



BACKGROUND

The WA Institutions Reconciliation Trust was established by Charitable Trust Deed (the "Deed") executed in August 1996 on behalf of the Christian Brothers as Founder and as Trustees by Barry MacKinnon (as Chairman), Peter McGowan (as appointee of Carroll & O'Dea) and Hayden Stephens (as appointee of Slater & Gordon).

The beneficiaries of the WA Institutions Reconciliation Trust are those former residents of Clontarf, Castledare, Bindoon and Tardun who were a party to the subject litigation and who have executed a Deed of Release undertaking not to commence or to seek to commence further proceedings against the Christian Brothers.

The maximum term of the WA Institutions Reconciliation Trust is 3 years from 30 June 1996.

The settled sum was \$3.5 million.

Clause 22 (m) of the Deed states, inter alia, that the WA Institutions Reconciliation Trust is to provide effective practical needs based help to injured ex-students on an individual basis pursuant to nominated categories of benefit and is not to be used for cash payments except in the limited circumstances of payments under the category of sexual abuse and in reimbursement of expenses incurred.

To 31 December 1998, payments made to or on behalf of beneficiaries of the WA Institutions Reconciliation Trust were:

<u><i>Benefit/Reimbursement</i></u>	<u><i>Amount paid</i></u>
♦ \$2,000 reimbursements	\$464,000.00
♦ Emergency relief	\$39,978.18
♦ Serious sexual abuse	\$1,489,750.00
Fees to obtain reports in support of claims	\$52,540.32
♦ Housing and accommodation	\$35,398.97
♦ Reunification travel expenses	
Reimbursements	\$232,382.52
Travel	\$145,872.60
♦ Alcohol and drug rehabilitation	\$2,728.00
♦ Current psychological therapy	
Beneficiaries	\$29,976.95
Spouses/children	\$5,584.00
♦ Current medication expenses	\$4,530.58
♦ Past therapy and associated expenses	
Reimbursements	\$73,191.56
♦ Transportation	\$40,539.70
♦ Employment - to establish a business	\$33,980.00
♦ Schooling expenses	
Reimbursements	\$4,200.00
Current	\$8,694.35
	\$2,663,348.73

Clause 29 of the Deed states:

"Clause 29 Winding Up - Duration of the Trust

(a) *It is the intention of the Founder that the purposes for which this Trust has been established shall be fulfilled within a maximum period of three years from 30 June 1996 and the Trust should be wound up at the earlier of:*

- (i) *The exhaustion of the Trust Fund;*
- (ii) *When the Trustees reasonably determine that the purposes of the Trust Fund have been fulfilled:*
- (iii) *Three years from 30 June 1996.*

Any surplus remaining in the Trust Fund on the winding up of same shall be returned to the Founder to be used by the Founder for the relief of hardship, poverty and distress amongst those persons who claimed to have been the subject of sexual and other abuse whilst in the institutions operated by the Founder within Australia".

As at 31 December 1998, the balance of funds held by the WA Institutions Reconciliation Trust was \$780,798.50.

The funds of the WA Institutions Reconciliation Trust have not been and will not be exhausted prior to 30 June 1999.

The Trustees have not determined that the purposes of the WA Institutions Reconciliation Trust have been fulfilled.

In these circumstances, the WA Institutions Reconciliation Trust will be wound up on 30 June 1999.

It is anticipated the surplus of funds held by the WA Institutions Reconciliation Trust at 30 June 1999 will be in the order of \$700,000.00.

RECOMMENDATIONS
FOR THE USE OF
THE SURPLUS FUNDS

1. **FUNDS BE SET ASIDE TO PAY FUTURE THERAPY NEEDS OF BENEFICIARIES OF THE WA INSTITUTIONS RECONCILIATION TRUST**

The amount paid by the WA Institutions Reconciliation Trust under the categories of current psychological therapy and current medication expenses, to 31 December 1998, totals \$40,091.53. This total represents expenses incurred by some 40 beneficiaries (or their spouses/children).

Most of the beneficiaries for whom these expenses were paid have ceased treatment. The WA Institutions Reconciliation Trust is currently paying treatment and ancillary expenses for 12 beneficiaries. Of these 12 beneficiaries, 10 are currently considered by their psychological advisers to require long term treatment.

The Trustees are concerned to ensure that therapy and ancillary costs ("therapy needs") of beneficiaries with long term needs will be met after the expiration of the WA Institutions Reconciliation Trust.

The Trustees are aware that counselling is available through CBERS. However, in addition to fees payable to psychologists/counsellors of the beneficiaries' choice, the WA Institutions Reconciliation Trust reimburses the ancillary costs of medication and travel necessary for treatment e.g. 25 cents per kilometer from the beneficiaries home to place of treatment and return. These costs can be a significant portion of a beneficiary's income, particularly if the income is a disability pension.

The Chairperson of CBERS was approached by the Manager of the WA Institutions Reconciliation Trust with a view to CBERS administering funds, set aside from the surplus, to pay the future therapy needs of beneficiaries of the WA Institutions Reconciliation Trust.

