

Deed of Release

Between

ACW

Of the First Part

And

Br John Thompson,

**The Provincial for the time being
of the Marist Brothers**

Of the Second Part

And

The Trustees of the Marist Brothers

Of the Third Part

DEED**DATE:** 2004**PARTIES**

Between ACW [REDACTED] Bruce Gillan, Solicitor, [REDACTED]
the State of [REDACTED] (Releasor)

And

Br John Thompson, the Provincial for the time being of the Marist Brothers, c/- Provincial House, 14 Drummoyne Avenue, Drummoyne, in the State of New South Wales of **the second part (the Provincial)**

(First Releasee)

And

The Trustees of the Marist Brothers, a body corporate under the Roman Catholic Church and Communities Lands Act 1942 of the **third part (the Marist Brothers)**

(Second Releasee)

-
- A. The Releasor has alleged:
- (a) that between approximately 1973 and 1975 when he was a student at [REDACTED] [REDACTED] in the State of Queensland he was unlawfully assaulted by Br Gregory Sutton, who was a teacher at the college at the time, and:
 - (b) as a result of such unlawful or inappropriate acts, he sustained loss, damage and injuries and may require specialist counselling and therapy (all of which allegations are referred to as "the claim" particulars of which are more fully set forth in Complaint of the Releasor dated 12/5/03.
- B. Gregory Sutton was at all material times a teacher at [REDACTED].

- C. **REDACTED** was a school operated by the Marist Brothers.
- D. (i) The Releasor has alleged that the Releasees are liable to him in respect of the claims;
- (ii) The Releasees recognise their pastoral obligations towards the Releasor but do not admit they are legally liable for the loss and damage claimed;
- (iii) However, in order to avoid the cost expense and inconvenience of litigation or further dispute the Releasees have agreed with the Releasor to settle the claim in the terms set out in this release.
- E. The Releasees have agreed to pay a lump sum of Twenty Five Thousand Dollars (\$25,000.00) ("the agreed sum") and other payments as specified in the agreement below to the Releasor, such payment being made by virtue of the fact that Gregory Sutton was an employee of the Second Releasee at all relevant times.

IT IS THEREFORE AGREED THAT:

1. The Releasees shall pay to the Releasor the sum of Twenty Five Thousand Dollars (\$25,000.00) plus a contribution of \$2,000.00 to legal costs; \$1,237.00 for fees of Dr Walkley and the sum of \$144.75 payable to the Health Insurance Commission, to the Releasor within fourteen days of this Deed being executed and returned to the offices of Monahan + Rowell.
2. The Releasor for himself, his Executors, Administrators, Heirs and assigns forever hereby releases and discharges the Releasees both jointly and severally and Gregory Sutton from all actions, suits, claims and demands of every description past present or future relating to or arising from the claim or any of the matters set out in this release which he now has or which he might have had but for the execution of this release.
3. If legal proceedings have commenced the Releasor will take all necessary steps to discontinue the litigation which he has instituted against the Releasees, on the basis that all of the parties to that litigation will bear their own costs.
4. (1) The Releasor acknowledges that the payment of the sum referred to in (1) above is subject to the provisions of the Health and Other Services (Compensation) Act 1995 (HIC) and that he has been informed of a possible liability to pay amounts under the Act or under the Health and Other Services (Care Charges Act) 1995.
- (2) The Releasee is authorised by the Releasor to deduct from the sum referred to in (1) above and to pay to the Health Insurance Commission pursuant to the *Health & Other Services Compensation Act, 1995* any amount that may be payable or refundable to that entity under the said Act.

5. In the event a person or body seeks to recover all or a proportion of the sum referred to in (1) above from the Releasees for the repayment of social services or victim's compensation awarded to the Releasor, the Releasor agrees to indemnify them in respect of the repayment and the Releasor further authorises the Releasees to reimburse to Centrelink any Social Service payments in respect of which the Releasor has received any demand or notice for payment pursuant to any Social Services legislation of the Commonwealth of Australia.
6. The Releasees may plead this Deed in bar to any claim or proceeding by the Releasor or any person claiming on his behalf in respect of the claim or any matter related thereto.
7. The law of Victoria governs this Deed and each of the parties irrevocably submits to the jurisdiction of the Courts of Victoria.
8. The Releasor acknowledges that the payment made hereunder by the Releasees is partly made by virtue of the fact that Gregory Sutton, alleged by the Releasor to have caused his loss and damage, the subject of the claim, was an employee of the Second Releasee at all relevant times.
9. The Releasor acknowledges that by accepting the agreed sum and executing this Deed he is not entitled to make any further approach to the Releasees for financial assistance, including assistance with respect to any specialist medical advice or for damages or otherwise.
10. The Releasor covenants and agrees that he will take no action against the Releasees or Gregory Sutton or any servant or agent of the Releasees or any of them in respect of the claim.
11. In the event that any provision of this Deed, or any part thereof, is held to be void or invalid, such provision or part thereof shall be severed from the whole and the balance of the Deed or the provision (as the case may be) shall remain in full force and effect.
12. It is the intention of the parties that this Deed is binding on all parties.
13. This Deed sets forth the entire agreement between the parties hereto and supersedes any and all prior agreements or understandings between the parties hereto pertaining to the claim and the proceedings
14. The releasor confirms and acknowledges that prior to executing this deed, the releasor has obtained his own independent legal advice.
15. The releasor hereby acknowledges and confirms his Solicitors have authority to receive payment on his behalf of the agreed sum and the Solicitors' receipt should be a full and sufficient discharge of the obligation to pay here.
16. It is the intention of the parties that this Deed shall be binding on all parties and the benefit of this Deed should extend to all persons referred to throughout the Deed even though they are not parties to the Deed or they have not signed the Deed and

the fact they are not a party or have not signed the Deed shall not prejudice or affect their right to rely on the Deed.

EXECUTED as a Deed.

SIGNED SEALED & DELIVERED by
ACW in the presence of:

ACW

[Handwritten signature]

Witness

ACW

[Handwritten signature]

RELEASOR

SIGNED SEALED & DELIVERED by,
Br John Thompson, Provincial
of the Marist Brothers in the presence of:

[Handwritten signature: Br John Thompson]

[Handwritten signature: D.J. Sullivan]

Witness

FIRST RELEASEE

THE COMMON SEAL of the Body Corporate called the Trustees of the Marist Brothers was hereunto affixed pursuant to a resolution passed at a meeting of the said Body Corporate in the presence of the Provincial and two other members of the said Body Corporate, all of whose signatures are hereunto affixed:

[Handwritten signature]

[Handwritten signature]

[Handwritten signature: D.J. Sullivan]

Witness

SECOND RELEASEE

DARCY J. O'SULLIVAN
Print Name of Witness