

HGH:VV

13 May 1996

PRIVATE & CONFIDENTIAL

Messrs Slater & Gordon

Solicitors

DX 229 MELBOURNE

Attention: Mr Peter Gordon

"Without Prejudice"

Dear Sir

**RE: PROCEEDINGS IN SYDNEY AND MELBOURNE AGAINST THE TRUSTEES
OF THE CHRISTIAN BROTHERS**

We refer to previous discussions in relation to settlement.

We reiterate the following legal matters in connection with the Sydney and Melbourne "Western Australian" cases -

1. Cases brought in respect of allegations prior to the proclamation of the Roman Catholic Church Communities Lands Act 1942 must fail.
2. Cases in respect of allegations of non sexual abuse must in our view fail in respect of the Statute of Limitations even if they survive to the stage of an Extension Application.
3. Remaining cases confront significant immediate and potentially fatal difficulties before Levine J in relation to:-
 - (a) The Summons into Statement of Claim amendment issue.
 - (b) Cross vesting of the Statement of Claim.

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- (c) Limitations extension - see Judgment of Master Malpass in Trustees of the Marist Brothers and Rodney Stinson, unreported, 9/1995.
4. We enclose herewith copies of indentures in relation to the six lead Sydney Plaintiffs and the Melbourne claim of Robert Harrison. The Defendant was not the legal custodian of the children. The Defendant not having any responsibility "in locus parentis" the claim for equitable damages must fail. We would refer you also to the Immigration (Guardianship of Children) Act, 1946 which has the effect after delegation from the Commonwealth of making the State of Western Australia the non-delegable legal guardian of all migrant children.
5. Finally, each and every case against the Body Corporate created pursuant to the Roman Catholic Church Communities Lands Act 1942 (Note the amendment to that Act in 1986) confronts the fact that the relevant statutory body corporate is not liable in tort. Refer to:-
- (i) Judgment of Cole J A in the New South Wales Court of Appeal in DJ and Ors v Trustees of the Christian Brothers and Anor., unreported,.....1995 in respect of a Western Australian Statute which was in its terms similar to the NSW Act prior to the 1986 amendments.
 - (ii) The preamble to the 1942 Act.
 - (iii) The Parliamentary debates in relation to the 1986 amendments and in particular the following assertions:-
 - ♦ Legislative Assembly - The Honourable Terry Sheahan - "The third amendment concerns the role of the bodies corporate created under the Church legislation... In addition to activities of a purely religious nature, the Church carries on many and varied activities of a charitable or educational nature on its land. Such activities include a large number of schools, welfare organisations, homes for the aged... These activities are mainly carried on by the Church on land that is vested in its

body corporate. However there is no specific power in the Acts to enable the activities to be conducted by, or in the name of, the body corporate.

The amendments will permit a body corporate of a diocese to have the power to carry on and conduct such activities on behalf of the Church. These will enable it to carry out the various educational, welfare and other charitable activities of the Church as a body corporate with perpetual succession."

- ◆ Legislative Council - The Honourable Deidre Grusovin - "In addition to activities of a clearly religious nature, the Church carries on many and varied activities These activities are mainly carried on by the Church on land that is vested in its Body Corporate. However, there is no specific power in the Acts to enable the activities to be conducted by, or in the name of, the Body Corporate... These measures will enable the Body Corporate to carry out the various educational, welfare and other charitable activities of the Churches Body Corporate with perpetual succession. Such a Body Corporate would be capable of entering into contractual obligations, being sued and suing in its own name..."

6. Apart from these legal issues there are clearly substantial factual and medical disputes to be litigated. Whether individual Plaintiffs suffer from psychological states so as to give rise to any worthwhile entitlement of damages or to justify an extension of time is clearly in issue.
7. The reports of Dr Rod Milton whom, we are confident, will be accepted by the Court on matters in which there is any conflict with Drs Quadrio and/or Phillips.

Any settlement that might be achievable herein will need to reflect substantial compromise on the part of your clients in the light of their legal position, the Costs Orders that are currently outstanding in favour of Christian Brother Defendants and

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the very substantial resources that unfortunately the Christian Brothers have applied towards the defence of this litigation (which was brought without warning) - resources that the Christian Brothers could have applied to assist ex-students in need.

We are instructed to indicate that the Christian Brothers Order would consider settlement on the following basis:-

1. The establishment of a fund in a sum not exceeding \$3.00 million to be administered by an independent board. The board may include representatives of Plaintiffs and/or your firm and representatives or nominees of the Christian Brothers. The fund is to provide essentially non cash assistance to those ex-students making application within a three month period of establishment of the fund on an individual needs basis. By non cash assistance we mean the expenditure of money to secure help on an individual need basis such as:
 - ◆ Counselling
 - ◆ Rehabilitation/Re-training
 - ◆ Literacy classes.
 - ◆ Family reunification
 - ◆ Transportation assistance
 - ◆ Short term accommodation assistance
2. The fund to be promoted and supported by all Plaintiffs and the Christian Brothers for donations in expectation that contributions will provide a further benefit to those in need.
3. The proceedings in Sydney and Melbourne to be terminated by means of a verdict in favour of the Defendant.
4. An amount to be paid in relation to the costs and disbursements incurred by the Plaintiffs in respect of the litigation - \$750,000.00.
5. A single joint press release to be prepared and issued in relation to settlement.

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We have been informed by the Solicitors for the Archbishop and the Bishops that the cost orders made in their favour are not to be interfered with by the settlement.

We look forward to discussing this matter with you when convenient and note that settlement will be conditional upon agreement being reached with the Health Insurance Commission as regards the position with compliance with or waiver from compliance with the provisions of the Health & Other Services (Compensation) Act 1995 which came into effect on 1 February 1996.

Yours faithfully
CARROLL & O'DEA
Per: