



**Royal Commission**  
into Institutional Responses  
to Child Sexual Abuse

# REPORT OF CASE STUDY NO. 13

The response of the Marist  
Brothers to allegations of child  
sexual abuse against Brothers  
Kostka Chute and Gregory Sutton

NOVEMBER 2015

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# Report of Case Study No. 13

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The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton

November 2015

## COMMISSIONERS

Justice Jennifer Coate  
Mr Bob Atkinson AO APM  
Mr Andrew Murray



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# Preface

## The Royal Commission

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The Letters Patent provided to the Royal Commission require that it ‘inquire into institutional responses to allegations and incidents of child sexual abuse and related matters’.

In carrying out this task, we are directed to focus on systemic issues but be informed by an understanding of individual cases. The Royal Commission must make findings and recommendations to better protect children against sexual abuse and alleviate the impact of abuse on children when it occurs.

For a copy of the Letters Patent, see Appendix A.

## Public hearings

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A Royal Commission commonly does its work through public hearings. A public hearing follows intensive investigation, research and preparation by Royal Commission staff and Counsel Assisting the Royal Commission. Although it may only occupy a limited number of days of hearing time, the preparatory work required by Royal Commission staff and by parties with an interest in the public hearing can be very significant.

The Royal Commission is aware that sexual abuse of children has occurred in many institutions, all of which could be investigated in a public hearing. However, if the Royal Commission were to attempt that task, a great many resources would need to be applied over an indeterminate, but lengthy, period of time. For this reason the Commissioners have accepted criteria by which Senior Counsel Assisting will identify appropriate matters for a public hearing and bring them forward as individual ‘case studies’.

The decision to conduct a case study will be informed by whether or not the hearing will advance an understanding of systemic issues and provide an opportunity to learn from previous mistakes, so that any findings and recommendations for future change which the Royal Commission makes will have a secure foundation. In some cases the relevance of the lessons to be learned will be confined to the institution the subject of the hearing. In other cases they will have relevance to many similar institutions in different parts of Australia.

Public hearings will also be held to assist in understanding the extent of abuse which may have occurred in particular institutions or types of institutions. This will enable the Royal Commission to understand the way in which various institutions were managed and how they responded to allegations of child sexual abuse. Where our investigations identify a significant concentration of abuse in one institution, it is likely that the matter will be brought forward to a public hearing.

Public hearings will also be held to tell the story of some individuals which will assist in a public understanding of the nature of sexual abuse, the circumstances in which it may occur and, most importantly, the devastating impact which it can have on some people's lives.

A detailed explanation of the rules and conduct of public hearings is available in the Practice Notes published on the Royal Commission's website at:

[www.childabuseroyalcommission.gov.au](http://www.childabuseroyalcommission.gov.au)

Public hearings are streamed live over the internet.

In reaching findings, the Royal Commission will apply the civil standard of proof which requires its 'reasonable satisfaction' as to the particular fact in question in accordance with the principles discussed by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336:

it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal...the nature of the issue necessarily affects the process by which reasonable satisfaction is attained.

In other words, the more serious the allegation, the higher the degree of probability that is required before the Royal Commission can be reasonably satisfied as to the truth of that allegation.

## Private sessions

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When the Royal Commission was appointed, it was apparent to the Australian Government that many people (possibly thousands) would wish to tell us about their personal history of child sexual abuse in an institutional setting. As a result, the Commonwealth Parliament amended the *Royal Commissions Act 1902* to create a process called a 'private session'.

A private session is conducted by one or two Commissioners and is an opportunity for a person to tell their story of abuse in a protected and supportive environment. As at 2 October 2015, the Royal Commission has held 4,207 private sessions and more than 1,508 people were waiting to attend one. Many accounts from these sessions will be recounted in later Royal Commission reports in a de-identified form.

## Research program

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The Royal Commission also has an extensive research program. Apart from the information we gain in public hearings and private sessions, the program will draw on research by consultants and the original work of our own staff. Significant issues will be considered in issues papers and discussed at roundtables.

## This case study

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The scope and purpose of this case study is:

1. The responses of the Marist Brothers, including schools operated by it, to allegations of child sexual abuse regarding Brother John Chute (aka Brother Kostka) and former Brother Gregory Sutton.
2. The steps taken by the Marist Brothers, including schools operated by it, to report allegations of child sexual abuse regarding Brother John Chute and former Brother Gregory Sutton to the police.
3. The response of agencies, including the NSW Department of Family and Community Services, to reports of child sexual abuse regarding Brother John Chute and former Brother Gregory Sutton.
4. The settling of compensation claims by Catholic Church Insurance and the Marist Brothers regarding allegations of child sexual abuse made against Brother John Chute and former Brother Gregory Sutton.
5. Any related matters.

The public hearing was held from 10 to 18 June 2014 in Canberra and on 30 June, 1 July and 8 August 2014 in Sydney.

# Executive summary

The Marist Brothers is a Catholic Order established for the education and ‘Christian formation’ of young people.

## Governance

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In the period 1959 to 1993, the Provincial of the Sydney Province:

- had direct authority over the Marist Brothers in the Sydney Province
- was responsible for responding to allegations or complaints of child sexual abuse
- was responsible for determining the action to be taken in respect to the accused.

Before 1983, there is no evidence that the Provincials had a practice of keeping written records of allegations against Brothers or admissions by them of child sexual abuse.

Before the 1992 protocol, which set out policies and procedures on handling complaints of child sexual abuse against a Brother, there was nothing kept in writing concerning the transfer of Brothers. The 1992 Protocol included guidelines governing the transfer between dioceses of religious against whom an allegation of criminal behaviour had been made.

From this case study, it is clear that accusations or admissions of sexual misconduct by Marist Brothers were treated as highly confidential. Information concerning child sexual abuse was usually held by the Provincial and perhaps one or two others. Successive Provincials seem not to have passed on such information, including to their successors and the Provincial Council.

## Brother John (Kostka) Chute

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Brother John (Kostka) Chute taught at a large number of schools, either operated by the Marist Brothers or at which the Marist Brothers sent Brothers to teach, in Queensland, New South Wales and the Australian Capital Territory (ACT).

Brother Chute was convicted in 2008 of 19 child sex offences against six of his former students during the period 1985 to 1989. He pleaded guilty.

Brother Chute taught at St Anne’s Primary School in Bondi from 1961 to the end of 1962. Three claimants – ACF, ACP and AAI – have alleged that Brother Chute sexually abused them when each was a student at St Anne’s Primary School during this period. The Church parties (that is, the Marist Brothers and the Truth Justice and Healing Council) accepted that Brother Chute sexually abused ACF, ACP and AAI.

In 1962 a teacher at St Anne's School, Brother Walter Cranney, and the Community Superior, Brother Des Phillips, knew that Brother Chute had admitted to sexually abusing a child at St Anne's Primary School in Bondi.

Brother Phillips did not inform the Provincial that Brother Chute had admitted to sexually abusing a child, as required by the Marist Brothers policy on reporting at that time. That failure meant that the Provincial at the time could take no action to protect other children from Brother Chute's sexually abusive behavior. No note was made of the complaint and there was no follow-up with Brother Chute.

Brother Phillips' response to AAI's complaint was 'grossly inadequate' – a conclusion rightly accepted by the Church parties.

In 1967, Brother Chute was transferred to St Joseph's School in Lismore (later known as St Carthage's), where he took up the position of principal of the primary school. AAA complained to the Marist Brothers in 2002 that Brother Chute sexually abused him in 1967 at this school. Brother Chute admitted that he had done so.

On 19 July 1969 the Provincial Council, chaired by Brother Othmar Weldon and with Brother Alman Dwyer in attendance, decided to give Brother Chute a canonical warning because he had admitted that he had 'inappropriately sexually touched' a child at St Joseph's School at Lismore.

In about 1969 the Provincial, Brother Weldon, and his successor as Provincial, Brother Dwyer (from 1983 to 1989), transferred Brother Chute from Lismore to Marist College Peshurst and made him the principal in the knowledge that Brother Chute had admitted to inappropriately touching a child while he was a class teacher at St Joseph's School and that that conduct warranted a canonical warning.

Brother Weldon and Brother Dwyer did not make successor Provincials aware of the knowledge they had of Brother Chute's admission or of the decision that that conduct warranted a canonical warning. That neither Brother Weldon nor Brother Dwyer ensured this conduct was known by subsequent Provincials meant that no warning was given to prospective schools of the risk Brother Chute posed to children and reflects very poorly on the Marist Brothers' approach to these matters under the leadership in place between 1958 and 1972.

In 1969, following his removal from St Joseph's School, Lismore, Brother Chute was appointed to the position of principal of the primary school at Marist College Peshurst. He taught at the school until 1972.

Notwithstanding that the Provincial Council was aware that Brother Chute had abused a child at Lismore in the period 1967 to 1969 and considered that that conduct warranted a canonical warning, Brother Chute was placed in a position of responsibility as a teacher at Marcellin Junior College in Coogee in 1973, as principal of Marist Brothers Parramatta in 1975 and as a teacher at Marist College Canberra in 1976.

The headmaster of Marist College Canberra, Brother Terence Heinrich, received an allegation in 1986 that Brother Chute had touched a boy's penis in the dark during a film night. He did not bring the complaint by the boy's parents to the attention of his successor at Marist College Canberra on handover of the role. He told the then Provincial, Brother Dwyer, of the allegation.

Brother Dwyer was a member of the Provincial Council in 1969 and knew of Brother Chute's admission to touching a child in Lismore and that it warranted a canonical warning. With that knowledge, the Provincial did nothing about this complaint. He did not advise Brother Heinrich of the canonical warning. He placed Brother Chute in a position of responsibility as assistant religious education coordinator at Marist College Canberra between 1983 and 1989.

Not only was this inaction by the Provincial woefully inadequate but it also presented an opportunity to remove Brother Chute from teaching or from contact with and therefore access to children. By not taking this opportunity, the Provincial put more children at risk of being sexually abused by Brother Chute.

In 1993 Mr Damian De Marco made a complaint to Marist College headmaster, Brother Christopher Wade, that Brother Chute had sexually abused him in 1981. The complaint was passed on to Brother Alexis Turton, who was then the Provincial of the Marist Brothers.

Mr De Marco also told Mr John Doyle, the year 12 form master and a lay teacher in 1986, about:

- being sexually assaulted by Brother Chute in a storeroom
- his concern for a year 7 student.

Mr Doyle gave evidence that he had no recollection of Mr De Marco making a complaint to him and he did not believe he would forget a complaint of such significance.

We accept that Mr Doyle has no recollection of the conversation. However, we accept Mr De Marco's account.

Mr De Marco said Mr Doyle told him that Mr Doyle had spoken to the headmaster, Brother Heinrich, about it and that 'nothing will be done'. In the circumstances set out in the report, we cannot be reasonably satisfied that Mr Doyle told Mr De Marco that Brother Heinrich had said nothing would be done about the complaint. This is not to say that we believe that Mr De Marco was not telling the truth. The passage of time clearly has the capacity to affect memories.

In 1993, Mr De Marco told Brother Turton of his complaint. We conclude that there can be no real doubt that what was being conveyed by Mr De Marco was unwanted conduct of a sexual nature by Brother Chute and that was clearly understood by Brother Turton.

The words that Brother Turton used to describe the conduct were that it was 'inappropriate' but 'not extreme' and 'not even genital'. The words do not convey the sexual aspect to the conduct and, to that extent, Brother Turton minimised the sexual aspect of Brother Chute's conduct.

Brother Turton also demonstrated his lack of understanding of the impact of this conduct on Mr De Marco and ongoing risk that Brother Chute posed to children.

By December 1993 the Provincial, Brother Turton, had received the complaint from Mr De Marco. Brother Turton's response was to assure Mr De Marco that Brother Chute would be carefully supervised and not alone with boys.

He then received a second complaint by ACN of a similar nature – of Brother Chute rubbing against him and hugging him, making ACN feel 'yucky'. This occurred in a small, windowless room. It is clear that at this time Brother Chute was not being carefully supervised or, if he was being supervised, he was supervised incompetently and was alone with a boy.

With this knowledge, the then Provincial, Brother Turton, did not tell the Marist Brothers community, other teachers or parents:

- about the investigation of Brother Chute's conduct
- that Brother Chute now had two complaints made against him of a similar sexualised nature
- that Brother Chute was removed because of these complaints.

That information could easily have been conveyed without disclosing the names of the complainants.

In summary, the Marist Brothers, through a senior Brother or Provincial, knew the following about Brother Chute's sexual offending:

- **St Anne's Primary School, Bondi** (1962) – in 1962 the Community Superior of the Bondi Marist Brothers, Brother Phillips, knew that Brother Chute had admitted to sexually abusing AAI but did not report it to the Provincial or to the police.
- **St Joseph's School, Lismore** (1969) – Brother Weldon, Provincial from 1964 to 1972, and Provincial Council member Brother Dwyer knew that Brother Chute had admitted to touching a child at Lismore. In 1969 the Provincial Council, comprising the then Provincial, Brother Weldon, and Brother Dwyer, who was to become a Provincial, determined to give Brother Chute a canonical warning for the touching of a child at Lismore and with that knowledge the Provincial transferred him to a position of responsibility as principal of Marist College Penshurst.
- **Marist College Canberra** (1986) – in 1986 the Provincial, Brother Dwyer, was told of an allegation that Brother Chute's hand had contact with a boy's penis. Provincial Dwyer did nothing, notwithstanding his knowledge of the admission in 1969 by Brother Chute and that it warranted a canonical warning.
- **Marist College Canberra** (1983–1989) – the Provincial, Brother Dwyer, permitted Brother Chute to keep teaching children at Marist College Canberra during his term as Provincial from 1983 to 1989 with the knowledge he had of the 1969 admission, the canonical warning and the 1986 allegation.

- **Marist College Canberra** (1983–1988, 1993) – the Provincial, Brother Dwyer, did not tell two headmasters of Marist College – Brother Heinrich (headmaster from 1983 to 1988) and Brother Wade (headmaster from 1993 to 2000) – that Brother Chute had admitted to touching a child at Lismore and that in 1969 the Provincial Council determined that that conduct warranted a canonical warning.
- **Marist College Canberra** (1993) – in late 1993, Brother Turton, the Provincial from 1989 to 1995, received an allegation which conveyed unwanted conduct of a sexual nature by Brother Chute.
- **Marist College Canberra** (1993) – in December 1993, the Provincial, Brother Turton, received a second complaint of a similar nature. With this knowledge, Provincial Turton did not tell the Marist Brothers’ community, other teachers or parents of:
  - the investigation of Brother Chute’s conduct that he initiated
  - that Brother Chute had now had two complaints made against him of a similar sexualised nature
  - that Brother Chute was removed because of these complaints.

The Marist Brothers kept no written record of these accumulated allegations of Brother Chute’s repeated offending conduct.

Between 1962 and 1972, and 1983 and 1993, the relevant Provincial of the Marist Brothers took no, or no adequate, steps to ensure that Brother Chute did not have contact with children through his work as a Marist Brother.

The Marist Brothers did not report any allegations of child sexual abuse to the police in the period 1962 to 1993. The Church parties acknowledged that ‘It is today a great source of regret to the Marist Brothers that Brother Chute’s conduct was not reported to the police much earlier’ so that later instances of abuse would not have occurred.

After his removal from teaching in 1993, the Marist Brothers received complaints from 48 of Brother Chute’s former students alleging that Brother Chute had sexually abused them when they were children. Forty of these complainants attended Marist College Canberra.

Catholic Church Insurance concluded that there was ‘significant evidence’ from Brother Chute that three prior Provincials – Brothers Duffy, Weldon and Howard – had knowledge that Brother Chute had behaved in a sexually inappropriate way with young boys and had failed to act decisively to address the risk of this behaviour continuing.

In August 2009 the Marist Brothers agreed to Catholic Church Insurance’s proposal to share responsibility for financial payments in relation to Brother Chute on a 50:50 basis.

## Brother Gregory Sutton

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Brother Gregory Sutton taught at a large number of schools, either operated by the Marist Brothers or at which the Marist Brothers sent Brothers to teach, in Queensland, New South Wales and the ACT.

On 15 August 1995 Brother Sutton was arrested in Missouri in the United States with respect to 24 alleged sexual offences against seven of his former students in Australia. He was extradited to Australia on 29 April 1996, where a further 39 charges of sexual abuse of children were brought against him.

On 2 August 1996, Brother Sutton pleaded guilty to a total of 67 child sex offences in relation to 15 students at schools in New South Wales:

- 13 counts of sexual intercourse with a child under 16 years
- 53 counts of indecent assault or an act of indecency
- one count of gross indecency.

Brother Sutton was sentenced in November 1996 to 18 year's imprisonment, with a minimum term of 13 and a half years. In December 2000, his sentence was reduced on appeal to 15 years, with a minimum term of 12 years. In total, Brother Sutton has been the subject of allegations of child sexual abuse by 27 of his former students.

Brother Sutton's first teaching appointment was at a Marist Brothers school in North Queensland in 1973. After that, he taught continuously for the Marist Brothers in Queensland, the ACT and New South Wales until April 1987, when he was removed from teaching by the then Provincial, Brother Dwyer.

Brother Sutton commenced teaching at St Carthage's Primary School in Lismore in January 1985. The school was operated by the Presentation Sisters. Teachers were provided by the Marist Brothers and there were also lay teachers. It was only after:

- a number of complaints of inappropriate behaviour with children, primarily girls
- the school's executive team had given a direction to refrain from that conduct
- Brother Sutton breached the direction by being alone and in physical contact with two girls
- a letter of final warning about this conduct
- a further allegation

that Brother Sutton was removed from the school in 1987. The evidence as to the reasons for that removal was couched in terms of problems to do with interpersonal relationships with staff.

In around April 1989 Brother John Holdsworth, the principal of the North Queensland school, became aware that Brother Sutton had admitted to interfering with ADO. ADO had committed suicide.

Brother Holdsworth told the then Provincial, Brother Turton, of the admission.

Neither the then Provincial, Brother Turton, nor Brother Holdsworth informed the police of the admission in 1989. It is noted that ADO was deceased and that ADO's father did not want the matter referred to the police.

Brother Sutton left for therapy at the Southdown Institute in Ontario, Canada, on 18 August 1989. Apart from the therapy at Southdown, the Church parties concede, and we find, that no disciplinary action was taken against Brother Sutton over his admission to sexually abusing ADO.

Brother Jeffrey Crowe produced to the Royal Commission a document entitled 'Confidential information regarding Frater Bartholomew for Mr Tony Carroll of Carroll and O'Dea' dated 20 August 1989.

This document set out the career of 'Bart' as a Marist Brother and teacher since 1969. It set out allegations of child sexual abuse arising from a 'Northern Rivers School' and involvement of Brothers 'Alman' (Dwyer) and 'Alexis' (Turton) in handling those allegations.

In evidence, Brother Turton agreed that the subject of the memorandum of 20 August 1989 was 'definitely' Brother Sutton. He said he had no idea why a different name was used.

It is clear to us that the effect of using a name other than the Brother to whom the contents related was to hide from a reader that it concerned Brother Sutton. Further, it hid the knowledge that the Marist Brothers had over time about allegations against Brother Sutton.

## Claims

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In total, the Marist Brothers have received 69 claims with respect to allegations of child sexual abuse by Brother Chute and Brother Sutton (48 with respect to Brother Chute and 21 with respect to Brother Sutton). Fifty-six of these claims have been resolved and, as at 6 September 2013, 13 claims remained unresolved. Of the 56 people who have received financial payments to date, the majority (52) were settled out of court, usually following mediation. The remaining complainants went through the Towards Healing process (discussed in sections 4 and 5 below).

In relation to the 48 claims concerning Brother Chute:

- 40 were from former students of Marist College Canberra
- the Marist Brothers have paid a total of \$6,838,946 to claimants
- 35 claims were settled out of court, with an average out-of-court settlement amount of \$191,112.74
- two claims have been processed under Towards Healing, with an average Towards Healing payment of \$42,000.

In relation to the 21 claims concerning Brother Sutton:

- eight were from former students of Marist College Canberra
- the Marist Brothers have paid a total of \$1,817,811 to claimants
- 17 claims were settled out of court, with an average out-of-court settlement amount of \$105,459.47
- two claims have been processed under Towards Healing, with one claimant receiving a financial payment of \$25,000 and the other claimant not receiving a financial payment.

The Marist Brothers and its insurer Catholic Church Insurance also provided the Royal Commission with the legal costs of the Marist Brothers for the settlement of claims for compensation. The costs for claims settled by the Marist Brothers were:

- \$123,149 (plus \$3,102.70 in disbursements) for civil claims concerning Brother Chute
- \$62,545.24 (plus \$15,337.99 in disbursements) for civil claims concerning Brother Sutton
- \$224,356.82 (plus \$14,371.79 in disbursements) for general litigation costs attributable to Brother Chute and Brother Sutton.

The legal costs of Catholic Church Insurance were:

- \$1,361,569.57 for civil claims concerning Brother Chute
- \$250,888.25 for civil claims concerning Brother Sutton.

Two of the 48 Brother Chute claimants went through the Towards Healing process. The average financial payment of \$42,000 under the Towards Healing protocol (based on a small sample size) was substantially less than those settlements negotiated as part of court processes. It is to be noted that under Towards Healing the Marist Brothers pay the claimant's legal expenses (where applicable) in addition to the reparation paid, whereas in other settlements the claimant's legal fees are generally paid out of the settlement amount.

# 1 The Marist Brothers

## 1.1 The public hearing

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The 13th public hearing of the Royal Commission examined the Marist Brothers' response to allegations of child sexual abuse by two individuals: Brother John Chute (also known as Brother Kostka) and Brother Gregory Sutton.

The Marist Brothers is a Catholic Order established for the education and 'Christian formation' of young people.<sup>1</sup>

Brothers Chute and Sutton taught at a large number of schools, either operated by the Marist Brothers or at which the Marist Brothers sent Brothers to teach, in Queensland, New South Wales and the Australian Capital Territory (ACT).

Brother Chute was convicted in 2008 of 19 child sex offences against six of his former students during the period 1985 to 1989.<sup>2</sup> Brother Sutton was convicted in 1996 of 67 child sex offences against 15 of his former students while teaching for the Marist Brothers.<sup>3</sup> Both pleaded guilty. Sixty-nine former students of the Brothers commenced civil proceedings against the Brother concerned and the Marist Brothers.

## 1.2 History, structure and governance of the Marist Brothers

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### History

The Institute of the Marist Brothers is a Catholic religious congregation. Marcellin Champagnat founded the Order in France in 1817 and the Marist Brothers received papal recognition as a religious congregation in 1863.

The Marist Brothers came to Australia in 1872, where they opened their first school in New South Wales. Since that time the Marist Brothers have principally been involved in the establishment and operation of various primary and secondary schools around the country.<sup>4</sup>

Since 1972, the Marist Brothers have operated 21 schools in their own right, including 12 boarding schools, and have administered a further 74 schools on behalf of parishes or dioceses at which Brothers have been placed.<sup>5</sup> Since 1984 the Marist Brothers have taught approximately 200,000 children.<sup>6</sup>

## Structure and governance

As an institute of 'pontifical right', the Marist Brothers are answerable to the Vatican, rather than a local diocesan authority, on internal governance and disciplinary matters.

A Brother Superior General, who is located in Rome, leads the international Marist congregation. A Brother Vicar General and a General Council assist the Brother Superior General.<sup>7</sup>

Until December 2012, the Australian arm of the Marist Brothers was divided into two Provinces. The Sydney Province covered New South Wales, Queensland and the ACT; and the Melbourne Province covered the remainder of the states and the Northern Territory. The two Provinces were joined in December 2012 to form one Australian Province.<sup>8</sup>

The Australian Province of the Marist Brothers is administered by a Provincial Council. The Provincial Council is charged with the administration of the Province, which means that it has overall responsibility for schools, institutions and ministries operated by the Marist Brothers. It also has pastoral responsibility for the communities of Brothers within the Province.

The Provincial Council is comprised of the Provincial (the leader of the Australian Province), the Vice Provincial and four advisors.

The Provincial has direct authority over all Australian Marist Brothers. The Vice Provincial, Provincial Council and Mission Council assist the Provincial. Each plays an advisory role to the Provincial in the governance of the Order.<sup>9</sup> In some decision making the Provincial cannot act without the consent of the Provincial Council or must do so collegially.<sup>10</sup>

Brother Jeffrey Crowe is the current Provincial. The following Brothers served as the Provincial of the Sydney Province of the Marist Brothers from 1958 to 1995:

- Brother Quentin Duffy, 1958 to 1964
- Brother Othmar Weldon, 1964 to 1972
- Brother Charles Howard, 1972 to 1976
- Brother Kieran Geaney, 1976 to 1983
- Brother Alman Dwyer, 1983 to 1989
- Brother Alexis Turton, 1989 to 1995.

The Marist Brothers generally live 'in community'. At the public hearing, former Brother and Community Superior, Mr John Holdsworth, explained that this meant that the Brothers live together and pray together.<sup>11</sup> In many cases, the Brothers' residence was located either on, or in close proximity to, the school at which they taught.

The Provincial appoints a Community Leader (formerly known as Community Superior) to lead each community of Brothers. The Community Leader is responsible for the familial life of all Brothers living within their community.<sup>12</sup>

Former Provincial Brother Turton gave evidence that the Provincial, or another member of the Provincial Council, aimed to visit each community of Brothers at least once a year. During these visits, the Provincial would try to speak individually with each of the Brothers in the community as well as to other people who had contact with the Brothers, including lay school principals.<sup>13</sup>

## 1.3 Formation of Brothers

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### Stages of formation

The process of becoming a professed member of the Marist Brothers is known as ‘formation’. Formation is the personal and spiritual preparation required to undertake the life of a Marist Brother.

The stages of formation have changed over the decades, but generally, during the 1960s to the 1990s, formation commenced with a period at a Juniorate. At the Juniorate stage boys completed their education in a boarding school environment, living with other boys and Brothers.<sup>14</sup>

The Juniorate phase was followed by the Postulancy phase, which generally lasted around six months and was seen as an intermediary step between the Juniorate and Novitiate. Postulants and novices normally resided together and undertook instruction on theology, spirituality and community living.<sup>15</sup>

The Novitiate remains the key stage of formation and focuses on introducing novices to living in community. A novice officially becomes a Brother when he takes vows.<sup>16</sup>

The Scholasticate phase follows the Novitiate phase and involves a Brother undertaking tertiary studies in education – for example, at teacher training college or university. The Scholasticate phase aims to prepare Brothers for ministry.

Throughout formation, a Brother continues to take his vows each year for approximately six to nine years. This is known as ‘temporary profession’. The final step in formation is for a Brother to take vows for life.<sup>17</sup>

‘Mid-life renewal programs’, sometimes known as ‘second Novitiates’, were also available for Marist Brothers and have in the past been undertaken at Fribourg in Switzerland or Manziana in Italy.<sup>18</sup>

### Demographic changes

Since the late 1970s there have been significant structural and demographic changes in the Order, including a significant drop in the number of Brothers from a peak of around 650 Brothers in the 1960s and 1970s to approximately 233 Brothers today.<sup>19</sup> Of these 233 Brothers only 31 (13 per cent) are younger than 60 years of age.<sup>20</sup>

In the last 20 years only four Brothers have taken their vows in Australia and there are currently only two candidates in formation.<sup>21</sup> Less than 1 per cent of the staff members currently working at Marist Brothers schools are Brothers.<sup>22</sup>

## 1.4 Approach to allegations of child sexual abuse

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### Child protection training for Brothers

Until the 1990s there were no initial or ongoing programs of education and training in child protection for the Marist Brothers. Historically, Brothers were taught about human reproduction, sexuality, and relationships in the context of a Brother's vow of celibacy. In the 1980s a clinical psychologist provided novices with a more comprehensive introduction to sexuality and chastity.

Screening processes were implemented at this time and comprised structured psychological testing. Initially they were conducted by Brothers with qualifications in clinical psychology and later they were conducted by external professionals.<sup>23</sup>

In the 1990s, due to the reduction in numbers of new Brothers, institutional training was replaced by personalised training. Post-Novitiates currently have a 'guide', who is typically an experienced psychologist or spiritual director and is not a member of the Marist Brothers.<sup>24</sup> Training programs have been provided on an inter-congregational basis, including to male and female religious Orders.<sup>25</sup> The current training program contains dedicated modules on child protection issues and regular individual sessions 'aimed at ensuring Brothers understand the personal commitments and issues involved in becoming a Brother'.<sup>26</sup>

### Responsibility for handling child sexual abuse allegations

In the period 1959 to 1993, the Provincial of the Sydney Province:

- had direct authority over the Marist Brothers in the Sydney Province
- was responsible for responding to allegations or complaints of child sexual abuse
- was responsible for determining the action to be taken in respect to the accused.

### Written records of complaints

Before 1983, there is no evidence that the Provincials had a practice of keeping written records of allegations against Brothers or admissions by them of child sexual abuse.

Brother Turton gave evidence that records were not kept because of ‘the pastoral relationship ... [and] the attitude that it’s a spiritual, moral problem and can be addressed through spiritual, moral paths, such as spiritual direction and confession’.<sup>27</sup>

He gave evidence that in the period from about 1959 to 1976 sexual offences against children were ‘regarded as personal, moral offences and my understanding is that some people regarded it as something that could be dealt with person to person or with a spiritual director’.<sup>28</sup>

Brother Crowe said that before the 1992 Protocol (which set out policies and procedures on handling complaints of child sexual abuse against a Brother) there was nothing kept in writing concerning the transfer of Brothers.<sup>29</sup> The 1992 Protocol included guidelines governing the transfer between dioceses of religious against whom an allegation of criminal behaviour had been made. The 1992 Protocol is discussed further later in this report.

From this case study, it is clear that accusations or admissions of sexual misconduct by Marist Brothers were treated as highly confidential. Information concerning child sexual abuse was usually held by the Provincial and perhaps one or two others. Successive Provincials seem not to have passed on such information, including to their successors and the Provincial Council.

From the late 1950s to about the early 1990s the Marist Brothers had a practice of restricting information about allegations or admissions of child sexual abuse to the Provincial of the day. This practice had the effect that the interests of the children entrusted to their care were not given the highest priority, as they should have been. Further, the Provincial had a practice of not keeping records of complaints of sexual abuse against Brothers. This meant there was no capacity to monitor the ongoing behaviour of a Brother who had been the subject of complaint.

## 1.5 Disciplining Brothers

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### Canonical measures

Under canon law, a number of disciplinary actions may be taken against a Brother accused of child sexual abuse. These actions are spelt out in the *Vademecum – Administrative Guide for the Use of Provincials and their Councillors*.<sup>30</sup> Actions can include:

- dismissal from the Order
- formal warnings
- formal orders
- imposed exclaustation (that is, forbidding a member to live in community)
- expiatory penalties, which include depriving a Brother of a specific right such as power, office, title or restrictions on residence and work
- dispensation, which involves a Brother applying to leave the Order of his own volition.<sup>31</sup>

The Marist Brothers have used canonical remedies against Brothers from time to time. Brother Crowe reviewed the Sydney Provincial Council minutes from 1949 and identified that one Brother was dismissed from the Order for ‘misconduct with boys’ in 1950 and two were dismissed in 1953 for ‘seriously improper conduct with pupils’.<sup>32</sup> Those minutes did not directly refer to sexual misconduct.

The Provincial Council determined to give Brother Chute a canonical warning in 1969. Brother Turton accepted that the warning was for inappropriate touching of children, but there was no mention of the reason for the warning in the Provincial Council minutes.<sup>33</sup> Brother Crowe gave evidence that a number of Brothers who have offended in cases of child sexual abuse have sought dispensation from vows, which has been granted.<sup>34</sup> Other Brothers have been subject to expiatory penalties following complaints, allegations or convictions for child sexual abuse.<sup>35</sup>

Since the 1990s the Marist Brothers stated that their preference has been to use Safety Plans to manage child protection risks rather than dismiss the Brother. Safety Plans allow for the imposition of restrictions upon a Brother’s ministry and for an appropriate person within the Order to monitor the Brother’s compliance with these restrictions.<sup>36</sup>

### Use of conditional restrictions

In the 1990s the Marist Brothers introduced the practice of conditional supervision of Brothers who are ‘credibly’ accused of child sexual abuse. At present, the *Additional Notes for Brothers* (which form part of the Order’s overarching *Keeping Children Safe* policy) includes the following requirements upon receipt of an allegation of child sexual abuse against a Brother:

- The Province Professional Standards Officer must immediately conduct an initial risk assessment and, unless the allegation has no substance, the Brother in question is stood aside from active ministry pending investigation.
- If a Brother admits to having sexually abused a child or he is found to have done so after investigation, he must be restricted from engaging in any ministry or activity that involves children.<sup>37</sup>

Where a Brother is convicted of a child sex offence, the Provincial is responsible for the preparation of a Safety Plan, which identifies the risks posed by the Brother and strategies to eliminate or mitigate these risks. The Provincial may also impose restrictions or have a Brother enter a Safety Plan in cases where there is no conviction.<sup>38</sup> The Additional Notes also require that a restricted Brother may not reside in a community adjacent to a school.<sup>39</sup>

Safety Plans impose restrictions of the type outlined above and include details about who is responsible for implementing aspects of the risk reduction plan.<sup>40</sup> The Province Professional Standards Officer is responsible for monitoring compliance with Safety Plans. When there is a change in leadership, the Province Professional Standards Officer briefs the new Provincial on Brothers the subject of restrictions.<sup>41</sup>

## Transferring Brothers within the Order

The practice of the Marist Brothers is and has been that the Provincial makes decisions on the appointment or transfer of Brothers to a community or school. The Marist Brothers told the Royal Commission that ‘it is typical for [Brothers] to move through many communities and ministries in their lifetime’.<sup>42</sup>

In the 1960s and 1970s there were typically up to 100 transfers each year.<sup>43</sup> As we have noted, both Brother Chute and Brother Sutton taught at a large number of schools during their teaching careers.

Having reviewed the Provincial Council minutes, Brother Crowe said that he was surprised that there was no specific reference in the minutes to discussions about sexual misconduct matters at the Provincial Council level.<sup>44</sup> Brother Crowe said he was deeply disturbed by the absence of such records in the Provincial Council minutes.<sup>45</sup> However, he said that the minutes were clear that two Brothers had been transferred in 1949 and 1969 because of complaints of child sexual abuse.<sup>46</sup> The second of those Brothers was Brother Chute.

Brother Crowe said that the Provincial Council meeting minutes were not the ‘complete’ source for ascertaining which Brothers were transferred to a new school as a result of child sexual abuse allegations.<sup>47</sup> The Church parties (that is, the Marist Brothers and the Truth Justice and Healing Council) accepted in submissions that there may have been other cases of transfer occurring that were not documented.<sup>48</sup>

## Referral to counselling or therapy

The Marist Brothers told the Royal Commission that in the 1960s and 1970s the practice was to refer a Brother who had admitted to child sexual abuse to counselling or other forms of professional therapy.<sup>49</sup> At that time Brothers were generally referred to generic treatment services such as those targeting depression or alcohol problems.<sup>50</sup> The Provincial made these types of referrals on a confidential basis and they were usually recorded in the Brother’s personnel file as ‘ongoing formation’.<sup>51</sup>

In the 1980s, there was a shift towards referring Brothers to specialist Catholic treatment centres that worked specifically with sex offenders, such as the St Luke Institute at Maryland in the United States; the Southdown Institute at Ontario, Canada; or, from 1997, Encompass in Australia.<sup>52</sup> The Church parties said in submissions that ‘any reference on a personnel record to one of these specialist institutes [indicated] that there was an issue relating to child sexual abuse’.<sup>53</sup>

The Australian Catholic Bishops Conference and the Australian Conference of Religious Leaders established the ‘Encompass program’ in 1997 to provide specific treatment to sex offenders in Australia. The Marist Brothers provided the Royal Commission with information that the treatment included a week-long psychological and physical assessment of issues, including offending sexual

behaviours, and that Encompass also offered a six-month treatment program at Wesley Private Hospital in Sydney, New South Wales.<sup>54</sup> This program was discontinued in 2008.

