



**ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES  
TO CHILD SEXUAL ABUSE**

**AT NEWCASTLE COURT HOUSE**

COMMONWEALTH OF AUSTRALIA

*Royal Commissions Act 1902*

PUBLIC INQUIRY INTO

**THE RESPONSE OF CATHOLIC CHURCH AUTHORITIES IN THE MAITLAND-NEWCASTLE  
REGION**

**SUBMISSIONS OF COUNSEL ASSISTING THE ROYAL COMMISSION**

<b>Part 1</b>	<b>The Marist Brothers</b>	<b>4</b>
1.1	Introduction	4
1.2	Data relating to the Marist Brothers	5
1.3	Brother Romuald	6
	Marist Brothers Maitland 1961 – 1963	7
	Marist Brothers Pagewood 1967	8
1.4	Brother Dominic	10
1.5	Brother Patrick	10
<b>Part 2</b>	<b>Marist Brothers Hamilton</b>	<b>11</b>
2.1	The prevalence of sexual and physical abuse at Marist Brothers Hamilton	12
	Sexual abuse	12
	Physical abuse at Marist Brothers Hamilton	14
	Culture at Marist Brothers Hamilton in the 1960s and 1970s	16
2.2	The death of Andrew Nash	17
	Evidence of Audrey Nash, CQT and CQS	17
	Evidence of Brother Christopher Wade relating to the death of Andrew Nash	19

Evidence of Brother Peter Carroll	20
2.3 Brother Wade's knowledge about abuse by Romuald, Dominic and Patrick	20
Complaint in relation to Romuald	21
Complaint by CNS to Brother Wade	22
Complaint by CNX to Brother Wade	25
Complaint by CNP to Brother Wade	25
Complaint by CQS to Brother Wade	26
Appropriate findings about Brother Wade's knowledge of abuse by Brothers Romuald, Dominic and Patrick and the lack of response by Brother Wade	28
2.4 Complaints by CNQ	29
<b>Part 3 Dominic</b>	<b>31</b>
3.1 St Mary's High School Casino	31
Complaint to Brother Turton in relation to CNM in November 1994	33
3.2 St Peter Claver's College, Riverview	36
Complaint from a staff member to Brother Turton in August 1995	37
Discussions between Brother Turton and Brother Hill regarding Dominic	39
Complaint by CNO in 1996	40
Criminal investigation regarding CNO's complaint	45
Knowledge of Brother Hill	46
3.3 Dominic's appointment to St Francis Xavier's College Hamilton (formerly Marist Brothers Hamilton)	46
Complaint by CQP following announcement of Dominic's appointment	47
Provincial Council meeting	53
Response of Brother Hill to the objections to Dominic's appointment	55
3.4 Wellsprings Program and return to Australia	55
3.5 Appointment to Marist College Ashgrove	58
3.6 Referrals to police	58
3.7 The response to complaints in relation to Dominic	59
<b>Part 4 Patrick</b>	<b>60</b>
4.1 Complaints to Brother Turton in the early 1990s	60
Complaint by CQY in early 1991	60
Complaint by CNJ in August 1992	62
Complaint regarding two students in September 1992	65
Complaint by CQZ in July 1993	67
Crossroads programme	68
Complaint by CNK in late August 1993	70
Brother Turton confronts Patrick 30 August 1993	70

Special Issues Allegation Report, January 1994	72
4.2 CNK reports to police	72
4.3 Patrick returns to Marist College Ashgrove	73
4.4 Further complaint by CNK	73
4.5 The response of Brother Turton to complaints in the early 1990s regarding Patrick	74
4.6 Brother Hill's knowledge about Patrick on becoming Provincial	75
4.7 Complaints or incidents after 1996	76
Letter from Bishop Malone to Brother Hill	77
CNJ reports to police	79
4.8 Complaint by CNI in 2001	81
Queensland Police request for information	82
CNI's criminal matter does not proceed	87
<b>Part 5 Failure to document complaints and to ensure continuity of information</b>	<b>88</b>
<b>Part 6 Impacts of physical and sexual abuse</b>	<b>88</b>
<b>Part 7 Brother Carroll's apology</b>	<b>92</b>

## Part 1 The Marist Brothers

---

### 1.1 Introduction

- 1 The Institute of the Marist Brothers is a Catholic religious congregation, the Australian arm of which is the Australian Province. Until December 2012, there were two Provinces in Australia: the Sydney Province and the Melbourne Province. The matters considered in the case study occurred within the Sydney Province, which included New South Wales, Queensland and the Australian Capital Territory.
- 2 The Royal Commission has previously considered, and reported upon, the response of the Marist Brothers to allegations of child sexual abuse in Case Study 13. Matters relevant to the structure and governance of the institution are set out in the report for Case Study 13.<sup>1</sup>
- 3 Case Study 43 considered the response of the Marist Brothers to allegations or incidents of child sexual abuse against three persons known as Brother Romuald, Brother Patrick and Brother Dominic. Each of them held teaching positions at Marist Brothers High School Hamilton (**Marist Brothers Hamilton**) in the 1970s. Marist Brothers Hamilton is now called St Francis Xavier's College.
- 4 The Royal Commission heard evidence of survivors about sexual and physical abuse at Marist Brothers Hamilton during the 1960s and 1970s and the impacts of the abuse.
- 5 The central issues that ought to be considered by the Royal Commission in relation to the Marist Brothers are:
  - a. the knowledge possessed by Brother Christopher (William) Wade of allegations of child sexual abuse perpetrated by the three Brothers during the 1970s, when Brother Wade was the principal of Marist Brothers Hamilton, and the response by Brother Wade to such allegations;
  - b. the response of two former Provincials, Brothers Alexis (Keith) Turton, and Brother Michael Anthony Hill to complaints made in the 1990s and 2000s of child sexual abuse perpetrated by the three Brothers.
- 6 In these submissions, 'complaint' includes an allegation, report, suspicion or concern.
- 7 Brother Turton was the Vice Provincial of the Sydney Province between September 1983 and June 1989 and Provincial between June 1989 and June 1995. From January 2002 until March 2012 he was the Director of Professional Standards for the Marist Brothers. In that capacity one of his responsibilities was to receive and respond to complaints of physical and sexual abuse against Brothers and report them to the

---

<sup>1</sup> Report of Case Study 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton.

Provincial.<sup>2</sup> He was a member of the Marist Brothers Sydney Province Provincial Council from September 1978 to June 1989.<sup>3</sup>

- 8 Brother Hill was the Vice Provincial between 1993 and July 1995 and Provincial from July 1995 to the end of 2001.
- 9 Brother Peter Carroll is the current Provincial for the Province of Australia. Brother Carroll was first elected to the Provincial Council of the former Sydney Province in 2003, elected to the Provincial Council of the Australian Province when it was formed in 2012 and appointed as Deputy Provincial to Brother Jeffrey Crowe at the same time. Brother Carroll was appointed Provincial of the Australian Province in January 2015 and he assumed office on 27 September 2015.

## 1.2 Data relating to the Marist Brothers

- 10 The Royal Commission has conducted a comprehensive data survey of all Catholic Church authorities in Australia including the Diocese of Maitland-Newcastle and the Marist Brothers. The data survey sought all claims and substantiated complaints received during the period 1 January 1980 to 28 February 2015.<sup>4</sup>
- 11 The data produced to the Royal Commission revealed that 32 people made either a claim or substantiated complaint of child sexual abuse against one or more Marist Brothers in relation to a Marist Brothers Maitland or Hamilton high school.<sup>5</sup> Nine people identified more than one accused and 20 Marist Brothers were identified in total.<sup>6</sup>
- 12 Ninety-one percent of people who made a claim or substantiated complaint report incidents alleged to have occurred between 1950 and 1989 (inclusive).<sup>7</sup> The decade with the highest number of alleged incidents of child sexual abuse that were the subject of a claim or substantiated complaint was the 1970s, with 12 claims or 36 per cent of the total claims relating to this time period.
- 13 Where the gender was reported, all claimants were male. The average age of the boys at the time of the alleged sexual abuse (where reported) was 12 years old. Sixty per cent of the males were under the age of 13 years at the time of the alleged child sexual abuse and 40% were between 13 and 18 years old.<sup>8</sup>
- 14 Sixteen claims or substantiated complaints of child sexual abuse against the Marist Brothers in relation to a Marist Brothers Maitland or Hamilton high school resulted in monetary compensation. One was initiated through civil proceedings and resulted in a monetary compensation payment of \$55,000.<sup>9</sup> Eleven claims went through Towards

<sup>2</sup> Exhibit 43-21 Statement of Brother Turton [23], [25], Turton T17938: 47 – T17939: 3 (Day 168).

<sup>3</sup> Exhibit 43-20 Statement of Brother Turton STAT.1179.001.0001 [14] – [20].

<sup>4</sup> Exhibit 43-35 REPT.0010.001.0001 [3].

<sup>5</sup> Exhibit 43-35 REPT.0010.001.0001 [33].

<sup>6</sup> Exhibit 43-35 REPT.0010.001.0001 [47].

<sup>7</sup> Exhibit 43-35 REPT.0010.001.0001 [38].

<sup>8</sup> Exhibit 43-35 REPT.0010.001.0001 [33] – [37].

<sup>9</sup> Exhibit 43-35 REPT.0010.001.0001 [43].

Healing, of which nine resulted in monetary compensation, with an average of \$76,000 per claimant (including legal and other costs).

- 15 Of those claims that went through an ‘other redress process’, being some form of negotiation with the Catholic Church authority by the claimant or their solicitor and/or advocate, six resulted in a monetary compensation payment. When taking into consideration treatment, legal and other costs, these six claims resulted in an average payment of \$162,000 per claimant. Of the remaining claims received through ‘other redress’, eight claimants have received treatments costs, with an average payment per claim of \$3,600.<sup>10</sup>

### 1.3 Brother Romuald

- 16 Brother Romuald (Francis William Athol Cable) (**Romuald**) was born in Sydney in 1932. He made his final profession as a Marist Brother in 1958. He remained a member of the Marist Brothers for 20 years, before leaving the Order to resume a secular life in 1978.<sup>11</sup>
- 17 During the 1950s and 1960s, Romuald held teaching positions at a number of schools in New South Wales and Queensland. He taught at Marist Brothers Maitland (1961 – 1963), Marist College Pagewood (1965 – 1967) and Marist Brothers Hamilton between 1971 and 1974.<sup>12</sup> There was evidence that allegations of child sexual abuse against Romuald had been reported at both Maitland and Pagewood, prior to his appointment to Marist Brothers Hamilton in 1971.
- 18 The data produced to the Royal Commission revealed that 12 people made a claim of child sexual abuse against Romuald.<sup>13</sup> Ten of those claims related to Marist Brothers Maitland or Marist Brothers Hamilton relating to alleged incidents of abuse occurring in the period from 1959 to 1974 (inclusive). Where age was reported, the average age of all of the claimants at the time of the alleged abuse was 13 years of age.<sup>14</sup>
- 19 In his statement to the Royal Commission, Brother Carroll referred to further claims made since the data was reported to the Royal Commission,<sup>15</sup> bringing the total claims received since 1993 to 21.<sup>16</sup>
- 20 As Brother Carroll stated, the complaints received by the Marist Brothers against Romuald ‘show a history of abuse at a number of the schools where he taught.’<sup>17</sup>
- 21 In 2012, Romuald was arrested for child sex offences. He was tried in 2015. He was convicted on 13 charges of indecent assault and buggery concerning two

<sup>10</sup> Exhibit 43-35 REPT.0010.001.0001 [44] – [45].

<sup>11</sup> Exhibit 43-9 (Tab 1) CTJH.053.07150.0397, Exhibit 43-30 Statement of Peter Carroll STAT.1181.001.0001\_R [140].

<sup>12</sup> Exhibit 43-9 (Tab 1) CTJH.053.07150.0397, Exhibit 43-30 Statement of Peter Carroll STAT.1181.001.0001\_R [139].

<sup>13</sup> Exhibit 43-35 REPT.0010.001.0001 [166] – [177].

<sup>14</sup> Exhibit 43-35 REPT.0010.001.0001 [168].

<sup>15</sup> Exhibit 43-30 Statement of Brother Carroll STAT.1181.001.0001\_R [190] – [195].

<sup>16</sup> Exhibit 43-30 Statement of Brother Carroll STAT.1181.001.0001\_R [190].

<sup>17</sup> Exhibit 43-30 Statement of Brother Carroll STAT.1181.001.0001\_R [143].

complainants.<sup>18</sup> He subsequently pleaded guilty to a further 12 counts of indecent assault involving 12 different complainants for offences during the period from 1960 through to 1974.<sup>19</sup> Romuald was sentenced to 16 years in prison with an eight year non-parole period.<sup>20</sup>

- 22 In addition, documents tendered indicate that a civil claim for physical brutality was lodged against Romuald in 1997 by a former student of St Patrick's Marist College Dundas, where Romuald taught between 1975 and 1977.<sup>21</sup>

### **Marist Brothers Maitland 1961 – 1963**

- 23 There is evidence of a report of an allegation of child sexual abuse by Romuald at Marist Brothers Maitland. The evidence is contained in an unsigned police statement of a man who attended Marist Brothers Maitland between 1959 and 1965.<sup>22</sup>
- 24 The man stated his fifth class teacher Romuald would call him to the front of the class, pull him close and squeeze his bottom while Romuald would have 'a huge bulge in his groin under his black habit'.<sup>23</sup> He said that this occurred when he was in fifth class in 1959, although Romuald did not teach at the school until 1961.
- 25 The man stated to police that one day he told Brother Florentine, another teacher, about what Romuald had been doing, and that Brother Florentine told the student he would 'sort it out' for him. The man stated 'I don't remember anything happening to Romuald and he didn't stop what he was doing.'<sup>24</sup> The man stated he also told Brother Florentine and Brother Fingal about the abuse but that 'nothing ever happened'.<sup>25</sup>
- 26 At the time, Brother Fingal was the principal of Marist Brothers Maitland.<sup>26</sup> Brother Carroll stated any complaint should have been recorded and led to appropriate action by the school and a report to and action by the Provincial.<sup>27</sup>
- 27 It is submitted that the evidence in the unsigned statement ought to be accepted. Several staff at Marist Brothers Pagewood were told of sexually aberrant behaviour by Romuald. It is not clear whether the complaint was elevated to the Provincial. Nothing effective was done to protect children at Marist Brothers schools from abuse by Romuald.
- 28 CQW gave evidence to the Royal Commission about abuse at Marist Brothers Maitland. He did not report the abuse at the time. CQW gave evidence about an occasion in 1961 when he went to Maitland City Baths to swim, where he and another boy encountered Romuald. Romuald became involved in the boys' game in the pool,

<sup>18</sup> Exhibit 43-9 (Tab 229) CTJH.053.07135.0391\_R [3].

<sup>19</sup> Exhibit 43-9 (Tab 229) CTJH.053.07135.0391\_R [4].

<sup>20</sup> Exhibit 43-9 (Tab 229) CTJH.053.07135.0391\_R [86].

<sup>21</sup> Exhibit 43-9 (Tab 178) CTJH.053.70038.0155\_R.

<sup>22</sup> Exhibit 43-9 (Tab 171) CTJH.053.07150.0382\_R.

<sup>23</sup> Exhibit 43-9 (Tab 171) CTJH.053.07150.0382\_R [8], [10].

<sup>24</sup> Exhibit 43-9 (Tab 171) CTJH.053.07150.0382\_R [11].

<sup>25</sup> Exhibit 43-9 (Tab 171) CTJH.053.07150.0382\_R [13].

<sup>26</sup> Exhibit 43-30 Statement of Brother Carroll STAT.1181.001.0001\_R [167].

<sup>27</sup> Carroll T18235: 7 – 24 (Day 171), Exhibit 43-30 Statement of Brother Carroll STAT.1181.001.0001\_R [173].

and in doing so, repeatedly fondled CQW on the genitals under the water. CQW also described Romuald making him touch his (Romuald's) genitals under the water so that he could feel his erect penis. When CQW left the pool, Romuald followed him into the change room and dried CQW after his shower, touching CQW's genitals in the process. Romuald had an erection at the time.<sup>28</sup>

### **Marist Brothers Pagewood 1967**

29 The Royal Commission received evidence of reports of sexual abuse made to the principal of Marist Brothers Pagewood, Brother Kevin Willits, about Romuald in 1967. Brother Willits is now deceased.<sup>29</sup>

30 The police statement of a former student of Marist Brothers Pagewood details an incident of abuse by Romuald in 1967 when the student was 16 years old.<sup>30</sup> The former student stated Romuald came up behind him in a science laboratory, put his hand down the front of his pants and inside his underpants.<sup>31</sup> He told Romuald to get his hands off him and bolted out of the room.<sup>32</sup>

31 The former student stated that on the Monday morning he reported the incident to Brother Willits with whom he got along.<sup>33</sup> The former student stated:<sup>34</sup>

*Brother Kevin quizzed me a little as to what happened. I explained to him exactly what happened. I felt that Brother Kevin believed me.*

*I then recall Brother Romuald was removed from the school within days of that incident.*

32 Michael Balk gave evidence of sexual abuse by Romuald in 1967 at Marist Brothers Pagewood, when Mr Balk was in Form 4.<sup>35</sup>

33 Mr Balk stated that Romuald pressed his groin against his bottom in a science laboratory on two occasions in early 1967,<sup>36</sup> grabbed his penis in the pool at a swim training session and afterwards forced Mr Balk's hand on to his (Romuald's) penis.<sup>37</sup>

34 Mr Balk stated that on a Saturday later in 1967 Brother Willits came to Mr Balk's house. Mr Balk said that Brother Willits spoke with Mr Balk's father and then Mr Balk was asked to join them. Mr Balk stated Brother Willits told him that another boy had complained about Romuald and his parents had approached Brother Willits and mentioned Mr Balk's name.<sup>38</sup> Mr Balk stated:

<sup>28</sup> Exhibit 43-13 Statement of CQW STAT.1131.001.0001\_R.

<sup>29</sup> Carroll T18235: 47 – T18236: 1 (Day 171).

<sup>30</sup> Exhibit 43-9 (Tab 202) NSW.2070.002.0441\_R [12].

<sup>31</sup> Exhibit 43-9 (Tab 202) NSW.2070.002.0441\_R [13].

<sup>32</sup> Exhibit 43-9 (Tab 202) NSW.2070.002.0441\_R [13] – [14].

<sup>33</sup> Exhibit 43-9 (Tab 202) NSW.2070.002.0441\_R [15].

<sup>34</sup> Exhibit 43-9 (Tab 202) NSW.2070.002.0441\_R [15] – [16].

<sup>35</sup> Exhibit 43-15 Statement of Michael Balk STAT.1129.001.0001.

<sup>36</sup> Exhibit 43-15 Statement of Michael Balk STAT.1129.001.0001 [18] – [19].

<sup>37</sup> Exhibit 43-15 Statement of Michael Balk STAT.1129.001.0001 [20] – [21].

<sup>38</sup> Exhibit 43-15 Statement of Michael Balk STAT.1129.001.0001 [26] – [27].



*I then told Br Kevin, in front of my father, that Br Romuald had touched me and had placed my hand on his penis at swimming training.*

*Brother Kevin did not seem shocked by my allegations. His reaction was more in line with my story confirming what he already knew. He asked me questions about when and where the incident happened. Brother Kevin then assured my father that Br Romuald had been spoken to and said that he would be moved to another school. There was no mention of reporting the matter to police. No other boys were mentioned, and Br Kevin did not indicate if Br Romuald had admitted to the behaviour.*

- 35 Mr Balk said of his parents' reaction that 'it was just something that happened, but they did not seem too concerned'. They described Romuald as 'one bad apple'. Mr Balk stated 'I remember that my mother was mostly embarrassed that she had to open a can of carnation milk for Br Kevin's tea.'<sup>39</sup>
- 36 Mr Balk said Romuald remained at the school until the end of that year (1967).<sup>40</sup>
- 37 Mr Balk's father, Kevin Balk, provided a statement to police about Romuald on 2 September 2014.<sup>41</sup> Kevin Balk is now deceased.
- 38 Kevin Balk stated to police that Michael 'never disclosed in detail' what happened to him, even in 2014, and his complaint was that Romuald had been picking on him.<sup>42</sup> Kevin Balk stated he went to complain to Brother Willits about this. He said that Brother Willits subsequently visited the house and asked to speak to him.<sup>43</sup> Kevin Balk recalled Brother Willits apologising for doubting his complaints about Romuald. Kevin Balk stated 'I don't know what I said in response and I do not recall any further conversation from this point' or during afternoon tea.<sup>44</sup> Kevin Balk's police statement does not refer to a conversation between Michael Balk and Brother Willits or the incidences of sexual abuse described by Michael.
- 39 Brother Carroll said the reports to Brother Kevin should have been recorded and led to appropriate action by both the school and the Provincial.<sup>45</sup>
- 40 While there is an inconsistency in accounts between Michael Balk and Kevin Balk as to precisely what Michael Balk said about the complaint against Romuald, it is submitted that Michael Balk's account of the conversation with Brother Willits ought to be accepted. Michael Balk's evidence was clear and unequivocal. The event was of significance to Michael Balk, and it is unlikely that his recollection of such an occasion would be mistaken. It is also consistent with records that Romuald was moved at the end of the year, which suggests the complaint was serious.

<sup>39</sup> Exhibit 43-15 Statement of Michael Balk STAT.1129.001.0001 [28].

<sup>40</sup> Exhibit 43-15 Statement of Michael Balk STAT.1129.001.0001 [29].

<sup>41</sup> Exhibit 43- 9 (Tab 203) NSW.2070.002.0507\_R.

<sup>42</sup> Exhibit 43- 9 (Tab 203) NSW.2070.002.0507\_R [6] – [7], [12].

<sup>43</sup> Exhibit 43- 9 (Tab 203) NSW.2070.002.0507\_R [9].

<sup>44</sup> Exhibit 43- 9 (Tab 203) NSW.2070.002.0507\_R [10].

<sup>45</sup> Carroll T18235: 7 – 45 (Day 171), Exhibit 43-30 Statement of Brother Carroll STAT.1181.001.0001\_R [173].

- 41 It is submitted that it ought to be accepted that another complaint that Romuald put his hands down the front of a boys' underpants was made by a student in 1967. The evidence in the man's signed police statement ought to be accepted.
- 42 The evidence supports a finding that three complaints of child sexual abuse by Romuald were known to several Marist Brothers and two principals, prior to Romuald's appointment to Marist Brothers Hamilton.
- 43 No appropriate action was taken in response to those complaints.

#### 1.4 Brother Dominic

- 44 Brother Dominic (Darcy John O'Sullivan) (**Dominic**) was born in 1938 in Murwillumbah, in New South Wales. He was a teacher at Marist Brothers Hamilton between 1971 and 1977, where he taught technical drawing and was a form master.<sup>46</sup>
- 45 Dominic later held positions at St Mary's High School, Casino (1978 – 1985) and St Peter Claver College, Riverview (1991 – 1996).
- 46 There was evidence that complaints were made about Dominic's sexual abuse of children or inappropriate behaviour with children at each of these three schools.
- 47 The data produced to the Royal Commission revealed that four people made a claim of child sexual abuse against Dominic alleging incidents of child sexual abuse, relating to alleged incidents of abuse occurring in the period from 1969 to 1977 (inclusive). All claims related to Marist Brothers Hamilton. The average age of the complainants at the time of the alleged child sexual abuse was 14 years of age.<sup>47</sup>
- 48 In his statement to the Royal Commission, Brother Carroll referred to further claims made since the data was reported to the Royal Commission, bringing the total claims received since 1996 to nine.<sup>48</sup>
- 49 Dominic was first charged in July 2013 with 10 counts of indecent assault. He was also charged in July 2014 with indecently assaulting a boy.
- 50 Dominic ultimately pleaded guilty in March 2016 to 12 counts of indecent assault, with a further 10 offences listed on a Form 1, against 12 different complainants. He was sentenced on 23 September 2016 to a term of imprisonment of 6 years commencing 26 August 2016. He was given a non-parole period of 3 years and will be eligible for parole on 25 August 2019.

#### 1.5 Brother Patrick

- 51 Brother Patrick (Thomas Joseph Butler) (**Patrick**) was born in 1929. He died in 2006 and he was never convicted of child sexual abuse offences. Patrick taught at Marist

<sup>46</sup> Exhibit 43-30 Statement of Brother Carroll STAT.1181.001.0001\_R [79] – [80].

<sup>47</sup> Exhibit 43-35 REPT.0010.001.0001 [154] – [159].

<sup>48</sup> Exhibit 43-30 Statement of Brother Carroll STAT.1181.001.0001\_R [129].

Brothers Hamilton from 1970 – 1980 (he had an earlier placement at Marist Brothers Hamilton from 1963 – 1964).<sup>49</sup>

- 52 Between 1981 and 1989, he held teaching positions at Marist Brothers schools in Sydney, New South Wales. In 1989, he was appointed to Marist Brothers College in Ashgrove, Queensland (**Marist College Ashgrove**), a position he held until his retirement in 2001.<sup>50</sup>
- 53 The data produced to the Royal Commission revealed that 11 people made a claim of child sexual abuse against Patrick alleging incidents of child sexual abuse. Four of those claims related to Marist Brothers Hamilton relating to alleged incidents of abuse occurring in the period from 1971 to 1977 (inclusive).<sup>51</sup> The average age at the time of the alleged child sexual abuse was 11 years of age.<sup>52</sup>
- 54 In his statement to the Royal Commission dated 25 August 2016, Brother Carroll referred to further claims made since the data was reported to the Royal Commission, bringing the total claims received since 2001 to 18.<sup>53</sup>

## Part 2 Marist Brothers Hamilton

---

- 55 Marist Brothers Hamilton (now St Francis Xavier's College) is a secondary school in the Hunter region. It was run by the Marist Brothers in the 1970s, but there were also lay teachers at the school. In 1969 there were up to 950 male students (Years 7 – 12)<sup>54</sup> and over 30 staff.<sup>55</sup>
- 56 Each of the three Marist Brothers considered in the case study taught at Marist Brothers Hamilton. Romuald was at Marist Brothers Hamilton from 1959 – 1960 and 1971 – 1974, Dominic was there from 1971 – 1977 and Patrick was there from 1970 – 1980.
- 57 Brother Wade was appointed to the school as a teacher and deputy principal in 1969.<sup>56</sup> He became acting principal in 1970 and was principal from 1971 to 1976.<sup>57</sup> When he became principal (taking over from Brother Alman Dwyer), Brother Wade also became Superior of the Marist Brothers Community.<sup>58</sup>
- 58 Brother Turton was principal of Marist Brothers Hamilton between 1977 and 1978, during which time he was also Superior of the Marist Brothers community at Hamilton.<sup>59</sup>

<sup>49</sup> Exhibit 43-9 (Tab 2) CTJH.053.70015.0045\_R.

<sup>50</sup> Exhibit 43-9 (Tab 2) CTJH.053.70015.0045\_R.

<sup>51</sup> Exhibit 43-35 REPT.0010.001.0001 [143], [147].

<sup>52</sup> Exhibit 43-35 REPT.0010.001.0001 [143] – [144].

<sup>53</sup> Exhibit 43-30 Statement of Brother Carroll STAT.1181.001.0001\_R [70].

<sup>54</sup> Exhibit 43-27 Statement of Brother Wade STAT.1180.001.0001\_R [16].

<sup>55</sup> Exhibit 43-27 Statement of Brother Wade STAT.1180.001.0001\_R [17] – [18].

<sup>56</sup> Wade T18148: 22 – 24 (Day 170).

<sup>57</sup> Exhibit 43-27 Statement of Brother Wade STAT.1180.001.0001\_R [11].

<sup>58</sup> Wade T18148: 37 – 44 (Day 170).

<sup>59</sup> Exhibit 43-20 Statement of Brother Turton STAT.1179.001.0001 [12] – [13].

59 The principal in 1980 was Brother John Venard Smith.

## 2.1 The prevalence of sexual and physical abuse at Marist Brothers Hamilton

### Sexual abuse

60 The Royal Commission received evidence from a large number of witnesses who were survivors of abuse, or family of those abused, at Marist Brothers Hamilton in the 1960s and 1970s. There are also a number of documents tendered which describe serious physical and sexual abuse of students at Marist Brothers Hamilton.

61 Of those, a number gave evidence that they were sexually abused by more than one Brother. Some of this evidence is set out below.

62 Mr Skippen commenced high school at Marist Brothers Hamilton in 1960 and Romuald was his first form class master.<sup>60</sup> Mr Skippen gave evidence that Romuald regularly called him up to the front of the class and fondled his genitals in front of the class.<sup>61</sup> Mr Skippen said he believed Romuald talked to him 'on each occasion to try and provide a cover for what he was doing.'<sup>62</sup> Mr Skippen said he did not tell anyone at the time what Romuald did because he was embarrassed, Romuald was a Marist Brother and he was scared he would not be believed.<sup>63</sup>

63 CNR commenced at Marist Brothers Hamilton in 1969. He gave evidence that he was physically and sexually abused by Dominic and Romuald.<sup>64</sup> CNR gave evidence that in class in 1971 Dominic would put his hands down CNR's shorts and touch his bottom. After a few minutes, Dominic would move on to another boy. CNR said that Dominic would grope him in this way at least once a fortnight, and going into the classroom used to be a horror to him. He said it was talked about and common knowledge among the boys.<sup>65</sup>

64 In 1972, CNR had a class taught by Romuald. He gave evidence that Romuald put his hand and fingers into CNR's pants and touched his bottom. He said the whole class witnessed the incident, but no one said anything.<sup>66</sup>

65 CQT described an occasion in 1971 when Patrick approached him while he was waiting in line to play handball, and put his hand inside CQT's pants and fondled his bottom in plain sight in the playground, while other teachers were around.<sup>67</sup> CQT said that Romuald had a reputation for caning people very hard and for groping boys.<sup>68</sup> In 1972, Dominic was CQT's teacher for an elective subject. He gave evidence that Dominic would place his hands inside CQT's pants and underpants and fondle his bottom. CQT said he saw Dominic do this to other students every week, but he was taught to be

<sup>60</sup> Exhibit 43-28 Statement of Terence Skippen STAT.1177.001.0001\_R.

<sup>61</sup> Exhibit 43-28 Statement of Terence Skippen STAT.1177.001.0001\_R [13].

<sup>62</sup> Exhibit 43-28 Statement of Terence Skippen STAT.1177.001.0001\_R [13].

<sup>63</sup> Exhibit 43-28 Statement of Terence Skippen STAT.1177.001.0001\_R [16].

<sup>64</sup> Exhibit 43-19 Statement of CNR STAT.1174.001.0001\_R.

<sup>65</sup> Exhibit 43-19 Statement of CNR STAT.1174.001.0001\_R.

<sup>66</sup> Exhibit 43-19 Statement of CNR STAT.1174.001.0001\_R.

<sup>67</sup> Exhibit 43-22 Statement of CQT STAT.1173.001.0001\_R.

