

NICOL ROBINSON HALLETTS
LAWYERS
ESTABLISHED 1890

Our ref: REDACTED

29 March 2007

CK

REDACTED

By Express Post

Dear CK

The Church of England North Coast Childrens Home

If it is the case that your instructions are not to settle this matter informally then we of course need to advise as to what steps you need to consider next.

We would initially comment that of 41 clients very few have instructed us not to settle at this stage which we are now doing.

We are of the view as we have advised previously that there are significant obstacles more particularly in terms of limitation of actions in commencing litigation in this matter.

We have of course re-iterated that view to you, indeed in reviewing our file notes and letters we have stressed many times that limitation is a major issue in all cases.

The risk of pursuing a civil claim is significant and you may consider that the risks outweighs the potential for succeeding in such proceedings.

If we were to represent you in formal court proceedings then regrettably we could not continue to act on a speculative basis.

We have shown our commitment to this matter in terms of the amount of work we have undertaken and the amount of our fees that we have had to write off simply to get the matter to this stage.

It is the case in all matters such as these that if the Diocese will not pay more than they have offered then there is no alternative other than to accept or to litigate.

We are willing to consider pursuing litigation for you but would need to consider whether that should be on a part speculative basis or on a fully private basis, we could not however proceed on a fully speculative basis as we have done in these informal processes.

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We would need you to share the burden of costs with us if we are to continue

It is important therefore that we bring several matters to your attention

We first of all have to succeed on a limitation action, convincing the Court by way of, in effect, a mini trial that the Court should exercise its discretion in your favour, something it does extremely sparingly it has to be said.

The costs for proceeding to a limitation hearing and representing you would be in the region of \$10,000.00 to \$15,000.00.

We would also have to instruct Counsel and can expect a brief fee in the region of \$4,000.00.

The initial Court issue fee would be \$659.00.

We would need to attend the Court in New South Wales for the limitation hearing, as would counsel and we can expect that any such hearing may be in excess of one day. The costs of flights and accommodation would need to be met by you counsel would not agree to do so without at least those costs being paid in advance, realistically those costs would be in the region of \$1,500.00.

Therefore if we were to proceed on a part speculative basis, by not asking you to pay out fees as we go, then we would require monies on account of outlays in advance of between \$6,000.00 to \$7,000.00.

If we proceeded on a fully private paying basis then we would require the sum of \$6,159.00 plus \$2,000.00 on account of our fees.

We would invoice you on an interim basis when the costs of the work we do reaches the amount that we hold on account. We would not proceed to do additional work unless monies continued to be placed in our account in advance of work being undertaken.

Therefore before the hearing you would be paying something in the region of \$16,000.00 to \$27,000.00 if we were to act on a private paying basis.

If you succeeded on the limitation point then there would be a chance that the Church would negotiate further, they may not.

If they didn't negotiate then the next step would be to proceed to a Trial of the matter, this would involve arguing before the Court that the Diocese was legally liable. This involves a consideration of various Acts of Parliament and would require the Court to set new precedent. Again, it is our duty to advise you that those are far from straightforward issues. We believe it is likely that the matters would eventually end up being heard after appeals in the High Court.

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We would then have to argue the level of damages that you should be entitled to but again that is a matter ultimately for the Court.

We would anticipate that the matter would be listed for, conservatively, a two day trial and the costs of getting to trial and including the trial could be in the region of a further \$20,000.00 to \$30,000.00.

Should you succeed then the Court would award costs to you but these would not cover all of your costs and may only meet some 25% or thereabouts.

If you lose at any stage whether that be at a limitation hearing or the final hearing then the Court, in all probability, will order costs against you and you would have to meet the Diocese legal costs for the proceedings which could be in the region of \$20,000.00 to \$30,000.00, it could be more.

We would also advise that the Diocese have confirmed that if the present offer is not accepted then they have instructed their solicitors not to respond to any further enquiries from those not settling unless a write is issued.

These are all of course extremely serious considerations that you will need to weigh and if we can explain further then please do not hesitate to telephone or write alternatively we can of course meet in person to discuss.

Yours faithfully
NICOL ROBINSON HALLETTS
per:



SIMON HARRISON
Partner

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