On 3 February 1999, the Management Committee of CBERS resolved not to agree to manage a separate fund for special people. The Chairperson of CBERS advised the Manager that to do so would be contrary to the ethos of CBERS which is to treat equally all former residents and students. CBERS does not want to be involved in or be seen to be involved in providing preferential treatment for those who were involved in the litigation. In any event, CBERS does not want to be the recipient of and be required to administer separate funds.

The Trustees do not believe that beneficiaries would want to make direct contact with the Christian Brothers, or a representative thereof, to request payment of their therapy needs.

|| **THE TRUSTEES RECOMMEND THAT A NEW TRUST BE ESTABLISHED.**

- The proposed parties are the same as the parties to the Deed which established the WA Institutions Reconciliation Trust i.e. the Christian Brothers as Founder and Barry MacKinnon, Peter McGowan and Hayden Stephens as Trustees. It is not proposed there be any additional Trustees.
- The proposed beneficiaries are those beneficiaries of the WA Institutions Reconciliation Trust deemed to require continuing long term treatment. They would be named in a schedule to the trust deed and are not expected to number more than 15.
- Benefits available under the new trust would be restricted to therapy needs but benefits under this category would be the same as those available from the WA Institutions Reconciliation Trust
- Regular reports from psychologists etc., would be obtained with respect to the beneficiaries' need for continuing treatment.
- The proposed term of the new trust is a maximum of 5 years from 1 July 1999. The new trust would be wound up earlier if its funds were exhausted or if the Trustees reasonably determined the purposes of the new trust had been fulfilled.
- The proposed settled sum is \$85,000.00. ?? //.
- It is proposed that administration be attended to by Barry MacKinnon, depending upon the volume of work involved. A fee would be charged for his services. Alternatively, a person would be employed by the new trust as administrator at a fee and on a basis to be determined by the Trustees.
- At the expiration of the new trust, it is proposed that the surplus of funds be paid to the Christian Brothers.

It is anticipated that costs associated with the drafting of the Deed of Trust to establish the new trust would be paid by the WA Institutions Reconciliation Trust prior to being wound up and that status as a charitable Trust would be sought from the Australian Taxation Office.

2. THE BALANCE OF THE SURPLUS BE DISTRIBUTED EQUALLY BETWEEN ALL SURVIVING BENEFICIARIES OF THE TRUST

An equal distribution of the balance of the surplus to all surviving beneficiaries (including those named as beneficiaries of the new trust) and whose current whereabouts are known to the Trustees, is recommended by the Trustees. It is the opinion of the majority of the Trustees that:

- The direct monetary payments provided for in the Deed payable to beneficiaries who were seriously sexually abused are inadequate and inequitable.
- Lack of provision in the Deed for any direct monetary payment to beneficiaries who were physically and/or emotionally abused and/or deprived of adequate education is inequitable.

If the surplus were equally distributed, each beneficiary would receive approximately \$3,000.00.

Pursuant to clause 29 of the Deed, the surplus is to be used *"for the relief of hardship, poverty and distress amongst those persons who claimed to have been the subject of sexual and other abuse whilst in the institutions operated by the Founder within Australia."*

The Trustees have at all times acted diligently and in good faith to ensure compliance with the terms of the Deed. They recognise that the provision in clause 29 for the use of the surplus cannot be ignored. They have examined the wording of clause 29 and are of the opinion that an equal distribution of the balance of the surplus would comply.

The beneficiaries of the WA Institutions Reconciliation Trust are members of the class of persons able to benefit from the surplus. The litigation was founded on claims of sexual and other abuse whilst in institutions operated by the Founder within Australia.

The amounts that have been paid by the WA Institutions Reconciliation Trust under the categories of emergency relief, housing and accommodation and transportation evidence that many of the beneficiaries have financial need. Nevertheless, the Trustees cannot say that the beneficiaries, in the main, require relief from *"poverty."*

However, *"hardship"* is defined as hardness of fate or circumstances; severe suffering or privation. *"Distress"* is defined as the pressure of pain, sorrow, anguish. (*The Concise Oxford Dictionary*).

It is the belief of the Trustees that the majority of the beneficiaries display elements of hardship and distress.

Some of the Trustees have had no personal communications with beneficiaries. However, they have been exposed to beneficiaries' hardship and distress through the content of beneficiaries' written communications, medical reports and information passed on by the Manager, the Chairman and Hayden Stephens, all of whom have had extensive dealings with many of the beneficiaries.

Clause 22(m) of the Deed states that the WA Institutions Reconciliation Trust is to provide *"effective practical needs based help on an individual basis."*

It is impossible for the Trustees to say that every individual beneficiary displays elements of hardship and distress. However, clause 29 states that the surplus is to be used *"amongst"* those persons as defined.

For these reasons, in the opinion of the Trustees, an equal distribution of the balance of the surplus amongst the beneficiaries would be equitable and in compliance with clause 29.