

IN THE SUPREME COURT
OF NEW SOUTH WALES
SYDNEY REGISTRY
COMMON LAW DIVISION

No 17714 of 1993

"AL"

and

TRUSTEES OF THE CHRISTIAN
BROTHERS & ORS (see attached
Schedule)
Defendants

MASTER STATEMENT OF CLAIM

SLATER & GORDON
Solicitors
562 Little Bourke Street
MELBOURNE VIC 3000
DX 229
TEL: (03) 602 4855
REF: PG:HS:KOT

NEW SOUTH WALES AGENTS

TURNER FREEMAN
Solicitors
Level 8, 45 Clarence Street
SYDNEY NSW 2000
DX 152
TEL: (02) 299 2622
REF: PT:AMF

1. The Plaintiff in or about 1947 was transported to Australia as part of a Child Migration Scheme ("the said Scheme")
2. As a consequence of the Plaintiff being transported to Australia as part of the said scheme, the Plaintiff was placed into the following institution Bindoon (hereinafter referred to as "the said institution") during the following years; approximately 1947 - 1955 (hereinafter referred to as "the period").
3. The Firstnamed Defendant is a body corporate incorporated and capable of being sued pursuant to Section 4 of the Roman Catholic Church Communities' Lands Act, 1942 - 1948.

4. The said institutions were institutions or subsidised institutions pursuant to the State Childrens Act 1907 as amended and the Child Welfare Act 1947.
5. "The said scheme" was operated or permitted to be operated with the knowledge and consent of the Governments of the United Kingdom the Commonwealth of Australia and the State of Western Australia.
6. The Plaintiff was placed into the custody and care of the First Defendant and/or the seventeenth defendant who then released the children into the custody and care of the first defendant who in each case thereupon became the guardian/custodian of the welfare and health of the children including the Plaintiff.
7. The operation of the Firstnamed Defendant at all material times incorporated the ultimate control and responsibility of the Western Australian Institutions Bindoon. Christian Brothers in Western Australia were at all material times the servants and/or agents of the Firstnamed Defendant.
8. During the period the Plaintiff was a student, orphan and/or ward pursuant to the State Childrens Act 1907 as amended and/or Child Welfare Act 1947 in the care and custody of the Christian Brothers of Western Australia at the said institution.
9. Throughout the course of the period the Plaintiff was subjected to physical and/or sexual and/or psychological abuse ("the said abuse"). In particular the said abuse was occasioned to the said Plaintiff by the following persons; Brother Keaney, Brother Boulter, Brother O'Neill, Brother Wise and Brother Angus.
10. As a consequence of the said abuse referred to in Paragraph 9 hereof, the Plaintiff has suffered personal injuries loss and damage.

PARTICULARS OF INJURY

Post Traumatic Stress Disorder

Depression

Broken bones

Severe bruising

Scarring to hands, back and legs.

PARTICULARS OF SPECIAL DAMAGES

(These will be supplied prior to trial)

11. The Plaintiff suffered the said injuries as a consequence of the negligence of the defendants or one or other of them.

PARTICULARS OF NEGLIGENCE OF THE FIRSTNAMED DEFENDANT AND
THE PREDECESSORS IN TIME OF THE
THIRDNAMED DEFENDANT

- (a) Permitting children (including the plaintiff) committed to its care to be raped, sodomised, brutalised, assaulted, battered and/or psychologically abused;
- (b) Failing to act upon suspicions that certain of the Christian Brothers at the Institutions who were responsible for the care and welfare of the children at the Institutions, such children including the Plaintiff -
- (i) were pedophiles;
 - (ii) were sadists;
 - (iii) had conducted obscene and indecent acts on the children at the institutions

- (iv) had practised acts of gross and gratuitous violence on the children at the Institutions; ((iii) and (iv) hereinafter referred to as "the said acts")
- (c) Failing to take any or any adequate precautions to prevent such persons continuing to perform the said acts.
- (d) Failing to remove persons that the Firstnamed Defendant knew or ought to have known -
- (i) were pedophiles;
 - (ii) were sadists;
 - (iii) had performed the said acts.
- (e) Turning a blind eye to evidence and/or complaints of -
- (i) physical and/or;
 - (ii) sexual and/or;
 - (iii) psychological -
- abuse of the plaintiff and other children at the said institutions.
- (f) Failing to act upon evidence and/or complaints of -
- (i) physical and/or;
 - (ii) sexual and/or;
 - (iii) psychological -
- abuse of the plaintiff and other children at the said institutions.
- (g) Failing to investigate adequately or at all complaints of -
- (i) physical and/or;
 - (ii) sexual and/or;
 - (iii) psychological
- abuse of the children including the Plaintiff at the Institutions.

