INTRODUCTION

1. I refer to your brief in this matter and to your letter dated 8 June 1995 and 19 June 1995. I note you have requested an advice concerning the documentary picture which has emerged following the inspection of documents in this matter by myself and Mr. G. Phillips of your office. It should be noted that inspection of documents in the archives and other sections of the Christian Brothers has only been completed in relation to documents dated prior to 1960. Few documents relating to the period 1960 to 1995 have been inspected and I am not in a position to determine whether there are any documents from that period which would assist us in this analysis.

2. In this advice I firstly propose to identify the types of documents inspected and in particular those which are relevant to the question of the awareness of the Order's Executive of sexual abuse in their schools and institutions and in particular cases in the orphanages in Western Australia. Secondly, I will examine various factors relevant to the handling of abuse complaints including the constitution of the Order and its methods of dealing with complaints. Thirdly and finally, some cases of Brothers named in this litigation as offenders will be examined from the point of view of the available documentary evidence of complaints concerning those Brothers.
1.1 During the course of 1994 and early 1995 Mr. Phillips and I inspected a substantial quantity of documentary material.

1.2 For the purposes of this report the inspected material can be categorised into the following groups of documents:

3. Visitation reports for Castledare.
4. Visitation reports for Clontarf.
5. Documents and correspondence relating to Bindoon and Castledare including some Child Welfare reports.
6. Clontarf account books and Clontarf cash books which include some reports of inspectors from the Education Department between 1952 and 1966.
7. Documents and correspondence from Clontarf.
8. Documents and correspondence from Tardun.
13. Castledare annals.
15. Minutes of the Council meeting 1922-1960 of the Province of St. Mary.
(18) Scrutiny book for the Australasian Province.
(19) Education Department reports of inspectors 1952-1962.
(21) Child Migration in the West Australian Boys Homes by B.M. Coldrey.
(22) Research folders on St. Patricks Goulburn, Tardun, and the Fitzgerald family.
(23) Recollections of Western Australia including Tardun by Brother REDACTED
(24) Miscellaneous documents including pictorial histories of Clontarf and Bindoon and a 1970 circular detailing improvements to be carried out at Castledare and Clontarf.
(25) Miscellaneous documents including Greenwich Window volumes and Liturgical calendars.
(26) Financial balance sheets of Tardun 1933-40.
(27) Provincial Chapters book.
(28) Title deeds from W.A. Archives.
(29) School reports from Tardun, Castledare, Clontarf and Bindoon
(30) Brother Faulkner’s files from West Court, Perth.
(31) Personnel records of selected Brothers.
(33) Correspondence from the archives at West Court in Perth.
(34) Documents used in Barry Coldrey’s research at West Court.
(35) Bindoon document box including register at West Court.
(36) Castledare documents including list of children, accounts and correspondence at West Court.
(37) Clontarf documents including register and financial records and rule book at West Court.

(38) Tardun documents including register and financial records at West Court.

(39) Correspondence with the Superior General from West Court archives.

(40) Selected Holy Spirit Provincial correspondence at West Court.

(41) Catholic Education Commission WA file at West Court.

(42) Diary and letters of Father Urbano Giminez.

(43) Administration documents from Bindoon, Castledare, Clontarf and Tardun at West Court.

(44) Educational records including necrologies at West Court.

(45) Liber baptizatorum.

(46) Christian Brothers records from the Traeacy Centre at Parkville Melbourne including Provincial correspondence 1953-1960.

1.3 Before referring to particular documents, it is important to outline the structure of the Order in Australia to determine where responsibility for the Western Australian orphanages rested. From the 1920's to 1954 the orphanages in Western Australia were under the control of the Executive in Strathfield, New South Wales. In 1954 the Australasian Province with its headquarters in Strathfield was split into two parts and the management and responsibility for the Western Australian orphanages was taken over by the Executive of the new Province, St. Patrick's Province, which was based in Melbourne. In 1967, responsibility for the orphanages in Western Australia was again transferred, to another new Province, the Province of the Holy Spirit, which was based in Perth.

1.4 Most of the documents inspected are concerned with the day to day running and management of the orphanages.
Documents in the Balmain archives of the Executive are concerned with the Order’s operations in Australia as a whole up to 1954 and after 1954 with New South Wales, Queensland and Papua New Guinea. Actual cases of sexual abuse or physical abuse of children are referred to in the Generalate correspondence, in a few visitation reports and also in a document called the Minutes of the Council meetings. In the period between 1922 and 1964 48 cases dealing with allegations of sexual abuse were raised before the Council in its meetings and debate and resolution of the allegations was recorded in the Minutes. This document provides a detailed record of the charges of immorality against Brothers and in particular charges of abuse of children by the Brothers which were reported to the Executive and the Executive’s response to these charges up until about 1959.

