

DATED

1996

BETWEEN

JOHN HENNESSEY

The Release

TRUSTEES OF THE CHRISTIAN BROTHERS

The NSW Body Corporate

TRUSTEES OF THE CHRISTIAN BROTHERS (WA) INC

The WA Body Corporate

AND

BROTHER ROBERT JULIAN MCDONALD

Brother Julian

DEED OF RELEASE

CARROLL & O'DEA

Solicitors

111 Elizabeth Street
SYDNEY NSW 2000

DX 183 SYDNEY

Tel: 02 232 2133

Ref: HGH:GMP

THIS DEED made on the _____ day of _____ 1996

BETWEEN: **John Hennessey** of **REDACTED** in the State of New South Wales (hereinafter called "the Releasor") of the First Part

AND: **TRUSTEES OF THE CHRISTIAN BROTHERS** of **REDACTED** in the State of New South Wales, a body corporate under the Roman Catholic Church Communities' Lands Act 1942 (NSW) (hereinafter called "the NSW Body Corporate") of the Second Part.

AND: **TRUSTEES OF THE CHRISTIAN BROTHERS (WA) INC** of **REDACTED** in the State of Western Australia, a body corporate under the Associations Incorporation Act (WA) 1987 (hereinafter called "the WA Body Corporate") of the Third Part (which New South Wales and Western Australian Body Corporates are hereinafter also referred to as "the Bodies Corporate").

AND: **BROTHER ROBERT JULIAN MCDONALD ("BROTHER JULIAN")** of **REDACTED** in the State of New South Wales in his capacity as:

- (a) Provincial of the St Mary's Province of the Congregation of the Brothers of the Christian Schools of Ireland an unincorporated association;

and on behalf of:

- (b) his predecessors and successors in title or at law;
- (c) all members of the Congregation of the Brothers of the Christian Schools of Ireland (living or dead) present or past;

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(d) the Provincial of the Holy Spirit Province of the Congregation of the Brothers of the Christian Schools of Ireland, an unincorporated association, and on behalf of his predecessors and successors in title or at law;

and

(e) the Provincial of the St Patrick's Province of the Congregation of the Brothers of the Christian Schools of Ireland an unincorporated association and on behalf of his predecessors and successors in title or at law (hereinafter collectively called "the Christian Brothers") of the Fourth Part.

RECITALS

- A. The Christian Brothers were involved in the operation of four institutions in the State of Western Australia known as Tardun, Clontarf, Castledare and Bindoon which institutions are hereinafter referred to as "the Institutes".
- B. The Releasor alleges that while he was a resident or student at one or more of the four Institutes he was unlawfully sexually and/or psychologically and/or physically assaulted or abused by a member or members of the Christian Brothers, a resident or visiting chaplain or priest, a volunteer or employee or other lay person (these allegations hereinafter referred to as "the Claims"). The Releasor alleges that as a result of the Claims he has suffered loss and damage.
- C. The Releasor has commenced or has foreshadowed the commencement of proceedings in relation to the Claims inter alia on the basis of an allegation of negligence, breach of statutory duty and/or breach of fiduciary duty on the part of the Christian Brothers and/or the NSW Body Corporate and/or the WA Body Corporate and each and all of them. The Releasor claims or will claim damages, exemplary or punitive damages, medical expenses, equitable compensation, loss of income and costs.

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- D. The NSW Body Corporate was incorporated under the Roman Catholic Church Communities' Lands Act 1942 (NSW) and the WA Body Corporate was incorporated under the Associations Incorporation Act 1987 (WA) for certain purposes.
- E. The Releasor has alleged that the Bodies Corporate, either or both of them, Brother Julian, the Christian Brothers and all individual members of the Christian Brothers from time to time, are liable to him in respect of the Claims.
- F. The NSW Body Corporate, the WA Body Corporate and the Christian Brothers do not admit and in fact deny any wrongdoing having been committed either by themselves or at all or other members of the Christian Brothers or employees thereof in such a way as gives rise to any liability on the part of the NSW and WA Bodies Corporate or the Christian Brothers.
- G. The NSW Body Corporate on an ex-gratia basis, and without admission of any liability on the part of itself, the WA Body Corporate and the Christian Brothers, have agreed to forego any and all costs orders and to make the payments and to establish the Trust Fund upon the terms and conditions set forth in the document entitled "Heads of Agreement" which is annexed hereto and marked with the letter "A".
- H. The Releasor has agreed to accept the terms contained in Annexure "A" in full and final satisfaction and discharge of any claim he may have against the NSW Body Corporate, the WA Body Corporate and the Christian Brothers, and has agreed to execute this Deed of Release.
- I. It is agreed between the Releasor and the NSW Body Corporate, the WA Body Corporate and the Christian Brothers, that subject to the terms and conditions set out hereinafter and contained in Annexure "A", the Releasor will accept the agreed terms in full and final settlement and discharge of any and all claims he may have against the Bodies Corporate and/or the Christian Brothers or any of them arising out of the Claims.