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- (h) Concealing from -
- (i) the Western Australian Police Department;
 - (ii) the Western Australian Education Department
 - (iii) the Western Australian Department of Welfare -
the occurrence of -
 - (a) physical and/or;
 - (b) sexual and/or;
 - (c) psychological -

abuse of children including the Plaintiff at the Institutions committed by Christian Brothers who had been placed in positions of trust and care for the children.

- (i) Failing to remove from the Institutions Christian Brothers who -
 - (i) were pedophiles;
 - (ii) were sadists;
 - (iii) had conducted obscene and indecent acts on the children at the Institutions;
 - (iv) had practised acts of gross and gratuitous violence on the children at the Institutions;
- (j) Failing to institute any or any proper system to monitor the behaviour of Christian Brothers who the Firstnamed defendant knew had committed acts of -
 - (i) physical and/or;
 - (ii) sexual and/or;
 - (iii) psychological;
 abuse of the children including the Plaintiff at the Institutions.

- (k) Failing to have any or any adequate system to screen Christian Brothers so as to ensure the suitability of persons to act as -
- (i) guardians;
 - (ii) custodians;
 - (iii) teachers -
- of the children including the Plaintiff at the Institutions.
- (l) Failing to provide any or any adequate counselling for Christian Brothers who were pedophiles and were sexually molesting students.
- (m) Failing to respond adequately or at all to complaints concerning -
- (i) physical and/or;
 - (ii) sexual and/or;
 - (iii) psychological -
- abuse of children including the Plaintiff at the Institutions.
- (n) Permitting a situation at the Institutions in which children including the Plaintiff lived in an environment of constant terror.
- (o) Depriving children of contact with or knowledge of their parents.
- (p) Permitting persons who were totally unsuited by their -
- (i) background;
 - (ii) education;
 - (iii) Prior behaviour of acts of -
 - (a) physical and/or;
 - (b) sexual and/or;
 - (c) psychological;
- abuse of children -
- to remain in positions of responsibility and care for the children at the Institutions including the Plaintiff.

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(q) Failing to comply with the provisions of the Child Welfare Act and the regulations thereto in particular regulations 7, 8, 9, 10, 11, 12, 15, 19, 20(a)(b)(c), 21, 22(a)(i)(ii)(iii)(b), 24, 27, 28, 30(i)(ii), 34.

(r) Allowing Brother Keaney to -

- (i) to be in charge of children including the Plaintiff at any of the said institutions;
- (ii) to have any access to the Plaintiff at any of the said institutions when it knew that the said Brother Keaney had sexually interfered with and/or physically abused other children at the said institutions.

(s) Failing to institute a policy whereby -

- (i) Brother Keaney;
- (ii) any person known or suspected to have committed sexual offences and/or physical abuse against children;

was banned from all of the said institutions and from remaining as a Christian Brother.

(t) Allowing Brother Boulter to -

- (i) to be in charge of children including the Plaintiff at any of the said institutions;
- (ii) to have any access to the Plaintiff at any of the said institutions when it knew that the said Brother Boulter had sexually interfered with and/or physically abused other children at the said institutions.

(u) Failing to institute a policy whereby -

- (i) Brother Boulter;
- (ii) any person known or suspected to have committed sexual offences and/or physical abuse against children;

was banned from all of the said institutions and from remaining as a Christian Brother.