The Marist Brothers said it now uses Vitality Psychology and Consulting Services. The Provincial and the Province Professional Standards Officer rely on the service to make a risk assessment on living and work arrangements for a Marist Brother who is the subject of a complaint.<sup>55</sup>

## 2 Brother John (Kostka) Chute

### 2.1 Formation and teaching career

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John Chute was born in 1932 and attended primary school in Coraki, near Lismore, New South Wales. When he was nine years old, his father died and he was sent to live with his cousins in Lismore, where he attended the local Marist Brothers primary school. As an adult he revealed to a psychologist that he had been sexually abused at the age of nine.<sup>56</sup>

#### Formation

John Chute entered the Juniorate of the Marist Brothers at Mittagong in New South Wales at the age of 11 because he was influenced by a Brother from the Marist Brothers school he attended in Lismore.<sup>57</sup> He told the same psychologist that he was sexually abused by a Brother at the age of 11 and a half.

After high school John Chute entered the Novitiate of the Marist Brothers and spent 18 months at Mittagong before taking his final vows.<sup>58</sup> He adopted the religious name of 'Kostka' and was known as Brother Kostka or Brother Kostka Chute. He did not have any formal education in teaching apart from his Novitiate with the Marist Brothers. He started teaching at the age of 20.<sup>59</sup>

#### Teaching positions

Between 1952 and 1993 Brother Chute occupied a number of positions at the following schools in New South Wales, the ACT and Queensland:

- July to August 1952: primary teacher at Marist Brothers High School in Maitland, New South Wales
- August to December 1952: secondary teacher at Kogarah Marist High School, New South Wales
- 1953 to 1957: primary teacher at Marist Brothers College Rosalie in Paddington, Queensland
- 1958: primary principal of Marist Brothers School in Mosman, New South Wales
- 1959 to 1960: primary principal of Marcellin College in Randwick, New South Wales
- 1961 to 1962: assistant superior, primary, at St Anne's Primary School in Bondi, New South Wales
- 1963: assistant superior, primary, at Marist Primary School in Queanbeyan, New South Wales
- 1964 to 1966: assistant superior, primary, at Villa Maria Catholic Primary School in Hunters Hill, New South Wales
- January 1967 to July 1969: primary principal of St Joseph's School (later St Carthage's) in Lismore, New South Wales
- July 1969 to December 1972: principal of Marist College Penshurst in New South Wales

- 1973 to 1974: primary teacher at Marcellin Junior in Coogee, New South Wales
- January to June 1975: principal of Marist Brothers Parramatta in New South Wales
- 1976 to 1993: assistant religious education coordinator at Marist College Canberra, ACT.

Brother Chute was sent to Fribourg in Switzerland for his second Novitiate from July 1975 to January 1976. He was then appointed to teach at Marist College Canberra as the secondary school assistant religious education coordinator in January 1976. Save for a 10-month sabbatical in 1987–88 at the Jesuit Community in Spokane in the United States, Brother Chute taught continuously at Marist College Canberra until December 1993. He was removed from the school in 1993 in circumstances that are set out below.<sup>60</sup>

## 2.2 Allegations against Brother Chute

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In 2008 Brother Chute was charged and convicted of 19 sexual offences involving six children he taught at Marist College Canberra.<sup>61</sup>

After his removal from teaching in 1993, the Marist Brothers received complaints from 48 of Brother Chute's former students alleging that Brother Chute had sexually abused them when they were children. Forty of these complainants attended Marist College Canberra.<sup>62</sup>

Marist Brothers Claims Data<sup>63</sup> and a Statement of Facts were tendered at Brother Chute's 2008 sentencing proceedings.<sup>64</sup> Brother Crowe said that the Claims Data was accurate.<sup>65</sup>

Table 1 below is compiled from that data. The table sets out the pseudonym of the student concerned, the date of the alleged child sexual abuse, the school concerned, whether Brother Chute was charged or convicted and the total financial payment received. With respect to the 38 matters that have been finalised, the Marist Brothers and Catholic Church Insurance have made financial payments without any admission of liability.

Pseudonyms have been given to complainants at their request. One of the complainants, Mr Damian de Marco, did not request a pseudonym.

Table 1: Complaints of child sexual abuse against Brother Chute

Victim	Date of alleged abuse	Conviction	Total financial payment received
Marcellin College, Randwick, New South Wales			
AAB	1959	Not charged	Claim in progress <sup>66</sup>
AAJ	1960	Not charged	Claim in progress
St Anne's Primary School, Bondi, New South Wales			
ACF	1961	Not charged	\$10,000
AAI	1962	Not charged	\$34,000
ACP	1962	Not charged	\$15,000
Villa Maria Catholic Primary School, Hunters Hill, New South Wales			
AAW	1965	Not charged	Claim in progress
St Joseph's School, Lismore, New South Wales			
AAA	1967	Not charged	\$130,000
Marcellin Junior College, Coogee, New South Wales			
ACB	1975	Not charged	Claim in progress
Marist College Canberra, Australian Capital Territory			
AAD	1976	Not charged	\$68,000
AAN	1976	Not charged	\$337,780
AAC	1977	Not charged	\$48,000
ACC	1977	Not charged	\$48,000
ACJ	1977	Not charged	\$170,000
ACR	1977	Not charged	\$310,000
LAA	1977	Not charged	Claim in progress
AAG	1978	Not charged	\$135,000
ACS	1978	Not charged	\$380,000
AAU	1979	Not charged	\$120,000
ACH	1979	Not charged	\$55,000
ACI	1979	Not charged	\$50,000
AAT	1979	Not charged	\$200,000
De Marco	1980	Not charged	\$210,000
ACM	1980	Not charged	\$26,666
LAE	1980	Not charged	\$75,000
AAR	1981	Not charged	\$160,000
AAO	1983	Not charged	\$57,500
AAS	1983	Not charged	\$135,000
LAF	1983	Not charged	Claim in progress

ACG	1984	Not charged	\$220,000
ACL	1984	Not charged	\$400,000
ACO	1984	Not charged	\$305,000
LAH	1984	Not charged	Claim in progress
AAE	1985	Convicted	\$250,000
AAM	1985	Convicted	\$180,000
AAP	1985	Not charged	\$285,000
AAV	1985	Not charged	\$210,000
ACD	1985	Convicted	\$255,000
ACQ	1985	Not charged	\$300,000
LAI	1985	Not charged	Claim in progress
AAK	1986	Not charged	\$250,000
AAQ	1986	Convicted	\$255,000
ACK	1986	Convicted	\$162,000
AAF	1987	Not charged	\$150,000
AAX	1987	Not charged	Claim in progress
AAH	1989	Convicted	\$320,000
AAZ	1989	Not charged	\$50,000
ACN	1990	Not charged	\$290,000
AAV	Not known	Not charged	Claim in progress

## 2.3 The evidence concerning Brother Chute

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### Evidence from insurance inquiries between 2002 and 2007

Complaints to the Professional Standards Office of the Marist Brothers were first made against Brother Chute in 2002. More complaints were made following media articles in 2007 about the sexual abuse of children and Marist College in Canberra.

Lawyers acting for the Marist Brothers engaged Arrow Insurance Adjusting (Arrow Insurance) to 'undertake discrete internal inquiries and assessments against the background of recent publicity'.<sup>67</sup> As part of these inquiries Mr Ian Whitehead of Arrow Insurance interviewed and took statements from Brother Turton, a former Provincial, and former headmasters of Marist College Canberra.

At the relevant time the Marist Brothers held a policy of insurance with Catholic Church Insurance. Catholic Church Insurance considered whether it could or should refuse to indemnify the Marist Brothers on the basis that the Marist Brothers had prior knowledge of child sexual abuse by Brother Chute.

Lawyers from Monahan & Rowell, representing Catholic Church Insurance, also engaged Arrow Insurance to conduct further investigations into whether the Marist Brothers had 'prior knowledge' of Brother Chute's alleged abuse. Statements were obtained from former students, lay teachers and Marist Brothers about claims that a number of alleged victims and/or their parents reported Brother Chute's conduct to staff at the relevant schools.

Those interviewed included:

- former Provincial Brother Howard, now deceased
- former Provincial Brother Turton
- former headmasters of Marist College Canberra, including Brother Terence Heinrich, Brother Joseph McMahon and Brother Christopher Wade.

Arrow Insurance completed its investigation report in May 2008. The outcomes of the investigation are considered below.

### Evidence from other investigations between 2007 and 2014

Further investigations were carried out over the following years. At various times, former Provincials, Community Superiors, teachers and headmasters were interviewed about specific claims of 'prior knowledge' that were raised in Statements of Claim and complaints.

Brother Chute was interviewed twice in 2009 while he was in prison. He was interviewed for a third time at his home in 2014.

The first of the 2009 interviews with Brother Chute was conducted by Mr Howard Harrison, a partner of Carroll & O’Dea Lawyers, on 12 April 2009. Mr Harrison recorded his notes from this meeting (the Harrison Note).<sup>68</sup> The second interview was conducted by Mr Patrick Monahan of Monahan & Rowell Solicitors, Mr Joe Bucci of Catholic Church Insurance and Mr Harrison of Carroll & O’Dea on 30 April 2009.

The notes of the 30 April 2009 interview, taken by Mr Bucci (the Bucci Note)<sup>69</sup> and Mr Monahan (the Monahan Note),<sup>70</sup> are in evidence.

The following features are relevant to the reliability of the Bucci Note and the Monahan Note:

- They are notes of the meetings; they are not transcripts. The Monahan Note states that Mr Monahan intended to record the interview; however, prison authorities prevented the use of a Dictaphone.
- None of the notes are signed.
- The note-takers were not called to give evidence.
- The Monahan and Bucci notes both refer to issues with Brother Chute’s ability to recall information.
- The Monahan Note contains the following statement: ‘What follows is a transcription of PJM’s notes, *supplemented to make them read in a sensible and understandable fashion*’<sup>71</sup> (emphasis added).

There are also a number of inconsistencies between the two documents. For example:

- With respect to the movie theatre incident involving ACK (see further discussion below), the Monahan Note records Brother Chute as saying ‘I do remember sitting outside with him and I had my hand on his knee’,<sup>72</sup> whereas the Bucci Note records ‘I’m not sure whether I put my hand on his knee’.<sup>73</sup>
- With respect to AAI, both notes record Brother Chute as admitting the offending to Community Superior Brother Des Phillips. However, the Monahan Note records that he admitted ‘I had indecently touched the child’<sup>74</sup> and the Bucci Note records him as admitting ‘I indecently assaulted the child’.<sup>75</sup>

Brother Chute was not called to give evidence before the Royal Commission.

As indicated above, a number of plaintiffs filed various Statements of Claim against the Marist Brothers in relation to the conduct of Brother Chute. As set out in Table 1 above, many of these have been settled by the payment of money, each without an admission of liability.

Some, but not all, of the plaintiffs gave evidence to the Royal Commission.

## Prior knowledge

As indicated earlier, ‘prior knowledge’ by a defendant of allegations of child sexual abuse is relevant to the plaintiff in civil proceedings and may also affect claims upon a policy of insurance.

In the claims against the Marist Brothers with respect to allegations of child sexual abuse against Brother Chute and Brother Sutton, Catholic Church Insurance considered whether insurance coverage of the Marist Brothers could or should be refused on the basis that the Marist Brothers had prior knowledge of such abuse.

Monahan & Rowell provided advice to Catholic Church Insurance on 22 June 2009 outlining evidence that supported the view that former Provincials of the Marist Brothers had knowledge that Brother Chute was behaving in a sexually inappropriate way with young boys and failed to act decisively to address the risk of that occurring again.<sup>76</sup> On 28 July 2009 Monahan & Rowell then made a counter-offer to the Marist Brothers in an attempt to resolve all matters that involved alleged sexual abuse or inappropriate sexual conduct on the part of Brother Chute.<sup>77</sup>

It is apparent from that letter that Catholic Church Insurance concluded that there was sufficient evidence of prior knowledge on the part of the Marist Brothers concerning ‘sexual abuse or inappropriate sexual abuse [by Brother Chute]’ to affect indemnity. Further, Catholic Church Insurance concluded that there was ‘significant evidence’ from Brother Chute that three prior Provincials – Brothers Duffy, Weldon and Howard – had knowledge that Brother Chute had behaved in a sexually inappropriate way with young boys and had failed to act decisively to address the risk of this behaviour continuing.<sup>78</sup> However, Monahan & Rowell advised Catholic Church Insurance that, in their view, Brother Chute’s account in his interview on 30 April 2009 of what he may have said to previous Provincials was unlikely to be accepted in a court.

Mr Harrison interviewed Brother Chute in May 2009. In an email he sent to his client, Provincial Brother Crowe, in May 2009 Mr Harrison noted the following about his interview with Brother Chute:

Regrettably [Brother Chute was] quite up front about various discussions with Provincials over the years including Br Charles, Br Quentin, Br Weldon. ... I think we will have some problems with indemnity in due course but not immediately ... [W]e have no option but to make [him] available to Catholic Church Insurance. Trouble is fundamentally he has high honesty and integrity levels and all of my ‘suggestions’ about not dumping on others excessively go out the window pretty quickly once there is a conversation under way. ... We would need to keep him well away from the legal arena upon release.<sup>79</sup>

In evidence, Brother Crowe gave some context to Mr Harrison’s email by explaining his recollection that the email formed ‘part of another series of communications’ relating to ‘serious doubts’ about Brother Chute’s evidence.<sup>80</sup>

In August 2009 the Marist Brothers agreed to Catholic Church Insurance's proposal to share responsibility for financial payments in relation to Brother Chute on a 50:50 basis. In agreeing to this proposal, Brother Crowe said that, while he had 'some questions' about the true extent of the prior knowledge, he accepted that there was sufficient evidence to warrant a 50 per cent contribution by the Marist Brothers to financial payments made to claimants.<sup>81</sup> He also said that the Marist Brothers 'had a good relationship with Catholic Church Insurance, and so [the agreement to split costs] seemed to be a fair thing to do'.<sup>82</sup>

## 2.4 Allegations in the early years (1959–1969)

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### Marcellin College, Randwick (1959–1960)

In the late 1950s Marcellin College, Randwick, was a primary school and a high school. In 1959 and 1960 Brother Chute was the principal of the primary school.<sup>83</sup> Brother Anselm was the headmaster of the whole college and, at that time, Brother Duffy was the Provincial of the Sydney Province of the Marist Brothers.

#### AAB

AAB told a representative from the Professional Standards Office of the Marist Brothers in February 2012 that, in or about the late 1950s, AAB went to the then headmaster of the school, Brother Anselm, and told him that Brother Chute had sexually abused him.<sup>84</sup> However, AAB 'felt as though he was not believed by his mother or the school'.<sup>85</sup> AAB's maternal uncle was a priest and AAB believes this may have been a reason that his complaint was not taken any further.<sup>86</sup> The Church parties did not dispute that AAB was abused by Brother Chute.<sup>87</sup>

In his 30 April 2009 interview with representatives from Catholic Church Insurance, Monahan & Rowell and Carroll & O'Dea, Brother Chute said that in 1959 the headmaster of the whole school approached him about a complaint from a mother that he had indecently touched her son.<sup>88</sup> The records of the interviews do not reveal whether this was a reference to AAB's allegation.

Brother Chute's account of his communication with the then Provincial of the Marist Brothers, Brother Duffy, as recorded by Mr Monahan in April 2009, is quite detailed:

[Brother Chute] By 1962, I had already spoken to Br Quentin Duffy. I had told him that I had a weakness in my character for young men. He said something like 'You will have to fix something up there' – that's about it. ...

[Question] When did you speak to Br Quentin Duffy?

[Brother Chute] It was initially about the complaint against me at Randwick – that I indecently touched a young boy at Randwick (1959/1960). This came to my attention through the Superior Br Ansalom [sic] (who is now dead). The mother mentioned it to Br Ansalom. He told me the details and said ‘You had better go and have a yarn with Quentin.’ I then went and told Br Quentin. I told him that I had indecently touched a boy. I admitted that.

So I spoke to Br Quentin Duffy. He said you have a problem. We’ve got to fix it up. He didn’t discuss how I should fix it up. It was not a formal interview. I spoke to him in the passage. I had made an appointment beforehand, but he was in a hurry and was running out of the door, and this was a quick discussion on the run. ...

[Question] [Is it] possible that Br Quentin Duffy did not understand you clearly because this was on the run, and ... was Brother Quentin not in the process of getting into the shower?

[Brother Chute] I was pretty direct. I told him what I had done. I was upfront.<sup>89</sup>

AAB was not called to give evidence. Brother Anselm and Brother Duffy are both deceased and had not been called upon to respond to the allegations by AAB before their death. Further, no document was produced to the Royal Commission that recorded any such complaint or communication with Brother Duffy.

As set out earlier, neither Brother Chute nor the note-takers (Mr Harrison, Mr Bucci and Mr Monahan) were called to give evidence. The Monahan Note was referred to earlier.

In these circumstances, we make no finding in relation to Brothers Anselm and Duffy.

## AAJ

AAJ gave evidence at the public hearing. He said Brother Chute sexually abused him at Marcellin College in or about 1960, when he was 12 years old. AAJ remembers being called to the front of the class and Brother Chute putting his arm around him. This progressed to Brother Chute touching AAJ through his trousers and then undoing the buttons of AAJ’s shorts and pushing his fingers inside AAJ’s shorts and underwear. He said that there were other boys in the classroom when this happened.<sup>90</sup>

On another occasion, AAJ said that Brother Chute had AAJ dress up as a woman on the basis that he would be in a school play. Brother Chute required AAJ to kiss him during rehearsals, ostensibly as part of the play, which ultimately was not performed.<sup>91</sup> AAJ said he was very distressed by this, especially as it occurred in front of others. He also said he was too frightened to tell anyone. He could not tell his mother because she revered the local priests and they frequently came to their house to watch TV.<sup>92</sup>

AAJ said that Brother Chute suddenly left the school and he did not know but suspected that this was related to Brother Chute's behaviour towards AAJ.<sup>93</sup>

### St Anne's Primary School, Bondi (1961–1962)

Brother Chute taught primary school at St Anne's Primary School in Bondi from 1961 to the end of 1962. Three claimants – ACF, ACP and AAI – have alleged that Brother Chute sexually abused them when each was a student at St Anne's Primary School during this period.<sup>94</sup> Brother Walter Cranney was a teacher at the school at the time and Brother Phillips was the principal of St Anne's and the Brothers' Community Superior. The Church parties accepted that Brother Chute sexually abused ACF, ACP and AAI.

#### ACF

ACF complained to the Marist Brothers in 2002 that Brother Chute sexually abused him in 1961 and 1962 when he was a student at St Anne's.<sup>95</sup> In a 2004 statement provided to the Marist Brothers, ACF said that the abuse took place in the classroom and on the beach after school or at weekends.<sup>96</sup>

#### ACP

In 2002 ACP complained to the Marist Brothers that Brother Chute sexually abused him when he was a student at St Anne's. He said that the abuse took place over 1961 and 1962 in the classroom, after school and at his home.<sup>97</sup> ACP says that he revealed the abuse to a priest in confession. He said that he was subsequently beaten by Brother Chute 'for telling lies'.<sup>98</sup>

The notes of the 30 April 2009 interview with Brother Chute are inconsistent as to whether Brother Chute could recall ACP.<sup>99</sup>

#### AAI

In 2008 AAI complained to the Marist Brothers that Brother Chute sexually abused him in 1962 on at least six occasions in the classroom.<sup>100</sup> A file note by Brother Turton dated 28 April 2009 records that, in or about 1962, AAI reported the abuse to Brother Cranney, who in turn told AAI's parents.<sup>101</sup> AAI's parents made a complaint to the principal of the school and the Community Superior of the Marist Brothers Community, Brother Phillips, shortly after the abuse occurred.<sup>102</sup>

In a statement attached to AAI's 2008 complaint, AAI's mother says that she became aware of the abuse one day after school in 1962, when her neighbour told her that Brother Chute had been 'behaving in a bad way to some of the kids and [AAI] was one of them'.<sup>103</sup> AAI's father arrived home from work a couple of hours later and told her that Brother Cranney had met him 'with the same news'.<sup>104</sup> AAI's mother went straight to the principal, Brother Phillips, to complain:

The following afternoon I went to the Brothers' house but was told [Brother Chute] was not home. I did not believe it. I spoke at length with Br Philip [sic], the principal of St Ann[e]'s Boys School, Bondi Beach. He uttered that the boys should not let him do it and I remember standing over him as he sat, with my fist clenched ... [H]e then said, 'What if he promises not to repeat any of those acts again, wouldn't that be alright?' This made me more angry ... I told him to get rid of [Brother Chute]. I really made a hell of a fuss ... I was not the first person to go to complain. Other parents had gone to complain ... And the Principal of the school, Br Philip, remarked to me during the visit, how glad he was that the parents involved were so discreet about the whole affair.<sup>105</sup>

Brother Phillips was interviewed about AAI's complaint in 2008 by lawyers from Monahan & Rowell, acting for Catholic Church Insurance. Brother Phillips said during the interview that he met with AAI's father in 1962 at a local hotel. According to Brother Phillips, AAI's father told him that one of his sons had 'been interfered with by [Brother Chute]'.<sup>106</sup> Brother Phillips said that he concluded that AAI's father was referring to interference of a sexual nature.<sup>107</sup>

Brother Phillips said that after the meeting with AAI's father he spoke to Brother Chute and Brother Chute admitted 'straight out' that AAI's complaint was correct. Brother Chute promised him that he would go and see Father Cox, a priest in North Randwick, and would 'rectify it all'.<sup>108</sup> At this interview, Brother Phillips said that he did not recall having a discussion with AAI's mother about the allegations.<sup>109</sup>

Brother Phillips presumed that Brother Chute went to see Father Cox and 'confessed his condition, that he was going to fix things up'.<sup>110</sup> Brother Phillips stated that he let AAI's father know that he had spoken to Brother Chute and that 'things would be righted'.<sup>111</sup> He did not speak to Brother Chute again about it because he was 'satisfied enough to know that I had broached the subject, he had been reconciled and things would change and be attended to'.<sup>112</sup>

In his 30 April 2009 interview with representatives from Catholic Church Insurance, Monahan & Rowell and Carroll & O'Dea, Brother Chute said that he admitted to Brother Phillips that he had indecently touched or indecently assaulted a boy and Brother Phillips 'did nothing'.<sup>113</sup> Brother Chute said that he told Brother Phillips he would go and see Father Cox, who was his 'spiritual director and confessor'.<sup>114</sup> Brother Chute says that he went and saw Father Cox and made a full confession.<sup>115</sup>

Brother Phillips did not report the allegation to the Provincial, Brother Duffy, because he thought he had handled it and ‘everything was fixed up’.<sup>116</sup> Brother Phillips said he regarded Brother Chute’s admission as ‘just a moral problem that [Brother Chute] had to do something about’.<sup>117</sup> Brother Phillips said that, at the time, he thought that he had handled the matter ‘in a circumspect way, fair to Kostka and fair to the lad who was no longer exposed to any danger’.<sup>118</sup>

## Conclusions

We are satisfied that in 1962 a teacher at St Anne’s School, Brother Cranney, and the Community Superior, Brother Phillips, knew that Brother Chute had admitted to sexually abusing a child at St Anne’s Primary School in Bondi.

Brother Phillips did not inform the Provincial that Brother Chute had admitted to sexually abusing a child, as required by the Marist Brothers policy on reporting at that time. That failure meant that the Provincial at the time could take no action to protect other children from Brother Chute’s sexually abusive behavior. No note was made of the complaint and there was no follow-up with Brother Chute.

Clearly, Brother Phillips’ response to AAI’s complaint was ‘grossly inadequate’ – a conclusion rightly accepted by the Church parties.<sup>119</sup>

Brother Chute left the school at the end of 1962. There is no evidence the departure was related to his admissions of sexual abuse.

## Queanbeyan, Hunters Hill and Lismore (1963–1969)

In 1963, Brother Chute commenced teaching at Marist Brothers Primary School in Queanbeyan and was the Assistant Superior of the Brothers’ community.<sup>120</sup> There is no evidence before the Royal Commission of any allegations against Brother Chute from his time at this school.

At the start of the 1964 school year, Brother Chute was transferred to a teaching position at Villa Maria Catholic Primary School in Hunters Hill, New South Wales.<sup>121</sup> AAW later alleged that Brother Chute sexually abused him when he was a student at the school.<sup>122</sup>

In 1967, Brother Chute was transferred to St Joseph’s School in Lismore (later known as St Carthage’s), where he took up the position of principal of the primary school. AAA complained to the Marist Brothers in 2002 that Brother Chute sexually abused him in 1967 at this school.<sup>123</sup>

In the 30 April 2009 interview, Brother Chute told representatives from Catholic Church Insurance, Monahan & Rowell and Carroll & O’Dea that ‘in or around 1967’ either the parish priest or the Superior, Brother Patricius Quinn, told the then Provincial, Brother Weldon, that Brother Chute had ‘touched a boy’ in Lismore.<sup>124</sup> Brother Chute said that he told Brother Weldon that he had ‘done

something wrong' and that Brother Weldon said to Brother Chute that it would be a 'good idea to move you' and to change principals.<sup>125</sup> Brother Chute also said he admitted to the boy's parents that he had assaulted their son and they accepted his apology.<sup>126</sup>

## 2.5 Canonical warning

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On 19 July 1969 the Provincial Council of the Sydney Province met in Drummoyne, New South Wales. The minutes record that the then Provincial, Brother Weldon, and Brother Dwyer, who was to be the Provincial from 1983 to 1989, were present. The minutes also record that Brother Howard, who was to be the Provincial from 1972 to 1976, as well as two others attended 'later in the meeting'.<sup>127</sup>

The minutes of the meeting also record that:

Brother Kostka has been transferred to Peshurst from Lismore. ... It was thought wise to give Brother Kostka a canonical warning.<sup>128</sup>

The terms of the warning and the nature of the conduct that it was intended to address are not set out in the minutes. However, there is no doubt that, at the least, it concerned Brother Chute's admission of touching a child in Lismore.

Mr Martin Slattery, a lawyer representing the Marist Brothers, interviewed Brother Chute in 2014 about the canonical warning and recorded that:

I showed Kostka a copy of the Provincial Council Minute from 1969 referring to his move from Lismore to Peshurst and the canonical warning and he explained a number of things in relation to it:

The canonical warning was most definitely, in his mind, a result of inappropriate touching of children. He says that he remembers that there was a telephone conversation between Othmar Weldon who was the Provincial at the time and himself and a follow up letter from Othmar which he believed was the canonical warning. Kostka remembers words to the effect of being told that he had 'let the church and the Marist Brothers and himself down with his behaviour' by Othmar.

The superior of the community in Lismore was Patricius Quinn and Kostka remembers speaking to him and the parish priest in Lismore at the time ... and one or both of them had received the complaint from the student or parent which was then passed onto Othmar.

Kostka remembers that he was transferred to Peshurst from Lismore.<sup>129</sup>

Brother Turton accepted that Brother Chute was given the canonical warning as a result of inappropriate touching of children.<sup>130</sup> Although Brother Turton was not at the meeting, he said

that Brothers Weldon, Howard and Dwyer, who were present at the meeting, were aware of the canonical warning in 1969.<sup>131</sup> He further said, 'Charles Howard was at that meeting where the canonical warning was given, so I accept that he would be aware of the offence or allegation'.<sup>132</sup>

Brother Crowe, who was also not at the meeting, gave evidence that it was more likely, based on his knowledge of later practice of the Provincial Council, that Brother Howard only came in at the end of the meeting to address his particular agenda item.<sup>133</sup>

Brother Howard died in January 2012. An interview conducted with him in 2009 by lawyers for the Marist Brothers reveals that he had difficulty recalling relevant events.<sup>134</sup> As stated, the minutes record him as attending 'later in the meeting' along with two others who were members of a steering committee and who made a presentation. That presentation was recorded as the last item in the minutes.

The Church parties submit that Brother Chute's evidence about receiving a canonical warning is unreliable. Brother Crowe said that the 1917 Code of Canon Law required that a copy of the document constituting the canonical warning be kept in the archives.<sup>135</sup> We were told that searches in Australia and Rome have been unsuccessful in identifying any documentary evidence of a canonical warning given to Brother Chute.<sup>136</sup>

Brothers Turton and Crowe gave evidence that they were each unaware until 2013 that a canonical warning had been given to Brother Chute in 1969.<sup>137</sup>

Brother Turton said that he is not aware of any steps taken to enforce the warning.<sup>138</sup> Similarly, Brother Crowe stated that he is not aware of any steps taken to monitor Brother Chute in the period after 1969 or otherwise enforce the terms of the warning.<sup>139</sup>

## Conclusions

In our view, it is unlikely that the Provincial Council, having determined to give Brother Chute a sanction as serious as a canonical warning, would have failed to follow up with the appropriate steps. As set out above, Brother Chute said that he received both a telephone call from the Provincial and a letter containing the canonical warning, which accords with an intention of the Provincial Council to give such a warning, as recorded in the minutes.

Whether or not the formalities were complied with, we are satisfied that on 19 July 1969 the Provincial Council, chaired by Brother Weldon and with Brother Dwyer in attendance, decided to give Brother Chute a canonical warning because he had inappropriately sexually touched a child at St Joseph's School at Lismore.

There is not sufficient evidence to conclude that Brother Howard was at the meeting at the time the canonical meeting was given.

We are satisfied that in about 1969 the Provincial, Brother Weldon, and his successor as Provincial, Brother Dwyer (1983–1989), transferred Brother Chute from Lismore to Marist College Peshurst and made him the principal in the knowledge that Brother Chute had admitted to inappropriately touching a child while he was a class teacher at St Joseph’s School and that that conduct warranted a canonical warning.

Brother Weldon and Brother Dwyer did not make successor Provincials aware of the knowledge they had of Brother Chute’s admission or of the decision that that conduct warranted a canonical warning. That neither Brother Weldon nor Brother Dwyer ensured this conduct was known by subsequent Provincials meant that no warning was given to prospective schools of the risk Brother Chute posed to children and reflects very poorly on the Marist Brothers’ approach to these matters under the leadership in place between 1958 and 1972.

## 2.6 Peshurst, Coogee and Parramatta (1969–1975)

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### Marist College Peshurst

In 1969, following his removal from St Joseph’s School, Lismore, Brother Chute was appointed to the position of principal of the primary school at Marist College Peshurst. He taught at the school until 1972.<sup>140</sup>

In his 30 April 2009 interview with representatives from Catholic Church Insurance, Monahan & Rowell and Carroll & O’Dea, Brother Chute said that he spoke to the then Provincial, Brother Howard, about a complaint that he had touched a child at Peshurst.<sup>141</sup> The Monahan Note of that interview with Brother Chute records:

I did speak to Br Charles Howard while he was the Provincial (1972 to 1976). I spoke to him about a complaint against me that I had touched a child. The complaint arose from my time at Peshurst (where I was the Principal of the Primary School from July 1969 to December 1972). I can’t remember the name of the kid. I think that the Superior (Br Simon Murphy) may have told Br Charles Howard about it. The parents complained to the Superior. Alternatively, I might have told Br Charles Howard about it myself. One way or another, he knew about the complaint and I spoke to him about it and admitted my behaviour. ...

I had a number of discussions with Br Charles Howard. I told him all about my problem. I told him that I was trying to get help. He was trying to get me to get help. ...

Br Charles Howard was very concerned for me. This was one of the reasons he sent me to Fribourg [in Switzerland]. I am quite certain of that.<sup>142</sup>

Brother Howard, the Provincial from 1972 to 1976, was interviewed by the Marist Brothers' lawyers in 2009. Brother Howard was asked about Brother Chute's account of what he said to the Community Superior, Brother Simon Murphy, and Brother Howard in that period concerning the sexual abuse of children.<sup>143</sup> Brother Howard said he did not remember a complaint that went to Brother Murphy and he did not recall sending Brother Chute to Switzerland because of concerns about his conduct.<sup>144</sup> He also said he did not recall speaking to Brother Chute about his 'sexual problem'.<sup>145</sup> Brother Howard was 85 at the time of the interview and, when asked about his health, he said, 'the memory is going, the memory is not what it used to be and the mind is reasonably clear for most things, at 85 plus'.<sup>146</sup>

### Marcellin Junior College, Coogee, and Marist Brothers Parramatta

As Provincial, Brother Howard appointed Brother Chute to Marcellin Junior College in Coogee, New South Wales, in 1973. Brother Chute taught primary school there for two years. In 1975 Brother Chute became the principal of Marist Brothers Parramatta. In July 1975 Brother Chute underwent a 'second Novitiate' at Fribourg in Switzerland.<sup>147</sup> On Brother Chute's return, Brother Howard appointed him to Marist College Canberra. Brother Chute started there in 1976.

Notwithstanding that the Provincial Council was aware that Brother Chute had abused a child at Lismore in the period 1967 to 1969 and considered that that conduct warranted a canonical warning, Brother Chute was placed in a position of responsibility as a teacher at Marcellin Junior College in Coogee in 1973, as principal of Marist Brothers Parramatta in 1975 and as a teacher at Marist College Canberra in 1976.

## 2.7 Marist College Canberra (1976–1993)

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Brother Chute commenced at Marist College Canberra in February 1976 as the assistant religious education coordinator. Brother Chute taught at the school for about 17 years until the Provincial, Brother Turton, transferred him to Dundas, New South Wales, in December 1993.<sup>148</sup>

Brother Chute lived in the Brothers' residence on the grounds of Marist College. The residence was about 60 to 70 metres from the nearest school building, adjacent to the playing fields.<sup>149</sup> There were about 12 Brothers living in the residence at the time and each Brother had a bedroom.<sup>150</sup> During the time that Brother Heinrich was headmaster – that is, between 1983 and 1988 – the door to the residence locked automatically, so for a student to gain access to the residence he would need to ring the doorbell and be let in by a Brother.<sup>151</sup>

During his time at Marist College Canberra, Brother Chute was at various times the head of religious education, responsible for year 7, and had his own office at the school. In the early years his office was located in the 'Year 7 corridor', which meant that the door opened directly onto a verandah. Inside the office there was access to a windowless storeroom. Many of Brother Chute's victims

complained that they were sexually abused by Brother Chute in the classroom (with or without others present), his office and/or the storeroom to his office.<sup>152</sup>

Brother Chute was also involved in a number of extracurricular activities, including rugby and a film club. A number of boys said their abuse occurred during those activities, including in a 'pie wagon' used at the rugby and inside and outside of the auditorium used to screen films.<sup>153</sup>

The following Brothers served as headmaster during Brother Chute's time at Marist College Canberra:

- Brother Joseph McMahon (1976 to 1982)
- Brother Patrick Thompson (acting) (February to September 1979)
- Brother Terence Heinrich (1983 to 1988)
- Brother Roger Burke (1989 to 1990)
- Brother David Hayes (acting) (1991 to 1992)
- Brother Christopher Wade (1993 to 2000).

There is evidence of the following sexual abuse by Brother Chute during his time teaching at Marist College Canberra (see Table 1):

- Brother Chute was convicted of sexually abusing six students at Marist College Canberra in the period 1985 to 1989
- the Marist Brothers have received claims of sexual abuse by Brother Chute during the period 1976 to 1990 from 40 students at Marist College Canberra (including the six students with respect to whom Brother Chute was convicted)
- 34 of the 40 claims have been settled through the payment of a monetary sum to the claimant and the remainder were in progress at the time of the hearing.

