration submission by the Catholic Church's Joint Liaison Group on Child Migration dated December 2000, CTJH.056.22001.2885 and Exhibit 11-0030 Senate Community Affairs References Committee Inquiry into Child Migration-supplementary response by the Catholic Church's Joint Liaison Group on Child Migration dated 23 April 2001, CTJH.056.22001.0001.
[219] Transcript of A Shanahan, WA2167: 9–26.
[220] Transcript of A Shanahan, WA2168: 7–23.
[221] Exhibit 11-0028, Christian Brothers Chronology, EXH.011.028.0001.
[222] Transcript of R J McDonald, WA2257: 23–28.
[223] Transcript of R J McDonald, WA2257: 30–WA2258: 9.
[224] Transcript of R J McDonald, WA2258: 17–26.
[225] Transcript of R J McDonald, WA2258: 11–15.
[226] Exhibit 11-0028, Statement of A Shanahan, CTJH.500.22001.0001, at paras 42–49.
[227] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at paras 38–41.
[228] Exhibit 11-0024, Agreement between Br. Barry Coldrey and the Provincial Council of Holy Spirit Province ro Write a History of the Brothers' Life and Work at Subiaco, Clontarf, Castledare, Tardun and Bindoon (1897-1990), CTJH.056.11059.0115.
[229] Transcript of A Shanahan, WA2086: 42–44.
[230] Transcript of A Shanahan, WA2087: 12–22.
[231] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 75.
[232] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 75.
[233] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 73.
[234] Transcript of A Shanahan, WA2090: 22–29.
[235] Exhibit 11-0028, Reaping the Whirlwind… The Christian Brothers and sexual abuse of boys in Australia 1920-1994. A secret report for Congregation Executives by Barry Coldrey, SGL.0001.001.0183_R.
[236] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 80.
[237] Transcript of A Shanahan, WA2278: 44–WA2279: 10.

[238] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 102 and Exhibit 11-0002, Advertisement publishing statement from the Congregation of Christian Brothers of Western Australia, CTJH.056.05001.0041.
[239] Transcript of R McDonald, WA2276: 22–25 and Exhibit 11-0002, Advertisement publishing statement from the Congregation of Christian Brothers of Western Australia, CTJH.056.05001.0041.
[240] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at paras 81–96 and 102.
[241] Transcript of J Hennessey, WA1539: 38–46.
[242] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 49 and Transcript of A Shanahan, WA2076: 33–WA2077: 10.
[243] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 61.
[244] Transcript of A Shanahan, WA2197: 33–47.
[245] Transcript of A Shanahan, WA2077: 12–WA2078: 1.
[246] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 61.
[247] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 104.
[248] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 68.
[249] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 108.
[250] Exhibit 11-0029, Statement of J McDonald, CTJH.500.21001.0001_R, at para 82.
[251] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 112.
[252] Exhibit 11-0001, Final Report of the Independent Advisory Panel to Assist Former Residents of Christian Brothers' Childcare Institutions, WAPF.0003.001.1821.
[253] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 127.
[254] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 145.
[255] Exhibit 11-0029, Statement of J McDonald, CTJH.500.21001.0001_R, at para 87.
[256] Transcript of C Walsh, WA1593: 26–30.
[257] Transcript of VG, WA1611: 4–20.
[258] Transcript fo VV, WA1631: 36–WA1632:3.
[259] Transcript of O Cosgrove, WA1578: 33–WA1579: 14.
[260] Transcript of M Harries, WA1732: 18–44.
[261] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 181 and Transcript of A Shanahan WA2183: 21–25.
[262] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at paras 181–187.
[263] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at para 183.
[264] Transcript of A Shanahan, WA2183: 32–34.
[265] Transcript of A Shanahan, WA2189: 11–15.
[266] Transcript of A Shanahan, WA2184: 12–18.
[267] Transcript of A Shanahan, WA2184: 32–44.
[268] Exhibit 11-0029, Statement of J McDonald, CTJH.500.21001.0001_R, at para 159.
[269] Transcript of A Shanahan, WA2184: 45-WA2185: 6.
[270] Transcript of A Shanahan, WA2137: 8-14.
[271] Transcript of A Shanahan, WA2185: 15-WA2186: 10.
[272] Transcript of A Shanahan, WA2187: 18-27.