- (v) Allowing Brother O'Neill to -
- (i) to be in charge of children including the Plaintiff at any of the said institutions;
 - (ii) to have any access to the Plaintiff at any of the said institutions when it knew that the said Brother O'Neill had sexually interfered with and/or physically abused other children at the said institutions.
- (w) Failing to institute a policy whereby -
- (i) Brother O'Neill;
 - (ii) any person known or suspected to have committed sexual offences and/or physical abuse against children;
- was banned from all of the said institutions and from remaining as a Christian Brother.
- (x) Allowing Brother Wise to -
- (i) to be in charge of children including the Plaintiff at any of the said institutions;
 - (ii) to have any access to the Plaintiff at any of the said institutions when it knew that the said Brother Wise had sexually interfered with and/or physically abused other children at the said institutions.
- (y) Failing to institute a policy whereby -
- (i) Brother Wise;
 - (ii) any person known or suspected to have committed sexual offences and/or physical abuse against children;
- was banned from all of the said institutions and from remaining as a Christian Brother.

- (x) Allowing Brother Angus to -
- (i) to be in charge of children including the Plaintiff at any of the said institutions;
 - (ii) to have any access to the Plaintiff at any of the said institutions when it knew that the said Brother Angus had sexually interfered with and/or physically abused other children at the said institutions.
- (y) Failing to institute a policy whereby -
- (i) Brother Angus;
 - (ii) any person known or suspected to have committed sexual offences and/or physical abuse against children;
- was banned from all of the said institutions and from remaining as a Christian Brother.

PARTICULARS OF NEGLIGENCE OF THE SECONDNAMED, FOURTHNAMED, FIFTHNAMED AND FOURTEENTHNAMED DEFENDANTS

- (a) Permitting children (including the plaintiff) committed to its care to be raped, sodomised, brutalised, assaulted, battered and/or psychologically abused;
- (b) Knowing or failing to act upon suspicions that certain of the Christian Brothers at the Institutions who were responsible for the care and welfare of the children at the Institutions, such children including the Plaintiff -
- (i) were pedophiles;
 - (ii) were sadists;
 - (iii) had conducted obscene and indecent acts on the children at the institutions
 - (iv) had practised acts of gross and gratuitous violence on the children at the Institutions; ((iii) and (iv) hereinafter referred to as "the said acts")

- (c) Failing to take any or any adequate precautions to prevent such persons continuing to perform the said acts.
- (d) Failing to remove persons that the Firstnamed Defendant knew or ought to have known -
 - (i) were pedophiles;
 - (ii) were sadists;
 - (iii) had performed the said acts.
- (e) Turning a blind eye to evidence and/or complaints of -
 - (i) physical and/or;
 - (ii) sexual and/or;
 - (iii) psychological -abuse of the plaintiff and other children at the said institutions.
- (f) Failing to act upon evidence and/or complaints of -
 - (i) physical and/or;
 - (ii) sexual and/or;
 - (iii) psychological -abuse of the plaintiff and other children at the said institutions.
- (g) Failing to investigate adequately or at all complaints of -
 - (i) physical and/or;
 - (ii) sexual and/or;
 - (iii) psychologicalabuse of the children including the Plaintiff at the Institutions.

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- (h) Concealing from -
- (i) the Western Australian Police Department;
 - (ii) the Western Australian Education Department
 - (iii) the Western Australian Department of Welfare -
- the occurrence of -
- (a) physical and/or;
 - (b) sexual and/or;
 - (c) psychological -
- abuse of children including the Plaintiff at the Institutions committed by Christian Brothers who had been placed in positions of trust and care for the children.
- (i) Failing to remove from the Institutions Christian Brothers who -
- (i) were pedophiles;
 - (ii) were sadists;
 - (iii) had performed the said acts.
- (j) Failing to institute any or any proper system to monitor the behaviour of Christian Brothers who the Firstnamed defendant knew had committed acts of -
- (i) physical and/or;
 - (ii) sexual and/or;
 - (iii) psychological;
- abuse of the children including the Plaintiff at the Institutions.
- (k) Failing to have any or any adequate system to screen Christian Brothers so as to ensure the suitability of persons to act as -
- (i) guardians;
 - (ii) custodians;
 - (iii) teachers -
- of the children including the Plaintiff at the Institutions.