Brother Heinrich was asked whether, when he was headmaster, he was aware of any complaints of child sexual abuse of students by Brother Chute at Marist College Canberra. Apart from ACK (considered below), Brother Heinrich said that while he was headmaster he did not receive any allegations that boys had been sexually abused.<sup>154</sup> He said he was unable to explain why there was no report to him.<sup>155</sup> Brother Wade was aware of the claims of Mr De Marco and ACN (considered below), which concerned abuse prior to his time. There were no claims provided to the Royal Commission that Brother Chute had abused a child during Brother Wade's time as headmaster at Marist College Canberra (from 1993 to 2000).

To date, 19 boys have told the Marist Brothers that Brother Chute sexually abused them while Brother Heinrich was headmaster. Brother Chute has been convicted of offences in relation to five of those boys.

Brother Heinrich and Brother Wade gave evidence that there was minimal supervision of Brother Chute when they were headmasters of Marist College Canberra.

Brother Chute reported directly to headmaster Brother Heinrich and there was no intermediary between him and Brother Heinrich.<sup>156</sup> Reporting was sporadic and involved Brother Heinrich having face-to-face meetings monthly in Brother Chute's office.<sup>157</sup> There was no regular process of monitoring him in his classroom.<sup>158</sup> There were no school inspectors that inspected Brother Chute's classes and Brother Heinrich visited his class once or twice a year at most.<sup>159</sup> Brother Heinrich accepted that Brother Chute had a high degree of autonomy and was trusted in his interaction with boys.<sup>160</sup> Brother Chute supervised the film club and the photography club and coached rugby during Brother Heinrich's time at the school.<sup>161</sup>

Brother Wade, who took over as headmaster at Marist College in 1993, gave a similar account of supervision arrangements of Brother Chute. He said that '[Brother Chute] was a senior figure. He was respected ... I just kept a general eye on him.'<sup>162</sup> Brother Wade said that he and Brother Chute had occasional contact.<sup>163</sup> He went to Brother Chute's office, but not very often, and sometimes observed him from outside the classroom.<sup>164</sup>

Brother Heinrich was asked about rules governing access by students at Marist College Canberra to the Brothers' residence while he was headmaster. He said that he did not know 'about rules' concerning students visiting the Brothers' residence, but the boys did not come to the residence to visit the residents unless there was a special meal. He said that boys were rarely there but then said that the senior students were invited to a 'special meal' at the residence approximately 12 to 14 times a year.<sup>165</sup> Brother Heinrich did not recall students ever coming to visit a particular Brother at the residence or delivering them a message; however, he could not exclude the possibility that this occurred. He said that students could get access to the residence if a Brother were to let them in.<sup>166</sup>

## Accounts of abuse of boys in the classroom, the office and the residence (1976–1987)

### AAN

AAN alleged:

One night Brother Kostka invited me to dinner at the Brothers' House. A few of the Brothers were present. I was the only boy there, after dinner, Brother Kostka invited me to his room. He undid my belt and lowered my trousers. Brother Kostka lowered his trousers and began fondling me and masturbating himself. Maybe after 15 minutes, this episode stopped. [He] drove me home.<sup>167</sup>

AAN also alleged that on 15 to 20 occasions:

Whilst in Brother Kostka's room at the seminary, Brother Kostka made the plaintiff lower his trousers and the Brother Kostka fondled the plaintiff's penis. On occasions, Brother Kostka removed his trousers and exposed his erect penis and masturbated himself whilst he also masturbated the plaintiff. ... On some of these occasions Brother Kostka performed oral sex on the plaintiff and attempted to make the plaintiff perform oral sex on him. ...<sup>168</sup>

Brother McMahon said that he never received any complaint of sexually inappropriate behaviour by Brother Chute when he was headmaster.<sup>169</sup>

AAN did not give evidence. He received a payment of \$337,780 from the Marist Brothers and Catholic Church Insurance with respect to his claim, with no admission of liability by the Marist Brothers.<sup>170</sup>

## ACS

In his statement of claim, ACS alleged that Brother Chute had sexually abused him in about 1979 at Marist College Canberra.

ACS alleged that in 1979 ACS's mother made a complaint to the then headmaster, Brother McMahon, about Brother Chute masturbating under his cassock in view of children and having children sit on his lap.<sup>171</sup> He alleged that ACS's mother not only informed Brother McMahon about Brother Chute's behaviour but also expressed the opinion that Brother Chute posed a danger to the children.<sup>172</sup> ACS also alleged that, in response, Brother McMahon told her that he was aware of Brother Chute's behaviour and had informed the Provincial and tried to have him removed, but the Provincial had refused to take any action.<sup>173</sup>

The then headmaster, Brother McMahon, in a signed statement dated 9 October 2008, denied receiving a complaint from ACS's mother and also denied that he informed the Provincial of any concerns or sought to have Brother Chute removed from the school.<sup>174</sup> He stated that the allegations that Brother Chute was masturbating in class were 'absolutely unbelievable' and 'absolutely incredible'.<sup>175</sup> He did remember that children were often in Brother Chute's office.<sup>176</sup>

Brother McMahon also stated that he would never have tolerated such behaviour if it had come to his attention and it 'was just not like me to ignore a report of the substance alleged'.<sup>177</sup> He claimed that if he had received such a complaint he 'would have acted vigorously and have consulted the Provincial'.<sup>178</sup> Further, he claimed that if he was 'not satisfied with the way in which the matter had been handled [by the Provincial], [he] would have left the school'.<sup>179</sup>

ACS did not give evidence. He received a payment of \$380,000 from the Marist Brothers with respect to his claim with no admission of liability by the Marist Brothers.<sup>180</sup>

## ACM

ACM alleged that Brother Chute took him to the Brothers' residence in 1980, 1981, 1983 and 1984 and sexually abused him there, including by having the plaintiff sit on his lap and placing his hand inside ACM's trousers and touching his penis and testicles.<sup>181</sup> Brother McMahon said that he never received any complaint of sexually inappropriate behaviour by Brother Chute when he was headmaster.<sup>182</sup>

ACM did not give evidence. He received a payment of \$26,666 from the Marist Brothers and Catholic Church Insurance with respect to his claim, with no admission of liability by the Marist Brothers.<sup>183</sup>

## AAU

AAU alleged that Brother Chute sexually abused him in 1982 on three separate occasions after school in Brother Chute's office.<sup>184</sup> On one of these occasions, AAU alleged that a cleaner employed by the school walked into Brother Chute's office and saw Brother Chute and AAU 'close to and facing each other and pulling up their trousers. [Brother Chute] said, "Shit" and the cleaner apologised and left the office'.<sup>185</sup> There is no evidence that AAU reported the abuse at the time. AAU also alleged that Brother Chute showed him pornography in the office on five occasions and then masturbated him.<sup>186</sup>

Brother McMahan stated in 2008 that he had no knowledge of the abuse allegedly perpetrated on AAU by Brother Chute and that he 'never had any information relayed to [him] by any cleaner' of the matters alleged by AAU.<sup>187</sup>

AAU did not give evidence. He accepted a payment from the Marist Brothers and Catholic Church Insurance of \$120,000, without liability being admitted.<sup>188</sup>

## AAM

AAM said that Brother Chute sexually abused him from year 7 in 1985. The Director of Public Prosecution's (DPP's) Statement of Facts tendered in Brother Chute's sentencing hearing in 2008 included the following from AAM:

It was considered normal for kids to go to Brother Kostka's office when they had nothing to do. ... If a student wanted to skip a class and watch television or read books, Brother Kostka would make it alright for a student to do so.<sup>189</sup>

The Statement of Facts described the abuse as follows:

In the first half of 1985 [AAM] was alone with Chute in his office. The office door was open. [AAM] was seated in front of Chute's desk when Chute went behind [AAM] and placed his arms around him. Chute then commenced to fondle [AAM]'s penis outside his clothing. He then attempted to put his hands inside [AAM]'s clothing.<sup>190</sup>

Brother Heinrich said that, as headmaster, he was not aware of allegations that Brother Chute had sexually abused AAM.<sup>191</sup>

AAM did not give evidence. He received a payment of \$180,000 from the Marist Brothers and Catholic Church Insurance with respect to his claim, without liability being admitted.<sup>192</sup>

## AAE

Brother Chute was convicted in 2008 of five counts of indecency upon AAE. In his statement to police AAE said:

I started Marist College in 1985 and the touching started almost straight away. This became very normal to me and Brother Kostka would touch me daily sometimes 2, 3 or 4 times in a single day. He would always cuddle me and he even put his hands down my pants during the classes he was teaching, it would often be in front of other students. I think that in all Brother Kostka would have touched me 600 to 700 times during my time at Marist College. It became so normal and regular that I accepted it as part of my life.<sup>193</sup>

AAE commenced civil proceedings in 2007. He alleged that Brother Chute had touched his penis outside his trousers and also, on numerous occasions, placed his hand inside his trousers onto his penis and testicles. He alleged that the assaults took place in class, in his office, while he was helping on the pie wagon, at film nights and in Brother Chute's room at the seminary.<sup>194</sup>

In March 2008, AAE told a psychiatrist that Brother Chute's sexual abuse of students at Marist College was widely known by staff at the school at the time:

everyone knew – the teachers – he'd do it in front of a class of thirty. What could I do? I have spoken to teachers who were there at the time. And my parents knew, I told them. They're in denial and I don't want to push them. ... The Marist Brothers were intimidating.<sup>195</sup>

Brother Heinrich gave evidence that he did not receive a complaint of abuse from AAE and was unaware of any allegations at all of Brother Chute engaging in sexual behaviour in a classroom.<sup>196</sup>

The Marist Brothers and Catholic Church Insurance settled with AAE for \$250,000, without liability being admitted.<sup>197</sup> AAE did not give evidence.

## AAF

In a statement of claim dated 29 October 2009, AAF alleged that Brother Chute fondled his penis inside and outside of his shorts in 1987. AAF stated that the abuse took place in Brother Chute's office.<sup>198</sup>

Brother Heinrich said that he did not receive any allegations that Brother Chute had sexually abused AAF.<sup>199</sup>

AAF received \$150,000 with respect to his claim from the Marist Brothers and Catholic Church Insurance, without liability being admitted.<sup>200</sup> AAF did not give evidence.

## ACK's complaint

Brother Chute was convicted in 2008 of an act of indecency on ACK during a 'Friday Film Night' at Marist College Canberra in 1986. According to the agreed facts read at Brother Chute's sentencing hearing:

At one movie night, towards the end of the year, Mr [ACK] was sitting on the stairs outside the theatrette when [Brother] Chute sat beside him. Brother Chute pulled Mr [ACK] close to him and commenced to touch Mr [ACK's] genitals outside his trousers. When Mr [ACK] went inside to watch the movie [Brother] Chute sat beside him and continued to touch Mr [ACK] in the same way. Although Mr [ACK] moved to another seat in the theatrette [Brother] Chute moved with him.<sup>201</sup>

ACK reported the incident to his parents that evening. His parents in turn complained to the then headmaster of the school, Brother Heinrich.<sup>202</sup>

Brother Heinrich gave evidence that at the time there was no policy or procedure for dealing with complaints of child sexual abuse and his first thought for dealing with the complaint was to confront Brother Chute.<sup>203</sup> He told Mr Whitehead of Arrow Insurance in 2007 that:

I went to see Kostka and told him what I had been told and Kostka tended to dismiss it by way of saying 'oh, it was a fumbling in the dark, it was a misunderstanding, it was an accidental situation, nothing to be concerned about' and so on. And I took him at his word that it was just a mishap in the dark.<sup>204</sup>

In relation to this conversation with Brother Chute, Brother Heinrich told representatives from Catholic Church Insurance, Monahan & Rowell and Carroll & O'Dea in 24 July 2008 that:

[Brother Kostka] sort of laughed it off and claimed that it was incidental and a misunderstanding was the word I think he used. He left me with the idea that this wasn't what it seemed to be. In the dark something had happened and in the process he had come into contact with the boy and that it was relatively innocent. That was the impression he conveyed.<sup>205</sup>

Brother Heinrich gave evidence at the public hearing that he has a memory of speaking to ACK's father. He said ACK's father told him that Brother Chute's 'hand had ended up in the boy's lap' and there was 'contact between his hand and the boy's penis'.<sup>206</sup> Brother Heinrich said that he did not want to prolong the meeting with the father because 'it was an extremely unpleasant and uncomfortable situation to be in, and [he] was conscious that the father was very ill at ease'.<sup>207</sup> Brother Heinrich explained that 'in many respects I was bereft of a strategy to deal with it'.<sup>208</sup>

He said that he was relieved that Brother Chute had a spontaneous explanation for the incident. He accepted that it may have been naïve on his part, but he took Brother Chute at his word and

accepted that the incident was a misunderstanding<sup>209</sup> and that the touching was ‘unintentional’ or ‘incidental’.<sup>210</sup> Brother Heinrich did not investigate the incident any further, but ‘by way of precaution’ he spoke to the Provincial, Brother Dwyer.<sup>211</sup>

In an interview with Mr Whitehead of Arrow Insurance, Brother Heinrich said that ‘there was not a lot said’ in his communications with Brother Dwyer and that there was no real feedback to him about such matters.<sup>212</sup>

Brother Heinrich said of a telephone conversation with the Provincial, Brother Dwyer, shortly after he was told of the abuse:

I can’t remember much about the conversation [with Brother Dwyer] except to recount what had happened and as a result of the case these sorts of conversations were fairly brief. The implication from Brother Dwyer was ‘you should leave it with me’. ... That was the sense.<sup>213</sup>

Brother Heinrich did not write to Brother Dwyer or communicate with him in writing.<sup>214</sup> He said that he was not asked for a report and did not provide one to the Provincial.<sup>215</sup> Brother Heinrich said he was not in a position to question Brother Dwyer about what he was going to do.<sup>216</sup>

Brother Heinrich gave evidence that when he began as headmaster at Marist College Canberra in 1983 and during his term there he was not told of complaints against Brother Chute or admissions by him that he had sexually abused children at schools where he had taught in 1962 or 1967–1969.<sup>217</sup> He said the Provincial, Brother Dwyer, who was present at the 1969 Provincial Council meeting, did not tell him that a decision had been made to give Brother Chute a canonical warning because of inappropriate touching of a child.<sup>218</sup>

Brother Heinrich did not remember whether he specifically asked Brother Dwyer whether Brother Chute had such a history, but he ‘would have told him about the incident and waited for some response, some advice’.<sup>219</sup> He said that if he had been told it would have engendered ‘some suspicion, some greater supervision’ and that he would have registered a strong concern with the Provincial.<sup>220</sup>

Brother Heinrich recalled a conversation in passing with Brother Dwyer in which Brother Dwyer said, ‘I told him to finish those film nights.’ Brother Heinrich could not recall how long after he received the complaint from ACK’s father that this conversation occurred.<sup>221</sup> Marist College Year Books from the relevant period indicate that Brother Chute remained the convenor of the film club for a number of years afterward, up to and including 1988.<sup>222</sup>

Brother Heinrich said that Brother Dwyer left the matter for him to monitor. He said he was content with this result because he had accepted Brother Chute's explanation for the incident.<sup>223</sup> It did not occur to him at the time that Brother Chute should be removed from teaching or removed from the school, as both of those decisions were for the Provincial.<sup>224</sup>

Brother Heinrich made no written record at the time of the allegations raised by ACK or action taken in response to the allegations,<sup>225</sup> including his conversations with Brother Chute and Brother Dwyer.<sup>226</sup> He gave evidence that recording the matter 'would not have been the normal thing to do'.<sup>227</sup> He said that his approach in dealing with such matters was to treat them 'extremely privately and discretely [sic]', 'very carefully and confidentially'.<sup>228</sup> Brother Heinrich said the matter was kept confidential, including from other teachers, and supplied on a confidential basis to the Provincial, Brother Dwyer. He said that it was a matter between the Provincial and the Brother concerned.<sup>229</sup>

Brother Heinrich did not report the incident to the police.<sup>230</sup> He told representatives from Catholic Church Insurance, Monahan & Rowell and Carroll & O'Dea in March 2009 that he explained to ACK's parents at the time that it was their right to do whatever they saw fit and 'one of the options would be to take it directly to the police'.<sup>231</sup> At this interview he said he regretted 'the fact that it came at a cost of acting self-protectively' even though that was not his intention.<sup>232</sup>

Brother Heinrich said that he did not consider reporting the matter to the police because 'in those days it wasn't the way we went about dealing with these sorts of things'. He said that such matters were managed 'privately, internally ... and [he] would rarely have ventured into talking to the police about something as intimate as concerning a brother'.<sup>233</sup> He explained the situation as follows: 'it was a case of trying to do the right thing by [Brother] Kostka [Chute] and secondly trying to defuse the situation if there was a solution at hand'.<sup>234</sup>

He said that at the time he did not regard indecent touching as the sort of matter that he would have taken to the police; rather, it was something he would (and did) report to the Provincial.<sup>235</sup> He said that even if the allegation had amounted to compelling evidence of rape or buggery he would have taken it first to the Provincial with a request to him to take it to the police.<sup>236</sup>

Brother Heinrich stated that he did not go back to the parents or have any further discussion with them about the incident.<sup>237</sup> No steps were taken to remove ACK from Brother Chute's class or to make sure that there was no association or connection between ACK and Brother Chute.<sup>238</sup> He said that at the time he did not see the need, although he gave evidence that 'of course' he does now.<sup>239</sup> He did not ask whether any other boys had been abused by Brother Chute at film nights and did not inform parents of other boys at the school of the allegations.<sup>240</sup>

Brother Heinrich stated that he did not bring the complaint by ACK's parents to the attention of his successor at Marist College Canberra on handover of the role. At the time he left the school, this was the only complaint of its kind that had come to his attention.<sup>241</sup>

He accepted that he failed to ask ACK's parents for details about ACK's disclosure and the nature of the alleged abuse. He said that this was a shortcoming on his part.<sup>242</sup> He said that he assumed that it was 'just a passing touching or meeting or bumping like that' and he 'was thinking just in terms of one incident'.<sup>243</sup>

In his interview on 30 April 2009, Brother Chute also gave his account to representatives from Catholic Church Insurance, Monahan & Rowell and Carroll & O'Dea. Brother Chute said that he recalled having one discussion with Brother Heinrich about the incident involving ACK, in which he denied touching ACK in a sexual way and apologised if he had caused any anxiety to ACK or his parents.<sup>244</sup> According to Brother Chute, Brother Heinrich never spoke to him about the incident again and this was the last he heard about it.<sup>245</sup>

## Conclusions

We are satisfied that Brother Heinrich received an allegation in 1986 that Brother Chute had touched a boy's penis in the dark during a film night. He did not bring the complaint by ACK's parents to the attention of his successor at Marist College Canberra on handover of the role. He told the then Provincial, Brother Dwyer, of the allegation.

Brother Dwyer was a member of the Provincial Council in 1969 and knew of Brother Chute's admission to touching a child in Lismore and that it warranted a canonical warning. With that knowledge, the Provincial did nothing about this complaint. He did not advise Brother Heinrich of the canonical warning. He placed Brother Chute in a position of responsibility as assistant religious education coordinator at Marist College Canberra between 1983 and 1989.

Not only was this inaction by the Provincial woefully inadequate but it also presented an opportunity to remove Brother Chute from teaching or from contact with and therefore access to children. By not taking this opportunity, the Provincial put more children at risk of being sexually abused by Brother Chute.

## Damian De Marco

Damian De Marco was a student at Marist College Canberra from 1981 to 1986. He gave evidence that in 1981, when he was in year 7, Brother Chute sexually abused him in a storeroom off his office. Mr De Marco said that Brother Chute cornered him in a storeroom located at the back of his office, came up behind him, grabbed him and tried to force his hand down the front of his pants.<sup>246</sup> He said that Brother Chute got his hand 'part way into my pants', but he was 'squirming and wriggling around' and managed to get free of Brother Chute's hold and escape.<sup>247</sup> Mr De Marco did not tell anyone about the incident in the storeroom at the time.<sup>248</sup>

### Damian De Marco's complaint to teacher Mr John Doyle in 1986

In Mr De Marco's statement to the Royal Commission he said that in 1986, when he was in year 12, Mr De Marco 'had a gut feeling that [Brother Chute] had developed an inappropriate relationship with [a year 7] boy' at Marist College.<sup>249</sup> Mr De Marco said he approached Mr John Doyle, the year 12 form master and a lay teacher, and told him about being 'sexually assaulted' by Brother Chute in the storeroom and that he was concerned for the year 7 student.<sup>250</sup> Mr Doyle said to him that he would 'deal with it'.<sup>251</sup> Mr De Marco stated that Mr Doyle told him the following day that Brother Chute had denied the allegations.<sup>252</sup> Mr De Marco said that Mr Doyle told him that he had spoken to the headmaster, Brother Heinrich, about it and that 'nothing will be done'.<sup>253</sup>

Mr De Marco had disclosed the 1986 conversation with Mr Doyle in 1993, 2008 and 2009. In 1993 he told Brother Turton, the then Provincial, about the conversation and Brother Turton recorded that Mr De Marco 'spoke to a lay teacher in Year 12 who dismissed the concern and said that nothing could be done about it'.<sup>254</sup> In 2008 Mr De Marco told psychiatrist Dr Klug that:

seeing Kostka with one particular boy ... [he] decided to tell John Doyle, the form master (a lay teacher) to try to stop him (Kostka) – Doyle said he would look into it – the next day or something like that he would do something about it – I remember being dumbfounded at the lack of desire and effort ...<sup>255</sup>

In 2009 Mr De Marco told another psychiatrist, Dr Wendy Roberts, about Mr Doyle and she recorded him saying:

I watched [Brother Chute] and he was up to the same stuff. There was one kid when in Year 12. You could tell he had him in the fold. I don't know the boy's name. I felt for sure this kid is being done over and it was horrific to watch and I thought I've got a responsibility. So I went to John Doyle, my Form Master and told him the whole lot. He said 'leave it with me'. He went away and came back a day later and it was totally denied and he said 'I'm not going to do anything about it'.<sup>256</sup>

In 2009 Mr Doyle provided a statutory declaration in which he said he had 'no recollection or memory of Damien [sic] De Marco ever telling me about the alleged incident or making any complaint to me about such alleged abuse'.<sup>257</sup> Mr Doyle provided a statement to the Royal Commission that he became aware in 2008 or 2009 that Mr De Marco alleged that in 1986 he had told Mr Doyle that he had been sexually abused by Brother Chute. Mr Doyle said:

I have no recollection of Mr De Marco ever making such a complaint to me. I have thought hard about this and I do not recall anything like that. I also do not believe that I would forget a complaint of such significance. If I had received such a complaint at that time, I would have immediately taken it to the Principal or Deputy Principal of the College.<sup>258</sup>

In an unsigned statement dated 31 March 2008, Brother Heinrich is recorded as saying that he had ‘a pretty vague recollection of a conversation with [Mr Doyle] in the office at some stage in which [Mr Doyle] raised a “concern” with [Brother Chute]’.<sup>259</sup> In his oral evidence he said that the comment may have been with regard to some concerns about Brother Chute’s behaviour unrelated to child sexual abuse.<sup>260</sup> Brother Heinrich was asked in oral evidence:

Q: Is it possible that John Doyle came to you and reported a communication by Mr De Marco that he had been sexually abused by Brother Kostka?

A: No.

Q: It’s not possible at all?

A: The gravity of that sort of disclosure makes it unforgettable. I never heard that from John Doyle.<sup>261</sup>

In his statement to the Royal Commission, Brother Heinrich said that, apart from the complaint from ACK’s parents, he ‘did not receive any other complaint or suggestion from any other teacher, member of staff, or student, to the effect that [Brother Chute] was or may have been involved in any sexual abuse or misconduct’.<sup>262</sup> Brother Heinrich’s evidence is that it was not his practice to keep written notes of such matters.<sup>263</sup>

### **Damian De Marco’s complaint to headmaster Brother Wade in 1993**

#### *Brother Turton’s file note on the complaint*

In 1993 Mr De Marco made a complaint to Marist College headmaster, Brother Wade, that Brother Chute had sexually abused him in 1981. The complaint was passed onto Brother Turton, who was then the Provincial of the Marist Brothers. Brother Turton recorded the handling of the matter in a file note:

A complaint was received from a certain Damien [sic] De Marco ... regarding hugging, squeezing and touching during 1980 at [Marist College Canberra] ...

The accusation was that it took place for three or four months, certainly not extreme and not anything inside clothes or even genital. ...

Damien spoke to a lay teacher in Year 12 who dismissed the concern and said that nothing could be done about it. ...

The Headmaster to whom Damien came reported the matter to me (Br Chris Wade) and I immediately contacted Damien by phone, flew down to Canberra and spent two hours with him at the airport. After this discussion it was decided that, subject to Brother who had

already been interviewed by me once, following up with therapy, it was not the sort of difficulty that demanded that he come out of the school. I gave the assurance that he would be carefully supervised, that he would not be in situations where he was alone with boys, that he would go into therapy. ...

I called [Brother Chute] to Sydney and together we went for an interview with Fr Brian Lucas. The outcome of this was certain admissions many years back in the past, but no awareness of anything serious more recently. ...

... At this time there is no concern from the young man who made the complaint, from the Headmaster, or from Margaret Rootes [from Centacare] that there is a danger in [Brother Chute] continuing to teach, although the teaching will be from Grade 9 and above. The only difficulties in the past have been with younger boys ... [Brother Chute] acknowledged the closeness and the hugging ...<sup>264</sup>

### *Mr De Marco's evidence*

Mr De Marco gave evidence that in about September 1993 he heard that Brother Chute was still teaching at Marist College and 'there was a suspicion about the school that he was a paedophile'.<sup>265</sup> This prompted Mr De Marco to telephone the headmaster at the time, Brother Wade. Mr De Marco stated that he obtained an appointment with Brother Wade after telling him that Brother Chute had tried to molest him when he was a child and threatened to go to the police.<sup>266</sup>

Mr De Marco said he met with Brother Wade and told him about Brother Chute 'sexually assaulting' him, his concern for other children and that he had informed a teacher at the school in 1986.<sup>267</sup> He said that he told Brother Wade that Brother Chute had trapped him in the back of the storeroom and tried to get his hands down his pants.<sup>268</sup> He told Brother Wade that Brother Chute got his hands part of the way down into his pants but did not touch his genitals.<sup>269</sup>

Mr De Marco stated that he told Brother Wade that he wanted Brother Chute 'to be removed from any situation where he is working with young people and the school to do a thorough investigation to find other victims'.<sup>270</sup> According to Mr De Marco, Brother Wade told him Brother Chute would be removed while the matter was investigated.<sup>271</sup>

Mr De Marco agreed that he met Brother Turton at Canberra Airport. He said that at the airport he told Brother Turton that there was nothing inappropriate until the event in the storeroom and that hugging was normal and commonplace amongst the boys.<sup>272</sup> He said there was just one event of abuse and that 'nothing happened over three or four months'.<sup>273</sup>

He said he told Brother Turton that Brother Chute 'had trapped me at the back of the storeroom and had tried to get his hands down my pants and had prevented me from getting away when I was trying to get away'.<sup>274</sup> When senior counsel for the Church parties put it to Mr De Marco that what took place was 'not extreme', 'not anything inside clothes' and 'not genital', Mr De Marco replied:

I agree it wasn't genital. It may have been. I don't know how far he got his hand down my pants, but he certainly got them past my belt and was working towards my genitals. But I was squirming pretty hard and trying to get away. But I certainly didn't say that it was not extreme. I told him that I regarded it as a sexual assault on me.<sup>275</sup>

Mr De Marco was asked whether he could recall the exact words he told Brother Turton at the airport and he said 'the exact words are unclear'<sup>276</sup> and that he was 'not exactly able to recall'.<sup>277</sup>

He said Brother Turton further told him at the airport that Brother Chute had denied that the abuse had occurred.<sup>278</sup> He said he indicated to Brother Turton that he had been 'molested' or 'sexually assaulted' and said he 'wouldn't have gone to the provincial to tell him that I was being hugged'.<sup>279</sup> Mr De Marco also says that he 'came away from the meeting with the promise that [Brother Chute] would not be returned to the school ... and I was under the impression from what Turton told me that he would never be going back to the school'.<sup>280</sup> He denied that Brother Turton had said to him it was 'not the sort of difficulty that demanded [Brother Chute] come out of the school'.<sup>281</sup>

Mr De Marco gave evidence that neither Brother Turton nor Brother Wade discussed with him referring the matter to the police. Mr De Marco thought there was little point in telling the police, as it was his word against Brother Chute's.<sup>282</sup>

### *Brother Wade's evidence*

Brother Wade gave evidence that when he took over as headmaster of Marist College he was given a handover by the previous headmaster but was not told of any concerns about the Brothers at the school. He told the Royal Commission that he was not informed of any allegations or admission of sexual abuse of children by Brother Chute<sup>283</sup> and was not told that a decision had been made to give Brother Chute a canonical warning in 1969 for child sexual abuse.<sup>284</sup> He was also not told of allegations concerning ACK in 1986.<sup>285</sup>

Brother Wade stated that he did not have any recollection of Mr De Marco coming to see him.<sup>286</sup> He did not recall any specific complaints about Brother Chute, including as to sexual misconduct.<sup>287</sup>

### *Brother Turton's evidence*

In his statement to the Royal Commission, Brother Turton said that he was contacted by Brother Wade, who said a former student had concerns about Brother Chute and thought the complaint may be serious. Brother Turton said he then contacted Mr De Marco by telephone and arranged to meet with him at Canberra Airport.<sup>288</sup> He said in his statement that he had some recollection of the meeting and had refreshed his memory from notes he prepared around this time.<sup>289</sup>

Brother Turton told the Royal Commission that his recollection of Mr De Marco's complaint accorded with his file note of 1993.<sup>290</sup> In his oral evidence on 18 June 2014 he agreed that Mr De Marco told him at the airport that Brother Chute 'had trapped me at the back of the storeroom and had tried to get his hands down my pants and had prevented me from getting away when I was trying to get away'.<sup>291</sup> He said he asked Mr De Marco at the time whether 'it was genital'

and Mr De Marco replied 'no'.<sup>292</sup> When asked what he understood the purpose of the hand being inserted into Mr De Marco's pants was, Brother Turton said it was 'a possible sexual approach'.<sup>293</sup> He said he was 'balancing' that against Mr De Marco saying it was not a 'genital matter'.<sup>294</sup>

Brother Turton said that the phrase 'inappropriate hugging, squeezing and touching' was his assessment of what Mr De Marco told him, not what Mr De Marco had said to him.<sup>295</sup> He said that it was his 'sense' from what Mr De Marco said at the airport meeting that Brother Chute's behaviour occurred over a 'couple of months', as recorded in the note.<sup>296</sup>

Brother Turton was also asked about his use of the word 'extreme' in the file note. He said that while he considered sexual intercourse, oral sex and masturbation of a child were all extreme, touching of the penis outside of clothes was 'not acceptable, I don't know about extreme'.<sup>297</sup>

Brother Turton said that he arranged for Brother Chute to meet with him and Father Brian Lucas as part of the Special Issues Resource Group, following, in general form, the protocol established for such matters.<sup>298</sup> After the meeting Brother Turton determined that 'it was not the sort of difficulty that demanded [Brother Chute] come out of the school' – a conclusion that he said Father Lucas supported.<sup>299</sup>

Father Lucas also gave evidence. He said he had a practice of not keeping notes of such meetings and did not make a note of the meeting with Brother Chute in 1993. In evidence he said he could not recall the meeting.<sup>300</sup> He said he deliberately did not record the meeting because he did not want to alienate the Brother concerned and wanted to respect his 'right to silence'.<sup>301</sup>

Father Lucas' practice of interviewing a cleric or religious about allegations of child sexual abuse and not making a note of those meetings has been considered in Case Study 14. That concerned the response of the Catholic Diocese of Wollongong to child sexual abuse matters involving a priest. We made findings about this practice in that Case Study.

According to Brother Turton's file note, Brother Chute returned to teaching at Marist College, subject to supervision, therapy and an undertaking not to be alone with children.<sup>302</sup> Brother Turton said that the supervision of Brother Chute on his return to school consisted of the headmaster being aware of the situation and regular meeting and reporting to Ms Rootes at Centacare.<sup>303</sup> Brother Turton said there was no monitoring of Brother Chute in his classes and the Marist Brothers relied on Brother Chute's word that he would not be alone with children as well as the fact that the incident was 10 years old.<sup>304</sup>

Brother Turton stated that, at the end of his investigation, he formed the view that the conduct described to him by Mr De Marco was inappropriate but not sexual abuse.<sup>305</sup>

Brother Turton was called to give further evidence on 30 June 2014 and was asked by Mr De Marco's legal representative about what Mr De Marco said to him at the airport. Brother Turton said that he could not remember the detail of what was said to him and 'the notes that I made are the strongest statement I can make on that'.<sup>306</sup> It was put to him that this conflicted

with his evidence on 18 June 2014 and he replied ‘I believe I was listening to what Mr De Marco was saying, so that – my sense of detail for that time – no, I’m not sure about that’ and then ‘I don’t recall those words being used.’<sup>307</sup>

Counsel Assisting put to Brother Turton that his description of Brother Chute’s act as ‘inappropriate hugging, squeezing and touching ... certainly not extreme and not anything inside clothes or even genital’ was a minimisation of what Mr De Marco had told him.<sup>308</sup> Brother Turton said he did not believe it was minimisation.<sup>309</sup>

### Later events

In 2001 and again in 2008 Mr De Marco told the police of the abuse by Brother Chute.<sup>310</sup> He said he was told Brother Chute could not be charged because of the statutory bar on such matters that existed before 1985.<sup>311</sup> The DPP’s Statement of Facts tendered at Brother Chute’s sentencing hearing in 2008 includes the account of the abuse of Mr De Marco as an ‘uncharged’ matter.<sup>312</sup>

Mr De Marco subsequently commenced civil action with respect to his abuse by Brother Chute. After mediation, he settled with the Marist Brothers for \$210,000 including legal costs, with no admission as to liability.<sup>313</sup> He says he received about \$109,000 after legal costs.<sup>314</sup>

### Conclusions

The first issue to be resolved is whether Mr De Marco told Mr Doyle, the year 12 form master and a lay teacher in 1986, about:

- being sexually assaulted by Brother Chute in the storeroom
- his concern for a year 7 student.

Mr De Marco gave a statement to the Royal Commission to this effect and gave oral evidence consistent with his statement. He was an impressive witness and we are satisfied he gave evidence consistent with his memory of the events.

Mr De Marco’s account is consistent with Brother Turton’s note completed before the end of November 1993 in so far as it records that Brother Turton was told that ‘Damian spoke to a lay teacher in Year 12’.

Mr De Marco’s account is also consistent with what he told two psychiatrists.

Mr Doyle gave evidence that he had no recollection of Mr De Marco making a complaint to him and he did not believe he would forget a complaint of such significance.

We accept that Mr Doyle has no recollection of the conversation. However, for the reasons set out, we accept Mr De Marco's account.

The second issue concerns what Mr Doyle told Mr De Marco. Mr De Marco said Mr Doyle told him that Mr Doyle had spoken to the headmaster, Brother Heinrich, about it and that 'nothing will be done'. Mr De Marco referred to this aspect of his conversation with Mr Doyle in his statement to the Royal Commission. He had not told anyone of this part of the conversation before making that statement.

Brother Heinrich has given his account of a discussion with Mr Doyle on a number of occasions. First, in an unsigned statement in 2008, Brother Heinrich is recorded as having a 'pretty vague recollection' of a discussion. Secondly, Brother Heinrich gave evidence to us that the comment may have been unrelated to child sexual abuse. He also said that it was not possible that Mr Doyle came to him. Finally, in his statement to the Royal Commission he said he did not receive any complaints.