[273] Transcript of R J McDonald, WA2243: 23-42.
[274] Transcript of R J McDonald, WA2244: 37-41.
[275] Transcript of R J McDonald, WA2245: 28-38.
[276] Exhibit 11-0029, Statement of J McDonald, CTJH.500.21001.0001_R, at para 156.
[277] Transcript of J McDonald, WA2250: 3-6.
[278] Exhibit 11-0029, Statement of J McDonald, CTJH.500.21001.0001_R, at para 34.
[279] Transcript of J McDonald, WA2269: 20
[280] Exhibit 11-0029, Statement of J McDonald, CTJH.500.21001.0001_R, at para 246.
[281] Exhibit 11-0029, Statement of J McDonald, CTJH.500.21001.0001_R, at para 247.
[282] Exhibit 11-0030, Safeguarding Children and Young People dated 4 July 2013, CTJH.056.12002.0005.
[283] Exhibit 11-0030, Child Protection Policy, CTJH.056.12002.0001.
[284] Exhibit 11-0030, Code of Conduct Policy, CTJH.056.12002.0023.
[285] Exhibit 11-0030, Code of Conduct-Interacting with Children and Young People, CTJH.056.12002.0031.
[286] Exhibit 11-0018, Statement of E White, STAT.0241.001.0001, at para 27.
[287] Exhibit 11-0018, Statement of E White, STAT.0241.001.0001, at paras 25-148.
[288] Exhibit 11-0018, Statement of E White, STAT.0241.001.0001, at paras 25-33.

[289] Exhibit 11-0018, Statement of E White, STAT.0241.001.0001, at paras 80-89.
[290] Exhibit 11-0018, Statement of E White, STAT.0241.001.0001, at paras 96-102.
[291] Exhibit 11-0018, Statement of E White, STAT.0241.001.0001, at paras 133-148.
[292] Exhibit 11-0018, Statement of E White, STAT.0241.001.0001, at para 151.
[293] Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at paras 12 and 20 and Transcript of H Stephens, WA1792: 16-26.
[294] Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at para 40.
[295] Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at para 27 and Transcript of H Stephens, WA1792: 39-WA1793: 13.
[296] Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at paras 27 and 28 and Transcript of H Stephens WA1792: 39-WA1793: 13.
[297] Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at paras 43, 62 and 65 and Transcript of H Stephens, WA1795: 2-5.
[298] Transcript of H Stephens, WA1795: 7-13.
[299] Transcript of H Stephens, WA1794: 20-40.
[300] Transcript of H Stephens, WA1794: 20-40.
[301] Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at para 30.
[302] Transcript of H Stephens, WA1798: 28-WA1799: 10.
[303] Transcript of H Stephens, WA1803: 39 – WA1804: 5 and Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at paras 34 and 35.
[304] Transcript of H G Harrison TWA1955: 10-17.
[305] Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at paras 31-33.
[306] Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at para 61 and at SGL.0001.001.0082_R.
[307] Transcript of H Stephens, WA1794: 45-WA1795: 17 and WA1842: 31-45.
[308] Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at para 16.
[309] Transcript of H Stephens, WA1796: 4-11 and Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at para 16.
[310] Exhibit 11-0022, Statement of H Harrison, CTJH.500.20001.0001_R, at para 10.
[311] Transcript of H Stephens, WA1796: 18-30.
[312] Transcript of H Stephens, WA1842: 4-29.
[313] Transcript of H Stephens, WA1842: 47-WA1843: 9.
[314] Transcript of H G Harrison, WA1953: 23-WA1958: 4.
[315] Transcript of H G Harrison, WA1878: 34-WA1879: 6.
[316] Transcript of H G Harrison, WA1882: 26-WA1883: 43.
[317] Transcript of R J McDonald, WA2226: 36-WA2227: 13.
[318] Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at paras 40 and 42.
[319] Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at paras 41 and 43 and Transcript of H Stephens, WA1805: 47-WA1806: 8.
[320] Transcript of H Stephens, WA1806: 13-22 and Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at para 44.
[321] Transcript of H Stephens, WA1806: 27-32.
[322] Transcript of H Stephens, WA1807: 6-21.
[323] Transcript of H Stephens, WA1807: 23-33.
[324] Transcript of H Stephens, WA1806: 47-WA1807: 4 and WA1808: 21-30.
