

DATED 23 May 1997

**BETWEEN**

ADR

Of the First Part

**THE TRUSTEES OF THE MARIST BROTHERS**

Of the Second Part

**BROTHER MICHAEL HILL**

Of the Third Part

**DEED OF RELEASE**

**CARROLL AND O'DEA**  
Solicitors  
Level 19, 111 Elizabeth Street,  
SYDNEY NSW 2000  
DX 183 SYDNEY  
Tel: 9232-2133  
REF: GMP:KAN

THIS DEED made the 23rd day of May 1997.

BETWEEN:

ADR

Of REDACTED, Canberra in the Australian Capital Territory (hereinafter called "the Releasor") of the First Part

AND: **THE TRUSTEES OF THE MARIST BROTHERS**

A body corporate under the Roman Catholic Church Communities Lands Act 1942 (NSW) of Provincial House, 14 Drummoyne Avenue, Drummoyne in the State of New South Wales (hereinafter called "the Marist Body Corporate") of the Second Part

AND: **BROTHER MICHAEL HILL**

of Provincial House, 14 Drummoyne Avenue, Drummoyne in the State of New South Wales in his capacity as Provincial Superior of the Marist Brothers an unincorporated association of Drummoyne in the abovementioned State (hereinafter called "the Institute") of the Third Part

## BACKGROUND

- A. The Releasor, has alleged and alleges that over a period of approximately 2 years in 1981 and 1982 whilst the Releasor was a student at the Marist Brothers College, Canberra ("the school") he was unlawfully sexually assaulted by Gregory Sutton ("Sutton") in respect of which allegation Sutton pleaded guilty in criminal proceedings before the District Court of New South Wales in 1996. The Releasor further alleges that as a result of such unlawful acts, he sustained loss, damage and injuries and may require specialist counselling or therapy (all of which allegations as aforesaid are hereinafter referred to as "the claims"). Full particulars of the claims are set out in reports of Dr C. Quadrio of 8 November 1996 and Dr R.B. Milton dated 21 March 1997 which have been exchanged by the Releasor and the Marist Body Corporate's Solicitors.

- B. Sutton was at all material times a member of the Institute and is no longer a member of the Institute.
- C. The school was alleged to have been conducted by the Marist Body Corporate. The Marist Body Corporate is an incorporated Body for certain purposes pursuant to The Roman Catholic Church Communities Lands Act 1942 (NSW). It is also alleged that the school was conducted by the Institute.
- D. The Releasor has alleged that the Marist Body Corporate and the Institute, and/or Sutton are liable to him in respect to the claims.
- E. The Marist Body Corporate and the Institute do not admit any wrongdoing on their part as alleged or at all.
- F. The Marist Body Corporate and the Institute on an ex gratia basis and with a denial of liability on the part of the Marist Body Corporate and the Institute have agreed to pay a lump sum of \$135,000.00 (hereinafter referred to as "the agreed sum") inclusive of costs to the Releasor, such payment being made by virtue of the fact that Sutton was a member of the Institute and the school was alleged to be conducted by the Marist Body Corporate and/or the Institute.
- G. The Releasor has agreed to accept the agreed sum in full satisfaction and discharge of any claims he may have against the Marist Body Corporate and the Institute or any servant or agent of the Institute or any of them arising out of the claims.
- H. It is agreed between the Releasor, the Marist Body Corporate and the Institute that the Marist Body Corporate and the Institute subject to the terms and conditions set out hereinafter will pay and the Releasor will accept the agreed sum in full and final settlement and discharge of the claims.
- I. The Releasor has not been awarded or received any compensation pursuant to the Victims Compensation Act, 1987 (NSW) on the Criminal Injuries Compensation Act 1983 (ACT). The Releasor confirms that the Releasor and his solicitors have not received notice of any determination having been made

either by the Victims Compensation Tribunal (NSW) or by a Magistrates Court of the Australian Capital Territory.

### **OPERATIVE PART**

In consideration of these presents and of the covenants and agreement herein contained:-

1. (a) The Marist Body Corporate and the Institute without any admission of liability agrees to pay to the Releasor the agreed sum.  
  
(b) Subject to the following sub clause payment of the agreed sum shall be made within 28 days of the date hereof.  
  
(c) In respect of any part of the agreed sum that is required by the Health & Other Services (Compensation) Act 1995 to be withheld pending receipt of either notice in writing of any amount to be repaid to the Health Insurance Commission pursuant to that Act or notification from the Health Insurance Commission that no repayment is required, such part of the agreed sum subject to any repayment as aforesaid shall be paid within 21 days from receipt of the appropriate notice.
2. The Releasor for himself, his Executors, Administrators, Heirs and Assigns forever hereby releases, remises, quits and discharges the Marist Body Corporate and the Institute and any servant or agents of the Marist Body Corporate and the Institute and any of them from all actions, suits, claims and demands of every description which he now has or which but for this Deed might have or has had, or which could hereafter be asserted, brought or made by him, or by anyone on his behalf or through him, either at law or at equity, or under the provisions of any Statute arising out of all or any of the acts, facts and circumstances constituted by the claims or in any way relating to the same or any matter incidental thereto.
3. The Marist Body Corporate and the Institute may plead this Deed in bar to any claim or proceedings by the Releasor or any person claiming on his behalf in respect of the claims or any matter related thereto.