Brother Turton's file note is not consistent with Mr De Marco's recollection of what Mr Doyle told him. That file note suggests that it was Mr Doyle, not the headmaster, who was dismissive of the complaint.

In these circumstances, we cannot be reasonably satisfied that Mr Doyle told Mr De Marco that Brother Heinrich had said nothing would be done about the complaint. This is not to say that we believe that Mr De Marco was not telling the truth. The passage of time clearly has the capacity to affect memories.

The third issue concerns what Mr De Marco told Brother Turton in 1993. Brother Turton's file note records lesser conduct than Mr De Marco's account of what occurred and what he told Brother Turton. Mr De Marco could not recall the exact words he used – it would be surprising if it were otherwise. Brother Turton was not entirely consistent in his evidence.

Brother Turton gave evidence that his file note records his words and not Mr De Marco's as to the description of what Brother Chute did to him. Our reading of that file note is that there can be no real doubt that what was being conveyed by Mr De Marco was unwanted conduct of a sexual nature by Brother Chute and that was clearly understood by Brother Turton.

Brother Turton's response was to assure Mr De Marco that Brother Chute would be carefully supervised and not alone with boys. That assurance only makes sense if the Provincial believed that there was a sexual component to his conduct.

The words that Brother Turton used to describe the conduct were that it was 'inappropriate' but 'not extreme' and 'not even genital'. The words do not convey the sexual aspect to the conduct and, to that extent, Brother Turton minimised the sexual aspect of Brother Chute's conduct. Brother Turton also demonstrated his lack of understanding of the impact of this conduct on Mr De Marco and the ongoing risk that Brother Chute posed to children.

## ACN and Brother Chute's departure from Marist College Canberra

In December 1993 ACN, a year 11 student at Marist College Canberra, spoke with the school counsellor about Brother Chute. He told the school counsellor, LAJ, that Brother Chute took him out of class and into his office. In his office he said Brother Chute said words to the effect of 'Brother needs a hug' and then hugged ACN. LAJ also recalled that ACN told her that this made ACN feel very uncomfortable and he said that he could 'feel things he did not want to feel'.<sup>315</sup> LAJ interpreted this as being Brother Chute's erect penis.<sup>316</sup>

LAJ then contacted ACN's parents and asked them whether they wanted to go to the police with him. LAJ was unsure about when she took ACN to the police station, but she does recall going to the Civic Police Station in Canberra and ACN giving a statement.<sup>317</sup>

LAJ passed ACN's allegations on to the then Provincial, Brother Turton.<sup>318</sup> LAJ said in a statement to the Royal Commission that she 'cannot recall exactly what I said to Brother Turton, but I recall that I relayed to him what [ACN] had told me about Brother Kostka'.<sup>319</sup> LAJ said that Brother Turton said to her, 'Are we looking at a raging paedophile or just a very foolish man?' and she replied, 'I have not heard anything concrete, it might be the latter.'<sup>320</sup> Neither LAJ nor ACN was available to give oral evidence. Brother Turton did not recall whether he used such language in 1993.<sup>321</sup>

LAJ said that Brother Turton told her that he would speak to Brother Chute. LAJ understood that this had happened because later Brother Chute came to her and said words to the effect that ACN 'has made a complaint about me'.<sup>322</sup> LAJ also recalls that Brother Turton told her that he would talk to ACN's parents.<sup>323</sup>

She said that she recalled speaking to Brother Turton on two or three occasions after receiving the complaint from ACN and that in one of those conversations Brother Turton said to her words to the effect that 'There have been rumours about Brother Kostka for a long time, but I have never heard anything concrete'.<sup>324</sup>

LAJ's usual practice in these kinds of matters was to also inform the headmaster, who was then Brother Wade, but she did not report ACN's complaint to him because 'I was frightened of him and considered him to be aggressive'.<sup>325</sup>

Brother Turton made a handwritten file note of his initial telephone conversation with LAJ about ACN on 4 December 1993.<sup>326</sup> The file note includes phrases such as 'rubbed vaguely against him', 'hug me' and 'abuse'. Brother Turton further refers to his initial conversation with LAJ about ACN in a later second file note.<sup>327</sup> In that document, Brother Turton records that the teacher hugged the boy in a small room with no windows but that there was 'no suggestion of genital touching nor any experience of sexual reaction on the part of [Brother Chute]'.<sup>328</sup>

Brother Turton gave evidence that he spoke to LAJ on 4 December 1993 and that during this conversation LAJ reported an allegation of abuse of ACN.<sup>329</sup> Brother Turton confirmed that as a

result of that conversation he understood that ACN had been asked by Brother Chute to come out of class to a tiny room with no windows, where Brother Chute asked the boy to hug him and rubbed himself vaguely against the boy.<sup>330</sup>

Brother Turton said he spoke with LAJ, who said that she was not sure whether it was a matter of sexual abuse.<sup>331</sup> Brother Turton acknowledged in evidence that he thought it was a possibility that it involved some form of sexual abuse by Brother Chute.<sup>332</sup>

Brother Turton's second file note records that the day after LAJ informed him of ACN's allegations Brother Turton spoke to ACN's father, who indicated that he was keen to have a meeting.<sup>333</sup> Approximately four days after the initial conversation with LAJ, Brother Turton flew to Canberra to see ACN's parents. The ACT Youth Advocate also attended this meeting. ACN's father provided a list of suggestions for resolving the situation, which included removal of Brother Chute from the school without reassignment to another school, that ACN be reassured that action had been taken against Brother Chute and that other students who may have been abused by Brother Chute be identified.<sup>334</sup> It was agreed that Brother Turton would later meet with ACN.<sup>335</sup>

Brother Turton recorded that ACN had told LAJ that Brother Chute called him to the office two or three times and asked him to give Brother Chute a hug, which made him feel 'yukky'.<sup>336</sup> Brother Turton recorded that LAJ told him that ACN 'felt no sexual arousal or erection on the part of the Brother'.<sup>337</sup>

On 17 December 1993 Brother Turton met with ACN, ACN's father and the ACT Youth Advocate.<sup>338</sup> ACN's father asked what the responses were to the demands that he had put forward. Brother Turton indicated to the father and the Youth Advocate that 'no formal announcements would be made' of the matter on Brother Chute's departure and the Brothers' community would be told that 'Brother [Chute] had come to the end of a teaching career'.<sup>339</sup>

Brother Turton interviewed Brother Chute, who admitted to hugging the boy and said it was a 'normal sign of affection'.<sup>340</sup> Brother Chute said he was 'not aware' of the boy's negative reaction or of the impression of being locked in a room. Brother Turton advised Brother Chute that under the circumstances it was not wise for him to stay in Canberra or to be teaching young people.<sup>341</sup> Brother Turton also recalls that Brother Chute denied anything 'overtly improper', by which he meant Brother Chute denied anything of a sexual nature.<sup>342</sup>

Brother Turton went on to say that he did not think that what was occurring at the time could properly be called 'alleged child abuse', as it was 'still a questionable area as to exactly what had happened, particularly considering the police advice [received later] and the community advocate's advice'.<sup>343</sup> Brother Turton was aware there was a visit to the police after the 17 December 1993 meeting. He recorded that the police advised it was 'unlikely it was a case of sexual abuse and at most could possibly be seen as physical abuse' and the matter went no further.<sup>344</sup>

On 23 December 1993 Brother Turton wrote to ACN's father saying that Brother Chute had been appointed to another position away from Marist College Canberra and that he would not be involved with teaching boys in the future.<sup>345</sup> In the letter he said that the school would ensure that 'appropriate steps are taken' to identify students who may have been affected 'in any of the ways described by ACN'. He said that there was a program of education of boys to encourage the reporting of 'possible cases of abuse or neglect from whatever source'. Brother Turton gave evidence that there was also a 'whole program' of having the issue discussed at the tutor group level.<sup>346</sup> The letter to ACN's father also noted that Brother Wade 'will review the conduct and operation of the College to ensure that the strict code of behaviour already in place is being properly observed'.<sup>347</sup>

Brother Turton said that he removed Brother Chute from the college because of the allegations made by Mr De Marco, because ACN had come forward and because he was concerned that ACN had not given his father (or him) a complete account of what had occurred with Brother Chute. He said the removal was a form of 'risk assessment'.<sup>348</sup>

Brother Wade, the then headmaster, gave evidence that he was aware in December 1993 that Brother Chute was to be removed from Marist College Canberra, but he was not told of the reason for the removal.<sup>349</sup> He also said that he understood that the review referred to in the letter was not connected to Brother Chute's conduct; rather, it was a general review.<sup>350</sup>

Brother Wade agreed that the investigation of Brother Chute in December 1993 and January 1994 was kept secret from him and from the other Brothers and teaching staff at Marist College.<sup>351</sup> Brother Turton said the students and parents at Marist College were not told that Brother Chute had been removed because of allegations of sexual abuse because 'no categorical decision had been made' about whether there was sexual abuse.<sup>352</sup> He also said that ACN had requested that Brother Turton not publicly name ACN.<sup>353</sup>

The mandatory reporting by teachers of child sexual abuse did not commence in the ACT until 1 June 1997, notwithstanding that the legislation containing the obligation, the *Children's Services Ordinance 1986*, was passed in 1986.

Thus, by December 1993 the Provincial, Brother Turton, had received one complaint that was clearly about behaviour of a sexual nature. His response was to assure Mr De Marco that Brother Chute would be carefully supervised and not alone with boys.

He then received a second complaint by ACN of a similar nature – of Brother Chute rubbing against him and hugging him, making ACN feel 'yukky'. This occurred in a small, windowless room. It is clear that at this time Brother Chute was not being carefully supervised or, if he was being supervised, he was supervised incompetently and was alone with a boy.

With this knowledge, the then Provincial, Brother Turton, did not tell the Marist Brothers community, other teachers or parents:

- about the investigation of Brother Chute's conduct
- that Brother Chute now had two complaints made against him of a similar sexualised nature
- that Brother Chute was removed because of these complaints.

That information could easily have been conveyed without disclosing the names of the complainants.

### Post-teaching, conviction and expiatory orders

On 1 January 1994 Brother Chute commenced on general duties at the Champagnat Centre in Dundas, New South Wales, where he stayed for three years. On 14 January 1997 he became an Assistant Community Leader at the Farmhouse in Mittagong.<sup>354</sup> Brother Turton gave evidence that there were three distinct facilities at Mittagong that were run by the Marist Brothers:<sup>355</sup>

- the Monastery, in which the community of Brothers lived
- the Farmhouse, a facility for Brothers, adults, young people and people who had left school
- the Centre, which was a centre for school children, usually senior students in year 12.<sup>356</sup>

Brother Chute's Record of Ministry indicates that he was at the Farmhouse from January 1997 to December 2001 and was Assistant Community Leader at the Centre from January 2002 to December 2007.<sup>357</sup> Brother Turton said that he worked as the cook for the 'adult centre'.<sup>358</sup>

Brother Turton also told the Royal Commission that Brother Chute's role at the Farmhouse did not involve him having contact with the Centre, which had commercially engaged cooks,<sup>359</sup> and that when Brother Turton visited he never saw Brother Chute anywhere other than at the Farmhouse.<sup>360</sup> Brother Crowe gave evidence that Brother Chute 'definitely was not' working at the Centre from 2002 to 2007 because 'there was a professional group of cooks and cleaners involved'.<sup>361</sup>

However, a file note by Brother Hill of an interview with Brother Chute on 14 September 2000 notes that Brother Chute had previously had a habit of dropping in to the Centre for morning tea each day.<sup>362</sup> Brother Wade gave evidence that Brother Chute mostly cooked for adults, but he accepted that there was a possibility that Brother Chute could have come into contact with children during this period.<sup>363</sup>

When Brother Turton was asked what steps were taken to avoid Brother Chute having contact with all children, Brother Turton responded that he understood that the Community Leader was aware that Brother Chute was not to work with children but that there were no file notes of any conversations between Brother Turton and the Community Leader about this issue.<sup>364</sup> There was also no evidence of any written guidelines or other documents in place in respect of Brother Chute

or restrictions on his movements. Brother Turton said he did not recall seeing any such document<sup>365</sup> but that such guidelines were not uncommonly communicated verbally.<sup>366</sup>

In 2008, Brother Chute was charged and convicted of 19 sexual offences involving six children who were students at Marist College Canberra.<sup>367</sup> He was sentenced to six years in jail, with the third year to be served by weekend detention and the remaining three years suspended.<sup>368</sup> Brother Chute's Record of Ministry notes that he was 'out of community' from June 2008.<sup>369</sup>

Under section 6 of the *Law Reform (Sexual Behaviour) Ordinance 1976 (ACT)* a person could not be charged with certain sexual offences 12 months after the offence occurred. The provision was repealed in 1985, but the statutory limitation on prosecution still applied to offences from 1976 to 1985. The Statement of Facts tendered by the prosecution in the trial of Brother Chute recorded that the Australian Federal Police had material available to it that Brother Chute committed offences in Canberra in 1976 and 1981 as well as in 1985, 1986, 1987, 1988 and 1989. The offences with which Brother Chute was charged and later convicted all occurred after the 1985 repeal, while those that occurred before 1985 could not be proceeded with as a result of the statutory time limits.

Following Brother Chute's release from jail in 2010, the Provincial, Brother Crowe, imposed a range of restrictions on Brother Chute, including that he must not have any unsupervised contact with children and must be accompanied by a person approved by the Professional Standards Office any time he leaves the Marist Brothers residence.<sup>370</sup>

Brother Crowe also imposed a number of expiatory penalties under canon law, including that Brother Chute is no longer entitled to call himself a Brother, wear the dress or insignia of a Brother, attend gatherings with other Brothers or have voting rights in the Order.<sup>371</sup>

## 2.8 Conclusions

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### Reporting to the Marist Brothers

The Marist Brothers, through a senior Brother or Provincial, knew the following about Brother Chute's sexual offending:

- **St Anne's Primary School, Bondi** (1962) – in 1962 the Community Superior of the Bondi Marist Brothers, Brother Phillips, knew that Brother Chute had admitted to sexually abusing AAI but did not report it to the Provincial or to the police.
- **St Joseph's School, Lismore** (1969) – Brother Weldon, Provincial from 1964 to 1972, and Provincial Council member Brother Dwyer knew that Brother Chute had admitted to touching a child at Lismore. In 1969 the Provincial Council, comprising the then Provincial, Brother Weldon, and Brother Dwyer, who was to become a Provincial, determined to give

Brother Chute a canonical warning for the touching of a child at Lismore and with that knowledge the Provincial transferred him to a position of responsibility as principal of Marist College Penshurst.

- **Marist College Canberra** (1986) – in 1986 the Provincial, Brother Dwyer, was told of an allegation that Brother Chute’s hand had contact with a boy’s penis. Provincial Dwyer did nothing, notwithstanding his knowledge of the admission in 1969 by Brother Chute and that it warranted a canonical warning.
- **Marist College Canberra** (1983–1989) – the Provincial, Brother Dwyer, permitted Brother Chute to keep teaching children at Marist College Canberra during his term as Provincial from 1983 to 1989 with the knowledge he had of the 1969 admission, the canonical warning and the 1986 allegation.
- **Marist College Canberra** (1983–1988, 1993) – the Provincial, Brother Dwyer, did not tell two headmasters of Marist College – Brother Heinrich (headmaster from 1983 to 1988) and Brother Wade (headmaster from 1993 to 2000) – that Brother Chute had admitted to touching a child at Lismore and that in 1969 the Provincial Council determined that that conduct warranted a canonical warning.
- **Marist College Canberra** (1993) – in late 1993, Brother Turton, the Provincial from 1989 to 1995, received an allegation which conveyed unwanted conduct of a sexual nature by Brother Chute.
- **Marist College Canberra** (1993) – in December 1993, the Provincial, Brother Turton, received a second complaint of a similar nature. With this knowledge, Provincial Turton did not tell the Marist Brothers’ community, other teachers or parents of:
  - the investigation of Brother Chute’s conduct that he initiated
  - that Brother Chute had now had two complaints made against him of a similar sexualised nature
  - that Brother Chute was removed because of these complaints.
- The Marist Brothers kept no written record of these accumulated allegations of Brother Chute’s repeated offending conduct.

Between 1962 and 1972, and 1983 and 1993, the relevant Provincial of the Marist Brothers took no, or no adequate, steps to ensure that Brother Chute did not have contact with children through his work as a Marist Brother.

## Reporting to the police

The Marist Brothers did not report any allegations of child sexual abuse to the police in the period 1962 to 1993. The Church parties acknowledged that ‘It is today a great source of regret to the Marist Brothers that Brother Chute’s conduct was not reported to the police much earlier’ so that later instances of abuse would not have occurred.<sup>372</sup>

Brother Phillips was aware of one admission by Brother Chute in 1962 and that Provincial Brother Weldon and (later Provincial) Brother Dwyer were aware of one admission of sexual abuse of a child by Brother Chute in 1969. Brother Heinrich was aware of an allegation of child sexual abuse against Brother Chute in 1986 and he informed Brother Dwyer. None of those Brothers reported the allegations or the admissions to the police. Provincial Brother Turton did not report the allegations made by Mr De Marco and ACN in 1993 to the police because he did not consider they amounted to sexual abuse.

It is also the case that there is no record that AAI's parents, who were aware of the sexual abuse of their child, reported Brother Chute to the police in 1962. Brother Chute said he told the parents of the boy at Lismore about the assault in about 1967. Brother Heinrich spoke with the parents of ACK in 1986 and informed them they could go to the police but considered his obligation was to inform the Provincial. Mr De Marco did not inform the police in 1993 but later did so, in 2001. ACN, accompanied by the school counsellor, informed the police sometime between December 1993 and June 1994.

## 3 Brother Gregory Sutton

### 3.1 Formation and teaching career

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Gregory Sutton entered the Juniorate of the Marist Brothers at Mittagong in 1967 at the age of 16.<sup>373</sup> After completing his leaving certificate, he then entered the Novitiate, taking his final vows in 1970.<sup>374</sup> During 1971 and 1972 he did his Scholasticate at the Marist Brothers' Champagnat College, New South Wales.<sup>375</sup>

Brother Sutton's first teaching appointment was at a Marist Brothers school in North Queensland in 1973. After that, he taught continuously for the Marist Brothers in Queensland, the ACT and New South Wales until April 1987, when he was removed from teaching by the then Provincial, Brother Dwyer.<sup>376</sup>

Brother Sutton's employment history with the Marist Brothers may be summarised as follows:

- 1973 to 1975: primary teacher at a North Queensland school
- 1976 to 1977: primary teacher at Marist Sacred Heart Primary School in Mosman, New South Wales
- 1978 to 1979: primary teacher at Marist Brothers Primary School in Eastwood, New South Wales
- 1980 to 1982: primary teacher at Marist College Junior School in Canberra, ACT
- 1983 to 1984: primary teacher at St Thomas More Primary School in Campbelltown, New South Wales
- 1985 to October 1986: primary teacher at St Carthage's Primary School in Lismore, New South Wales
- November to December 1986: 'renewal course' at Marcellin Hall in New Zealand
- January to April 1987: primary teacher at St Carthage's Primary School in Lismore, New South Wales
- April to June 1987: general duties, Provincial House in Drummoyne, New South Wales
- July to December 1987: secretarial duties, Catholic Theological Union
- January 1988 to July 1989: administrative duties, Catholic Theological Union
- August 1989 to June 1990: 'renewal course' at Southdown Institute, Ontario, Canada
- July 1990 to August 1991: student at Loyola University, Chicago, United States
- October 1991: leaves Marist Brothers
- 1992: intern at elementary school in St Louis, Missouri, United States
- 1994 to August 1995: principal at St Dismas Elementary School, St Louis, Missouri, United States.<sup>377</sup>

The Church parties' submissions challenged the credibility of Brother Sutton based on evidence tendered in the public hearing. They submit that psychological assessments of him at Southdown concluded that he was evasive and a self-confessed manipulator and that he had a 'habitual practice of secretiveness and superficiality'.<sup>378</sup> They submit that he lied on numerous occasions, including in

replying to questions from Sister Julia O’Sullivan (Sister Julia) in 1985 and 1986, in reply to questions from Mrs Jan O’Grady in those years and in reply to questions from Brother Turton in 1985, twice in 1986 and in 1989.<sup>379</sup> The Church parties submit that ‘no reliance can be placed in relation to any relevant contested matter.’<sup>380</sup> Brother Turton’s counsel made a similar submission as to Brother Sutton’s credibility.<sup>381</sup>

## 3.2 Allegations against Brother Sutton

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On 15 August 1995 Brother Sutton was arrested in Missouri in the United States with respect to 24 alleged sexual offences against seven of his former students in Australia.<sup>382</sup> He was extradited to Australia on 29 April 1996, where a further 39 charges of sexual abuse of children were brought against him.<sup>383</sup>

On 2 August 1996, Brother Sutton pleaded guilty to a total of 67 child sex offences in relation to 15 students at schools in New South Wales:

- 13 counts of sexual intercourse with a child under 16 years
- 53 counts of indecent assault or an act of indecency
- one count of gross indecency.<sup>384</sup>

Brother Sutton was sentenced in November 1996 to 18 years imprisonment, with a minimum term of 13 and a half years.<sup>385</sup> In December 2000, his sentence was reduced on appeal to 15 years, with a minimum term of 12 years.<sup>386</sup> In total, Brother Sutton has been the subject of allegations of child sexual abuse by 27 of his former students.

Table 2 below sets out a summary of the allegations of child sexual abuse by Brother Sutton that the Marist Brothers have received. It is compiled from Marist Brothers Claims Data,<sup>387</sup> the accuracy of which was agreed to by Brother Crowe,<sup>388</sup> and is consistent with the Statement of Facts tendered at Brother Sutton’s 1996 sentencing proceedings.<sup>389</sup>

Table 2 includes the pseudonym of the student concerned, the date of the alleged child sexual abuse, the school concerned, whether Brother Sutton was charged or convicted and the total financial payment that each victim received. With respect to the matters that have been finalised, the Marist Brothers and Catholic Church Insurance have made financial payments without any admission of liability.

### Prior knowledge

Following Brother Sutton’s arrest in 1996, a number of former students initiated civil proceedings against the Marist Brothers concerning alleged child sexual abuse by Brother Sutton. In response to these proceedings, in 1997 Catholic Church Insurance engaged Carrington Investigations to investigate whether the Marist Brothers had ‘prior knowledge’ of Brother Sutton’s alleged abuse.

As part of this investigation, statements were obtained from teachers, principals and Marist Brothers, including former Community Superiors and former Provincials, Brother Howard, Brother Turton and Brother Dwyer, who is now deceased.<sup>390</sup>

In 2003, in response to civil claims relating to alleged abuse by Brother Sutton in the early 1970s, Brother Turton, then Director of Professional Standards for the Marist Brothers, interviewed Brothers who lived and taught with Brother Sutton in North Queensland in the early 1970s, including the then Community Superior and Provincial.

Table 2: Complaints of child sexual abuse against Brother Sutton

Victim	Date of alleged abuse	Conviction	Total financial payment received
<i>North Queensland school, Queensland</i>			
ADO	1970 <sup>391</sup>	Not charged	
ACW	1973	Not charged	\$25,000
ADF	1974	Not charged	Claim in progress
<i>Marist Sacred Heart Primary School, Mosman, New South Wales</i>			
ADP	1976	Convicted	Has not made claim
ADA	1976	Convicted	\$135,000
ADS	1977	Convicted	\$55,000
ADI	1977	Convicted	\$110,000
<i>Marist Brothers Primary School, Eastwood, New South Wales</i>			
ADV	1979	Convicted	\$90,645
REDACTED	1979	Convicted	Has not made claim
ADU	1979	Convicted	Has not made claim
ADX	1979	Convicted	Has not made claim
<i>Marist College Junior School, Canberra, Australian Capital Territory</i>			
ADJ	1980	Not charged	Claim in progress
ADK	1980	Not charged	\$185,000
ACM	1980	Not charged	\$26,666
ADD	1980	Not charged	\$57,500
LAE	1980	Not charged	\$75,000
ADC	1981	Not charged	\$70,000
ADR	1981	Not charged	\$135,000
ACX	1982	Not charged	\$100,000

Victim	Date of alleged abuse	Conviction	Total financial payment received
<i>St Thomas More Primary School, Campbelltown, New South Wales</i>			
ACY	1983	Convicted	\$65,000
ADM	1984	Convicted	\$93,000
ADQ	1984	Convicted	\$210,000
<i>St Carthage's Primary School, Lismore, New South Wales</i>			
ACV	1985	Convicted	\$130,000
ACT	1985	Convicted	Has not made claim
ADB	1985	Convicted	Has not made claim
ACU	1986	Convicted	\$190,000
ACZ	1986	Convicted	\$65,000

### 3.3 Brother Sutton's first school in North Queensland (1973–1975)

Brother Sutton commenced his first teaching appointment in January 1973 at a Marist Brothers primary school in North Queensland and taught there until the end of 1975. He has not been convicted of any offences in relation to this period, but the Marist Brothers have made payments to two former students at the school who claimed they were sexually abused by him: ACW and ADF.<sup>392</sup>

In 1989 Brother Sutton admitted to then Provincial Brother Turton that he had sexually abused ADO. This evidence is considered further below.

During the period that Brother Sutton taught at the North Queensland school, former Brother John Holdsworth was the principal of the school and former Brother Denis Doherty was the teacher in charge of the primary school students.<sup>393</sup> Brother Elston Mullins was the Superior of the Marist Brothers community in the North Queensland town in 1973 and Brother Holdsworth succeeded him, filling the position from 1974 to 1977.<sup>394</sup>

As the person in charge of the primary school, Brother Doherty was responsible for supervising Brother Sutton's professional performance and day-to-day conduct in the classroom.<sup>395</sup> As the Community Superior, Brother Holdsworth considered it was his role 'to act as leader in matters of prayer and general living'<sup>396</sup> but noted that he was 'not "in charge" of [Brothers] in the sense of them reporting to me, or me being responsible for all aspects of their behaviour'.<sup>397</sup>

## Brother Doherty's evidence

Brother Doherty said in his statement to the Royal Commission that throughout 1973 he gradually became uneasy about certain interactions he observed between Brother Sutton and various students.<sup>398</sup> The basis for Brother Doherty's unease was that Brother Sutton had selected two or three children as his 'pets' and gave them favourable treatment compared with other children at the school.<sup>399</sup> Brother Doherty stated that Brother Sutton allowed his favourites to misbehave and 'acted more like their playmate than their teacher'.<sup>400</sup>

The Brothers' residence was located approximately 20 metres from the school grounds and Brother Doherty gave evidence that it was Brother Sutton's practice to arrive early at the school in the morning, usually before the other Brothers.<sup>401</sup> Brother Doherty said that Brother Sutton often had children in his classroom before school started for the day.<sup>402</sup>

Brother Doherty said that one day in 1973 he entered Brother Sutton's classroom before class to pass on a telephone message and saw Brother Sutton wrestling on the ground with three boys from his grade 4 class. Brother Doherty said that when Brother Sutton became aware that he was standing there he 'quickly stood up and went red in the face'.<sup>403</sup> Brother Doherty subsequently warned Brother Sutton not to engage in that kind of behaviour in the future and counselled him against having children in the classroom outside of hours, as it was 'just not good practice'.<sup>404</sup>

Brother Doherty stated that Brother Sutton frequently used the Brothers' car, which they shared. He saw Brother Sutton with a child in the car on one occasion and on other occasions Brother Sutton told him he had been with students in the car.<sup>405</sup>

Brother Doherty gave evidence that in 1973 and 1974 he was also concerned that 'just about every time' he saw Brother Sutton undertaking his allocated task of mowing the school lawn the same boy was 'perched between his legs' on the seat of the ride-on tractor mower.<sup>406</sup> Brother Doherty considered that it 'didn't look right ... [it was] verging on scandalous' because there was 'no need to be that close to a student' and Brother Sutton's actions in doing so could potentially expose the Brothers to accusations of interfering with children.<sup>407</sup> Brother Doherty said that he said to Brother Sutton, 'you can't do that, you are in front of the public'.<sup>408</sup>

In 1997, in connection with civil proceedings brought by ADS against Brother Sutton (the 1997 affidavit), Brother Howard and the Trustees of the Marist Brothers, Brother Doherty swore an affidavit about sexual abuse at the North Queensland school. In the affidavit he set out his concerns about Brother Sutton having students as 'pets', arriving at school early, wrestling with three grade 4 boys and mowing the lawn with a boy between his legs.<sup>409</sup>

Brother Doherty recalled Brother Sutton asking him for permission to take some children to a holiday house at Mission Beach in Queensland.<sup>410</sup> In his statement to the Royal Commission Brother Doherty said that he refused permission because he was worried about 'safety' and wanted other adults there, and he was not worried about him interfering with children. However, in his

oral evidence he said that he was worried about Brother Sutton interfering with children and the word 'safety' was 'a gentle way of saying "You're a paedophile. I don't want you going there on your own."' <sup>411</sup> However, those words were not said to Brother Sutton (or later to Brother Holdsworth).

Brother Doherty refused permission for the Mission Beach trip and Brother Sutton took the matter up with Brother Holdsworth. <sup>412</sup> In his 1997 affidavit Brother Doherty stated that when he and Brother Holdsworth spoke about the trip he told Brother Holdsworth that 'It doesn't look right. I am suspicious of him.' <sup>413</sup> He said that Brother Holdsworth replied, 'It will be okay this time, but next time he'll have to take the fathers.' <sup>414</sup>

In 1974 Brother Doherty said that he raised with Brother Holdsworth the serious 'petting' or 'favouriting' of children, the wrestling with boys and the placement of a child between his legs on the tractor mower. <sup>415</sup> He said that he used 'heavy petting' to mean 'very advanced teacher-pet type relationships'. <sup>416</sup> He said that he got the impression from Brother Holdsworth that he did not share Brother Doherty's concerns. <sup>417</sup> He said he was not aware of any response by Brother Holdsworth. <sup>418</sup> He told us that he raised the issue with Brother Holdsworth on two to three occasions. <sup>419</sup>

Brother Doherty said in his statement that he 'felt terribly conflicted though because I could never be sure if my suspicions were born out of my general distaste for him or whether he was actually interfering with kids'. <sup>420</sup> Brother Doherty did not say that he told Brother Holdsworth that Brother Sutton had sexually abused any child.

Brother Doherty said that the then Provincial, Brother Howard, visited the North Queensland town in 1975 as part of a number of annual visits to Marist Brothers in the Sydney Province. <sup>421</sup> He said that such occasions were an opportunity to state whether you were happy in the place and whether you wanted to be shifted. He said that it was in the context of such frank discussions that Brother Sutton was mentioned. <sup>422</sup> In the meeting Brother Doherty said he told Brother Howard, 'I am suspicious about Greg. I fear that he may be interfering with children.' <sup>423</sup> He says that Brother Howard replied, 'It sounds serious, we will move him to Sydney for counselling.' <sup>424</sup>

Brother Doherty said that he mentioned to Brother Howard 'the rolling around on the floor, the teacher's pets and Greg driving the School car on many occasions with children in it'. <sup>425</sup> He said he encouraged Brother Howard to speak with the new principal, Sister Kerin Caldwell, which he understands that Brother Howard did. <sup>426</sup> He told us that he never specifically mentioned any instances of sexual abuse by Brother Sutton to Brother Howard. <sup>427</sup>

In 1975 there was correspondence between Brothers Doherty and Howard. On 15 August 1975 Brother Howard wrote to Brother Doherty saying, 'Don't worry too much about the Greg situation – we will be able to handle that for next year. Thanks for what you do for him, despite the difficulties.' <sup>428</sup> Brother Doherty gave evidence that he took this to mean that Brother Sutton 'was within reaching distance of counselling and would be closely observed and cared for'. <sup>429</sup> Brother Doherty had kept the letter, but the Marist Brothers did not produce a copy to the Royal Commission.

In early 1976 Brother Sutton was transferred from the North Queensland school to Sacred Heart Primary School in Mosman, New South Wales. Brother Doherty said that when he inquired of Brother Howard in 1976 about how Brother Sutton was going he was ‘rudely and savagely told ... to mind my own business’.<sup>430</sup>

While not disputing Brother Doherty’s honesty, the Church parties made submissions about Brother Doherty’s memory of certain events, particularly what he told Brother Holdsworth and the then Provincial, Brother Howard.

The Church parties say there were a number of inconsistencies between Brother Doherty’s 1997 affidavit and his 2014 statement to the Royal Commission. Those were:

- Brother Doherty said in 1997 he complained about Brother Sutton to his superior Brother Mullins in 1973, but in 2014 he said he raised it with Brother Holdsworth in 1974.<sup>431</sup>
- Brother Doherty was equivocal on whether he was worried about Brother Sutton interfering with children on the Mission Beach trip.
- Brother Doherty was more detailed in his account of the conversation with Brother Howard in 2014 than in 1997.<sup>432</sup>

Further, the Church parties submit that the words attributed to Brother Howard – ‘It sounds serious, we will move him to Sydney for counselling’ – did not appear until 2014. That submission is not accepted, as the words appear in paragraph 7 of the 1997 affidavit.<sup>433</sup>

These matters will be further considered after setting out the evidence of Brothers Holdsworth and Howard.

## Brother Holdsworth’s evidence

Brother Holdsworth<sup>434</sup> provided a statement to the Royal Commission and gave oral evidence. In his statement he said that he thought Brother Sutton was more suited to primary school than high school and that he ‘seemed to enjoy the company of the children he was teaching’. He recalled him driving children around on a tractor and having a model train set up in his classroom, about which he was enthusiastic.<sup>435</sup> He said he was not concerned by this because he did not understand in 1974 and 1975 that this sort of activity may have been indicative of child sexual abuse.<sup>436</sup>

Brother Holdsworth said that Brother Sutton did not report directly to him.<sup>437</sup> He said he saw Brother Sutton with children and thought he was ‘very interactive’ with them.<sup>438</sup> His office was located away from where Brother Sutton taught and he did not see him playing with children or at lunchtime.<sup>439</sup> He was not aware that Brother Sutton left early for class or that he had been wrestling with children.<sup>440</sup> He also said he was not aware of Brother Sutton ‘favouriting’ children or having ‘teacher’s pets’.<sup>441</sup>

He said in his statement that he never received any complaints or suggestions of inappropriate behaviour or sexual misconduct by Brother Sutton.<sup>442</sup> He went on to say, 'I saw nothing untoward in his behaviour, and I received no information of that kind about him.'<sup>443</sup> He said he was not aware 'of any reason to suspect that Brother Sutton might be engaging in any sexual or inappropriate activity with any of the students'.<sup>444</sup>

In his statement Brother Holdsworth said that he did not recall Brother Doherty 'ever reporting concerns to me regarding the matters set out in paragraphs 5 and 6 of Mr Doherty's affidavit'. He said his recollection is 'that Mr Doherty never said any such things to me'.<sup>445</sup> Paragraph 5 of the 1997 affidavit contains the account of the Mission Beach conversation: 'It doesn't look right. I am suspicious of him.' Paragraph 6 contains Brother Doherty's account of him telling Brother Holdsworth about serious petting, wrestling with young boys and having a boy with him on the tractor mower.<sup>446</sup>

Brother Holdsworth provided accounts in 1997 and 2003 of his interaction with Brother Sutton in the context of civil proceedings commenced against the Marist Brothers concerning Brother Sutton's abuse of children. In his 1997 affidavit he said: 'there was nothing in [Brother Sutton's] behaviour which caused me concern. There was never any suggestion of sexual impropriety on his part.'<sup>447</sup>

Brother Turton later interviewed Brother Holdsworth in 2003 and noted:

[Doherty] often complained about unprofessional and inconsistent behaviour by [Sutton]. The main thing that Holdsworth remembers is [Doherty] objecting to the amount of time that [Sutton] had the car away from the community and often he would have a single student with him. [Doherty] did not think this was appropriate behaviour.<sup>448</sup>

Brother Turton further recorded Brother Holdsworth as saying, 'As it turns out [Brother Doherty] certainly did say to the Provincial that he was not happy with the work of [Brother Sutton] nor with the professional level of his relationship with students.'<sup>449</sup> Brother Holdsworth gave oral evidence that he no longer has an independent recollection of this interview but accepts the contents of the file note as accurate.<sup>450</sup>

Brother Holdsworth gave further evidence that he did not request or make a recommendation to Brother Howard that Brother Sutton be moved from the school in North Queensland, and Brother Howard did not communicate to Brother Holdsworth his reasons for transferring Brother Sutton.<sup>451</sup> Brother Turton's file note of the interview with Brother Holdsworth in 2003 records the following:

Holdsworth says he did not request a move for [Brother Sutton] and when [Brother Sutton] was moved at the end of the second year he assumed it was because the two of them had commented namely [Brother Sutton] and [Brother Doherty] that they did not get on well.<sup>452</sup>

## Brother Howard

Brother Howard was the Provincial from 1972 to 1976 and died in January 2012. While there was no statement from Brother Howard, there were two file notes taken – one in 1997 and one afterwards (undated), where it appears Brother Doherty's account was raised with Brother Howard.

