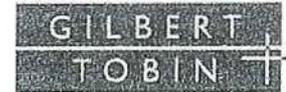


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L A W Y E R S

31 January 2014

Sydney

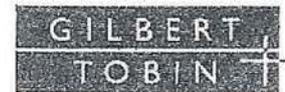
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Roderick Best  
 General Counsel  
 Royal Commission into Institutional Responses to Child Sexual Abuse  
 Level 17, Governor Macquarie Tower  
 1 Farrer Place  
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Dear Mr Best

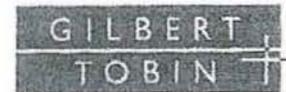
**Proposed hearings in relation to St Ann's Special School, Adelaide**

- 1 We act for Catholic Church Insurance Limited (CCI). We understand that the Royal Commission (**Commission**) is considering whether to conduct hearings in relation to St Ann's Special School Adelaide (**St Ann's**) commencing in March 2014. Our client wishes to state unambiguously that it has no objection to the Commission's review of the St Ann's matters and, in fact, considers that such a review is appropriate. However, CCI does have concerns about the timing of the Commission's hearings and their potential effect on civil matters.
- 2 As the Commission would be aware, there are a number of current civil proceedings in the District Court of South Australia in relation to matters concerning St Ann's (the **Civil Actions**), in which CCI is involved as an insurer. CCI has instructed us to provide the following information for the assistance of the Commission and ask it to reflect on this information in its deliberations on how to proceed in light of the Civil Actions.
- 3 The Civil Actions seek damages from certain school entities (the Catholic Church Endowment Society Incorporated and Catholic Special Schools Incorporated, together the **School Entities**) in relation to the conduct of a former employee of St Ann's, Mr Brian Perkins.
- 4 For the Commission's information, the Statements of Claim in the Civil Actions include allegations of negligence against the School Entities, including failures:
  - (a) to properly protect the students at the school;
  - (b) in the investigations of the sexual assaults by Mr Perkins;
  - (c) in informing parents of the allegations of abuse;
  - (d) to take steps to provide counselling and treatment for the plaintiffs from 1991;
  - (e) in relation to background checks prior to the employment of Mr Perkins; and
  - (f) in the development of appropriate policies, procedures and guidelines concerning the selection process of employees at the school.
- 5 The Civil Actions were commenced between July and September 2012 and are currently in pre-hearing stages. There is a possibility of a mediation being held in the next six months in at least one of the matters. A trial date has also now been allocated in one of the matters on 7 April 2015.



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- 6 CCI anticipates that the Civil Actions and the Commission's investigations will potentially traverse a number of the same issues of fact, including:
- (a) the facts and circumstances of the abuse;
  - (b) the employment of Mr Perkins;
  - (c) the steps taken by the Archdiocese of Adelaide to provide redress to the children who may have been affected;
  - (d) issues of proof and liability; and
  - (e) issues of quantum and assessment of damages.
- 7 Whilst we have no specific information as to the issues the Commission intends to investigate, we would expect that in addition to the criminal and policing aspects of the matter, the Commission may want to consider:
- (a) the facts and circumstances of Mr Perkins' employment and conduct;
  - (b) the duties and conduct of other individuals employed at St Ann's;
  - (c) the response of the school and Archdiocese following the incidents, including investigations of the incidents, and communications with parents;
  - (d) the provision of counselling and services to assist potential victims;
  - (e) the policies and protective measures in place at the time; and
  - (f) particular issues as to the causes and handling of the incident which arise in relation to the treatment of intellectually disabled children.
- 8 Given the broad nature of the Commission's inquiry, it is difficult to pinpoint those areas which could give rise to prejudice to the Civil Actions. However, we ask the Commission to consider the following:
- (a) material which has been produced to the Commission under the compulsion of notices served by the Commission could be used and made available to the other parties, which would otherwise be privileged in the Civil Actions. While we are aware of the legislative restrictions on direct use of that material, there is nevertheless a high risk that the plaintiffs in the Civil Actions will be advantaged by having had access to material which they would not otherwise be entitled to see at this stage;
  - (b) factual evidence heard before the Commission is likely to be directly relevant to the establishment of liability in the Civil Actions. For example, this could be the case if the Commission intends to explore the issues of Mr Perkin's employment, institutional knowledge, the effect on the children, issues of proof, or the institutional response; and
  - (c) if the Commission intends to explore the approach taken by the Church to provide ex-gratia payments to victims, and the process devised and adopted for the assessment of those payments, evidence may be heard which is directly relevant to issues of damages in the Civil Actions.
- 9 Finally, we appreciate that the Civil Actions will be heard by a judge, rather than a jury, which is a relevant factor in terms of any direct reliance on evidence in the Commission. However, our



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client has concerns that prejudice could nevertheless result from the effect of the manner in which the cases are brought before the court. If the Commission's investigation occurs before the hearing of the Civil Actions, the plaintiffs in the Civil Actions could have the benefit of seeing the School Entities' statements, documents and evidence, and being able to plan their litigation strategy accordingly. In this respect, the Commission's investigation carries the risk that it could affect the litigation strategy adopted by the plaintiffs, the evidence filed, and the likelihood of settlement.

- 10 CCI would be happy to hear from the Commission as to any procedural protections which might be adopted for this hearing, or any alternative timing for the hearing which might eliminate the possibility of prejudice to the Civil Actions.

Yours faithfully

**Gilbert + Tobin**

A handwritten signature in cursive script, appearing to read "Kate Harrison".

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