

AMENDED PURSUANT TO THE ORDER OF HER
HONOUR THE CHIEF JUSTICE ON 8 OCTOBER 2004

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
MAJOR TORTS LIST

No.7910/02

BETWEEN :

AIMEE NICOLE FOSTER

Plaintiff

and

NOREEN HARRISON and OTHERS (according
to the Schedule attached)

Defendants

AMENDED STATEMENT OF CLAIM

Date of Document:

Filed on behalf of :

The Plaintiff

Prepared by:

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Ref: MEJ:CFR 97530

1. At all times material and in particular between in or about 1987 and late in 1992 (hereinafter called "the period"), the Reverend Father Kevin O'Donnell ("the deceased"):
 - (a) was an ordained priest of the Roman Catholic Church, incardinated in the Diocese of Melbourne;
 - (b) was attached to the Sacred Heart Parish, Oakleigh in the Diocese of Melbourne (hereinafter called "the parish");
 - (c) was involved in and shared responsibility for, the: care, education, nurturing, counselling and provision of pastoral care to students, including Emma and Katherine Foster ("the victims") at the Sacred

Heart Primary School, Oakleigh in the State of Victoria (hereinafter called "the school");

- (d) was -
- (i) in carrying out his responsibilities referred to in paragraph (c) hereof;
 - (ii) in otherwise carrying out his priestly duties in the parish and at the school, a servant and/or agent and/or was otherwise acting under the control of the firstnamed and/or secondnamed and/or thirdnamed and/or fourthnamed Defendants and/or each or other of them.

PARTICULARS

By virtue of matters including the following :

- A. Canon No. 381 of the Code;
- B. Canon No. 384 of the Code;
- C. Canon No. 385 of the Code;
- D. Canon No. 391 of the Code;
- E. Canon No. 392 of the Code;
- F. Canon No. 393 of the Code;
- G. Canon No. 394 of the Code;
- H. Canon No. 396 of the Code;
- I. Canon No. 397 of the Code;
- J. Canon No. 399 of the Code;
- K. Canon No. 515 of the Code;
- L. Canon No. 519 of the Code;

- M. Canon No. 521 of the Code;
- N. Canon No. 522 of the Code;
- O. Canon No. 523 of the Code;
- P. Canon No. 524 of the Code;
- Q. Canon No. 528 of the Code;
- R. Canon No. 533 of the Code;
- S. Canon No. 538 of the Code;
- T. Canon No. 804 of the Code;
- U. Canon No. 805 of the Code;
- V. Canon No. 806 of the Code;
- W. Canon No. 1740 of the Code;
- X. Canon No. 1746 of the Code;
- Y. the deceased was within the Diocese of Melbourne under the control of and/or accountable to the secondnamed and/or thirdnamed Defendants;
- Z. the secondnamed and/or thirdnamed Defendants were required to ensure that the deceased was provided with adequate means of livelihood;
- AA. the secondnamed and/or thirdnamed Defendants were required to ensure that the deceased had the means and facilities needed to carry out his duties and functions;
- BB. the secondnamed and/or thirdnamed Defendants were required to ensure that the deceased fulfilled his obligations and had

powers of removal and transfer if such obligations were not being met.

- CC. the secondnamed and/or thirdnamed Defendants were required to ensure that certain days and hours of duties were being performed by the deceased and had authority to ensure that same occurred;
- DD. the secondnamed and/or thirdnamed Defendants had responsibility to ensure that holidays taken by the deceased were in accordance with the Code or were otherwise sanctioned by them;
- EE. any delegation of duties by the deceased was always subject to the authority and control of the secondnamed and/or thirdnamed Defendants.

1A. The Plaintiff is the sister of the victims.

2. The firstnamed Defendant, during the period:

- (a) was the school principal of the school;
- (b) further to (a) hereof, had amongst other responsibilities, responsibilities to: care for, educate, nurture, counsel, provide pastoral care to and to discipline students from time to time, including the victims, and had, at the school, the overall duty to ensure that such responsibilities were discharged;

- (c) further to (b) hereof, carried on such functions as school principal under the supervision of the secondnamed and/or thirdnamed Defendants, and/or each or other of them;
- (d) in carrying out the functions of school principal referred to in paragraphs (b) and (c) hereof, was the servant and/or agent and/or was otherwise acting under the control of the secondnamed to fourthnamed Defendants and/or each or other of them.

