

L A W Y E R S



21 June 2001

Mr Keith Barker
 Ace Asia Pacific
 GPO Box 4065
 SYDNEY NSW 2001

Contact

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Partner

David Abernethy

Our reference

DJA/JPC/BRIS2923-7545873

Your reference

502-14-12701

Dear Sir

BRISBANE GRAMMAR SCHOOL - CLAIM BY FORMER STUDENTS

We have previously notified you of the prospect of a number of claims being brought against our client by former students, arising out of allegations of misconduct by the School's former School Counsellor, Kevin Lynch.

Reports in the media indicated that law firm, Shine Roche McGowan, acted for a number of these students. Proceedings were recently filed by that firm on behalf of those students. The proceedings have not yet been served.

Prior to instituting proceedings, Shine Roche McGowan provided us with general details as to the nature of the allegations made against Mr Lynch, but refused to disclose the identity of the particular former students or the years in which the misconduct was alleged to have occurred.

Following reports in the press that proceedings had been instituted, we conducted a Court file search to ascertain those details.

Proceedings have been commenced by Shine Roche McGowan on behalf of a total of 38 former students. The allegations of misconduct arise, in respect of different students, in the years between 1975 and 1989.

Insurance Company of North America, a predecessor to Ace Asia Pacific, was the School's public liability insurer from 1 September 1977 to 1 September 1979, and from 1 September 1982 to 1 September 1985.

Cigna Insurance, another predecessor to Ace Asia Pacific, was the School's public liability insurer from 1 September 1985 to 1 September 1986.

The claims in respect of which allegations of misconduct are alleged in the 1977;

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CCW.071.0397

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1978, 1979 school years, or the 1982 to 1986 school years are as follows:

- 1 [REDACTED] alleged misconduct in 1984 and 1985
- 2 [REDACTED] - alleged misconduct in 1985 and 1986 (royal Insurance on risk after 1 September 1986)
- 3 [REDACTED] - alleged misconduct in 1977 and 1978
- 4 [REDACTED] - alleged misconduct in 1978 and 1979 ((American International Underwriters, now American Home Assurance on risk after 1 September 1979);
- 5 [REDACTED] - alleged misconduct in 1984, 1985 and 1986 (Royal Insurance on risk after 1 September 1986);
- 6 BQD - alleged misconduct between 1980 and 1984 (AIU on risk 1 September 1979 to 1 September 1982).
- 7 [REDACTED] - alleged misconduct in 1985
- 8 [REDACTED] - alleged misconduct 1981 to 1985 (AIU on risk before 1 September 1982).
- 9 [REDACTED] - alleged misconduct in 1979 and 1980 (AIU on risk after 1 September 1979)
- 10 [REDACTED] - alleged misconduct in 1979 (AIU on risk after 1 September 1979)
- 11 [REDACTED] - allegations in 1982, 1983 and 1984 (AIU on risk prior to 1 September 1982)
- 12 [REDACTED] - alleged misconduct in 1984
- 13 [REDACTED] - alleged misconduct in 1984, 1985 and 1986 (royal Insurance on risk after 1 September 1986)
- 14 [REDACTED] - alleged misconduct in 1979, 1980 and 1981 (AIU on risk after 1 September 1979)
- 15 [REDACTED] - alleged misconduct on 1986 and 1987 (Royal Insurance on risk after 1 September 1986)



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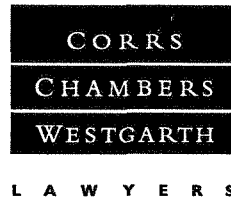
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- 16 [REDACTED] – alleged misconduct in 1986 (Royal Insurance on risk after 1 September 1986)
- 17 [REDACTED] – alleged misconduct in 1985
- 18 [REDACTED] – alleged misconduct in 1981 and 1982 (AIU on risk before 1 September 1982)
- 19 [REDACTED] – alleged misconduct in 1981, 1982 and 1983 (AIU on risk before 1 September 1982).
- 20 [REDACTED] – alleged misconduct in 1984
- 21 BQK – alleged misconduct from 1982 to 1986 (AIU on risk prior to 1 September 1982).
- 22 BQL – alleged misconduct in 1986 and 1987 (Royal Insurance on risk after 1 September 1986)
- 23 [REDACTED] – alleged misconduct in 1986, 1987 and 1988 (Royal Insurance on risk after 1 September 1986)
- 24 [REDACTED] – alleged misconduct in 1984
- 25 [REDACTED] – alleged misconduct in 1983 and 1984
- 26 [REDACTED] – alleged misconduct in 1978
- 27 BQS – alleged misconduct in 1986 and 1987 (Royal Insurance on risk after 1 September 1986)
- 28 [REDACTED] – alleged misconduct in 1983, 1984 and 1985
- 29 [REDACTED] – alleged misconduct in 1977, 1978 and 1979 (AIU on risk after 1 September 1979)
- 30 [REDACTED] – alleged misconduct in 1983
- 31 [REDACTED] – alleged misconduct in 1979, 1980 and 1981 (AIU on risk after 1 September 1979).