1.5 It is interesting to note that the majority of the cases involved the less serious types of sexual assault; most charges detailed incidents involving immodest touching or fondling but not sodomy, intercourse or rape. Between 1922 and 1954 about 36 cases were reported and dealt with by the Council. Only 2 cases involved Brothers in Western Australia and none involved the 4 orphanages. Most cases involved Brothers residing in New South Wales or Queensland. Only 2 of the Brothers named by plaintiffs as offenders in the current proceedings were named in cases in the Minutes. Firstly Brother REDACTED was charged in 1943 with interfering indecently with boys at Geraldton. Eight boys were involved and one boy had been seriously interfered with on at least 6 occasions. REDACTED admitted that his hand might have touched the boy’s private parts. The Council voted in favour of his dismissal 5:0. (A prior reference to REDACTED in the Scrutiny Book dated 5 December 1930 notes that he is
inclined to fondle boys. There is no other reference of
significance concerning him). Secondly in 1946 Brother
was accused of taking boys in his room
and handling one boy's private parts over his trousers.
Brother was giving a canonical warning. The
response by the Executive in these cases in the 1940's
seems reasonable; who was charged with more
serious interference on a number of occasions was
dismissed whereas was given a canonical warning
as only one episode of actual handling seemed to be
involved and the boy was clothed.

1.6 Analysis of the cases in the Council Minutes shows that
out of the 36 cases, 8 Brothers were expelled or
directed to seek dispensations, 18 were given canonical
warnings or penances, 4 matters were referred to the
General Council in Dublin and in 6 cases where Brothers
denied allegations it was held that there was not
sufficient evidence or the matter required further
investigation. It is interesting to note that in the
majority of cases where Brothers were expelled or told
to seek dispensations they admitted the charges or part
of the charges alleged against them. In the cases where
Brothers were given a canonical warning the charges
involved allegations such as hugging and kissing,
immodest touching without exposure on the part of
Brothers, touching private parts of sleeping boys,
handling private parts of boys, embracing, touching
boys indecently outside clothes. These cases do not
appear to involve the serious sexual abuse of boys and
with the exception of one or two cases where there was
repeated abuse, the Executive's reaction seems to have
been reasonable.

1.7 It is interesting to note that the Council Minutes do
not refer to Brother who was based at
Castledare in 1944 and the complaints about
interference by REDACTED of his son made by a parent to the Detective office. After the complaint was made REDACTED was transferred to Leura where he had no more contact with boys. The matter was raised in visitation report for Castledare dated 26-28 January 1946. The visitor Brother Dooley noted on page 1 of the report "2 years ago Brother REDACTED was accused of interfering with a boy. He denied it; it was a question of the boy's word against his. Brother REDACTED was taken out of school and sent to Leura where he is at present." The matter appears not to have been discussed by the Council; however appropriate action was taken as the Brother was taken out of the school and sent to Leura which was a property used by the Order in New South Wales as a retirement home and also as a residence for Brothers under investigation.

1.8 There is also reference in a note attached to the Visitation Report for Clonitarf in 1946 to another incident involving Brother REDACTED. This concerned a complaint by REDACTED. The matter was reported in late January 1946 to the Superior, Brother Crowley, by some boys. Crowley questioned the boys and Walsh and reported the matter to the Visitor who recommended Crowley put the matter before the Brother Provincial. On 5 February Brother Provincial told Crowley to transfer REDACTED to Wakefield Street, Adelaide. REDACTED did not deny the allegations of handling a boy's private parts but explained one in terms of teaching a boy to push back the foreskin while washing the penis. The allegations also involved complaints of fondling the boy's stomach, abdomen and legs. Like the case of REDACTED, this matter appears not to have been discussed by the Provincial Council as there is no record of it in the minutes.

1.9 The failure by the Council to deal with these cases in
its meetings indicates that not all charges of sexual assault of boys by Brothers were referred to the Executive sitting as a Council. Therefore, one cannot rely on the minutes as providing a total picture of the situation as regards allegations of sexual abuse in the Order and in particular in the West until 1954.

1.10 The cases of REDACTED appeared to have been handled appropriately by the visiting members of the Executive; the matters were investigated and the Brothers transferred to either Leura or a different school. If REDACTED offended again in Wakefield Street, the Executive would have been open to criticism but no record has been inspected indicating that there was further complaint concerning him.

1.11 In "Reaping the Whirlwind" reference is made to a letter written in February 1937 by Brother Conlon to Dublin and in particular to Brother Keaney who had been made aware by one of the Clontarf boys "of a charge against a Brother (indecent). The alleged abuser was also described as a heavy drinker." The Brother was not identified. In the Visitation Report of 1936 the Visitor requested Brother REDACTED be removed due to his problems with drink and smoking. REDACTED was not on the staff of Clontarf in 1937. One could speculate that Smith was the Brother referred to by REDACTED. The use of the word "indecent" is interesting. REDACTED, like many Brothers, usually described abuse using terms such as immoral or evil; indecent suggests improper conduct or even exposure but not sexual abuse actually involving a boy.

This is a difficult matter to comment on as the Brother is not identified and there is no information concerning the charge. There is no mention of the matter in the archives in New South Wales. This is a
case where a member of the Executive referred the matter to the Superior General’s office in Dublin and it does illustrate the close involvement the Superior General’s office had with the Provinces.

1.12 The final reference to sexual abuse in a Western Australian orphanage pre-1954 appears in the Scrutiny Book where it was noted that in 1943 Brother Laurence Hyacinth Murphy was transferred to Strathfield to "live down gross accusations by evil boys". Murphy was then working at Tardun and the boy concerned, REDACTED has denied anything occurred, but has not sworn an affidavit. REDACTED wrote about these allegations on 17 March 1991 and stated the matter was investigated by the Superior Brother Sandys and Brothers Fagan and Murphy was exonerated. REDACTED also stated he felt there was nothing of a sexual or invidious nature about Murphy’s actions at this time. The response by the Superior in this case appeared to be more than adequate which is important as Murphy has been named by VOICES and by Barry Coldrey as a child molester during a later period.