<sup>68</sup> Exhibit 43-22 Statement of CQT STAT.1173.001.0001\_R.

obedient to the Marist Brothers and this obedience would be enforced with violence so there was no option to stop it.<sup>69</sup>

- 66 CQV gave evidence about sexual abuse by Patrick, who was his maths teacher in 1971. He said on multiple occasions, Patrick stopped at CQV's desk, put his hand inside his shirt and fondled his nipples. CQV saw Patrick do this to other students.<sup>70</sup> CQV said that over time, Patrick progressed to putting his hands inside CQV's pants and fondling his penis. He said this also occurred on multiple occasions.<sup>71</sup>
- 67 Mr Russ gave evidence that Patrick, his maths teacher, sexually abused him in 1975.<sup>72</sup> Mr Russ said the abuse by Patrick made him feel ashamed and isolated.<sup>73</sup> Mr Russ said did not tell his parents at the time because their Catholicism was unwavering and their commitment to the school was absolute.<sup>74</sup>
- 68 In 1971, Romuald was CQQ's teacher. CQQ recalled going swimming for school sport with Romuald, who he said would have his 'favourite boys'. He said Romuald would herd the kids into the shower after they had been swimming and take their swimmers off if they refused. It was obvious to CQQ that Romuald had an erection when he did this. CQQ avoided Romuald by jumping on the bus without showering.<sup>75</sup> CQQ said that Romuald attempted to sexually abuse him by tucking in his shirt from behind and putting his hands down the front of CQQ's pants, but CQQ would push him back and get a flogging as a result. He remembered this happening to other children.<sup>76</sup>
- 69 CQQ gave evidence of being sexually abused by Patrick in 1973. Patrick would walk around CQQ's desk as he was working and start tucking in his shirt from the back, and work his way around the front and grab CQQ's genitals. This would happen most days and Patrick would do the same thing to other boys.<sup>77</sup> On one occasion, CQQ hit Patrick, after which the abuse stopped.<sup>78</sup>
- 70 CNQ told the Commission that he was sexually abused by Dominic and Patrick, as well as another Brother.<sup>79</sup> CNQ said that he was abused by Dominic in 1977, when he was in Form 1. CNQ said he was in Dominic's office when Dominic began cuddling him, took off CNQ's clothes, and asked him whether he had pubic hair or was he circumcised. As he did this, Dominic masturbated himself. CNQ stated that Dominic continued to abuse him, about every three weeks, on many occasions. On some occasions, Dominic masturbated CNQ and rubbed his penis on CNQ's bottom. CNQ gave evidence that on the last occasion he was abused by Dominic, he was anally raped. CNQ described another occasion when he went to Dominic's office to get supplies for another

<sup>69</sup> Exhibit 43-22 Statement of CQT STAT.1173.001.0001\_R.

<sup>70</sup> Exhibit 43-33 Statement of CQV STAT.1146.001.0001\_R.

<sup>71</sup> Exhibit 43-33 Statement of CQV STAT.1146.001.0001\_R.

<sup>72</sup> Exhibit 43-29 Statement of Peter Russ STAT.1175.001.0001 [5], [11] – [12].

<sup>73</sup> Exhibit 43-29 Statement of Peter Russ STAT.1175.001.0001 [12].

<sup>74</sup> Exhibit 43-29 Statement of Peter Russ STAT.1175.001.0001 [14].

<sup>75</sup> Exhibit 43-34 Statement of CQQ STAT.1189.001.0001 [12] – [13].

<sup>76</sup> Exhibit 43-34 Statement of CQQ STAT.1189.001.0001 [15] – [16].

<sup>77</sup> Exhibit 43-34 Statement of CQQ STAT.1189.001.0001 [18].

<sup>78</sup> Exhibit 43-34 Statement of CQQ STAT.1189.001.0001 [19].

<sup>79</sup> Exhibit 43-19 Statement of CNQ STAT.1128.001.0001\_R.

teacher, and he saw another student there standing between Dominic's legs in his underwear.

- 71 Evidence about additional complainants is referred to below in the sections of these submissions dealing with particular perpetrators.

### **Physical abuse at Marist Brothers Hamilton**

- 72 A number of survivors of sexual abuse also gave evidence of physical abuse by the Marist Brothers.

- 73 Peter Russ gave evidence that physical abuse 'was a routine part of school life at Marist Brothers'.<sup>80</sup>

- 74 CNQ gave the following evidence:<sup>81</sup>

*The Marist Brothers teachers were all cruel and physically abusive. They regularly hit me with their fists, with straps, canes, cricket bats, books or whatever else they happened to carrying. The physical abuse occurred on a regular basis. I was beaten for the smallest of things: for not doing my homework; talking in class; not trying in class; not trying in chorus try-outs for choir, for my uniform not being right and other behaviour. Being physically abused was always at the back of my mind and I was constantly in fear of being beaten or caned.*

- 75 CNV gave evidence that the 'harsh discipline meant that all of the boys at school were scared of the Brothers, and it made it virtually impossible to report anything'.<sup>82</sup>

- 76 In relation to his time at Marist Brothers Hamilton, CQT said:<sup>83</sup>

*I wanted to leave the school because of the physical and sexual abuse. I told my mum about a vicious beating by a Brother that left me with a swollen wrist and I could not close my hand. That same day the same Brother also dragged another boy out from his desk and threw him on the floor.*

- 77 CNS gave the following evidence:<sup>84</sup>

*'I've come to the conclusion that the physical abuse in the form of the harsh punishment, the canings, the grabbing kids around the neck and by the tie and strangling them and punching them ensured that we were constantly in fear of our teachers, and this enabled them to get away with it. We were too scared to stand up to them and say, "No, what you are doing is wrong." We knew in our hearts that it was wrong, that they didn't have the right to put their hands down our pants and do things like that, but we were too scared to do anything about it, and the only avenue that we had to protect*

<sup>80</sup> Russ T18226: 16 – 30 (Day 171).

<sup>81</sup> CNQ T17915: 46 – T17916: 9 (Day 168).

<sup>82</sup> Exhibit 43-17 Statement of CNV STAT.1163.001.0001\_R [8].

<sup>83</sup> CQT T18029: 30 – 35 (Day 169).

<sup>84</sup> CNS T17905: 31 – 46 (Day 168).

*ourselves were passive means like doing your belt up tight, sitting next to the window so that you weren't immediately accessible.*

78 CQP gave evidence that a Brother slapped him around the head and shoulders and belted him so hard he fell to the floor, when CQP nudged a class mate with his elbow during class. CQP said, rightly, 'This was a level of humiliation, fear and violence that no 12-year-old boy should be subjected to.'<sup>85</sup>

79 When asked if there was a spiritual element to the physical punishment, because of the significance or the stature that Marist Brothers had in the minds of the boys, and whether it made them particularly disabled from complaining, Brother Carroll replied 'That could well have been the case, yes'.<sup>86</sup> He agreed that it could be a 'long journey' for a survivor to come forward because of the combination of physical and sexual abuse.<sup>87</sup>

80 In response to the question of why the Marist Brothers behaved in such a physically abusive way, Brother Turton gave the following response:<sup>88</sup>

*there were a significant number that were [physically abusive]. As to the exact cause of that, I'm not exactly sure. Certainly, in our early days, our teacher training was minimal; our religious training was emphasised. That could have been part of the issue, but I really don't have all the answers to that ... [Treating children this way was entirely] inappropriate, but being teacher trained, I think, would certainly be a big help to addressing that.*

81 Brother Turton gave evidence that there was a view, at least among some Marist Brothers, that you could administer physical pain if a student got his work wrong. He said 'Certainly, going back, that was – that was part of our learning, and I think we were a bit slow to learn'.<sup>89</sup>

82 Brother Turton gave evidence that a partial explanation was that 'physical punishment was accepted in those days', and gave the following evidence:<sup>90</sup>

*But I don't have the explanation ... I don't have the full explanation. And for some men, whether it was a personality trait or not, I don't know, but the issue, I think, is a tragic one and has been, is being, addressed and that's all I can say, I think.*

83 In response to the question of whether the Marist Brothers had attempted to understand how it was that so many behaved in this way, Brother Turton responded 'I think the Brothers, over the years, particularly since the '80s, have been addressing this issue, trying to understand it, changing their method of formation and obviously bringing in very severe controls on physical punishment and so on, but other than that, I don't really have an answer'.<sup>91</sup>

<sup>85</sup> Exhibit 43-45 Statement of CQP STAT.1210.001.0001\_R [5] – [6].

<sup>86</sup> Carroll T18259: 4 – 13 (Day 171).

<sup>87</sup> Carroll T18278: 5 – 12 (Day 171).

<sup>88</sup> Turton T17986: 32 – T17987: 3 (Day 169).

<sup>89</sup> Turton T17988: 5 – T17990: 6 (Day 169).

<sup>90</sup> Turton T17988: 5 – T17990: 6 (Day 169).

<sup>91</sup> Turton T17988: 5 – T17990: 6 (Day 169).

- 84 Evidence about physical intimidation was not limited to the students. Brother Wade gave evidence of receiving a complaint from a child of being sexually abused by Romuald and having to confront Romuald about the complaint. He said:<sup>92</sup>

*I can remember the conversation that I had with him. I can remember feeling extremely anxious and nervous in having to confront him because, as other people have said, he was a very physically dominating and intimidating character. I made myself do it because I knew that I had to. He denied it and that's where I left the matter.*

- 85 Brother Wade later gave evidence that Romuald 'had in his personality and in his manner of dealing with people ways of acting which were intimidating and frightening' and that Romuald frightened him.<sup>93</sup> When asked if it occurred to him that if he were afraid of Romuald, the children at the school might have been absolutely terrified of him, Brother Wade said 'I can't recall at this stage whether I made that conclusion or not. It sounds reasonable'.<sup>94</sup>
- 86 Commissioner Murray asked Brother Wade if he is now inclined to take responsibility for what occurred on his watch, and he said, 'I believe it's certain that on occasions, on too many occasions, there was excessive punishment.'<sup>95</sup>

#### **Culture at Marist Brothers Hamilton in the 1960s and 1970s**

- 87 It is submitted that the evidence supports a finding that students were subjected to frequent and sometimes brutal physical violence at the hands of certain Brothers and teachers at Marist Brothers Hamilton in the 1960s and 1970s. The severity and frequency of punishment, and the lack of any apparent proportionality between the punishment and the supposed transgression, is such that this cannot be explained as merely an example of typical corporal punishment as accepted in society at the time. The physical punishment was of such a kind as to produce a culture of fear and intimidation of the students.
- 88 There was also an element of what might be called 'spiritual intimidation' of students. As one survivor, CNJ, wrote:<sup>96</sup>

*When I get down on myself for having not spoken up at the time, I have to remind myself of the enormity of a child facing off with a Marist Brother. Up until that time I was taught that a Brother, Nun or Priest was 'God's representative on earth'. So when God's agent sticks his hand down your pants, life gets seriously confused.*

- 89 The evidence was that Dominic, Patrick and Romuald engaged in inappropriate sexual conduct with children in the classroom that was brazen, frequent and in some cases quite blatant. Such offending suggests that the Brothers perceived that they enjoyed a

<sup>92</sup> Wade T18157: 20 – 25 (Day 170).

<sup>93</sup> Wade T18180: 3 – 20 (Day 170).

<sup>94</sup> Wade T18191: 47 – T18192: 4 (Day 171).

<sup>95</sup> Wade T18195: 33 – 38 (Day 171).

<sup>96</sup> Exhibit 43-9 (Tab 177) IND.0478.001.0146\_R.



measure of impunity and this was in fact the case. The culture of physical violence and the students' fear of retribution contributed to this state of affairs.

## 2.2 The death of Andrew Nash

### Evidence of Audrey Nash, CQT and CQS

- 90 Andrew Nash commenced high school at Marist Brother Hamilton in 1973. His older brother, CQT, also attended the school.
- 91 Andrew Nash's mother, Audrey Nash, gave evidence to the Royal Commission.<sup>97</sup> She is 90 years old.
- 92 Mrs Nash told the Royal Commission that in 1974, Andrew's form master was Romuald. She recalled one occasion in early 1974 when Andrew did not come home from school. When he returned home in the evening, Andrew was subdued and quiet, and said he had been to Bar Beach. Mrs Nash said she wondered how he got there given the distance from school. Mrs Nash gave evidence that after this, Andrew was very reluctant to go to school and his behaviour began to change.
- 93 Mrs Nash told the Royal Commission that about six months after the Bar Beach incident, Andrew took his own life in his bedroom at the age of 13.
- 94 Mrs Nash gave evidence that she asked a passing taxi driver to call an ambulance and a priest. Within two hours of Andrew's death, Father William Burston came to the house. Father Burston was new to the parish. She said shortly after this, two other priests arrived – Father Tom Brennan and Father Helferty (the principal and vice-principal respectively at St Pius X high school).
- 95 Shortly after the priests, three Marist Brothers came to the house – Brother Wade, Romuald and Brother John O'Brien (Andrew's rugby coach).
- 96 Mrs Nash said she did not know why the priests and Brothers came to the house. She said that Romuald asked her whether anything happened at school, and if Andrew had left a note. She said, 'When I said, 'No', they got into a little huddle and left.'<sup>98</sup>
- 97 Mrs Nash told the Royal Commission that after the funeral, she never heard from any of them again.<sup>99</sup>
- 98 CQT told the Royal Commission that his brother Andrew loved going to church and being an altar boy, and also sang in the choir and played rugby.<sup>100</sup> He described the night of Andrew's death:<sup>101</sup>

*In October 1974, Andrew took his own life by hanging himself on a hook on the back of the door with his dressing gown cord. I was home but my*

<sup>97</sup> Exhibit 43-23 Statement of Audrey Nash STAT.1172.001.0001\_R.

<sup>98</sup> Exhibit 43-23 Statement of Audrey Nash STAT.1172.001.0001\_R [23].

<sup>99</sup> Exhibit 43-23 Statement of Audrey Nash STAT.1172.001.0001\_R [24].

<sup>100</sup> Exhibit 43-22 Statement of CQT STAT.1173.001.0001\_R [24].

<sup>101</sup> Exhibit 43-22 Statement of CQT STAT.1173.001.0001\_R [25].

*younger sister Bernadette found him first. Audrey was screaming and my sisters were screaming. I think my mother ran out of the house and told a cab driver to ring a priest.*

- 99 His recollection of the priests and Brothers who came to the house that night is consistent with Mrs Nash's account. He said of the priests and Brothers:<sup>102</sup>

*They ignored me and they were mainly talking to each other and then to Audrey. I heard Br ROMUALD ask Audrey, 'Did he leave a note?' Audrey said, 'No'. The he asked, 'Did he say anything?' Audrey said, 'No'. Audrey then asked, 'What happened at school today?' And she said, 'Nothing.'*

*Pretty soon after that the clergy had a conversation I couldn't hear because of Audrey wailing with grief. Then the priests and Brothers packed up and left. Not one of them offered any pastoral care, counselling or help.*

- 100 CQS was questioned by Mr Chiu, counsel for Audrey Nash and CQT. He said he remembers Andrew Nash; they were in the same school year. When asked by Mr Chiu if Andrew was 'one of the boys targeted for sexual abuse', CQS replied 'Yes'. When asked who targeted Andrew, CQS said 'By Brother Romuald, and I also understand Brother Dominic.'<sup>103</sup>

- 101 Mr Chiu asked CQS, 'When you say you understand, was that common knowledge among the boys?' CQS responded:<sup>104</sup>

*It was knowledge on the basis that Andrew was a wonderful singer, actually, and was in Brother Dominic's choir, and I know that he was with Brother Dominic, and that's how I understand.*

- 102 CQS gave evidence as to what the school told the students about the circumstances of Andrew's death. He said:<sup>105</sup>

*They told us that he - it was an accident and that he was climbing up the door in the bedroom and his brother shut the door and Andrew's tie got caught in the door and he hung himself on his tie by accident.*

- 103 CQS's initial recollection was that this was an announcement that was made at the school, but he could not recall who made the announcement.<sup>106</sup> When questioned further by Mr Brady (counsel for Brother Wade) CQS agreed he could not recall exactly whether there was a formal announcement, or whether the teachers had said that is what had occurred. He agreed he could not say whether the principal said anything to him about the matter. Nor could he say that Brother Wade had told the teachers what to say about it.<sup>107</sup>

<sup>102</sup> Exhibit 43-22 Statement of CQT STAT.1173.001.0001\_R [25]-[26].

<sup>103</sup> CQS T18143: 7 – 13 (Day 170).

<sup>104</sup> CQS T18143: 15 – 20 (Day 170).

<sup>105</sup> CQS T18143: 33 – 36 (Day 170).

<sup>106</sup> CQS T18143: 28 – 43 (Day 170).

<sup>107</sup> CQS T18146: 21 – 39 (Day 170).

### Evidence of Brother Christopher Wade relating to the death of Andrew Nash

- 104 In his statement to the Royal Commission, Brother Wade said of Andrew Nash's death, 'I remember this suicide however I have no recollection of attending his residence the night of the suicide with Brother Romuald and Father Bill Burston.'<sup>108</sup>
- 105 Brother Wade said that although he did not recall attending the Nash home that night, he was not saying it did not happen. He agreed he had no reason to doubt the other witnesses who recall his presence at the house.<sup>109</sup> Brother Wade agreed it was a very unusual event, and denied that if he went to the house, the reason was to ascertain if Andrew had left a note.<sup>110</sup> Brother Wade said he understood Andrew to have committed suicide, and said he never expressed the view to anyone that his death was a result of a prank gone wrong or an accident.<sup>111</sup>
- 106 Brother Wade gave evidence that in his 30 years as a principal, this was the only suicide of a student currently enrolled at the school.<sup>112</sup> He recalled visiting the families of other students who were killed or injured in road and bike accidents.<sup>113</sup> When asked how many times he recalled being in a room with a wailing mother whose son had just died, he said he does not recall ever being in that set of circumstances, although he agreed it was a highly unusual situation.<sup>114</sup>
- 107 The Chair asked Brother Wade a number of questions about the aftermath of Andrew Nash's death. Brother Wade recalled attending the mass which followed a matter of days later, the location of the mass (Sacred Heart Hamilton), and that the church was 'packed'. He did not recall who conducted the mass or who spoke.<sup>115</sup>
- 108 It was put to Brother Wade by Mr Chiu that it is implausible that he had no memory of visiting the Nash household on the evening of 8 October 1974, and Brother Wade said he was not lying.<sup>116</sup>
- 109 Although Brother Wade had no recollection of it, he agreed there was no reason to doubt the evidence of Audrey Nash and CQT that he was one of the Brothers who went to the family home on the evening of Andrew's death.
- 110 There is no reason to doubt Audrey Nash or CQT's account, and it is submitted their evidence about this ought to be accepted.
- 111 It is submitted that the Royal Commission should reject Brother Wade's evidence that he has no memory of attending the Nash home. Brother Wade otherwise exhibited an ability to recall matters from his past, including from the 1970s, albeit with varying degrees of precision. It is not credible that he has no recollection of an event as

<sup>108</sup> Exhibit 43-27 Statement of Brother Wade STAT.1180.001.0001\_R [42].

<sup>109</sup> Wade T18165: 17 – 45 (Day 170).

<sup>110</sup> Wade T18166: 3 – 42 (Day 170).

<sup>111</sup> Wade T18167: 25 – 39 (Day 170).

<sup>112</sup> Wade T18207: 11 – 27 (Day 171).

<sup>113</sup> Wade T18207: 37 – 47 (Day 171).

<sup>114</sup> Wade T18208: 28 – 38 (Day 171).

<sup>115</sup> Wade T18209: 6 – 46 (Day 171).

<sup>116</sup> Wade T18208: 40 - T18209: 4 (Day 171).

significant and unusual as the death of Andrew Nash. Notwithstanding his apparent lack of recollection of the visit, Brother Wade could recall other details about the events surrounding Andrew's death. Brother Wade was not frank or forthcoming in his evidence regarding his lack of recollection of these events.

- 112 The Royal Commission should find that Brother Wade did attend the Nash house on the night of Andrew's death. The evidence about his short attendance there indicates he did not attend for pastoral reasons. As submitted below, evidence in relation to other students indicates that Brother Wade was aware by this time of allegations that Romuald, Dominic and Patrick had sexually abused children. The combined effect of this evidence suggests that the likely reason why Brother Wade attended the Nash home was because of a concern that Andrew's suicide might lead to suggestions that he was sexually abused coming to light.

### **Evidence of Brother Peter Carroll**

- 113 The current Marist Brothers Provincial, Brother Peter Carroll, delivered a statement to the Royal Commission with regard to Andrew Nash's death. He said:<sup>117</sup>

*I want to acknowledge today, in public, that I accept on behalf of the Marist Brothers that all the evidence points to Andrew having been sexually abused and the evidence also points to Andrew having taken his own life.*

*Importantly, it is obvious that many things have been said about the circumstances of Andrew's death, some of which must be corrected. It has been suggested in some places that Andrew's death was a prank gone wrong involving a family member, and yesterday we heard that the school at the time told the students that Andrew might have died by an accident involving another family member. To me, it is obvious that no member of the Nash family was involved in causing his death. Any suggestion that they were is completely wrong and hurtful to the family. These ideas must be totally rejected. Such comments have immeasurably compounded the family's pain and sense of loss.*

- 114 Brother Carroll's statement was an appropriate acknowledgement to make on behalf of the Marist Brothers.

### **2.3 Brother Wade's knowledge about abuse by Romuald, Dominic and Patrick**

- 115 There was evidence of several reports being made to Brother Wade about sexual and physical abuse of children by Romuald, Dominic and Patrick while Brother Wade was in a position of authority at Marist Brothers Hamilton.

---

<sup>117</sup> Carroll T18230: 37 – T18231: 6 (Day 171).

## Complaint in relation to Romuald

- 116 In his statement to the Royal Commission, Brother Wade said one complaint was made to him of sexual abuse by Romuald, and this is the only complaint he can recall receiving at Marist Brothers Hamilton.<sup>118</sup>
- 117 Brother Wade said he could not recall how the information came to him, the source, the nature of the alleged offence or what boy or boys were concerned.<sup>119</sup> He said it was a possibility it was a meeting with a student but he had no memory of it.<sup>120</sup> He only remembered it was plainly to do with ‘sexual interfering’ with a boy and he remembered ‘the necessity to confront’ Romuald.<sup>121</sup>
- 118 Brother Wade gave evidence that he could not recall the year when the complaint was made.<sup>122</sup> In his record of interview with police in 2014, Brother Wade placed the time of the complaint about Romuald as ‘Sometime just before or just after’ the death of Andrew Nash (8 October 1974).<sup>123</sup>
- 119 Brother Wade said he confronted Romuald in the Brothers’ residence in a ‘fairly private’ corridor of the top floor. He gave evidence that Romuald was a very physically dominating and intimidating character, and he was extremely anxious and nervous at having to confront him.<sup>124</sup>
- 120 In his notes of his police interview in 2014, and in his statement to the Royal Commission,<sup>125</sup> Brother Wade said of his conversation with Romuald:<sup>126</sup>

*I questioned Romuald about it at the time, using the then familiar terminology as to whether he had ‘interfered’ with a boy. He denied it saying he thought he ‘had been good in that area recently’, or some similar form of words, which led me to infer that there could have been matters in the past.*

- 121 Brother Wade’s signed record of that interview with police provides:<sup>127</sup>

*What I remember about that conversation is that he said to me, ‘I thought I had been good in that area recently.’ When he said this I thought that it was an admission that he had done stuff in the past.*

- 122 Brother Wade gave evidence he interpreted Romuald’s comments to mean the incident the subject of the complaint, which Brother Wade had asked about, did not happen.<sup>128</sup> Brother Wade was asked if his understanding of the effect of Romuald’s

<sup>118</sup> Exhibit 43-27 Statement of Brother Wade STAT.1180.001.0001\_R [38], [41].

<sup>119</sup> Exhibit 43-27 Statement of Brother Wade STAT.1180.001.0001\_R [39], Wade T18154: 21 – T18155: 21 (Day 170).

<sup>120</sup> Wade T18154: 27 – 30 (Day 170).

<sup>121</sup> Wade T18154: 43 – 46, T18156: 25 – 31 (Day 170).

<sup>122</sup> Wade T18152: 16 – 26 (Day 170).

<sup>123</sup> Exhibit 43-9 (Tab 192) CTJH.053.07170.0199\_R at .0203\_R, Exhibit 43-9 (Tab 10) IND.0478.001.0012.

<sup>124</sup> Wade T18157: 18 – 25 (Day 170).

<sup>125</sup> Exhibit 43-27 Statement of Brother Wade STAT.1180.001.0001\_R [38].

<sup>126</sup> Exhibit 43-9 (Tab 193) CTJH.053.70050.0039\_R.

<sup>127</sup> Exhibit 43-9 (Tab 192) CTJH.053.07170.0199\_R at 0202.

<sup>128</sup> Wade T18158: 32 – 34, 37 - 41 (Day 170).

words was that, although he denied the particular complaint, he was effectively admitting that he had sexually interfered with boys in the past, Brother Wade said 'I think I had on my hands a possible admission'<sup>129</sup> and he drew only a 'vague' and 'non-specific' inference.<sup>130</sup>

- 123 When it was put to Brother Wade by the Chair that there is no doubt it was an admission by Romuald as he understood it, he agreed.<sup>131</sup> Brother Wade then sought to qualify this by adding that he did not know whether the words were 'strong enough' to say Romuald made an admission.<sup>132</sup>
- 124 Brother Wade said he did not do anything further in relation to the specific complaint which Romuald had denied, or in relation to the admission about past conduct, as he thought he had done what was necessary.<sup>133</sup> He accepted it was wrong to accept Romuald's word when he said he had not done it, with terrible consequences for children.<sup>134</sup> When asked what he should have done, Brother Wade said he should have 'at least informed the Provincial and possibly gone to the police.'<sup>135</sup>
- 125 Brother Wade agreed with the proposition put by Mr Chiu that he had wanted to hear a denial and that way he was able to put an end to the matter.<sup>136</sup> He agreed he did not want trouble in the community between himself and Romuald.<sup>137</sup>
- 126 Brother Wade agreed that he never made a report to the Provincial or anyone else about allegations that Romuald had interfered with boys.<sup>138</sup>

### **Complaint by CNS to Brother Wade**

- 127 CNS was a student at Marist Brothers Hamilton between 1969 and 1972. He gave evidence that he heard rumours about Romuald, Dominic and Patrick and that the kids at school would refer to them as 'poofs.' CNS said it was widely discussed amongst the students that those Brothers were 'touchy-feely' and should be avoided.<sup>139</sup>
- 128 CNS told the Royal Commission that on one occasion he observed Dominic tucking in a boy's shirt in the playground and putting his hands down the boy's pants.<sup>140</sup>
- 129 Patrick was CNS's maths teacher in third form. CNS gave evidence that Patrick would approach him from behind while he was sitting at his desk and rub his hands over his chest and torso, and then move his hand down towards the top of his pants. CNS said that he could feel Patrick trying to get his hands inside his pants but he kept his belt

<sup>129</sup> Wade T18160: 10 – 18 (Day 170).

<sup>130</sup> Wade T18160: 27 – 29 (Day 170).

<sup>131</sup> Wade T18161: 2 – 4 (Day 170).

<sup>132</sup> Wade T18161: 18 – 19 (Day 170).

<sup>133</sup> Exhibit 43-27 Statement of Brother Wade STAT.1180.001.0001\_R [40], Wade T18159: 28 – 34 (Day 170), T18161: 24 – 30 (Day 170), T18198: 11 – 20 (Day 171), T18180: 43 – T18181: 1 (Day 170).

<sup>134</sup> Wade T18155: 29 – 37 (Day 170).

<sup>135</sup> Wade T18155: 43 – 45 (Day 170).

<sup>136</sup> Wade T18197: 38 – T18198: 15 (Day 171).

<sup>137</sup> Wade T18161: 32 – 41 (Day 170), T18198: 28 – 30 (Day 171).

<sup>138</sup> Wade T18165: 8 – 11 (Day 170).

<sup>139</sup> Exhibit 43-16 Statement of CNS STAT.1152.001.0001\_R [9] – [10].

<sup>140</sup> Exhibit 43-16 Statement of CNS STAT.1152.001.0001\_R [11].

done up tight because of warnings from other students.<sup>141</sup> Patrick abused CNS on numerous occasions throughout the year but he was never able to get his hands right down inside his pants.<sup>142</sup> CNS also provided evidence of Patrick's physical abuse.<sup>143</sup>

- 130 CNS told the Royal Commission that in the Christmas holidays in 1972 he was sent to see Brother Wade, because he and his friend, CNR, let off a fire-cracker next to the school. CNS said that by this time he had decided he would not return to Marist Brothers Hamilton the following year.<sup>144</sup>
- 131 CNS gave evidence that he saw Brother Wade the following day. He stated that Brother Wade told him he had shown a lack of maturity and responsibility but he told Brother Wade he did not care as he was not returning to Marist Brothers Hamilton. CNS said he then said to Brother Wade:<sup>145</sup>

*How do you justify what Brother Patrick, Brother Romuald and Brother Dominic are doing molesting kids. How do you justify that in a Catholic School?*

- 132 CNS said that he did not go into detail of what he had seen, nor did he mention the names of any particular students. He said, however, that the 'interaction was such that it was clear that Br Christopher and I both knew what I was referring to.'<sup>146</sup>
- 133 CNS said:<sup>147</sup>

*Brother Christopher did not seem surprised or shocked by my allegation. He didn't ask for clarification, and he didn't answer my question. He appeared to be annoyed that I was anything other than sorry for my actions, and that I was challenging his authority. All he said was something to the effect of, 'They are all good, competent teachers'.*

- 134 CNS also stated that he learnt some years later that his younger brother, CNV, who also attended the school had been abused by Patrick and also Romuald.<sup>148</sup>

*I remember speaking to my father about what had happened and my father told me that around the end of 1973, he went and spoke to Br Christopher about what had happened to CNV and made a complaint. My father did not tell me the conversation or any result of his complaint. I do remember that the following year, CNV also left Marist Brothers and went to St Pius X.*

- 135 Counsel for Brother Wade, Mr Brady, put to CNS that he had wanted to say something in the meeting but didn't actually say it.<sup>149</sup> CNS said he had repeated the conversation

<sup>141</sup> Exhibit 43-16 Statement of CNS STAT.1152.001.0001\_R [12].

<sup>142</sup> Exhibit 43-16 Statement of CNS STAT.1152.001.0001\_R [15].

<sup>143</sup> Exhibit 43-16 Statement of CNS STAT.1152.001.0001\_R [13] – [14].

<sup>144</sup> Exhibit 43-16 Statement of CNS STAT.1152.001.0001\_R [17].

<sup>145</sup> Exhibit 43-16 Statement of CNS STAT.1152.001.0001\_R [18].

<sup>146</sup> Exhibit 43-16 Statement of CNS STAT.1152.001.0001\_R [18].

<sup>147</sup> Exhibit 43-16 Statement of CNS STAT.1152.001.0001\_R [19].

<sup>148</sup> Exhibit 43-16 Statement of CNS STAT.1152.001.0001\_R [22].

<sup>149</sup> CNS T17904: 24 – 27 (Day 168).

to people during the last 30 years and ‘I absolutely, definitely spoke to him about it. It was the one important part of that conversation that meant something to me.’<sup>150</sup>

- 136 Mr Brady put to CNS that he did not say anything to Brother Wade about the Brothers molesting children. CNS responded that he had a ‘very clear memory’ of his 1972 conversation with Brother Wade.<sup>151</sup> CNS gave evidence he thought the conversation about sexual abuse made an impression on Brother Wade, as when he visited the school grounds in 1974 Brother Wade asked him to leave the grounds.<sup>152</sup> CNS agreed with Mr Brady’s observation that the cause of the earlier 1972 meeting had been for Brother Wade to reprimand CNS for letting off fireworks.<sup>153</sup>
- 137 When it was put to CNS by Mr Brady that CNS only mentioned Patrick, CNS replied ‘No. I mentioned all three of the brothers. They were all well known.’<sup>154</sup>
- 138 CNR told the Royal Commission that he was with CNS when they carried out the prank that led to CNS being sent to see Brother Wade.<sup>155</sup> CNR said that CNS told him about his conversation with Brother Wade within a week of it occurring. CNR said he could not recall the exact words of that conversation, but CNS told him that he had said something like ‘Brother Patrick, Br Dominic and Br Romuald are poofers and are abusing guys.’<sup>156</sup>
- 139 CNV also said in his statement to the Royal Commission that CNS told him that before he left the school, he spoke to Brother Wade and ‘said something like ‘What are you going to do about this Brother Patrick?’, and Brother Christopher responded with something like ‘Well, he’s a very good maths teacher!’<sup>157</sup> It is not clear how long after the event this conversation took place.
- 140 In his statement to the Royal Commission, Brother Wade said he had ‘no knowledge of any complaints, allegations, reports, suspicions or concerns of child sexual abuse relating to CNS’. He said he recalls the name CNS.<sup>158</sup>
- 141 Brother Wade gave evidence that he did not remember CNS coming to see him about the incident at the school, and he did not remember the comments by CNS or his response as alleged by CNS in his statement. When asked whether his evidence is the conversation did not happen, or he does not recall either way, Brother Wade said ‘I don’t recall either way.’<sup>159</sup>

---

<sup>150</sup> CNS T17903: 46 – T17904: 27 (Day 168).