In a note that Brother Howard provided to Carrington Investigations dated 7 March 1997, he said that his memory was 'far from brilliant', he had 'absolutely no recollection of anything described by [Doherty] in the [1997] affidavit' and he 'would not ... have recalled that [Sutton] was in the community there at the time'.<sup>453</sup> As Brother Doherty's affidavit was sworn on 27 March 1997, it is likely the date of the note is inaccurate. He said that 'if the nature of the accusations raised by [Doherty] were seen to be serious, then someone would have remembered them'.<sup>454</sup> Brother Howard then says that he considered Brother Doherty to have been lacking in both judgment and credibility with the Brothers. He said that this 'could have been operative in a number of ways including a possible lack of sensitivity to any complaints [Doherty] may have had about the behaviour of [Sutton]'.<sup>455</sup>

There is a further unsigned note from Brother Howard dated 8 April 1997:<sup>456</sup> 'David [sic] Doherty said nothing to me about any of his suspicions in a way that made his concerns clear to me in '73 or '74.'<sup>457</sup> He further stated:

In his affidavit [Doherty] ... says that he spoke to me about [Sutton] in '75. If he had raised such concerns with me I would have spoken to the brother concerned and to the headmaster as I had done in the past. I can't deny that we did discuss it but if it did happen I wouldn't have acted in the way suggested. I can only point to my track record as to my actions taken before.<sup>458</sup>

Brother Turton recorded an undated file note of an interview with Brother Howard in relation to a civil claim. The file note is about Brother Howard's decision to transfer Brother Sutton to Marist Brothers Primary School, Mosman, at the end of 1975:

[Howard] was quite sure that there had been no reference to any question of abuse regarding the move with [Sutton]. [Howard] was aware that [Sutton] and [Doherty] did not enjoy a good relationship and that [Doherty] as teacher in charge of the primary school was not satisfied with [Sutton's] work in class. He was also aware that [Doherty] was not happy with [Sutton] having excess use of the community car and at times having students in the car with him. However he insisted that there had been no mention of any question of sexual abuse or the alike [sic]

What made this issue a more difficult one was that [Doherty] himself was regarded as an angry young man and not always reliable. He was given to outbursts. When Br [Howard] did not receive any complaints from the Headmaster John Holdsworth regarding unprofessional or wrong behaviour by [Sutton] he attributed the strong feelings of [Doherty] to the bad relationship between [Sutton] and [Doherty]. Br Charles confirmed

that he did move [Sutton] as it seemed that was the only way to try to achieve a little more harmony and peace in the school.<sup>459</sup>

The letter from Brother Howard to Brother Doherty of 15 August 1975 is set out above. The letter is not mentioned in the three file notes mentioned.

## Conclusions

Brother Doherty said he did not refer to sexual abuse in any of the matters he raised with Brother Holdsworth and Brother Holdsworth said that he did not receive any allegations of sexual misconduct by Brother Sutton. However, Brother Holdsworth did accept that Brother Doherty raised concerns with him that Brother Sutton was unprofessional and inconsistent. Brother Holdsworth also accepted that Brother Doherty raised concerns with him about the periods of time Brother Sutton often had the car with a single student in it away from the community. Brother Holdsworth was not concerned by Brother Sutton's behaviour that he had observed and did not accept (at the time) that having a child in a car was inappropriate.

Brother Holdsworth said that, while he thought Brother Sutton having a child with him on the tractor was inappropriate in hindsight, at the time he would not have come to that conclusion.<sup>460</sup>

Notwithstanding the inconsistencies in his evidence over time, we accept that Brother Doherty passed on his concerns about Brother Sutton's behaviour (the tractor, the wrestling, the 'petting' and the use of the car) to Brother Holdsworth in the period 1974 to 1975. However, it is unlikely and indeed it was his evidence that Brother Holdsworth concluded at the time that the behaviour conveyed to him was not suspicious or indicative of sexual abuse of children. This may reflect Brother Holdsworth's personal views or the views of the general community in 1974 and 1975.

The Church parties submit that it could not be accepted that Brother Doherty told Brother Howard in 1975 that Brother Sutton 'may have been interfering with children' because Brother Howard could not recall the conversations with Brother Doherty and would have acted differently if the conversation took place. The submission also drew attention to the various inconsistencies in Brother Doherty's accounts.

However, it is clear from the two file notes taken by Brother Turton that Brother Doherty spoke to the then Provincial, Brother Howard, about Brother Sutton.<sup>461</sup> Brother Holdsworth was aware that Brother Doherty had raised with Brother Howard what Brother Holdsworth described as 'unprofessional and inconsistent behaviour', including the use of the car.

Brother Howard was aware that Brothers Sutton and Doherty 'did not enjoy a good relationship' and also that Brother Doherty was not happy with Brother Sutton having 'excess use of the car' and 'having students in the car with him'.<sup>462</sup> The most likely source of Brother Howard's knowledge about these matters was Brother Doherty given that Brother Doherty said he spoke with Brother Howard about Brother Sutton on his annual visit to see the Brothers.

Brother Howard accepted that Brother Doherty raised the use of the car with children, which was at least one of the bases for Brother Doherty's suspicions. Further, the letter of 15 August 1975 confirms an acknowledgement of an issue of concern with Brother Sutton ('the Greg situation') and that it was being 'handled'. Brother Sutton was transferred to Mosman at the end of 1975, which at least had the effect of removing Brother Sutton from working with Brother Doherty. As was noted in the file note, 'it seemed that was the only way to try to achieve a little more harmony and peace in the school'.<sup>463</sup>

We take into account that Brother Doherty did not tell Brother Holdsworth that he thought Brother Sutton was interfering with children. We also take into account the passage of time and that the first time Brother Doherty recorded the comment was in 1979 – some 20-odd years after the exchange. We are unable to be satisfied to the requisite extent that the conversation with Brother Howard was precisely as Brother Doherty has set out. However, we are satisfied that Brother Doherty conveyed his concerns about Brother Sutton to Brother Holdsworth but do not conclude that those concerns were expressed as 'interfering' with children.

### 3.4 Mosman, Eastwood, Canberra and Campbelltown (1976–1984)

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#### Marist Sacred Heart Primary School, Mosman (1976–1977)

At the start of the 1976 school year, Brother Sutton commenced teaching at Marist Sacred Heart Primary School in Mosman, Sydney.<sup>464</sup> He taught there for two years from January 1976 until December 1977.

In 1996 Brother Sutton was convicted of the following child sex offences against four boys at the school, each of whom was aged between 10 and 11 years when the offences occurred:

- three counts of indecent assault against ADA. On each occasion, Brother Sutton fondled ADA's genitals, and on one occasion Brother Sutton placed ADA's hand on Brother Sutton's penis. The offences occurred in Brother Sutton's classroom and at the Brothers' residence<sup>465</sup>
- three counts of indecent assault against ADP. Each incident involved Brother Sutton masturbating ADP and attempting to force ADP to masturbate and perform oral sex on him. The offences occurred on school premises in the sports storeroom and in Brother Sutton's bedroom at the Brothers' residence<sup>466</sup>
- three counts of indecent assault against ADS involving mutual masturbation in Brother Sutton's classroom during lunch time. On one occasion, ADI was present and Brother Sutton attempted to force the boys to touch each other's genitals<sup>467</sup>

- three counts of indecent assault against ADI involving mutual masturbation. The first incident occurred in Brother Sutton's classroom with ADS present, the second at a school camp and the third in Brother Sutton's bedroom at the Brothers' residence.<sup>468</sup>

There is evidence that one concern was raised about Brother Sutton's conduct during the two years that Brother Sutton taught at the school. According to a statement provided to Carrington Investigations in 1997, in or about 1976 one of the lay teachers at the school approached the then Superior of the Mosman community, Brother Kevin Hopson, and said words to the effect that 'it might be good to tell Brother Gregory not to be in the Sports room with just one or two kids'.<sup>469</sup>

Brother Hopson stated that the teacher did 'not expand upon that comment'. He subsequently addressed a staff meeting and reinforced that having only one or two children alone in the classroom was an 'unwise' practice for any teacher.<sup>470</sup> Brother Hopson said that he did not receive 'any form of complaint' about Brother Sutton being involved in sexual activity whilst at the school. Brother Hopson says in hindsight the lay teacher's remark was of some significance but that at the time he thought that the lay teacher was 'just being cautious'.<sup>471</sup>

### Marist Brothers Primary School, Eastwood (1978–1979)

In January 1978 Sutton was transferred to the Marist Brothers Primary School in Eastwood, Sydney.<sup>472</sup>

In 1996 Brother Sutton was convicted of offences against four students at the school, each of whom was aged 10 or 11 years at the time of the abuse:

- one count of indecent assault against ADU. The first offence occurred on school grounds and involved Brother Sutton fondling ADU's penis.<sup>473</sup>
- six counts of indecent assault against ADV. The offences involved Sutton fondling ADV's genitals and masturbating him, in one instance in the presence of ADX. The offences occurred in the photocopier room at the school and Brother Sutton's bedroom at the Marist Brothers' residence in Eastwood<sup>474</sup>
- two counts of indecent assault against ADX. The offences involved mutual masturbation and occurred on school premises.<sup>475</sup>
- one count of indecent assault against REDACTED.<sup>476</sup>

In 1997 the Community Superior at the time, Brother John Callaghan, told Carrington Investigations that Brother Sutton did not exhibit any tendencies or express any views that struck him as unusual or a cause for concern:

He did appear to be more immature than his colleagues ... he had a model train set in his classroom and frequently had the trains running around during his classes.

While it did not raise my suspicions at the time I did observe that Brother Gregory took some of the boys in his class out for drives in his motor car. With hindsight I would now

regard such behaviour as something to be regarded with concern, something that should be investigated, something that the Brother should be warned against. At the time I saw it as indicative of Sutton's immaturity, that he preferred the company of small boys to that of adults.

At no time did I receive a complaint from a parent, a Brother, a student or anyone else that suggested that [Sutton] was sexually involved with one of his students or had acted improperly in any way ...<sup>477</sup>

Brother Callaghan also told Carrington Investigations that he had not received any complaints from anyone that suggested that Brother Sutton was sexually involved with one of his students or had acted improperly in any way.<sup>478</sup>

In his 2007 statement, Brother Callaghan also indicated that the principal of the school, Brother Brian Blayney, mentioned to him on one occasion that Brother Sutton often kept the door of his classroom locked during class time.<sup>479</sup> Brother Callaghan stated that he did not interpret Brother Blayney's remark as a complaint or suspicion that Brother Sutton may have been engaging in 'improper activity'. Rather, Brother Callaghan thought that Brother Blayney meant this statement as a reflection on his teaching ability and was suggesting that he kept the door locked so that no-one could make a quick check on the lesson progress. Further, Brother Callaghan 'assumed that he was locking the door because he was worried that some of the children might interfere with his train set'.<sup>480</sup>

### Marist College Junior School, Canberra (1980–1982)

In January 1980, Brother Sutton was transferred to Marist College Junior School in Canberra.<sup>481</sup> He taught at the school until the end of the 1982 school year.

Brother Sutton was not convicted of any offences relating to this period. However, in civil proceedings brought against the Marist Brothers, eight former students have alleged that Brother Sutton sexually abused them.<sup>482</sup>

There was no evidence that the Marist Brothers or the school received allegations of child sexual abuse against Brother Sutton in the period 1980 to 1982.

### St Thomas More Primary School, Campbelltown (1983–1984)

At the beginning of the 1983 school year, Brother Sutton was transferred from Canberra to St Thomas More Primary School in Campbelltown.<sup>483</sup> In 1996 Brother Sutton was convicted of offences committed at the time against three students at the school: ADM, ADQ and ACY.<sup>484</sup>

ADM and ADQ gave evidence at the public hearing; ACY did not. ADM and ADQ were both 10 years of age in 1984 and in Brother Sutton's year 5 class. ADM and ADQ spoke about the nature of the abuse they suffered at the hands of Brother Sutton and the far-reaching impact of the abuse on their lives.

## ADM

Brother Sutton was convicted of two counts of sexual intercourse with a child under 16, four counts of indecent assault and one count of an act of indecency in relation to ADM. The offences involved Sutton digitally penetrating ADM's vagina whilst she sat on his knee during class time; rubbing her vagina in the school media room; touching and kissing her vagina in his classroom before school started; forcing her to masturbate him to ejaculation in the school storeroom; and forcing her to kiss him on the penis.<sup>485</sup>

ADM gave evidence that 'the effect of the abuse by [Brother Sutton] has been profound and had a significant impact on me in a number of areas of my life'.<sup>486</sup> ADM gave evidence that the abuse perpetrated upon her by Brother Sutton has resulted in her developing chronic depression and abusing alcohol in her early adulthood.<sup>487</sup> ADM also gave evidence that she finds it difficult to maintain relationships and is over-protective of her own children because the abuse has made it hard for her to 'enjoy a normal childhood, adolescent and adult life'.<sup>488</sup>

ADM has said that she knew that what Brother Sutton was doing to her was wrong, but she felt that she could not tell her parents about it because it should not be happening and she thought that she would get into trouble.<sup>489</sup> It was not until ADQ made her complaint to the police in 1989 that ADM told her family about the abuse by Brother Sutton and made a report to the police.<sup>490</sup>

## ADQ

In relation to ADQ, Brother Sutton was convicted of two counts of sexual intercourse with a child under 16 and two acts of indecency.<sup>491</sup>

ADQ gave evidence that during the year Brother Sutton forced her to touch his penis and kiss him on the mouth 'so many times that I lost count'.<sup>492</sup> On one occasion in the school media room, Brother Sutton forced her to touch ADM's vagina while he watched.<sup>493</sup> A separate incident involved Brother Sutton forcing her to kiss his penis.<sup>494</sup>

ADQ also gave evidence that Brother Sutton digitally penetrated her vagina on numerous occasions, often while she was sitting on his lap during class time in the presence of other students, including ADM.<sup>495</sup> On more than one occasion Sutton threatened to kill her family if she told anyone about the abuse.<sup>496</sup>

ADQ gave evidence that the abuse occurred at various locations on school premises, including in Brother Sutton's classroom before school, on the playground during recess and lunch, in the school media room and shed, and once at a school fete.<sup>497</sup>

In 1989, when she was 15, ADQ told her boyfriend and a friend about what Brother Sutton had done to her. Her friend then told ADQ's parents.<sup>498</sup> ADQ's parents took her to Camden Police Station in Sydney, where she reported the sexual abuse by Brother Sutton at the school and gave police a statement.<sup>499</sup>

On the basis of the statements given by ADM and ADQ, in August 1989 the NSW Police attempted to locate Brother Sutton. The police were told by those at the St Thomas More Primary School that he no longer worked there. They discovered that he had left the country some days after the statements were given. This issue is considered further below.

ADQ also gave evidence about the impact of the abuse on her life. She stated:

The abuse has caused me to have many emotional problems. I have mood swings and become very angry. I have low self-esteem, can't take a compliment and have trouble communicating with people. I believe that this stems from the fact that I cannot trust anyone. I also have nightmares and flash backs about the abuse by [Sutton].<sup>500</sup>

ADQ said in her statement that what Brother Sutton did to her took away her ability to have a 'normal' relationship and experience 'normal' things with her own children.<sup>501</sup>

## ACY

In relation to ACY, Brother Sutton was convicted of one count of sexual intercourse of a child under 16, four counts of indecent assault, one count of indecency and a further count of gross indecency.<sup>502</sup>

All of the offences except one were committed when ACY was 11 years of age. They included Brother Sutton masturbating and performing fellatio on ACY and forcing ACY to perform the same on him. The offences mostly occurred in a car.

An act of gross indecency, which involved mutual masturbation, occurred in June 1987. ACY was 15 years old at the time of the act of gross indecency. As set out below, this was a couple of months after Brother Sutton had been removed from teaching by then Provincial Brother Dwyer. His removal clearly was not effective in preventing him from abusing ACY on a further occasion.

There was no evidence that the sexual abuse of ADM, ADQ or ACY was brought to the attention of the Marist Brothers during the years 1983, 1984 and 1987.

### 3.5 St Carthage's Primary School, Lismore (1985–1987)

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Brother Sutton commenced teaching at St Carthage's Primary School in Lismore in January 1985.<sup>503</sup> The school was operated by the Presentation Sisters. Teachers were provided by the Marist Brothers and there were also lay teachers.<sup>504</sup> The principal, Sister Julia, was a Presentation Sister and she reported to the head of her Order. The Lismore Catholic Education Office dealt with administrative tasks such as the payment of salaries and religious stipends.<sup>505</sup>

In 1985 the school executive was headed by Sister Julia. The other members of the school executive were the assistant principal, Mrs O'Grady, and the senior head teacher, Mr Alan Duroux. Mrs O'Grady and Mr Duroux were lay teachers.

In 1996, Brother Sutton was convicted of the following offences against two girls and three boys at St Carthage's, each of whom was aged 10 or 11 years old at the time:

- ACZ: Brother Sutton was convicted of five counts of indecent assault of a child under 16 by a person in authority. The offences involved Brother Sutton masturbating and fondling ACZ's genitals. The offences occurred in the sports storeroom and a classroom.<sup>506</sup>
- ACT: Brother Sutton was convicted of one count of indecent assault and one act of indecency of a child under 16. The offences occurred at the Marist Brothers' residence and involved Brother Sutton fondling ACT's penis over the top of his clothes and trying to undress him.<sup>507</sup>
- ACV: Brother Sutton was convicted of eight counts of indecent assault and two counts of indecency offences. The offences included Brother Sutton masturbating and performing fellatio on ACV and Brother Sutton forcing ACV to masturbate him to ejaculation. The offences occurred at the Brothers' residence, in the monastery after dinner, in the school storeroom, on school camp and during car rides with Brother Sutton. On one occasion after a trip to the beach, Brother Sutton attempted to have anal intercourse with ACV, who was 11 years of age at the time.<sup>508</sup>
- ADB: Brother Sutton was convicted of one count of indecent assault, being that he touched her on the outside of her underpants.<sup>509</sup> ADB told police that shortly after this incident in early 1985 her mother made a complaint to the school and Brother Sutton left her alone after that.<sup>510</sup> Further evidence on ADB's complaint is set out below.
- ACU: Brother Sutton was convicted of seven counts of sexual intercourse with a child under 16, being that he digitally penetrated her vagina and performed cunnilingus on her; and two counts of indecent assault, being that he touched her vagina and forced her to touch his penis. The offences occurred at a number of different locations, including at the Brothers' residence, in a car after Brother Sutton drove her home from a school camp and on a trip to Byron Bay, in a swimming pool and on school premises.<sup>511</sup> The evidence on the nature of Brother Sutton's offending against ACU is considered further below.

## Concerns and complaints in 1985

Mrs O’Grady gave evidence at the public hearing that during the first term of 1985 she observed that the same group of about five or six students frequently hung around Brother Sutton in the playground. Mrs O’Grady explained that:

[Brother Sutton] had special stories and things for those children, or special attention for those children, giggling and joking and laughing, whereas the rest of the class, his class, were nowhere to be seen near him, and that worried me because it looked like favouritism.<sup>512</sup>

Mrs O’Grady said that throughout 1985 other teachers at the school, including Mr Duroux, expressed concern to her about the favouritism shown by Brother Sutton to certain students.<sup>513</sup> She said that he displayed a level of friendliness with the children that was ‘unprofessional’ and his dynamic with children ‘felt more like a parent/child relationship than a teacher/student relationship’.<sup>514</sup>

Around the same time, Mrs O’Grady also noticed that when she walked past Brother Sutton’s classroom the blinds on the windows were often drawn shut. Mrs O’Grady gave evidence that the classroom appeared ‘very closed in and very dark’.<sup>515</sup> She stated that she thought this practice was strange and had never seen it before in a classroom.<sup>516</sup>

In February 1985, ADB’s mother complained to a teacher, Ms Roslyn Howard, that ADB ‘was “touched”, “rubbed” or “felt” on the upper thigh by Brother Gregory’.<sup>517</sup> Ms Howard reported the information she received from ADB’s mother to the principal, Sister Julia.<sup>518</sup>

On 13 March 1985, Sister Julia spoke to Brother Sutton about the complaint from ADB’s mother. Sister Julia recorded the following note on this meeting with Brother Sutton:

Though I was extremely embarrassed I told him of the content of the complaint (though I watered it down somewhat to ‘being overly familiar with’ a child). I pointed out the highly vulnerable stage of year 5 students’ development, and warned him to be careful as a teacher, a man, and most especially as a religious. He assured me he would.<sup>519</sup>

In a 1986 letter Sister Julia recounted what occurred in March 1985.<sup>520</sup> She said that she told Brother Sutton that the mother of the child considered he had been ‘acting in a highly inappropriate manner through [his] physical contact, and expressions of affection towards her child’. She said she had expressed her extreme concerns to him, justified by her own observations and those of other teachers. She said she directed him to ‘avoid all such conduct in the future’.<sup>521</sup>

However, Mrs O’Grady gave evidence that after Sister Julia’s meeting with Brother Sutton Sister Julia told her that the complaint was a ‘misunderstanding’ and had been resolved.<sup>522</sup>

Towards the middle of 1985, a different parent approached the head teacher, Mr Duroux, and expressed concern about reports she had received from several other parents regarding the ‘sexual

overtones' of Brother Sutton's 'conversations and activities' with students.<sup>523</sup> According to notes made by Mr Duroux, he interviewed two of the girls identified in the parent's complaint and they both indicated that 'nothing Brother Greg had said or done had caused them offence or concern'.<sup>524</sup>

### **Brother Turton's visit to Lismore in mid-1985 as Vice Provincial**

From 1983 to 1989 Brother Dwyer was the Provincial and Brother Turton was the Vice Provincial. In mid-1985, Brother Turton travelled to Lismore as part of his role as Vice Provincial of the Marist Brothers, which involved regular visits to Marist Brother communities for 'pastoral and community development purposes'.<sup>525</sup> Brother Turton said that, in addition to speaking to each of the Brothers in the particular community he was visiting, it was also his practice to speak to principals of schools where Marist Brothers taught.<sup>526</sup>

During this visit Brother Turton spoke to Sister Julia about Brother Sutton.<sup>527</sup> He recalls that Sister Julia raised concerns about Brother Sutton 'being alone with students and showing favouritism to some students' and not working well with other staff.<sup>528</sup> Brother Turton asked Sister Julia whether there were 'any specific causes for concern, or anything suspicious or improper'. He said he recalled Sister Julia replying that 'she had no specific incident or conduct that was worrying her' and that 'she did not think anything more was necessary and ... would talk to Br Sutton if she felt it was required'.<sup>529</sup>

Brother Turton then spoke to Brother Sutton. He said he specifically asked Brother Sutton whether 'there was anything in his behaviour with students which might be considered improper, or anything that the Brothers should be concerned about'.<sup>530</sup> Brother Turton said Brother Sutton denied that he had engaged in any improper conduct.<sup>531</sup>

In evidence, Brother Turton accepted that the term 'improper' in this context could include child sexual abuse, but that possibility was not 'in [his] mind' at the time of his conversation with Brother Sutton;<sup>532</sup> he was 'simply trying to clarify what Sister Julia was referring to'.<sup>533</sup>

Upon his return to Provincial House in Sydney, Brother Turton briefed the Provincial, Brother Dwyer, on the substance of his conversations with Sister Julia and Brother Sutton. He told Brother Dwyer that there was 'no specific incident or behaviour, no suggestion of impropriety or misconduct and [Sister Julia] had not asked for any action by the Order'.<sup>534</sup>

Brother Turton does not recall having any further contact with Sister Julia in 1985.<sup>535</sup>

Sister Julia did have a further meeting on 11 September 1985 with Brother Sutton to discuss 'the difficulties [she] had experienced throughout the year' with him, including 'unprofessional conduct' and his reply to Mrs O'Grady's and Mr Duroux's accusations.<sup>536</sup> In the file note of the meeting she referred to ADB being treated cruelly by Brother Sutton after he became aware ADB's mother had made a complaint about his conduct.<sup>537</sup>

### December 1985 meeting with Brother Sutton

In December 1985 three members of the school's executive team – Sister Julia, Mrs O'Grady and Mr Duroux – called Brother Sutton to a meeting to 'discuss the difficulties'.<sup>538</sup> In a file note dated 5 December 1985, Sister Julia recorded the following in relation to this meeting:

Jan [O'Grady] outlined the areas of his behaviour we found unprofessional, dwelling particularly on his method of relating to students – more in the nature of another child than an adult. His habit of allowing children (especially girls) in to his classroom to play when they were supposed to be on the playground ... [and] most seriously, his over familiarity with young girls, displays of affection, touching and hugging them inside the room and on the playground was a source of grave concern to us, to parents and to other children.<sup>539</sup>

Mrs O'Grady also gave evidence about this meeting. She recalls that she said to Brother Sutton words to this effect:

Parents and teachers have noticed that you have picked out favourites amongst the children and that other children don't get the same attention. You treat some children more like their parent, not their teacher. This is unacceptable and can't go on. It is a dangerous practice. ... I also recall telling Brother Gregory that his practice of taking off in the middle of school hours and leaving the children unsupervised and closing the blinds and doors to the classroom was also unacceptable.<sup>540</sup>

When asked what she meant by 'dangerous', Mrs O'Grady replied:

Well, you can be accused of things, for a start. ... You can be accused of inappropriate behaviour. You can be accused of abusing a child sexually. You can be accused of brutalising a child. You can be accused of all sorts of things with a child if you're not supposed to be with them and you go against those rules in my opinion.<sup>541</sup>

At the meeting in December 1985 the school executive gave Brother Sutton these directions to follow:

- No children are to be in the classroom before school or at recess.
- No social interaction to take place in the classroom before school, at recess times or after school.
- No child is to be taken from the school premises *for any reason* during school hours.
- No physical contact is to be used as a way of social interaction with students – particularly female students.<sup>542</sup>

## The power to have a Brother removed from the school

Brother Turton's evidence was that the principal had the power to remove Brother Sutton from his position as a teacher at the school<sup>543</sup> and the Provincial had the power to withdraw a Brother from the school.<sup>544</sup>

Brother Turton's evidence was that, when he returned from his visit, he gave the message to the Provincial that 'Sister Julia was not asking for the brother to be removed but that the letter had been submitted on the conditions given.'<sup>545</sup>

## The 1986 letter of warning

On 19 February 1986 Mrs O'Grady entered Brother Sutton's classroom one afternoon after class had finished to pass on a telephone message to him. Mrs O'Grady stated that she overheard girls giggling. When she opened the door to his classroom she saw that there were two girls in the room, with Brother Sutton chasing them.<sup>546</sup> He caught one of them and had his arms around her.<sup>547</sup> The other girl, who was standing by a desk, said, 'Oh my dress is all bunched up at the back' and smoothed it down.<sup>548</sup> Mrs O'Grady said she thought to herself: 'Well, is this very, very serious inappropriate touching of a child?'<sup>549</sup>

The following day, Mrs O'Grady told Sister Julia and Mr Duroux what she had seen and, as a result, Sister Julia 'agreed that she would give Brother Gregory a letter with a final warning which spelt out the consequences if he were to have any further physical contact with children or have them in his classroom outside of school hours'.<sup>550</sup>

In late February 1986 Mr Duroux contacted the Child Protection Specialist at the Lismore office of the Department of Community Services, Mr Frank Brennan.<sup>551</sup> Mr Duroux's note of the conversation dated 3 March 1986 records that Mr Brennan thought there may be an illness involved, that the Brother may have been at 'that level' for years and that professional help was needed. Mr Brennan is recorded as saying that 'at this stage it is not serious, yet the actions are inappropriate. ... He needs to get out of the school situation'. He advised that the matter should be documented, Brother Sutton's 'Superior' should be informed and enquiries should be made about whether there is a 'pattern or 'history' of such conduct. He further advised that, once that information is to hand, the risk to children should be reassessed. Mr Duroux indicated he reported the conversation to the Special Executive meeting on 28 February 1986.<sup>552</sup>

On 7 March 1986 Sister Julia wrote the following letter to Brother Sutton:<sup>553</sup>

In March '85 in response to a complaint by a parent of one of the girls in your class, I informed you that the parent considered you were acting in a highly inappropriate manner through your physical contact, and expressions of affection towards her child. ... I directed you to avoid all such conduct in the future.

At a meeting with you in December '85 two members of my Executive and I informed you of our growing concern at your unprofessional behaviour, which you continued to exhibit towards children at this school, particularly physical contact with female students, obvious favouritism towards certain children, and creation of groups or cliques among pupils which had seriously divided the class and grade. You were advised of the legal implications of inappropriate demonstrations of affection or friendship given by teacher to pupil. At that meeting you were given the following directives:

- No children are to be in the classroom before school or at recess.
- No social interaction to take place in the classroom before school, at recess times or after school.
- No child is to be taken from the school premises *for any reason* during school hours.
- No physical contact is to be used as a way of social interaction with students – particularly female students.

Failur [sic] to comply with these directives would require me to take action of a serious nature. Informing your superiors would necessarily preface any such action.

On the afternoon of Wednesday February 19th, 1986, after the class had been dismissed, you were seen to have your arms around a female student. This incident was witnessed by the Deputy Principal, Mrs J O'Grady, and is in direct contravention of the above directions. As a result this letter is to be presented to you as a written warning, a copy is to be given to your Superior. If such an incident occurs again, you leave me no option but to have you dismissed from the staff of St Carthage's School. ... I strongly urge you to observe the above directions.<sup>554</sup>

Between 7 and 11 March 1986 Brother Turton returned to Lismore at the request of the then Provincial, Brother Dwyer, to 'deal with a report by [Sister] Julia of inappropriate behaviour by [Brother] Sutton'.<sup>555</sup>

Brother Turton met with Sister Julia and she showed him the 7 March 1986 letter.<sup>556</sup> Brother Turton asked her whether there was any specific incident of impropriety and whether 'there is anything which you feel suggests misconduct with students'.<sup>557</sup> She replied that it was his relationship with some children; 'his being alone with them and his putting his arms around them is too personal'.<sup>558</sup> Brother Turton says he said to her, 'Are any of these teachers or anyone else suggesting that there is sexual misconduct or sexual abuse of children?' and she replied, 'No nothing specific but some have suspicions.' He then said to her, 'Do you want us to withdraw him from the school?' and she replied, 'No, I believe if we see him and have him sign this document he will realise how seriously we regard this and make sure that he understands that this is a final warning'.<sup>559</sup>

Shortly after the meeting with Sister Julia, Brother Turton met separately with Brother Sutton and asked him 'whether there had been anything in his conduct that would harm the children, or embarrass the principal or the Marist Brothers'. According to Brother Turton, Brother Sutton

emphatically denied this. Brother Turton said that he then asked Brother Sutton specifically whether ‘there had been any contact of a sexual nature ... with children’ and Brother Sutton said ‘no’.<sup>560</sup>

On 11 March 1986 Brother Sutton handwrote on the bottom of the 7 March 1986 letter: ‘After discussion with Bro Alexis [Turton] steps have been initiated under his supervision. Apologies for the indiscretion of 19th Feb.’<sup>561</sup>

In evidence, Brother Turton agreed that at the time he read the letter in March 1986 he was aware that Brother Sutton had already breached a direction given to him by Sister Julia to refrain from physical contact with students on at least two previous occasions.<sup>562</sup> He also accepted that the conduct as described in the letter raised the possibility Brother Sutton had engaged in some form of sexual contact with students.<sup>563</sup>

In response to questions about why, in light of this knowledge, Brother Turton took no steps to recommend to the Provincial that Brother Sutton be removed from the school, Brother Turton explained that:

At this stage, Sister Julia was the principal and responsible officer at the school, and I was doing my best to gain from her advice, experience and expectations and when I read [the letter], I saw [it] as a final warning, which is not unusual in situations like this, and I accepted what [Sister Julia] was saying.<sup>564</sup>

Counsel Assisting asked Brother Turton the following questions:

Q: So you realised in 1986 that one of the possibilities of this conduct by Brother Gregory Sutton was that he was involved in child sexual abuse of his students?

A: It was – it could have been sexual, yes.

Q: Did you realise that if he was to stay in the school, there was a distinct risk to the children concerned that sexual abuse of them could occur?

A: The risk would be there if the sexual element was substantiated. At that stage, I didn’t see it as substantiated.

Q: Are you saying that you needed direct evidence of sexual contact between the brother and the child to take a step such as removing or suggesting his removal from the school?

A: If there was direct evidence, that certainly would warrant that, or I would want a clearer direction from Sister Julia, as the principal and as the responsible one, that she wanted the brother removed from the school.<sup>565</sup>

Brother Turton gave evidence that he advised the Provincial, Brother Dwyer, of the concerns raised by Sister Julia and that ‘the letter had been submitted on the conditions given’.<sup>566</sup> He told

Brother Dwyer that Sister Julia was not asking for Brother Sutton to be removed.<sup>567</sup> He said he took no further action to monitor or supervise Brother Sutton's compliance with the undertakings because he understood that Sister Julia and her staff would perform this role, as they were 'the people who were on the spot'.<sup>568</sup>

### Personal renewal course in New Zealand

In November and December of 1986 Brother Sutton went to Marcellin Hall in Auckland to participate in a 'personal renewal' course. He returned to teach at St Carthage's at the beginning of the 1987 school year.<sup>569</sup>

In a 2007 statement to Carrington Investigations, Brother Dwyer indicated that there was 'no correlation with [Brother Sutton] undertaking that course to sexual behaviour'.<sup>570</sup>

Brother Turton gave evidence that he did not recall the reasons that Brother Sutton went on the course and noted that Marcellin Hall was not a therapy centre.<sup>571</sup>

Brother Anthony Hunt was the Community Superior of the Marist Brothers community in Lismore and lived with Brother Sutton in the period 1984 to 1987. He was also the deputy principal of Trinity Catholic College from 1985 to 1988. Brother Hunt, then Community Superior of the Lismore community, gave evidence that he understood that Brother Sutton attended Marcellin Hall to address 'the concerns that were being raised', which were 'pointing in the direction' of child sexual abuse.<sup>572</sup>

### Abuse of ACU and response of the Community Superior Brother Hunt

Brother Sutton pleaded guilty to seven counts of sexual assault; and two counts of indecent assault, being touching ACU's vagina.<sup>573</sup> The abuse occurred in 1986 and 1987, until Brother Sutton was removed from the school in April 1987.<sup>574</sup> At the time of the abuse, ACU was 10 or 11 years old.