PARTICULARS

By virtue of matters including the following :

Canons 391, 804(2), 805, 806 of the Revised Code of Canon Law, 25.1.83 (hereinafter referred to as "the Code").

3. The secondnamed Defendant :
- (a) is an Emeritus Archbishop for the Diocese of Melbourne;
 - (b) was, prior to and in the period, the Archbishop for the Roman Catholic Diocese of Melbourne;
 - (c) was responsible for the appointment of and/or the placing of the deceased in and about various parishes and schools, including the parish and the school, prior to and during the period, throughout the Diocese of Melbourne;
 - (d) was responsible for the supervision and/or overseeing and/or monitoring and/or governing and control of the deceased and the firstnamed Defendant in respect to the exercise by them of their activities as described in paragraphs 1 and 2 hereof.

PARTICULARS

The Plaintiff refers to and repeats particulars provided in paragraphs 1 and 2 hereof.

- (e) was responsible for the care and protection of infant students, including the victims, who came into contact with priests, including the deceased at the school and otherwise appointed and situate in the Sacred Heart parish, Oakleigh in the Diocese of Melbourne;
- (f) was the employer and/or overseer and/or supervisor and/or the person who was otherwise in control of the deceased and the firstnamed Defendant and/or each or other of them, for and on behalf of the Diocese of Melbourne in respect of the exercise by them of their activities as described in paragraphs 1 and 2 hereof.

PARTICULARS

The Plaintiff refers to and repeats Particulars subjoined to paragraphs 1 and 2 hereof.

- (g) was a member and/or convenor of the fourthnamed Defendant, prior to and during the period.

4. The thirdnamed Defendant :

- (a) is the Roman Catholic Archbishop for the Diocese of Melbourne and is :
- (b) sued as representing the office of Archbishop for the Roman Catholic Diocese of Melbourne;

- (c) is a corporation sole;
and as a consequence of paragraph (a)(b) and (c) hereof is :
- (d) capable of being sued pursuant to the laws of the State of Victoria;
- (e) was responsible for the appointment of and/or placing of the deceased in and about various parishes and schools, including the parish and the school, prior to and during the period, throughout the Diocese of Melbourne;
- (f) was responsible for the supervision and/or overseeing and/or monitoring and/or governing and control of the deceased and the firstnamed Defendant in respect to the exercise by them of their activities as described in paragraphs 1 and 2 hereof.

PARTICULARS

The Plaintiff refers to and repeats particulars provided in paragraphs 1 and 2 hereof.

- (g) was responsible for the care and protection of infant students, including the victims, who came into contact with priests, including the deceased at the school and otherwise appointed and situate in the Sacred Heart parish, Oakleigh in the Diocese of Melbourne;
- (h) was the employer and/or overseer and/or supervisor and/or the person who was otherwise in control of the deceased and the firstnamed Defendant and/or each or other of them, for and on behalf of the Diocese of Melbourne in respect of the exercise by them of their activities as described in paragraphs 1 and 2 hereof.

PARTICULARS

The Plaintiff refers to and repeats Particulars subjoined to paragraphs 1 and 2 hereof.

- (i) was a member and/or convenor of the fourthnamed Defendant, prior to and during the period.
5. The fourthnamed Defendant was at all times material and in particular during the period :
- (a) a body corporate pursuant to the Roman Catholic Trust Act 1907 (“the Act”);
 - (b) pursuant to the provisions of the Act, capable of being sued pursuant to the laws of the State of Victoria;
 - (c)
 - (i) the registered proprietor of, and/or
 - (ii) owned, and/or
 - (iii) occupied, and/or
 - (iv) operated, and/or
 - (v) controlled, and/or
 - (vi) conducted;the school and/or other buildings located in or about the school and Church precinct, including the gym/hall, the Church and Presbytery (these buildings are hereinafter referred to as “the premises”);
 - (d) had the capacity to exercise control over the activities of the deceased at the school and/or in the premises.