In addition, proceedings have been instituted on behalf of a [REDACTED] [REDACTED]. It is alleged [REDACTED] was a student at the School and that alleged misconduct occurred between 1977 and 1981. If so, Ace Asia's policy





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would respond for the period prior to 1 September 1979. However, the School cannot find any record of this person having been a student at the School at that time or otherwise.

Enclosed are copies of the following:

- 1 Informal submission forwarded to us by Shine Roche McGowan on behalf of their clients as a group;
- 2 Letter from Corrs Chambers Westgarth to Shine Roche McGowan in response dated 1 May 2001;
- 3 Letter from Shine Roche McGowan to Corrs Chambers Westgarth dated 11 May 2001; and
- 4 Statements of Claim in respect of each of the claimants referred to above.

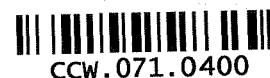
You will see from the general submission forwarded by the plaintiff's lawyers, they are interested in achieving a settlement on the basis of a lump sum payment in respect of all of the claimants, which would then be distributed between the claimants.

Leaving aside the issue of the merits of the claims (discussed below), any such proposal would require co-operation between the insurers whose policies respond to the various years during which misconduct is alleged. Further, such a proposal could not bind other potential claimants.

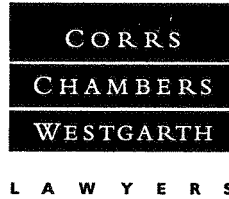
Those insurers are as follows:

- 01/09/77 to 01/09/79: Insurance Company of North America (now Ace Asia Pacific)
- 01/09/79 to 01/09/82: American International Underwriters (now American Home Assurance – AIG)
- 01/09/82 to 01/09/85: Insurance Company of North America (now Ace Asia Pacific)
- 01/09/85 to 01/09/86: Cigna Insurance (now Ace Asia Pacific)
- 01/09/86 to 31/12/88: Royal Insurance

There is one claim relating to the 1975 year. We are still making enquiries as to the identity of the insurer for that year.



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There are also three claims which relate to the 1989/90 years, the insurer for which is also still being identified.

Limitation Period

The most substantial hurdle which these claimants must overcome in order to bring a claim is the limitation period which, in all cases, has long expired.

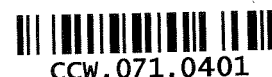
The Queensland Limitation of Actions Act makes provision for the granting of an extension of time to commence proceedings where a claimant can demonstrate a "material fact of a decisive character" coming to his/her attention within the twelve month period prior to proceedings being commenced.

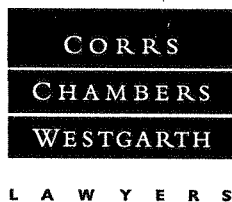
However, even if the Court is satisfied that threshold requirement has been met, leave to proceed should be denied if there is demonstrated actual prejudice, or a high likelihood of prejudice to the defendant's ability to defend the claims occasioned by the delay in bringing the action.

You will see from the exchange of correspondence between this firm and Shine Roche McGowan that we have sought explanations from them as to the basis on which an extension of time would be sought in each case. They have declined to provide such details.

Our preliminary view is that:

- (a) many of the claimants may well struggle to demonstrate to the Court that a material fact came to their attention within the twelve months prior to proceedings being instituted; and
- (b) even if they do so, the School can argue prejudice occasioned by:
 - (i) the death of Lynch. The alleged abuse occurred behind closed doors in one on one counselling situations. The only person who could dispute the allegations made by the plaintiffs is now deceased. The School is therefore greatly prejudiced in investigating whether the alleged incidents did occur, and if so, whether there are any extenuating circumstances which ought be considered; and
 - (ii) the complete absence of counselling records. Anecdotal evidence suggests Lynch kept counselling records in respect of students counselled, but these records were either destroyed or taken by him when he left the School's employ. They appear no





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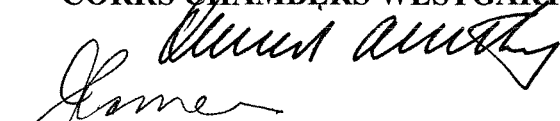
longer to exist and we know of no-one who could comment, even in a hearsay sense, on their contents.

In our view, a consistent attitude must be taken to all of the claims. Therefore, we are writing in identical terms to each of the insurers involved and suggest that, once each has reviewed the **enclosed** material, a meeting between ourselves and a representative of each insurer be convened to discuss an appropriate joint approach to be taken to the claims.

Please review the **enclosed** material and confirm you agree with that proposal.

Yours faithfully

CORRS CHAMBERS WESTGARTH


David Abernethy
Partner

encl