A number of these acts took place at the Brothers' residence. On one occasion, Brother Sutton took ACU to the monastery to see his train set, which was set up in the laundry area. He sat her on a table near the train set and touched her vagina. Following this incident he drove her home but stopped in the bush on the way and again touched her vagina.<sup>575</sup>

On another occasion at the Brothers' residence, Brother Sutton took ACU to his bedroom to watch videos and then digitally penetrated her vagina, performed cunnilingus on her and made her masturbate him to ejaculation.<sup>576</sup>

Brother Sutton also abused ACU in her family home. At the start of 1987, Brother Sutton drove her home after school one day and performed cunnilingus on her in the kitchen until he was interrupted by a car approaching the house.<sup>577</sup>

Brother Sutton also took ACU swimming at the pool and the beach during school holidays and on one occasion to Byron Bay. On these trips he digitally penetrated her and made her masturbate him. According to the Statement of Facts prepared by the Office of the DPP, 'this routine occurred 3 or 4 times a week'.<sup>578</sup>

Brother Hunt gave evidence that on one occasion he saw Brother Sutton sitting alone with ACU in the kitchen of the Brothers' residence. In relation to this incident, Brother Hunt explained that, although he thought it was 'unusual',<sup>579</sup> he did not 'attach anything untoward to it' because it was 3.30 or 4.00 pm, they were in an open area of the house and he was aware that Brother Sutton was a friend of ACU's family.<sup>580</sup> He said he did not think that Brother Sutton might put himself in a room alone with the child or that he might be involved in some form of sexual abuse of the child.<sup>581</sup>

Brother Hunt said that 'every now and again' he saw a group of primary school aged boys from St Carthage's playing with Brother Sutton in the laundry area of the Brothers' residence where Brother Sutton's train set was located.<sup>582</sup> Brother Hunt said that he 'didn't see anything objectionable about [this]'<sup>583</sup> because it was 'a very open space' where 'everybody came in and out when they were going into the house'.<sup>584</sup>

Brother Hunt accepted that he had a role in 'monitoring' Brother Sutton because he was the Superior of the community in Lismore.<sup>585</sup> Normally he said children did not come to the residence.<sup>586</sup> However, Brother Hunt saw nothing unusual in Brother Sutton having children over to play with his train set in the laundry.<sup>587</sup>

Brother Hunt said that in early 1997 he had been approached by a mother of a boy who had been taken overnight by Brother Sutton to another Brother's residence in Murgon, Queensland.<sup>588</sup> Brother Hunt said that, in retrospect, it was 'highly unusual'<sup>589</sup> and he had told him not to take children anywhere in the car.<sup>590</sup> Brother Hunt said he told no-one about this incident:

Brother Hunt gave evidence that as deputy principal of a school of 600 students he appreciated that children were at risk of being sexually assaulted by adults.<sup>591</sup> When asked whether he understood in 1985–1988 whether sexual assault of a child was a crime, he said that he did not 'associate' sexual assault of a child with a crime.<sup>592</sup> He said that he had not heard the word 'paedophile' at the time and that he did not see sexual abuse or assault of children occurring in settings where children were given favours and special treatment.<sup>593</sup>

Brother Hunt said he was not told anything specific concerning allegations of physical contact between Brother Sutton and his students.<sup>594</sup> He said that Mrs Kay Rolfe, the Parish Counsellor, did not mention any direct suggestions of any sexual misconduct or describe the details of any particular events.<sup>595</sup> He said that he learned nothing from anyone that could be regarded as 'concrete evidence of impropriety' on Brother Sutton's part 'but there had been enough concerns which made me feel uneasy about [his] association with children and his on-going conflict with Mrs O'Grady'.<sup>596</sup> In his written statement to the Royal Commission Brother Hunt said that at some

stage he passed his 'concerns' on to the Provincial.<sup>597</sup> However, in oral evidence he said that he did not express to the Provincial or Vice Provincial his growing awareness in 1986 that Brother Sutton may be harming children.<sup>598</sup>

As set out below, when Mrs O'Grady approached Brother Hunt with further concerns about Brother Sutton being alone with ACU he counselled her to 'take a pastoral approach'.

Brother Hunt said that, in retrospect, he regretted not being more proactive with the Provincial and he felt sorrow for the harm done to children by Brother Sutton.<sup>599</sup>

## Discovery and removal

In or about Easter 1987, Brother Sutton and a number of other teachers, including Mrs O'Grady and Mr Duroux, took the year 5 classes on an overnight camp. The camp had to be abandoned early due to inclement weather. Mrs O'Grady, then acting principal, recalls that after the camping equipment had been packed up Brother Sutton did not return to the school that day. She gave evidence that she was not satisfied with the inconsistent explanations that Brother Sutton gave in response to questions as to his whereabouts.<sup>600</sup>

As a result, Mrs O'Grady checked Brother Sutton's diary and noted that the entry for the day after the school camp read, 'Picked up [ACU]. What an arvo. She is magnificent.'<sup>601</sup> In a file note dated 8 April 1987, Mrs O'Grady recorded that an entry in Brother Sutton's diary stated, 'I had a fight with [ACU] and then we made up.'<sup>602</sup>

After reading these entries in Brother Sutton's diary, Mrs O'Grady contacted the Parish Counsellor, Mrs Rolfe, and told her about the events following the school camp as well as the history of complaints and concerns documented in notes she had made from early 1985 regarding Brother Sutton's conduct with students at the school.<sup>603</sup> Mrs O'Grady gave evidence that, at Mrs Rolfe's suggestion, she also contacted Brother Hunt and briefed him on Brother Sutton's history, including her concerns about the inappropriate nature of his relationship with ACU.<sup>604</sup>

Mrs O'Grady said that Brother Hunt counselled her to take a pastoral approach with Brother Sutton.<sup>605</sup> Brother Hunt's recollection of this meeting is that '[Mrs O'Grady] was very angry, but my thought at the time was that if she wanted to moderate his behaviour, a confrontational approach wasn't working.'<sup>606</sup>

Shortly after her meeting with Brother Hunt, Mrs O'Grady met with the Director of the Lismore Catholic Education Office, Mr John Kelly.<sup>607</sup> Mrs O'Grady outlined the history of her concerns regarding Brother Sutton. She also provided Mr Kelly with a copy of a series of notes she had made that documented complaints and concerns regarding Brother Sutton's conduct since 1985, including the events regarding ACU.<sup>608</sup>

Mr Kelly gave evidence that he read Mrs O’Grady’s notes at this meeting. In an unsigned and undated statement Mr Kelly stated that he formed the opinion at the time based on the notes he was shown by Mrs O’Grady that Brother Sutton’s behaviour was ‘far more serious than professional negligence’.<sup>609</sup>

In his Royal Commission statement, Mr Kelly stated that, after reading the notes:

It did not occur to me at that time that any of Brother Sutton’s behaviour was or might be sexual misconduct. My view was simply that the repeated non-compliance with rules and authority was completely unacceptable as a member of the teaching staff.<sup>610</sup>

Mr Kelly stated that, shortly after this meeting with Mrs O’Grady, Mr Kelly telephoned the then Provincial, Brother Dwyer.<sup>611</sup> On 25 April 1987, Brother Dwyer flew to Lismore and met with Mr Kelly.<sup>612</sup> Mr Kelly gave evidence that he told Brother Dwyer about his meeting with Mrs O’Grady, summarised the concerns documented in her notes and offered to show him the notes.<sup>613</sup> Mr Kelly recalls that Brother Dwyer did not consider it necessary to read the notes.<sup>614</sup> Mr Kelly gave evidence that he read to the Provincial the parts of Mrs O’Grady’s notes concerning ACU, including the diary notes from April 1987.<sup>615</sup> The Provincial said to him, ‘leave it to me’.<sup>616</sup>

On 30 April 1987 Brother Sutton was removed from St Carthage’s by the Provincial, Brother Dwyer, and placed in an administrative role at Provincial House in Drummoyne, New South Wales.<sup>617</sup>

Brother Turton gave evidence that Brother Dwyer told Brother Turton that the decision to remove Brother Sutton from St Carthage’s was due to Brother Sutton’s ‘inappropriate behaviour’.<sup>618</sup> Brother Turton stated that Brother Dwyer did not give any indication of what the inappropriate behaviour was<sup>619</sup> and Brother Turton did not inquire because ‘it was up to the Provincial as to what he would share’.<sup>620</sup> However, Brother Turton stated that it did occur to him that Brother Sutton’s removal from the school ‘might [have been] connected to the matters that had been raised by Sr Julia in 1985 and 1986’.<sup>621</sup>

Brother Dwyer gave a statement to Catholic Church Insurance investigators in January 1997 about Brother Sutton. His recollection of the allegations against Brother Sutton was of him playing favourites and ‘giving special attention to several of the children’.<sup>622</sup> He said ‘there was never any direct allegation of sexual impropriety’. He said Brother Sutton had been confronted about sexual impropriety and denied it: ‘[t]here was no evidence to support otherwise’.<sup>623</sup> He said that his decision to remove Brother Sutton in 1987 was ‘essentially based on his interpersonal problems with staff and worry that there may have been friction with the Lay person, who had been appointed in charge’ (Mrs O’Grady).<sup>624</sup>

Brother Turton gave evidence that, shortly after Brother Sutton came to live at Provincial House in Drummoyne, Brother Dwyer asked Brother Turton to speak to Brother Sutton about engaging in therapy.<sup>625</sup> Brother Turton recalls Brother Dwyer indicating that the reason he was seeking therapy

for Brother Sutton was due to ‘concern[s] about Brother Sutton’s inability to relate to the other teachers at Lismore and to other people, and about some kind of inappropriate behaviour with students’.<sup>626</sup>

Brother Turton stated that he ‘assumed, but did not know, that the inappropriate behaviour, whatever it was, was of the kind referred to in the March 1986 document’, but Brother Dwyer did not tell him that ‘any suggestion of sexual misbehaviour had arisen’.<sup>627</sup>

Brother Turton said he subsequently had several conversations with Brother Sutton about the possibility of him seeing a therapist.<sup>628</sup> According to Brother Turton, Brother Sutton did not keep his first appointment but agreed to see another psychologist, Mr Vincent Ryan, in Melbourne. Brother Sutton said that he attended a week-long assessment with Mr Ryan in around May 1987.<sup>629</sup> Brother Turton stated that ‘after several sessions Vincent Ryan advised the Brothers that there would be no point in him continuing to see Brother Sutton because he was immature and unable to express his feelings’.<sup>630</sup> However, Brother Sutton did not engage in any form of ongoing counselling or therapeutic intervention until he went to Canada in September 1989.<sup>631</sup>

Brother Sutton had been transferred from Lismore to the Provincial House in Drummoyne, Sydney, where he performed general duties until he secured a position at the Catholic Theological Union.<sup>632</sup> He served there until July 1989, when he commenced a course in financial management at Kuringgai Chase College of Advanced Education.<sup>633</sup>

## Conclusions

It was only after:

- a number of complaints of inappropriate behaviour with children, primarily girls
- the school’s executive team had given a direction to refrain from that conduct
- Brother Sutton breached the direction by being alone and in physical contact with two girls
- a letter of final warning about this conduct
- a further allegation

that Brother Sutton was removed from the school. The evidence as to the reasons for that removal was couched in terms of problems to do with interpersonal relationships with staff.

## 3.6 Suicide of ADO and Brother Sutton’s admission

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In around April 1989 Brother Holdsworth became aware of the suicide of ADO.<sup>634</sup> Brother Holdsworth was then with St Vincent’s Boys’ Home at Westmead, New South Wales. Brother Holdsworth gave evidence that ‘several months’ after he was told of the suicide he was contacted by ADO’s father.

ADO's father told him that before ADO died he told his older brother that Brother Sutton had interfered with him when he was a student at the North Queensland school that was considered above.<sup>635</sup>

ADO's father asked Brother Holdsworth to accompany him to confront Brother Sutton.<sup>636</sup> Brother Holdsworth told the Royal Commission that he had never previously received or been aware of any complaints or suggestions of inappropriate behaviour by Brother Sutton and was shocked by what ADO's father told him.<sup>637</sup>

Brother Holdsworth made arrangements for ADO's father to visit Brother Sutton at Brother Sutton's residence in Hunter's Hill, Sydney.<sup>638</sup> Brother Holdsworth gave evidence that he accompanied ADO's father to Brother Sutton's bedroom but waited outside the room when the conversation between ADO's father and Brother Sutton took place.<sup>639</sup>

Brother Holdsworth said that when ADO's father came out of Brother Sutton's bedroom he said that Brother Sutton had admitted to interfering with ADO.<sup>640</sup> Brother Holdsworth understood this to mean that Brother Sutton had admitted to sexually abusing ADO when ADO was between eight and 10 years of age.<sup>641</sup>

He gave evidence that he was not sure whether in 1989 he understood that committing a sexual act upon a child was a crime.<sup>642</sup> He said he could not 'put a time line' to when he became aware that children were at risk of adults behaving in a sexual way towards them and has 'no clear memory' of being exposed to such a concept through media reporting.<sup>643</sup> This was despite his significant experience teaching in schools since 1953.<sup>644</sup>

Brother Holdsworth subsequently contacted the then Provincial, Brother Turton, and told him of the conversation between Brother Sutton and ADO's father. Brother Turton gave evidence that Brother Holdsworth told him that Brother Sutton had admitted to engaging in 'sexual misconduct' with ADO.<sup>645</sup> Brother Holdsworth also told him that ADO's father had said that he did not want the Marist Brothers to take the matter to the police or for anything else to be done.<sup>646</sup>

Brother Turton then spoke to Brother Sutton, who 'acknowledged that he had been guilty of sexual misconduct with the boy'.<sup>647</sup> Brother Sutton led Brother Turton to understand that this was the only child who he had ever abused.<sup>648</sup> Brother Turton said that he did not press Brother Sutton for details on the nature of the misconduct because it 'was sufficient ... to know that it was serious sexual misconduct'.<sup>649</sup> Brother Sutton agreed that he required professional help.<sup>650</sup>

Brother Sutton gave evidence that this meeting with Brother Turton took place approximately one or two weeks before he left Australia for the United States and Canada on 18 August 1989.<sup>651</sup>

Brother Turton agreed that, in the late 1980s, he understood Brother Sutton's conduct to be criminal in nature.<sup>652</sup> However, he did not take any steps to inform the police because ADO's family did not wish for any further action or for the police to be informed.<sup>653</sup> Brother Turton took the view that, given that it was a historical matter, the desires of the parents were the primary ones to be honoured.<sup>654</sup>

Sometime after the meeting between ADO's father and Brother Sutton, ADO's father told Brother Holdsworth that he was concerned that Brother Sutton may have also sexually abused one of ADO's friends.<sup>655</sup> Brother Holdsworth called the father of ADO's friend, who told both of them that he believed that Brother Sutton had not interfered with his son, who was by 1989 an adult in his twenties.<sup>656</sup> Brother Holdsworth said he concluded that the concerns were groundless.<sup>657</sup> Brother Holdsworth did not speak to the former student and he did not speak to any of the staff who worked with Brother Sutton in North Queensland in the 1970s.<sup>658</sup> Brother Holdsworth said that he did not consider the possibility that the boy concerned may not have disclosed the abuse to his parents.<sup>659</sup> This matter was not reported to the police<sup>660</sup> and Brother Holdsworth made no notes of it.<sup>661</sup>

We conclude that both Brothers Turton and Holdsworth were told that Brother Sutton had admitted to sexually abusing ADO when he worked at a school in North Queensland in the 1970s.

Neither the then Provincial, Brother Turton, nor Brother Holdsworth informed the police of the admission in 1989. It is noted that ADO was deceased and that ADO's father did not want the matter referred to the police.

### 3.7 Brother Sutton's departure to the Southdown Institute

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On 11 July 1989 the New South Wales Department of Community Services received a 'risk of harm' report concerning abuse of ADQ by a Marist Brother at St Thomas More Primary School, Campbelltown, in 1984.<sup>662</sup> The report was referred to the NSW Police Child Mistreatment Unit on 2 August 1989.

Detective Senior Constable Donna Lawrence from that unit then took statements from ADQ and her friend ADM on 9 and 10 August 1989.<sup>663</sup> Both girls had been friends at St Thomas More Primary School in Campbelltown in 1984 and both statements set out numerous sexual offences by Brother Sutton against them. ADM's statement included Brother Sutton touching her on the vagina, exposing his erect penis to her, masturbating him and him kissing her and touching her breasts<sup>664</sup> ADQ's statement included similar acts.<sup>665</sup>

#### The Southdown Institute

On 15 August 1989 Dr Ruth Droege, the Director of the Assessment Program at the Southdown Institute in Ontario, Canada, wrote to Brother Sutton stating that he would be participating in the 'Assessment program at Southdown from August 27 to September 1, 1989'.<sup>666</sup> The assessment program included assessment by a psychiatrist, a psychologist, a spiritual counsellor and an alcohol counsellor.

Brother Sutton left for therapy at Southdown in Ontario, Canada, on 18 August 1989. Apart from the therapy at Southdown, the Church parties concede, and we find, that no disciplinary action was taken against Brother Sutton over his admission to sexually abusing ADO.

## The confidential memorandum

Brother Crowe produced to the Royal Commission a document entitled ‘Confidential information regarding Frater Bartholomew for Mr Tony Carroll of Carroll and O’Dea’ (the confidential memorandum) dated 20 August 1989.<sup>667</sup>

This document set out the career of ‘Bart’ as a Marist Brother and teacher since 1969. It set out allegations of child sexual abuse arising from a ‘Northern Rivers School’ and involvement of Brothers ‘Alman’ (Dwyer) and ‘Alexis’ (Turton) in handling those allegations.

In evidence, Brother Turton agreed that the subject of the memorandum of 20 August 1989 was ‘definitely’ Brother Sutton.<sup>668</sup> He said he had no idea why a different name was used.

It is clear to us that the effect of using a name other than the Brother to whom the contents related was to hide from a reader that it concerned Brother Sutton. Further, it hid that knowledge that the Marist Brothers had over time about allegations against Brother Sutton.

## After Brother Sutton’s departure for the Southdown Institute

Detective Senior Constable Lawrence told the Royal Commission that ‘at some point’ after taking statements from ADM and ADQ the NSW Police searched for Brother Sutton but were unable to locate him.<sup>669</sup> She stated that ‘on or close to the day’ she was trying to locate Brother Sutton to arrest him, another police officer at the Child Mistreatment Unit advised her that he had gone overseas.<sup>670</sup>

The residential component of the treatment course at Southdown concluded in July 1990.<sup>671</sup> In about mid-1991, Brother Sutton advised Brother Turton that he intended to apply for dispensation from the Order.<sup>672</sup> This dispensation was granted in October 1991.<sup>673</sup>

In 1995 proceedings were commenced to extradite Brother Sutton from the United States. Those proceedings were successful and in 1996 Brother Sutton was tried and convicted in New South Wales of 67 child sex offences.

For legal reasons, we make no findings in respect of the circumstances of Brother Sutton’s departure for Southdown.

## 3.8 Conclusions

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These are our conclusions in relation to Brother Sutton:

- **Brother Sutton’s schools in 1976–1984** – there was no evidence of complaints of sexual abuse against Brother Sutton being made at the time to those in a position of authority, including the Provincial of the Marist Brothers.

- **St Carthage's Primary School, Lismore (1987)** – it was only after:
  - a number of complaints of inappropriate behaviour with children, primarily girls
  - the giving of a direction by the school's executive team to refrain from that conduct
  - Brother Sutton's breach of that direction by being alone and in physical contact with two girls
  - a letter of final warning about this conduct
  - a further allegation

that Brother Sutton was removed from the school, and then it was in circumstances apparently unrelated to that conduct.

- **Sexual abuse of ADO (1989)** – both Brothers Turton and Holdsworth were told that Brother Sutton had admitted to sexually abusing ADO when he worked at a school in North Queensland in the 1970s.
- **Sexual abuse of ADO (1989)** – neither Brother Turton nor Brother Holdsworth informed the police of Brother Sutton's admission in 1989. ADO was deceased and the family did not want the police informed.
- **Sexual abuse of ADO (1989)** – apart from the therapy at Southdown, no disciplinary action was taken against Brother Sutton over his admission to sexually abusing ADO.

## 4 Other issues

### 4.1 Claims and litigation

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The Marist Brothers provided the Royal Commission with a summary of all claims for compensation or redress made between 1 January 1980 and 6 September 2013 concerning allegations of child sexual abuse by Brother Chute and Brother Sutton.

In total, the Marist Brothers have received 69 claims with respect to allegations of child sexual abuse by Brother Chute and Brother Sutton (48 with respect to Brother Chute and 21 with respect to Brother Sutton). Fifty-six of these claims have been resolved and, as at 6 September 2013, 13 claims remained unresolved. Of the 56 people who have received financial payments to date, the majority (52) were settled out of court, usually following mediation. The remaining complainants went through the Towards Healing process.<sup>674</sup>

In relation to the 48 claims concerning Brother Chute:

- 40 were from former students of Marist College Canberra
- the Marist Brothers have paid a total of \$6,838,946 to claimants
- 35 claims were settled out of court, with an average out-of-court settlement amount of \$191,112.74
- two claims have been processed under Towards Healing, with an average Towards Healing payment of \$42,000.<sup>675</sup>

In relation to the 21 claims concerning Brother Sutton:

- eight were from former students of Marist College Canberra
- the Marist Brothers have paid a total of \$1,817,811 to claimants
- 17 claims were settled out of court, with an average out-of-court settlement amount of \$105,459.47
- two claims have been processed under Towards Healing, with one claimant receiving a financial payment of \$25,000 and the other claimant not receiving a financial payment.<sup>676</sup>

#### Litigation strategy

The Marist Brothers and its insurer Catholic Church Insurance also provided the Royal Commission with the legal costs of the Marist Brothers for the settlement of claims for compensation. The costs for claims settled by the Marist Brothers were:

- \$123,149 (plus \$3,102.70 in disbursements) for civil claims concerning Brother Chute
- \$62,545.24 (plus \$15,337.99 in disbursements) for civil claims concerning Brother Sutton
- \$224,356.82 (plus \$14,371.79 in disbursements) for general litigation costs attributable to Brother Chute and Brother Sutton.<sup>677</sup>

The legal costs of Catholic Church Insurance were:

- \$1,361,569.57 for civil claims concerning Brother Chute
- \$250,888.25 for civil claims concerning Brother Sutton.<sup>678</sup>

A majority of the claims settled by the Marist Brothers had been commenced by the issuing of court proceedings in the ACT. The Marist Brothers claimed upon a policy of insurance with Catholic Church Insurance. The Marist Brothers was represented by Carroll & O’Dea Lawyers and Catholic Church Insurance was represented by Monaghan & Rowell solicitors.

An email from Provincial Brother Crowe to the Trustees of the Marist Brothers in June 2008 outlined possible defence strategies following a discussion with lawyers. It notes that ‘Our base line is that if the Trustees (not Kostka) are taken to court then we will use the full force of the law to defend ourselves. We will use the Ellis judgement.’<sup>679</sup> Brother Michael Green, a Provincial councillor and trustee, responded to Brother Crowe’s email as follows:

the important thing for us is to have a consistent and morally defensible position ... but that should not diminish our efforts to exercise every legal defence we have available to us ... the financial costs to us in this matter are obscenely out of proportion to the crimes committed, and that is enough reason for me to defend the charges as we are.<sup>680</sup>

In July 2008, Brother Crowe and Brother Turton met with Mr Harrison from Carroll & O’Dea and Mr Patrick Monaghan from Monaghan & Rowell to determine the defence strategy. A file note from that meeting indicates that they were of the view that the lawyer acting for most of the Brother Chute claimants, Mr Jason Parkinson of Porters Lawyers, was refusing to ‘talk about court-ordered mediation’ and so the defence strategy that the Marist Brothers adopted was to ‘continue to play hard ball until we move to mediation. This means using all legal defence strategies open to us: Ellis–Pell; statutes of limitation etc’.<sup>681</sup>

Brother Crowe gave evidence that the position taken was that the Marist Brothers would reach mediated settlements but would not agree to exemplary or punitive damages.<sup>682</sup> He said that the Marist Brothers ‘have always taken the position that we wanted the matters settled, and settled quickly and justly’.<sup>683</sup>

Brother Crowe said that he was ‘ambivalent’ about relying on the Ellis defence.<sup>684</sup> He explained that he was ‘concerned that the position in taking the Ellis point seemed to deny a duty of care and whether it was appropriate to use it for an educational institution’. He said he understood that ‘the obligations of the insurer were in terms of using all the legal avenues available to them in a court of law’.<sup>685</sup>

Brother Crowe also gave evidence about the Marist Brothers’ current approach to claims handling. He explained that, for claims that pre-dated the Marist Brothers’ insurance policy in 1969 or 1970, the Marist Brothers ‘do not take issue’ with the Trustees of the Marist Brothers being named as

the proper defendant. However, for claims that relate to conduct that occurred after 1970, the Marist Brothers avail themselves of all possible legal defences.<sup>686</sup> Brother Crowe indicated that, in light of the Royal Commission's work, the Marist Brothers are reconsidering their approach to what defences are 'appropriate' on a case-by-case basis.<sup>687</sup>

Brother Crowe also stated that the Marist Brothers are 'always open ... to people coming back to us who are dissatisfied ... either in the Towards Healing process or in the civil litigation process, if they feel that the amount was inadequate, unfair or that the proceedings were at fault'.<sup>688</sup> He said that the Marist Brothers are developing a process for responding to and reviewing the complaints of people who come back in these circumstances. He did not exclude the possibility of providing additional financial support.<sup>689</sup>

Three deeds of release from civil proceedings concerning Brother Chute and settled in 2009 and 2010 were in evidence.<sup>690</sup> Each deed contained a clause that required all parties to the deed not to disclose the terms of the deed other than as required by law.<sup>691</sup>

## Use of Towards Healing

Two of the 48 Brother Chute claimants went through the Towards Healing process. The average financial payment of \$42,000 under the Towards Healing protocol (based on a small sample size) was substantially less than those settlements negotiated as part of court processes. It is to be noted that under Towards Healing the Marist Brothers pay the claimant's legal expenses (where applicable) in addition to the reparation paid, whereas in other settlements the claimant's legal fees are generally paid out of the settlement amount.

At a meeting in February 2008 between the Marist Brothers and Catholic Church Insurance about ACN's claim, it was resolved that the 'ultimate strategy' was to bring all Brother Chute matters 'to early mediations along Towards Healing lines, or to a similar structured settlement meeting'.<sup>692</sup>

Brother Crowe gave evidence that it was 'not necessarily' his view in 2008 that people who wished to make a claim against a Brother should be channelled towards the Towards Healing process.<sup>693</sup> As mentioned, his position was that the matters should be settled 'quickly and justly'.<sup>694</sup>

While Brother Crowe emphasised that there is no upper limit on financial payments made through the Towards Healing process, he agreed with the proposition that, based on Marist Brothers' claims data, there appears, in effect, to be a 'ceiling' on payments in the vicinity of 'somewhere between \$25,000 and \$40,000'.<sup>695</sup> Brother Crowe also accepted that it would be unusual for a complainant to receive a financial payment in excess of around \$40,000 through Towards Healing.<sup>696</sup>

Brother Crowe gave evidence that the Marist Brothers requires people who receive financial payments through Towards Healing to sign a deed of release precluding them from taking civil action against the Marist Brothers.<sup>697</sup> He said that an advisory group within the Marist Brothers is currently looking at a range of issues related to professional standards matters, including the use of deeds of release.<sup>698</sup>

## 4.2 Response of the departments for child protection and police

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The public hearing also considered the response of the New South Wales and ACT departments responsible for child protection to allegations against Brother Sutton and Brother Chute. The current departments are the Department of Family and Community Services (NSW) and the Justice and Community Safety Directorate (ACT).

### Department of Family and Community Services (NSW)

Mr Brennan, the Child Protection Specialist at the Lismore Regional Office of the then Department of Community Services, provided a statement to the Royal Commission which discussed a meeting he had with Mr Duroux, head teacher at St Carthage's, on 28 February 1986 concerning Brother Sutton.<sup>699</sup> Mr Duroux made a note of that discussion in which he recorded that Mr Brennan gave him the following advice, which he passed on to the school executive:

- 'document information from parents and others that is clear – the facts are needed stating exactly what happened and where'
- 'don't wait for another incident. Act now.'
- inform Brother Sutton's superior
- enquire about whether there is a 'pattern or history' and what options are available to him if removed
- assess what the risk is after the extra information is collated from his superiors and previous principals.<sup>700</sup>

Mr Brennan said that he did not recall having a conversation with Mr Duroux and did not recall hearing of any such incidents.<sup>701</sup> Mr Brennan also said that his practice, whenever anybody began to report suspected child abuse to him, was to immediately refer the person making the report to the local district office of the Department of Community Services.<sup>702</sup> At the time, there were no mandatory reporting obligations for persons other than medical practitioners.<sup>703</sup> St Carthage's response to this advice is set out in this report and the events surrounding the warning letter to Brother Sutton of March 1986.

Searches of the Department of Community Services records conducted between 9 May and 6 June 2014 identified no documents or records relevant to the meeting between Mr Brennan and Mr Duroux.<sup>704</sup> It was not until 18 January 1988 that teachers were required to report sexual abuse of a child to the Department of Community Services under the newly introduced mandatory reporting obligations in the *Child (Care and Protection) Act 1987* (NSW).

Reports of 'risk of harm' were received by the Department of Community Services in August 1989 and concerned ADM and ADQ. The reports were forwarded to the NSW Police Child Mistreatment Unit and to Campbelltown Area Health. The parents of ADM and ADQ requested no further involvement and, as the children were no longer at the school at which Brother Sutton taught, there

was no ongoing risk. As both children were receiving counselling at Campbelltown Area Health and the NSW Police Child Mistreatment Unit was proceeding with investigations, the department's files on the two children were closed.<sup>705</sup>

On 25 November 1991, the then Department of Community Services received allegations of serious sexual abuse of ACU by Brother Sutton at St Carthage's Primary School five years before.<sup>706</sup> The department was told that concerns were held for other children who may have been abused by Brother Sutton at the school.<sup>707</sup> The department facilitated a police interview of ACU and a meeting was held with staff of Trinity Catholic College, where many of the former children from St Carthage's were then studying. The report was forwarded to police. ACU told the department that there may have been many other victims of Brother Sutton – perhaps up to 25.<sup>708</sup>

In May 1992, the department determined that the following actions should take place:

- There should be a coordinated meeting between the principal of the Trinity Catholic College, the NSW Police Child Mistreatment Unit and the department.
- A group should be established for children involved, to be run by the Sexual Assault Service.
- A protocol should be established to encourage 'protective behaviours' at both schools.
- The department's 'case co-ordination' should meet to provide support for children and families affected.<sup>709</sup>

At a meeting on 7 May 1992 the department, the NSW Police and the Sexual Assault Service agreed on arrangements for interviewing children over 16 and for contacting the parents of children. The interviewing arrangements were coordinated between the department, the Sexual Assault Service and the NSW Police Child Mistreatment Unit.<sup>710</sup>

In July 1992 departmental officers held three meetings, with groups of 10 students at each meeting, to discuss the possibility that children were abused at St Carthage's. Evidence was obtained from some of those students about sexual abuse of ACU.<sup>711</sup>

As part of the interview process both ACZ and ADB came forward to report that Brother Sutton had sexually abused them at St Carthage's.<sup>712</sup> The NSW Police Child Mistreatment Unit was advised of the new allegations and the two children were referred to the Sexual Assault Counselling Service.<sup>713</sup> Brother Sutton was later convicted of offences against ACU, ADB, ACV, ACZ and ACT while at St Carthage's.<sup>714</sup>

The department conducted searches for notifications concerning Brother Chute and no relevant records were discovered.<sup>715</sup>

## NSW Police

The Royal Commission was told that the NSW Police file on the complaints of ADM and ADQ has been lost and was not available to it. Accordingly, the Royal Commission has an incomplete record of precisely what inquiries were made by the investigating police in the period 1989 to 1992.

However, a statement from Detective Senior Constable Lawrence was available.<sup>716</sup> Her statement was based upon available historical records, her recollection of the investigation of Brother Sutton and the procedures in place within the NSW Police Child Mistreatment Unit at the time of the investigation.

Detective Senior Constable Lawrence joined the Campbelltown office of the NSW Police Child Mistreatment Unit in 1989, soon after she had completed her probation period.<sup>717</sup> At the time she joined the unit she was told that there was a backlog of hundreds of cases of child abuse that were to be investigated by the NSW Police Child Mistreatment Unit. She felt that the unit was understaffed for the workload and the supervision was limited, as many of the officers only had a few years' experience.<sup>718</sup>

Detective Senior Constable Lawrence stated that after taking statements from ADM and ADQ she and another police officer attended St Thomas More Primary School to locate and arrest Brother Sutton. They were told that he was not at the school at the time.<sup>719</sup> Detective Senior Constable Lawrence cannot recall who they spoke to but she does recall that around that time the police did speak with someone above administrative level from the school.<sup>720</sup> She said she and other officers from the Child Mistreatment Unit were involved in the search for Brother Sutton. It was in the course of the search that she was advised that Brother Sutton had travelled overseas, but she was not sure where.<sup>721</sup>

At some point after August 1989 the police file on Sutton was put 'on hold' pending any further information on his whereabouts but was not closed.<sup>722</sup> Detective Senior Constable Lawrence said she circulated Brother Sutton 'as being wanted in relation to the child sexual assault offences'.<sup>723</sup> On 25 November 1991 information was communicated to the police about concerns for other children who may have been abused by Brother Sutton.<sup>724</sup>

On 14 April 1992, the New South Wales Department of Community Services spoke to Constable Tipping of the NSW Police Child Mistreatment Unit, who advised the department that ACU had completed her statement. Constable Tipping reported that the alleged perpetrator was believed to be overseas and may not be extradited because of the cost factor.<sup>725</sup> She also noted that if there was more than one victim the prosecution case would be stronger.<sup>726</sup>

In 1995 Detective Senior Constable Lawrence was contacted by Detective Sergeant Magann, who was investigating complaints of child sexual abuse against Brother Sutton arising from his time at Lismore. Detective Sergeant Magann informed Detective Senior Constable Lawrence that Brother Sutton had been located.<sup>727</sup> Further statements were taken from ADM and ADQ, as the previous file could not be located,<sup>728</sup> and the offences against them were included in the application for Brother Sutton's extradition.<sup>729</sup>

## Justice and Community Safety Directorate (ACT)

The ACT Justice and Community Safety Directorate also conducted searches on Brother Chute and did not discover any relevant records.<sup>730</sup>

The records tendered in the public hearing in relation to the responses of the ACT Justice and Community Safety Directorate are limited to Brother Turton's notes of his meetings with ACN's family and an ACT Youth Advocate officer on 8 and 17 December 1993.<sup>731</sup> Brother Turton noted that at the 8 December 1993 meeting the Youth Advocate encouraged the parents of ACN's family to consider their options for financial compensation.<sup>732</sup>

The Church parties have noted in their submissions that there is no evidence of whether the Youth Advocate's office reported the ACN matter to the police or whether they took any other steps on ACN's complaint. No relevant ACT Government records were available to the Royal Commission, if any existed.

### 4.3 Marist Brothers' approach to the public hearing

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The Marist Brothers and the Truth Justice and Healing Council (the Church parties) were jointly represented and took a joint position in the public hearing. In submissions to the Royal Commission, the Church parties said that 'the extent of the abuse now known to have been carried out by these two men – upon many children, over many years, at numerous different schools – is truly shocking'.<sup>733</sup>

The current Provincial of the Marist Brothers, Brother Crowe, told the Royal Commission that:

It is by now all too painfully obvious that both Brother Chute and former Brother Sutton abused large numbers of children, over many years, at numerous different Marist schools.

It clear that sometimes indications, or communications, in relation to the behaviour of each of them, were not quickly or adequately appreciated. Sometimes those indications or suspicions were not adequately reported (or not reported at all) to those in positions of authority. Finally, even to the extent that they were reported, some leaders failed to take the decisive steps that should have been taken.