<sup>151</sup> CNS T17903: 45 – 47 (Day 168).

<sup>152</sup> CNS T17904: 2 – 17 (Day 168).

<sup>153</sup> CNS T17904: 19 – 27 (Day 168).

<sup>154</sup> CNS T17904: 36 – 38 (Day 168).

<sup>155</sup> Exhibit 43-19 Statement of CNR STAT.1174.001.0001\_R [25] – [26].

<sup>156</sup> Exhibit 43-19 Statement of CNR STAT.1174.001.0001\_R [27].

<sup>157</sup> Exhibit 43-17 Statement of CNV STAT.1163.001.0001\_R [13]

<sup>158</sup> Exhibit 43-27 Statement of Brother Wade STAT.1180.001.0001\_R [44] and [46].

<sup>159</sup> Wade T18163: 42 – T18164: 16, T18174: 46 – T18175: 2 (Day 170).



### Complaint by CNX to Brother Wade

- 142 CNV is the son of CNX and younger brother of CNS. He also gave evidence to the Royal Commission about his sexual abuse by Romuald and Patrick.
- 143 CNV started at Marist Brothers Hamilton in 1972 when he was only 11 years old. He described an incident in 1972 when Patrick sexually abused him by putting his hands down his pants and feeling his pubic area, holding CNV in such a way that he could not get away.<sup>160</sup> He also gave evidence about an occasion in 1973 when Romuald walked around the change room at Merewether Baths with an erection in front of the boys.<sup>161</sup>
- 144 CNV said that in 1973, when his grades began to suffer, he went to his parents and asked to change schools like his brother, CNS. He said he told them around this time of the sexual abuse by Romuald and Patrick. CNV gave evidence that his father, CNX, had a meeting at the school with the principal, Brother Wade, and as a result he changed schools the following year. CNV said his father did not tell him at the time what happened at the meeting, but many years later, not long before CNX died, CNV asked him about the meeting. CNV said CNX told him that 'he did raise the sexual abuse [at the meeting] and really gave it to them, meaning he told them he was very unhappy that Br PATRICK and Br ROMUALD were allowed to keep teaching.'<sup>162</sup> CNV said that once CNX told him this, 'I was able to let my father pass away without any negative thought on him not being as good a dad as I had been to my boys.'<sup>163</sup>
- 145 Brother Wade gave evidence that he could not recall the conversation with CNV's father. When asked if his evidence is the conversation did not happen or he cannot recall either way, Brother Wade said 'I can't recall either way.'<sup>164</sup>

### Complaint by CNP to Brother Wade

- 146 CNP made a statement to police in November 2013 in which he said he was abused by Dominic in 1972.<sup>165</sup> In his police statement, CNP said that Dominic would squeeze his bottom in class and rub his hand up and down his back when inspecting his work. On one occasion Dominic put his hands inside CNP's shorts and squeezed his penis. CNP said that on this occasion he told Dominic to 'fuck off' and went straight to Brother Wade's office.<sup>166</sup>
- 147 CNP said he told Brother Wade what had happened, and that:<sup>167</sup>

*Brother CHRISTOPHER told me that Brother DOMINIC was just being friendly and he was sure that it was an accident that he touched me on the penis and that I should just return to class.*

<sup>160</sup> Exhibit 43-17 Statement of CNV STAT.1163.001.0001\_R [9] - [12].

<sup>161</sup> Exhibit 43-17 Statement of CNV STAT.1163.001.0001\_R [14] - [17].

<sup>162</sup> Exhibit 43-17 Statement of CNV STAT.1163.001.0001\_R [19] - [21].

<sup>163</sup> CNV T17913: 25 - 30 (Day 168).

<sup>164</sup> Wade T18165: 1 - 6 (Day 170).

<sup>165</sup> Exhibit 43-9 (Tab 187) CTJH.053.07170.0111\_R and CTJH.053.07170.0114\_R.

<sup>166</sup> Exhibit 43-9 (Tab 187) CTJH.053.07170.0111\_R at 0013.

<sup>167</sup> Exhibit 43-9 (Tab 187) CTJH.053.07170.0111\_R at 0013.

148 CNP said that after this he truanted from school for three days:<sup>168</sup>

*When I finally got the courage to return to school I found out that our class and all other classes were told that there would not be any more technical drawing as the classroom was being renovated and we were given extra Science and English classes instead. The school actually built a Chapel in the place where the Technical Drawing Room had been. This was the last time I saw Brother DOMINIC at the school grounds.*

149 Brother Wade recalled the name of CNP. Initially, Brother Wade said of CNP's account that he believed it never happened, because he would never have thought the action being described was simply being friendly.<sup>169</sup> Later, when asked if his position was that it did not happen because he would remember it, or he simply could not recall either way, Brother Wade said 'I think I'd say that I simply – I certainly can't recall either way.'<sup>170</sup>

150 Counsel for Brother Wade, Mr Brady, asked Brother Wade whether the technical drawing classroom was in fact renovated in 1972 and he said it was not. Brother Christopher said that the school did build a chapel, in the room next to the technical drawing room, but that it was completed and opened by early 1971.<sup>171</sup>

### **Complaint by CQS to Brother Wade**

151 CQS commenced high school at Marist Brothers Hamilton in 1973. He gave evidence that he was sexually abused by Patrick and Romuald during 1974. CQS was abused by Patrick in the classroom. He was abused by Romuald while travelling in a car with during an excursion, and at the local pool in front of other students. CQS also described witnessing Romuald and Patrick abusing other boys.<sup>172</sup>

152 CQS gave evidence that he was very upset after one incident of abuse by Romuald, and told his mother and father. He said he described to them in some detail what Romuald had done to him, which included touching him on the genitals.<sup>173</sup>

153 CQS said his father was angry, and thinks he may have approached Mr Forbes, a teacher who CQS trusted. The following day, Mr Forbes approached CQS about what had happened, and CQS described what Romuald had done to the boys including himself. Mr Forbes told him that he must see the principal, Brother Wade, and emphasised to CQS the importance of telling the truth.<sup>174</sup>

154 Within days, CQS said he and his father met with Brother Wade in his office. CQS gave evidence that he told Brother Wade:<sup>175</sup>

<sup>168</sup> Exhibit 43-9 (Tab 187) CTJH.053.07170.0111\_R at 0013.

<sup>169</sup> Wade T18172: 6 – 13 (Day 170).

<sup>170</sup> Wade T18174: 9 – 20 (Day 170).

<sup>171</sup> Wade T8218: 15 – 29 (Day 171).

<sup>172</sup> Exhibit 43-26 Statement of CQS STAT.1182.001.0001\_R [8]-[9]; [12]-[22].

<sup>173</sup> Exhibit 43-26 Statement of CQS STAT.1182.001.0001\_R [24]-[25].

<sup>174</sup> Exhibit 43-26 Statement of CQS STAT.1182.001.0001\_R [27]-[28].

<sup>175</sup> Exhibit 43-26 Statement of CQS STAT.1182.001.0001\_R [29].

*everything Br Romuald had done to me. This included that he had tried to touch my genitals in the ute on the way back from Bulahdelah, that he rubbed his erection against me and probably other boys at Merewether Baths, and that he walked around Merewether Baths change rooms with an erection. I also told him that Br Romuald made me undress in front of the other kids, demonstrated where to find the femoral artery, and groped my genitals while doing so. I told Br Christopher that Br Romuald said he wanted to do this on a boy who was going through puberty and show the other boys.*

- 155 CQS gave evidence that Brother Wade had ‘a poker face’ during the meeting but said it was a very important matter and that he would do something about it. CQS did not have another conversation with Brother Wade about Romuald.<sup>176</sup>
- 156 CQS said that about a week later, Romuald approached him at school and asked if he had told anyone about what happened at Merewether Baths, and CQS said he had not. CQS said that from this time onwards, Romuald was very aggressive towards him and caned him at every class. Before he complained to Brother Wade, CQS said he had only been caned by Romuald on the odd occasion. CQS said he lived in fear and lost confidence in himself and the school.<sup>177</sup> He said Romuald left the school at the end of that year.<sup>178</sup>
- 157 CQS was examined by Mr Brady, counsel for Brother Wade, who asked him about the content of what he told Brother Wade. It was put to CQS that it would have been difficult for him to go into detail about what happened, and CQS said ‘It was difficult, but my father was with me and he encouraged me to go into detail.’ CQS said that while he could not recite the exact words he used, he certainly remembered clearly the topics that he spoke about.<sup>179</sup>
- 158 When asked by Mr Brady if it is possible what CQS told Brother Wade was more general, like what he told Mr Forbes, CQS said:<sup>180</sup>

*No, because - because when Mr Forbes spoke to me it was not in a confidential area, it was in the classroom, and this other meeting was held in Brother Christopher's office, in a confidential environment, and I was with my father and I felt confident to say exactly what had happened, on the basis that my father encouraged me to do that.*

### *Evidence of Brother Wade*

- 159 Brother Wade gave evidence that he did not recall a conversation with CQS and his father, as described by CQS in his statement. When asked if he says it did not happen or he just cannot recall either way, Brother Wade said ‘I just can’t recall’. When asked if it is possible it happened and he has forgotten it, Brother Wade replied ‘Yes.’<sup>181</sup>

<sup>176</sup> Exhibit 43-26 Statement of CQS STAT.1182.001.0001\_R [30]-[31].

<sup>177</sup> Exhibit 43-26 Statement of CQS STAT.1182.001.0001\_R [34].

<sup>178</sup> Exhibit 43-26 Statement of CQS STAT.1182.001.0001\_R [35].

<sup>179</sup> CQS T18145: 14 – 29 (Day 170).

<sup>180</sup> CQS T18145: 34 – 40 (Day 170).

<sup>181</sup> Wade T18162: 23 – 36 (Day 170).

**Appropriate findings about Brother Wade’s knowledge of abuse by Brothers Romuald, Dominic and Patrick and the lack of response by Brother Wade**

- 160 It is submitted that the evidence of CNS, CNV, and CQS that they reported (or in the case of CNV, that his father, CNX, reported) allegations of sexual abuse by Marist Brothers at Marist Brothers Hamilton to Brother Wade should be accepted.
- 161 There is no reason to disbelieve CNS, CNV or CQS. CNS said he had a ‘very clear memory’ of the conversation. CQS, when questioned, maintained that he had a clear recollection of the topics he spoke about with Brother Wade. CNV said his father, CNX, told him he did ‘raise sexual abuse’ with Brother Wade. That revelation, made not long before CNX’s death, was clearly of great significance to CNV.
- 162 CNS, CNV and CQS presented as honest and believable witnesses.
- 163 The evidence of Brother Wade relating to these complaints is inconsistent. It is submitted that the ultimate conclusion to be drawn, following Brother Wade’s oral evidence, is that he cannot recall the reports one way or another, but he does not deny they occurred.
- 164 It is submitted that CNP’s account (contained in his 2013 police statement) should also be accepted. Again, Brother Wade’s evidence was ultimately that he did not recall the complaint and not that it did not occur. The potential factual errors in CNP’s statement are not material to an assessment of his report to Brother Wade. His account was similar to the accounts of other victims of abuse by Patrick.
- 165 Brother Wade was less than forthcoming in certain critical aspects of his evidence. In relation to the complaint he recalled receiving about Romuald, Brother Wade’s evidence was evasive. He sought to avoid accepting the obvious significance of what Romuald had said to him, namely that Romuald had admitted to past sexual misconduct with boys. Even when presented with a document recording his own description of an admission to police, Brother Wade sought to qualify his prior position and to minimise the significance of what he was told.
- 166 As submitted above, the Royal Commission should also find that Brother Wade was not forthcoming in his evidence as to what he remembered about the night of Andrew Nash’s death.
- 167 Brother Wade received multiple complaints about sexual abuse perpetrated by Romuald, Dominic and Patrick while he was in a leadership position within the Marist Brothers. He did not take the complaints seriously, and failed to respond appropriately, or at all. He failed to act in the best interests of the children at Marist Brothers Hamilton, for whom he was directly responsible. Had he responded appropriately when complaints were brought to him, it is possible that other children would not have suffered sexual abuse by these Brothers.
- 168 Brother Wade’s lack of response to inculpatory statements by Romuald is extraordinary and inexcusable. Romuald’s comment to Brother Wade – that he thought he had ‘been good in that area recently’ – was an admission of past sexual misconduct with children. Brother Wade recognised it as such. It also meant that

Romuald's denial of the particular allegation that was being put to him was not credible. Brother Wade's acceptance of the denial and his failure to take any action to protect children from Romuald or even to interrogate Romuald further as to his past misconduct, represent grave failings on the part of Brother Wade and the institution in which he held a senior role. Romuald should have been removed from contact with children and the matter should have been fully investigated and reported to the police. Brother Wade prioritised his own desire to avoid confrontation and controversy, for himself and for the Marist Brothers, over the safety of children in his care.

- 169 No record of any of the complaints reported to Brother Wade was produced by the Marist Brothers. The inference that should be drawn is that no such records were made. Brother Wade's failure to make a full and frank record of the complaints of serious misconduct against Brothers was totally inadequate, and a serious dereliction of his duty as principal of the school and superior of the Marist Brothers community.

## 2.4 Complaints by CNQ

- 170 CNQ gave evidence that he was sexually abused by Patrick on multiple occasions in 1980. He said that in maths class, Patrick would 'He would put his arm around my shoulder and then touch my knee and move his hand up and down my thigh, often touching and rubbing my crotch area.'<sup>182</sup> He said that Patrick would also abuse in him in the chapel.<sup>183</sup>
- 171 CNQ gave evidence of an incident he said took place in second term of 1980. On this occasion CNQ said that Patrick sat next to him in maths class and started touching his leg. CNQ said he had 'had enough' and punched Patrick in the head. He was sent out of class. CNQ said that he was taken to Brother Alfred's office (his form master). He said he told Brother Alfred 'Br PATRICK had his hand on my thigh and leg and I punched him.' CNQ said that Brother Alfred did not appear surprised, told him to 'stay away' from Patrick and said he would change maths classes.<sup>184</sup>
- 172 CNQ later told his mother what Patrick had done and said he wanted to leave the school. CNQ said that in the school holidays at the end of 1980 he and his mother went to see the principal, Brother Venard. CNQ said:<sup>185</sup>

*I told Br JOHN about Br PATRICK coming to sit next to me and putting his hand on my crotch and leg, and that I hit him in response. Br JOHN put both hands up in a defensive manner and he replied that, 'there is nothing I can do about that'.*

- 173 Brother Carroll gave evidence that any complaint of this nature should have been recorded, should have led to appropriate action being taken within the school and should have been reported to the Provincial.<sup>186</sup>

<sup>182</sup> Exhibit 43-18 Statement of CNQ STAT.1128.001.0001\_R [35].

<sup>183</sup> Exhibit 43-18 Statement of CNQ STAT.1128.001.0001\_R [38] – [39].

<sup>184</sup> Exhibit 43-18 Statement of CNQ STAT.1128.001.0001\_R [42] – [44].

<sup>185</sup> Exhibit 43-18 Statement of CNQ STAT.1128.001.0001\_R [45] – [46].

<sup>186</sup> Exhibit 43-30 Statement of Brother Carroll STAT.1181.001.0001\_R [68].

- 174 Brother Venard is 88. A medical certificate was produced to the effect that Brother Venard is not competent to give evidence.<sup>187</sup>
- 175 In 2013, Brother Venard provided answers to a series of questions about CNQ's complaint, through the solicitors for the insurers. The questions were put to Brother Venard on the basis of CNQ's police statement and a 'personal' statement.<sup>188</sup> The report to Brother Venard is described in the following terms by CNQ in his personal statement:

*The meeting didn't last long. Brother John started off by telling me I had been in the wrong and I should not have punched Brother Patrick and that I was disrespectful.*

*I told him I was not and that Brother Patrick was doing wrong things to me, like touching me and cuddling me a lot, I didn't tell all because, one; I was embarrassed with Mum there and also from the start of the meeting this guy was just aggressive and over bearing . I said to Brother John what are you going to do about that, what he did to me. Brother John was very firm and started saying he didn't know anything about this and no one else had made complaints about Brother Patrick, I said well he did this to me. Then he became very indignant, and I will never forget these words from what he was saying but I remember this he put both hands up and said, 'THERE IS NOTHING I CAN DO ABOUT IT'.<sup>189</sup>*

- 176 Brother Venard is recorded as saying he did not recall CNQ's name. His responses to other questions were:<sup>190</sup>

**6. Do you recall the conversation CNQ alleges he had with you in 1980? If so, what do you recall?**

*No, I do not recall that conversation or that incident but it may have happened. I think I would have taken the opinion that the boy might have been mistaken and misjudged Brother Patrick and my approach would have been to try to smooth it over. The report of the meeting sounds quite reasonable especially when I did not know all the facts.*

**7. Did you know Br Patrick Butler? If so, what do you recall about him?**

*Brother Patrick was a personal friend who was my golf partner, a good teacher, a strong personality. I would not like to have had an argument with him. He could talk his way out of things.*

**8. Were you aware of any complaints made against Br Patrick Butler? If so, please provide details (ie dates and nature of complaint/s).**

<sup>187</sup> Confidential exhibit.

<sup>188</sup> Exhibit 43-9 (Tab 188) CTJH.053.70009.0111\_R, Exhibit 43-9 (Tab 189) CTJH.053.70009.0098\_R, Exhibit 43-9 (Tab 232) CTJH.053.70045.0191\_R.

<sup>189</sup> Exhibit 43-9 (Tab 189) CTJH.053.70009.0098\_R at 0103.

<sup>190</sup> Exhibit 43-9 (Tab 237) CTJH.053.70045.0186\_R.

*No. I was not aware of any complaints about Brother Patrick. Something in the back of my mind says 'rumours' but I can't think what that was. I cannot remember any incidents*

- 177 CNQ said he subsequently changed schools to St Pius X, Adamstown.
- 178 CNQ said that he and his mother had a meeting with Father Tom Brennan prior to CNQ commencing at St Pius X. Father Brennan was then the principal of the school. CNQ said that Father Brennan asked why CNQ wanted to attend St Pius X and CNQ said he told him that he had punched Patrick. He said 'I told him Br PATRICK had been touching me and that I had had enough - that's why I belted him. I didn't tell Fr BRENNAN any details about the abuse.' CNQ said Father Brennan responded by 'putting both hands up in a defensive manner and saying that there was nothing he could do about it.'<sup>191</sup>
- 179 Father Brennan is deceased.
- 180 It is submitted that there is no reason to doubt CNQ's evidence that he told Brother Venard that Patrick had been touching him inappropriately, although he did not disclose fully what had occurred. Brother Venard did not deny such a conversation and indicated that there were 'rumours' about Patrick. It is submitted that as a consequence of the conversation Brother Venard knew that Patrick had touched CNQ inappropriately.
- 181 Nor is there any reason to doubt CNQ's evidence that he told Father Brennan that Patrick had been 'touching him', although he did not tell Father Brennan any other detail of the abuse.
- 182 There is no evidence that Brother Venard or Father Brennan took any steps to inquire further as to the nature of the allegation or to inform the Marist Brothers Provincial or the police. They should have done so.
- 183 The implication of Brother Venard's recollection is that he would have tried to 'smooth over' things with CNQ. That was plainly inadequate.

## Part 3 Dominic

---

### 3.1 St Mary's High School Casino

- 184 Dominic left Marist Brothers Hamilton in 1977. Between 1978 and 1985, he was at St Mary's High School, Casino, in Northern NSW (**St Mary's**). He was the Superior of the community. At St Mary's, he held the positions of deputy principal (1978 – 1980) and principal (1981- 1985).<sup>192</sup>
- 185 Mr John Hamilton provided a statement to the Royal Commission. He was the deputy principal at St Mary's between 1983 and 1990, during some of the period when

<sup>191</sup> Exhibit 43-18 Statement of CNQ STAT.1128.001.0001\_R [49] – [50].

<sup>192</sup> Exhibit 43-30 Statement of Brother Carroll STAT.1181.001.0001\_R [79] – [80].

Dominic was principal.<sup>193</sup> Mr Hamilton is also a former student of Marist Brothers Maitland and taught at Marist Brothers Hamilton between 1978 and 1982.

- 186 Mr Hamilton said that in around mid-1983, he had a conversation with two lay teachers (who are both now deceased) from Marist Brothers Hamilton and they asked him if Dominic had been ‘up to his old tricks.’ Mr Hamilton said he did not recall a more detailed discussion about the matter but he was left with the impression that the two teachers had heard that Dominic was overly friendly with children at Marist Brothers Hamilton.<sup>194</sup> Mr Hamilton stated that this was not something that he had witnessed or that had been reported to him while he was a teacher at the school. He said he thought that the teachers meant that Dominic ‘had somehow had too much physical contact with the students’ but he said:<sup>195</sup>

*I never thought they meant the contact was sexual in nature or that he put his hands under their clothes or touched their genitals. At the time I would not have believed that Brother Dominic was capable of this.*

- 187 Mr Hamilton said that the two teachers also said they had heard that Patrick had been inappropriate with children at Marist Brothers Hamilton in terms of being overly familiar with them. He said one of the teachers said ‘why else do you think that Brother Patrick could only teach Year 12 students’.<sup>196</sup>

- 188 Mr Hamilton said he did not recall how the teachers knew of the allegations but he thought it was innuendo or hearsay. He said:<sup>197</sup>

*In retrospect I don't think I gauged the severity of what the Brothers had been up to and dismissed it because I did not think it was something religious brothers were capable of. I understand now that this was naïve loyalty. For this reason I did not report what I had heard to anyone.*

- 189 Mr Hamilton stated that in the time he worked with Dominic at St Mary’s he only ever saw Dominic behave in a way he thought inappropriate once, in 1985. Mr Hamilton said that he walked into the sick bay to find Dominic sitting over a student who was lying on a bed and rubbing the boy’s head with his hand or a cloth. He described the gesture as ‘in a gentle manner like a caring father’ but said he felt uncomfortable because ‘male teachers do not act like this with students.’ Mr Hamilton said that he felt ‘alarmed’ and became more suspicious of Dominic after this, but that he did not recall thinking at the time that the conduct was untoward or sexual. Mr Hamilton said if he had thought so, he would have reported the matter to the Provincial.<sup>198</sup>

- 190 In a statement to police in 2014, CQX said he was abused by Dominic at St Mary’s Casino in 1982. He described an incident where Dominic came to him when he was in the sick bay and put his hand under the blanket and touched his genital area on the

<sup>193</sup> Exhibit 43-32 Statement of John Hamilton STAT.1184.001.0001\_R [18].

<sup>194</sup> Exhibit 43-32 Statement of John Hamilton STAT.1184.001.0001\_R [20].

<sup>195</sup> Exhibit 43-32 Statement of John Hamilton STAT.1184.001.0001\_R [21].

<sup>196</sup> Exhibit 43-32 Statement of John Hamilton STAT.1184.001.0001\_R [22].

<sup>197</sup> Exhibit 43-32 Statement of John Hamilton STAT.1184.001.0001\_R [24] – [25].

<sup>198</sup> Exhibit 43-32 Statement of John Hamilton STAT.1184.001.0001\_R [28].



outside of his clothing.<sup>199</sup> CQX also said that there was a chant that the children at school used to say ‘Bum’s to the wall, Dom’s on the crawl.’ He said that, after school, he had a conversation with Mr Hamilton, who he said was aware of the saying.<sup>200</sup>

- 191 Mr Hamilton said in his statement to the Royal Commission that in the last couple of years, former students of St Mary’s have told him that Dominic attempted to or did touch them sexually or that they had witnessed him do this when he was principal at St Mary’s. Mr Hamilton did not refer specifically to CQX.<sup>201</sup>

#### *Father Chapman*

- 192 Mr Hamilton said that sometime in 1983 he spoke to Father Chapman, who had just returned from a trip to Sydney with year 10 students. He said that Father Chapman said to him something like ‘you want to keep an eye on Brother Dominic, you wouldn’t believe what he has been up to’ or ‘he is up to no good.’ He said he did not ask for further detail and Father Chapman did not provide it. Mr Hamilton said ‘it is only in retrospect I have realised that this might have been a reference to Brother Dominic offending.’<sup>202</sup>

- 193 Father Chapman provided a statement to police on 29 February 2016. He said he did not take any students on excursions during the time he was assistant priest at St Mary’s in 1982 and 1983 and has never taken children on an excursion to Sydney. He said he did recall a lay teacher, John Hamilton, but did not recall any conversations with him about Dominic. Father Chapman stated he never heard any allegations against Dominic and never witnessed any inappropriate conduct.<sup>203</sup>

#### **Complaint to Brother Turton in relation to CNM in November 1994**

- 194 In 1994, Brother Turton (then the Provincial) received a call from the parish priest of Casino, Father Hackett, who had been approached by a man, CNM. CNM claimed that he had been abused by Dominic, when a student at St Mary’s in the early 1980s.
- 195 Brother Turton’s note of this report, dated 11 November 1994, provides:<sup>204</sup>

*Phone call from PP at ONI. Approached by young man, history of paranoid Schizophrenia, accusing AB29. Claim in 1981 that AB29 called him into the office, put his arm around his shoulders and touched him genitally inside the trousers. Claim that AB29 made a comment about girls maturing more quickly than boys.*

*A lad, CNM, had been very angry with AB29 earlier because he had dismissed certain students from the school for writing graffiti and slanderous comments about the Principal.*

<sup>199</sup> Exhibit 43-9 (Tab 194) CTJH.053.07170.0130\_R at 0131.

<sup>200</sup> Exhibit 43-9 (Tab 194) CTJH.053.07170.0130\_R at 0132.

<sup>201</sup> Exhibit 43-32 Statement of John Hamilton STAT.1184.001.0001\_R [34].

<sup>202</sup> Exhibit 43-32 Statement of John Hamilton STAT.1184.001.0001\_R [26] – [27].

<sup>203</sup> Exhibit 43-9 (Tab 240) CTJH.053.07171.0181\_R.

<sup>204</sup> Exhibit 43-9 (Tab 59) CTJH.053.07170.0256\_R.

*The statement was that that was the only incident and no events of a similar nature were known. The young man wanted to be reassured that there was no likelihood of AB29 causing harm to students. The parish priest (RH) contacted Provincial and Provincial will raise the matter with AB29.*

*The lad concerned had been coming to the PP due to his disturbed state, seen as a result of the paranoid schizophrenia. The parish priest had been taking him through the prayer of healing and will continue to remain in touch.*

- 196 Brother Turton confirmed that the reference in the note to 'AB29' was to Dominic, 'ONI' was a reference to Casino parish and the parish priest 'RH' was Father (Rex) Hackett.<sup>205</sup>
- 197 The references in Brother Turton's note to a 'young man' in the first paragraph and 'CNM' and a 'lad' in the other paragraphs give rise to some ambiguity as to whether there are one, or multiple, reports recorded in the note. However, the police statement given by CNM in 2014 describes the incident reported in the first paragraph of the note, which indicates it was CNM who made that report, and not a different person.<sup>206</sup> In his oral evidence, Brother Turton initially said that he thought that CNM and the man who approached Father Hackett were two separate people,<sup>207</sup> but accepted this to be an error when shown CNM's police statement.<sup>208</sup>
- 198 Brother Turton said that did not speak to the complainant (CNM) directly and that the note only recorded what was relayed to him by Father Hackett.<sup>209</sup>
- 199 When asked whether Father Hackett gave any indication of whether he was going to take any action in relation to the complaint, he said 'No, he didn't give me any indication of that.'<sup>210</sup> Brother Turton was asked whether Father Hackett was reporting the matter to him to deal with as he saw fit and he said he did not know any more than that Father Hackett wanted him to know about the matter.<sup>211</sup>
- 200 A handwritten annotation on Brother Turton's note records:<sup>212</sup>

*Further conversation with the parish priest of Casino. Lad was pleased to know the message had been conveyed to the Provincial. Did not want the man to be challenged if there was no evidence of similar charge then or since. That is the case.*

- 201 There is a further handwritten annotation at the bottom of the note, which records that Brother Turton sought further advice from 'Fr B. L.' (Father Brian Lucas) and his note of that conversation is 'if lad is concerned then he should make direct approach

<sup>205</sup> Turton T17942: 17 – 36 (Day 168).

<sup>206</sup> Exhibit 43-9 (Tab 205) CTJH.053.07170.0154\_R.

<sup>207</sup> Turton T17943: 12 – 13 (Day 168).

<sup>208</sup> Turton T17953: 3 – 8 (Day 168).

<sup>209</sup> Turton T17943: 29 – 41 (Day 168).

<sup>210</sup> Turton T17944: 27 – 31 (Day 168).

<sup>211</sup> Turton T17944: 33 – 38 (Day 168).

<sup>212</sup> Exhibit 43-9 (Tab 59) CTJH.053.07170.0256\_R.

to [the Marist Brothers] and present his case subject to reasonable medical checking of his schizophrenic condition.’<sup>213</sup>

- 202 Brother Turton gave evidence that he was not sure if he asked Dominic about CNM’s allegation, but that he believed he did. He then said he ‘presumed’ he asked Dominic about the issue and that Dominic said that there was nothing to the allegation. Brother Turton said that he knew he did ask Dominic about the graffiti allegation and Dominic said ‘Well, we do expel people for graffiti.’<sup>214</sup>
- 203 Brother Turton was asked what steps he took to address the reassurance sought by the complainant that there was no likelihood of Dominic causing harm to other students and he said that on the basis of the information he had, he was waiting for the complainant to make a direct approach to the Marist Brothers so that a response could be made if the complaint was substantiated. He said that, in the circumstances, he ‘accepted the reassurance of Brother Dominic.’<sup>215</sup>
- 204 Brother Turton gave evidence that he reported the matter to Father Lucas because he was the nominated person under the Church protocols. He said that he reported many cases to Father Lucas, and Father Lucas would provide advice as to the steps to be taken in response.<sup>216</sup>
- 205 Brother Turton said that at the time he received the report from Father Hackett, no other complaints in relation to Dominic had been brought specifically to his attention, but he accepted that he did not make any inquiries of anyone as to whether other complaints had been made against Dominic.<sup>217</sup>
- 206 On 9 April 2015, Brother Turton provided a statement to NSW Police. In relation to the report regarding CNM he said:<sup>218</sup>

*... I have vague memories of receiving a complaint about a child which was very indefinite and whether it was reliable [sic]. I can't remember specifically what I did but my usual process was to contact lawyers and find out what I needed to do and what legal obligations I had. I recall there was a question of the reliability of the complaint due to schizophrenia. The legal man who was looking after the ‘Special Issues’ with the church was Father Brian Lucas and I contacted him. Father Brian Lucas is also a Solicitor. He is part of the Special Issues Section of the Catholic Church. At that stage my hunch is that he was also the Chancellor of the Sydney Diocese. In regards to the complainant he was an adult when I received the complaint. I would have checked with the Parish Priest that the complainant would have been informed of his right to take it to the Police.*

*... I refer in my notes to the complainant suffering from schizophrenia but I would not have assumed it, I would have been told that ...*

<sup>213</sup> Exhibit 43-9 (Tab 59) CTJH.053.07170.0256\_R.