1.13 Apart from these three cases, examination of all the documents reveals no evidence of any other knowledge or general suspicion on the part of the Executive in Strathfield of any incidents of child abuse in the Western Australian orphanages during its period of Executive control.

1.14 Once responsibility for the orphanages was assumed by St. Patrick’s Province, the documentary trail became more fragmented. There appears to be no similar record like the minutes of Council meetings detailing the hearing of allegations of abuse. Therefore resort to the general correspondence and visitation reports is necessary to determine the extent of knowledge of the
Executive at that stage. The following cases were reported in visitation reports in the late 1950’s.

BROTHER ALONSO ANGUS

1.15 In the visitation report for Clontarf orphanage dated 18 July 1957, Brother Luke Carey, reported that the boys had been known to enter a Brother’s room singularly or in groups and to spend considerable time there. "There is always a danger of this in an institution of this kind and Brothers in charge of dormitories were told to attend to the needs of the boys outside their rooms or in places reserved for the purpose". Further Carey noted that Brother Alonso Angus was found at fault in permitting boys to enter his bedroom and he was given to understand that a serious view is taken of such conduct. Copies of letters from the Provincial both dated 31 July 1957 were sent to Brother Angus and to Brother Doyle, the Superior of Clontarf. Brother Doyle was advised by the Provincial that he was unhappy about the part of the report stating that boys were allowed to go into Brothers’ bedrooms. The Provincial directed Brother Doyle to make it clear to all that they must be particularly careful to observe the regulations as set out and request that he report directly to him any breach of the rule in that matter without delay. Brother Angus was requested to write to the Provincial but a copy of that letter, assuming that he did reply, does not exist. There is no mention of any breach by Angus of this direction but in 1959 in the visitation report of Clontarf the Visitor, Brother J. Levander, noted about Brother Angus "the charge of interfering with boys came up a couple of years ago. He was also reported for having boys in his bedroom. Those charges were denied. Recently a similar charge of dealing immorally with a boy at Clontarf came to the notice of the Superior. The incident is said to
have taken place last year. Brother Alonso denied the charge to both the Superior and me, there the matter rests at present" Brother Angus remained at Clontarf. Attached to the 1959 visitation report are letters from Brother Garvey, the Provincial to Brother Doyle, the Superior, and to Brother Angus. The Provincial advised Brother Doyle in his letter of 20 August 1959 that "all superiors have to keep their eyes wide open" in the institutions concerning the matters regarding Brother Angus and also Brother McLaughlin. The Provincial also wrote to Brother Angus requesting an explanation regarding the very serious accusation of interfering with a boy. Brother Angus replied in a letter dated 26 August 1959 denying the accusation.

1.16 In the letter dated 5 October 1959 the Provincial wrote to the Superior General stating that the Brothers accused of interfering with boys at Clontarf and Castledare have categorically denied both charges. The Superior General responded on 13 October 1959 noting "in one or two of the cases mentioned it seems to me if my memory serves me correctly, that similar charges were preferred on some former occasion". The Assistant Superior General Brother Leo Duffy also wrote to the Provincial suggesting a more thorough investigation of the matter. Duffy also added that if evidence of serious misconduct is sustained a canonical warning does not always meet the situation and dismissal should be considered.

1.17 It should be noted that Brother J.L. Carey was the Visitor to Clontarf in 1954. Carey was interviewed by Journalist Andre Molan at the Old Boys Reunion in Clontarf in 1991. Carey stated to Molan that the account given in "Lost Children of the Empire" was the one told to him in 1954. However, at the time he had not believed the boy having formed the view that the
boy was being vindictive for some punishment he received. "Carey said to me I have a feeling I made a mistake." There is no documentary record of this complaint or the investigation of it in the Archives.

1.18 There are two points which emerge when examining these documents relating to the allegation of child abuse by Brother Angus. Firstly it is not clear whether the matters raised in 1957 related merely to allowing boys in his room or whether there were actual allegations of physical interference. The visitation report of 1957 only refers to Angus permitting boys to enter his bedroom; no mention of interference is made. One assumes that the comments by Levander in his report of 1959 and those of the Superior General in his letter of 13 October 1959 suggesting there may have been prior charges which were never documented is a reference to the allegations made in 1954. Secondly, it is impossible from the documents available in the archives to determine what the allegations of interference involved and how serious they were. This is important in that the severity of the type of abuse alleged would determine the response by the Executive to an extent.

1.19 In considering the response of the Order's Executive in this matter one must not look back as Carey did in 1991 with the benefit of hindsight. If the charges of 1957 related only to permitting boys to enter his bedroom and there had been no complaint of physical interference the response was adequate. Likewise if there were suggestions of interference which were denied and dismissed as being unjustified, the Executive acted properly. The adequacy of the Executive's response to further complaints in 1959 is also difficult to evaluate on the limited material available. It appears that no canonical warning was given to Angus and therefore his denials were believed.
There is no documentary evidence concerning the type of investigation made by the Visitor or the Executive. It is on the documentary evidence impossible to determine the question of whether the Executive was negligent by failing to take action in this case. It is evident that by this date, the Executive had knowledge of charges and the possibility of abuse and should have ensured that Angus was very closely supervised.