Those failures, of communication and of action, have had tragic results. Those failures ... resulted in many more children being abused, even after enough should have been known or suspected to remove each of the two Brothers from working with children.

These facts are horrendous and inexcusable.

The Marist Brothers, and I as the Provincial, are deeply ashamed and contrite that so many children and their families have been let down by us in all these ways. We realise that no words of apology can ever undo the damage that has been done to the victims. Nevertheless on behalf of the Marist Brothers I do apologise most sincerely to the victims, those who have had the courage to come forward at this hearing, and all those who have been hurt by these two men and by the failures of others.<sup>734</sup>

The Church parties further indicated that their approach to the Royal Commission is based on ‘the principles of truth, justice and healing’. The Church parties submitted that this approach meant that ‘in every instance where the evidence fairly establishes that a particular Marist Brother knew that a particular complaint or admission of child sexual abuse had been made, or acted in a certain way notwithstanding that he knew the fact, the Church parties will acknowledge that to be so’. Conversely, the Church parties said that ‘where the evidence does *not* establish that particular Marist Brother knew such a fact, or acted in a certain way notwithstanding that he knew the fact, the Church parties ... will be obliged to reject some of the submissions and suggested “available findings” advanced by Counsel Assisting ...’.<sup>735</sup>

The Church parties asserted that the practice of the Marist Brothers until the 1990s was that:

- a. accusations or admissions of sexual misconduct were treated as highly confidential;
- b. such matters were treated as the responsibility of the Provincial of the day; and
- c. successive Provincials ... seem not themselves to have passed on such information to anyone, apparently including their successors and the Provincial Council (with some rare exceptions).<sup>736</sup>

Brother Crowe said that he was struck by ‘the silence ... the absence ... the ignorance’ in his survey of references to child sexual abuse in Provincial Council minutes until the late 1980s.<sup>737</sup> The Church parties said that they did not seek ‘in any way’ to defend such a system: ‘Clearly that “system” – really the absence of a system – was completely inadequate and unsatisfactory.’<sup>738</sup> We concur.

## 5 Child protection policies and procedures

### 5.1 Policies and procedures before 1990

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The Marist Brothers' policies and procedures concerning child protection and the handling of allegations of child sexual abuse have changed and evolved over the years.

#### Policies and procedures 1947 to 1990

The current Provincial of the Marist Brothers, Brother Crowe, told us that the Marist Brothers abided by historical rules of conduct.<sup>739</sup> The *Common Rules of the Brothers* applied during the period 1947 to 1967.<sup>740</sup> Among other things, these rules of conduct indicated how Brothers were expected to behave around children. For example, the common rules stated that:

- with the children they should always be reserved and dignified. They shall avoid taking them by the hand, touching the face, or the like ... (Rule 152)
- Brothers should most carefully guard against a too human attachment to their pupils, and should have no familiarity with them ... (Rule 328)
- even during the recreations the Brothers must not be familiar with the children, nor play with them, unless to start the games (Rule 333)
- Brothers shall not take children to accompany them on journeys, walks or visits (Rule 336)
- no subject, whoever he may be, shall ever be suffered to swerve from the above Rules, and whoever ostensibly and grievously offends against this holy virtue shall be expelled from the Institute (Rule 157).<sup>741</sup>

Brother Turton said that the *Common Rules of the Brothers* were absorbed into the 'Constitutions' of the Marist Brothers, but they did not adopt the same language as the *Common Rules of the Brothers*.<sup>742</sup> The evidence regarding Brothers Chute and Sutton did not disclose that the Marist Brothers applied any specific written rules or standards for the behaviour of Brothers (before 1990).

Further, the Marist Brothers said that they had no written policies or procedures on the handling of complaints of child sexual abuse before the 1990s.<sup>743</sup> The Marist Brothers' expectation was that, if a Brother had concerns or received a complaint or allegation regarding another Brother's conduct with children, he would raise it with the relevant school principal in the first instance and the principal would in turn notify the Provincial.<sup>744</sup>

It was then the Provincial's responsibility to respond to allegations or complaints of child sexual abuse. This typically involved the Provincial speaking to the Brother in question and, depending on the outcome of this discussion, taking one or more of the following steps:

- directing the Brother to undertake spiritual direction
- obtaining an assurance from the Brother that the behaviour would not be repeated
- withdrawing the Brother and/or transferring him to another school or ministry

- restricting a Brother's ministry so as to avoid him having contact with children
- asking the Brother to leave the Order.<sup>745</sup>

To preserve the confidentiality of the parties involved, such matters were rarely discussed at Provincial Council meetings and the Provincial did not always document the steps taken to investigate and manage risks posed to children by a Brother in these circumstances.<sup>746</sup>

## Early child protection policies 1987 to 1990

Brother Crowe said that the earliest consideration by the Marist Brothers to introducing a specific written child protection policy appears to have been in 1987.<sup>747</sup> Provincial Council minutes from a meeting in December 1987 record the council's determination that the Sydney Province develop its own policy on child abuse.<sup>748</sup> The minutes of a Provincial Council meeting in January 1988 record that the council had 'considered a draft statement on child abuse' that was to be distributed to the Brothers.<sup>749</sup> However, Brother Crowe said that the document referred to in the January 1988 minutes cannot be located.<sup>750</sup>

Brother Crowe said that in the late 1980s the Catholic Church began to develop policies and procedures to assist church authorities, including religious institutes such as the Marist Brothers, to prevent and respond to complaints of child sexual abuse.<sup>751</sup> An initial protocol for responding to child sexual abuse was developed by the Special Issues Committee of the Australian Catholic Bishops Conference in 1989. The *Protocol for Dealing with Allegations of Criminal Behaviour* was agreed to by the Australian Catholic Bishops Conference and Catholic Religious Australia, which represents many Orders including the Marist Brothers. The protocol was released in 1990 and applied to all Catholic dioceses, Orders and Congregations in Australia.<sup>752</sup>

## 5.2 Policies and procedures from the 1990s

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### Changes in policies and procedures

From the early 1990s the Marist Brothers developed specific policies and procedures on handling complaints of child sexual abuse against a Brother. At that time, allegations of child sexual abuse were referred to as 'Special Issues' matters and each Catholic diocese was required to have a nominated officer responsible for handling them.

Within the Marist Brothers, an initial assessment was made as to whether the conduct complained of amounted to alleged sexual abuse. This assessment was usually undertaken in conjunction with the Special Issues Officer in the relevant diocese.<sup>753</sup> The *Protocol for Dealing with Allegations of Criminal Behaviour* contained guidelines for responding to allegations of child sexual abuse that included referring the issue to 'civil authorities (including the police) where this was mandatory,

requested or advisable'.<sup>754</sup> Any matters that related to allegations of child sexual abuse within the Marist Brothers were referred to the Provincial to manage.

The *Protocol for Dealing with Allegations of Criminal Behaviour* was amended in 1992 (the 1992 Protocol).<sup>755</sup> One important element of the 1992 Protocol was that it dealt with religious against whom there were allegations of criminal behaviour being transferred between dioceses. It required that the ecclesial authority from which the Brother was being transferred had to provide a warranty to the new ecclesial authority that it was not aware of any circumstances that might lead to allegations of criminal behaviour against a cleric or religious.<sup>756</sup>

In 1994 the Sydney Province of the Marist Brothers introduced a policy on professional misconduct. (The Melbourne Province followed in 1995.) This policy largely adopted the procedures contained in the 1992 Protocol but included additional processes concerning screening and selection procedures at formation.<sup>757</sup>

The Towards Healing protocol was introduced in 1996 and comprises a set of principles and procedures established by the Australian Catholic Bishops Conference and the Australian Conference of Leaders of Religious Institutes for responding to complaints, including complaints of child sexual abuse against a priest, religious or other Catholic Church personnel.<sup>758</sup> The Royal Commission considered the Towards Healing process in Case Study 4.

Following the implementation of Towards Healing, complaints made through Towards Healing were referred to the relevant state Professional Standards Director, who works with the Marist Brothers to resolve the matters.<sup>759</sup>

From 2001 the Province Professional Standards Officer (considered further below) was given authority to respond to 'Special Issues' matters on behalf of the Provincial.<sup>760</sup>

Following the merger of the Sydney and Melbourne Provinces of the Marist Brothers in December 2012, an overarching child protection framework was developed, culminating in the release in June 2013 of a national child protection policy called *Keeping Children Safe*, with accompanying *Additional Notes for Brothers*.<sup>761</sup>

The *Keeping Children Safe* policy includes procedures for reporting and responding to complaints and allegations of child sexual abuse. The policy also stipulates that each Marist Brothers ministry within the Province (for example, schools and Marist welfare agencies) must develop its own set of child protection guidelines and must have a Professional Standards Committee and a Child Protection Officer.<sup>762</sup> The policy contains preventative strategies that include employment screening processes, induction and annual training in relation to the policy, Safety Plans for restricted persons, education of children and young people about grooming behaviour, suitability screening and training in child protection matters at formation.<sup>763</sup>

The Marist Brothers informed the Royal Commission that it has become more common in recent years for victims to bring their complaints through lawyers by way of civil claims rather than through Towards Healing, and that this is particularly the case where the accused Brother has been the subject of criminal proceedings.<sup>764</sup> The Marist Brothers stated that they currently have no written policies or procedures for dealing with civil claims made in this way and that the Marist Brothers is represented by its own lawyers in this process.<sup>765</sup> Brother Crowe told the Royal Commission that it is the Marist Brothers' preference to deal with civil claims by way of mediation.<sup>766</sup> Claims and litigation are considered further below.

In addition to Towards Healing, the Marist Brothers is currently a signatory to the following protocols adopted by the Australian Catholic Bishops Conference that are relevant to child protection:

- *Integrity in Ministry* (which sets out the principles and standards of behaviour expected of Catholic clergy and religious)
- *Integrity in the Service of the Church* (which sets out the principles and standards of behaviour expected of lay persons working for the Catholic Church).<sup>767</sup>

In New South Wales and the ACT, schools administered by the Marist Brothers have adopted policies of their local diocesan Catholic Education Office. In other states and territories, schools governed or administered by the Marist Brothers must adopt all policies developed by their respective Catholic Education Commissions.<sup>768</sup>

The position of the Province Professional Standards Officer was created in 2001.<sup>769</sup> The Province Professional Standards Officer assists the Provincial in responding to complaints of abuse and has the primary responsibility for the management of professional standards issues.

In 2004 the Sydney Province of the Marist Brothers established the Province Professional Standards Advisory Committee, which has a role that includes policy development and the provision of general advice to the Provincial on abuse cases.<sup>770</sup> In 2013 the Australian Province of the Marist Brothers also established the Ministries Professional Standards Committee, which provides advice to the Provincial on abuse cases involving lay people and audits local ministry child protection policies.<sup>771</sup>

In January 2013 the Provincial Council delegated responsibility to the Mission Council for advising the Provincial on the governance of Marist Brother ministries. The areas that the Mission Council is responsible for include the development of policies on financial governance, schools, child protection and employment relations. The Mission Council now makes decisions about appointments of lay personnel, but the Provincial retains the ability to appoint Brothers.<sup>772</sup>

The Province Professional Standards Officer is appointed by, and accountable to, the Provincial. This position was occupied by a lay person at the time of the hearing, who is responsible for the following five key areas:

- developing policy direction and advice
- implementing measures aimed at preventing child sexual abuse

- providing child protection training to Brothers and Marist Brothers ministries
- handling cases that involve allegations of a child protection nature, including liaising with and supporting alleged victims
- supporting Community Leaders and principals to discharge their respective child protection responsibilities, including mandatory reporting obligations.<sup>773</sup>

The Province Professional Standards Advisory Committee comprises representatives with child protection expertise, including a clinical psychologist, lawyer and former school principal. It supports and guides the work of the Province Professional Standards Officer and provides advice to the Provincial and Provincial Council on:

- developing and reviewing child protection policies and procedures
- supporting alleged victims of child sexual abuse by a Brother
- resolving legal issues in relation to cases involving allegations of child sexual abuse
- undertaking risk assessments on Brothers against whom allegations of child sexual abuse have been received
- supervising Brothers who have had restrictions imposed on their ministry as a result of a complaint of child sexual abuse.<sup>774</sup>

On behalf of the Provincial and the Provincial Council, the Ministries Professional Standards Committee is responsible for:

- ensuring that locally developed policies and practices are consistent across the Province
- monitoring the progress and resolution of professional standards matters in Province ministries
- auditing the compliance of Province ministries with policy requirements
- ensuring that all Province ministries conduct child protection training
- advising the Provincial on professional standards matters involving Brothers.<sup>775</sup>

The information set out above was provided by the Marist Brothers. In a later case study the Royal Commission will consider the current policies of Catholic Church authorities, including the Marist Brothers.

## 6 Systemic issues

### 6.1 Systemic issues arising from this case study

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In this case study, the systemic issues that were identified include the following:

- recognition by school staff of grooming behaviour
- recognition by school staff of behaviour that may constitute or may lead to sexual abuse of children
- responding to reports of suspicions of grooming and suspicions of sexual abuse of children, including in the context of religious organisations and religious-run schools
- investigation of information received concerning suspicions of grooming, grooming and sexual abuse of children
- monitoring, supervision and oversight of employees working with children
- the need for mechanisms for handling complaints of sexual abuse from children
- reporting allegations of child sexual abuse to child protection authorities and the police
- communication protocols and procedures between agencies and potentially affected families for the reporting and investigating of allegations of child sexual abuse
- the importance of record keeping
- litigation strategy in claims of child sexual abuse.

# APPENDIX A: Terms of Reference

## Letters Patent dated 11 January 2013

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO

The Honourable Justice Peter David McClellan AM,  
Mr Robert Atkinson,  
The Honourable Justice Jennifer Ann Coate,  
Mr Robert William Fitzgerald AM,  
Dr Helen Mary Milroy, and  
Mr Andrew James Marshall Murray

GREETING

WHEREAS all children deserve a safe and happy childhood.

AND Australia has undertaken international obligations to take all appropriate legislative, administrative, social and educational measures to protect children from sexual abuse and other forms of abuse, including measures for the prevention, identification, reporting, referral, investigation, treatment and follow up of incidents of child abuse.

AND all forms of child sexual abuse are a gross violation of a child's right to this protection and a crime under Australian law and may be accompanied by other unlawful or improper treatment of children, including physical assault, exploitation, deprivation and neglect.

AND child sexual abuse and other related unlawful or improper treatment of children have a long-term cost to individuals, the economy and society.

AND public and private institutions, including child-care, cultural, educational, religious, sporting and other institutions, provide important services and support for children and their families that are beneficial to children's development.

AND it is important that claims of systemic failures by institutions in relation to allegations and incidents of child sexual abuse and any related unlawful or improper treatment of children be fully explored, and that best practice is identified so that it may be followed in the future both to protect against the occurrence of child sexual abuse and to respond appropriately when any allegations and incidents of child sexual abuse occur, including holding perpetrators to account and providing justice to victims.

AND it is important that those sexually abused as a child in an Australian institution can share their experiences to assist with healing and to inform the development of strategies and reforms that your inquiry will seek to identify.

AND noting that, without diminishing its criminality or seriousness, your inquiry will not specifically examine the issue of child sexual abuse and related matters outside institutional contexts, but that any recommendations you make are likely to improve the response to all forms of child sexual abuse in all contexts.

AND all Australian Governments have expressed their support for, and undertaken to cooperate with, your inquiry.

NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and under the Constitution of the Commonwealth of Australia, the *Royal Commissions Act 1902* and every other enabling power, appoint you to be a Commission of inquiry, and require and authorise you, to inquire into institutional responses to allegations and incidents of child sexual abuse and related matters, and in particular, without limiting the scope of your inquiry, the following matters:

- a. what institutions and governments should do to better protect children against child sexual abuse and related matters in institutional contexts in the future;
- b. what institutions and governments should do to achieve best practice in encouraging the reporting of, and responding to reports or information about, allegations, incidents or risks of child sexual abuse and related matters in institutional contexts;
- c. what should be done to eliminate or reduce impediments that currently exist for responding appropriately to child sexual abuse and related matters in institutional contexts, including addressing failures in, and impediments to, reporting, investigating and responding to allegations and incidents of abuse;
- d. what institutions and governments should do to address, or alleviate the impact of, past and future child sexual abuse and related matters in institutional contexts, including, in particular, in ensuring justice for victims through the provision of redress by institutions, processes for referral for investigation and prosecution and support services.

AND We direct you to make any recommendations arising out of your inquiry that you consider appropriate, including recommendations about any policy, legislative, administrative or structural reforms.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to have regard to the following matters:

- e. the experience of people directly or indirectly affected by child sexual abuse and related matters in institutional contexts, and the provision of opportunities for

them to share their experiences in appropriate ways while recognising that many of them will be severely traumatised or will have special support needs;

- f. the need to focus your inquiry and recommendations on systemic issues, recognising nevertheless that you will be informed by individual cases and may need to make referrals to appropriate authorities in individual cases;
- g. the adequacy and appropriateness of the responses by institutions, and their officials, to reports and information about allegations, incidents or risks of child sexual abuse and related matters in institutional contexts;
- h. changes to laws, policies, practices and systems that have improved over time the ability of institutions and governments to better protect against and respond to child sexual abuse and related matters in institutional contexts.

AND We further declare that you are not required by these Our Letters Patent to inquire, or to continue to inquire, into a particular matter to the extent that you are satisfied that the matter has been, is being, or will be, sufficiently and appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to consider the following matters, and We authorise you to take (or refrain from taking) any action that you consider appropriate arising out of your consideration:

- i. the need to establish mechanisms to facilitate the timely communication of information, or the furnishing of evidence, documents or things, in accordance with section 6P of the *Royal Commissions Act 1902* or any other relevant law, including, for example, for the purpose of enabling the timely investigation and prosecution of offences;
- j. the need to establish investigation units to support your inquiry;
- k. the need to ensure that evidence that may be received by you that identifies particular individuals as having been involved in child sexual abuse or related matters is dealt with in a way that does not prejudice current or future criminal or civil proceedings or other contemporaneous inquiries;
- l. the need to establish appropriate arrangements in relation to current and previous inquiries, in Australia and elsewhere, for evidence and information to be shared with you in ways consistent with relevant obligations so that the work of those inquiries, including, with any necessary consents, the testimony of witnesses, can be taken into account by you in a way that avoids unnecessary duplication, improves efficiency and avoids unnecessary trauma to witnesses;

- m. the need to ensure that institutions and other parties are given a sufficient opportunity to respond to requests and requirements for information, documents and things, including, for example, having regard to any need to obtain archived material.

AND We appoint you, the Honourable Justice Peter David McClellan AM, to be the Chair of the Commission.

AND We declare that you are a relevant Commission for the purposes of sections 4 and 5 of the *Royal Commissions Act 1902*.

AND We declare that you are authorised to conduct your inquiry into any matter under these Our Letters Patent in combination with any inquiry into the same matter, or a matter related to that matter, that you are directed or authorised to conduct by any Commission, or under any order or appointment, made by any of Our Governors of the States or by the Government of any of Our Territories.

AND We declare that in these Our Letters Patent:

**child** means a child within the meaning of the Convention on the Rights of the Child of 20 November 1989.

**government** means the Government of the Commonwealth or of a State or Territory, and includes any non-government institution that undertakes, or has undertaken, activities on behalf of a government.

**institution** means any public or private body, agency, association, club, institution, organisation or other entity or group of entities of any kind (whether incorporated or unincorporated), and however described, and:

- i. includes, for example, an entity or group of entities (including an entity or group of entities that no longer exists) that provides, or has at any time provided, activities, facilities, programs or services of any kind that provide the means through which adults have contact with children, including through their families; and
- ii. does not include the family.

**institutional context:** child sexual abuse happens in an institutional context if, for example:

- i. it happens on premises of an institution, where activities of an institution take place, or in connection with the activities of an institution; or
- ii. it is engaged in by an official of an institution in circumstances (including circumstances involving settings not directly controlled by the institution) where you

consider that the institution has, or its activities have, created, facilitated, increased, or in any way contributed to, (whether by act or omission) the risk of child sexual abuse or the circumstances or conditions giving rise to that risk; or

- iii. it happens in any other circumstances where you consider that an institution is, or should be treated as being, responsible for adults having contact with children.

**law** means a law of the Commonwealth or of a State or Territory.

**official**, of an institution, includes:

- i. any representative (however described) of the institution or a related entity; and
- ii. any member, officer, employee, associate, contractor or volunteer (however described) of the institution or a related entity; and
- iii. any person, or any member, officer, employee, associate, contractor or volunteer (however described) of a body or other entity, who provides services to, or for, the institution or a related entity; and
- iv. any other person who you consider is, or should be treated as if the person were, an official of the institution.

**related matters** means any unlawful or improper treatment of children that is, either generally or in any particular instance, connected or associated with child sexual abuse.

AND We:

- n. require you to begin your inquiry as soon as practicable, and
- o. require you to make your inquiry as expeditiously as possible; and
- p. require you to submit to Our Governor-General:
  - i. first and as soon as possible, and in any event not later than 30 June 2014 (or such later date as Our Prime Minister may, by notice in the Gazette, fix on your recommendation), an initial report of the results of your inquiry, the recommendations for early consideration you may consider appropriate to make in this initial report, and your recommendation for the date, not later than 31 December 2015, to be fixed for the submission of your final report; and
  - ii. then and as soon as possible, and in any event not later than the date Our Prime Minister may, by notice in the Gazette, fix on your recommendation, your final report of the results of your inquiry and your recommendations; and

- q. authorise you to submit to Our Governor-General any additional interim reports that you consider appropriate.

IN WITNESS, We have caused these Our Letters to be made Patent  
WITNESS Quentin Bryce, Governor-General of the Commonwealth of Australia.

Dated 11th January 2013  
Governor-General  
By Her Excellency's Command  
Prime Minister

## Letters Patent dated 13 November 2014

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO

The Honourable Justice Peter David McClellan AM,  
Mr Robert Atkinson,  
The Honourable Justice Jennifer Ann Coate,  
Mr Robert William Fitzgerald AM,  
Dr Helen Mary Milroy, and  
Mr Andrew James Marshall Murray

GREETING

WHEREAS We, by Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia, appointed you to be a Commission of inquiry, required and authorised you to inquire into certain matters, and required you to submit to Our Governor-General a report of the results of your inquiry, and your recommendations, not later than 31 December 2015.

AND it is desired to amend Our Letters Patent to require you to submit to Our Governor-General a report of the results of your inquiry, and your recommendations, not later than 15 December 2017.

NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and under the Constitution of the Commonwealth of Australia, the *Royal Commissions Act 1902* and every other enabling power, amend the Letters Patent issued to you by omitting from subparagraph (p)(i) of the Letters Patent “31 December 2015” and substituting “15 December 2017”.

IN WITNESS, We have caused these Our Letters to be made Patent.

WITNESS General the Honourable Sir Peter Cosgrove AK MC (Ret’d), Governor-General of the Commonwealth of Australia.

Dated 13th November 2014  
Governor-General  
By Her Excellency’s Command  
Prime Minister

## APPENDIX B: Public hearing

<b>The Royal Commission</b>	Justice Peter McClellan AM Justice Jennifer Coate Mr Bob Atkinson AO APM Mr Robert Fitzgerald AM Professor Helen Milroy Mr Andrew Murray
<b>Commissioners who presided</b>	Justice Jennifer Coate Mr Bob Atkinson AO APM Mr Andrew Murray
<b>Date of hearing</b>	10–13 and 16–19 June, 1 July and 7 August 2014
<b>Legislation</b>	<i>Royal Commissions Act 1902</i> (Cth) <i>Royal Commissions Act 1923</i> (NSW)
<b>Leave to appear</b>	The Truth Justice and Healing Council, Marist Brothers  The State of New South Wales  Witness ADM Former student of Gregory Sutton  Witness ADQ Former student of Gregory Sutton  Mr Damian De Marco Former student of Brother Chute  Witness AAP Former student of Brother Chute  Witness AAJ Former student of Brother Chute  Mr Gregory Sutton Former Marist Brother (retired)  Mr John Chute (aka Brother Kostka) Former Marist Brother

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**Leave to appear**

Mr Denis Doherty  
Former Marist Brother and former Head  
Teacher of a Marist Brothers primary school in  
North Queensland

Ms Margaret Jan O’Grady  
Former Assistant Principal of St Carthage’s  
School, Lismore

Brother Alexis Turton  
Former Provincial of the Marist Brothers,  
Sydney Province

Mr John Kelly  
Former Director of the Catholic Education for  
the Diocese of Lismore

Mr John Holdsworth  
Former Community Superior of the Marist  
Brothers, Lismore

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**Legal representation**

S Beckett  
Counsel Assisting the Royal Commission

P Gray SC and J Gooley, instructed by K  
Harrison of Gilbert and Tobin  
Appearing for the Truth Justice and Healing  
Council, Marist Brothers

S McNaughton SC, instructed by I Fraser of  
Crown Law  
Appearing for the State of New South Wales

A Douglas-Baker, instructed by J Scanlon of  
Kelsos the Law Firm  
Appearing for Witness ADM and Witness ADQ

P O’Brien of O’Brien Solicitors  
Appearing for Mr D De Marco

K McGlinchey of McGlinchey Lawyers  
Appearing for Witness AAP and Witness AAJ

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<b>Legal representation</b>	<p>G Walsh of Greg Walsh &amp; Co Solicitors Appearing for Mr G Sutton and Mr J Chute</p> <p>A Kernaghan of Kernaghan and Associates Appearing for Mr D Doherty</p> <p>P Skinner, instructed by H Harrison, Carroll &amp; O’Dea Appearing for Brother Alexis Turton</p> <p>F Hannigan of Hannigan’s Lawyers Appearing for Mr J Kelly and Mr J Holdsworth</p> <p>G Hooper Appearing for M J O’Grady</p>
<b>Pages of transcript</b>	1,390 pages
<b>Notices to Produce</b>	31 notices to produce, producing 847 documents, issued under the <i>Royal Commissions Act 1902</i> (Cth)
<b>Summons to attend (NSW)</b>	18 summons to attend producing 3,682 documents, issued under <i>Royal Commissions Act 1923</i> (NSW)
<b>Requirements to produce (Qld)</b>	2 requirements to produce producing 2 documents, issued under the <i>Commissions of Inquiry Act 1950</i> (Qld)
<b>Summons to attend (Vic)</b>	1 summons to attend producing 3 documents, issued under the <i>Evidence (Miscellaneous Provisions) Act 1959</i> (Vic)
<b>Number of exhibits</b>	78 exhibits, including 7 volumes of witness statements and 7 volumes of documents.
<b>Witnesses</b>	<p><b>Witness ADM</b> Former student of Brother Sutton</p> <p><b>Witness ADQ</b> Former student of Brother Sutton</p> <p><b>Mr Damian De Marco</b> Former student of Brother Chute</p> <p><b>Witness AAJ</b> Former student of Brother Chute</p>

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**Witnesses****Witness AAP**

Former student of Brother Chute

**Mr John Doyle**

Former teacher at Marist College Canberra

**Ms Margaret Jan O'Grady**

Former Assistant Principal of St Carthage's School, Lismore

**Brother Terence Heinrich**

Former Principal of Marist College Canberra

**Brother Christopher Wade**

Former Principal of Marist College Canberra

**Mr Denis Doherty**

Ex Marist Brother and former Head Teacher of a Marist Brothers primary school in North Queensland

**Mr John Holdsworth**

Former Community Superior and Principal of a Marist Brothers primary school in North Queensland

**Mr John Kelly**

Former Director of the Catholic Education for the Diocese of Lismore

**Mr Anthony Hunt**

Former Superior of the Marist Brothers Community in Lismore

**Father Brian Lucas**

General Secretary of the Australian Catholic Bishops Conference

**Mr Gregory Sutton**

Former teacher of a Marist Brothers primary school in Sydney (retired)

**Brother Alexis Turton**

Former Provincial of the Marist Brothers Order Australia

**Brother Jeffrey Crowe**

Provincial of the Marist Brothers Order Australia

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# Endnotes

- 1 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [13];  
Marist Brothers website accessed at <http://www.maristbr.com/> on 4 September 2014.
- 2 Exhibit 13-0003, CTJH.053.12001.2427\_R.
- 3 Transcript of G Sutton, T3976:25–27 (ACT Day 36).
- 4 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [14];  
Marist Brothers website accessed at <http://www.maristbr.com/> on 4 September 2014.
- 5 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [15].
- 6 Transcript of J Crowe, T3964:6–7 (ACT Day 35).
- 7 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [23];  
Marist Brothers website accessed at <http://www.maristbr.com/> on 4 September 2014.
- 8 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [11]–[12].
- 9 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [23]–[24].
- 10 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [27].
- 11 Transcript of J Holdsworth, T3364:29–39 (ACT Day 30).
- 12 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [23].
- 13 Transcript of A Turton, T3577:29–T3578:3 (ACT Day 32).
- 14 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0383.
- 15 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0383.
- 16 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0383 and 385
- 17 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0385.
- 18 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0387.
- 19 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [19].
- 20 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [19].
- 21 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [19].
- 22 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [20].
- 23 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [39];  
Exhibit 13-0003, CTJH.053.24002.0363\_R at 0382.
- 24 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0386–0387.
- 25 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [40].
- 26 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [80].
- 27 Transcript of A Turton, T3656:1–5 (ACT Day 32).
- 28 Transcript of A Turton, T3646:28–31 (ACT Day 32).
- 29 Transcript of J Crowe, T4009:5–9 (ACT Day 36).
- 30 Exhibit 13-0037, Annexure JC43, CTJH.053.19001.0137.
- 31 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [131];  
Exhibit 13-0003, CTJH.053.24002.0363\_R.
- 32 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [53].
- 33 Transcript of A Turton, T3652:14–21 (ACT Day 32).
- 34 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [132].
- 35 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [132].
- 36 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0378, 0380–0381.
- 37 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0380–0381.
- 38 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0380.
- 39 Exhibit 13-0037, Annexure JC16, CTJH.053.19001.0001 at 0002.
- 40 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0380 and 0405.
- 41 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0380.
- 42 Ex 13-0003, CTJH.053.24002.0363\_R at 0381.

43 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [122].  
44 Transcript of J Crowe, T3973:23–43 (ACT Day 35).  
45 Transcript of J Crowe, T3973:11–31 (ACT Day 35).  
46 Transcript of J Crowe, T4008:6–7 (ACT Day 36).  
47 Transcript of J Crowe, T4008:43–47 (ACT Day 36).  
48 Marist Brothers and Truth Justice and Hearing Council, *Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, in response to Submission of Counsel Assisting Case Study 13*, 11 December 2014, para 84.  
49 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0379.  
50 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0379.  
51 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0379.  
52 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0379.  
53 Marist Brothers and Truth Justice and Hearing Council, *Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, in response to Submission of Counsel Assisting Case Study 13*, 11 December 2014, para 90.  
54 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0379.  
55 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0379.  
56 Exhibit 13-0003, CTJH.053.07090.0204 at 0205.  
57 Exhibit 13-0003, CTJH.053.12001.2427\_R at 2433; CTJH.053.07090.0014 at 0015  
58 Exhibit 13-0003, CTJH.053.07090.0014 at 0015.  
59 Exhibit 13-0003, CTJH.053.07090.0014 at 0015, CTJH.053.07090.0204 at 0205.  
60 Exhibit 13-0003, CTJH.053.12001.2062.  
61 Exhibit 13-0003, CTJH.053.12001.2856\_R at 2864; Ex 13-0003, CTJH.053.12001.2427\_R at 2430.  
62 Exhibit 13-0038, TEN.0009.001.0001 at 0002–0004.  
63 Exhibit 13-0038, TEN.0009.001.0001.  
64 Exhibit 13-0003, CCI.0066.00008.0339\_R.  
65 Transcript of J Crowe, T4016:28–36 (ACT Day 36).  
66 At the date of the hearing: Transcript of J Crowe, T4018:39–45 (ACT Day 36).  
67 Exhibit 13-0003, CTJH.053.07081.0455.  
68 Exhibit 13-0003, CTJH.053.07077.0024\_R.  
69 Exhibit 13-0003 CTJH.053.12001.3957\_R at 3959–3964.  
70 Exhibit 13-0003 CTJH.053.12001.3957\_R at 3965–3974.  
71 Exhibit 13-0003 CTJH.053.12001.3957\_R at 3965.  
72 Exhibit 13-0003 CTJH.053.12001.3957\_R at 3966.  
73 Exhibit 13-0003 CTJH.053.12001.3957\_R at 3960.  
74 Exhibit 13-0003 CTJH.053.12001.3957\_R at 3967.  
75 Exhibit 13-0003 CTJH.053.12001.3957\_R at 3961.  
76 Exhibit 13–0003, CCI.0092.00015.0043.  
77 Exhibit 13–0003, CCI.0069.00005.0029\_R.  
78 Exhibit 13–0003, CCI.0092.00015.0043.  
79 Exhibit 13–0003, CTJH.053.07077.0015\_R.  
80 Transcript of J Crowe, T4047:5–9 (ACT Day 36).  
81 Transcript of J Crowe, T4014:45–T4015:10 (ACT Day 36).  
82 Transcript of J Crowe, T4015:19–25 (ACT Day 36).  
83 Exhibit 13-0003, CTJH.053.12001.2062.

- 84 Exhibit 13-0003, CTJH.053.12001.0116\_R. Brother Chute refers to him as Brother Ansalom, but the Church parties have indicated that the proper name was in fact Brother Anselm: Marist Brothers and Truth Justice and Healing Council, *Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, in response to Submissions of Counsel Assisting Case Study 13*, 11 December 2014, para 151.
- 85 Exhibit 13-0003, CTJH.053.12001.0116\_R.
- 86 Exhibit 13-0003, CTJH.053.12001.0116\_R.
- 87 Marist Brothers and Truth Justice and Hearing Council, *Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, in response to Submission of Counsel Assisting Case Study 13*, 11 December 2014, para 146.
- 88 Exhibit 13-0003 CTJH.053.12001.3957\_R at 3962.
- 89 Exhibit 13-0003 CTJH.053.12001.3957\_R at 3968–3969.
- 90 Transcript of AAJ, T2998:11–18 (ACT Day 27).
- 91 Transcript of AAJ, T2998:34–40 (ACT Day 27).
- 92 Transcript of AAJ, T2998:25–47, T2999:39–45 (ACT Day 27).
- 93 Transcript of AAJ, T2999:12–21 (ACT Day 27).
- 94 Exhibit 13-0038, TEN.0009.001.0001.
- 95 Exhibit 13-0003, CCI.0039.00019.0091\_R.
- 96 Exhibit 13-0003, CCI.0039.00019.0076 at 0076.
- 97 Exhibit 13-0003, CCI.0039.00023.0145\_R.
- 98 Exhibit 13-0003, CCI.0039.00023.0145\_R.
- 99 Exhibit 13-0003, CTJH.053.12001.3957\_R at 3962, 3968
- 100 Exhibit 13-0003, CCI.0040.00006.0089\_R.
- 101 Exhibit 13-0003, CTJH.053.12001.3951\_R at 3951–3952.
- 102 Exhibit 13-0003, CCI.0040.00006.0089\_R at 0104.
- 103 Exhibit 13-0003, CCI.0040.00006.0089\_R at 0104.
- 104 Exhibit 13-0003, CCI.0040.00006.0089\_R at 0104.
- 105 Exhibit 13-0003, CCI.0040.00006.0089\_R at 0104–0105.
- 106 Exhibit 13-0003, CTJH.053.12001.0805\_R at 0808.
- 107 Exhibit 13-0003, CTJH.053.12001.0805\_R at 0808.
- 108 Exhibit 13-0003, CTJH.053.12001.0805\_R at 0809.
- 109 Exhibit 13-0003, CTJH.053.12001.0805\_R at 0813.
- 110 Exhibit 13-0003, CTJH.053.12001.0805\_R at 0809.
- 111 Exhibit 13-0003, CTJH.053.12001.0805\_R at 0809.
- 112 Exhibit 13-0003, CTJH.053.12001.0805\_R at 0809.
- 113 Exhibit 13-0003, CTJH.053.12001.3957\_R at 3967.
- 114 Exhibit 13-0003, CTJH.053.12001.3957\_R at 3968.
- 115 Exhibit 13-0003, CTJH.053.12001.3957\_R at 3968.
- 116 Exhibit 13-0003, CTJH.053.12001.0805\_R at 0811.
- 117 Exhibit 13-0003, CTJH.053.12001.0805\_R at 0815.
- 118 Exhibit 13-0003, CTJH.053.12001.0805\_R at 0810.
- 119 Marist Brothers and Truth Justice and Hearing Council, *Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, in response to Submission of Counsel Assisting Case Study 13*, 11 December 2014, para 167.
- 120 Exhibit 13-0003, CTJH.053.12001.2062.
- 121 Exhibit 13-0003, CTJH.053.12001.2062.
- 122 Exhibit 13-003, CTJH.053.12001.2054\_R.
- 123 Exhibit 13-0003, CCI.0053.00008.0215\_R.
- 124 Exhibit 13-0003, CTJH.053.12001.3957\_R at 3971.