[325] Transcript of H Stephens, WA1808: 5-10 and Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at para 55.
[326] Transcript of H Stephens, WA1808: 5-10 and Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at para 58.
[327] Transcript of H Stephens, WA1808: 16-19 and Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at para 59.
[328] Transcript of H Stephens, WA1808: 21-30 and Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at para 60.
[329] Transcript of H Stephens, WA1808: 32-37.
[330] Transcript of H Stephens, WA1808: 39-47.
[331] Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at para 69.
[332] Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at para 70 and Transcript of H Stephens, WA1809: 2-8.

[333] Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at para 79.
[334] Transcript of H Stephens, WA1811: 16-28 and Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at para 75.
[335] Transcript of H Stephens, WA1811: 43-WA1812: 31.
[336] Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at para 82.
[337] Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at para 83.
[338] Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at para 84 and Transcript of H Stephens, WA1814: 12-19.
[339] Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at paras 85 and 86.
[340] Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at para 87.
[341] Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at para 88.
[342] Transcript of H Stephens, WA1814:33-47.
[343] Transcript of H Stephens, WA1815: 2-12.
[344] Transcript of H Stephens, WA1815: 14-17.
[345] Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at para 93.
[346] Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at para 19.
[347] Transcript of H Stephens, WA1799: 27-WA1800: 26.
[348] Transcript of H G Harrison, WA1897: 24-47 and Ex 11-24 Tab B, at CTJH.056.11063.0010.
[349] Exhibit 11-0024, Letter from Carroll & O'Dea to Brother Julian McDonald, CTJH.056.11063.0003_R.
[350] Exhibit 11-0024 Letter from Carroll & O'Dea to Brother Julian McDonald, CTJH.056.11063.0003_R, at CTJH.056.11063.0010.
[351] Transcript of H G Harrison, WA1926: 47-WA1927: 19.
[352] Transcript of H G Harrison, WA1927: 29-42.
[353] Transcript of H G Harrison, WA1926: 47-WA1927: 19.
[354] Transcript of H G Harrison, WA1927: 29-42.
[355] Exhibit 11-0029, Statement of J McDonald, CTJH.500.21001.0001_R, at para 70 and Transcript of R J McDonald, WA2230: 19-22.
[356] Transcript of R J McDonald, WA2229: 42-47.
[357] Transcript of H G Harrison, WA1937: 1-27.
[358] Exhibit 11-0024, Letter from Slater & Gordon to Hoard Harrison re Christian Brother Litigation, CTJH.056.11022.0098.
[359] Transcript of H G Harrison, WA1936: 35-46.
[360] Exhibit 11-0024, Letter from Carroll & O'Dea to Brother Julian McDonald re: Slater & Gordon Proceedings – Sydney, 14 February 1995, CTJH.056.11072.0027_R, at CTJH.056.11072.0036.
[361] Exhibit 11-0024, Letter from Carroll & O'Dea to Brother Julian McDonald re: Slater & Gordon Proceedings – Sydney, 19 June 1995, CTJH.056.11063.0167_R, at CTJH.056.11063.0172.
[362] Exhibit 11-0024, Letter from Carroll & O'Dea to Brother Julian McDonald re: Slater and Gordon Proceedings-Sydney, 15 April 1996, at CTJH.056.11076.0043.
[363] Exhibit 11-0024, Letter from Carroll & O'Dea to Brother Julian McDonald re: Slater and Gordon Proceedings-Sydney, at CTJH.056.11071.0071.
[364] Exhibit 11-0024, Letter from Carroll & O'Dea to Brother Julian McDonald re: Slater & Gordon Proceedings – Sydney, 30 April 1996, CTJH.056.11071.0075, at CTJH.056.11071.0076.
[365] Exhibit 11-0024, Letter from Carroll & O'Dea to Brother Julian McDonald re: Slater & Gordon Proceedings – Sydney, 30 April 1996, CTJH.056.11071.0075, at CTJH.056.11071.0076.
[366] Exhibit 11-0024, Minutes of Meeting No 7 National Committee on Child Abuse Issues St Mary's Provincialate Balmain 3 May 1996, CTJH.056.20003.0019, at CTJH.056.20003.0020.
[367] Transcript of R J McDonald, WA2237: 26-30.
[368] Transcript of H Stephens, WA1817: 11-29.
[369] Transcript of H Stephens, WA1857: 5-7.