<sup>214</sup> Turton T17945: 1 – 5 (Day 168).

<sup>215</sup> Turton T17945: 22 – 28 (Day 168).

<sup>216</sup> Turton T17945: 38 – T17946: 10 (Day 168).

<sup>217</sup> Turton T17950: 43 – T17951: 8 (Day 168).

<sup>218</sup> Exhibit 43-9 (Tab 213) CTJH.053.07170.0252\_R at 0254 – 0255.

*From my notes I didn't report this matter any further as I received further advice from Father Brian LUCAS that if the lad concerned should make a direct approach to Marist Brothers and present his case subject to reasonable medical checking re his schizophrenic condition ...*

- 207 Father Hackett also provided a statement to police on 9 April 2015. Father Hackett said that he met CNM at the presbytery and CNM told him that he had been sexually abused by Dominic at St Mary's Casino. He stated that CNM told him Dominic put his hands down the front of CNM's pants. Father Hackett said that he accepted CNM's account and that CNM was 'very distressed' and that the incident was still affecting him. Father Hackett said that he was shocked and distressed for CNM and contacted the Superior and reported the allegation over the phone. Father Hackett said that he did not see CNM again and did not hear about the outcome of the complaint. Father Hackett said that according to 'Our protocols' he was required to inform a church authority which in this case was the Superior but 'I was not obliged to inform the Police of these matters.'<sup>219</sup>
- 208 CNM provided a statement to police on 22 September 2014. He stated that when he was in year 8 (in 1983) he was called to Dominic's office. Dominic told CNM to come and sit on his knee, which CNM did. Dominic put his arm around CNM's back then slid his hand down the front of CNM's short and underpants and felt his penis and testicles. At the time he was doing this, Dominic said 'Girls mature quicker than boys.'<sup>220</sup>
- 209 CNM said that he told Father Hackett about what had happened in about 1995. CNM said he did not want Father Hackett to go to the police, but Father Hackett said he would report to the Bishop in Lismore. A week later, CNM said he went back to see Father Hackett who said the Bishop had told him to ring the Superior.<sup>221</sup>
- 210 Brother Turton should have taken steps to investigate CNM's complaint. He did not interview CNM. There was no reason for Brother Turton to require a 'direct approach' by CNM to the Marist Brothers before investigating the complaint. It was not for the complainant to 'present his case' and agitate for action to be taken; that was a matter for Brother Turton, as Provincial. It was wrong to accept the reassurance of Dominic that there was nothing to the complaint without further inquiry, particularly in circumstances where Dominic held a current teaching position and was a principal of a school.

### 3.2 St Peter Claver's College, Riverview

- 211 From 1991 until the end of 1996, Dominic was the principal of St Peter Claver's College, Riverview, in Queensland (**Riverview**).<sup>222</sup>

<sup>219</sup> Exhibit 43-9 (Tab 217) CTJH.053.07170.0271\_R.

<sup>220</sup> Exhibit 43-9 (Tab 205) CTJH.053.07170.0154\_R at 0155.

<sup>221</sup> Exhibit 43-9 (Tab 205) CTJH.053.07170.0154\_R at 0157.

<sup>222</sup> Exhibit 43-30 Statement of Brother Carroll STAT.1181.001.0001\_R [80].

212 Riverview was, at that time, a Diocesan school, owned and operated by the Brisbane Catholic Education Centre.<sup>223</sup>

### **Complaint from a staff member to Brother Turton in August 1995**

213 A further concern in relation to Dominic is recorded in a note by Brother Turton dated 7 August 1995. The note refers to an allegation that was reported about a different Brother, referred to as 'AB34'. Brother Turton then wrote:<sup>224</sup>

*In the process of discussion regarding AB34, the comment was made that it would be most unfortunate if there were some concerns hanging over AB34 as it was common knowledge that AB29, who is a [sic] WEI, is known to be over-familiar with male students.*

*This is at the level of inappropriate touching but no indication of any genitality or such.*

*No one has confronted AB29 about the matter although it is fairly common matter for discussion among staff. Apparently, referral has been made to Bev Paterson at the local CEO for consideration. It is not known whether the matter has been passed on to the director of the CEO or whether any action has been taken by Bev Paterson in particular regarding any formal communication with AB29.*

214 Brother Turton confirmed that 'WEI' refers to Riverview, the school at which Dominic, 'AB29', was then principal.<sup>225</sup>

215 A further note by 'AT' of the same date in relation to the complaint against AB34 records 'This is all the more serious in the light of possible matters connected with AB29.'<sup>226</sup>

216 In his 2015 police statement, Brother Turton said of these two notes:<sup>227</sup>

*These notes are in relation to a concern at Riverview that Brother Dominic O'SULLIVAN was over familiar with male students. From referring to my notes it sounds like someone from the staff has raised a concern about Brother Dominic's behaviour but I am not sure. From my notes I am aware that it had been referred appropriately to Bev PATERSON at the local CEO of Brisbane for consideration. I cannot say from these notes who has done this and I don't recall. Bev PATERSON still works in the area of Child Protection in Queensland. She is also on the National Committee for the Church.*

217 In his statement to the Royal Commission, Brother Turton said 'the complaint arose in passing' while he was dealing with the complaint about the other Brother. He said that he pressed the staff member in relation to the comment about Dominic and 'ascertained that the concerns ... were of inappropriate touching, that is, being too

<sup>223</sup> Exhibit 43-30 Statement of Brother Carroll STAT.1181.001.0001\_R [96].

<sup>224</sup> Exhibit 43-9 (Tab 64) CTJH.053.70050.0033.

<sup>225</sup> Turton T17954: 4 – 9 (Day 168).

<sup>226</sup> Exhibit 43-9 (Tab 65) CTJH.053.07170.0257.

<sup>227</sup> Exhibit 43-9 (Tab 213) CTJH.053.07170.0252.

tactile and not maintaining professional boundaries, but that there was no suggestion or complaint made that he had sexually assaulted any students.<sup>228</sup>

- 218 Brother Turton was asked what further detail he recalled in relation to the report by the staff member and he said there was no more to it than recorded in the note that he could recall. He said it was a ‘sort of hearsay comment’ and that when he saw it had been referred to a child protection officer for the Brisbane Catholic Education Centre (CEC), he assumed that if there was anything more to it, it would be followed up by the CEC.<sup>229</sup>
- 219 Brother Turton could not recall whether the words ‘inappropriate touching’ were the words used by the staff member who reported the matter, but he said ‘I did clarify the point that it did not come into the sexual touching assault area.’<sup>230</sup> The Chair asked Brother Turton what he understood when he wrote ‘inappropriate touching’ and he said ‘It would have been touching the legs, which someone was uncomfortable with; touching the bottom, it could have been that.’<sup>231</sup> In relation to whether touching the bottom had a sexual connotation, Brother Turton said ‘It raises the question; I’m not sure it gives the answer.’<sup>232</sup> Asked whether it required an answer at that stage, Brother Turton said ‘It was a possibility but at that stage, knowing that it was going to the investigation area of the CEC, I didn’t follow that any further at that stage.’<sup>233</sup> According to Brother Turton, the conduct did not involve ‘sexual genital touching and so on.’<sup>234</sup>
- 220 Brother Turton said that the CEC was the appropriate body because Dominic was in their employ and the school in question was a CEC school, not a Marist Brothers school.<sup>235</sup> When asked why that same process did not apply to the report he received from Father Hackett in relation to CNM, Brother Turton said ‘That I can’t explain.’ He accepted that he was aware at the time he received the complaint regarding CNM that it was in relation to a CEC school. As to why he did not report the CNM allegation to the CEC in those circumstances, Brother Turton said that the matter was hinging on the question of CNM’s medical condition and whether he was going to approach the Marist Brothers formally.<sup>236</sup> He said that he did not have any contact with the CEC about the matter, or to tell them he had received another report in 1994.<sup>237</sup>
- 221 By August 1995, Brother Turton was no longer the Provincial; that position was then filled by Brother Michael Hill. Brother Turton said that any contact with the CEC at that time would have gone to the Provincial. When asked in what capacity he would have been speaking to the staff member he said that as he recalled it was ‘just a call from a staff member who I must have met there at some stage.’<sup>238</sup>

<sup>228</sup> Exhibit 43-20 Statement of Brother Turton STAT.1179.001.0001\_R [126].

<sup>229</sup> Turton T17954: 15 – 31 (Day 168).

<sup>230</sup> Turton T17956: 19 – 24 (Day 168).

<sup>231</sup> Turton T17956: 31 – 36 (Day 168).

<sup>232</sup> Turton T17956: 38 – 42 (Day 168).

<sup>233</sup> Turton T17956: 44 – T17957: 2 (Day 168).

<sup>234</sup> Turton T17957: 25 – 30 (Day 168).

<sup>235</sup> Turton T17954: 27 – 31 (Day 168).

<sup>236</sup> Turton T17954: 40 – T17955: 7 (Day 168).

<sup>237</sup> Turton T17957: 32 – 36, T17958: 17 – 21 (Day 168).

<sup>238</sup> Turton T17957: 44 – T17958: 5 (Day 168).

222 Brother Turton did not contact CNM to advise him that there had now been a complaint against Dominic at Riverview. He said he was 'still waiting' for a direct approach by the complainant and a medical clearance so did not follow up.<sup>239</sup> When asked if he reported the fact that there had been a further complaint to Father Hackett, he said 'No, I didn't, no.'<sup>240</sup>

### **Discussions between Brother Turton and Brother Hill regarding Dominic**

223 Brother Hill was Vice Provincial at the time Brother Turton received the 1994 complaint from Father Hackett, and had just become Provincial at the time of the 1995 allegation by a staff member.

224 Brother Turton was asked whether he discussed these matters with Brother Hill. He said 'I don't have a specific recollection of that', but said it was possible.<sup>241</sup> In response to whether he would ordinarily discuss complaints of inappropriate behaviour by a Brother with his Vice Provincial, Brother Turton said 'Often. Not always, depending on gravity, circumstance and so on, but quite often, yes.'<sup>242</sup>

225 Brother Turton said there was no formal handover process between himself and Brother Hill when the latter became Provincial. He said, however, that 'the files were all well known. So I'm sure we would have had a number of discussions but precisely I can't remember exactly how that took place.'<sup>243</sup>

226 As to whether he had a discussion with Brother Hill about Dominic when Brother Hill became Provincial, Brother Turton said 'I don't have a recollection of it. I can't say it didn't happen.'<sup>244</sup>

227 Brother Turton said he did have concerns regarding Dominic by August 1995. When asked whether it would have been important for Brother Hill to know of those concerns, as the new Provincial, Brother Turton said 'Yes.' He said 'I think it's likely, yes', when asked if he likely spoke to Brother Hill about Dominic.<sup>245</sup>

228 Brother Hill gave evidence that he was not aware in 1994 of Brother Turton communicating with Father Hackett about a complaint relating to Dominic from CNM.<sup>246</sup> He said Brother Turton never asked him as Vice Provincial to investigate a complaint about Dominic.<sup>247</sup> When asked if Brother Turton ever had a general conversation with him about Dominic having a problem, Brother Hill said 'I can't recall one, no.'<sup>248</sup>

---

<sup>239</sup> Turton T17958: 32 – 40 (Day 168).

<sup>240</sup> Turton T17959: 12 – 14 (Day 168).

<sup>241</sup> Turton T17960: 15 – 19 (Day 168).

<sup>242</sup> Turton T17960: 33 – 37 (Day 168).

<sup>243</sup> Turton T17960: 39 – 46 (Day 168).

<sup>244</sup> Turton T17961: 1 – 5 (Day 168).

<sup>245</sup> Turton T17961: 17 – 25 (Day 168).

<sup>246</sup> Hill T18070: 19 – 26 (Day 170).

<sup>247</sup> Hill T18071: 6 – 7 (Day 170).

<sup>248</sup> Hill T18070: 45 – 47 (Day 170).

- 229 In relation to the 1995 complaint, Brother Hill said he was not aware at the time that Brother Turton was advised of an issue regarding Dominic at Riverview.<sup>249</sup> Brother Hill gave evidence he did not know why Brother Turton was having a conversation in relation to AB34 when Brother Hill was Provincial but said it could have had to do with ‘that grey area, the changeover period’ and may have been initiated before Brother Hill took office.<sup>250</sup> Brother Hill agreed with the suggestion that responsibility for investigating complaints against Brothers was passing into his hands at the time.<sup>251</sup>
- 230 Brother Hill stated he had no recollection of Brother Turton conveying the information to him. When asked if it ought to have been conveyed, Brother Hill said ‘I would have thought so, yes.’<sup>252</sup>
- 231 Brother Turton had no specific recollection of informing Brother Hill of the complaints about Dominic during a handover process. Brother Hill said he was not aware of the complaints, and he had no recollection of Brother Turton telling him about them. It is submitted the most likely reason neither of them has a specific recollection of a discussion about these matters is because it did not occur. The information was important and Brother Turton should have told Brother Hill about it.
- 232 Brother Turton’s response to the complaint by the staff member was inadequate. He sought to avoid responsibility for the complaint by saying it was a matter for the CEC. He did not, however, inform the CEC of the prior complaint of abuse of CNM, take any steps to inquire with the CEC as to their response, or refer the complaint to the new Provincial, Brother Hill.

### **Complaint by CNO in 1996**

- 233 In July 1996, CNO, then a 13-year old student in grade 9 at Riverview, made a complaint against Dominic to police. CNO gave a statement to police detailing incidents which had occurred the previous year, being:<sup>253</sup>
- a. an incident when he was lying on his belly in sick bay in 1995 when Dominic approached him and rubbed his bottom on the outside of his clothes
  - b. an incident in 1995 when he was called to Dominic’s office and Dominic called him over to sit on his knee and put his arm around his waist
  - c. an incident in 1995 where Dominic gave him a high five in the playground, then held onto his hand and would not let it go until CNO pulled his hand away.
- 234 Another incident described by CNO occurred only a few days prior to his police statement, on 11 July 1996. CNO stated that Dominic requested CNO see him in his office. When he arrived, CNO said Dominic sat next to him on the lounge and Dominic put his arm around CNO’s shoulders. CNO said Dominic then took CNO’s hand and put

<sup>249</sup> Hill T18071: 21 – 28 (Day 170).

<sup>250</sup> Hill T18072: 16 – 22, 32 – 36 (Day 170).

<sup>251</sup> Hill T18072: 24 – 26 (Day 170).

<sup>252</sup> Hill T18072: 42 – T18073: 1 (Day 170).

<sup>253</sup> Exhibit 43-9 (Tab 71) CTJH.053.70050.0320\_R at 0320 – 0321.



it on the inside of his (Dominic's) thigh and started to rub CNO's hand. CNO said Dominic also commented on CNO's facial hair and said 'soon you'll be getting hairs on your balls', then kissed him on the top of his head and rubbed his bottom with one hand. CNO then left the office.<sup>254</sup>

235 The complaint was referred to the school and the CEC.

236 Dominic was interviewed by representatives of the school and the CEC on 16 July 1996. He made admissions in relation to some of the alleged conduct but did not accept that it was improper. The note of that meeting provides:<sup>255</sup>

*1. Br Dominic did not deny the actions that led to the parent concerns [sic]. However, within the broader context of the actions as described by Br Dominic and by Paul Blundell, Br Dominic's actions appear to have been non-sexual in intention, very foolish and most inappropriate ...*

*2. Br Dominic has agreed to a complete 'hands off' approach to all students ...*

*4. Br Dominic undertook to contact his religious superiors at Drummoyne to inform them of the claims and to arrange legal support ...*

*5. There would not appear to be need for Br Dominic to take any leave from his duties at this time. However, should circumstances change, this may need to be re-considered by BCEC and/or Br Dominic in the future.*

237 The CEC note also records that the advice from police was that the complaints were 'not of a serious nature' and it 'would appear to be highly unlikely' that charges would be laid.<sup>256</sup>

238 Dominic was also interviewed by police on 19 July 1996. In the interview he denied his conduct towards CNO was sexual. He explained his actions in the meeting in his office on 11 July as 'fatherly', 'foolish' and 'boys talk.'<sup>257</sup>

239 Brother Turton (who was no longer the Provincial) gave evidence that he could not recall the complaint in relation to CNO having been brought to his attention.<sup>258</sup>

240 Brother Hill gave evidence he remembered this case 'quite clearly'.<sup>259</sup> He said the only complaint he recalled receiving in relation to Dominic was in 1996, when Dominic told him that he had done something foolish in making an inappropriate statement to a student.<sup>260</sup> He said that Dominic phoned him and said he had made 'a comment to a young teenage boy about the emergence of pubic hair, in a very personal way'.<sup>261</sup> Brother Hill agreed the comment Dominic told him about was 'Soon you'll get hair on

<sup>254</sup> Exhibit 43-9 (Tab 71) CTJH.053.70050.0320\_R at 0321 – 0322.

<sup>255</sup> Exhibit 43-9 (Tab 74) CTJH.053.07172.0160\_R at 0160 – 0161.

<sup>256</sup> Exhibit 43-9 (Tab 74) CTJH.053.07172.0160\_R at 0161.

<sup>257</sup> Exhibit 43-9 (Tab 78) CTJH.053.07172.0171\_R at 0187.

<sup>258</sup> Turton T17961: 37 – 46 (Day 168).

<sup>259</sup> Hill T18067: 29 – 33 (Day 170).

<sup>260</sup> Exhibit 43-24 Statement of Brother Hill STAT.1178.001.0001 [62], Hill T18066: 18 – 26 (Day 170).

<sup>261</sup> Hill T18066: 31 – 33 (Day 170).

your balls'.<sup>262</sup> He said Dominic told him he was to have a meeting with the CEC the following morning.<sup>263</sup>

- 241 Brother Hill said he reproached Dominic for a 'gross violation of boundaries' and said that 'it was quite inappropriate, particularly for a person in that position.'<sup>264</sup>
- 242 Brother Hill agreed the conversation likely occurred in July 1996.<sup>265</sup> He said he had no indication whatsoever prior to that conversation of any issues relating to Dominic behaving inappropriately.<sup>266</sup>
- 243 Brother Hill said he knew Ms Diane Goosem of the CEC, and he contacted her about the incident. Brother Hill said Ms Goosem advised him that 'her office would handle the matter and that there would be no disciplinary consequences', apart from a reprimand.<sup>267</sup>
- 244 Brother Hill said it was not conveyed to him that there was also a complaint that Dominic touched the boy inappropriately, put the boy's hand on his thigh and rubbed it, and kissed the boy on the top of his head.<sup>268</sup> When asked whether he remembered anything further about the complaint, Brother Hill said 'All the person I spoke to did was to confirm what Dominic had told me on the phone the previous evening, that there'd been an inappropriate comment.'<sup>269</sup> As to whether it was conveyed to him that part of the meeting included Dominic agreeing to a 'hands off' approach, he said it may have been but he had no recollection of it. He agreed had that been conveyed, it would have indicated there was more to the incident than an inappropriate comment.<sup>270</sup>
- 245 Later in his evidence, Brother Hill reiterated that while he knew of the inappropriate comment he 'was totally unaware of the other associated matters' at Riverview.<sup>271</sup>
- 246 When asked if he was told about the outcome of the CEC investigation, Brother Hill said he asked whether Dominic should be stood down and Ms Goosem said 'no, the [CEC] would handle the matter.' Brother Hill said he was told 'there was no need for me to be involved' and 'they saw it as a minor matter rather than a standing-down issue.'<sup>272</sup>
- 247 Brother Hill gave evidence that in terms of the division of responsibility between himself as Provincial and the Catholic Education Office when dealing with that complaint, Brother Hill said 'in a pastoral sense' Dominic was under his jurisdiction, but

---

<sup>262</sup> Hill T18066: 35 – 37 (Day 170).

<sup>263</sup> Hill T18066: 39 – 46 (Day 170).

<sup>264</sup> Hill T18069: 34 – 47 (Day 170).

<sup>265</sup> Hill T18073: 17 – 37 (Day 170).

<sup>266</sup> Hill T18070: 2 – 5 (Day 170).

<sup>267</sup> Exhibit 43-24 Statement of Brother Hill STAT.1178.001.0001 [63].

<sup>268</sup> Hill T18067: 47 – T18068: 4 (Day 170).

<sup>269</sup> Hill T18067: 43 – 46 (Day 170).

<sup>270</sup> Hill T18068: 19 – 28 (Day 170).

<sup>271</sup> Hill T18081: 28 – 30 (Day 170).

<sup>272</sup> Hill T18068: 6 – 12 (Day 170).

'St Peter Claver was a systemic school, therefore, under the auspices of the Brisbane Catholic education authorities.'<sup>273</sup>

248 When Brother Hill was asked whether the appointment of Dominic to another school was a matter for him, he said 'that's correct'.<sup>274</sup> When the proposition was put to Brother Hill that he would have an interest in disciplinary matters involving Marist Brothers for the purposes of transfers, he said 'Certainly'.<sup>275</sup>

249 Brother Carroll gave evidence that, as Riverview is a Diocesan school, the Catholic Education Centre was the appropriate body to handle the complaint and determine what action was to be taken. He said, however, 'actions in relation to a brother would have been a matter for discussion between the Director of the Brisbane CEO and the Marist Brothers Provincial.'<sup>276</sup> He said it was 'unusual' that Brother Hill seemed not to have known what the complaint was about. He agreed that this appeared to be a fault in the system.<sup>277</sup>

250 An undated handwritten note relating to these events was in evidence. The telephone number for Drummoyne appears at the top of the note.<sup>278</sup> The note records:

- *Need your guidance and support.*
- *The separated parents of a year 9 lad (boy living with father) have made a complaint against me to the J.A.B.<sup>279</sup> for inappropriate behaviours towards the boy – twice last year and one situation last Thursday afternoon.*
- ...
- *The father phoned late Monday evening (D.P) to say the boy had made a statement to the Goodna J.A.B.*

251 The note also details the meeting with the CEC. It records:<sup>280</sup>

*I retold my situation to the meeting. Clarified the context. I have not denied the details of the complaints but put the context as a basis for some misunderstanding ...*

*I was interviewing the boy around 2.15-2.30 last Thursday (11/7/96) about his learning difficulties ...*

*When I asked how he coped with his parents' separation, he said that at first he was very confused and upset but now he understood and accepted things more.*

<sup>273</sup> Hill T18067: 12 – 17 (Day 170).

<sup>274</sup> Hill T18067: 19 – 22 (Day 170).

<sup>275</sup> Hill T18067: 24 – 27 (Day 170)

<sup>276</sup> Exhibit 43-30 Statement of Brother Carroll STAT.1181.001.0001\_R [96].

<sup>277</sup> Carroll T18247: 27 – 30, T18248: 14 – 17 (Day 171).

<sup>278</sup> Exhibit 43-9 (Tab 75) CTJH.053.70046.0022\_R.

<sup>279</sup> Juvenile Aid Bureau.

<sup>280</sup> Exhibit 43-9 (Tab 75) CTJH.053.70046.0022\_R at 0023.

*Foolishly I let my compassion and urge to affirm the lad's efforts take over and patted his arm which was resting on my knee.*

*As he left the office I gave the boy a shoulder hug and kissed him on the head.*

*I accept that my actions were foolish and inappropriate given my awareness of and responsibility for personal safety...etc.*

*Near the end of the conversation I noticed the emerging hair growth on the lad's upper lip and said in 'boy's talk' 'it won't be long before you will have hair on your nuts as well'*

*The complaint also lists an occasion (95) last year when the lad was in sick bay and I was supposed to have squeezed his leg.*

*Very early last year the support teacher brought the lad to me as he was crying uncontrollably. With the support teacher present I sat the lad on my knee and gave him a drink of water. He gradually calmed down and the problem sorted out ...*

*Be assured, Michael, I have no inclination to interfere, harm or hurt this [indecipherable] lad or any other student. While my actions were totally inappropriate I accept they would be/and were interpreted differently than intended. There never was any action of overt sexual fondling or any inappropriate suggestion.<sup>281</sup>*

- 252 The provenance and purpose of this note is unclear. It appears to be either an aide memoir prepared by Dominic for a conversation with Brother Hill, or a file note of a phone conversation (or conversations) between Dominic and Brother Hill.
- 253 Brother Hill was asked about this note. He gave evidence that he had no recollection of having been sent the note.<sup>282</sup> He confirmed his recollection was that he had a conversation with Dominic the night before Dominic met with the CEC, and not afterwards,<sup>283</sup> as the note suggests. He said his recollection was that he was only aware of the inappropriate comment, and not the allegation of inappropriate touching. When asked whether it was possible that he had a further conversation with Dominic in which Dominic conveyed the allegation of inappropriate touching that he had since forgotten, Brother Hill said 'Oh that's possible, certainly, yes. But I think I'd remember it.'<sup>284</sup>
- 254 It is submitted that it is likely that Brother Hill had a further conversation with Dominic in which Dominic conveyed that the allegations by CNO were more than an inappropriate comment. The note describes the CEC meeting in terms which suggest that the description was being communicated after that meeting. That Dominic phoned Brother Hill after the meeting is also consistent with the CEC's note that at that meeting Dominic 'undertook to contact his religious superiors at Drummoyne to

<sup>281</sup> Exhibit 43-9 (Tab 75) CTJH.053.70046.0022\_R at 0027.

<sup>282</sup> Hill T24682: 2 – 5 (Day 241).

<sup>283</sup> Hill T24682: 14 – 18 (Day 241).

<sup>284</sup> Hill T24683: 30 – 38 (Day 241).

inform them of the claims and to arrange legal support.’<sup>285</sup> It is also reasonable to assume that Brother Hill, as Provincial, was made aware of the substance of the allegations, notwithstanding that he said the disciplinary response was a matter for others. To the extent that Brother Hill gave evidence that he was only made aware of an allegation that Dominic had made an inappropriate comment to CNO, his evidence ought to be rejected. Brother Hill was made aware both of the inappropriate comment and that Dominic had touched CNO in a way that CNO considered to be inappropriate.

### **Criminal investigation regarding CNO’s complaint**

255 On 6 August 1996, Mr Pat Mullins, Dominic’s solicitor, wrote to Brother Hill. He referred to the police interview and noted that ‘The Police who conducted the interview indicated to us that they would make a recommendation to their superior officers that no charges be made against Brother Dominic.’<sup>286</sup>

256 However, contrary to that initial indication, a subsequent telephone attendance memo records that Mr Mullins spoke to police on 16 December 1996 and that police:<sup>287</sup>

*indicated that a recommendation has come back from Superior Officers with a recommendation to charge Brother Dominic.*

*This will be done by way of Summons, but it won’t be until the New Year ...*

257 A further handwritten attendance memo by Mr Mullins of the same date records a conversation with Dominic and ‘he will be o.s. next year: - 22/1/1997 – 31/5/1997, Wellsprings’.<sup>288</sup>

258 On 27 January 1997 CNO withdrew his police complaint in writing, citing that he did not wish to go to court and he did not believe anything would be gained by going to court.<sup>289</sup>

259 On 3 March 1997, Mr Mullins wrote to Brother Hill:<sup>290</sup>

*We ... advise that we spoke to Brother Dominic before Christmas last year where he indicated to us that he would be overseas for the bulk of this year.*

*Our enquiries at the Juvenile Aid Bureau at Goodna prior to Christmas indicated it was unlikely that any proceedings would be bought in the near future.*

*We do not propose to chase up the Police ourselves at this point as we think that this would be counter-productive.*

260 Brother Hill gave evidence that he recalled that CNO made a statement to police, that there were indications that the police were going to charge Dominic, and that CNO

<sup>285</sup> Exhibit 43-9 (Tab 74) CTJH.053.07172.0160\_R at 0161.

<sup>286</sup> Exhibit 43-9 (Tab 79) CTJH.053.07165.0058.

<sup>287</sup> Exhibit 43-9 (Tab 85) CTJH.053.70046.0015.

<sup>288</sup> Exhibit 43-9 (Tab 84) CTJH.053.70046.0005.

<sup>289</sup> Exhibit 43-9 (Tab 88) QLD.0157.001.0035\_R, Exhibit 43-9 (Tab 226) CTJH.053.07172.0153\_R.

<sup>290</sup> Exhibit 43-9 (Tab 89) CTJH.053.70050.0137.

withdrew the complaint, but that he was unsure whether he knew this at the time or later.<sup>291</sup> When questioned further about the timeframe, he stated he didn't have a 'clear memory of learning that back in 1996.'<sup>292</sup> Brother Hill agreed that police involvement was a matter that would have been important for him to know about, as it indicated that the issue was more serious.<sup>293</sup>

- 261 Dominic's undated note and the letters of August 1996 and March 1997 from Mr Mullins indicate that Brother Hill was aware of the police investigation at the time.

### Knowledge of Brother Hill

262 It is submitted that Brother Hill knew:

- (a) By July 1996, that CNO had made a complaint against Dominic alleging an inappropriate comment. It is likely that Brother Hill knew the allegation also concerned inappropriate touching.
- (b) By July 1996, that CNO had made a statement to the police at Goodna.
- (c) By July, that police at Goodna wished to (and did) interview Dominic about CNO's allegation.
- (d) By March 1997, that the police had reported to Mr Mullins that it was unlikely proceedings would be brought 'in the near future'.

263 It is not clear on the documents whether Mr Mullins informed Brother Hill on or around 16 December 1996 that police were intending to charge Dominic in the New Year (1997). However, it is submitted that it is probable that he did so. Mr Mullins was engaged by Brother Hill, and the Marist Brothers paid Mr Mullins legal fees.<sup>294</sup> Mr Mullins reported developments in Dominic's criminal matter to Brother Hill.<sup>295</sup> It is more likely than not that this very significant information would have been communicated to Brother Hill at the time.

### 3.3 Dominic's appointment to St Francis Xavier's College Hamilton (formerly Marist Brothers Hamilton)

264 On 25 May 1996, Brother Hill held an interview with Dominic in which he proposed appointing Dominic as principal of St Francis Xavier's College Hamilton (**St Francis Xavier's**) (formerly Marist Brothers Hamilton) from the beginning of 1997. Brother Hill wrote at the time that he had told Dominic 'that the Council was fully in favour of him taking up this position.'<sup>296</sup>

<sup>291</sup> Hill T18068: 30 – 46 (Day 170).

<sup>292</sup> Hill T18069: 1 – 7 (Day 170).

<sup>293</sup> Hill T18069: 1 – 15 (Day 170).

<sup>294</sup> Exhibit 43-9 (Tab 79) CTJH.053.07165.0058, Exhibit 43-9 (Tab 89) CTJH.053.70050.0137\_R.

<sup>295</sup> Exhibit 43-9 (Tab 79) CTJH.053.07165.0058, Exhibit 43-9 (Tab 89) CTJH.053.70050.0137\_R.

<sup>296</sup> Exhibit 43-9 (Tab 67) CTJH.053.70050.0151.