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- (l) Failing to provide any or any adequate counselling for Christian Brothers who were pedophiles and were sexually molesting students.
- (m) Failing to respond adequately or at all to complaints concerning -
- (i) physical and/or;
 - (ii) sexual and/or;
 - (iii) psychological -
- abuse of children including the Plaintiff at the Institutions,
- (n) Permitting a situation at the Institutions where the children including the Plaintiff lived in an environment of constant terror.
- (o) Depriving the children of contact with or knowledge of their parents.
- (p) Permitting persons who were totally unsuited by their -
- (i) background;
 - (ii) education;
 - (iii) Prior behaviour of acts of -
 - (a) physical and/or;
 - (b) sexual and/or;
 - (c) psychological;
- abuse of children -
- to remain in positions of responsibility and care for the children at the Institutions including the Plaintiff.
- (q) Failing to ensure that children (including the plaintiff) committed to the care of the Christian Brothers were not subjected to the said abuse;
- (r) Failing to adopt any or any proper system to ensure that the said abuse did not occur;

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- (s) Participating in and/or permitting the Christian Brothers to participate in the Child Migration Scheme without insuring the welfare of children placed in the scheme.
- (t) Allowing Brother Keaney to -
- (i) to be in charge of children including the Plaintiff at any of the said institutions;
 - (ii) to have any access to the Plaintiff at any of the said institutions when it knew that the said Brother Keaney had sexually interfered with and/or physically abused other children at the said institutions.
- (u) Failing to institute a policy whereby -
- (i) Brother Keaney;
 - (ii) any person known or suspected to have committed sexual offences and/or physical abuse against children;
- was banned from all of the said institutions and from remaining as a Christian Brother.
- (v) Allowing Brother Boulter to -
- (i) to be in charge of children including the Plaintiff at any of the said institutions;
 - (ii) to have any access to the Plaintiff at any of the said institutions when it knew that the said Brother Boulter had sexually interfered with and/or physically abused other children at the said institutions.
- (w) Failing to institute a policy whereby -
- (i) Brother Boulter;
 - (ii) any person known or suspected to have committed sexual offences and/or physical abuse against children;
- was banned from all of the said institutions and from remaining as a Christian Brother.

(x) Allowing Brother O'Neill to -

- (i) to be in charge of children including the Plaintiff at any of the said institutions;
- (ii) to have any access to the Plaintiff at any of the said institutions when it knew that the said Brother O'Neill had sexually interfered with and/or physically abused other children at the said institutions.

(y) Failing to institute a policy whereby -

- (i) Brother O'Neill;
 - (ii) any person known or suspected to have committed sexual offences and/or physical abuse against children;
- was banned from all of the said institutions and from remaining as a Christian Brother.

(z) Allowing Brother Wise to -

- (i) to be in charge of children including the Plaintiff at any of the said institutions;
- (ii) to have any access to the Plaintiff at any of the said institutions when it knew that the said Brother Wise had sexually interfered with and/or physically abused other children at the said institutions.

(aa) Failing to institute a policy whereby -

- (i) Brother Wise;
 - (ii) any person known or suspected to have committed sexual offences and/or physical abuse against children;
- was banned from all of the said institutions and from remaining as a Christian Brother.

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- (bb) Allowing Brother Angus to -
- (i) to be in charge of children including the Plaintiff at any of the said institutions;
 - (ii) to have any access to the Plaintiff at any of the said institutions when it knew that the said Brother Angus had sexually interfered with and/or physically abused other children at the said institutions.
- (cc) Failing to institute a policy whereby -
- (i) Brother Angus;
 - (ii) any person known or suspected to have committed sexual offences and/or physical abuse against children;
- was banned from all of the said institutions and from remaining as a Christian Brother.

PARTICULARS OF NEGLIGENCE OF THE SIXTHNAMED, SEVENTHNAMED,
EIGHTHNAMED, NINTHNAMED, TENTHNAMED, ELEVENTHNAMED,
TWELFTHNAMED, THIRTEENTHNAMED AND FIFTTEENTHNAMED
DEFENDANTS

- (a) Failing to ensure that children (including the plaintiff) committed to the care of the Christian Brothers were not subjected to the said abuse;
- (b) Knowing or suspecting that certain of the Christian Brothers at the Institutions who were responsible for the care and welfare of the children at the Institutions, such children including the Plaintiff -
- (i) were pedophiles;
 - (ii) were sadists;
 - (iii) had conducted obscene and indecent acts on the children at the institutions

