

FORM 1

Rule 102.02(1)(d)

F.D.N.

IN THE DISTRICT COURT OF SOUTH AUSTRALIA

No 848 of 2005

BETWEEN:

LD [ ] by his next friend LN [ ]  
Plaintiff

and

CATHOLIC CHURCH ENDOWMENT SOCIETY INCORPORATED  
First Defendant

and

CATHOLIC SPECIAL SCHOOLS INCORPORATED  
Second Defendant

**SECOND DEFENCE OF THE FIRST AND SECOND DEFENDANTS TO THE  
THIRD AMENDED STATEMENT OF CLAIM**

Filed on behalf of the First and Second  
Defendants

Catholic Church Endowment Society  
Incorporated and Catholic Special  
Schools Incorporated

By

O'Loughlins Lawyers  
Level 2, 99 Frome Street  
ADELAIDE SA 5000

Telephone:

08 8111 4000

Facsimile:

08 8111 4099

E-mail:

amcintyre@oloughlins.com.au

L1190

P9808

As agents for:

Colin Biggers & Paisley Lawyers  
Level 31, Rialto South Tower  
525 Collins Street  
Melbourne, Victoria 3000

Settled by:

Anna Louise McIntyre

Date and time of filing or transmission:



FORM 8

**SECOND DEFENCE OF THE FIRST AND SECOND DEFENDANTS**

In answer to the Third Amended Statement of Claim dated 13 December 2012 ("the Claim") issued by the Plaintiff, LD, by his next friend LN, 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:
  - 4.1 Perkins pleaded guilty to five offences involving unlawful conduct with three students from the School; and
  - 4.2 those offences did not include any offences against 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, and those offences did not include any offences against the Plaintiff.
7. As to paragraphs 17, 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

- 7.1 At Trial, the First and Second Defendants will refer to and rely upon any Expert's Reports supplied to those Defendants.
8. 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:
  - 8.1 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);
  - 8.2 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).

9. 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:

9.1 In or around late 2003 and early 2004, the Plaintiff accepted the sum of \$75,000 ("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

9.2 The First and Second Defendants refer to and rely upon the Form of Acceptance executed by LN  and NJ   as the lawful guardians of the Plaintiff in or around late 2003 and early 2004 ("the Acceptance");

9.3 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:

9.3.1 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;

9.3.2 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;

9.3.3 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.

10. 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: 8 January 2013

  
.....  
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 Incorporated and Catholic Special Schools Incorporated, by Anna Louise McIntyre, who certifies that it complies with the rules concerning pleadings.