- 265 Brother Hill gave evidence that he only remembered the discussion with the Council in vague terms and could not recall there being any dissent.<sup>297</sup>
- 266 On 3 June 1996, Brother Hill wrote to Dominic to inform him of his appointment as principal of St Francis Xavier's, to commence at the beginning of the 1997 school year.<sup>298</sup> Brother Hill wrote 'I intend to announce new school Principals for 1997 in the next edition of the Newsletter which should appear in the second half of June.'<sup>299</sup>
- 267 On 6 June 1996, Brother Hill wrote to Mr Michael Bowman, then the Director of the Catholic Schools Office, to inform him of the Brothers' nomination of Dominic for the appointment.<sup>300</sup> Mr Bowman responded on 14 June to say he would be pleased to welcome Dominic to the Diocese.<sup>301</sup>

### **Complaint by CQP following announcement of Dominic's appointment**

#### *Evidence of CQP*

- 268 CQP was a student of Marist Brothers Hamilton in the 1970s. He gave evidence that he was sexually abused by Dominic in 1972 and 1973 and that he saw Dominic sexually abusing other boys in the class. CQP said:<sup>302</sup>

*On multiple occasions over those two years Brother DOMINIC came up behind me and rubbed his erection against my hip and lower back. He also stood next to, or over me, and put his hands down my shirt and rubbed my breast area. He also ran his hands up my legs towards my thighs. He never put his hand under my shorts. I could not say exactly how many times Brother DOMINIC did this to me, but it happened many times over the two years. I also saw Brother DOMINIC come up behind other students and press against their backs, and rub his hands on their legs and put his hands under their shorts. Again, these were things that I witnessed regularly over these two years. I had classes with Brother DOMINIC four or five times a week in 1972 and 1973. I would say that Brother DOMINIC abused me or I saw him abusing other students in most of these classes.*

- 269 In 1996 CQP was deputy principal of a Catholic school. CQP gave evidence that in 1996 he read an article in the Newcastle Herald announcing the prospective appointment of Dominic as principal of St Francis Xavier's. He said it 'really shook me' that Dominic could be placed back at the school. He said he was concerned for the safety of his children, one of whom was about to become a student at the school, and that he was concerned that other parents who had been abused by Dominic in the past would object to his appointment.<sup>303</sup>
- 270 CQP said he did not know what to do, but he made an appointment to see a parish priest, Father Peter Brock. CQP said that he told Father Brock what 'Brother Dominic

<sup>297</sup> Hill T18074: 22 – 36 (Day 170).

<sup>298</sup> Exhibit 43-9 (Tab 68) CTJH.053.70050.0148\_R.

<sup>299</sup> Exhibit 43-9 (Tab 68) CTJH.053.70050.0148\_R.

<sup>300</sup> Exhibit 43-9 (Tab 69) CTJH.053.07164.0088\_R.

<sup>301</sup> Exhibit 43-9 (Tab 70) CTJH.053.70050.0145\_R.

<sup>302</sup> Exhibit 43-45 Statement of CQP STAT.1210.001.0001\_R [8].

<sup>303</sup> Exhibit 43-45 Statement of CQP STAT.1210.001.0001\_R [17] – [19].

did to me in class and what I had seen him to do other students' and that to the best of his recollection what he told Father Brock 'would have given him the understanding' that CQP was referring to Dominic touching students, including himself, in a sexual manner.<sup>304</sup>

271 CQP said that he could not recall Father Brock's exact response but said he did not offer any advice or pastoral care. CQP was angry and disappointed.<sup>305</sup>

272 A day or so of after that meeting, CQP met with Mr Bowman, of the Catholic Education Office. CQP gave the following account of his discussion with Mr Bowman:<sup>306</sup>

*I told him I was concerned that Brother DOMINIC was coming back to St Francis Xavier's College because of what he had done to me and other kids when we were students there. I don't recall my exact words, but I told him that Brother DOMINIC rubbed his erection on me, put his hands down my shirt and ran his hands up my legs. I also recall telling him that I was concerned that other former students who now had children at the school would feel the same way.*

273 CQP said that Mr Bowman indicated to him that he would take the matter up with Bishop Malone and Brother Hill. CQP said that he formed the impression that Mr Bowman would not allow Dominic to be appointed to the school. CQP expressed his gratitude to Mr Bowman. He said in his statement to the Royal Commission that '[i]t was a relief for me to tell someone of my experience, to feel that I was believed and to have them confirm to me that what happened was wrong and that it should never happen again.'<sup>307</sup>

274 CQP said that within the next few days he received a phone call from Brother Hill. At the time he received the call, CQP had not heard that Dominic's appointment had been withdrawn.<sup>308</sup> He said that Brother Hill told him he had been informed by Bishop Malone that CQP had made allegations about Dominic. CQP said:<sup>309</sup>

*I then proceeded to tell [Brother Hill] what Brother DOMINIC had done to me. I can't recall my exact words but I told Brother HILL about the incidents I have described. That is, I said that Brother DOMINIC came up behind me in class and rubbed his erection against my hip and lower back, that he put his hands down my shirt and rubbed my breast area, and that he also ran his hands up my legs towards my thighs. I also said that I witnessed Brother DOMINIC come up behind other students and press against their backs, and rub his hands on their legs and put his hands under their shorts. I am sure I would have conveyed to Brother HILL that these things happened on multiple occasions. I do not think that I told him how old I was at the time, but I made it clear that these things had happened when I was a student at Marist Brothers Hamilton. I don't recall whether I also told Brother HILL that*

<sup>304</sup> Exhibit 43-45 Statement of CQP STAT.1210.001.0001\_R [20].

<sup>305</sup> Exhibit 43-45 Statement of CQP STAT.1210.001.0001\_R [21].

<sup>306</sup> Exhibit 43-45 Statement of CQP STAT.1210.001.0001\_R [22].

<sup>307</sup> Exhibit 43-45 Statement of CQP STAT.1210.001.0001\_R [23] – [24].

<sup>308</sup> Exhibit 43-45 Statement of CQP STAT.1210.001.0001\_R [25].

<sup>309</sup> Exhibit 43-45 Statement of CQP STAT.1210.001.0001\_R [26].



*there were rumours of him taking boys into his office and doing things of a sexual nature to them.*

- 275 CQP said that he also shared with Brother Hill his concern that Dominic's appointment would cause a scandal with other parents who had been abused as students and that he told Brother Hill that he thought Dominic should not be appointed.<sup>310</sup> CQP said 'I believe I made it clear that the conduct by Brother Dominic was sexual and my impression that Dominic gained some sort of sexual gratification from these acts.' CQP said he could not recall what Brother Hill said in response but that he formed the impression that Brother Hill believed him. CQP stated that Brother Hill 'seemed to accept what I was saying, he did not express disbelief or challenge me on any of the allegations.'<sup>311</sup>
- 276 CQP said this was the last conversation he recalled having with Brother Hill on the matter. He said that sometime later he received an internal schools memo that Mr Bryan Maher would act as principal of St Francis Xavier's in 1997, until Brother Robinson took up the position towards the end of the year. CQP said he felt relieved and thought 'there we go, something has been done.'<sup>312</sup>
- 277 CQP was questioned by Counsel for Brother Hill. It was put to CQP that the incidents he described in his statement were not inconsistent with what Brother Hill said CQP told him. Counsel referred specifically to 'invading personal spaces' and inappropriately touching students on the head and leg. CQP accepted the Chair's proposition that he may have told Brother Hill that he observed these things but he also told Brother Hill what had happened to him personally.<sup>313</sup>
- 278 Counsel for Brother Hill asked why CQP had said he 'believed' he had told Brother Hill that he made it clear the conduct was sexual, rather than just saying he did tell Brother Hill. CQP responded 'I believe. It is my conviction. I believe. I can't think I can say it any plainer ... I have no doubt, sir.'<sup>314</sup>

#### *Evidence of Bishop Malone*

- 279 Bishop Malone gave evidence that he did remember there was 'an issue' with regard to the character of the new principal, although he could not remember who the Brother in question was.<sup>315</sup> He said that he was informed that there were 'warning bells' in relation to the principal 'around issues of inappropriate sexual behaviour.'<sup>316</sup> He said that he did not know what the nature of the behaviour was.<sup>317</sup>
- 280 Bishop Malone stated he was 'vague' on the source of that information but that he thought it was the Director of Schools in the Diocese,<sup>318</sup> who was Mr Bowman. He said

<sup>310</sup> Exhibit 43-45 Statement of CQP STAT.1210.001.0001\_R [27].

<sup>311</sup> Exhibit 43-45 Statement of CQP STAT.1210.001.0001\_R [28] – [29].

<sup>312</sup> Exhibit 43-45 Statement of CQP STAT.1210.001.0001\_R [30] – [31].

<sup>313</sup> CQP T24663: 46 – T24664: 5, T24664: 46 – T24665: 24 (Day 241).

<sup>314</sup> CQP T24665: 3 – 14 (Day 241).

<sup>315</sup> Malone T17762: 46 – 47 (Day 166).

<sup>316</sup> Malone T17763: 10 – 11, 29 – 30, T17764: 3 – 4 (Day 166).

<sup>317</sup> Malone T17764: 2 – 5 (Day 166).

<sup>318</sup> Malone T17763: 32 – 36 (Day 166).

that his diary reflected a meeting with Mr Bowman on 13 August 1996, and that he assumed, but was not certain, that the information came from Mr Bowman.<sup>319</sup>

- 281 Bishop Malone said that on the basis of the information received he contacted Brother Hill and said ‘It doesn’t sound very good for this guy’, meaning Dominic, and told Brother Hill ‘We’ve got enough problems here without buying into any more’.<sup>320</sup> He said that Brother Hill heard what he was saying and changed his mind about the appointment.<sup>321</sup>
- 282 Bishop Malone said that taking the report regarding Dominic to the police was a matter for the Provincial, not him. He accepted that he did not inquire whether Brother Hill did take the matter to police.<sup>322</sup> When asked whether he inquired of Brother Hill as to what else was being done to deal with the suggestion that a Brother had engaged in inappropriate sexual behaviour, Bishop Malone said ‘No, I didn’t. That was his bailiwick, not mine.’<sup>323</sup>

*Evidence of Brother Hill regarding his conversation with Bishop Malone*

- 283 Brother Hill’s evidence was that he received a phone call from Bishop Malone shortly after Dominic’s appointment was announced. Brother Hill said Bishop Malone ‘raised serious reservations about the appointment due to several statements that he had received from men reporting inappropriate behaviour by Dominic’ and that ‘With that information I immediately rescinded the appointment.’<sup>324</sup> Brother Hill said there was no more detail to the information provided by Bishop Malone than that it was ‘inappropriate behaviour’. When asked whether he inquired of Bishop Malone if there were any further details he said no.<sup>325</sup> Brother Hill accepted that he understood Bishop Malone as treating the complaints to be serious and said that he did also.<sup>326</sup>
- 284 Brother Hill said that he could not recall the exact timing of the call from Bishop Malone but said it would have occurred sometime after July (being after he became aware of the complaint by CNO).<sup>327</sup> When asked what his response was to the information from Bishop Malone, Brother Hill said ‘Oh, before he finished the sentence I had revoked the appointment.’<sup>328</sup>
- 285 Brother Hill said that Bishop Malone ‘found it difficult to give me details of the complaints he had received and the impression I had at the time, rightly or wrongly, is that people were simply objecting and objecting strongly to the appointment.’ He accepted that he concluded that the basis for those objections was that Dominic had engaged in inappropriate conduct in the past.<sup>329</sup>

<sup>319</sup> Malone T17774: 22 – 42 (Day 166).

<sup>320</sup> Malone T17763: 12 – 14 (Day 166).

<sup>321</sup> Malone T17763: 14 – 20 (Day 166).

<sup>322</sup> Malone T17765: 34 – 41 (Day 166).

<sup>323</sup> Malone T17765: 44 – T17766: 1 (Day 166).

<sup>324</sup> Exhibit 43-24 Statement of Brother Hill STAT.1178.001.0001 [67].

<sup>325</sup> Hill T18075: 24 – 27 (Day 170).

<sup>326</sup> Hill T18075: 45 – T18076: 3 (Day 170).

<sup>327</sup> Hill T18077: 5 – 21 (Day 170).

<sup>328</sup> Hill T18077: 23 – 26 (Day 170).

<sup>329</sup> Hill T18082: 19 – 36 (Day 170).

- 286 Brother Hill was asked what steps he took to find out what kind of complaints he was dealing with from the gentlemen who had complained to Bishop Malone and he said 'Well I didn't know who they were and neither did the Bishop'. He did not follow up with the Bishop as he said 'I couldn't see any way of identifying the people concerned.'<sup>330</sup>
- 287 Brother Hill said that he could not recall making inquiries of Brother Turton to determine whether there had been any previous complaints about Dominic and said 'He was overseas by then.' When asked whether they were still in contact, Brother Hill said 'Not really.'<sup>331</sup>
- 288 Brother Hill said that he 'probably' checked the files to see whether there was any record of previous complaints but he had no specific recollection of doing so.<sup>332</sup>

*Evidence of Brother Hill regarding CQP*

- 289 Brother Hill's evidence to the Royal Commission in September was given before CQP provided his statement. His evidence in September in relation to those events was as follows.
- 290 Following the call from Bishop Malone, Brother Hill contacted CQP, who was an acquaintance and who had been a student of Dominic at Marist Brothers Hamilton. In his statement, Brother Hill said:<sup>333</sup>

*I contacted him to attempt to find out more information about the reported inappropriate behaviour. My memory is that he described similar boundary violation concerns but nothing that was believed to be of a criminal nature. Nonetheless it was inappropriate behaviour.*

- 291 In his oral evidence he said that he phoned the deputy principal, who 'described things such as Dominic invading personal spaces of children, of teenaged boys, by touching them on the head inappropriately, touching them on the leg.'<sup>334</sup> Brother Hill said that the deputy principal described 'Nothing by way of sexual assault' but described a 'boundary violation.'<sup>335</sup> When asked what kind of behaviour he would have taken to be criminal, Brother Hill said 'Genital fondling and such things as that.'<sup>336</sup>
- 292 Brother Hill was recalled to give further evidence on this topic on 9 December 2016, after CQP provided a statement. He was asked whether CQP's evidence refreshed his memory as to what happened and he said 'No, it's the precise opposite.'<sup>337</sup>
- 293 It was put to Brother Hill that, contrary to his evidence in September, Bishop Malone had identified CQP as a person who had raised a complaint about Dominic's appointment and that this was the reason why Brother Hill called CQP. Brother Hill

<sup>330</sup> Hill T18083: 7 – 18 (Day 170).

<sup>331</sup> Hill T18083: 20 – 26 (Day 170).

<sup>332</sup> Hill T18083: 28 – 30 (Day 170).

<sup>333</sup> Exhibit 43-24 Statement of Brother Hill STAT.1178.001.0001 [68].

<sup>334</sup> Hill T18081: 46 – T18082: 2 (Day 170).

<sup>335</sup> Hill T18082: 2 – 5 (Day 170).

<sup>336</sup> Hill T18082: 13 – 15 (Day 170).

<sup>337</sup> Hill T24670: 30 – 33 (Day 241).

denied that this was the case. He said it was still his position that at the time he was unaware of the identity of the complainants to Bishop Malone. He said it was a 'total coincidence' that he happened to contact the very person who made the complaint to Bishop Malone.<sup>338</sup>

- 294 Brother Hill maintained that he revoked Dominic's appointment before he phoned CQP. Brother Hill was asked to explain why he had contacted CQP. He said he made the call because he knew that CQP would have been a student at the school at the same time that Dominic was there.<sup>339</sup> He confirmed the evidence of CQP that there had been no contact between the two since 1976. Brother Hill gave evidence that after speaking to Bishop Malone he felt that he needed more information about Dominic in order to assist him in explaining to Dominic why the appointment had been revoked he was faced with the task of telling Dominic his appointment had been revoked, but did not know what he would say to Dominic and he was looking for some more detail.<sup>340</sup> Brother Hill accepted that CQP was the only former student of Dominic's with whom he spoke.<sup>341</sup>
- 295 It was put to Brother Hill that he was fabricating his evidence to explain his position and he rejected that.<sup>342</sup>
- 296 Brother Hill had no recollection of telling CQP that Dominic's appointment had been revoked and could not explain why he did not do so. He accepted that the conversation was a private one.<sup>343</sup>
- 297 Brother Hill said that his 'clear memory' was that at the end of the conversation with CQP he had an impression of generalised inappropriate touching by Dominic. He said that this was in relation to other students and at no point did CQP tell Brother Hill of his own abuse by Dominic.<sup>344</sup> When asked whether he was confident in that memory, he replied 'Absolutely.'<sup>345</sup>
- 298 Brother Hill accepted that he would not have viewed an allegation of Dominic rubbing his erection on a student's back as a 'boundary violation.' He called it 'depravity.' He also said he would not have viewed an allegation of Dominic putting his hands down a student's shirt and rubbing his breast area as a boundary violation. He said, however, that in 1996 he would have viewed inappropriate touching of boys' legs (which he accepted he was told) as a boundary violation.<sup>346</sup> It was put to Brother Hill that he was giving evidence selectively in order to claim that the things he was told only amounted to boundary violations and he said 'No, it's a clear memory.'<sup>347</sup> It was put to Brother Hill that he spoke to CQP because he knew CQP was the complainant, and that CQP told Brother Hill that he had been a victim of abuse by Dominic, which included

<sup>338</sup> Hill T24670: 35 – 45 (Day 241).

<sup>339</sup> Hill T24671: 3 – 6 (Day 241).

<sup>340</sup> Hill T24672: 35 – 47, T24673: 21 – 24 (Day 241).

<sup>341</sup> Hill T24671: 45 – 47 (Day 241).

<sup>342</sup> Hill T24673: 35 – 28 (Day 241).

<sup>343</sup> Hill T24674: 11 – 14, 25 – 34 (Day 241).

<sup>344</sup> Hill T24675: 10 – 14 (Day 241).

<sup>345</sup> Hill T24675: 29 – 32 (Day 241).

<sup>346</sup> Hill T24675: 34 – 43, T24675: 45 – T24676: 5, 7 – 19 (Day 241).

<sup>347</sup> Hill T24676: 21 – 26 (Day 241).

Dominic rubbing his erection against CQP's back. Brother Hill rejected that and said 'that's not something I would forget in a hurry, or ever.'<sup>348</sup>

### *Conclusions on complaint by CQP*

- 299 It is submitted that CQP's evidence ought to be accepted in full. CQP presented as an honest and forthright witness. He gave clear and coherent evidence of his experiences and his conversation with Brother Hill. It was not put to CQP that he was mistaken or that he was lying. It should be accepted that the conversation with Brother Hill occurred as described by CQP.
- 300 Brother Hill's evidence as to why he spoke to CQP should be rejected. The Royal Commission would reject as an entirely implausible the explanation by Brother Hill that, not knowing the identity of the person who complained to Bishop Malone, and he happened to single out to call CQP - the very person who had in fact complained to Bishop Malone – by 'total coincidence' or 'sheer chance'. Neither man had been in contact with the other for 20 years. Brother Hill's evidence that he thought to contact CQP because he knew him to be a former student, in order to obtain further details of Dominic's conduct so that he could explain a decision he had already made to revoke the appointment is not credible.
- 301 It is also entirely implausible that, if this coincidental phone contact had occurred, CQP would not have indicated to Brother Hill that he was the person who had contacted Bishop Malone and that the complaints related to abuse of him by Dominic.
- 302 The only logical conclusion is that Brother Hill contacted CQP because he was informed that CQP had made an allegation of sexual abuse by Dominic.
- 303 It is submitted that Brother Hill's evidence about his conversation with CQP was untruthful.

### **Provincial Council meeting**

- 304 Brother Hill was asked whether he recalled discussing the objection to Dominic's appointment with the Provincial Council and he said 'It would have arisen at the next meeting, I'm sure' but said that he did not have a specific recollection of the discussion.<sup>349</sup> He was taken to the minutes of the meeting of the Provincial Council dated 16 August 1996, which record:<sup>350</sup>

*Br Dominic O'Sullivan is unable to go to Hamilton next year because of health reasons. Discussion on the possible replacement for Br Dominic took place.*

*Br Anthony Robinson was considered for the position as he returns in August 1997. He could take up the position in Term 4 from an Acting Lay Principal.*

<sup>348</sup> Hill T24679: 19 – 33 (Day 241).

<sup>349</sup> Hill T18077: 39 – T18078: 2 (Day 170).

<sup>350</sup> Exhibit 43-30 Statement of Brother Carroll (Tab 11.1) CTJH.053.70101.0010\_R at .0011\_R.

305 Brother Hill said he was ‘surprised’ to see the content of the document. He said that he would have told the members of the Provincial Council about the allegations in relation to Dominic and said he could not provide an explanation as to why the minute was expressed in the way it was.<sup>351</sup> When asked whether he would have told the Provincial Council that Bishop Malone had said ex-students of Dominic had objected to his appointment he said ‘Yes, Definitely’. He said he would have said ‘That there had been reservations, serious reservations about the appointment made directly to the Bishop Malone who conveyed them to me.’<sup>352</sup> Brother Hill agreed that that had nothing to do with Dominic’s health and the minutes were misleading.<sup>353</sup>

306 Brother Hill accepted that the minutes would be brought forward and approved at the following meeting and he would have participated in their approval. He could not recall why he did so.<sup>354</sup>

307 It was put to Brother Hill that it appeared from the minutes that someone was attempting to hide the truth and he said ‘It certainly appears that way.’ When asked whether he was trying to hide the truth in the minute, Brother Hill said:<sup>355</sup>

*No, not directly. As I say, I would have explained to the members of the Council why the appointment had been reversed. I mean, it was quite a significant step to take and they needed to know why.*

308 In his statement, Brother Carroll referred to minutes recording ill-health as the reason for Dominic not taking the appointment to Hamilton and said ‘I am aware that [Dominic] did have major surgery in 1996.’<sup>356</sup>

309 There is evidence that Dominic was subject to health concerns at or around this time. A letter from Dominic to Brother Hill a year later refers to his medical needs.<sup>357</sup> Brother Carroll said that when he read the minute, he consulted Brother Dominic’s medical file and saw that he had had significant surgery in 1996.<sup>358</sup>

310 In his oral evidence, Brother Carroll said that his statement reflected his understanding of the position before he heard Brother Hill’s testimony. When asked if he was himself misled by the Provincial Council minutes, he said yes.<sup>359</sup>

311 Dominic remained as principal at Riverview until the end of 1996.<sup>360</sup>

312 There is no evidence that the CEC was informed of the objections to Dominic’s appointment communicated to Brother Hill and Bishop Malone.

313

<sup>351</sup> Hill T18078: 43 – T18079: 2 – 6 (Day 170).

<sup>352</sup> Hill T18079: 8 – 30 (Day 170).

<sup>353</sup> Hill T18079: 32 – 42 (Day 170).

<sup>354</sup> Hill T18080: 4 – 18 (Day 170).

<sup>355</sup> Hill T18080: 23 – 28 (Day 170).

<sup>356</sup> Exhibit 43-30 Statement of Brother Carroll STAT.1181.001.0001\_R [109].

<sup>357</sup> Exhibit 43-9 (Tab 92) CTJH.053.70050.0134\_R.

<sup>358</sup> Carroll T18249: 1 – 7 (Day 171).

<sup>359</sup> Carroll T18329: 7 – 19 (Day 171).

<sup>360</sup> Exhibit 43-24 Statement of Brother Hill STAT.1178.001.0001 [65].

## Response of Brother Hill to the objections to Dominic's appointment

314

315 Brother Hill did not have a recollection of consulting with Brother Turton to determine if other allegations had been made against Dominic and his evidence was that they were no longer in regular contact. Brother Hill should have checked the files on Dominic, particularly if he was unable to or did not make inquiries with Brother Turton. Had he done so, he likely would have seen that there had been at least two prior allegations against Dominic.

316 Brother Hill should have informed the CEC of the new allegations brought to his attention as they were relevant to assessing the appropriate response to the complaint by CNO. He did not and Dominic remained in his position as principal of Riverview for another six months.

317 No action was taken by Brother Hill to seek to have Dominic removed from his position as principal of Riverview in the latter half of 1996, notwithstanding the objections to his appointment to St Francis Xavier's. This strongly suggests that Brother Hill's motivation was to protect the Marist Brothers from scandal, rather than to protect the children of either school from the risk of sexual abuse by Dominic.

318 The reasons recorded in the minutes of the Provincial Council meeting for Dominic not taking up the appointment were false. Brother Hill and Bishop Malone each gave evidence that the appointment was withdrawn as a direct consequence of being informed of historical allegations of sexually inappropriate behaviour by Dominic. It was the collective responsibility of the Provincial Council to record accurate and frank minutes. To record in the minutes that ill-health was the reason Dominic did not take the appointment was deliberately misleading. It created the impression on the record that no complaints had been received. It was deliberately misleading and did, in fact, mislead Brother Carroll.

### 3.4 Wellsprings Program and return to Australia

319 In 1997, Dominic travelled to the United States and attended the Wellsprings Sabbatical/Renewal Program.<sup>361</sup>

320 Brother Hill gave evidence that he arranged for Dominic to attend Wellsprings and said he 'believed that this program would assist Dominic to address the issues' that had been reported to him 'including boundary violations.'<sup>362</sup>

321 Brother Turton said that Dominic 'may have' attended Wellsprings, but he would have to check. When asked if he discussed with Dominic sending him to Wellsprings while he was still Provincial, Brother Turton said 'I don't remember it but I could well have'.<sup>363</sup>

<sup>361</sup> Exhibit 43-9 (Tab 87) CTJH.053.70050.0542.

<sup>362</sup> Exhibit 43-24 Statement of Brother Hill STAT.1178.001.0001 [69].

<sup>363</sup> Turton T17962: 11 – 23 (Day 168).

- 322 On 25 July 1997, Brother Hill wrote to Dominic proposing that he consider taking up a position as Director of the Novitiate in Lomeri, in Fiji, at the end of the year.<sup>364</sup>
- 323 Brother Hill gave evidence that he proposed the appointment because it would give Dominic ‘something to do’ but ‘it would not put him in any unsupervised contact with minors.’<sup>365</sup>
- 324 Dominic responded by letter in August saying he felt alarmed, angry, disappointed and even alienated by the prospective appointment.<sup>366</sup>
- 325 Brother Hill replied to Dominic on 13 August 1997 saying:<sup>367</sup>

*Therefore please rest easy ... I have no intention of pushing you in any way in that direction. I am about to leave for overseas (General Conference in Rome) and will not return until mid-October. At this stage I can state quite clearly that there are no Principalships up for grabs in 1998 but I would still hope to adhere to my long range plan which I suggested to you last year, namely that of asking you to lead a school in the Brisbane area in 1999.*

*I would be particularly interested in some of the possibilities you have suggested, particularly being a personal assistant to one of our headmasters for a year or so. Either myself or Mark Farrelly will be in touch with you at some stage over the next few months.*

- 326 Notwithstanding the content of his August 1997 letter Brother Hill gave evidence of an ‘evolution’ in his thinking in relation to Dominic. He said:<sup>368</sup>

*During the course of 1997 I was aware that a significant number of complaints were being received in relation to other Brothers. I recall a significant evolution in my thinking as to potentially widespread inappropriate behaviour by a number of individuals. Despite my belief that there had been nothing criminal in nature that had been alleged in relation to Dominic, it was clear to me by the latter half of 1997 that a Principalship was untenable for an individual who had received such complaints of inappropriate behaviour.*

*Following this evolution in my thinking and increasing awareness of complaints, I did my best to ensure that Dominic never had unsupervised contact with children.*

- 327 Brother Carroll said that he had seen nothing on the documents recording that Brother Hill had concluded that Brother Dominic should no longer have unsupervised access to children.<sup>369</sup> He agreed that this was a ‘major problem’ in terms of the lack of continuity of information being passed from one leader to another.<sup>370</sup>

<sup>364</sup> Exhibit 43-9 (Tab 91) CTJH.053.70050.0136\_R.

<sup>365</sup> Hill T18084: 10 – 16 (Day 170).

<sup>366</sup> Exhibit 43-9 (Tab 92) CTJH.053.70050.0134\_R.

<sup>367</sup> Exhibit 43-9 (Tab 93) CTJH.053.70050.0132.

<sup>368</sup> Exhibit 43-24 Statement of Brother Hill STAT.1178.001.0001 [72] – [73].

<sup>369</sup> Carroll T18250: 33 – 38 (Day 171).

<sup>370</sup> Carroll T18250: 44 – T18251: 3 (Day 171).



- 328 Brother Hill gave evidence that in his discussions with Dominic when he was at Wellsprings, Dominic ‘showed zero insight’ as to the reasons that had led to him completing the program. Brother Hill said that he spoke to Dominic about the ‘boundary violations’ before and after his return from the United States, but could not recall whether he raised any particular incidents.<sup>371</sup> When asked whether Dominic gave an indication as to whether he had committed any ‘boundary violations’, Brother Hill said ‘[o]nly minimally’. He went on to explain that Dominic ‘tended to minimise’ allegations as carelessness.<sup>372</sup>
- 329 Dominic’s proposed appointments were subsequently discussed by the Provincial Council when it met in September 1997. The minutes of that meeting record that the possibility of Dominic going to Dundas or Ashgrove was discussed but that ‘the Principals at these two schools expressed some reservation about the appointment.’<sup>373</sup>
- 330 Brother Hill gave evidence that he could not recall what the proposed positions were and would not have been the person to raise the possibility of the appointments with the principals, that being the province of the Brother responsible for ministries.<sup>374</sup> Brother Hill accepted the positions were in schools and said he ‘presumed’ they were teaching positions.<sup>375</sup> He said:<sup>376</sup>

*... I can’t give you a time on this, but I knew it wasn’t going to happen anyway. I didn’t say anything to the Council at that time but I was determined that Dominic was not going to be in the position of contact with minors.*

- 331 Brother Hill said that sometime in 1997 he told two members of the executive of the Provincial Council, Mark Farrelly and Peter Rodney, that he did not want Dominic in a position of unsupervised contact with minors.<sup>377</sup> He could not recall the discussion in relation to the expressed reservations of the principals. He said that those concerns would have been raised with Brother Farrelly.<sup>378</sup>
- 332 Dominic was subsequently appointed to Provincial House, Drummoyne, as the Province Secretary and Community Leader. Brother Hill gave evidence that ‘part of the reason’ he gave Dominic this appointment was to avoid him having unsupervised contact with children but said ‘he was also skilled at a secretarial role.’<sup>379</sup> He said he would have informed the Provincial Council of his reasoning that Dominic not have unsupervised contact with children and said ‘The alarm bells were quite deafening by that stage.’<sup>380</sup>

<sup>371</sup> Hill T18088: 30 – T18089: 16 (Day 170).

<sup>372</sup> Hill T18089: 18 – 29 (Day 170).

<sup>373</sup> Exhibit 43-9 (Tab 95) CTJH.053.70050.0021.

<sup>374</sup> Hill T18084: 45 – T18085: 3 (Day 170).

<sup>375</sup> Hill T18085: 10 – 23 (Day 170).

<sup>376</sup> Hill T18085: 23 – 27 (Day 170).

<sup>377</sup> Hill T18085: 29 – T18086: 11 (Day 170).

<sup>378</sup> Hill T18086: 31 – 45 (Day 170).

<sup>379</sup> Hill T18087: 29 – 41 (Day 170).

<sup>380</sup> Hill T18087: 47 – T18088: 4 (Day 170).

333 Brother Hill ceased as Provincial in 2001. He said that he would have had a conversation with the Brother who took over from him and told him that Dominic should not have unsupervised contact with children.<sup>381</sup> There is no documentary record of that conversation or of Brother Hill's conclusion.

### 3.5 Appointment to Marist College Ashgrove

334 Dominic remained in Drummoyne until the beginning of 2005, when he was appointed as Personal Assistant to the Headmaster of Marist College Ashgrove, Queensland.<sup>382</sup>

335 That appointment was made notwithstanding the conclusion by Brother Hill that Dominic was not fit to have unsupervised access to children. Although it was not a teaching position, it was an appointment to a school which carried an obvious risk that Dominic could have unsupervised contact with children. Dominic should not have been appointed to any role within a school, given the history of complaints against him and the risk he posed to children.