**BROTHER LAURIAN McLAUGHLIN**

1.20 The same 1959 visitation report for Clontarf referred to a Brother Laurian McLaughlin. It was alleged that he kissed and embraced a boy. The Brother took the problem to the Superior who informed the Visitor, Brother J. Levander. Levander stated he took up the matter with the Brother and was surprised to learn that the Brother did not regard his action with the boy as fundamentally wrong. "It is hard to know whether the boy was conscientious or cunning". The Visitor then impressed on Laurian the gravity of such compromising incidents to both himself and the good name of the Order. The Visitor also considered Laurian to be an easy mark. The Provincial wrote to Laurian on 20th August 1959 informing him that the incident was a serious breach of the rules and it was wrong to embrace and kiss a boy. He forbade him to have a boy in his room and also warned that unless there was an improvement he would be found unworthy to continue as a member of the congregation. This response by the Executive is not inappropriate given the relatively minor nature of the incident.

**BROTHER SALVIUS MARQUES**

1.21 In July 1959 allegations of interference by Brother Salvius Marques were noted in the visitation report for
Castledare. It was alleged that Marques fondled a boy but he denied the charges. Attached to the visitation report however is a handwritten note which makes three points "(1) 1955 boy in room - not sure which Brother; (2) Brother Laurian kissing boy; and (3) Alonso Angus second report of interference". There is no date on this note and it is not clear who wrote it.

1.22 The Provincial requested a response concerning this matter. Brother Marques responded by stating that the accusation was completely untrue. There were also handwritten notes presumably of the Provincial concerning Brother Marques (spelt Marks but obviously referring to Marques) which noted that in 1954 he had been reported about leaving a boy in his room and that he had been advised against this for the sake of the boy and himself. In 1955 it was reported that he continued to have the practice. He was advised that there could be Court case publicity and was rebuked for his infringement and was advised to observe the rules and to be very circumspect. The Executive transferred Marques from Castledare to Clontarf in January 1960. There is not a detailed account or statement concerning the nature of the allegations of interference against Marques in 1959. In the Visitation Report for Clontarf dated 12-20 November 1961 it was noted in relation to Marques "he is the uncertain member of the team, especially in respect of his relations with boys. Serious representations were made to him on this matter." This case is similar to the one involving Brother Angus. It is impossible from the documentary material to determine the extent of the allegations and the severity of the abuse alleged. The adequacy of the investigation of the allegations is also impossible to determine from these records. The transfer of Marques in 1959 and continued suspicions about him indicate that the Executive had reservations about his conduct.
but no other conclusions could be made from this material.

1.23 Allegations of interference by Brother [REDACTED] at Castledare in 1959 were outlined in a letter to the Superior General from the Brother Provincial dated 11 June 1959. Smith admitted touching the private parts of boys but denied the allegation that he had invited boys to touch his private parts. [REDACTED] was transferred to Mooney Ponds and given a canonical warning. The Provincial also wrote to [REDACTED] detailing the seriousness of the matter. This is a fairly standard response to such a situation; there was some investigation and the Executive took action which to them would have been appropriate at that time.

1.24 The documents inspected in Christchurch contain several letters containing allegations of interference by Brother [REDACTED], Brother [REDACTED] and Brother [REDACTED] at Castledare in 1969. In a letter dated 30 October 1969 to the Superior General Brother Levander stated that Brother [REDACTED] at Castledare had admitted to petting boys. [REDACTED] was transferred to Bindoon and later withdrew from the congregation. A letter dated 26 September 1969 to the Principal at Castledare from Mrs. [REDACTED] set out allegations against Brother [REDACTED] of interference with her son and 2 other boys. There is also a statement by one of the boys attached to her letter which accuses Brother of interfering with 2 twins at Castledare. At this stage, it is not clear what investigation followed these complaints.
by the claimants as having abused boys in the orphanages. These complaints do cause concern as three out of the four members of the staff at Castledare during this period have been named as offenders in the current proceedings. Further inspection of documents relating to this period and also the Brothers named as offenders on the staff at Castledare is necessary.

1.25 The Provincial wrote to the Superior General on 1 April 1960 concerning Brother [REDACTED] appearance in Court following the making of obscene telephone calls to a lady. He also noted that "we have not been happy about his relationships with the boys and for that reason we removed him from Tardun in February 1957." The Provincial Council voted 5 nil in favour of his dispensation. No reference to any incident at Tardun has been found in the documentary material. Therefore it is not clear what the reservations about Jordan were exactly, whether they were justified and whether the Executive's actions were reasonable.

SECTION 2

2.1 It is now appropriate to focus on some of the more general factors which are relevant to these cases.

2.2 The Constitution of the Congregation of the Brothers of the Christian Schools of Ireland provides some guidance concerning Brothers' relationships with boys. Chapter VIII Rule 91 provides "while Brothers should cherish an
affection for all their pupils especially the poor, they are forbidden to manifest a particular friendship for any of them. They must not fondle their pupils, and unless duty and necessity should require it, a Brother must never be alone with a pupil."

2.3 The Constitution also provides for the departure and dismissal of Brothers from the congregation. Rule 222 provides "in the case of grave external scandal, or a serious imminent injury to the community, the religious may be dismissed immediately by the higher Superior with the consent of his Council, or even, if there be danger in delay and time does not admit of recourse to the higher Superior, by the local Superior, with the consent of his Council and the local Ordinary. The religious must put off immediately the religious habit; and the case must be submitted without delay to the judgment of the Holy See."