[370] Transcript of R J McDonald, WA2283: 16-25 and Transcript of H G Harrison, WA1938: 8-25.
[371] Transcript of H G Harrison, WA1949: 3-10 and Transcript of R J McDonald, WA2237: 32-34.
[372] Transcript of R J McDonald, WA2237: 32-38.
[373] Exhibit 11-0029, Statement of J McDonald, CTJH.500.21001.0001_R, at paras 120 to 122 and Exhibit 11-0024, Minutes of Meeting No 8 National Committee on Child Abuse Issues St Mary's Provincialate, Balmain, 3 May 1996, CTJH.056.20003.0022_R.

[374] Exhibit 11-0001, Annexure to Letter from Slater & Gordon to class action members - Heads of Agreement re Litigation in Sydney & Melbourne against the Trustees of the Christian Brothers (unexecuted), SGL.0001.001.0507_E.
[375] Transcript of H Stephens, WA1820: 21-39.
[376] Transcript of H G Harrison, WA1890: 11-29.
[377] Transcript of H Stephens, WA1804: 16-24 and WA1804: 40-WA1805: 18.
[378] Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at para 111.
[379] Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at para 111.
[380] Exhibit 11-0022, Statement of H Harrison, CTJH.500.20001.0001_R, at para 78.
[381] Exhibit 11-0022, Statement of H Harrison, CTJH.500.20001.0001_R, at para 30.
[382] Transcript of H G Harrison, WA1952: 44-WA1953:17 and Transcript of R J McDonald, WA2287: 28-WA2288:27.
[383] Exhibit 11-0016, Annexure to letter from Slater & Gordon to class action members-Charitable Trust Deed (Annexure A to Heads of Agreement) (executed), SGL.0001.001.0530_E_R.
[384] Exhibit 11-0016, Annexure to letter from Slater & Gordon to class action members-Charitable Trust Deed (Annexure A to Heads of Agreement) (executed), SGL.0001.001.0530_E_R.
[385] Exhibit 11-0001, Annexure to Letter from Slater & Gordon to class action members - Charitable Trust Deed (Annexure A to Heads of Agreement) (executed) (41 pages), SGL.0001.001.0530_E_R, at SGL.0001.001.0532_E_R.
[386] Exhibit 11-0001, Annexure to Letter from Slater & Gordon to class action members - Charitable Trust Deed (Annexure A to Heads of Agreement) (executed) (41 pages), SGL.0001.001.0530_E_R, at SGL.0001.001.0551_E_R.
[387] Exhibit 11-0001, Annexure to Letter from Slater & Gordon to class action members - Charitable Trust Deed (Annexure A to Heads of Agreement) (executed) (41 pages), SGL.0001.001.0530_E_R, at SGL.0001.001.0547_E_R.
[388] Exhibit 11-0001, Annexure to Letter from Slater & Gordon to class action members - Charitable Trust Deed (Annexure A to Heads of Agreement) (executed) (41 pages), SGL.0001.001.0530_E_R, at SGL.0001.001.0481_R.
[389] Exhibit 11-0001, Annexure to Letter from Slater & Gordon to class action members - Charitable Trust Deed (Annexure A to Heads of Agreement) (executed) (41 pages), SGL.0001.001.0530_E_R, at SGL.0001.001.0543_E_R.
[390] Exhibit 11-0001, Annexure to Letter from Slater & Gordon to class action members - Charitable Trust Deed (Annexure A to Heads of Agreement) (executed) (41 pages), SGL.0001.001.0530_E_R, at SGL.0001.001.0544_E_R.
[391] Exhibit 11-0001, Annexure to Letter from Slater & Gordon to class action members - Charitable Trust Deed (Annexure A to Heads of Agreement) (executed) (41 pages), SGL.0001.001.0530_E_R, at SGL.0001.001.0544_E_R.
[392] Exhibit 11-0001, Annexure to Letter from Slater & Gordon to class action members - Charitable Trust Deed (Annexure A to Heads of Agreement) (executed) (41 pages), SGL.0001.001.0530_E_R, at SGL.0001.001.0545_E_R.
[393] Exhibit 11-0001, Annexure to Letter from Slater & Gordon to class action members - Charitable Trust Deed (Annexure A to Heads of Agreement) (executed) (41 pages), SGL.0001.001.0530_E_R, at SGL.0001.001.0546_E_R.