4. The Releasor covenants to file a Notice of Discontinuance of any proceedings commenced by him in relation to the claims within fourteen (14) business days of receipt of the agreed sum on the basis that there be no order as to costs.
5. It is a condition of the settlement that the Releasor will not disclose (other than to his spouse, parents, children, therapist, counsellor, general practitioner, appropriate treating specialist, legal adviser, financial adviser or police or otherwise as required by law) the fact of settlement, the terms of settlement or the negotiations leading to settlement or in relation to the claim this deed or any of the matters referred to herein. Each party must use its best endeavours to ensure that none of his, hers or its or their employees, servants, agents, officers, advisers, relatives or spouses (including defacto spouses) disclose any such information.
6. This Deed is governed by the law of New South Wales and each of the parties irrevocably submits to the jurisdiction of the Courts of New South Wales.
7. The Releasor acknowledges that the payment made hereunder by the Marist Body Corporate and the Institute is partly made by virtue of the fact that the person alleged by the Releasor to have caused him the loss and damage, the subject of the claims, was a member of the Institute at all relevant times.
8. The Releasor acknowledges that by accepting the agreed sum and executing this Deed he is not entitled to make any further approach to the Marist Body Corporate and the Institute for financial assistance, including assistance with respect to any specialist medical advice or for damages or otherwise.
9. The Releasor covenants and agrees that he will take no action against the Marist Body Corporate and the Institute or any servant or agent of the Institute or any of them in respect of the claims.
10. In the event that the Releasor materially breaches any term of this Deed, or at any time in the future alleges or it is established that the Releasor lacked the mental capacity to enter into this Deed, and without prejudice to any other rights available to the Marist Body Corporate and the Institute, in respect of such breach, including rights pursuant to Clause 3, the Releasor covenants

Marist Body Corporate and the Institute and each of them, that forthwith upon any such event as aforesaid occurring he will repay to the Marist Body Corporate and the Institute the agreed sum and the Releasor further agrees that if the agreed sum in such event is not repaid within seven (7) days of such breach or the allegation or establishment that the Releasor lacked mental capacity, that the agreed sum shall be due and owing to the Marist Body Corporate and the Institute and the Marist Body Corporate and the Institute shall be entitled to commence proceedings against the Releasor without further notice to him for the recovery of such monies and the Releasor consents to a default Judgment being made against him for the agreed sum, together with the costs associated therewith and this Deed may be used as proof of the Releasor's consent to such default Judgment.

11. (a) The Releasor covenants that he has not as at the date hereof been awarded or received any compensation pursuant to the Victims Compensation Act, 1987 (NSW) or the Criminal Injuries Compensation Act 1983 (ACT).
- (b) In the event, (and whether or not in breach of the preceding sub-clause) it is established at any time that the Releasor has already been awarded or received, or subsequently receives or is awarded, compensation pursuant to the aforesaid Act, and the Crown, pursuant to the aforesaid Acts, seeks to recover all or any proportion of the compensation from the Marist Body Corporate and the Institute, or any servant or agent of the Institute, or any them, the Releasor covenants and agrees to indemnify, to a maximum of \$135,000.00 or in the event that the compensation recovered or sought to be recovered is less than \$135,000.00 that compensation only, the Marist Body Corporate and the Institute and/or any servant or agent of the Marist Body Corporate and the Institute or any of them, in respect of the compensation or any proportion of the compensation. Such indemnity specifically excludes any incidental costs, losses, liabilities, payments or expenses of any type to which the Marist Body Corporate and the Institute and/or any servant or agent of the Institute may be or become liable as a consequence of such recovery action by or on behalf of the Crown.

12. The Releasor covenants and agrees to indemnify the Marist Body Corporate, and the Institute, in respect of any costs, claims, damages, liability, payment of expenses of any type that arise as a consequence of <sup>his</sup> ~~her~~ <sup>breach</sup> ~~breach~~ of the terms of this Deed. *AK*
13. 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.
14. The Releasor hereby acknowledges and confirms that his solicitors have authority to receive payment on his behalf of the agreed sum and the solicitor's receipt shall be a full and sufficient discharge of the obligation to pay herein.
15. For the purposes of this Deed:-
- (a) the "Institute" means and includes each and every past, present and future member of the Institute. The "Institute" means each and every past present and future Provincial Superior.
  - (b) the "Releasor" means and includes any trustee, guardian or personal representative of the Releasor;
  - (c) the "Marist Body Corporate" means and includes the Trustees of the Marist Brothers, the present and future Trustees and their predecessors;
16. This Deed sets forth the entire agreement between the parties hereto and supersedes any or all prior agreements or understandings between the parties hereto pertaining to the claims and the proceedings.
17. The Releasor confirms and acknowledges that prior to executing this Deed the Releasor has obtained his own independent legal advice.





## SOLICITOR'S CERTIFICATE

I, Susan Robinson of Messrs R.J. Benjamin, Solicitors of South Hurstville in the State of New South Wales certify that:

1. I am a legal practitioner holding a current practicing certificate under the Legal Profession Act.
2. The annexed Deed is the product of settlement negotiations which took place at the office of Carroll & O'Dea in Sydney on the 8th and 9th day of April 1997. The Deed has been signed by the Releasor in circumstances where the Releasor had the advice of Senior and Junior Counsel in conference at the said office of Carroll & O'Dea on the said date.
3. I have explained the purport and effect of the Deed to the Releasor in writing.

DATED: 23rd May 1997

*S. Robinson*  
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Solicitor

*J. Puckering*  
.....

Witness