2.4 In other cases there must be at least 3 offences of the same type or if they are of a different type of such nature that "when taken together they manifest the perversity of the will resolved on evil; or only one continuous offence which, from repeated admonitions, has virtually become threefold." It is not necessary that reasons for dismissal be proved by a judicial process but the reasons must be manifest to the Brother who must be given an opportunity to clear himself. Brothers also have the right of appeal to the Apostolic See against the decree of dismissal and pending the result of the appeal the decree of dismissal has no effect. Decrees of dismissal must be confirmed by the Apostolic See. The power of intervention by the Apostolic See and also the Superior General and his Council based in Dublin and later in Rome is significant. It is clear that the Executive's power in the Provinces in Australia was limited and the final
decision in matters requiring dismissal of Brothers rested with the Apostolic See.

2.5 A final point worth noting in the constitution is Rule 413 in Chapter XIII which is concerned with visitations. It provides that "each Brother is bound to inform spontaneously the visitor if there exists any practice in the community contrary to the spirit of our vocation, or, if there be any inobservance which his conscience tells him should be disclosed." This type of reporting provision within the Order is important in that it provides a means for abuse cases or suspicions of abuse to be reported to the Executive. There is no question from the documentary material that the Order's Executives in Australia, Dublin and Rome were aware of the danger of child abuse occurring in their schools and institutions. There were frequent warnings by the Provincials and Superior Generals to Brothers to be alert to the temptation of becoming too close to the boys. Members of the Executive appeared to be alert to these problems during the annual visitations and there were various references to complaints of favouritism for boys, particular affections for boys and the dangers of boys entering a Brother's room or the treating of boys' cuts and bruises in a Brother's room. The Clontarf Boys' Town Visitation Report 1951 had a document annexed to it which was entitled "Points Arising Out of the Visitation of 1951". Seventeen points were made including one that a Brother should be careful at all times to preserve the greatest reserve with the boys special care being called for in the dormitories and the "hands off" rule is to be their safeguard. The points were left by the Visitor as recording support for the Superior's policy as it stated that many of the issues raised in that document had already been attended to by the Superior. Brother Angus was then on the staff at Clontarf. This was some
eight years before Brother Angus was mentioned in the visitation report as indecently dealing with a boy. It can be seen that at the time the Provincial through his visitor was making clear to the community and the Superior what standards were to be observed and enforced. Documents of this type were not infrequent. Concerns for the boys were also evident in correspondence concerning complaints of abuse. The Superior General in a letter to the Provincial dated 27.2.56 wrote "... It is alarming to think what could be the effect upon the minds and conduct of these boys when they grow into manhood." This sort of reference was not unusual in these matters.

2.6 It is also important to look at the administrative response in cases of allegation of sexual abuse. There was a system of visitation in place throughout the entire period and each orphanage was visited annually by a member of the Executive who provided a detailed report on all aspects of orphanage life. There was also a visit by the Superior General or a member of the Superior General's staff every 5 years up until 1946 and then every 6 years. The Apostolic Delegate also visited the orphanages in 1943 and 1952. Once complaints were raised, the Executive or the Superior would carry out an investigation. If the Executive felt that an allegation was proved or the Brother admitted to having abused a child a variety of responses would come into play. If the incident was a fairly minor incident, for example, the fondling of a boy, a canonical warning could be given to the particular Brother. In more serious cases stronger action was taken and the Brother was often dismissed from the Order or told to seek a dispensation. It was seen as preferable for Brothers to seek a dispensation rather than be dismissed as it was felt that bad publicity could thus be avoided. Brothers who were not yet under
2.7 It should be noted that if a Brother admitted to allegations of sexual abuse, dealing with the matter was fairly straightforward. If there was conflict the denials of Brothers' tended to be preferred and complaints by boys would be dismissed. In these conflict situations it was also more likely that a Brother was warned rather than dismissed from the Order. Once serious allegations were made it was also common procedure for those Brothers to be isolated from boys or transferred to another school, usually a day school where contact with boys was more limited.

2.8 It is most important in this type of litigation to categorise the types of offences which the claimants have alleged took place. A claimant is unlikely to succeed in recovering significant damages in a case of simple exposure, but could succeed in being awarded substantial damages in a case where rape or even consensual intercourse is held to have taken place. In these cases, the types of offences could be categorised in terms of gradation of sexual abuse activity: for example: (i) exposure; (ii) molestation; (iii) intercourse; (iv) rape. It should be noted that from the information contained in the documents concerning the schools and orphanages run by the Christian Brothers that the majority of the cases involve level (i) or (ii) activity i.e. exposure and molestation, for example, touching the private parts of a boy. Reports of more severe cases of abuse in Australia were rare. Reaction and particularly the speed of reaction by the administration did of course depend on what type of category of abuse had been alleged to have occurred. Other factors included whether the allegation was denied by the Brother or admitted, the publicity that the Brother had been exposed to or the likelihood of
such publicity, whether the Brother was a teaching brother, staff problems and the boys’ welfare. From the correspondence it is clear that the Provincials and Superiors General displayed little sympathy towards offenders.