336 Brother Carroll agreed that part of the explanation for this appointment could be the lack of continuity in terms of information available to leaders in 2005 of the conclusions reached by their predecessors.<sup>383</sup>

337 That Dominic could be appointed to another role in a school environment in 2005, despite the 'deafening' alarm bells by 2001, is a serious indictment on the state of communication and record-keeping within the Marist Brothers. At the very least, Brother Hill should have ensured the reasons for Dominic's appointment to a secretarial role outside of a school were properly documented. The appointment was a serious failure on the part of the Marist Brothers, and it should never have happened.

### 3.6 Referrals to police

338 On 19 December 2012 Professional Standards Officer, Norm Maroney, wrote to the Director of Professional Standards, Michael Salmon. Mr Maroney wrote that in the course of examining files held at the Professional Standards Office he came across the file containing the complaint by the Parish Priest of Casino in 1994 (in relation to CNM at St Mary's School, Casino, in the early 1980s). Mr Maroney wrote 'Please confirm when the matter is reported to the Police.'<sup>384</sup>

339 Michael Salmon responded on 20 December 2012 to say that the information provided was formally reported to the Child Protection & Sex Crime Squad of the NSW Police on 20 December 2012.<sup>385</sup>

<sup>381</sup> Hill T18089: 31 – 46 (Day 170).

<sup>382</sup> Exhibit 43-30 Statement of Brother Carroll STAT.1181.001.0001\_R [80].

<sup>383</sup> Carroll T18251: 18 – 24 (Day 171).

<sup>384</sup> Exhibit 43-9 (Tab 173) CTJH.053.07170.0208.

<sup>385</sup> Exhibit 43-9 (Tab 176) CTJH.053.07170.0211.

- 340 In May 2013 Mr Maroney wrote to Pat Mullins (Mullins & Mullins) seeking information and records regarding the complaint made against Dominic in 1996 as the NSW Police were seeking records.<sup>386</sup>
- 341 In 2013, Brother Jeffrey Crowe (then the Provincial) wrote to Bishop Wright to say that Dominic was 'sadly' about to be charged by NSW Police in relation to events at Hamilton in the 1970s. Brother Crowe said 'We suspect that there may be other Brothers similarly accused from former times at either Hamilton or Maitland.'<sup>387</sup>
- 342 On 1 September 2014, Mr Maroney wrote to Brother Carroll and said as a result of reviewing the 'A-B files' it was recommended that Dominic be required to sign and acknowledge a Personal Safety Plan. Mr Maroney also wrote 'I am aware that he has been verbally instructed not to be associated with children, however, perhaps this could now be formalised in writing.'<sup>388</sup>

### **3.7 The response to complaints in relation to Dominic**

- 343 It is submitted that the evidence establishes that:
- a. in 1994, Brother Turton knew of an historical allegation that Dominic had touched CNM on his genitals inside his trousers in the early 1980s
  - b. in 1995, Brother Turton knew of a staff member's concern that Dominic (then the principal of a school) was touching students inappropriately
- 344 Neither of the above complaints was adequately investigated. No action was recommended by Brother Turton to remove Dominic from his position as principal of Riverview. Brother Turton did not report the complaints to the CEC or Brother Hill (who became Provincial in mid-1995).
- 345 Brother Hill also knew:
- a. in July 1996, of a complaint by CNO that included allegations of inappropriate behaviour by Dominic on at least three occasions, and included inappropriate touching
  - b. in 1996, of a complaint by CQP that Dominic had rubbed his erection against him and other boys in the classroom, touched their legs and put his hand inside their shorts and shirts, at Marist Brothers Hamilton in the 1970s
- 346 Consequently, Dominic's appointment as principal of St Francis Xavier's was revoked. The Provincial Council minutes recorded, falsely, that this was due to his poor state of health.

<sup>386</sup> Exhibit 43-9 (Tab 183) CTJH.053.70050.0750\_R.

<sup>387</sup> Exhibit 43-9 (Tab 185) CTJH.053.70050.0749.

<sup>388</sup> Exhibit 43-9 (Tab 201) CTJH.053.70050.0049\_R.

347 In light of the history and frequency of complaints against Dominic, the decision to place Dominic at Marist College Ashgrove in 2005 was wrong. It placed children at that school at risk of sexual abuse.

## Part 4 Patrick

---

### 4.1 Complaints to Brother Turton in the early 1990s

348 After leaving Marist Brothers Hamilton at the end of 1980, Patrick held teaching positions at Marist Brothers schools in Sydney (Marist Brothers Kogarah and Randwick). In 1989, he was appointed to Marist College Ashgrove in Queensland as a remedial teacher.<sup>389</sup>

349 In an unsigned statement in 2002, Patrick described his role at Marist College Ashgrove. He said he came in 'semi-retirement' in 1989, suffered a further bout of ill-health in 1992 and 'gave up teaching completely' in 1993.<sup>390</sup> Patrick said he commenced tutoring some boarding students, before and after school. He continued to tutor students until his retirement in 2001.<sup>391</sup>

350 Several reports in relation to Patrick were made to Brother Turton in the early 1990s, while he was Provincial. Three of these are collated and recorded in a handwritten note by Brother Turton dated 18 September 1992.<sup>392</sup>

#### Complaint by CQY in early 1991

351 In early 1991, Brother Turton received a report of historical abuse by Patrick at Marist Brothers Eastwood. The complainant was CQY.<sup>393</sup>

352 The report is recorded in Brother Turton's note dated 18 September 1992:<sup>394</sup>

*Early 91 – A.T contacted by young man ~ 35 years old. Assertion of sex abuse (non-specific) when he was 12/13 at EWD. PB was almost certainly the man. Couldn't remember his surname. 'Victim' was [REDACTED] in appearance. Was going to therapy. Had had difficulty with establishing or maintaining relationship. Sometimes felt 'dirty'. Did not want to take legal or police action. Wanted assurance man not alone with kids or unsupervised. Didn't want others to suffer what he suffered. I listened, empathised, I offered support and counselling. He said he was OK. I promised to check details he requested. I contacted headmaster + counsellor at PB present school (TH + DC). They said no problem. Not alone with kids. No complaints or negative comments. They said they would be vigilant.*

---

<sup>389</sup> Exhibit 43-9 (Tab 2) CTJH.053.70015.0045\_R.

<sup>390</sup> Exhibit 43-9 (Tab 126) CTJH.053.07160.0283\_R.

<sup>391</sup> Exhibit 43-9 (Tab 126) CTJH.053.07160.0283\_R, Exhibit 43-9 (Tab 125) QLD.0153.001.0793.

<sup>392</sup> Exhibit 43-9 (Tab 42) CTJH.053.70013.0043\_R, Turton T17963: 14 – 18 (Day 168).

<sup>393</sup> Exhibit 43-9 (Tab 42) CTJH.053.70013.0043\_R, Turton T17963: 20 – 24 (Day 168).

<sup>394</sup> Exhibit 43-9 (Tab 42) CTJH.053.70013.004\_R.

*I contacted Usher and Lucas ... should I confront PB? Advice was no. 'Victim' didn't want it. No subsequent allegations. An old man. No cause for alarm at present school. Did not notify PB.*

- 353 'TH' is a reference to Brother Terry Heinrich (the principal), and 'DC' to Sister Dorothy Costigan, a counsellor at Marist College Ashgrove.<sup>395</sup> At the time of the complaint in 1991, Patrick was 62 years old.<sup>396</sup>
- 354 Brother Turton gave evidence that he spoke to CQY directly. He said they had quite a long conversation but, to his surprise, CQY did not want further help or counselling.<sup>397</sup>
- 355 As to the substance of CQY's complaint, Brother Turton said he did not press for details as it was clear that CQY did not want to give them, but he said CQY 'implied' that the conduct was sexually abusive and that Brother Turton observed him to be exhibiting signs of the tragic consequences of abuse. He said 'I was quite moved by the man' and 'I accepted what he said.'<sup>398</sup> Brother Turton said that although he did not know the details, he thought that the conduct 'could have been quite serious' and when asked whether he took it to involve sexual abuse he said 'It could easily have been that' and 'I didn't rule that out.'<sup>399</sup> In response to a question whether he concluded it was likely that CQY was complaining about sexual abuse by Patrick, Brother Turton said 'Yes.'<sup>400</sup>
- 356 When asked why CQY saw him in particular, Brother Turton said 'I was the Provincial and he just wanted to make sure other students weren't in danger.'<sup>401</sup> Brother Turton agreed that CQY sought an assurance from him that Patrick was not alone with kids or unsupervised, because he did not want others to suffer what he had suffered.<sup>402</sup>
- 357 Brother Turton said he did not recall any more detail than contained in the note regarding any assurances provided by the principal or counsellor that Patrick was not alone or unsupervised with children, other than a 'strong sense' that if Patrick was in a tutoring position it was 'in association with other groups, with teachers with them.'<sup>403</sup> Brother Turton said that he got assurances from the principal and counsellor that they were 'very comfortable' with the situation and that he told them why he was asking about Patrick's contact with children.<sup>404</sup>
- 358 In relation to what he meant by saying that the principal and counsellor would be 'vigilant', Brother Turton said 'being an experienced headmaster, being an experienced counsellor, I think they would work out the details of what that meant, but it was mainly to see that he was always in situations with others and that other teachers were there'. He said the impression he was given was that this was the case.<sup>405</sup>

<sup>395</sup> Turton T17964: 27 – 31 (Day 168).

<sup>396</sup> Exhibit 43-9 (Tab 2) CTJH.053.70015.0045\_R.

<sup>397</sup> Turton T17964: 33 – 38 (Day 168).

<sup>398</sup> Turton T17965: 34 – 45 (Day 168).

<sup>399</sup> Turton T17966: 3 – 16 (Day 168).

<sup>400</sup> Turton T17966: 40 – 43 (Day 168).

<sup>401</sup> Turton T17964: 40 – 43 (Day 168).

<sup>402</sup> Turton T17965: 3 – 14 (Day 168).

<sup>403</sup> Turton T17965: 23 – 26 (Day 168).

<sup>404</sup> Turton T17965: 27 – 32 (Day 168).

<sup>405</sup> Turton T17967: 24 – 35 (Day 168).

- 359 When asked what the counsellor's role was expected to be, he said 'basically to be open to personal concerns or worries of students' and that the counsellor was likely to hear matters that a principal would not. When it was put to Brother Turton that a school counsellor is likely to hear things after they have happened, he said not necessarily; a counsellor might also hear of a fear that something could happen.<sup>406</sup>
- 360 Brother Turton said that he spoke to Father Brian Lucas, and possibly also Father John Usher, and their advice was to heed the advice of CQY not to confront Patrick, but to contact the principal, as he had done.<sup>407</sup> Asked whether CQY's wishes were a significant factor in how he responded to the complaint, Brother Turton said 'Provided I could satisfy myself and get reassurance from people on the ground that there was care and vigilance being exercised and there were no concerns, yes', subject to following the protocol to inform Father Lucas.<sup>408</sup>
- 361 Brother Turton accepted that part of the reason for the advice he received from Father Lucas and Father Usher was that there had been no other complaints.<sup>409</sup> He said he left the meeting on the understanding that they were happy with that situation and that he would notify them if he received any further complaints.<sup>410</sup>

### **Complaint by CNJ in August 1992**

- 362 In or around August 1992, CNJ reported abuse by Patrick at Marist Brothers Hamilton in the 1970s to a counsellor at the school.<sup>411</sup> CNJ's complaint was referred to the principal, Brother Kenneth, and then to Brother Turton.<sup>412</sup>
- 363 CNJ's report is recorded in a Brother Turton's note dated 18 September 1992.<sup>413</sup> Brother Turton wrote that he was contacted in August 1992 by the Headmaster of Marist Brothers Hamilton with an allegation of abuse from a former student, in relation to events in 1974 – 1975, when the student was 13 – 14 years old. CNJ's name is noted in the margin next to the complaint. The note records:<sup>414</sup>

*Man only realised later that interaction may have been abuse (not much detail but no penetration or intercourse – genital??) Counsellor was compassionate, told 'victim' of protocol and determination of FMS + church to address issues and offer every support. The 'victim's' realisation came as a result of Social Welfare studies being undertaken.*

*This lack of any sense of 'abuse' seems to indicate not very serious interaction. No request for action by FMS other than checking on PB & vigilance.*

<sup>406</sup> Turton T17968: 1 – 16 (Day 168).

<sup>407</sup> Turton T17968: 19 – 32 (Day 168).

<sup>408</sup> Turton T17968: 40 – T17969: 12 (Day 168).

<sup>409</sup> Turton T17973: 21 – 25 (Day 169), Exhibit 43- Statement of Brother Turton STAT.1143.001.0001\_R [50].

<sup>410</sup> Turton T17973: 33 – 39 (Day 169).

<sup>411</sup> Exhibit 43-9 (Tab 42) CTJH.053.70013.004\_R.

<sup>412</sup> Turton T17974: 7 – 9, 25 – 27 (Day 169), Exhibit 43-9 (Tab 41) CTJH.053.70013.0081\_R.

<sup>413</sup> Exhibit 43-9 (Tab 42) CTJH.053.70013.0043\_R.

<sup>414</sup> Exhibit 43-9 (Tab 42) CTJH.053.70013.0043\_R.

*Again I checked with HM + counsellor at Ash and with BL and JU. Advice from BL + JU was don't confront as long as no evidence or possibility of unusual behaviours (interactions).*

*No further action other than notification of TH + DC.*

- 364 Brother Turton gave evidence that he could not recall the phone call from the principal independently of the note.<sup>415</sup> When asked whether the reference to 'not much detail but not penetration or intercourse – genital??' jogged his memory as to the nature of the abuse reported, he said 'Not really' but 'the degree of sexuality was always a concern'.<sup>416</sup> Brother Turton gave the following evidence about his conversation with the headmaster:<sup>417</sup>

*I really don't have any recollection of the detail of what the headmaster said, except that this person came and spoke to him and was concerned. He may have used the word 'sexual' – I don't know – to him.*

- 365 Brother Turton said that he did speak to CNJ and that CNJ did not go into a lot of detail but said 'it was of a nature that he realised he might have been being groomed.'<sup>418</sup> Asked to explain what he meant, Brother Turton said 'Simply that at the time it didn't seem to be what would go to the serious end of the scale of abuse and sexual abuse.'<sup>419</sup> Brother Turton did say, however, that he was impressed by CNJ and had no reason to disbelieve him. He accepted that he thought CNJ perceived the matters to be quite serious given CNJ was raising them after 20 years.<sup>420</sup>

- 366 Brother Turton was asked whether he felt hampered in his management of Patrick by the fact that he was not aware of the detail of the allegation. He said that at that stage the management was 'the vigilance' and 'following up', as had been the response to the prior complaint by CQY.<sup>421</sup> He said he spoke again with the counsellor and principal to ensure they had 'heard the earlier requests clearly', that they held no concerns and that Patrick continued to be supervised.<sup>422</sup> Brother Turton stated that he did not think he spoke to Patrick about this particular complaint at the time it was received.<sup>423</sup>

- 367 Brother Turton made a correction to his statement in which he said he spoke to Father Usher about this complaint as he said he was 'not sure' if it was Father Usher as well as Father Lucas. However, he agreed it was 'probably' likely that if he had recorded in the file note a reference to a discussion with JU (Father John Usher), the note was accurate.<sup>424</sup>

- 368 On 1 September 1992, CNJ wrote to a counsellor and said:<sup>425</sup>

<sup>415</sup> Turton T17974: 34 – 37 (Day 169).

<sup>416</sup> Turton T17976: 13 – 23 (Day 169).

<sup>417</sup> Turton T17976: 25 – 31 (Day 169).

<sup>418</sup> Turton T17976: 37 – 41 (Day 169).

<sup>419</sup> Turton T17977: 2 – 5 (Day 169).

<sup>420</sup> Turton T17978: 35 – 43 (Day 169).

<sup>421</sup> Turton T17977: 29 – 41 (Day 169).

<sup>422</sup> Turton T17977: 46 – T17978: 7 (Day 169).

<sup>423</sup> Turton T17979: 5 – 10 (Day 169).

<sup>424</sup> Turton T17976: 2 – 11 (Day 169).

<sup>425</sup> Exhibit 43-9 (Tab 41) CTJH.053.70013.0081\_R.

*I have been buoyed by the news that Marist Brothers have a protocol for dealing with sexual assault and also by their offer of financial and counselling support. This has given me knowledge that they do care and that is important to me, especially now.*

- 369 Subsequent calls and correspondence between CNJ and Brother Turton indicate that Brother Turton continued to have some contact with CNJ and arranged for him to receive counselling.<sup>426</sup>
- 370 Brother Turton said that he spoke to CNJ and told him that Patrick was being ‘well supervised by appropriate people and there were no issues of concern.’ He was not sure whether he told CNJ of the complaint by CQY but said he may well have, and it was his practice to tell a complainant of other complainants if they asked.<sup>427</sup>
- 371 Brother Carroll was based at Marist College Ashgrove between 1990 and 1996, including in the positions of teacher and dormitory master.<sup>428</sup> He gave evidence that at the time he was there he was not aware that there had been complaints in relation to historical offending made against Patrick. He said he was also unaware of any need for special supervision or vigilance in relation to Patrick.<sup>429</sup>
- 372 Brother Carroll said that there was a study supervisor for the boarders and that this was organised by way of a roster. He said that he did some supervision in 1990 and he had no recollection of any study supervisors being told by the headmaster or anyone else that Patrick was subject to special supervision.<sup>430</sup> When asked whether he thought he would have been aware of such a direction, Brother Carroll said ‘Possibly. I would think so ... I was one of the boarding masters for the school.’<sup>431</sup>
- 373 In his statement to the Royal Commission, Brother Hill said there was an investigation into Patrick in relation to CNJ’s complaint, when Brother Turton was Provincial, which related to inappropriate sexual behaviour. He said he had no involvement in handling CNJ’s complaint, although Brother Turton briefed him on it.<sup>432</sup> He said his memory was that Patrick’s behaviour ‘was injudicious and inappropriate but not criminal.’<sup>433</sup>
- 374 In his oral evidence, Brother Hill said he could not remember anything about the nature of the complaint apart from that it was subject to a police investigation.<sup>434</sup> Brother Hill presumed he became aware of the complaint through one of his conversations with Brother Turton and that ‘In all likelihood, he might have mentioned’ speaking with staff at Marist College Ashgrove but he had no specific

<sup>426</sup> Exhibit 43-9 (Tab 44) CTJH.053.07174.0035\_R, Exhibit 43-9 (Tab 45) CTJH.053.70013.0069\_R, Exhibit 43-9 (Tab 55) CTJH.053.70013.0127\_R, Exhibit 43-9 (Tab 56) CTJH.053.70013.0094\_R, Exhibit 43-9 (Tab 57) CTJH.053.70013.0079\_R.

<sup>427</sup> Turton T17979: 33 – 41 (Day 169).

<sup>428</sup> Carroll T18251: 35 – T18252: 14 (Day 171).

<sup>429</sup> Carroll T18252: 24 – 40 (Day 171).

<sup>430</sup> Carroll T18255: 30 – T18256: 13 (Day 171)

<sup>431</sup> Carroll T18256: 8 – 13 (Day 171).

<sup>432</sup> Exhibit 43-24 Statement of Brother Hill STAT.1178.001.0001 [51] – [52].

<sup>433</sup> Exhibit 43-24 Statement of Brother Hill STAT.1178.001.0001 [52].

<sup>434</sup> Hill T18092: 7 – 14 (Day 170).



memory of that.<sup>435</sup> Brother Hill said he knew at this time that Patrick was no longer teaching, but tutoring boarders during study periods in the presence of others.<sup>436</sup>

- 375 Brother Turton could not specifically recall speaking to Brother Hill about the complaint from CNJ but said 'I'm not surprised that I did' and that as Brother Hill was a clinical psychologist and on the Provincial Council it was not unusual for Brother Turton to discuss matters with him.<sup>437</sup>
- 376 In relation to Brother Hill's recollection of the conversation, Brother Turton said he did not think he had formed an opinion as to whether the conduct was criminal or injudicious and inappropriate. He said that he had 'simply formed the view that it was serious enough to be closely observed' and to have the principal and counsellor maintain the 'vigilance' in respect of Patrick. Asked whether any view of the conduct on his part could only have been impressionistic, Brother Turton said 'Yes. There was no legal specialist examining this issue ... It was our view at the time'.<sup>438</sup>

### **Complaint regarding two students in September 1992**

- 377 A third incident, which occurred in September 1992 at Marist College Ashgrove, is recorded in Brother Turton's 18 September 1992 note.<sup>439</sup>
- 378 Brother Turton gave evidence that the principal at Marist College Ashgrove contacted him to let him know about this incident. The incident involved two boys who had been found out of their class which Patrick was taking. When they were found, the boys said they 'were away because they sort of didn't like – Brother Patrick was a bit close to them, was patting their bottom and sometimes squeezing their bottom.'<sup>440</sup>
- 379 Brother Turton said the matter was taken to Father Jim Spence, the Special Issues Officer in Queensland (akin to the role of Father Lucas in Sydney). An assessment was done, the parents were contacted, and Patrick was sent for counselling with Sister Costigan.<sup>441</sup> He said the matter was not regarded as a serious one.<sup>442</sup>
- 380 When asked why he thought counselling was appropriate, Brother Turton said 'There was a pattern of incidents there that had to be acknowledged', even though this particular incident was not regarded as serious. He recognised this as the third in a series of similar complaints.<sup>443</sup> The following exchange took place with Counsel Assisting:<sup>444</sup>

*Q. Were you concerned after this incident that that arrangement of supervision and vigilance was not particularly effective?*

<sup>435</sup> Hill T18092: 3 – 5, 16 – 25 (Day 170).

<sup>436</sup> Hill T18093: 3 – 8 (Day 170).

<sup>437</sup> Turton T17980: 26 – 45 (Day 169).

<sup>438</sup> Turton T17981: 23 – 39 (Day 169).

<sup>439</sup> Exhibit 43-9 (Tab 42) CTJH.053.70013.0043\_R at .0044\_R.

<sup>440</sup> Turton T17981: 41 – T17982: 8 (Day 169).

<sup>441</sup> Turton T17982: 10 – T17983: 40 (Day 169).

<sup>442</sup> Turton T17982: 20 – 22 (Day 169).

<sup>443</sup> Turton T17983: 39 – T17984: 10 (Day 169).

<sup>444</sup> Turton T17984: 27 – 42 (Day 169).

*A. No, I was actually encouraged, the fact that the headmaster rang me about what turned out to be a relatively, you know, minor thing - I was pleased that he was - he was exercising vigilance.*

*Q. So the system of vigilance was enabling you to find out about something further that had occurred?*

*A. Yes, and that the man was in the presence of others, so I saw that as a positive.*

*Q. But it hadn't been terribly effective in terms of preventing this occurring again in 1992, had it?*

*A. Well, the assessment of it was that it was not – it was not a serious incident at all.*

*Q. But if he had had close enough access to these boys to pat and squeeze their bottoms, even if the conclusion was reached that that level of touching was not particularly serious, doesn't it indicate that he could have just as well engaged in much more serious touching?*

*A. No, I felt the supervision was appropriate.*

- 381 When asked if it caused him concern that Patrick had sufficiently close access to children that he could touch them in a way that was upsetting to them, Brother Turton said it caused concern but the result of the assessment was that the issue was pointed out to Patrick through his counsellor. He said that there was no other change in terms of supervision as a result of this incident.<sup>445</sup>
- 382 Brother Hill gave evidence that he was not aware of the incident involving the two boys at Marist College Ashgrove at the time, nor was he made aware of it in 1995 when he became Provincial. He agreed it reflected poorly on the arrangement of 'supervision and vigilance' with respect to Patrick's access to children.<sup>446</sup>
- 383 By this time, Brother Turton had received complaints from CQY and CNJ, both of which he understood to be of a sexual nature. He understood the complaints to be serious, and he believed both men.
- 384 Particularly in light of the information already known to Brother Turton about similar historical incidents, this further contemporaneous incident should have caused Brother Turton great alarm and prompted an effective response to deal with the ongoing risk that Patrick posed to the safety of children. As Brother Turton said, there was a pattern of behaviour that needed to be acknowledged. It should have alerted him to the fact that Patrick was still in a position to touch students in a sexually inappropriate way, and was still engaging in this conduct.
- 385 The supervision arrangements described by Brother Turton were grossly inadequate. It should have been obvious to Brother Turton that children at Marist College Ashgrove were presently at risk of sexual abuse by Patrick. He should have recognised this risk,

<sup>445</sup> Turton T17984: 44 – T17985: 20 (Day 169).

<sup>446</sup> Hill T18094: 2 – 19 (Day 170).

and removed Patrick from a school environment entirely. He did not do so, and this was a significant failing on his part as Provincial.

### Complaint by CQZ in July 1993

- 386 Another handwritten note signed by Brother Turton dated 12 July 1993 records a complaint from CQZ. CQZ was a former student at Marist Brothers Eastwood. The note records events between 1959 and 1961 and provides ‘Pat – didn’t teach – strange + weird – “touchy”’.<sup>447</sup>
- 387 A typed note of the same date, also signed by Brother Turton, records that Brother Turton met with CQZ. The note refers to physical abuse by Marist Brothers, and that CQZ ‘also said a Brother Patrick that was there at the time was very touchy feely with him. Patrick did not teach him but he found him strange and weird and had a ‘reputation’ among the boys.’<sup>448</sup>
- 388 Brother Turton gave evidence that CQZ contacted him directly, and he interviewed him.<sup>449</sup> He said CQZ spoke mostly about the physical abuse he experienced at Marist Brothers Eastwood.<sup>450</sup> When asked if he sought details as to what CQZ had meant by Patrick being ‘touchy-feely’, Brother Turton said CQZ told him ‘it was just touchy-feely’ and he did not like being touched.<sup>451</sup>
- 389 In his statement, Brother Turton said CQZ ‘described [Patrick] to be touchy-feely which I understood to be a tactile person and who had invaded Mr [CQZ]’s personal space but not in a sexual way.’<sup>452</sup> Brother Turton explained that this was the meaning he attributed to CQZ’s use of the words ‘touchy-feely’.<sup>453</sup>
- 390 Brother Turton agreed that by this time Patrick was on his radar, having received the two historical complaints of CQY and CNJ, and the recent report about the two boys at Marist College Ashgrove. He agreed that he was interested to get the details of CQZ’s concerns, but said this was all the information he was able to gain from CQZ.<sup>454</sup>
- 391 Brother Turton said he did not take any action in relation to CQZ’s report. He said he did not do so because ‘there was nothing different there, nothing new’ and this was ‘certainly not more serious than the others, if anything, less.’ He said the supervision and vigilance arrangements regarding Patrick were in place.<sup>455</sup>
- 392 Brother Hill gave evidence that the name CQZ did not ring any bells. He said he does not recall CQZ’s complaint specifically, but that about this time he became aware of several complaints about Patrick through conversations with Brother Turton.<sup>456</sup>

<sup>447</sup> Exhibit 43-9 (Tab 46) CTJH.053.07174.0029\_R.

<sup>448</sup> Exhibit 43-9 (Tab 47) CTJH.053.70018.0002\_R.

<sup>449</sup> Turton T17985: 32 – 37 (Day 169).

<sup>450</sup> Turton T17986: 11 – 23 (Day 169).

<sup>451</sup> Turton T17990: 8 – 20 (Day 169).

<sup>452</sup> Exhibit 43-20 Statement of Brother Turton STAT.1179.001.0001 [71].

<sup>453</sup> Turton T17990: 22 – 38 (Day 169).

<sup>454</sup> Turton T17990: 40 – T17991: 24 (Day 169).

<sup>455</sup> Turton T17991: 26 – 38 (Day 169).

<sup>456</sup> Hill T18095: 34 – T18096: 6 (Day 170).

393 The report by CQZ was yet another report about Patrick touching students. Brother Turton regarded it as not adding any new or different information to what was already available from the three complaints he had received since 1991. This was not the case – CQZ’s report added to the increasingly compelling picture that Patrick had a tendency to touch children in a sexually inappropriate manner. Brother Turton should have recognised this. It was obvious. It does not assist Brother Turton that CQZ did not give him further detail about what he meant. Brother Turton already had sufficient information about Patrick inappropriately touching students to clearly understand that a reference by CQZ to Patrick being ‘touchy-feely’ was a reference to sexually inappropriate conduct that needed to be addressed. Brother Turton should have taken steps to remove Patrick permanently from a school environment where he continued to have access to children. He did not do so and this was a serious failure on his part.

### **Crossroads programme**

394 About a month after the report from CQZ, on 12 August 1993, Brother Turton wrote to Patrick and enclosed an enrolment form for the Crossroads programme at Baulkham Hills in New South Wales. Brother Turton said in his letter that Crossroads was ‘the one that we spoke about’ and asked Patrick to send a copy of the form to ‘Mick Hill’ who he said was responsible for coordinating ongoing formation.<sup>457</sup>

395 Patrick replied on 22 August and wrote that for reasons they had discussed before, he could not undertake the Crossroads course.<sup>458</sup>

396 Brother Turton explained to the Royal Commission that the Crossroads programme was ‘typical’ of programs run by the Catholic Church around the world, often referred to as ‘mid-life programs’ or ‘life review programs’. He said people after a certain number of years in ministry would go to such courses as a break or as a ‘chance to look at their life’. Counsellors were available to those who wanted to talk through particular issues.<sup>459</sup>

397 Brother Turton said he had encouraged Patrick to get into counselling, and he saw Crossroads as a chance to do that. He said the complaints that had come to his attention were part of the reason he did this, and he said this to Patrick. He agreed Patrick’s attitude to counselling could be described as resistant.<sup>460</sup>

398 Brother Turton again wrote to Patrick on 25 August 1993, expressing his hope that Patrick would reconsider. Brother Turton wrote that he had spoken with Mick Hill about ‘the general context of our earlier discussion’ and that he had also spoken to Sister Dorothy who would be in touch with Patrick.<sup>461</sup>

399 Brother Turton gave evidence that he spoke to Brother Hill:<sup>462</sup>

<sup>457</sup> Exhibit 43-9 (Tab 48) CTJH.053.07166.0088.

<sup>458</sup> Exhibit 43-9 (Tab 49) CTJH.053.07166.0083.

<sup>459</sup> Turton T17992: 37 – 45 (Day 169).

<sup>460</sup> Turton T17993: 6 – 27 (Day 169).

<sup>461</sup> Exhibit 43-9 (Tab 50) CTJH.053.07166.0082.

<sup>462</sup> Turton T17993: 46 – T17994: 4 (Day 169).

