

## DEED OF RELEASE

**THIS DEED** is made on the 20th day of November 2009

**PARTIES:**

**RAPHAEL ELLUL**

of **REDACTED**

(" Releasor")

and

**TRUSTEES OF THE CHRISTIAN BROTHERS (ABN 64 066 939 786)**

a Body Corporate under the Roman Catholic Church Communities' Lands Act 1942 (NSW) of 2 Thames Street, Balmain, in the State of New South Wales

(" Body Corporate")

and

**BROTHER VINCENT FRANCIS DUGGAN**

in his capacity as Province Leader of the Oceania Province of the Congregation of Christian Brothers of 131 Queens Road, Nudgee, in the State of Queensland

(" Institute")

**BACKGROUND:**

- A The Releasor has made the allegations set out in Clause 1 of this Deed against the Body Corporate and/or the Institute.
- B The Releasor, the Body Corporate and the Institute have agreed to settle the claims on the terms set out in this Deed.

**OPERATIVE PROVISIONS:****1. Allegations**

1.1 The Releasor alleges that:

1.1.1 he was in the care of the Christian Brothers as a resident at C.B.A.S. Tardun in Western Australia between 1960 and 1966.

(“the home”);

1.1.2 during his time at the home he suffered from lack of education and was physically and emotionally abused by Brothers Bernadine Thomas and Brendan Kelly and sexually abused by Patrick Maurus Synan, and further that as a result of such an act he has sustained loss, damage and injuries and he may require specialist counselling and/or other therapy.

(“the claims”);

1.1.3 all loss, damage and injuries alleged to have occurred whilst in the care of the Christian Brothers have arisen out of the allegations in the claims;  
and

1.1.4 the loss, damage and injuries were caused or contributed to by the Body Corporate and/or the Institute.

## 2. Settlement

2.1 In consideration of the Releasor's promises set out in this Deed, the Body Corporate and the Institute agree to pay the Releasor the settlement amount of \$35,000.00 (thirty five thousand dollars) inclusive of all costs and disbursements. ("the agreed sum").

2.2 The Releasor acknowledges that the agreed sum is paid:

- 2.2.1 for and on behalf of the Body Corporate and the Institute;
- 2.2.2 in full extinguishment of his rights against the Body Corporate and the Institute; and
- 2.2.3 subject to deduction of any amount so required pursuant to the provisions of the Health and Other Services (Compensation) Act 1995 (Cth) or any related legislation or any social services (Centrelink) legislation of the Commonwealth of Australia.

2.3 The Institute will cause the payment of the agreed sum to be made to the Releasor within 28 days of the return of this Deed executed by the Releasor to the solicitors for the Body Corporate and the Institute or other nominated representative.

2.4 The Releasor undertakes and agrees to pay out of the agreed sum any moneys repayable by the Releasor to any person or body whether in respect to social services, sick leave payments, make up pay, accident pay or any charges or moneys assessed under the *Health & Other Services (Compensation) Act 1995* (Cth) and any social services (Centrelink) legislation of the Commonwealth of Australia and any other relevant legislation.

### **3. Release**

- 3.1 The Releasor for himself, his executors, administrators, dependants, heirs and assigns hereby releases and forever discharges the Body Corporate and the Institute from any claim, proceeding, action, cause of action or charge that he may have or may have had against the Body Corporate or the Institute with respect to the claims.
- 3.2 The Releasor acknowledges having been informed of his right, and having been allowed reasonable time, to seek independent legal advice prior to his signing of this Deed of Release.

### **4. No liability and bar to further claims**

- 4.1 The Releasor acknowledges and agrees that:
- 4.1.1 he will make no further claim for damages, expenses, treatment costs or compensation;
  - 4.1.2 nothing in this Deed constitutes an admission of liability by the Body Corporate or the Institute in respect of the claims;
  - 4.1.3 this Deed may be pleaded by the Body Corporate and the Institute as a bar to any claim, action, cause of action, charge or any other proceeding commenced against them or any other person;
- arising out of or in connection with the acts, facts or circumstances constituted by the claims.

### **5. Jurisdiction**

- 5.1 This Deed is governed by the law of New South Wales and each of the parties irrevocably submits to the jurisdiction of the Courts of New South Wales.

## 6. Amendment

6.1 This document may only be amended by another agreement in writing which is signed by all of the parties.

## 7. Entire Agreement

7.1 This Deed constitutes the entire agreement between the parties and supersedes any prior agreements made in any form between them.

## 8. Definitions and Interpretation

In this Deed the following definitions apply:

8.1 **“Christian Brothers”** includes:

- (a) any member of the Congregation of Christian Brothers;
- (b) the Body Corporate; and
- (c) the Institute.

8.2 **“Congregation of Christian Brothers”** means the pontifical institute founded by Edmund Rice and approved by the Holy See known as the Congregation of Christian Brothers.

8.3 **“Congregation Leader”** means the Congregation Leader for the time being (currently Brother Philip Pinto) of the Catholic religious institute known as the Congregation of Christian Brothers.

8.4 **“Province Leader”** means the Province Leader for the time being (currently Brother Vincent Francis Duggan) of the Province.

8.5 **“Province”** means the Oceania Province of the Congregation of Christian Brothers, an unincorporated association, or any successor Province as may be determined from time to time by the Congregation Leader.

8.6 **“ Body Corporate”** means any or all of the following:

- (a) **Trustees of the Christian Brothers** and its administrators, successors, assigns, servants, agents, employees or contractors;
- (b) past and present members of the Province Leadership Teams of the Province;
- (c) past and present members of the Congregation of Christian Brothers; and
- (d) their executors, administrators, successors, assigns, servants, agents, employees or contractors.

8.7 **“ Institute”** means and includes:

- (a) the Province Leader;
- (b) past and present members of the Province Leadership Teams of the Province;
- (c) Edmund Rice Education Australia (an unincorporated association);
- (d) each and every past, present and future member of the Congregation of Christian Brothers;
- (e) their executors, administrators, successors, assigns, servants, agents, employees or contractors; and
- (f) each and every past and present member of the former Provinces of the Oceania Province of the Congregation of Christian Brothers and **any associated legal entity**.

EXECUTED AS A DEED this 25 day of NOVEMBER 2009

**SIGNED SEALED & DELIVERED**  
by the Releasor

) R. Ellul  
) .....  
Signature

in the presence of:

S. Solverson  
.....

Signature of Witness

SHEILA SALVONA  
.....

Print Name of Witness

**SIGNED by THE BODY CORPORATE** by its  
**Attorneys** in the presence of:

**TRUSTEES OF THE CHRISTIAN BROTHERS**  
**ABN 64 066 939 786** by its **Attorneys**:

.....  
*J. Hennessy*

Witness

.....  
*B. Brandon*

.....  
*P. Richardson*

Pursuant to General Power of Attorney dated 11 February 2008

**SIGNED SEALED AND DELIVERED** )  
by the said )  
**VINCENT FRANCIS DUGGAN** )  
in the presence of : )

.....  
*V. Duggan*

.....  
*P. Wehl*

Witness