2.9 Complaints of excessive or sadistic punishment by Brothers were taken seriously by the Provincial Council. These matters were discussed and Brothers given guidance and instructions on this point. Superiors and other Brothers would make complaints to the Provincials and in fact complaints had been made about the Superior of Tardun, Bruno Doyle, by a potential postulant who was also an old boy at Clontarf. Somebody was sent to investigate once the complaint had been received. Investigations into complaints by an absconder from Clontarf in the 1950’s were also made by the Child Welfare in Western Australia. The principal, Doyle, was reprimanded and advised to moderate his discipline practices.

2.10 The issue of excessive punishment or physical abuse has not been examined in any great detail in this advice, as Mr. Gross Q.C., has indicated that he feels it will not be a major issue in these proceedings.

2.11 By way of comment on the individual groups of documents listed above it must be said that the house annals, visitation reports, visitors books, documents and correspondence concerning the particular orphanages provide a good picture of the day to day life at the orphanages.

2.12 The inspection of these documents would be a major undertaking by the plaintiffs’ Solicitors. It would require a substantial input of time and resources and would take several weeks to complete.
2.13 One matter which does emerge from the inspection of this collection of documents is the lack of criteria by which documents are collected and kept. Some of the matters covered in these documents are obviously confidential matters and in fact during the inspection of documents it emerged that the Brother’s historian, Brother Barry Coldrey, had not in fact had access to all the documents which were relevant in this field. If it is felt by the Executives of the different Provinces in Australia that certain documents cannot for various and probably good reasons be provided to historians such as Brother Coldrey, the rationale in retaining such documents should be examined. Given this situation and the problems of confidentiality it may be necessary at some stage for the Order to review the way in which documents are organised and retained.

SECTION 3

3.1 Case studies of the documents in the archives concerning selected Brothers names in these proceedings have been made. Sufficient details of the documentary evidence available concerning Brother Salvius Marques, Brother Herbert Hansen, Brother Columbanus Beedon have been set out in Section 1.

BROTHER LAWRENCE HYACINTH MURPHY

3.2 Reference to the 1943 scrutiny book entry has already been made in Section 1. Murphy returned to Western Australia in 1944 and taught at Castledare until 1954. References are made to Murphy frequently in the annual Visitation Reports; in the 1947 Visitation Report he was described as the most effective man on the staff as far as the boys were concerned. In 1948 the Visitor observed "Brother Hyacinth has remarkable power in
controlling and training these diminutive children". In 1949 it was noted "Brother H. Murphy has an uncanny skill in getting the best out of the boys and his success shows that they will respond to a kindly but firm handling when once their confidence is won. He has a quiet, even and serious manner with them, seldom has he to use the strap, although they know it is always there if necessary. Though he is a coadjutor, he is engaged all day in school and then at night he controls the whole dormitory. He is thoroughly happy in his work and his self-sacrifice and devotion are admirable. I cannot imagine the place functioning without him." In May 1951 the Visitor described Murphy as having a "mesmeric influence" over boys. Further "wherever he was there was perfect calm and the fullest cooperation. He and Brother [REDACTED] followed the policy that the worst way to handle boys was to try to thrash them into submission". Murphy was described as having an uncanny power in the classroom and also out of it and in conclusion the Visitor stated "I was most impressed with the attitude of Brother Hyacinth". The picture drawn from these comments and especially from Murphy's avoidance of the use of the strap would hardly have suggested to the Executive tendencies of paedophilia.

3.3 Murphy was moved at the end of 1954 to Clontarf Orphanage under the Superiorship of Brother Bruno Doyle. The Visitation Report of Clontarf for 1955 which was carried out by Brother F.J. Levander is unremarkable. However, Brother Murphy was no longer in the Clontarf community in 1956. In an Affidavit Brother Doyle detailed the only occasion he recalled of a complaint of a Brother, interfering with a student; the Brother being Murphy. Murphy denied the allegation. The students involved were [REDACTED] and [REDACTED]. The Provincial, Brother Garvey, in Victoria was advised and
Brother Murphy was immediately removed from Clontarf and sent to Albany. Brother Murphy was then transferred to Christian Brothers College in Wakefield Street, Adelaide. Brother Murphy’s career from 1955 until his exit from the Order in 1980 or 1981 has been traced. There was no record in Western Australia, Melbourne or at Wakefield Street School concerning any allegation of interference of pupils against Brother Murphy. The present principal and immediate past principal of Wakefield Street have been questioned by Gerard Phillips concerning the existence of records or knowledge concerning Brother Murphy. Whilst there was nothing in the documentary material, Brother Burke has said that he recalled that there was some allegation made against Brother Murphy in the year 1970 or 1971 by some parents of boys at Wakefield Street and he, Brother Burke, immediately referred the matter to the Provincial. He has no recollection of the matter after that as he had no further involvement in it. The archivist in Western Australia has advised that the Provincial Council Minutes, records and Brother Murphy’s file do not record any dealing with Brother Murphy in the early 1970’s. The only document in existence in the archives in Australia concerning Brother Murphy and any allegation of sexual impropriety is a scrutiny book extract for 1943. It was noted in the 1944 Castledare annals that Brother Hyacinth Murphy replaced Brother O’Neil at the Castledare Orphanage. Brother Laurence Hyacinth Murphy made his final profession at Strathfield in 1945. In the Visitation Report for the community at Whyalla as at 6 June 1971, Brother Murphy was described as having settled down since his transfer to Whyalla last October (1970). The report said that Murphy was making a serious attempt to update his teaching techniques and to adapt to the requirements of modern day educational trends. The Visitor commented that he thought Brother realised and
appreciated the sensitive treatment of this problem by the Provincial Council and he had been given excellent conditions under which to rehabilitate. From the contents of the report, it appears obvious that the rehabilitation is concerned with his professional teaching techniques. There are no documents in the Christian Brothers records in Perth concerning Brother Murphy in 1970 regarding the reasons for Brother Murphy’s transfer from Wakefield Street to Whyalla in 1970.