*around the whole issue, the issues that had been raised for Pat – his need to really look at his whole lifestyle and so on, and that was our best chance of getting that to happen and Mick Hill, being a clinical psychologist, was a very good person to discuss that with.*

- 400 He said he was not sure if his conversation with Brother Hill included in detail the three complaints he had received, and the incident at Marist College Ashgrove, but there had certainly been a reference to those complaints.<sup>463</sup> Brother Turton said he thought he would have referred to the number of complaints he had received.<sup>464</sup>
- 401 In an unsigned and undated Crossroads enrolment form for Patrick, which is noted to have been completed by Brother Hill for Brother Turton, it is recorded that the holistic nature of Crossroads would ‘be of invaluable assistance to Pat in helping him to address some imbalances in his life.’<sup>465</sup>
- 402 Patrick’s ministry information sheet records that he attended Crossroads from March to August 1994.<sup>466</sup>
- 403 In his statement to the Royal Commission, Brother Hill said he had no recollection of the conversation referred to by Brother Turton.<sup>467</sup> He also said he had no recollection of completing the enrolment form or discussing the recommendation with either Brother Turton or Patrick.<sup>468</sup> In his oral evidence, Brother Hill said that he did speak with Brother Turton about Patrick entering the program.<sup>469</sup>
- 404 Brother Hill gave evidence that Crossroads was a program for people either in the process of or preparing to retire, changing ministries, or transition.<sup>470</sup> He said he believed Patrick was in a transitional stage in his life, as he was moving out of classroom teaching.<sup>471</sup> Brother Hill said reference to ‘imbalances’ would have been referring to Patrick’s difficulties ‘with managing his emotions and interpersonal relationships.’<sup>472</sup>
- 405 When asked whether the complaints were raised in the context of the discussions, Brother Hill said he could not recall but that Brother Turton ‘may have’.<sup>473</sup> He said that from memory there were several conversations in which Brother Turton raised the complaints he had received about Patrick.<sup>474</sup>
- 406 It is submitted that the evidence establishes that Brother Turton told Brother Hill that several complaints had been made about Patrick.

<sup>463</sup> Turton T17994: 6 – 9, T17995 : 33 – 37 (Day 169).

<sup>464</sup> Turton T17995: 33 – 41 (Day 169).

<sup>465</sup> Exhibit 43-9 (Tab 53) CTJH.053.07161.0496.

<sup>466</sup> Exhibit 43-9 (Tab 2) CTJH.053.70015.0045\_R.

<sup>467</sup> Exhibit 43-24 Statement of Brother Hill STAT.1178.001.0001 [44].

<sup>468</sup> Exhibit 43-24 Statement of Brother Hill STAT.1178.001.0001 [46].

<sup>469</sup> Hill T18096: 23 – 25 (Day 170).

<sup>470</sup> Hill T18096: 15 – 17 (Day 170).

<sup>471</sup> Hill T18096: 19 – 21 (Day 170)

<sup>472</sup> Exhibit 43-24 Statement of Brother Hill STAT.1178.001.0001 [48].

<sup>473</sup> Hill T18096: 27 – 30 (Day 170).

<sup>474</sup> Hill T18096: 32 – 37 (Day 170).

### Complaint by CNK in late August 1993

407 By the end of the month, another complaint was made to the Brother Turton about Patrick. An unsigned note dated 30 August 1993 records a report from CNK, a student at Marist Brothers Hamilton from 1973 – 1976. The note records that CNK reported that he was ‘interfered with’ in class by ‘P.B.’, in Year 8 and that ‘Claims were [sic] generally accepted by the kids that P.B. was very touchy, feely.’ CNK said that he was called ‘Pat’s Pet’ by other boys and that Pat ‘touched him up’.<sup>475</sup> The note also records:

*I originally got a phone call from Hamilton where he was with the Headmaster and they were confused as to what to do. He was agitated and threatening to go up and confront the Brother concerned. I spoke with him and he came down to Sydney for an interview ...*

*I told him that I had phoned P.B. and that he did not remember him, his name or the incident. He was very angry at that ...*

*I assured him that I would keep in touch and that I would also talk again with P.B. and put pressure on him to go into therapy to see whether or not he was in a state of denial about something that was very real or to look at other issues ...*

408 Brother Turton said he made this file note around the time he was contacted by CNK.<sup>476</sup> He said he was not sure if he spoke to Patrick about CNK’s complaint before he interviewed CNK or after, but he did not think he would have had enough information to speak to Patrick before the interview with CNK.<sup>477</sup>

409 When asked if he spoke to CNK about the details of the kind of touching he was describing, Brother Turton said ‘Not any more than is [in the note].’ Of the phrase ‘very touchy, feely’ and the reference to Patrick having ‘touched him up’, Brother Turton said he understood the conduct to be sexual.<sup>478</sup> He said he put this complaint into a more serious category than the report from CQZ, and he took it ‘quite seriously’.<sup>479</sup>

410 In his statement, Brother Turton said in accordance with his usual practice he encouraged CNK to report to the police.<sup>480</sup> Brother Turton’s 30 August 1993 note, however, does not record this.

### Brother Turton confronts Patrick 30 August 1993

411 In a file note dated 30 August 1993, Brother Turton recorded that he confronted Patrick about ‘this issue and four other accusations of a touchy, feely, type from three other schools.’<sup>481</sup> The note records that Patrick was ‘quite broken by all this’ but eventually agreed ‘to see the therapist D.C’ (Sister Dorothy) and that ‘I [Brother

<sup>475</sup> Exhibit 43-9 (Tab 51) CTJH.053.07163.0177\_R.

<sup>476</sup> Exhibit 43-20 Statement of Brother Turton STAT.1179.001.0001\_R [74].

<sup>477</sup> Turton T17998: 14 – 26 (Day 169).

<sup>478</sup> Turton T17996: 32 – 46 (Day 169).

<sup>479</sup> Turton T17996: 45 – T17997: 9 (Day 169).

<sup>480</sup> Exhibit 43-20 Statement of Brother Turton STAT.1179.001.0001\_R [75].

<sup>481</sup> Exhibit 43-9 (Tab 52) CTJH.053.07174.0038\_R.

Turton] should give her all the details of the discussion so that they could get started.<sup>482</sup>

412 Brother Turton gave evidence that the confrontation with Patrick was by phone and 'this issue' was the complaint by CNK.<sup>483</sup>

413 Brother Turton's note further records:<sup>484</sup>

*He is aware that the action of [CNK] could be quite unpredictable and he is very concerned.*

*He had earlier refused the opportunity to go to do the Crossroads Programme but I again pushed this very hard with him and will continue to do so hoping that he will do it. D.C. will contact him today, 30<sup>th</sup> August, 1993, and the work will begin. The Superior, R.M., has been advised simply that P.B. maybe under pressure and agitated and just to keep an eye on him. Likewise, the Headmaster. The fairly remote contact that he has with students would be considered not to be dangerous at all or providing possibility anything inappropriate [sic].*

414 Brother Turton could not recall much detail from the discussion, 'apart from the fact that I would obviously have conveyed the substance of the interview that we had and that I wanted him to take another step in dealing with this.'<sup>485</sup>

415 Brother Turton 'interpreted' that he went through each of the allegations made against Patrick, and said he denied them and was 'somewhat broken up'.<sup>486</sup> He said he had reason to doubt Patrick's denial of the allegations, as he believed those who had made the complaints.<sup>487</sup> Brother Turton got Patrick's agreement to see the school counsellor (but 'not simply'), and he pushed him to attend the Crossroads programme in relation to his overall life issues and in connection with the complaints.<sup>488</sup>

416 Brother Turton said he advised the Superior of the Ashgrove Community and the principal of the school, but not in detail. He said he would have told them that Patrick was 'under stress, there have been some allegations and the school's aware of that, the headmaster, and being supervised.'<sup>489</sup>

417 In relation to the note, 'The fairly remote contact that he has with students would be considered not to be dangerous at all or providing possibility anything inappropriate', Brother Turton said there had been no structural change to the arrangements applied to Patrick since those following the earlier complaint regarding the two boys in August 1992. He said he thought the principal and school counsellor might increase their vigilance.<sup>490</sup>

<sup>482</sup> Exhibit 43-9 (Tab 52) CTJH.053.07174.0038\_R.

<sup>483</sup> Turton T17999: 11 – 24 (Day 169).

<sup>484</sup> Exhibit 43-9 (Tab 52) CTJH.053.07174.0038\_R.

<sup>485</sup> Turton T17999: 15 – 20 (Day 169).

<sup>486</sup> Turton T17999: 29 – 37 (Day 169).

<sup>487</sup> Turton T18003: 15 – 27 (Day 169).

<sup>488</sup> Turton T18000: 22 – T18001: 12 (Day 169).

<sup>489</sup> Turton T18001: 14 – 41 (Day 169).

<sup>490</sup> Turton T18002: 14 – 19 (Day 169).

- 418 It is submitted that Brother Turton had no reasonable basis to conclude that the 'remote contact [Patrick] has with students would be considered not to be dangerous at all' or provide an opportunity for him to behave inappropriately. He knew that, in fact, this was not the case. Patrick had sufficiently close contact with students at Marist College Ashgrove, in his present position as a remedial tutor, to touch students. A complaint had been made less than twelve months earlier. Brother Turton knew that no changes had been made to the supervision arrangements for Patrick since that incident.
- 419 Further, what Brother Turton told the Ashgrove Superior and the principal was not the whole story. He did not tell them all that he knew about other complaints about Patrick. Notwithstanding the demonstrated inadequacy of the supervision arrangement for Patrick, it should have been obvious to Brother Turton that those required to supervise him should have been given all of the relevant information. This was a plainly inadequate response.

### **Special Issues Allegation Report, January 1994**

- 420 On 14 January 1994, Brother Turton completed a 'Special Issues Allegation Report' in relation to 'AB17'.<sup>491</sup> Brother Turton gave evidence that 'AB17' was the code name given to Patrick.<sup>492</sup> The report detailed the allegations made by CQY, CNJ, the two students at Marist College Ashgrove, and CNK. CQZ's complaint was not recorded.

## **4.2 CNK reports to police**

- 421 On 30 September 1993, CNK made a statement to NSW Police in Lismore.<sup>493</sup>
- 422 According to police records, CNK reported the abuse by Patrick as involving:<sup>494</sup>
- a) multiple incidents in 1974 during maths class where Patrick would sit beside him, put his hand around his waist, move his hand to his penis and feel his penis on the outside of his pants
  - b) an incident in April 1974 where Patrick put his hands inside CNK's pants and touched his penis
  - c) a further incident in May 1974 where Patrick tried to put his hand in CNK's pants but could not because CNK was wearing too much clothing.
- 423 The last document on the police file is a letter dated 24 November 1993, which notes that inquiries were to be made by Lismore Child Mistreatment Unit in relation to the matter.<sup>495</sup> Prior correspondence records that police were to liaise with CNK to determine whether he wished to proceed with the matter.<sup>496</sup>

<sup>491</sup> Exhibit 43-9 (Tab 58) CTJH.053.70010.0135\_R.

<sup>492</sup> Turton T18002: 25 – 28 (Day 169).

<sup>493</sup> Exhibit 43-9 (Tab 54) NPF.103.001.0119\_E\_R at 0125 – 0133.

<sup>494</sup> Exhibit 43-9 (Tab 54) NPF.103.001.0119\_E\_R at 0125 – 0133.

<sup>495</sup> Exhibit 43-9 (Tab 54) NPF.103.001.0119\_E\_R.

<sup>496</sup> Exhibit 43-9 (Tab 54) NPF.103.001.0119\_E\_R at 0020, 0022.



- 424 A post-it note attached to the 24 November letter dated 15 December 1993 records '[CNK] will call back re his decision on whether to proceed'. Another note indicates that Brother Turton was to be contacted.<sup>497</sup>
- 425 Brother Turton gave evidence that CNK informed him that he had reported to police. He said CNK told him the police had said they would not follow it up unless he came back with more information.<sup>498</sup> There is no reference to this in the documents on the police file.
- 426 The documents suggest police were awaiting confirmation from CNK as to whether he wished to proceed with the matter. There is no evidence as to whether CNK communicated with police as to his intentions, and it is not possible to draw any conclusions about this.

### 4.3 Patrick returns to Marist College Ashgrove

- 427 In September 1994, after spending a year at the Crossroads programme, Patrick returned to a tutoring position at Marist College Ashgrove. He remained in this role until his retirement in 2001.<sup>499</sup>
- 428 There is no evidence that Patrick received counselling during his time at Crossroads in relation to his problem of touching students in a sexually inappropriate way. There is also no evidence that any communication was made or recommendation given to the Marist Brothers by anyone at Crossroads that it was safe to return Patrick to a school environment. It may be inferred that no such recommendation was made and that there was no basis for the Marist Brothers to conclude that the risk posed to children by Patrick had materially diminished. Returning Patrick to a role in which he provided remedial tutoring to students at Marist College Ashgrove was wrong, and it was in total disregard for the safety of the students at the school.

### 4.4 Further complaint by CNK

- 429 Less than a year later, in June 1995, CNK again agitated his complaint about Patrick. A file note by Howard Harrison, of Carroll & O'Dea Solicitors (who represent the Marist Brothers) dated 9 June 1995 records that CNK called Patrick in relation to a 'problem' at Hamilton in 1974. The note records that Patrick 'has no memory of difficulty with this person, but concedes that there may be people who have a cause for complaint against him.'<sup>500</sup>
- 430 Brother Turton gave evidence that he had no recollection of Mr Harrison reporting this exchange to him, including the admission by Patrick that there 'may be people who have a cause for complaint against him.' Brother Turton said, however, it may have happened; he has no reason to say it is wrong. When asked if he recalled when he first became aware of a change in Patrick's response, from denial of allegations to

<sup>497</sup> Exhibit 43-9 (Tab 54) NPF.103.001.0119.

<sup>498</sup> Turton T18004: 14 – 24 (Day 169).

<sup>499</sup> Exhibit 43-9 (Tab 2) CTJH.053.70015.0045\_R.

<sup>500</sup> Exhibit 43-9 (Tab 61) CCI.0097.00058.0013\_R.

accepting he had behaved inappropriately, Brother Turton said he did not recall Patrick ever acknowledging that to him.<sup>501</sup>

- 431 Brother Hill gave evidence that he was not aware that Carroll & O’Dea Solicitors had met with Patrick in about June 1995, nor was he aware a complainant (CNK) wanted to meet with Patrick.<sup>502</sup> When asked if anyone reported to him around this time that Patrick had made a concession, he said ‘I’m aware of it. Now, when I became aware of that I can’t state with any precision.’<sup>503</sup> He said he would have been told by Brother Turton that there was ‘almost a reluctant concession’ by Patrick, which was something less than a complete denial.<sup>504</sup>
- 432 Carroll & O’Dea Solicitors forwarded Mr Harrison’s file note to Mr Paul Reynolds, National Claims Manager of Catholic Church Insurances Limited on 23 June 1995.<sup>505</sup>
- 433 Given the significance of the matter, the Royal Commission should find that it is more likely than not that Brother Hill was made aware in June 1995 or soon thereafter of the substance of what Patrick had said to Mr Harrison.

#### **4.5 The response of Brother Turton to complaints in the early 1990s regarding Patrick**

- 434 By August 1993, Brother Turton had received the following allegations of historical sexual abuse by Patrick:
- a. The report by CQY in August 1991 of sexual abuse at Marist Brothers Eastwood, which Brother Turton accepted as credible. Brother Turton thought the conduct complained of was ‘serious’.
  - b. The report by CNJ in August 1992 of sexual abuse at Marist Brothers Hamilton in the 1970s, which Brother Turton accepted as credible, although he was unsure of the details or ‘the degree of sexuality’.
  - c. The report by CQZ in July 1993 of Patrick being ‘touchy-feely’ at Marist Brothers Eastwood between 1959 and 1961.
  - d. The report of CNK in August 1993 of sexual abuse at Marist Brothers Hamilton in the early 1970s, which he accepted and regarded as serious.
- 435 In September 1992, Brother Turton received a contemporaneous report in relation to two boys at Marist College Ashgrove, Patrick’s present role. The boys complained that Patrick would get too close to them, and pat and squeeze their bottoms during tutoring lessons.

<sup>501</sup> Turton T18006: 4 – 24 (Day 169).

<sup>502</sup> Hill T18097: 34 – 38 (Day 170).

<sup>503</sup> Hill T18098: 7 – 11 (Day 170).

<sup>504</sup> Hill T18098: 13 – 24 (Day 170).

<sup>505</sup> Exhibit 43-9 (Tab 60) CCI.0097.00058.0012\_R.

- 436 The conduct complained of spanned a period of 33 years. There were striking similarities in each of the complaints. The conduct reported by the two boys at Marist College Ashgrove was similar to the conduct that had been the subject of historical complaints. It should have been obvious to Brother Turton that Patrick had engaged in sexual abuse of children in past decades and that this was still occurring in 1992.
- 437 It should also have been obvious to Brother Turton that the supervision arrangements in place at Marist College Ashgrove were woefully inadequate. Brother Turton's evidence that the arrangements were working because he received the report of the two boys after it occurred but before something more serious could happen is illogical. The report in fact plainly demonstrated the arrangements were ineffective and hopelessly so. Brother Turton's failure to appreciate this, even in hindsight, demonstrates an ongoing failure to understand the risks posed by Patrick and the type of response that was required.
- 438 Brother Turton failed to recognise the pattern of sexually inappropriate behaviour that was clearly demonstrated in the reports he received. He had a tendency to minimise the significance of the conduct. He failed to find out sufficient detail about the complaints to form a proper understanding of the seriousness of the complaints. He considered each report in isolation without properly appreciating their cumulative significance. At least by the time he received the report of the two boys at Marist College Ashgrove, Brother Turton should have taken steps to remove Patrick from a school environment, immediately. In failing to do so, he did not have regard to the safety and welfare of the students at Marist College Ashgrove, and he put them at ongoing risk.
- 439 Brother Turton's failings in this regard are highlighted by the fact that past victims such as CQY were specifically concerned to ensure that other students were not in danger.

#### **4.6 Brother Hill's knowledge about Patrick on becoming Provincial**

- 440 Brother Michael Hill was appointed Provincial of the Sydney Province, taking over from Brother Turton, in July 1995. He remained in that role until the end of 2001.<sup>506</sup>
- 441 Before retiring as Provincial, on 3 July 1995, Brother Turton wrote to Patrick to thank him for '50 years of great educational service to kids' and to thank him personally as one of Brother Turton's favourite teachers'.<sup>507</sup>
- 442 Brother Hill was asked if he knew of the supervision arrangements for Patrick at Marist College Ashgrove when he took over as Provincial, and he said 'I did.' He said it would have been part of the handing-over arrangement, and Brother Turton would have told him.<sup>508</sup>
- 443 Brother Hill said he was told the arrangements involved the headmaster, the community leader and the counsellor's 'vigilance'. Brother Hill said his understanding

<sup>506</sup> Hill T18047: 46 – T18048: 4 (Day 169).

<sup>507</sup> Exhibit 43-9 (Tab 62) CTJH.053.07161.0503.

<sup>508</sup> Hill T18092: 27 – 38 (Day 170).

was that Patrick was tutoring boarders during study periods ‘in the presence of [other] ... study supervisors’.<sup>509</sup>

- 444 When asked his view at that time of Patrick’s suitability for continuing in the Order, Brother Hill said by the time he took over it was ‘abundantly clear’ he should not have unsupervised contact with children.<sup>510</sup> Brother Hill agreed that while he was in charge, he proceeded on the basis that whatever Patrick was doing it should not involve unsupervised contact with children, and he understood that to be the position at Marist College Ashgrove.<sup>511</sup>
- 445 Brother Hill said he only became aware of the complaint regarding the two boys at Marist College Ashgrove when preparing for the public hearing. Brother Hill said he thought he should have been told but that it may have been unrealistic to expect that level of detail in the handover. However, he agreed it reflected poorly on the supposed ‘supervision and vigilance’ arrangement and that was a reason he should have been told about it when he became Provincial.<sup>512</sup>
- 446 Brother Turton was not asked whether he told Brother Hill about the incident with the two boys at Marist College Ashgrove in his handover to Brother Hill. However, there is no reason not to accept Brother Hill’s evidence that he was not told. It is consistent with Brother Turton’s failure to recognise the significance of the incident. It is also consistent with Brother Turton not informing Brother Hill of complaints about Dominic when he became Provincial. The information was important and Brother Turton should have told Brother Hill about it.

#### 4.7 Complaints or incidents after 1996

- 447 An unsigned note records an interview with Patrick in August 1996. What appears to be a cover page appearing in close proximity to this note on the file states, ‘Notes on interviews with Provincials.’ Brother Hill confirmed that this was his document and he conducted the interview. He said this was one of a series of interviews he, as Provincial, conducted with Patrick on an annual basis.<sup>513</sup>
- 448 The note records that Patrick was spending ‘a good deal of time tutoring individual students in the high school’ and that Patrick ‘spoke at length’ about a year 8 boy he was teaching to read. Patrick was also tutoring mathematics for boarders in the evenings in the library and ‘He said that on any one evening around 20 senior students from the advance classes will approach him for tutoring.’<sup>514</sup>
- 449 There is no indication in that document that Patrick’s tutoring was required to be in the presence of other adults.

<sup>509</sup> Hill T18093: 1 – 8 (Day 170).

<sup>510</sup> Hill T18098: 26 – 31 (Day 170).

<sup>511</sup> Hill T18098: 33 – 40 (Day 170).

<sup>512</sup> Hill T18093: 27 – T18094: 29 (Day 170).

<sup>513</sup> Hill T24684: 23 – 40 (Day 241).

<sup>514</sup> Exhibit 43-9 (Tab 81) CTJH.053.07160.0362.

450 Brother Hill was asked about this note and he said that if Patrick was tutoring in the library, there would have been other teachers there. Brother Hill said he based this on the fact that he had observed people tutoring in the library, which was organised by way of a roster of boarding staff. Brother Hill said he was not aware of any arrangements in place to ensure the staff understood the need for Patrick to be supervised.<sup>515</sup>

### Letter from Bishop Malone to Brother Hill

451 Two months after the interview with Patrick, on 9 October 1996, the Bishop of the Catholic Diocese of Maitland-Newcastle, Bishop Malone, wrote to Brother Hill. He wrote that he felt compelled to inform Brother Hill that complaints had come to him about ‘two other Brothers’. Bishop Malone referred to a telephone conversation with a ‘gentleman who claimed inappropriate actions while he was a student at Marist Brothers, Hamilton in 1972-73.’ It is recorded that the man alleged Patrick and Romuald were ‘guilty of touching some of the pupils’ and that ‘It was “*common knowledge among the kids*” that both Brothers acted inappropriately’. Bishop Malone wrote that it ‘seems unlikely that criminal activity took place.’<sup>516</sup>

452 Brother Hill responded to Bishop Malone’s letter on 18 October 1996. He wrote:<sup>517</sup>

*I note with regret your information concerning the actions of two of our men at Hamilton in the early 1970s. This is not the first time that each of these has come to our attention. For your own piece [sic] of mind I can assure you that, after thorough investigation, it would seem that aspects of the behaviour of Brother Patrick were certainly injudicious and inappropriate but not criminal in nature. The other person left the Brothers almost twenty years ago.*

453 Brother Hill was asked what ‘thorough investigation’ he was referring to, and he said the police had investigated what he understood to be the particular complaint being referred to, and had decided not to proceed. He said his conclusion that ‘aspects of the behaviour of Brother Patrick were certainly injudicious and inappropriate but not criminal’ was based on the results of the police investigation. He said that he was not intending to convey a thorough investigation had been carried out by the Marist Brothers.<sup>518</sup>

454 In his statement to the Royal Commission, Brother Hill said the investigation to which he referred was of ‘inappropriate sexual behaviour’ against CNJ.<sup>519</sup> In answer to questions by Mr Chiu, Brother Hill said to his knowledge at that time CNJ’s complaint was the only one investigated by police.<sup>520</sup> He agreed that he did not himself conduct any investigation.<sup>521</sup> CNJ had not complained to police in 1996. The records available to the Royal Commission indicate that he did not do so until 1998. CNK had, however,

<sup>515</sup> Hill T 24685: 21 – 44 (Day 241).

<sup>516</sup> Exhibit 43-9 (Tab 82) CTJH.053.07161.0467.

<sup>517</sup> Exhibit 43-9 (Tab 83) CTJH.053.07161.0466.

<sup>518</sup> Hill T18100: 2 – 22 (Day 170).

<sup>519</sup> Exhibit 43-24 Statement of Brother Hill STAT.1178.001.0001 [51].

<sup>520</sup> Hill T18115: 2 – 5, T18116: 4 – 6 (Day 170).

<sup>521</sup> Hill T18116: 8 – 10 (Day 170).

reported to police. When that was put to Brother Hill by Counsel Assisting, Brother Hill accepted he was mistaken and the reference ought to have been to CNK.<sup>522</sup>

- 455 When asked by the Chair if he appreciated at the time the difference between what the police might consider to be evidence sufficient to found a criminal conviction beyond reasonable doubt, and his responsibility for the conduct of the Marist Brothers for the care of children, he said he did. Brother Hill said this was a sufficient response because there were structures in place to ensure Patrick had no unsupervised contact with children.<sup>523</sup>
- 456 Brother Hill gave evidence that his intention in writing this letter was to convey to Bishop Malone that he was aware of the complaints about Patrick, and he was 'well and truly ... within our sights and under control.'<sup>524</sup> When asked by the Chair if the report that it was 'common knowledge among the kids' that Patrick acted inappropriately raised alarm bells, Brother Hill agreed that it did. He accepted that it was at least naïve to tell the Bishop, in effect, that he need not worry about Patrick because he had not engaged in criminal conduct.<sup>525</sup> Brother Hill gave evidence that this report about Patrick was a side issue and the focus of his attention was on assuring Bishop Malone that Dominic would not be appointed principal at St Francis Xavier's.<sup>526</sup>
- 457 Bishop Malone gave evidence that he did not speak with Brother Hill any further about the complaints about Patrick and Romuald.<sup>527</sup>
- 458 There is no doubt that a complaint about Patrick inappropriately touching students at Marist Brothers Hamilton in the 1970s was received by Bishop Malone in 1996. Bishop Malone passed that information on to Brother Hill.
- 459 It is submitted that it was unreasonable of Brother Hill to conclude that, because the police did not proceed to charge Patrick, his job was done. He knew that at this time Patrick was tutoring boarders in the evening at Marist College Ashgrove. He was also aware of other complaints about Patrick from his handover with Brother Turton.
- 460 In light of this further information, Brother Hill should have made further enquiries to satisfy himself that Patrick did not have access to children in a way that might permit inappropriate touching. There is no evidence to suggest he did so. Such enquiries would logically include consulting the records held by the Marist Brothers relating to Patrick, which would have revealed the incident with the two boys during a tutoring session at Marist College Ashgrove only four years prior.
- 461 Brother Hill again interviewed Patrick in August 1997. His notes of the interview record:<sup>528</sup>

---

<sup>522</sup> Hill T26487: 6 – T26488: 26 (Day 241).

<sup>523</sup> Hill T18100: 24 – T18101: 7 (Day 170).

<sup>524</sup> Hill T18116: 31 – 42 (Day 170).

<sup>525</sup> Hill T18117: 2 – 31 (Day 170).

<sup>526</sup> Hill T18117: 33 – T18118: 5 (Day 170).

<sup>527</sup> Malone T17768: 6 – 8 (Day 166).

<sup>528</sup> Exhibit 43-9 (Tab 94) CTJH.053.07160.0363.

*[Patrick] still occupies himself on an evening with individual tutoring in the boarding school.*

*This mainly involves maths. However, he has also taken on some individual students for basic reading and writing. He told me the story of a Year 10 student from outback Queensland who arrived at the College virtually illiterate. He felt that he had done an enormous service to this lad by teaching him to read.*

## **CNJ reports to police**

462 In February 1998, CNJ (who had complained to Brother Turton in August 1992) made a statement to Newcastle Police.

463 CNJ described in detail multiple occasions when Patrick sexually abused him during the 1970s when he was a student at Marist Brothers Hamilton. He described Patrick regularly massaging his neck and shoulders during maths class. He also described more than one occasion when Patrick undid the buttons on his shirt and massaged his chest and stomach. CNJ also described two occasions when Patrick put his hand into CNJ's pants and massaged his penis, testicles and genital area for a number of minutes. On each of these occasions, the abuse occurred in public.<sup>529</sup>

464 On 28 May 1998, Carroll & O'Dea Solicitors wrote to Brother Hill, advising that Newcastle police wished to interview Patrick.<sup>530</sup>

465 Less than two months later, on 20 July 1998, Patrick was interviewed by Brother Hill.<sup>531</sup> Brother Hill's file note records:<sup>532</sup>

*He continued his tutoring four nights a week. This is clearly a significant contribution to the boarding school. He said the volume varies but the practice is now well established and Pat is pleased with his efforts. He is particularly pleased that he was able to teach a Year 9 student how to read and write...Pat has been working with him for the past six months and the student is showing rapid progress. Pat also referred to another student who had been taken literally off the streets and into the boarding school...With a lot of effort they are gradually helping him to adjust from life on the streets to the fairly structured regimentation of boarding life.*

466 On 4 November 1998, Carroll & O'Dea Solicitors engaged Queensland solicitor, Mr Pat Mullins of Mullins & Mullins to represent Patrick in the police interview. Their letter to Mr Mullins records that police wished to interview Patrick in relation to 'a very old complaint.' The letter also states that Patrick 'was retired from Ashgrove.' This was not wholly correct; Patrick still tutored students at Marist College Ashgrove in 1998.

467 Almost a year later, in April 1999, Patrick was interviewed by Newcastle police in Queensland. He denied the allegations made by CNJ.<sup>533</sup>

<sup>529</sup> Exhibit 43-9 (Tab 96) QLD.0153.001.0715\_R.

<sup>530</sup> Exhibit 43-9 (Tab 97) CTJH.053.70013.0032\_R.

<sup>531</sup> Hill T24684: 23 – 40 (Day 241).

<sup>532</sup> Exhibit 43-9 (Tab 98) CTJH.053.07160.0364.

<sup>533</sup> Exhibit 43-9 (Tab 103) QLD.0153.001.0724\_R.

468 On 14 July 1999, Patrick was again interviewed by the Brother Hill.<sup>534</sup> Brother Hill's note records that Patrick 'continues his tutoring duties of an evening' and that:<sup>535</sup>

*The large burden weighing on him at the moment continues to be the situation with [CNJ]. Pat has absolutely no memory of the person concerned and certainly strenuously denies the allegations which have been made against him...I assured him that should he be brought to NSW to face further action on this that he will receive expert support.*

469 In a further interview on 15 July 2000, Brother Hill recorded that Patrick had:<sup>536</sup>

*...undertaken to do 12 periods per week, each of 50 minutes, as part of a consorted [sic] effort to assist with students with learning difficulties. In a sense Pat acts as a teachers' aid in accompanying the regular teacher in situ. As a result, he has not yet undertaken to do any evening tutoring...*

470 Patrick was not charged in respect of CNJ's complaint. There is no evidence as to the reasons why the matter did not proceed.

471 By 1998, the Marist Brothers had detailed information about the allegations of sexual abuse made by CNJ. As Provincial, Brother Hill instructed Carroll & O'Dea in relation to CNJ's claim. The allegations made by CNJ in his police statement were of a very serious nature.

472 Brother Hill knew that at this time Patrick was tutoring students four nights a week at the boarding school at Marist College Ashgrove. Although he said Patrick was subject to supervision arrangements, he took no steps beyond informing the headmaster and community leader to ensure that any arrangements were followed. Patrick described to Brother Hill his engagement with particularly vulnerable children who were underprivileged or had learning difficulties.

473 Notwithstanding that police did not proceed to charge Patrick, it is inconceivable that CNJ's allegations did not raise alarm bells for Brother Hill, particularly in light of his knowledge of Patrick's ongoing tutoring role. Brother Hill also knew of other complaints about Patrick from his handover with Brother Turton, and of the complaint conveyed by Bishop Malone in 1996.

474 By this stage, Brother Hill must have recognised that Patrick was a potential danger to children and removed him from the school environment altogether. He did not do so, and this was a serious failure on his part. Brother Hill's failure to take appropriate action meant that children at Marist Brothers Ashgrove, including particularly vulnerable children, were at risk of being sexually abused by Patrick. This was inexcusable.

<sup>534</sup> Hill T24684: 23 – 40 (Day 241).

<sup>535</sup> Exhibit 43-9 (Tab 107) CTJH.053.07160.0365\_R.

<sup>536</sup> Exhibit 43-9 (Tab 108) CTJH.053.07160.0366.