PARTICULARS

The Plaintiff refers to paragraph 4(c) hereof and to the fact that the secondnamed and/or thirdnamed Defendants and/or each or other of them was a convenor and/or member of the fourthnamed Defendant.

6. The fifthnamed Defendant at all times material and in particular during the period:
 - (a) was an ordained priest of the Roman Catholic Church, incardinated in the Diocese of Melbourne;
 - (b) was attached to various parishes throughout the Diocese of Melbourne;
 - (c) in and/or about 1992 was the Vicar General for the Diocese of Melbourne;
 - (d) further to (c) hereof, had a responsibility to, and did advise the firstnamed and/or secondnamed and/or thirdnamed and/or fourthnamed Defendants and/or each or other of them, in respect of important and/or significant Church and administrative issues arising for consideration and action within the Diocese of Melbourne;
 - (e) was -
 - (i) in carrying out the duties referred to in the previous paragraph;
 - (ii) in otherwise carrying out his priestly duties and responsibilities in the Diocese of Melbourne, a servant and/or agent and/or was otherwise acting under the control of the secondnamed and/or thirdnamed Defendants and/or each or other of them.

PARTICULARS

By virtue of matters including the following :

- A. Canon No. 381 of the Code;
- B. Canon No. 384 of the Code;
- C. Canon No. 385 of the Code;
- D. Canon No. 391 of the Code;
- E. Canon No. 392 of the Code;
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- R. Canon No. 533 of the Code;
- S. Canon No. 538 of the Code;
- T. Canon No. 804 of the Code;
- U. Canon No. 805 of the Code;
- V. Canon No. 806 of the Code;

- W. Canon No. 1740 of the Code;
- X. Canon No. 1746 of the Code;
- Y. the fifthnamed Defendant was within the Diocese of Melbourne under the control of and/or accountable to the secondnamed and/or thirdnamed Defendants;
- Z. the secondnamed and/or thirdnamed Defendants were required to ensure that the fifthnamed Defendant was provided with adequate means of livelihood;
- AA. the secondnamed and/or thirdnamed Defendants were required to ensure that the fifthnamed Defendant had the means and facilities needed to carry out his duties and functions;
- BB. the secondnamed and/or thirdnamed Defendants were required to ensure that the deceased fulfilled his obligations and had powers of removal and transfer if such obligations were not being met.
- CC. the secondnamed and/or thirdnamed Defendants were required to ensure that certain days and hours of duties were being performed by the fifthnamed Defendant and had authority to ensure that same occurred;
- DD. the secondnamed and/or thirdnamed Defendants had responsibility to ensure that holidays taken by the fifthnamed Defendant were in accordance with the Code or were otherwise sanctioned by him;

EE. any delegation of duties by the fifthnamed Defendant was always subject to the authority and control of the secondnamed and/or thirdnamed Defendants.

7. The sixthnamed Defendant at all times material and in particular during the period:

- (a) was an ordained priest of the Roman Catholic Church incardinated in the Diocese of Melbourne;
- (b) was attached to various parishes throughout the Diocese of Melbourne;
- (c) in carrying out his priestly duties in the Diocese of Melbourne was a servant and/or agent and/or was otherwise acting under the control of the secondnamed and/or thirdnamed Defendant and/or each or other of them.

PARTICULARS

By virtue of matters including the following :

- A. Canon No. 381 of the Code;
- B. Canon No. 384 of the Code;
- C. Canon No. 385 of the Code;
- D. Canon No. 391 of the Code;
- E. Canon No. 392 of the Code;
- F. Canon No. 393 of the Code;
- G. Canon No. 394 of the Code;
- H. Canon No. 396 of the Code;

- I. Canon No. 397 of the Code;
- J. Canon No. 399 of the Code;
- K. Canon No. 515 of the Code;
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- R. Canon No. 533 of the Code;
- S. Canon No. 538 of the Code;
- T. Canon No. 804 of the Code;
- U. Canon No. 805 of the Code;
- V. Canon No. 806 of the Code;
- W. Canon No. 1740 of the Code;
- X. Canon No. 1746 of the Code;
- Y. the sixthnamed Defendant was within the Diocese of Melbourne under the control of and/or accountable to the secondnamed and/or thirdnamed Defendants;
- Z. the secondnamed and/or thirdnamed Defendants were required to ensure that the sixthnamed Defendant was provided with adequate means of livelihood;

