

FORM 1

FDN

IN THE DISTRICT COURT OF SOUTH AUSTRALIA

No 1867 of 2012

BETWEEN:

LB

BY HIS NEXT FRIEND

LK

Plaintiff

and

CATHOLIC CHURCH ENDOWMENT SOCIETY INCORPORATED

First Defendant

and

CATHOLIC SPECIAL SCHOOLS INCORPORATED

Second Defendant

DEFENCE OF THE FIRST AND SECOND DEFENDANTS

Filed on behalf of the First and Second Defendants

Catholic Church Endowment Society Incorporated and Catholic Special Schools Incorporated

By

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Date and time of filing or transmission:



FORM 8

DEFENCE OF THE FIRST AND SECOND DEFENDANTS

In answer to the Statement of Claim dated 31 August 2012 (“**the Claim**”) issued by the Plaintiff, by his next friend the First and Second Defendants, Catholic Church Endowment Society Inc and Catholic Special Schools Incorporated, plead as follows:

1. They admit paragraphs 1, 2, 3, 4 and 9 of the Claim.
2. As to paragraph 5 of the Claim, the First and Second Defendants admit only that from 1986 until August 1991 the Second Defendant employed Brian Perkins (“**Perkins**”) as the School’s bus driver and part-time woodwork instructor.
3. As to the allegations contained in paragraph 6 of the Claim, the First and Second Defendants deny that they are vicariously liable for the conduct of Perkins (or any associates) as any alleged illicit conduct by Perkins was not conduct which was performed in the usual course of his employment at the School, and included alleged activities outside of school hours.
4. As to paragraph 8 of the Claim, the First and Second Defendants admit only that on 4 August 2003, Perkins pleaded guilty to five offences involving unlawful conduct with three students from the School, one offence of which involved the Plaintiff.
5. As to paragraph 10 of the Claim, the First and Second Defendants admit that Perkins has passed away, but do not know the specific date of his passing.
6. As to paragraph 11 of the Claim, the First and Second Defendants do not know and cannot admit the matters set out in that paragraph and say only that on 4 August 2003,

Perkins pleaded guilty to five offences involving unlawful conduct, one offence of which involved the Plaintiff.

7. As to paragraph 14 of the Claim, the First and Second Defendants deny those matters, and say only that on 4 August 2003, Perkins pleaded guilty to five offences involving unlawful conduct, one offence of which involved the Plaintiff.
8. As to paragraphs 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33 of the Claim, the First and Second Defendants will respond to the claims in those paragraphs, following medical review of the Plaintiff.

Particulars

- 8.1 At Trial, the First and Second Defendants will refer to and rely upon any Expert's Reports supplied to those Defendants.
9. As to paragraphs 35, 36, 37, and 38 of the Claim, the First and Second Defendants say that the Claim is statute barred and insofar as the Claim is made:
 - 9.1 in tort, as more than six years have passed since the alleged incidents, as pleaded by the Plaintiff, and as contained in the Claim, were alleged to have taken place, the First and Second Defendants rely upon section 35 of the *Limitations of Actions Act 1936* (SA);
 - 9.2 for a personal injury, as more than three years have passed since the alleged incidents, as pleaded by the Plaintiff, and as contained in the Claim were alleged to have taken place, the First and Second Defendants rely upon section 36 of the *Limitations of Actions Act 1936* (SA).
10. The First and Second Defendants deny that the Plaintiff is entitled to the relief claimed in the prayer for relief or any relief at all, and say further that:

10.1 In or around late 2003 and early 2004, the Plaintiff accepted the sum of \$100,000 (“**the Plaintiff’s Payment**”) from the Catholic Church, representing the First and Second Defendants, without any admission of liability to do so, and as a gesture of goodwill, pastoral support and assistance, to be set off, and in all respects credited as payment, against any award for damages, or other compensation in any legal proceedings which the Plaintiff may take against the First and Second Defendants in respect of any actual or alleged abuse, indecency or other tortious act against the Plaintiff at the instigation of Perkins between 1986 and 1991.

Particulars

10.2 The First and Second Defendants refer to and rely upon the Form of Acceptance executed by Mrs LK [redacted] as the lawful guardian of the Plaintiff on 19 November 2003 (“**the Acceptance**”);

10.3 The First and Second Defendants say that the Plaintiff’s Payment under the Acceptance was paid on terms set out in the Acceptance, that included, inter alia:

10.3.1 in accepting the Plaintiff’s Payment, the Plaintiff, or anyone claiming for or on behalf of the Plaintiff, was awarded damages (or other compensation), costs, interest (“**the Award**”) or other remedy in any legal proceedings they may take against the First and Second Defendants in respect of any actual or alleged abuse, indecency or other tortious act against the Plaintiff at the instigation of Perkins between 1986 and 1991, then the Plaintiff’s Payment will be set off

against and in all respects credited as payment or part payment of that Award, and may be pleaded in bar to recovery of an Award;

10.3.2 if the Award is more than the amount of the Plaintiff's Payment, the Plaintiff, or anyone claiming or on behalf of the Plaintiff, will only be entitled to recover from the First and Second Defendants the amount by which the Award exceeds the said Payment;

10.3.3 the Plaintiff's Payment was accepted without any admission of liability by the First and Second Defendants to make the said Payment to the Plaintiff.

11. Save and except that they constitute admissions, the First and Second Defendants otherwise deny the allegations set out in the Claim as if they were set out seriatum and specifically traversed.

Dated 23 November 2012

[Signed] 

Print Name: **Anna Louise McIntyre**

CERTIFICATE

This pleading is put forward in accordance with the instructions of the First and Second Defendants, Catholic Church Endowment Society Inc and Catholic Special Schools Incorporated, by Anna Louise McIntyre, who certifies that it complies with the rules concerning pleadings.