- (iv) had practised acts of gross and gratuitous violence on the children at the Institutions;
- (c) Turning a blind eye to evidence and/or complaints of -
- (i) physical and/or;
 - (ii) sexual and/or;
 - (iii) psychological -
- abuse of the plaintiff and other children at the said institutions.
- (d) Failing to act upon suspicions or knowledge of evidence and/or complaints of -
- (i) physical and/or;
 - (ii) sexual and/or;
 - (iii) psychological -
- abuse of the plaintiff and other children at the said institutions.
- (e) Failing to require the removal of persons that the Firstnamed Defendant knew or ought to have known -
- (i) were pedophiles;
 - (ii) were sadists;
 - (iii) had conducted obscene and unlawful acts on the children at the Institutions;
 - (iv) Had practised acts of gross and gratuitous violence on the children at the Institutions from positions at the Institutions where such Institutions/persons had authority over and responsibility for the children including the Plaintiff.
- (f) Failing to provide any or any adequate counselling for Christian Brothers who were pedophiles and were sexually molesting students.

- (g) Failing to adopt any or any system of monitoring complaints of the children and no system of monitoring the conduct of the Christian Brothers in question.
- (h) Failing to adopt any or any proper system to ensure that the said abuse did not occur;
- (i) Participating in and/or permitting the Christian Brothers to participate in the Child Migration Scheme.
- (j) Failing to provide legal advice to the plaintiff and other children for the purpose of informing them of their rights consequent upon the said abuse.
- (k) Allowing Brother Keaney to -
- (i) to be in charge of children including the Plaintiff at any of the said institutions;
 - (ii) to have any access to the Plaintiff at any of the said institutions when it knew that the said Brother Keaney had sexually interfered with and/or physically abused other children at the said institutions.
- (l) Failing to institute a policy whereby -
- (i) Brother Keaney;
 - (ii) any person known or suspected to have committed sexual offences and/or physical abuse against children;
- was banned from all of the said institutions and from remaining as a Christian Brother.

(m) Allowing Brother Boulter to -

- (i) to be in charge of children including the Plaintiff at any of the said institutions;
- (ii) to have any access to the Plaintiff at any of the said institutions when it knew that the said Brother Boulter had sexually interfered with and/or physically abused other children at the said institutions.

(n) Failing to institute a policy whereby -

- (i) Brother Boulter;
- (ii) any person known or suspected to have committed sexual offences and/or physical abuse against children;

was banned from all of the said institutions and from remaining as a Christian Brother.

(o) Allowing Brother O'Neill to -

- (i) to be in charge of children including the Plaintiff at any of the said institutions;
- (ii) to have any access to the Plaintiff at any of the said institutions when it knew that the said Brother O'Neill had sexually interfered with and/or physically abused other children at the said institutions.

(p) Failing to institute a policy whereby -

- (i) Brother O'Neill;
- (ii) any person known or suspected to have committed sexual offences and/or physical abuse against children;

was banned from all of the said institutions and from remaining as a Christian Brother.

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- (q) Allowing Brother Wise to -
- (i) to be in charge of children including the Plaintiff at any of the said institutions;
 - (ii) to have any access to the Plaintiff at any of the said institutions when it knew that the said Brother Wise had sexually interfered with and/or physically abused other children at the said institutions.
- (r) Failing to institute a policy whereby -
- (i) Brother Wise;
 - (ii) any person known or suspected to have committed sexual offences and/or physical abuse against children;
- was banned from all of the said institutions and from remaining as a Christian Brother.
- (s) Allowing Brother Angus to -
- (i) to be in charge of children including the Plaintiff at any of the said institutions;
 - (ii) to have any access to the Plaintiff at any of the said institutions when it knew that the said Brother Angus had sexually interfered with and/or physically abused other children at the said institutions.
- (t) Failing to institute a policy whereby -
- (i) Brother Angus;
 - (ii) any person known or suspected to have committed sexual offences and/or physical abuse against children;
- was banned from all of the said institutions and from remaining as a Christian Brother.