- AA. the secondnamed and/or thirdnamed Defendants were required to ensure that the deceased had the means and facilities needed to carry out his duties and functions;
- BB. the secondnamed and/or thirdnamed Defendants were required to ensure that the deceased fulfilled his obligations and had powers of removal and transfer if such obligations were not being met.
- CC. the secondnamed and/or thirdnamed Defendants were required to ensure that certain days and hours of duties were being performed by the deceased and had authority to ensure that same occurred;
- DD. the secondnamed and/or thirdnamed Defendants had responsibility to ensure that holidays taken by the sixthnamed Defendant were in accordance with the Code or were otherwise sanctioned by him;
- EE. any delegation of duties by the sixthnamed Defendant was always subject to the authority and control of the secondnamed and/or thirdnamed Defendants.

8. In the period, the victims were :

- (a) infants, having been born on the **REDACTED** respectively;
- (b) students at the school under the principalship of the firstnamed Defendant;

- (c) as such, subject to the care, control and supervision of the firstnamed Defendant and/or the deceased and/or each or other of them;
 - (d) subject to the care and protection of the firstnamed to sixthnamed Defendants and/or each or other of them.
9. (a) ~~Further to~~ By reason of the matters set out in paragraphs 1 to 8 hereof, during the period the firstnamed to sixthnamed Defendants and/or each or other of them owed a duty to the victims as infant students at the school, and to the Plaintiff, to use due care and skill to protect the victims from harm and to ensure their safety ("the duty");
- (b) In the case of the firstnamed to sixthnamed Defendants and/or each or other of them the duty was non-delegable.
10. ~~Further to paragraphs 1 to~~ By reason of the matters set out in paragraphs 5, 8 and 9 hereof, during the period the fourthnamed Defendant owed a duty to the victims as persons lawfully at the school and premises and to the Plaintiff to take reasonable steps to prevent criminal conduct towards the victims by the deceased.
11. In the period, the victims were subjected to physical and/or sexual and/or psychological abuse ("the abuse") whilst infant students at the school by the deceased whilst the deceased was carrying out or purportedly carrying out his priestly duties and functions at the school and in the premises whilst a servant and/or agent and/or otherwise under the control of the firstnamed to

fifthnamed Defendants and/or each or other of them as described in paragraph 1 hereof.

PARTICULARS OF ABUSE

The abuse occurred during class time at school and after Mass on Sundays. It occurred at various sites at the school and/or on the premises. The deceased would request that the victims be removed from their classes whilst at school, or after Mass would otherwise be required to accompany the deceased in order that they would be involved with him in the discharge of his responsibilities referred to in paragraph 1 hereof. On occasions the deceased would provide the victims with tainted soft drink which would make them feel "weird". The nature of the abuse included genital contact.

- 11A. On a date not more than six years prior to the issuing of these proceedings, the Plaintiff was informed as to the perpetration of the abuse on one or other of the victims ("the information").
12. As a result of receiving the information, the Plaintiff has suffered shock, personal injury, loss and damage.

PARTICULARS OF INJURIES

Chronic dysthymia;

Anxiety.

PARTICULARS OF LOSS AND DAMAGE

Full particulars of same shall be provided prior to the trial of this action.

13. The Plaintiff suffered, and continues to suffer the abovementioned injuries, loss and damage as a consequence of the breach by the Defendants of their duties referred to paragraphs 9 and 10 hereof.