BROTHER LAMBERT WISE

3.4 In a Visitation Report for Castledare 12-15 October 1952, a Visitor, Brother Duffy noted that Brother Lambert Wise "is not doing much work in the fields. He seems to spend most of his time driving the truck. The Superior is not satisfied with what he is doing but yet does nothing to improve matters. He has been sending boys to Brother Lambert’s room for attention to bruises and similar complaints. This is dangerous and it should be unnecessary with the Nuns available. I told him to make a safer arrangement." This was a clear example of the Visitor having observed that a dangerous practice had commenced directing the Superior and Brother Lambert to cease it and make better arrangements. There were no allegations of interference against Brother Wise and the Executive through the Visitor was ensuring that prudent practices were set up at the orphanage thereby avoiding potentially dangerous situations.

3.5 On 7 January 1954 the Assistant, Brother P.L. Duffy wrote to Brother Carroll to warn the Superior of Castledare, Brother O’Doherty of problems regard Wise. "I think you would be well advised to let Brother L. O’Doherty know, during the next visitation, of the
The desirability of keeping Brother Lambert Wise away from all supervision of the boys except perhaps when they are in the field. His relations with boys have given rise for concern, before, and for everybody’s sake, the greatest care should be taken to protect both him and the boys."

3.6 The Castledare house annals note that on Christmas Eve 1955 Brother Lambert Wise was transferred to Melbourne and was ordered to leave as soon as possible, having been at Castledare for four years. In the Melbourne archives there is a letter from Brother Clancy in Dublin to the Provincial in Melbourne dated 27 August 1957. The letter states "I notice that Brother Lambert Wise is a member of the teaching staff at Rostreavor, a boarding college (in South Australia). Perhaps you do not know that there was some reason in the past to believe that contact with boys constituted a danger to him. If the weakness really was there, it is the kind of thing, unfortunately, that does not die easily, but has the habit of reasserting itself. I would suggest a word with Brother Leonard, your Provincial bursar, if you have not already so. The only reason for mentioning it now is lest you may not be aware of the position because I have good reason to know what unfortunate things have occurred with others in the past."

3.7 There is nothing specific in the documents concerning any allegation made against Brother Wise. It is certainly open to inference from Brother Clancy’s letter and from Wise’s rapid departure on Christmas Eve 1955 that some complaint may have been made concerning Wise. This case illustrates too the possibility that the Superior in the place where Brother Wise was sent was unaware of why he had been moved.

3.8 These few documents available on Brother Wise
illustrate the major problems involved in investigating and determining what occurred in these cases nearly 40 years ago. It is almost impossible to determine now whether there were charges by a boy against Brother Wise, and if so what the alleged interference involved, what sort of investigation took place, what evidence there was and whether the charges were denied. The documentary picture is inadequate but there is nothing in the material that is direct evidence of actual interference by Brother Wise nor that the Executive responded inadequately or inappropriately in the situation that arose at Castledare.

BROTHER PAUL KEANEY

3.9 Keaney emerges from the documentary material (and there is much mention of him) as a very colourful and strong character with enormous personal charisma. There are many documents which reflect positively on Keaney and a number which are critical of his management, his ambitious building projects and tendency to punish boys severely. In the 1941 Visitation Report, the Consultor wrote "the director has the defect of losing his head when excited and of expressing himself unsuitably from our standards, before the boys. Notwithstanding his angry outbursts, he was popular with the boys". A letter to the Superior General from Brother Doyle dated 8 January 1946 was also critical of Keaney. Brother Doyle visited Western Australia in 1944 and 1945 and noted that the orphanage was constantly inundated with visitors and that there were lots of parties with alcohol. He related how on one night one of the boys at the institution was ushered into a room in which there was a naked woman who was too drunk to know her state. In Brother Doyle's opinion the boys also worked too long. He also informed the Superior General that Keaney
transferred the Brothers who opposed him. Brother Keaney was transferred from Bindoon in early 1945 but returned in early 1948.

3.10 A somewhat different view of Brother Keaney's management was given by Dr. E.M. Shang, Senior Medical Officer of Schools to the Secretary for Lands in a report dated 25 February 1948:

"Brother Keaney certainly goes out of his way in an endeavour to make life happy for the children even although he naturally expects obedience and has good discipline among them. Nevertheless over all the years I have been associated with him and his work with boys, I have never yet come across any cases of repression amongst boys, in fact the reverse. The impression I have always had when in boys' institutions under Brother Keaney's control is that whilst boys worked moderately hard (that is as hard as you could get any boys to work) they did it happily and willingly."

"My own feeling about Brother Keaney is that he has such a good influence on boys that I would like to see him in charge of a large inter-denominational immigration home where his influence could be given a much larger field than is at present possible."