THE PARTICULARS OF NEGLIGENCE OF THE SEVENTEENTH DEFENDANT,
EIGHTEENTH NAMED, NINETEENTH NAMED, TWENTIETH NAMED AND
TWENTYFIRST NAMED DEFENDANT

- (a) Failing to fulfil the duties and obligations prescribed under the State Childrens Act 1907 as amended, Child Welfare Act 1947 and the Regulations thereto for the benefit of the plaintiff and other children in the institutions.
- (b) Failing to enforce the State Childrens Act 1907 - 1927 and the Child Welfare Act 1947 and the regulations thereto against the Firstnamed Defendant and the predecessors entitled for the time being of the Thirdnamed Defendant and the managers of the said institutions for the time being for the benefit of the plaintiff and the other children in the institution.
- (c) Through the Child Welfare Department and the police failing to respond to complaints of the said abuse;
- (d) Failing to investigate complaints of the said abuse;
- (e) Failing to inspect and/or supervise properly or at all, the reception of Child Migrant to Christian Brothers Schools.

THE PARTICULARS OF NEGLIGENCE OF THE SIXTEENTH NAMED
DEFENDANT

- (a) Failing to inspect and/or supervise properly or at all, the reception of Child Migrant to Christian Brothers Schools.

12. Further, or alternatively, the First Defendant and the predecessor in time of the Third Defendant were in breach of the Child Welfare Act and the Factories and Shops Act 1920 in requiring the Plaintiff to perform labouring duties:
- (a) whilst under the age of 16;
 - (b) without reward.
13. Further or alternatively, the defendants or any of them were in breach of their fiduciary duties to the plaintiff.

Particulars

The Defendants or any of them stood in loco parentis and/or as guardian to the plaintiff during the period. The defendants during the period took no or no adequate steps to protect the plaintiff from the said abuse. The Defendants further took no steps to advise the plaintiff of his legal rights regarding the said abuse and/or to arrange for the plaintiff to receive independent legal advice relating to the said abuse. The plaintiff suffered loss and damage described in Paragraph 10 of this Statement of Claim as a consequence of the said breach of fiduciary duty.

14. Further, the defendants or any of them performed the said acts of omissions constituting the causes of action described herein in reckless, wanton deliberate and/or contumelious disregard of the plaintiff's rights.

Particulars

- (a) the plaintiff refers to and repeats the particulars of negligence;
- (b) the plaintiff reserves the right to add further particulars following discovery.

TO THE DEFENDANTS IN AUSTRALIA OTHER THAN NEW SOUTH WALES

(As set out in the Schedule of Defendants)

You are liable to suffer judgment or order against you unless the prescribed form of notice of your appearance is received in the Registry within twenty-one (21) days after service of this Statement of Claim upon you.

Your appearance to this Statement of Claim must give an address at some place within 10 kilometres of the office of Supreme Court of New South Wales at Sydney at which address proceedings and notices for you may be left.

TO THE DEFENDANTS IN NEW SOUTH WALES

(As set out in the Schedule of Defendants)

You are liable to suffer judgment or an order against you unless the prescribed form of notice of your appearance is received in the Registry within fourteen (14) days after service of this Statement of Claim upon you.

Your appearance to the Statement of Claim must give an address at some place within 10 kilometres of the office of the Supreme Court of New South Wales at Sydney at which address proceedings and notices for you may be left.

AND THE PLAINTIFF CLAIMS

- (a) Damages;
- (b) Punitive and Aggravated Damages;
- (c) Interest.

01/03/94 14:29

01 2 221 1117

CARROLL & O'DEA

027/030

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PLAINTIFF

The Plaintiff's name and address is c/- Mr Peter Gordon, Slater & Gordon Solicitors, 562 Little Bourke Street, Melbourne 3000.

PLAINTIFF'S SOLICITOR PETER GORDON
SLATER & GORDON
562 Little Bourke Street

MELBOURNE VIC 3000
DX 229 MELBOURNE


PLAINTIFF'S ADDRESS
FOR SERVICE:

c/- Messrs Turner Freeman
Level 8
45 Clarence Street
SYDNEY NSW 2000
DX 152 SYDNEY

ADDRESS OF
REGISTRY:-

Supreme Court
Queens Square
SYDNEY NSW 2000

Filed:


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PETER GORDON
Solicitor for the Plaintiff