OPERATIVE PART

In consideration of:

- (a) the making of the payments referred to and contained in Annexure "A" to the Trust; and
 - (b) the Bodies Corporate and the Christian Brothers agreeing to forego any and all costs orders made in the proceedings:
1. The NSW Body Corporate without any admission of liability agrees to make the payments referred to in Annexure "A" and the Bodies Corporate and the Christian Brothers agree to forego any and all orders for costs made in any State or Commonwealth Court without any admission of liability.
2. The Releasor for himself, his executors, administrators, heirs and assigns forever hereby releases remits quits and discharges the NSW Body Corporate, the WA Body Corporate and the Christian Brothers, and any servant or agent of the Christian Brothers and any and all of them from all actions suits claims and demands of every description including any order for costs which he has now, or which but for this Deed might have or has had, or which could hereafter be asserted, brought or made by him, or by anyone on his behalf or through him either at law or at equity, or under the provisions of any Statute arising out of all or any of the acts, facts and circumstances constituted by the Claims.
3. The NSW and WA Bodies Corporate and the Christian Brothers or any past or present member thereof may plead this Deed in bar to any claim or proceedings by the Releasor or any person claiming on his behalf in respect of the Claims.
4. The Releasor agrees to file a Notice of Discontinuance of any proceedings commenced by him in relation to the Claims within twenty-one (21) days of the execution of this Deed.
5.
 - (a) The Releasor covenants and agrees that he has read the Heads of Agreement annexed hereto and that he understands and accepts the terms and conditions contained therein.

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- (b) The Releasor further covenants and agrees that he understands that his personal entitlement to assistance and/or compensation either in monetary terms or in kind relating to the Claims is governed fully and completely by the terms and conditions of the WA Institutions Reconciliation Trust and that any such personal entitlement is subject always to the decisions to be made in good faith by the Trustees in accordance with the relevant Deed of Trust and the Releasor acknowledges that such decisions shall be made in the absolute discretion of the Trustees and the Releasor covenants and agrees that he will accept such decision and will take no steps whatsoever to challenge such decision.
- (c) The Releasor acknowledges and agrees that he has entered into this Deed of his own volition and of his own free will and he accepts and wishes to participate in the terms of this settlement scheme as set out herein and in the annexures hereto.
6. This Deed and the Heads of Agreement (Annexure "A") are both governed by the law of Western Australia and the parties and each of them irrevocably submits to the jurisdiction of the Courts of Western Australia.
7. This Deed and its annexure set forth the entire agreement between the parties hereto and supersedes any and all prior agreements or understandings between the parties.
8. In the event that the Releasor breaches any term of this Deed or at any time in the future alleges or it is established that the Releasor lacked the mental capacity to enter into this Deed, and without prejudice to any other rights available to the NSW Body Corporate, the WA Body Corporate and the Christian Brothers in respect of such breach, including the right set forth in clause 3, the Releasor covenants with the NSW Body Corporate, the WA Body Corporate and the Christian Brothers and each of them that forthwith upon such event as aforesaid accruing, he will
- (a) repay any lump sum cash component of the settlement to the Releasor pursuant to the Heads of Agreement;

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(b) consent to the restoration of any order for costs made in the Courts of any State or the Commonwealth against the Releasor in favour of the NSW Body Corporate, Brother Julian, and the Christian Brothers.

(c) in respect of any costs order pay the amount as agreed taxed or assessed.

9. The Releasor covenants and agrees to indemnify the NSW Body Corporate, the WA Body Corporate, Brother Julian and the Christian Brothers in respect of any costs, claims, damages, liability, payment of expenses of any type (including any costs or contributions that the Christian Brothers or the Bodies Corporate or any of them might incur as a result of being joined into any litigation instigated by the Releasor against any other person or entity in respect of the Claims) that arise as a consequence of his breach of the terms of this Deed PROVIDED that the entitlement to claim such costs and damages is consequent upon their proof.

10. In the event that any provisions of this Deed or any annexure hereto is held to be void or invalid, such provisions or part thereof shall be severed from the whole and the balance of the Deed or the provision (as the case may be) shall remain in full force and affect.

11. Each party shall bear its own costs of the preparations and execution of this Deed. The NSW Body Corporate shall be responsible for any stamp duty payable thereupon.

12. The Releasor acknowledges that in executing this Deed the Releasor has had access to his own independent legal advice.

EXECUTED AS A DEED)
SIGNED SEALED AND DELIVERED) X
by the said)
JOHN HENNESSEY)
in the presence of:) ...X..... ←
Witness
signs
here

SOLICITOR'S CERTIFICATE

I, HAYDEN STEPHENS, of 120 King Street Melbourne in the State of Victoria certify that:

1. I am a legal practitioner holding a current practising certificate.
2. I have explained the purpose and effect of the above Deed and have answered any questions asked by the Releasor, who appeared to be able to understand the purport and affect of such explanation and answers.
3. The Releasor has voluntarily executed the above Deed in my presence and after the matters referred to in 2 above have taken place.

DATED

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Solicitor

.....
Witness