PARTICULARS OF BREACH OF DUTY BY THE FIRSTNAMED, SECONDNAMED, THIRDNAMED, FOURTHNAMED AND FIFTHNAMED DEFENDANTS

- (a) Prior to and in the period the first second, third, fourth and fifthnamed Defendants and/or each or other of them did not have an effective system for:
- (i) screening persons, including the deceased, to ensure that such persons were suitable to be placed in a position of care and responsibility for infants, including the victims;
 - (ii) supervising persons, including the deceased, once such persons were placed in positions referred to in paragraph (i) hereof;
 - (iii) monitoring persons, including the deceased, once such persons had been placed in positions within the parish and at the school otherwise referred to in (i) hereof;
 - (iv) removing persons from their placements referred to in (i) hereof by virtue of them being unsuitable to retain such placements;
- (b) Further, having regard to knowledge, including knowledge in the public domain, as to the paedophilic, perverse, sexual and dangerous

propensities of certain members of the clergy, religious orders and laity (“the knowledge”), then failing to ensure that persons, including infants, such as the victims, were not at risk of harm or danger as a consequence of their contact with members of the clergy, religious orders and laity under the control of the firstnamed to fifthnamed Defendants, such members including the deceased.

PARTICULARS OF “KNOWLEDGE”

- (i) Prior to and during the period the firstnamed to sixthnamed Defendants knew or ought to have known of the paedophilic, perverse, sexual and dangerous propensities of certain members of the clergy, religious orders and laity, including Father Wilfred Baker and Father Gerard Ridsdale and Father Michael Glennon (“the general complaints”).
- (ii) Their propensities for paedophilic, perverse, sexual and dangerous actions had been brought to the notice of certain Bishops in the State of Victoria, including the then Vicar General of the Diocese of Melbourne, then Monsignor Peter Connors, now Bishop for the Diocese of Ballarat and also to the then Archbishop for the Diocese of Melbourne, the secondnamed Defendant.
- (iii) In or about 1958 complaints were made by a Mr. REDACTED and Mr. REDACTED in respect of the interference by the deceased with a young boy. Such complaints were made to

Monsignor Laurence Moran, the then Chief Administrator for the Diocese of Melbourne (“the 1958 complaints”);

- (iv) Subsequent to the 1958 complaints, Mr. REDACTED once more complained to a priest at St. Francis’ Church, Melbourne in the Diocese of Melbourne as to the inappropriate behaviour of the deceased towards infants (“the St. Francis complaints”);
 - (v) In early 1992, Reverend Father John Silvano complained to the fifthnamed Defendant about the inappropriate behaviour of the deceased with young children (“the Silvano complaints”).
- (c) If they knew or ought to have known as alleged, then:
- (i) failing to investigate the deceased who had responsibility for the care and custody of infants, including the victims.

PARTICULARS

- A. Failing to ask the deceased about his sexual activities and propensities.
- B. Failing to ask the deceased about his sexual activities and proclivities.
- C. Failing to enquire, within the school and/or the parish, as to the sexual activities and propensities of the deceased.
- D. Failing to have the deceased assessed so as to determine whether or not by virtue of his sexual activities and propensities he constituted a danger to infants, including the victims.

- E. Failing to adequately or at all screen the deceased to determine whether or not he was suitable to be entrusted in the positions to which he was designated.
 - F. Employing and/or otherwise engaging the deceased having failed to determine whether or not he was suitable to be entrusted in the positions to which he was designated.
 - G. Failing to psychologically assess the deceased prior to entrusting him with positions involving the guidance and supervision of infants;
 - H. Failing to investigate adequately or at all the general complaints and/or the 1958 complaints and/or the St. Francis complaints and/or the Silvano complaints;
 - I. Failing to act adequately or at all to the general complaints and/or the 1958 complaints and/or the St. Francis complaints and/or the Silvano complaints.
- (ii) Failing to supervise the deceased in the carrying out of his activities described in paragraph 1 hereof.

PARTICULARS

- A. Failing to ensure that if the deceased was associated with infants that he was supervised and/or adequately supervised.

- B. Failing to instruct the deceased not to develop any sexual and/or inappropriate relationship with the victims.
 - C. Failing to warn the deceased not to develop any sexual relationship with the victims.
 - D. Failing to instruct the deceased not to indecently assault and/or assault the victims.
 - E. Failing to warn the deceased not to indecently assault and/or assault the victims.
 - F. Failing to exercise any or any adequate management and/or control of the deceased's duties and functions with respect to infants.
 - G. Failing to ensure that the deceased was supervised properly.
- (iii) Failing to monitor the deceased in the carrying out of his activities referred to in paragraph 1 hereof.