## 4.8 Complaint by CNI in 2001

- 475 Less than a year after Brother Hill's interview with Patrick, in April 2001, a year 7 student at Marist College Ashgrove made a complaint against Patrick. The student, CNI, said Patrick had stroked his arm and leg, and placed his hands on his groin during a study session.<sup>537</sup>
- 476 Patrick was charged with one count of indecent dealings with a child and the matter proceeded to a committal hearing.<sup>538</sup>
- 477 On 9 April 2001, Brother Hill emailed Howard Harrison of Carroll & O'Dea Solicitors, and said:<sup>539</sup>

*As the famous movie line said: just when you thought it was safe to go back in the water...! After a fairly mild couple of months all hell has broken loose over the past couple of weeks on the abuse front and it is important for me to bring you up to date with some events ...*

*Last Tuesday night a junior student at Marist College Ashgrove (Queensland) made a complaint against a Brother. The appropriate protocol was put into place immediately and the Brother was subsequently charged by Queensland Police with one count of sexual assault ... The Brother concerned is Patrick Butler. You would already have some material on him as "AB17". Brother Patrick strongly denies the allegation. He is due to appear in a Brisbane Court on 18 June.*

- 478 Brother Hill recalled the incident and said that CNI's complaint was brought to his attention soon after it happened.<sup>540</sup> He gave evidence that by putting the 'appropriate protocol' in place, he meant that he offered pastoral care to CNI, referred Patrick to independent legal representation, and co-operated fully with the police with any request for information.<sup>541</sup> He said he was concerned the incident had occurred, and he concluded that the supervision arrangements at Ashgrove were not effective.<sup>542</sup> Brother Hill gave evidence that he did not make his own enquiries about what had happened while the police were investigating.<sup>543</sup>
- 479 In an unsigned statement of Patrick in 2001, he described his tutoring arrangements as follows:

*The night tutoring continued for some years in a spare classroom near where the boarders were studying. In recent years, the dormitories were refurbished and all studied at their own desks. As tutoring had to move closer to where the students were, I eventually moved into an empty dormitory that was close to the living areas of all the boarders from Yr 7 to Yr 10.*

<sup>537</sup> Exhibit 43-9 (Tab 109) QLD.0152.001.0006\_R.

<sup>538</sup> Exhibit 43-9 (Tab 110) QLD.0153.001.0765\_R.

<sup>539</sup> Exhibit 43-9 (Tab 111) CTJH.053.07161.0461\_R.

<sup>540</sup> Hill T18103: 5 – 13 (Day 170).

<sup>541</sup> Hill T18103: 38 – T18104: 14 (Day 170).

<sup>542</sup> Hill T18104: 33 – 45 (Day 170).

<sup>543</sup> Hill 18104: 20 – 31 (Day 170).

*As at 3 April 2001 was tutoring in the temporarily unused dormitory on the second floor of the junior dormitory building ...*

*The dormitory where I did my tutoring work largely comprised open space with chairs and tables near the entry point which was through glass doors with glass panels in each. My recollection was that the doors were nearly always open, at least during tutoring time.*

- 480 It may be inferred from Patrick's unsigned statement that, as at April 2001, whatever special 'vigilance' or 'supervision' applied, he was then tutoring students in a room without other adults present. Given the history of complaints in relation to him, allowing him that access to children was reckless and in total disregard for the safety of the children at Marist College Ashgrove. It should not have occurred.

### **Queensland Police request for information**

- 481 On 10 April 2001, Detective Sergeant Geoff Marsh of Queensland Police Task Force Argos wrote to Brother Hill with the following request:<sup>544</sup>

*I am requesting that your administration staff conduct checks of the archives and personnel files of the aforementioned Brother [Patrick] Butler in an effort to identify any history or circumstances which may suggest that the brother has acted in any inappropriate manner with any child during his extensive teaching career.*

- 482 The following day, on 11 April 2001, Brother Hill telephoned solicitor Pat Mullins of Mullins & Mullins (who previously acted for Patrick in relation to CNJ's police matter). A telephone attendance memo records that Brother Hill informed Mr Mullins:<sup>545</sup>

*They have now had an approach from Geoff Marsh of Taskforce Argus [sic] wanting them to do a search of their archives to come up with any documents they have which would point to Brother Patrick being involved in any inappropriate behaviour with children.*

- 483 On the same day, Brother Hill responded to Queensland Police by fax as follows:<sup>546</sup>

*Subsequent to our telephone conversation of yesterday afternoon I have checked the archives and files of Brother Patrick. There is a note there indicating that he was the subject of a complaint brought to the attention of my predecessor in 1993. The allegation referred to the 1970s. It is my understanding that ...the NSW Police made further investigations.*

- 484 Brother Hill provided Mr Mullins' details. Brother Hill gave evidence that he believed the complaint he was referring to in this fax was that of CNJ.<sup>547</sup>

- 485 Also on 11 April 2001, Brother Hill wrote to the Brothers informing them of the charges and said it would be inappropriate for him to speculate on the matter but that 'it is

<sup>544</sup> Exhibit 43-9 (Tab 112) CTJH.053.07160.0335\_R.

<sup>545</sup> Exhibit 43-9 (Tab 113) CTJH.053.70016.0138.

<sup>546</sup> Exhibit 43-9 (Tab 114) CTJH.053.07160.0334\_R.

<sup>547</sup> Exhibit 43-24 Statement of Brother Hill STAT.1178.001.0001 [51], [57], Hill T18107: 34 – 35 (Day 170).

evident that a most unfortunate misunderstanding' had occurred.<sup>548</sup> It is submitted that Brother Hill had no basis to tell the Brothers that the complaint was an 'unfortunate misunderstanding', particularly given his knowledge of the serious allegations of inappropriate touching made by CNJ.

- 486 In an unsigned statement by Patrick that appears to have been prepared in relation to this matter, Patrick said:<sup>549</sup>

*I am aware of allegations by [CNI] that I stroked 'his leg, arm and then his dick' and I deny those allegations. I cannot entirely exclude the possibility that I may have touched him on the arm or leg when encouraging him but I certainly didn't touch him on the penis. I also did not hover my hand above his lap in the way he suggested. I reject completely any suggestion that I did anything improper towards him. If I did touch him in any way, and I cannot remember doing so, it would have been entirely innocent or accidental.*

- 487 Patrick also said that since the allegations were made he had 'ceased tuition altogether' and had had no contact with students. He said he spent most of his time in his room or otherwise within the Brothers' community house.<sup>550</sup>

- 488 A handwritten file note signed by 'Pat' and dated 12 April 2001 records the words:<sup>551</sup>

*Det Sgt Scott Marsh, Task Force Argos*

*Never been charged with any criminal offence.*

- 489 On 18 April 2001, Mr Mullins responded to Detective Sergeant Marsh's request for information. He wrote:<sup>552</sup>

*On instructions from the Provincial Brother Michael Hill we confirm that Brother Michael Hill has caused a search to be done of the records of the Province, and that those records reveal that Brother Patrick Butler, also known as Thomas Joseph Butler, has never been charged with any criminal offence.*

- 490 On 10 May 2001, Detective Sergeant Marsh wrote an interim report to the Detective Inspector of Task Force Argos. The report recorded:

***Investigation***

*Inquiries with NSWPOL have established that BUTLER was subject to and [sic] investigation for similar indecent dealing allegations during 1998 and 1999 ... The investigation was subject to allegations by a [CNJ].*

...

***Further investigation***

<sup>548</sup> Exhibit 43-9 (Tab 115) CTJH.053.07161.0504.

<sup>549</sup> Exhibit 43-9 (Tab 126) CTJH.053.07160.0283\_R.

<sup>550</sup> Exhibit 43-9 (Tab 126) CTJH.053.07160.0283\_R.

<sup>551</sup> Exhibit 43-42 CTJH.053.70016.0137\_R.

<sup>552</sup> Exhibit 43-9 (Tab 116) CTJH.053.07160.0333\_R.

*DSC Dixon has advised that subject to his investigation in 1999 he conducted a thorough background investigation of BUTLER. He advises that he failed to generate any associated complaints.*

*The Marist Brothers Provincial Brother Michael Hill...advises that a search or [sic] their archive has failed to identify any adverse allegations with respect to brother Butler – apart from CNJ allegations.*

- 491 Brother Hill told the Royal Commission that he intended to co-operate with the request for information from Task Force Argos. He said the relevant files had been sent to Mr Mullins at the time of the earlier criminal matter involving CNJ, but that as at 2001 all the documents relating to complaints about Patrick were in the files held in the Provincial's office at Drummoyne in Sydney.<sup>553</sup> Brother Hill said:<sup>554</sup>

*A. Well, all the documentation was in Brisbane. Whether we kept copies, or whether copies had gone to Brisbane I can't recall, but I certainly reviewed the documentation.*

*Q. You have a memory of yourself reviewing documentation?*

*A. I do. I do, yes.*

- 492 When asked if his review only identified the complaint of CNJ but not any others, Brother Hill said 'No, there is a step missing.' He said:<sup>555</sup>

*There was a phone conversation between Geoff Marsh and myself prior to this where he was - I made him aware that there were several complaints had been received, but the [CNJ] one, if that's his name, had been subject to a police investigation, and that was the one he was interested in.*

- 493 When asked if it was a separate conversation to the one referred to in his letter, Brother Hill said 'No it was the same conversation.'<sup>556</sup> Brother Hill said he told Detective Sergeant Marsh that there had been several complaints received about Patrick based on his own personal knowledge.<sup>557</sup>

- 494 Counsel Assisting asked Brother Hill about the response Mr Mullins gave to Task Force Argos on 18 April 2001, in which it was reported that Patrick had never been charged with a criminal offence. The following exchange took place:<sup>558</sup>

*Q. But you did understand also that they weren't asking only about whether he had been the subject of criminal charges before, but whether he had been the subject of any complaints?*

*A. Yes, that's - they are - there were two parts to it. As I recall, it started off with a very, very broad request, right? Any complaints. And as I say, my first conversation with Geoff Marsh was that he wanted the material only from the complaint which drew the interest of the police in terms of*

<sup>553</sup> Hill T18105: 17 – T18106: 28 (Day 170).

<sup>554</sup> Hill T18108: 3 – 8 (Day 170).

<sup>555</sup> Hill T18108: 17 – 25 (Day 170).

<sup>556</sup> Hill T18108: 27 – 29 (Day 170).

<sup>557</sup> Hill T18109: 3 – 16 (Day 170).

<sup>558</sup> Hill T18109: 32 – 44 (Day 170).

*investigation, and here I think Pat Mullins is - well, he's virtually saying, yes, "never charged", the difference between receiving a complaint and being charged.*

- 495 Brother Hill agreed with Counsel Assisting that Detective Sergeant Marsh's written request on 10 April 2001 was not limited in any way to matters which had been the subject of a police investigation. However, Brother Hill said in their telephone conversation on the same day, Detective Sergeant Marsh narrowed the request, and said 'he wanted to receive the report from the case dealing – where there was a police investigation.' He said he indicated to Detective Sergeant Marsh that there were several complaints, but Detective Sergeant Marsh said words to the effect that he was not interested in those. Brother Hill said Detective Sergeant Marsh did not say why this was so.<sup>559</sup>
- 496 In relation to Detective Sergeant Marsh's report of 10 May 2001, Brother Hill agreed it seems to be consistent with the original request from Task Force Argos for information about any adverse allegations in relation to Patrick.<sup>560</sup>
- 497 When asked if it is possible that he misunderstood Detective Sergeant Marsh's request was limited to criminal investigations, Brother Hill said:<sup>561</sup>

*No, because - well, I mean, it's always possible, but my - and it's a fairly clear recollection of my discussion with Detective Sergeant Marsh by telephone, is that, first of all, he was aware that there were several complaints received, but certainly my distinct impression is that he was wanting the documentation purely for one of those complaints, which was the subject of a police - a prior police investigation; that's a fairly clear memory.*

- 498 Brother Hill also agreed that the description of the detective's request in Mr Mullins file note of 11 April 2001 was consistent with the request being unconfined. When asked if he could see any reason that Mr Mullins would describe the request in an unconfined way on 11 April 2001, when the detective had confined the request by telephone to Brother Hill on 10 April 2001, he said he conveyed to Mr Mullins the qualification to the request. He accepted the qualification was not recorded in the file note.<sup>562</sup>
- 499 Brother Hill was asked again by Counsel Assisting if it is possible that he was misremembering the event, and the police did not qualify their request. Brother Hill said 'Oh no, I'm – I remember quite clearly: they did qualify their request. I'm not in error there.'<sup>563</sup>
- 500 Brother Hill agreed with Counsel Assisting that the documentary records of the Marist Brothers did, in fact, include documents about complaints against Patrick which had

<sup>559</sup> Hill T18110: 1 – 25 (Day 170).

<sup>560</sup> Hill T18111: 6 – 40 (Day 170).

<sup>561</sup> Hill T18111: 45 – T18112: 5 (Day 170).

<sup>562</sup> Hill T18112: 37 – T18113: 12 (Day 170).

<sup>563</sup> Hill T18113: 14 – 18 (Day 170).

not been the subject of police investigation. He said he provided that information to the police verbally, but they did not request the documents.<sup>564</sup>

- 501 Following Brother Hill's evidence, the solicitors assisting the Royal Commission requested a statement from Queensland police. A statement was prepared by Detective Inspector Geoffrey Marsh, dated 28 October 2016.
- 502 Detective Inspector Marsh stated that he had no specific or independent recollection of his conversation with Brother Hill. However, he said:<sup>565</sup>

*I ... consider it highlight unlikely that I would have narrowed the scope of my request as described by Brother Hill. The sole purpose of my investigation ... was to identify any further complainants to assist the Queensland prosecution by way of similar fact evidence. This being the case, it defies logic that I would exclude information in the manner and to the extent indicated by Brother Hill.*

#### *Brother Hill's evidence in relation to Detective Sergeant Marsh's statement*

- 503 On 9 December 2016, Brother Hill gave further evidence in relation to this matter, including specifically in response to Detective Sergeant Marsh's statement. Brother Hill said he stood by his earlier evidence to the Royal Commission and did not wish to change the substance of it in 'any way, shape or form.'<sup>566</sup> When asked if, having reflected on the matter, it was possible he may have misunderstood the request he said 'That's a possibility, certainly' but it did not explain why Detective Sergeant Marsh had not followed up with him to request further information. Brother Hill said that Detective Sergeant Marsh could have done so because he was clear that he had informed the officer of the prior complaints (not subject of a police investigation).<sup>567</sup>
- 504 Brother Hill rejected the proposition put to him by Counsel Assisting that he was fabricating his evidence because he was embarrassed that he did not provide the information to police actually held by the Marist Brothers.<sup>568</sup>
- 505 It is submitted that Brother Hill's evidence that Task Force Argos narrowed or qualified their request for information from the Marist Brothers to only those complaints which were the subject of a police investigation is illogical and inherently unlikely. The documentary evidence records the clear and broad terms of the request. Information about prior police investigations was available to Detective Sergeant Marsh, and indeed he obtained some of that information, through enquiries with his counterparts at NSW Police.<sup>569</sup>
- 506 The enquiry with the Marist Brothers was quite plainly for a different purpose. It was a wide-ranging request, and its objective, as evidenced by Detective Sergeant Marsh's May 2001 report and his statement to the Royal Commission, was to elicit similar fact

<sup>564</sup> Hill T18113: 20 – 32 (Day 170).

<sup>565</sup> Exhibit 43-44 Statement of Detective Inspector Marsh STAT.1258.001.0001\_R [21].

<sup>566</sup> Hill T24689: 3 – 5, 32 – 33 (Day 241).

<sup>567</sup> Hill T14690: 1 – 16 (Day 241).

<sup>568</sup> Hill T24690: 18 – 22 (Day 241).

<sup>569</sup> Exhibit 43-9 (Tab 117) CTJH.0153.001.0708\_R.

evidence in relation to Patrick's past conduct. Although it is possible that Brother Hill misunderstood the information sought, there is no logical reason for the detective to narrow his request of the Marist Brothers to information about criminal investigations. Notwithstanding that Detective Inspector Marsh had no independent or specific recollection of the conversation, it is 'highly unlikely' that he would have narrowed the request. His evidence is consistent with the documents and with the logical aim of the enquiry. Brother Hill's evidence that then Detective Sergeant Marsh narrowed the scope of his request in a telephone call should be rejected.

507 In any event, had the request been limited in the manner contended by Brother Hill (to complaints that had been the subject of police investigation) his response was still deficient. He did not refer to the fact that there had been two separate complaints to police: one by CNJ in 1998 and another by CNK in 1993, about which Brother Hill was aware.

508 The file note signed by 'Pat' on 12 April 2001, which appears to record a conversation with Detective Sergeant Marsh, does not assist in resolving the issue. On its face, the note records that Detective Sergeant Marsh was informed by 'Pat' (likely Pat Mullins) that Patrick had not been the subject of a previous criminal charge. It comes two days after Brother Hill says he spoke to the detective and the request was qualified.

509 It is submitted that Brother Hill's evidence that he informed Detective Sergeant Marsh verbally of the other complaints documented on Patrick's file should be rejected.

510 It follows that:

- a. Brother Hill's fax to Detective Sergeant Marsh on 11 April 2001, in which he stated having checked the archives that Patrick was 'the subject of a complaint brought to the attention of my predecessor in 1993' and 'the police made further investigations', and
- b. Brother Hill's instruction to Mr Mullins, which resulted in Mr Mullins letter to Detective Sergeant Marsh on 18 April 2001, that the Marist Brothers records reveal that Patrick had never been charged with a criminal offence,

were not responsive to the request by Task Force Argos. Each failed to disclose the prior complaints of CQY, CQZ, CNK or the two boys at Marist College Ashgrove which were documented on the file.

### **CNI's criminal matter does not proceed**

511 On 21 February 2002, Patrick was committed for trial in the District Court at Brisbane on one charge of indecent treatment of a child under 16 (under 12 years).<sup>570</sup> However, the Court ruled there was no case to answer and Patrick was discharged on 25 February 2003.<sup>571</sup>

512 Patrick died in 2006.

<sup>570</sup> Exhibit 43-9 (Tab 122) QLD.0153.001.0769\_R.

<sup>571</sup> Exhibit 43-9 (Tab 127) QLD.0152.001.0002\_R, Exhibit 43-9 (Tab 128) QLD.0153.001.0021\_R.

## Part 5 Failure to document complaints and to ensure continuity of information

---

- 513 During the period that Brother Turton and Brother Hill served as Provincials, where complaints about a Brother were made, they were (on occasions) not documented adequately or at all. Examples include:
- a. There is no contemporaneous record of the requirement purportedly imposed in 1992 that Patrick be subject to special supervision with children.
  - b. The records of the Provincial Council in 1996 record inaccurately the reasons for the revocation of Dominic's appointment to Hamilton.
  - c. There is no record of Brother Hill's conclusion in 1997 that Dominic not have unsupervised access to children. In 2005, Dominic was appointed to an administrative position in a school.
  - d. In December 2012, the (then) Provincial Brother Jeffrey Crowe wrote to Bishop Wright and said that the Marist Brothers were unaware of claims of sexual abuse perpetrated by Romuald 'until two weeks ago'.<sup>572</sup> As acknowledged by Brother Carroll, that was incorrect. References to sexual misconduct by Romuald were also brought to the attention of the Marist Brothers in the 1990s.<sup>573</sup> Brother Carroll accepted that the inaccuracy was a reflection of the fact that complaints had been made but not documented.<sup>574</sup>
- 514 There was no adequate handover process between Brother Turton and Brother Hill when the former ceased as Provincial and the latter took over. This compounded the poor state of information in the records relating to complaints against Dominic and Patrick. For example, Brother Hill's evidence was that he knew of at least one complaint in relation to Patrick (by CNJ) but that he did not know of others. That was information that should have been communicated by Brother Turton. It is not unreasonable to expect this level of detail about matters of this significance in a handover of leadership of the Order.
- 515 These deficiencies in record keeping and the absence of an adequate handover process impeded the ability to respond adequately and appropriately to complaints of child sexual abuse, and put other children at risk.

## Part 6 Impacts of physical and sexual abuse

---

- 516 Many survivors gave accounts of the long lasting, profound effects that resulted from being sexually and physically abused by the Marist Brothers. These included psychological and psychiatric conditions, substance abuse, trouble socialising,

---

<sup>572</sup> Exhibit 43-9 (Tab 172) CTJH.053.70038.0162\_R.

<sup>573</sup> Exhibit 43-30 Statement of Brother Carroll STAT.1181.001.0001\_R [165].

<sup>574</sup> Carroll T18242: 7 – 15 (Day 171).



problems with authority, confusion surrounding sexuality and sexual identify, educational and career setbacks, relationship difficulties and loss of faith.

- 517 Michael Balk was sexually abused by Romuald at St Gabriel's High School, Pagewood, in 1967. He gave evidence that when he was still young, 'the abuse had a significant impact on my sexual development. It caused me anxiety and I was reluctant to socialise with, and was withdrawn around, girls. I couldn't be my natural self. I found myself always trying to prove my worth and wanting others to admire me and to look up to me'.<sup>575</sup>
- 518 Mr Balk gave evidence of the continuing effects of the abuse. 'I am very withdrawn and don't make friends easily. I avoid getting close to people and have had few friends other than my family. I fear that in old age I will suffer from loneliness in not having close friends'. He gave further evidence that the abuse has affected his career and other interests. 'I haven't been able to settle into any career and have never reached my full potential. I have at times struggled with supervisors and others in authority if they have not lived up to my expectations. This has had a major impact on my career opportunities and my life in general'.<sup>576</sup>
- 519 Mr Balk gave evidence of suffering from depression, becoming suicidal at one time, and of being distrustful and critical of work superiors and counsellors. 'Even today, I don't think I truly understand the full extent of the effects of the abuse on my life. I think back to that teacher that I initially respected and looked up to, someone who could have fuelled my passion for engineering and had a profoundly positive influence on my life. Instead, I remember how he deceived me and took advantage of me, and it makes me angry that he has caused so much hurt to so many boys'.<sup>577</sup>
- 520 CNS was physically and sexually abused by Patrick at Marist Brothers, Hamilton, in 1972. He gave evidence that the abuse 'definitely affected my schooling. My grades began to get worse, and I would sometimes avoid school and go truant. I was terrified of the school, particularly of going to maths'.<sup>578</sup> CNS gave further evidence that he has 'suffered from, at times, overwhelming anxiety since leaving Marist Brothers. I believe that this is the result of the abuse I experienced at the school and the terror I often felt when I went to school. This anxiety was a great detriment and has negatively impacted my personal relationships. The abuse has also caused me to be hyper vigilant about my own children. I became over protective of them. I did not send my children to Catholic schools'.<sup>579</sup>
- 521 CNV was sexually abused by Patrick at Marist Brothers, Hamilton, in 1972 and was exposed to by Romuald in 1973. He gave evidence that during 1973 'my grades began to suffer. I was in the top class, but I got a report card that indicated I was going to be dropped to the second class'.<sup>580</sup>

<sup>575</sup> Exhibit 43-15 Statement of Michael Balk STAT.1129.001.0001 [41].

<sup>576</sup> Exhibit 43-15 Statement of Michael Balk STAT.1129.001.0001 [42] – [43].

<sup>577</sup> Exhibit 43-15 Statement of Michael Balk STAT.1129.001.0001 [47] – [48].

<sup>578</sup> Exhibit 43-16 Statement of CNS STAT.1152.001.0001\_R [25].

<sup>579</sup> Exhibit 43-16 Statement of CNS STAT.1152.001.0001\_R [25] – [26].

<sup>580</sup> Exhibit 43-17 Statement of CNV STAT.1163.001.0001\_R [19].

- 522 CNV also gave evidence of the ongoing, long-term effects of the abuse. ‘My abuse has left me with a spiritual void. As a result, I have explored other false religions, which has detrimentally affected my marriage. I have also found myself having flashbacks to when I was 11 years old and was abused, and this is adversely impacting upon my teaching career. I was always considered one of the brightest members of my family, but an under-achiever. I have a great family, who have been very successful, but I feel that I have not lived up to my potential’.<sup>581</sup>
- 523 CNQ was sexually abused by multiple Marist Brothers at Marist Brothers, Hamilton, between 1977 and 1980. He gave evidence that the abuse made him feel ‘ashamed, confused and unclean’. He became paranoid about being homosexual and that people would think he enjoyed it. CNQ developed a stutter at school after the abuse had started, which has improved over time but has never completely gone.<sup>582</sup>
- 524 CNQ gave further evidence that he has had ‘difficulty with relationships and have been through two failed marriages. I have trouble with intimacy and I am often uncomfortable with sexual relationships. Usually, these issues, combined with my alcohol and substance abuse problems, have resulted in my relationships breaking up’. His relationships with his children have also been impacted, particularly with his daughter. ‘She was very upset when my marriage with her mother broke down and blamed my drinking. I was an overprotective father and found it hard to cuddle them. I have not told any of my children about the abuse since I believe I would cease to be a man in their eyes if I did’.<sup>583</sup>
- 525 CNQ has been diagnosed with anxiety and post-traumatic stress disorder and has spent time in hospital, both as an inpatient and outpatient, for alcohol addiction and depression. CNQ gave evidence that he still does not ‘have many friends, and I do not seek to have any serious relationships with women. I suffer flashbacks from my sexual abuse and am prone to outbursts of tears. I avoid crowds and public places, and I often think that my life has been wasted’.<sup>584</sup>
- 526 CNR was sexually abused by Dominic at Marist Brothers, Hamilton, in 1971 and by Romuald in 1972. CNS gave evidence that ‘[e]verything shattered when the abuse by Br DOMINIC started. I found it bizarre that a Marist Brother, who was supposed to have sacrificed his life for the Church, would grope kids. I lost interest in school because of the sexual and physical abuse. I used to go home at lunchtime to get away. After the abuse started, sitting at a desk made me feel sick and break into a sweat. This has had a huge impact on my life’.<sup>585</sup>
- 527 CNR gave evidence that the abuse had a significant impact on his education. ‘In my family there are several PhDs and it was a given that I would continue on to further study. Because of the abuse I left school as soon as I finished fourth form. I was in the

---

<sup>581</sup> Exhibit 43-17 Statement of CNV STAT.1163.001.0001\_R [34] – [36].

<sup>582</sup> Exhibit 43-18 Statement of CNQ STAT.1128.001.0001\_R [61] – [62].

<sup>583</sup> Exhibit 43-18 Statement of CNQ STAT.1128.001.0001\_R [64] – [65].

<sup>584</sup> Exhibit 43-18 Statement of CNQ STAT.1128.001.0001\_R [66] – [67].

<sup>585</sup> Exhibit 43-19 Statement of CNR STAT.1174.001.0001\_R [29].

top class so this was a shock to my family. Other boys I had witnessed being abused or who had told me they had been abused also left at the same time'.<sup>586</sup>

- 528 CNR gave evidence of suffering from depression as a result of the abuse. After leaving school and starting to work as a fitter and turner, CNR gave evidence that he 'really lost it' and 'felt like I didn't have any reason to live. I would go to work and come home and sleep then go back to a shift without even showering. I would ride my motorbike at high speeds and wouldn't have cared if I had been killed'.<sup>587</sup> CNR has been on anti-depressants for many years. 'I have a problem with hoarding, which I'm trying to deal with. I have also been diagnosed with PTSD and OCD. I am on medication now which makes me calmer. I have intended to commit suicide more than once. I was detained in full-time psychiatric care for four months in 2014 because I intended to commit suicide'.<sup>588</sup>
- 529 CNR gave evidence that he is 'now heavily reliant upon the care and emotional support provided by my wife to cope with everyday living and to keep me safe. Even simple decisions and emotions are too much for me to cope with by myself'.<sup>589</sup>
- 530 CQT provided evidence of his loss of faith as a result of being abused at Marist Brothers, Hamilton. He said that he 'cannot trust any Marist Brother, Roman Catholic priest, or Sister of Mercy nun in any way. I have three children and I would not send them to a religious school. I'm extremely over protective of them'. CQT also provided evidence that a 'major impact on the community in my opinion has been the number of suicides of boys who went through Marist Brothers Hamilton. Not only of my brother Andrew, but also of many former students including friends'.<sup>590</sup>
- 531 Of his brother's death, CQT said his family was shattered. He said his father was away on a ship when his brother died, and when he came home, he was broken and never recovered. CQT said that he was the only one who could go to the morgue to identify his brother, and he did his Higher School Certificate within weeks.<sup>591</sup>
- 532 Audrey Nash spoke of the immense impact the abuse of her sons Andrew and CQT has had on her life and her faith. She said she spent her whole life committed to her Catholic faith and working for the Catholic Church. She said:<sup>592</sup>

*I don't go to church now. I still have my beliefs, but I am appalled at the lack of empathy, the lack of support, and the lack of concern for all of the people affected by child sexual abuse. I am disgusted by the efforts of the church to cover up the abuse, and to protect the abusers.*

*I have been devastated by what happened to CQT and Andrew, and my children and I have been just as devastated by the reaction of all of the members of the Catholic Church. I have been left feeling empty. I also feel*

<sup>586</sup> Exhibit 43-19 Statement of CNR STAT.1174.001.0001\_R [30].

<sup>587</sup> Exhibit 43-19 Statement of CNR STAT.1174.001.0001\_R [32].

<sup>588</sup> Exhibit 43-19 Statement of CNR STAT.1174.001.0001\_R [34].

<sup>589</sup> Exhibit 43-19 Statement of CNR STAT.1174.001.0001\_R [35].

<sup>590</sup> Exhibit 43-22 Statement of CQT STAT.1173.001.0001\_R [42] – [43].

<sup>591</sup> Exhibit 43-22 Statement of CQT STAT.1173.001.0001\_R [27].

<sup>592</sup> Exhibit 43-23 Statement of Audrey Nash STAT.1172.001.0001\_R [42] – [43].

*so stupid that I used to fear and revere these people, and that I used to respect them and look up to them.*

## Part 7 Brother Carroll's apology

---

533 At the conclusion of the public hearing, Brother Carroll delivered an apology to those who have been affected by sexual and physical abuse by the Marist Brothers. He said:<sup>593</sup>

*We cannot deny the unpalatable truths that have been revealed about the Marist Brothers' responses to child sexual abuse; vulnerable young people were sexually abused by Brothers, criminal activity took place, our response was entirely inadequate, the serious effects of sexual abuse were unrecognised, leaders failed to take strong, decisive action, victims were offended against again by means of aggressive legal processes. Our responses were naive, uninformed, even callous at times.*

*I know that this Case Study has revealed similar patterns - failures, inadequacies and ignorance.*

*My predecessor in his statements at both previous case studies has expressed our collective remorse and apology. I reiterate that today. What happened in the past should not have occurred. Children should not have been abused by those into whose trust they were willingly placed. Our response to victims and their families should have been immediate, compassionate and authentic.*

*As a Religious Order we have failed to protect the young people for whom we were founded and for whom many thousands of men have dedicated their lives. Those who have offended against young people have betrayed the trust placed in them by children and their parents, and by their own fellow Brothers.*

*Our commitment today is what it should have been in the past: full cooperation with authorities, thorough, professional and effective processes and protocols to protect children and ensure their safety, compassionate responses to victims. We ask forgiveness for ourselves in our failures and we hope for healing for the victims of past crimes.*

534 Brother Carroll was visibly moved by the numerous survivors who gave evidence during the public hearing. Brother Carroll was right to acknowledge the past failings of the Marist Brothers, and his apology on behalf of the Order was appropriate.

Stephen Free

Counsel Assisting

15 December 2016

---

<sup>593</sup> Carroll T18231: 18 – T18232: 5 (Day 171).