[394] Transcript of H Stephens, WA1825: 29-41.
[395] Transcript of H G Harrison, WA1946: 23-36 and WA1947: 30-36.
[396] Exhibit 11-0001, Letter to class action members from Slater & Gordon re settlement of your claim against the Christian Brothers, SGL.0001.001.0502_R, at SGL.0001.001.0503_E; Exhibit 11-0001, WA Institutions Reconciliation Trust Annual Report, SGL.0001.001.0473_R, at SGL.0001.001.0483_R and Stephens TWA1829: 42-TWA1830: 12.
[397] Exhibit 11-0001, WA Institutions Reconciliation Trust Annual Report, SGL.0001.001.0473_R, at SGL.0001.001.0483_R and Stephens TWA1829: 30-34 and TWA1830: 22-31.
[398] Exhibit 11-0001, WA Institutions Reconciliation Trust Annual Report, SGL.0001.001.0473_R, at SGL.0001.001.0484_R and Stephens TWA1830: 46-TWA1831: 13.
[399] Exhibit 11-0001, Minutes dated 22 May 1997, SGL.0002.002.1075_R, at SGL.0002.002.1077_R; Exhibit 11-0001, Minutes dated 8 August 1997, SGL.0002.002.1394_R, at SGL.0002.002.1402_R; Exhibit 11-0001, Minutes dated 22 Sep 1997, SGL.0002.002.1569_R, at SGL.0002.002.1569_R; Ex 11-0001, Minutes dated 21 Nov 1997, SGL.0002.002.1749_R, at SGL.0002.002.1750_R.
[400] Exhibit 11-0001, Minutes dated 28 Nov 1997, SGL.0002.002.1758_R at SGL.0002.002.1759_R.

[401] Exhibit 11-0001, Minutes dated 28 Nov 1997, SGL.0002.002.1758_R, at SGL.0002.002.1759_R.
[402] Exhibit 11-0001, Minutes dated 28 Nov 1997, SGL.0002.002.1758_R, at SGL.0002.002.1763_R.
[403] Ex 11-20 at SGL.0003.001.0001_R.
[404] Exhibit 11-0001, Submissions from the Western Australian Institutions Reconciliation Trust to the Congregation of Christian Brothers, CTJH.056.17112.0022, at CTJH.056.17112.0023.
[405] Exhibit 11-0001, Minutes dated 28 Nov 1997, SGL.0002.002.1758_R, at SGL.0002.002.1760_R.
[406] Exhibit 11-0001, Memorandum from Tony Shanahan of Christian Brothers to Members of PLT re wind up of WA Reconciliations Trust, CTJH.056.17112.0039.
[407] Exhibit 11-0001, Annexure to Letter from Slater & Gordon to class action members - Charitable Trust Deed (Annexure A to Heads of Agreement) (executed) (41 pages), SGL.0001.001.0530_E_R, at SGL.0001.001.0543_E_R.
[408] Exhibit 11-0001, Annexure to Letter from Slater & Gordon to class action members - Charitable Trust Deed (Annexure A to Heads of Agreement) (executed) (41 pages), SGL.0001.001.0530_E_R, at SGL.0001.001.0544_E_R.
[409] Exhibit 11-0001, Annexure to Letter from Slater & Gordon to class action members - Charitable Trust Deed (Annexure A to Heads of Agreement) (executed) (41 pages), SGL.0001.001.0530_E_R, at SGL.0001.001.0543_E_R.
[410] Exhibit 11-0001, Annexure to Letter from Slater & Gordon to class action members - Charitable Trust Deed (Annexure A to Heads of Agreement) (executed) (41 pages), SGL.0001.001.0530_E_R, at SGL.0001.001.0544_E_R.
[411] Exhibit 11-0001, WA Institutions Reconciliation Trust Annual Report, SGL.0001.001.0473_R, at SGL.0001.001.0484_R.
[412] Exhibit 11-0001, Submissions from the Western Australian Institutions Reconciliation Trust to the Congregation of Christian Brothers, CTJH.056.17112.0022, at CTJH.056.17112.0023.
[413] Exhibit 11-0001, Annexure to Letter from Slater & Gordon to class action members - Charitable Trust Deed (Annexure A to Heads of Agreement) (executed) (41 pages), SGL.0001.001.0530_E_R, at SGL.0001.001.0548_E_R.
