

- 1. Title:** **Protocol – Provision of Legal Assistance by the Congregation to Christian Brothers or Former Christian Brothers in Criminal Matters**
- 2. Applies to:** All brothers of the Christian Brothers Oceania Province
- 3. Geographic Application:** Province wide unless otherwise stated
- 4. Legislation/Regulation:** All applicable legislation/regulation
- 5. Guideline Statement:**
The purpose of this document is to provide guidelines for decisions by the Oceania Leadership as to the provision of legal assistance to Christian Brothers or former Christian Brothers in criminal matters.
- 6. Procedures:**
- 6.1 Christian Brothers
 - 6.2 Former Christian Brothers
 - 6.3 Stages of Assistance
 - 6.4 The Level of Assistance

6.1 Christian Brothers

Legal assistance will usually be provided by the Province if sought by a Brother on the basis that is set out below. This may mean that any provision is subject to certain conditions.

6.2 Former Christian Brothers

Legal assistance may be provided by the Province if sought by a former Christian Brother. Such assistance will not be provided if the relevant event alleged occurred after the person had ceased to be a Christian Brother. Where the event occurred whilst the person was a Christian Brother, in deciding whether assistance will be provided, the following matters will be taken into account:

- a) The person's service as a Christian Brother.
- b) The person's personal circumstances including their age, state of health, financial position and level of support from family and friends.
- c) The circumstances of the matter for which assistance is sought and the effect it could have on the person.
- d) The nature and extent of the assistance sought.

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Date Approved:	11 February 2016	Version:	1.0
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If assistance is provided it will be on the basis set out below. It may also be conditional on the person making some financial contribution having regard to their financial position and be subject to a ceiling.

6.3 Stages of Assistance

Where legal assistance is provided it will usually be on a staged basis with the position being reviewed after each stage. Broadly the stages are:

- a) Investigation and interview by the police.
- b) Attending the Magistrates Court in response to charges laid by police.
- c) The conduct of a committal hearing.
- d) Where the matter is determined as a summary matter in the Magistrates Court, the hearing and determination and any appeal to the County Court.
- e) Where the matter proceeds as an indictable matter, the preliminary proceedings in the higher court.
- f) The Trial and any plea hearing.
- g) Any appeal to the court of appeal.

6.4 The Level of Assistance

Prior to each stage the Oceania Province Leader will consider and determine the appropriate level of assistance to be provided and how that assistance can be best provided for that stage. This will take into account the circumstances of the matter including its seriousness and complexity and, if it is proposed to be contested, the merits of the defense or appeal in the case of an appeal. A financial ceiling may be placed on the assistance provided for a stage which could be reviewed if circumstances changed. In the case of a former Christian Brother the Oceania Province Leader will determine any financial contribution that the person should make for any stage. The Province Leader reserves the right to withdraw or cease assistance at any stage if it considers such action is warranted.

7. Addendum to Protocol

The purpose of this Addendum is to amplify the Guidelines adopted by the Province and in particular Procedure 6.4 – The Level of Assistance.

TRIALS IN THE COUNTY OR SUPREME COURTS

- a) The Province will not provide assistance for such a trial if the charges can be heard and disposed of in the Magistrates Court unless there are compelling reasons why they should not be.
- b) The Province will not provide assistance for such a trial where it is considered there is no reasonably arguable defence to the charges. In such a situation if assistance is provided it will be limited to a plea of guilty.
- c) Where assistance for a trial is provided it may be limited to assistance to follow a specific defence argument or arguments or any other form of assistance considered appropriate in the circumstances.

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- d) Ordinarily, before deciding whether assistance should be provided for a trial, the Province Leader will require written advice from the accused's counsel on the merits, in particular the strength of the prosecution case, the defence case and whether there is a reasonably arguable defence. If the accused is not prepared to consent to such advice being provided assistance will not be provided for a trial.
- e) Where assistance is provided for a trial the level of assistance will be determined having regard to the nature and complexity of the trial and consequently the level of experience required for counsel and instructing solicitor.

8. Other Relevant Oceania Documents: Not applicable

9. Forms: Not applicable

10. Context:

Policies and guidelines of the Christian Brothers Oceania Province are the reasonable attempt by the Christian Brothers Oceania Province to interpret the legal and moral requirements applying to the matter they address. Where there is any discrepancy between legislation and any policies or guidelines of the Christian Brothers Oceania Province, the legislation will prevail to the extent of any inconsistency.

The Christian Brothers Oceania Province also reserves a right of discretion in relation to the implementation of policies or guidelines as the Christian Brothers Oceania Province may deem appropriate. The Christian Brothers Oceania Province will act reasonably in applying such discretion. In the event there is any dispute in relation to the use, or otherwise, of such discretion, the Province Leader retains the ultimate right to decide on such matter.

The Christian Brothers Oceania Province confirms that its policies and guidelines are not incorporated into any employment agreement/contract and, as such, the terms of the Christian Brothers Oceania Province's policies and guidelines do not form terms of employment.

Members of the Christian Brothers Oceania Province community are expected to take reasonable steps to inform themselves of the Christian Brothers Oceania Province's policies and guidelines, and ensure that conduct is appropriate as required by these policies and guidelines. Failure to abide by the Christian Brothers Oceania Province's policies or guidelines may result in the Christian Brothers Oceania Province taking relevant action for misconduct.

11. Definitions: Not applicable

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