



The Diocese of Grafton

MEMORANDUM

TO: Members of Bishop-in-Council

FROM: The Registrar

SUBJECT: Professional Standards Matters

DATE: Thursday 12 October 2006

A note to keep you informed on the matter of the North Coast Children's Home and two related aspects of Professional Standards.

1. North Coast Children's Home

As you are aware from the last meeting of Bishop-in-Council, solicitors acting for 42 former residents of the Home have provided statements to the Diocesan Solicitor, Mr Peter Roland.

After reviewing these statements, Mr Roland remained of the strong view that the threshold legal questions of the Limitations period, the connection of the alleged offenders to the church and the legal connection of Home and church were major difficult issues for the proposed Plaintiffs. He responded in that vein and engaged Counsel to discuss the matter and tactics.

Mr Stephen Sheaffe, of the Brisbane Bar, and a member of an Anglican family from Lismore, came to Grafton last Monday and Tuesday for extensive discussions on the way ahead.

On Mr Sheaffe's advice, Mr Roland has again written to the solicitors for the potential claimants denying liability and briefly pointing to the "insurmountable problems" of a legal and evidential nature faced by the potential claimants (copy letter attached).

The expectation is that the following will now happen:-

- The weakest cases presented against us (old cases with apparently minor indecent assault by an unknown person) will presumably not proceed further;
- A number of cases which are not clean cut or where the potential claimant will not want to pay cash to lawyers for court action in circumstances where winning is not absolutely certain will not proceed;
- This will leave the strongest matters to be brought to Court as a series of separate proceedings, (this is not a class action – they can not come as one writ). These matters will all need to have leave of a Supreme Court Judge to proceed because they are beyond the usual time limits. Our legal team will look at each Application for Leave and if there is a prospect of the church being disadvantaged they will be likely to oppose the Application, we'll win some of those and lose some.
- This will then leave the core substantiated allegations in Court and the claimant's Solicitors will pursue the best case they have of as a means of

proving all their cases and whoever wins will attempt to use the action as a precedent for the other matters. (The loser considers appealing).

Timeframe:

Unknown, but the claimants will have to commence the court action fairly quickly because of the Limitations Period. We still do not know where the action is going to be brought - Queensland or New South Wales.

Costs:

This will be expensive. Mr Roland has indicated some preliminary figures which are modest in terms of the matter, but still substantial. There is no real prospect of recovering costs even if we win totally.

Once the matters are in a court process, there may be a chance to compromise a commercial settlement in some of the matters (ie it will be cheaper to pay some money than risk a loss and have to pay the judgement plus costs).

Resources:

A substantial issue is now much of my time (and probably Mrs Catt's) is to be spent on this matter. To date we've only been looking at the big picture, but things such as preparing a 90 page historical brief on the creation and ownership of the Home took some two weeks of my time, but saved more than two weeks (72 hours) of a Law Clerk or professional historian's time at \$100+ per hour plus out of pocket expenses, or a Solicitor's time at \$300 per hour plus out of pockets

We will now have to start the detailed checking of the Children's Home records with the statements of the potential claimants and matters such as the Children's Department inspections of the Home and records held in the State Archives. Who out of the people who have come forward to defend the Home's name were resident when those attempting to make claims were resident? Some of the staff are still alive and wish to put forward a different view of the Home. None of these matters are quick or easy. They will be taking considerable amounts of my time in the coming months. However, use of my time will potentially be both efficient (as I theoretically understand the issues) and represent a potential major cost saving, which is relevant to the next issue.

2. Care and Assistance for a Claimant

An allegation of a very serious sexual assault by an individual has been fitfully before the Professional Standards Committee for the past two years. It has been complex in terms of the question of whether the person accused of the original acts was a "Church Worker" under the Professional Standards Ordinance, (a Church Worker under that Ordinance includes anyone who appears to have a role), whether insurance covered the matter, criminal proceedings which resulted in "no case" to answer and the place of the church's "informal" care and assistance package.

We were recently unexpectedly approached to provide the claimant with \$75,000 as a Pastoral Care and Assistance Package (the Sydney Scheme), no claim had been expected. The potential amount has been negotiated down to \$45,000. The executive of Bishop-in-Council after a lot of heart ache and discomfort have agreed to pay the lower amount.

This has been an horrendously difficult decision and there is no doubt that the claimant will receive what can only be described as a very generous payment. I wish to thank the members of the Bishop-in-Council Executive for approving the payment in the face of a lot of argument against it, so that the decks are now clear to be able to concentrate on the North Coast Children's Home matters. The potential liability in the Children's home matter is many times that of this

matter, (and there is no insurance on the Children's Home) but the considerable time necessary to attend to supporting solicitors is the same in both cases. Effectively the final decision was about - do we use our limited resources to fight this one matter (with or without insurance – a preliminary issue either way) where there are no certainties of any reasonable resolution or do we concentrate on the 42 matters from the North Coast Children's Home, with a real opportunity of substantial reduction in the amounts paid to claimants and reduction in the professional costs to get us there?

It is my view that the reluctantly made decision of the executive to pay the money was the only one able to be made in the unique circumstances we find ourselves in. (Damned if we do and damned if we don't).

One good thing from this experience is the understanding that even if someone who we do not believe is covered by insurance says they're not interested in getting money from the church they will from now on get referred to the insurers the moment they walk in! That may stop any thoughts that the "informal Sydney system" automatically pays money.

3. Professional Standards Costs to date

To date this year we have paid out:-

\$55,000	A male - claim from mid sixties against a priest
\$10,000	Claim connected with Bishop Shearman
\$35,000	Claim from 80's by female against a priest
\$45,000	The claim discussed above
\$10,000	In counselling and legal costs

Additionally the legal costs for the North Coast Children's Home will start to come in shortly. None have been paid yet, but it will be \$20 - \$30,000+ by year's end, and we can expect to be working through the matters all next year.

Pat Comben
Registrar



The Anglican Church of Australia

50 Victoria Street (PO Box 4) Grafton NSW 2460
Telephone: (02) 6642 4122 Fax: (02) 6643 1814 Email: angdiog@nor.com.au