PARTICULARS

- A. Failing to have a system or an effective system to ensure that the deceased was a person suited to be entrusted with the care and responsibility of infants including the victims.
- B. If a system, as previously described, did exist, then failing to monitor the effectiveness of such system to ensure that the deceased was a fit and proper person to

be entrusted with the care of infants including the victims.

- C. Failing to have in place a system whereby such abuse could be reported and/or investigated and/or eliminated.
 - D. Failing to ensure that if the deceased was associated with infants that he was supervised and/or adequately supervised.
 - E. If a system as aforementioned had been devised, then failing to follow same during the period when the deceased abused the victims.
 - F. Failing to exercise any or any adequate management and/or control of the deceased's duties and functions with respect to infants.
- (iv) Failing to remove the deceased from his positions as referred to in paragraph 1 hereof when:
- A. reasonable investigation and/or
 - B. reasonable supervision, and/or
 - C. reasonable monitoring,

would have drawn to their attention the potential danger which the deceased represented to infants including the victims in the period in the parish and/or at the school.

PARTICULARS

- (1) The Plaintiff refers to and repeats particulars attached to

paragraph (c)(i) hereof.

- (2) The Plaintiff refers to and repeats particulars attached to paragraph (c)(ii) hereof.
- (3) The Plaintiff refers to and repeats particulars attached to paragraph (c)(iii) hereof.

- (d) Failing to stop the abuse of the victims by the deceased;
- (e) Failing to take measures to stop the abuse;
- (f) Placing the victims in a position of risk;
- (g) Placing the victims in a position of danger;
- (h) Placing the victims in a position prone to exploitation.

**PARTICULARS OF BREACH OF DUTY BY THE
FOURTHNAMED DEFENDANT AS ALLEGED IN PARAGRAPH 10 HEREOF**

- (a) The Plaintiff refers to and repeats the Particulars of Breach of Duty alleged against the firstnamed to fifthnamed Defendants;
- (b) The secondnamed and/or thirdnamed Defendants were at all times material a member and/or convenor of the fourthnamed Defendant.

PARTICULARS OF BREACH OF DUTY OF THE FIFTHNAMED DEFENDANT

- (a) Failing to act upon complaints made by Father John Silvano in early 1992 in respect of the inappropriate behaviour of the deceased towards young children;
- (b) Failing to remove the deceased from his position in the parish and at the school, having received the complaint referred to in paragraph (a) hereof;

- (c) Failing to investigate the complaint made in respect of the deceased referred to in paragraph (a) hereof;
- (d) Permitting the deceased to remain in contact with young children, including the victims, having received a complaint made in paragraph (a) hereof;
- (e) Failing to bring to the attention of the firstnamed and/or secondnamed and/or thirdnamed and/or fourthnamed Defendants and/or each or other of them, if in fact such notice was not so given, as to the complaint made and referred to in paragraph (a) hereof.

**PARTICULARS OF BREACH OF DUTY OF THE SIXTHNAMED DEFENDANT
AS ALLEGED IN PARAGRAPH 9 HEREOF.**

- (a) Failing to act upon his observations of the deceased engaging in inappropriate behaviour with a young boy whilst in the Diocese of Melbourne, in or about 1958;
- (b) Having made the observation referred to in paragraph (a) hereof, failing to communicate the nature of same to the appropriate authorities, including the then Archbishop for the Diocese of Melbourne and Victoria Police;
- (c) Having made the observation referred to in paragraph (a) hereof, failing to ensure that the deceased was not permitted contact and/or involvement with young children.

14. The firstnamed to sixthnamed Defendants, in allowing the victims to be subjected to the abuse, acted in a high-handed and arrogant manner in contumelious disregard for the victims' wellbeing as a result of which the Plaintiff claims exemplary/punitive damages.

PARTICULARS OF EXEMPLARY/PUNITIVE DAMAGES

The Plaintiff refers to and repeats Particulars provided in paragraphs 11 and 13 hereof.

AND THE PLAINTIFF CLAIMS :

- A. Damages; and
- B. Exemplary/punitive damages; and
- C. Costs on a solicitor and client basis.

Williams Winkler
15-10-04

T.J. SECCULL