3.11 Whilst there are documents which give credence to claims of excessive punishment by Keaney there are none that suggest he ever interfered with boys or was not alert to problems of sexual abuse. It is evident that he tended to distrust allegations made by the boys, preferring to rely on what the Brothers told him.

3.12 One incident which is documented is the request by Keaney to the Provincial requiring that Brother Boulter be changed in 1950. Brother Keaney had required Brother Boulter's services in 1948 for Bindoon as he was a skilled tradesman and the Provincial had acceded to the request. Brother Boulter had arrived at Bindoon in 1949. Brother Keaney's letter is vague but he appears
concerned about Brother Boulter’s relationship with a particular boy and that possibly an unhealthy relationship had developed between Boulter and another staff member. The Provincial Council did not take Brother Keaney’s hint; relations between the Executive at Strathfield and Brother Keaney were poor. The Consultor J.S. Tevlin wrote to Brother Keaney on 16 September 1950. "How was it you pressed so steadily for the coming of Brother Boulter to Bindoon if you knew of the disadvantages of having him there? Your statement that you do not consider it a "healthy thing" that he and Brother S. should be in touch does not enlighten us sufficiently, as our judgment should have an opportunity of functioning regarding the evidence you can adduce as well as yours. I know definitely from examples happening under your notice, and within my own hearing how your liking and disliking a man influences your deductions even as regards harmless remarks. I do decidedly think that you allow your personal feelings to sway your dispassionate judgment. I can quote examples. Your sincerity of purpose is clouded by your prejudice for the time being. You doubtless believe yourself but I do not consider there is full reason for my believing your deductions are correct."

3.13 On 26 September 1950 Brother Keaney replied to Brother Tevlin supplying further details of the matter. A boy of "dangerous character" had made allegations of misconduct against Brother Boulter. Since he could not transfer the Brother, Brother Keaney said he had transferred the boy, presumably to Tardun. He claimed he could not assess the truth of the boy’s allegations but such charges could damage the good name of the congregation. This incident is fairly representative of the relationship between Paul Keaney and the Executive in Strathfield. However, it does illustrate his awareness of problems or potential problems of sexual
abuse and it could be argued that at the time transferring the boy out of the school was an appropriate response.

3.15 In 1950 Brother REDACTED was Superior at Castledare Orphanage. Brother Joseph who was the Sub-Superior wrote to the Provincial on 7 December 1950 requesting a transfer. The reasons for the request were the violent temper of the Superior and his severe punishment of the little ones. He alleged that the Superior lost self-control when inflicting corporal punishment and it was noted that some boys had black and blue marks all over the body as well as welts, some had swollen lips and bleeding noses, having been knocked over by being slapped in the face and then punished whilst on the ground. Brother Joseph also related reports that boys had been taken to the shower room and slapped whilst completely naked. Brother Joseph said he could not verify those reports but had reason to believe them as true. The 1950 Castledare Visitation Report relates the general problems and the lack of harmony in the community and neither Brother REDACTED nor Brother Joseph remained at Castledare in 1951. Allegations of sexual abuse by Brother REDACTED have been made in these proceedings but there are no documents in the archives which indicate that Brother REDACTED sexually abused boys. It is possible that such allegations relate to the slapping of naked boys as outlined above. The Executive in this instance acted promptly after it received the report from Brother Joseph. It also made clear through its visitor, Brother S.R. Young, that certain forms of punishment were unacceptable even granted that boys were "out-of-control".
3.16 The only documentary material concerning Brother Boulter in this area has been referred to above in the sub-section on Brother Keaney. There is nothing in the materials from the archives which suggests any complaint of sexual interference involving boys by Brothers Dick, Moore, or Dawe, despite the fact that these Brothers have been named as offenders repeatedly in the current proceedings.

CONCLUSION

4.1 The key question to be considered is not whether there was actual abuse at these orphanages but whether the response of the Executive to the complaints and reports of sexual abuse was reasonable. Obviously more general matters such as the structure of the Order, supervision of Brothers and the procedures for dealing with complaints are also relevant.

4.2 It must be kept in mind that the attitudes in society and resources available in the period investigated, that is 1920-1960, were vastly different to those today. The Order was primarily concerned with the need to provide Catholic education for boys and there was a preoccupation with the problem of ensuring that there was sufficient Brothers available to staff schools.

4.3 Knowledge of the damage caused to children by sexual abuse was also very limited. It was thought that no real damage would occur to boys in the minor cases where Brothers had fondled or embraced boys. Sexual abuse was seen as immoral conduct, and not as a psychiatric issue. It was only in the 1960's that psychiatrists were employed to treat Brothers who had abused boys.
4.4 The inspection of the archives has revealed that while certain cases were documented, others were referred to only briefly and one cannot discount the possibility that some complaints were only dealt with orally. In nearly all of these cases, given the incomplete documentary picture, it is difficult now to determine what the Executive did in terms of investigation and subsequent response. The lapse of time and varied degree of documentation of complaints leads one to the conclusion that it is now almost impossible to determine whether the Executive were negligent in various matters following complaints of sexual abuse. The Executive certainly seemed to be unaware of many matters which have only been alleged in recent years. Their response to other matters which had been reported, although variable, was probably not unreasonable given the circumstances of the times. The majority of these matters are certainly defensible on the basis of the documentary material which has been inspected.

CHAMBERS
25 September 1995

C. A. Rimmer