[414] Exhibit 11-0019, Statement of H Stephens, STAT.0239.001.0001_R, at para 116.
[415] Exhibit 11-0001, Submissions from the Western Australian Institutions Reconciliation Trust to the Congregation of Christian Brothers, CTJH.056.17112.0022, at CTJH.056.17112.0022.
[416] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at paras 172 to 175.
[417] Exhibit 11-0027, Statement of A Shanahan, CTJH.500.22001.0001, at paras 172 to 175.
[418] Transcript of J Hennessey, WA1542: 16-45; Transcript of O Cosgrove, WA1579: 21-42; Transcript of C Walsh, WA1592: 25-42; Transcript of VG, WA1610: 12-43; and Transcript of E Delaney, WA1698: 23-WA1699: 25.
[419] Transcript of O Cosgrove, WA1579: 21-37; Transcript of C Walsh, WA1592: 25-38; Transcript of VG, WA1610: 20-32; and Transcript of E Delaney, WA1699: 14-15.
[420] Transcript of VG, WA1610: 38-43 and Transcript of E Delaney, WA1699: 4-9.
[421] Transcript of H Stephens, WA1822: 36-40.
[422] Transcript of H Stephens, WA1822:42-46.
[423] Transcript of H Stephens, WA1802:13-21.
[424] Transcript of H Stephens, WA1840: 1-28.
[425] Transcript of H Stephens, WA1825: 29-41.
[426] Transcript of H Stephens, WA1841: 3-24.
[427] Transcript of A Shanahan, WA2178: 10-12.
[428] Transcript of R J McDonald, WA2237: 46-WA2238: 6.
[429] Transcript of A Shanahan, WA2177: 1-19 and WA2178:14-WA2179:16.
[430] Transcript of R J McDonald, WA2230:31-47.
[431] Transcript of A Shanahan, WA2083: 40-WA2084: 7 and WA2182: 43-46.
[432] Transcript of H G Harrison, WA1967: 38-44.
[433] Transcript of A Shanahan, WA2182: 24-46.
[434] Transcript of R J McDonald, WA2254: 33- WA2255: 26, Exhibit 11-0029, Statement of J McDonald, CTJH.500.21001.0001_R, at paras 215, 223 and 229.
[435] Transcript of VI, WA1676: 24-WA1677:5 and WA1678: 36-WA1681: 12; Exhibit 11-0001, Letter from Rev B J Hickey to VK, IND.0021.001.0006_R; and Exhibit 11-0001, Letter from Brother P Negus to Jane, IND.0021.001.0012_R.
[436] Transcript of J Wells, WA1570: 45-WA1571: 15.
[437] Transcript of VV, WA1631: 6-34.

[438] Transcript of R Ellul, WA1655: 2-WA1656: 10.
[439] Transcript of R J McDonald, WA2254: 33- WA2255: 26, and Exhibit 11-0029, Statement of J McDonald, CTJH.500.21001.0001_R, at paras 215, 223 and 229.
[440] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at para 31.
[441] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at para 26.
[442] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at paras 21 to 25 and Transcript of N Lethorn, WA1970: 14-42.
[443] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at para 28.
[444] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at paras 32 and 34 and STAT.0243.001.0037.
[445] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at para 33 and Exhibit 11-0025, Annexure NL1: Media Statement $114 million for child abuse victims, STAT.0243.001.0036.
[446] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at paras 35 and 65.
[447] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at paras 31 and 38.
[448] Transcript of N Lethorn, WA1975: 2-22.
[449] Transcript of N Lethorn, WA1978: 11-17.
[450] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at para 72.
[451] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at para 75.
[452] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at para 115.
[453] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at para 116.
[454] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at para 117.
[455] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at para 75 and Annexure 10 at STAT.0253.001.0187.
[456] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, Annexure 10 at STAT.0243.001.0187 and STAT.0243.001.0226 and Transcript of N Lethorn, WA1987:41-45.
[457] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at paras 117 and 118 and Transcript of Lethorn, WA2002: 11-29.
[458] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at para 76 and Transcript of N Lethorn, WA1984: 9-15.
[459] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at para 77.
[460] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at para 74.
[461] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at para 78.
[462] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at para 80.
[463] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at para 106.
[464] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at paras 107 to 109.
[465] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at para 113.
[466] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at paras 113 and 114.
[467] Transcript of J Hennessey, WA1543: 13-18; Transcript of J Wells, WA1569: 46- WA1570: 6; Transcript of O Cosgrove, WA1580: 35- WA1581: 1; Transcript of VV, WA1630: 20-23; Transcript of R Ellul, WA1656: 14-18; and Transcript of G Grant, WA1718: 39-42.
[468] Transcript of C Walsh WA1592: 20-22; Transcript of E Delaney WA1699: 43-45; and Exhibit 11-0015, Statement of G Grant, STAT.0233.001.0001_R, at para 74.
[469] Transcript of J Hennessey, WA1543: 9-13; Transcript of O Cosgrove, WA1580: 24-27; and Transcript of VV, WA1630: 17-20.
[470] Transcript of J Wells, WA1570: 8-12; Transcript of C Walsh, WA1592: 18-20; Transcript of VG, WA1611: 27-28; Transcript of VI, WA1683:13-WA1684: 6; and Transcript of E Delaney, WA1699: 47-WA1700: 1.
[471] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at para 123.
[472] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at paras 124 and 126.
[473] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at paras 140 and 141.
[474] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at para 145.
[475] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at paras 128 to 130 and Transcript of N Lethorn, WA1999: 9-28.
[476] Exhibit 11-0025, Statement of N Lethorn, STAT.0243.001.0001, at paras 119 and 120.
[477] Transcript of R J McDonald, WA2222: 26-42.
[478] Transcript of R J McDonald, WA2222: 44-WA2223: 8.
[479] Transcript of R J McDonald, WA2223: 10-27.
[480] Transcript of R J McDonald, WA2223: 29-WA2224: 8.
[481] Exhibit 11-0001, Media release re allegations against certain Christian Brothers,WAPF.0003.001.3625.

[482] Exhibit 11-0026, Statement of B Fiannaca, STAT.0242.001.0001, at paras 7 and 9.
[483] Exhibit 11-0026, Statement of B Fiannaca, STAT.0242.001.0001, at para 10 and Exhibit 11-0001, DPP Statement of Presecution Policy and Guidelines, WAPF.0003.001.2111.
[484] Exhibit 11-0026, Statement of B Fiannaca, STAT.0242.001.0001, at para 30 and Exhibit 11-0026, Director of Public Prosecutions for Western Australia-Statement of Prosecution Policy and Guidelines 2005, STAT.0242.001.0024.
[485] Exhibit 11-0001, Media release re allegations against certain Christian Brothers, WAPF.0003.001.3625.
[486] Exhibit 11-0026, Statement of B Fiannaca, STAT.0242.001.0001, at para 19.
[487] Exhibit 11-0026, Statement of B Fiannaca, STAT.0242.001.0001, at para 20.
[488] Exhibit 11-0026, Statement of B Fiannaca, STAT.0242.001.0001, at para 21.
[489] Exhibit 11-0026, Statement of B Fiannaca, STAT.0242.001.0001, at para 22 and Transcript of B Fiannaca, WA2013: 3-18.
[490] Transcript of B Fiannaca, WA2012: 28-44.
[491] Exhibit 11-0026, Statement of B Fiannaca, STAT.0242.001.0001, at para 40.
[492] Transcript of B Fiannaca, WA2013: 23-WA2014: 10.
[493] Exhibit 11-0026, Statement of B Fiannaca, STAT.0242.001.0001, at paras 23 and 40.
[494] Transcript of B Fiannaca, WA2015: 4-11.
[495] Exhibit 11-0026, Statement of B Fiannaca, STAT.0242.001.0001, at para 15.
[496] Transcript of B Fiannaca, WA2017: 30-42.
[497] Transcript of B Fiannaca, WA2010: 37-46.
[498] Exhibit 11-0026, Statement of B Fiannaca, STAT.0242.001.0001, at para 39.
[499] Exhibit 11-0001, Letter from Director of DPP to Assistant Commissioner (Crime Operations), WAPF.0003.001.2841.
[500] Exhibit 11-0001, Letter from Director of DPP to Assistant Commissioner (Crime Operations), WAPF.0003.001.2841.
[501] Transcript of B Fiannaca, WA2022: 34-WA2024: 5.
[502] Transcript of B Fiannaca, WA2023: 35-44.

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