125 Exhibit 13-0003, CTJH.053.12001.3957\_R at 3971.

126 Exhibit 13-0003, CTJH.053.12001.3957\_R at 3964.

127 Exhibit 13-0003, Annexure AT13, CTJH.053.12001.5997 at 5998.

128 Exhibit 13-0003, Annexure AT13, CTJH.053.12001.5997 at 5998.

129 Exhibit 13-0024, CTJH.053.28001.0679.

130 Transcript of A Turton, T3652:14–21 (ACT Day 32).

131 Transcript of A Turton, T3652:37–44 (ACT Day 32).

132 Transcript of A Turton, T3653:44–46 (ACT Day 32).

133 Transcript of J Crowe, T4064:22–25 (ACT Day 36).

134 Exhibit 13-0003, CTJH.053.07085.0056; see specifically at 0062.

135 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [133].

136 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [133].

137 Exhibit 13-0031, Statement of Brother Turton, CTJH.500.28001.0001\_R at [121], [135]; Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [134].

138 Transcript of A Turton, T3651:39–43 (ACT Day 32).

139 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [135].

140 Exhibit 13-0003, CTJH.053.12001.2062.

141 Exhibit 13-0003, CTJH.053.12001.3957\_R at 3969.

142 Exhibit 13-0003, CTJH.053.12001.3957\_R at 3969–3971.

143 Exhibit 13-0003, CTJH.053.07085.0056 at 0061.

144 Exhibit 13-0003, CTJH.053.07085.0056 at 0061.

145 Exhibit 13-0003, CTJH.053.07085.0056 at 0062.

146 Exhibit 13-0003, CTJH.053.07085.0056 at 0064.

147 Exhibit 13-0003, CTJH.053.12001.2062.

148 Exhibit 13-0003, CTJH.053.12001.2063.

149 Exhibit 13-0014, EXH.013.014.0001; Transcript of T Heinrich, T3151:7–17 (ACT Day 28).

150 Transcript of T Heinrich, T3151:34–44 (ACT Day 28).

151 Transcript of T Heinrich, T3153:33–40 (ACT Day 28); Exhibit 13-0003, CCI.0066.00010.0133\_R at 0161.

152 See, for example, Transcript of D De Marco, T2942–T2943 (ACT Day 26).

153 For example, ACK.

154 Transcript of T Heinrich, T3158:32–34 and see T3155:2–9, T3183:14–T3185:12 (ACT Day 28). Brother Heinrich was asked about specific allegations of child sexual abuse by Brother Chute against 14 boys: AAO, AAS, ACG, ACL, ACO, AAM, AAP, AAV, ACD, ACQ, AAQ, AAK, AAE and AAF. He was only aware of the complaint involving ACK.

155 Transcript of T Heinrich, T3158:32-34 (ACT Day 28)

156 Transcript of T Heinrich, T3159:8–13 (ACT Day 28).

157 Transcript of T Heinrich, T3159:24–25 (ACT Day 28).

158 Transcript of T Heinrich, T3159:15–32 (ACT Day 28).

159 Transcript of T Heinrich, T3159:34–47 (ACT Day 28).

160 Transcript of T Heinrich, T3160:18–31 (ACT Day 28).

161 Transcript of T Heinrich, T3160:37–44 (ACT Day 28).

162 Transcript of W Wade, T3252:7–11 (ACT Day 29).

163 Transcript of W Wade, T3252:30–34 (ACT Day 29)

164 Transcript of W Wade, T3252:39–41 (ACT Day 29).

165 Transcript of T Heinrich, T3153:8–40 (ACT Day 28).

166 Transcript of T Heinrich, T3153:33–46 (ACT Day 28).

167 Exhibit 13-0003, CCI.0019.00009.0419\_R AT 0420.

168 Exhibit 13-0003, CCI.0053.00008.0105\_R at 0112.  
169 Exhibit 13-0003, CTJH.053.07085.0179\_R at 0188.  
170 Exhibit 13-0038, TEN.0009.001.0001 at 0003.  
171 See, for example, Exhibit 13-0003, CCI.0066.00008.0318\_R; Exhibit 13-0003, CCI.0066.00013.0293\_R at 0295.  
172 Exhibit 13-0003, CCI.0066.00008.0318\_R at 0322.  
173 Exhibit 13-0003, CCI.0066.00008.0318\_R at 0322.  
174 Exhibit 13-0003, CTJH.053.07085.0179 at 0181 and 0183.  
175 Exhibit 13-0003, CTJH.053.07085.0179 at 0183.  
176 Exhibit 13-0003, CTJH.053.07085.0179 at 0184.  
177 Exhibit 13-0003, CTJH.053.07085.0179 at 0183.  
178 Exhibit 13-0003, CTJH.053.07085.0179 at 0183.  
179 Exhibit 13-0003, CTJH.053.07085.0179 at 0181.  
180 Exhibit 13-0038, TEN.0009.001.0001 at 0003.  
181 Exhibit 13-0003, CCI.0053.00008.0105\_R at 0119.  
182 Exhibit 13-0003, CTJH.053.07085.0179\_R at 0188.  
183 Exhibit 13-0038, TEN.0009.001.0001 at 0003.  
184 Exhibit 13-0003, CCI.0069.00004.0005\_R at 0008; Exhibit 13-0003, CTJH.053.12001.1886\_R at 1887.  
185 Exhibit 13-0003, CTJH.053.12001.1886\_R at 1887.  
186 Exhibit 13-0003, CTJH.053.12001.1886\_R at 1887.  
187 Exhibit 13-0003, CTJH.053.07085.0179 at 0185.  
188 Exhibit 13-0038, TEN.0009.001.0001 at 0003.  
189 CCI.0066.00008.0339 at 0343–0344.  
190 CCI.0066.00008.0339 at 0344.  
191 Transcript of T Heinrich, ACT3156:33-3157:06 (ACT Day 28).  
192 Exhibit 13-0038, TEN.0009.001.0001 at 0003.  
193 CCI.0006.00008.0351\_R at 0358.  
194 Exhibit 13-0003, CCI.0066.00008.0318\_R at 0319–0320.  
195 Exhibit 13-0003, CCI.0066.00008.0440\_R at 0441.  
196 Transcript of T Heinrich, T3185:1–4 (ACT Day 28).  
197 Exhibit 13-0003, CCI.0066.00008.0339\_R at 0342; Exhibit 13-0038, TEN.0009.001.0001 at 0004.  
198 Exhibit 13-0003, CCI.0073.00009.0255\_R at 0257.  
199 Transcript of T Heinrich, T3184:01–08 (ACT Day 28).  
200 Exhibit 13-0038, TEN.0009.001.0001 at 0004.  
201 Exhibit 13-0003, CCI.0066.00008.0339\_R at 0346.  
202 Exhibit 13-0003, CCI.0066.00008.0339\_R at 0346.  
203 Transcript of T Heinrich, T3168:17–28 (ACT Day 28).  
204 Exhibit 13-0003, CTJH.053.07072.0022 at 0025.  
205 Exhibit 13-0003, CCI.0066.00010.0133 at 0152.  
206 Transcript of T Heinrich, T3193:40–T3194:6 (ACT Day 28).  
207 Transcript of T Heinrich, T3244:30–33 (ACT Day 29).  
208 Transcript of T Heinrich, T3244:39–42 (ACT Day 29).  
209 Exhibit 13-0013, Statement of Brother Heinrich, CTJH.500.30001.0001\_R at [31].  
210 Transcript of T Heinrich, T3171:42–46 (ACT Day 28).  
211 Transcript of T Heinrich, T3172:12–38 (ACT Day 28).  
212 Exhibit 13-0003, CTJH.053.07072.0022\_R at 0026.  
213 Exhibit 13-0003, CCI.0066.00010.0133 at 0153.  
214 Exhibit 13-0003, CCI.0066.00010.0133 at 0147.

215 Transcript of T Heinrich, T3173:21–25 (ACT Day 28).  
216 Exhibit 13-0013, Statement of Brother Heinrich, CTJH.500.30001.0001\_R at [33].  
217 Transcript of T Heinrich, T3146:24–T3147:18, T3172:5–6 (ACT Day 28).  
218 Transcript of T Heinrich, T3147:31–43, T3148:23–28 (ACT Day 28).  
219 Transcript of T Heinrich, T3209:4–7 (ACT Day 29).  
220 Transcript of T Heinrich, T3148:35–T3149:3 (ACT Day 28).  
221 Exhibit 13-0003, CCI.0066.00010.0133\_R at 0154.  
222 Exhibit 13-0034, PUB.0005.001.0002\_R; Transcript of T Heinrich, T3237:39–T3239:19 (ACT Day 29).  
223 Exhibit 13-0003, CCI.0066.00010.0133\_R at 0155.  
224 Transcript of T Heinrich, T3175:9–20 (ACT Day 28).  
225 Exhibit 13-0003, CCI.0066.00010.0133 at 0147.  
226 Exhibit 13-0003, CCI.0066.00010.0133 at 0148.  
227 Transcript of T Heinrich, T3195:41–45 (ACT Day 28).  
228 Transcript of T Heinrich, T3177:17–30 (ACT Day 28).  
229 Transcript of T Heinrich, T3177:43–45 (ACT Day 28).  
230 Transcript of T Heinrich, T3168:13–15 (ACT Day 28).  
231 Exhibit 13-0003, CTJH.053.12001.3911\_R at 3914.  
232 Exhibit 13-0003, CTJH.053.12001.3911\_R at 3914.  
233 Exhibit 13-0003, CTJH.053.12001.3911\_R at 3914.  
234 Exhibit 13-0003, CTJH.053.12001.3911\_R at 3914.  
235 Transcript of T Heinrich, T3178:06–45 (ACT Day 28).  
236 Transcript of T Heinrich, T3179:10–17 (ACT Day 28).  
237 Exhibit 13-0003, CCI.0066.00010.0133\_R at 0151.  
238 Transcript of T Heinrich, T3173:35–44 (ACT Day 28).  
239 Transcript of T Heinrich, T3174:9–14 (ACT Day 28).  
240 Transcript of T Heinrich, T3174:22–25 (ACT Day 28).  
241 Exhibit 13-13, Statement of Brother Heinrich, CTJH.500.30001.0001\_R at [39]–[40].  
242 Transcript of T Heinrich, T3170:11–22, T3171:37–40 (ACT Day 28).  
243 Transcript of T Heinrich, T3170:11–22 (ACT Day 28).  
244 Exhibit 13-0003, CTJH.053.12001.3957\_R at 3960.  
245 Exhibit 13-0003, CTJH.053.12001.3957\_R at 3966.  
246 Exhibit 13-0005, Statement of Damian De Marco, STAT.0279.001.0001 at [11].  
247 Exhibit 13-0005, Statement of Damian De Marco, STAT.0279.001.0001 at [11].  
248 Exhibit 13-0005, Statement of Damian De Marco, STAT.0279.001.0001 at [13].  
249 Exhibit 13-0005, Statement of Damian De Marco, STAT.0279.001.0001 at [15].  
250 Exhibit 13-0005, Statement of Damian De Marco, STAT.0279.001.0001 at [17].  
251 Exhibit 13-0005, Statement of Damian De Marco, STAT.0279.001.0001 at [17].  
252 Exhibit 13-0005, Statement of Damian De Marco, STAT.0279.001.0001 at [18].  
253 Exhibit 13-0005, Statement of Damian De Marco, STAT.0279.001.0001 at [18].  
254 Exhibit 13-0031, Annexure AT1, CTJH.053.07077.0175\_R at 0175.  
255 Exhibit 13-0006, CCI.0071.00011.0156\_R at 0157.  
256 Exhibit 13-0007, CCI.0071.00011.0047\_R at 0060.  
257 Exhibit 13-0003, CCI.0071.00011.0087\_R at 0087.  
258 Exhibit 13-0011, Statement of John Doyle, CTJH.500.25001.0001\_R [17]–[19].  
259 Exhibit 13-0003, CTJH.053.07081.0544\_R at 0547.  
260 Transcript of T Heinrich, T3190:30–T3191:30 (ACT Day 28).

- 261 Transcript of T Heinrich, T3181:13–25 (ACT Day 28).
- 262 Exhibit 13-0013, Statement of Terence Heinrich, CTJH.500.30001.0001\_R at [42].
- 263 Transcript of T Heinrich, T3195:34–T3196:8 (ACT Day 28).
- 264 Exhibit 13-003, CTJH.053.07077.0175\_R.
- 265 Exhibit 13-0005, Statement of Damian De Marco, STAT.0279.001.0001\_R at [20].
- 266 Exhibit 13-0005, Statement of Damian De Marco, STAT.0279.001.0001\_R at [21] to [22].
- 267 Exhibit 13-0005, Statement of Damian De Marco, STAT.0279.001.0001\_R at [23].
- 268 Transcript of D De Marco, T2949:1–8 (ACT Day 26).
- 269 Transcript of D De Marco, T2949:1–8 (ACT Day 26).
- 270 Exhibit 13-0005, Statement of Damian De Marco, STAT.0279.001.0001\_R at [23].
- 271 Exhibit 13-0005, Statement of Damian De Marco, STAT.0279.001.0001\_R at [23].
- 272 Transcript of D De Marco, T2950:35–38 (ACT Day 26).
- 273 Transcript of D De Marco, T2951:1–2 (ACT Day 26).
- 274 Transcript of D De Marco, T2949:42–T2950:1 (ACT Day 26).
- 275 Transcript of D De Marco, T2976:13–19 (ACT Day 27).
- 276 Transcript of D De Marco, T2976:45–47 (ACT Day 27).
- 277 Transcript of D De Marco, T2977:40–41 (ACT Day 27).
- 278 Transcript of D De Marco, T2953:16–18 (ACT Day 26).
- 279 Transcript of D De Marco, T2976:40–T2977:3 (ACT Day 27).
- 280 Transcript of D De Marco, T2953:4–9 (ACT Day 26).
- 281 Transcript of D De Marco, T2984:1–6 (ACT Day 27).
- 282 Transcript of D De Marco, T2955:16–22 (ACT Day 27).
- 283 Transcript of W Wade, T3253:27–T3254:47 (ACT Day 29).
- 284 Transcript of W Wade, T3254:1–4 (ACT Day 29).
- 285 Transcript of W Wade, T3254:30–34 (ACT Day 29).
- 286 Exhibit 13-0007, Statement of Brother Christopher Wade CTJH.500.27001.0001\_R at [29].
- 287 Exhibit 13-0007, Statement of Brother Christopher Wade, CTJH.500.27001.0001\_R at [27].
- 288 Exhibit 13-0031, Statement of Brother Turton, CTJH.500.28001.0001\_R at [43], [44].
- 289 Exhibit 13-0031, Statement of Brother Turton, CTJH.500.28001.0001\_R at [45].
- 290 Exhibit 13-0031, Statement of Brother Turton, CTJH.500.28001.0001\_R at [48] and see [46] to [67].
- 291 Transcript of A Turton, T3666:30–47 (ACT Day 32).
- 292 Transcript of A Turton, T3666:22–24 (ACT Day 32)
- 293 Transcript of A Turton, T3667:8–11 (ACT Day 32).
- 294 Transcript of A Turton, T3667:18–19 (ACT Day 32).
- 295 Transcript of A Turton, T3667:34–44 (ACT Day 32).
- 296 Transcript of A Turton, T3666:13–21 (ACT Day 32).
- 297 Transcript of A Turton, T3668:15–31 (ACT Day 32).
- 298 Transcript of A Turton, T3671:16–28 (ACT Day 32).
- 299 Exhibit 13-0003, Annexure AT1, CTJH.053.07077.0175\_R; Exhibit 13-31;  
Statement of Brother Turton, CTJH.500.28001.0001\_R at [59].
- 300 Exhibit 13-0030, Statement of Father Brian Lucas, CTJH.500.23001.0001\_R at [20].
- 301 Transcript of B Lucas, T3551:37–45 (ACT Day 31).
- 302 Exhibit 13-0003, Annexure AT1, CTJH.053.07077.0175\_R at 0175.
- 303 Transcript of A Turton, T3674:9–13 (ACT Day 32).
- 304 Transcript of A Turton, T3674:41–47 (ACT Day 32).
- 305 Exhibit 13-0031, Statement of Brother Turton, CTJH.500.28001.0001\_R at [67].

306 Transcript of A Turton, T3899:23–27 (ACT Day 35).  
307 Transcript of A Turton, T3900:15–30 (ACT Day 35).  
308 Transcript of A Turton, T3669:22–27 (ACT Day 32).  
309 Transcript of A Turton, T3669:29–31 (ACT Day 32).  
310 Exhibit 13-0005, Statement of Damian De Marco, STAT.0279.001.0001\_R at [26]–[27].  
311 Transcript of D De Marco, T2956:34–36 (ACT Day 26).  
312 Exhibit 13-0003, CCI.0066.00008.0339\_R at 0341–0342.  
313 Exhibit 13-0038, TEN.0009.001.0001 at 0003-0004.  
314 Transcript of D De Marco, T2956:25–26 (ACT Day 26).  
315 Exhibit 13-0018, Statement of LAJ, STAT.0277.001.0002\_R at [8].  
316 Exhibit 13-0018, Statement of LAJ, STAT.0277.001.0002\_R at [8].  
317 Exhibit 13-0030, Statement of LAJ, STAT.0277.001.0002\_R at [9].  
318 Exhibit 13-0018, Statement of LAJ, STAT.0277.001.0002\_R at [10].  
319 Exhibit 13-0018, Statement of LAJ, STAT.0277.001.0002\_R at [10].  
320 Exhibit 13-0018, Statement of LAJ, STAT.0277.001.0002\_R at [12].  
321 Transcript of A Turton, T3960:4–19 (ACT Day 35).  
322 Exhibit 13-0018, Statement of LAJ, STAT.0277.001.0002\_R at [13].  
323 Exhibit 13-0018, Statement of LAJ, STAT.0277.001.0002\_R at [14].  
324 Exhibit 13-0018, Statement of LAJ, STAT.0277.001.0002\_R at [11].  
325 Exhibit 13-0018, Statement of LAJ, STAT.0277.001.0002\_R at [16].  
326 Exhibit 13-0003, CCI.0071.00011.0136\_R.  
327 Exhibit 13-0003, Annexure AT3, CTJH.053.07072.0063 at 0063.  
328 Exhibit 13-0003, CTJH.053.07072.0063 at 0063.  
329 Transcript of A Turton, T3677:27–41 (ACT Day 32).  
330 Transcript of A Turton, T3678:25–38 (ACT Day 32).  
331 Transcript of A Turton, T3679:27–29 (ACT Day 32).  
332 Transcript of A Turton, T3677:41–42, T3680:3 (ACT Day 32).  
333 Exhibit 13-0003, CTJH.053.07072.0063 at 0063.  
334 Exhibit 13-0003, CTJH.053.12001.5400\_R.  
335 Exhibit 13-0003, CTJH.053.07072.0063\_R at 0065.  
336 Exhibit 13-0003, CTJH.053.07072.0063\_R at 0065.  
337 Exhibit 13-0003, CTJH.053.07072.0063\_R at 0065.  
338 Exhibit 13-0003, CTJH.053.07077.0214\_R.  
339 Exhibit 13-0003, CTJH.053.07077.0214\_R at 0215.  
340 Exhibit 13-0003, CTJH.053.07072.0057\_R.  
341 Exhibit 13-0003, CTJH.053.07072.0057\_R.  
342 Transcript of A Turton, T3684:25–27 (ACT Day 32).  
343 Transcript of A Turton, T3686:39–42 (ACT Day 32).  
344 Exhibit 13-0003, CTJH.053.07077.0201\_R.  
345 Exhibit 13-0003, CTJH.053.07072.0058\_R at 0058.  
346 Transcript of A Turton, T3687:1–8 (ACT Day 32).  
347 Exhibit 13-0003, Annexure AT7, CTJH.053.07072.0058\_R.  
348 Transcript of A Turton, T3684:40–T3685:04 (ACT Day 32).  
349 Transcript of W Wade, T3278:39–47–T3279:23–28 (ACT Day 29).  
350 Transcript of W Wade, T3275:41–T3276:36 (ACT Day 29).  
351 Transcript of W Wade, T3281:38–42 (ACT Day 29).

- 352 Transcript of A Turton, T3686:5–7 (ACT Day 32).
- 353 Transcript of A Turton, T3686:5–10 (ACT Day 32).
- 354 Exhibit 13-0003, CTJH.053.12001.2062.
- 355 Transcript of A Turton, T3706:44–T3707:1–2 (ACT Day 33)
- 356 Transcript of A Turton, T3706:34–T3708:1–13 (ACT Day 33).
- 357 Exhibit 13-0003, CTJH.053.12001.2062.
- 358 Transcript of A Turton, T3709:2–5 (ACT Day 33).
- 359 Transcript of A Turton, T3709:13–15 (ACT Day 33).
- 360 Transcript of A Turton, T3709:21–23 (ACT Day 33).
- 361 Transcript of J Crowe, T4054:2–6 (ACT Day 36).
- 362 Exhibit 13-0003, CTJH.053.07097.0299; Transcript of A Turton, T3886:4 (ACT Day 35).
- 363 Transcript of W Wade, T3283:5–15 (ACT Day 29).
- 364 Transcript of A Turton, T3709:15–43 (ACT Day 33).
- 365 Transcript of A Turton, T3709:40–43 (ACT Day 33).
- 366 Transcript of A Turton, T3710:5–6 (ACT Day 33).
- 367 Exhibit 13-0003, CTJH.053.12001.2856\_R; Ex 13-0003, CTJH.053.12001.2427\_R.
- 368 Exhibit 13-0003, CTJH.053.12001.2427.
- 369 Exhibit 13-0003, CTJH.053.12001.2062.
- 370 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R; see annexure JC44 CTJH.053.32001.0381\_R for the current Safety Plan that is in place.
- 371 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [136].
- 372 Marist Brothers and Truth Justice and Healing Council, *Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, in response to Submission of Counsel Assisting Case Study 13*, 11 December 2014, para 322.
- 373 Exhibit 13-0003, CCI.0029.00016.0075\_R.
- 374 Exhibit 13-0003, CCI.0029.00016.0075\_R.
- 375 Exhibit 13-0003, CCI.0016.00011.0110\_R.
- 376 Exhibit 13-0003, CCI.0016.00011.0110\_R.
- 377 Exhibit 13-0003, CCI.0016.00011.0110.
- 378 Marist Brothers and Truth Justice and Healing Council, *Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, Submissions in Response to Submissions of Counsel Assisting – Case Study 13*, 11 December 2014, para 367 and see paras 359–366, 368.
- 379 Marist Brothers and Truth Justice and Healing Council, *Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, Submissions in Response to Submissions of Counsel Assisting – Case Study 13*, 11 December 2014, para 367.
- 380 Marist Brothers and Truth Justice and Healing Council, *Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, Submissions in Response to Submissions of Counsel Assisting – Case Study 13*, 11 December 2014, para 368.
- 381 A Turton, *Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, Preliminary Submissions as to Procedural Fairness*, 5 December 2014, para 105.
- 382 Exhibit 13-0024, Annexure S, NSW.0032.001.0099.
- 383 Exhibit 13-0003 NSW.0022.001.0051\_R.
- 384 Exhibit 13-0003 NSW.0022.001.0051\_R; Exhibit 13-0003, NSW.0022.002.0009\_R; and Exhibit 13-0003, NSW.0022.002.0014\_R.
- 385 Transcript of G Sutton, T3976:29–33 (ACT Day 36).
- 386 Transcript of G Sutton, T3976:44–47 (ACT Day 36).
- 387 Exhibit 13-0038, TEN.0009.001.0001.
- 388 Transcript of J Crowe, T4016:28–36 (ACT Day 36).

389 Exhibit 13-0003, NSW.0022.001.0051\_R.  
390 Exhibit 13-0003, CCI.0029.00005.0067\_R; Exhibit 13-0003, CCI.0029.00016.0030\_R.  
391 This information was provided by the Marist Brothers; however, it does not accord with other evidence to the  
Royal Commission.  
392 Exhibit 13-0038, TEN.0009.001.0001.  
393 Exhibit 13-0021, Statement of Mr Holdsworth, CTJH.500.24001.0001\_R at [13];  
Exhibit 13-0019, Statement of Mr Doherty, STAT.0278.001.0001\_R at [9].  
394 Exhibit 13-0021, Statement of Mr Holdsworth, CTJH.500.24001.0001\_R at [13].  
395 Exhibit 13-0019, Statement of Mr Doherty, STAT.0278.001.0001\_R at [9].  
396 Transcript of J Holdsworth, T3367:14–17 (ACT Day 30).  
397 Exhibit 13-0021, Statement of Mr Holdsworth, CTJH.500.24001.0001\_R at [20].  
398 Exhibit 13-0019, Statement of Mr Doherty, STAT.0278.001.0001\_R at [18].  
399 Transcript of D Doherty, T3318:37–T3319:7 (ACT Day 29).  
400 Exhibit 13-0019, Statement of Mr Doherty, STAT.0278.001.0001\_R at [19].  
401 Transcript of D Doherty, T3319:9–18 (ACT Day 29).  
402 Transcript of D Doherty, T3323:7–44 (ACT Day 30).  
403 Transcript of D Doherty, T3322:30–47 (ACT Day 30).  
404 Exhibit 13-0019, Statement of Mr Doherty, STAT.0278.001.0001\_R at [22].  
405 Exhibit 13-0019, Statement of Mr Doherty, STAT.0278.001.0001\_R at [24], [25].  
406 Transcript of D Doherty, T3325:13–40 (ACT Day 30).  
407 Transcript of D Doherty, T3325:29–T3326:2 (ACT Day 30). Brother Doherty said that  
at the time the term ‘interfering with children’ was preferred to the term ‘paedophilia’.  
408 Exhibit 13-0019, Statement of Mr Doherty, STAT.0278.001.0001\_R at [27].  
409 Exhibit 13-0003, CCI.0029.00001.0389\_R at 0390.  
410 Exhibit 13-0019, Statement of Mr Doherty, STAT.0278.001.0001\_R at [29].  
411 Transcript of D Doherty, T3339:37–40 (ACT Day 30).  
412 Exhibit 13-0019, Statement of Mr Doherty, STAT.0278.001.0001\_R at [31].  
413 Exhibit 13-0003, STAT.0278.001.0001\_R at [32]  
414 Exhibit 13-0003, STAT.0278.001.0001\_R at [32]  
415 Exhibit 13-0019, Statement of Mr Doherty, STAT.0278.001.0001\_R at [36]–[37].  
416 Transcript of D Doherty, T3330:22–24 (ACT Day 30).  
417 Exhibit 13-0019, Statement of Mr Doherty, STAT.0278.001.0001\_R at [37].  
418 Exhibit 13-0019, Statement of Mr Doherty, STAT.0278.001.0001\_R at [38].  
419 Transcript of D Doherty, T3341:27–32 (ACT Day 30).  
420 Exhibit 13-0019, Statement of Mr Doherty, STAT.0278.001.0001\_R at [34].  
421 Transcript of D Doherty, T3330:34–T3331:8 (ACT Day 30).  
422 Transcript of D Doherty, T3331:2–8 (ACT Day 30).  
423 Exhibit 13-0003, CCI.0029.00001.0389\_R at 0391.  
424 Exhibit 13-0003, CCI.0029.00001.0389\_R at 0391.  
425 Exhibit 13-0019, Statement of Mr Doherty, STAT.0278.001.0001\_R at [40].  
426 Exhibit 13-0019, Statement of Mr Doherty, STAT.0278.001.0001\_R at [40].  
427 Transcript of D Doherty, T3333:41–44 (ACT Day 30).  
428 Exhibit 13-0020, EXH.013.020.0001.  
429 Transcript of D Doherty, T3336:2–6 (ACT Day 30).  
430 Transcript of D Doherty, T3350:7–10 (ACT Day 30).  
431 Exhibit 13-0019, Statement of Mr Doherty, STAT.0278.001.0001\_R at [35].  
432 Exhibit 13-0003, CCI.0029.00001.0389\_R at [7], Exhibit 13-0019, Statement of Mr Doherty,  
STAT.0278.001.0001\_R at [40].

433 Exhibit 13-0003, CCI.0029.00001.0389\_R.  
434 John Holdsworth was no longer a Brother when he gave evidence, but the title has been retained to avoid confusion.  
435 Exhibit 13-0021, Statement of Mr Holdsworth, CTJH.500.24001.0001\_R at [28].  
436 Transcript of J Holdsworth, T3372:44–47 (ACT Day 30).  
437 Transcript of J Holdsworth, T3369:11 (ACT Day 30).  
438 Transcript of J Holdsworth, T3369:24 (ACT Day 30).  
439 Transcript of J Holdsworth, T3370:31, T3370:39 (ACT Day 30).  
440 Transcript of J Holdsworth, T3370:11–14 (ACT Day 30).  
441 Transcript of J Holdsworth, T3369:1–7 (ACT Day 30).  
442 Exhibit 13-0021, Statement of Mr Holdsworth, CTJH.500.24001.0001\_R at [27].  
443 Exhibit 13-0021, Statement of Mr Holdsworth, CTJH.500.24001.0001\_R at [27].  
444 Exhibit 13-0021, Statement of Mr Holdsworth, CTJH.500.24001.0001\_R at [27].  
445 Exhibit 13-0021, Statement of Mr Holdsworth, CTJH.500.24001.0001\_R at [47].  
446 Exhibit 13-0003, CCI.0029.00001.0389\_R.  
447 Exhibit 13-0021, Statement of Mr Holdsworth, Annexure JH 1, CTJH.053.12003.1291\_R at [4].  
448 Exhibit 13-0003, CCI.0016.00011.0116\_R.  
449 Exhibit 13-0003, CCI.0016.00011.0116\_R.  
450 Transcript of J Holdsworth, T3375:22–34 (ACT Day 30).  
451 Transcript of J Holdsworth, T3377:11–21 (ACT Day 30).  
452 Exhibit 13-0003, CCI.0016.00011.0116\_R.  
453 Exhibit 13-0003, CCI.0029.00016.0055\_R.  
454 Exhibit 13-0003, CCI.0029.00016.0055\_R.  
455 Exhibit 13-0003, CCI.0029.00016.0055\_R.  
456 Exhibit 13-0003, CCI.0029.00014.0331\_R.  
457 Exhibit 13-0003, CCI.0029.00014.0331\_R at 0331.  
458 Exhibit 13-0003, CCI.0029.00014.0331\_R at 0331.  
459 Exhibit 13-0003, CCI.0016.00011.0117\_R.  
460 Transcript of J Holdsworth, T3372:34–38, T3391:45–T3392:1 (ACT Day 30).  
461 Exhibit 13-0003, CCI.0016.00011.0116\_R, Exhibit 13-0003, T CCI.0016.00011.0117\_R.  
462 Exhibit 13-0003, CCI.0016.00011.0117\_R.  
463 Exhibit 13-0003, CCI.0016.00011.0117\_R.  
464 Exhibit 13-0003, CCI.0016.00011.0110\_R.  
465 Exhibit 13-0003, NSW.0022.002.0009\_R.  
466 Exhibit 13-0003, NSW.0022.002.0009\_R.  
467 Exhibit 13-0003, NSW.0022.002.0009\_R.  
468 Exhibit 13-0003, NSW.0022.002.0009\_R.  
469 Exhibit 13-0003, CCI.0029.00005.0094\_R at 0096.  
470 Exhibit 13-0003, CCI.0029.00005.0094\_R at 0096.  
471 Exhibit 13-0003, CCI.0029.00005.0094\_R at 0096.  
472 Exhibit 13-0003, CCI.0016.00011.0110\_R.  
473 Exhibit 13-0003, NSW.0022.002.0009\_R.  
474 Exhibit 13-0003, NSW.0022.002.0009\_R.  
475 Exhibit 13-0003, NSW.0022.002.0009\_R.  
476 Exhibit 13-0003, NSW.0022.002.0009\_R at 0011.  
477 Exhibit 13-0003, CCI.0029.00005.0100\_R at 0101.  
478 Exhibit 13-0003, CCI.0029.00005.0100\_R at 0102.

479 Exhibit 13-0003, CCI.0029.00005.0100\_R at [8].

480 Exhibit 13-0003, CCI.0029.00005.0100\_R at 0102.

481 Exhibit 13-0003, CCI.0016.00011.0110\_R.

482 Exhibit 13-0038, TEN.0009.001.0001.

483 Exhibit 13-0003, CCI.0016.00011.0110\_R.

484 Exhibit 13-0003, NSW.0022.001.0005 at 0006–0007.

485 Exhibit 13-0003, NSW.0022.002.0014\_R.

486 Exhibit 13-0002, Statement of ADM, STAT.0274.001.0001\_R at [37].

487 Exhibit 13-0002, Statement of ADM, STAT.0274.001.0001\_R at [36], [40].

488 Exhibit 13-0002, Statement of ADM, STAT.0274.001.0001\_Rat [41], [42].

489 Exhibit 13-0002, Statement of ADM, STAT.0274.001.0001\_R at [26].

490 Exhibit 13-0002, Statement of ADM, STAT.0274.001.0001\_Rat [28]–[29].

491 Exhibit 13-0003, NSW.0022.002.0014\_R.

492 Exhibit 13-0004, Statement of ADQ, STAT.0275.001.0001\_R at [11].

493 Exhibit 13-0004, Statement of ADQ, STAT.0275.001.0001\_R at [12] and [13].

494 Exhibit 13-0004, Statement of ADQ, STAT.0275.001.0001\_R at [18].

495 Exhibit 13-0004, Statement of ADQ, STAT.0275.001.0001\_R at [11] and [15].

496 Exhibit 13-0004, Statement of ADQ, STAT.0275.001.0001\_R at [18] and [19].

497 Exhibit 13-0004, Statement of ADQ, STAT.0275.001.0001\_R at [10], [11], [12] and [17].

498 Exhibit 13-0004, Statement of ADQ, STAT.0275.001.0001\_R at [23].

499 Exhibit 13-0004, Statement of ADQ, STAT.0275.001.0001\_R at [24].

500 Exhibit 13-0004, Statement of ADQ, STAT.0275.001.0001\_R at [32].

501 Exhibit 13-0004, Statement of ADQ, STAT.0275.001.0001\_R at [33].

502 Exhibit 13-0003, NSW.0022.002.0009\_R.

503 Exhibit 13-0003, CCI.0016.00011.0110\_R.

504 Mrs O’Grady said that the school was a merger between a girls’ school operated by the Presentation Sisters and a Marist Brothers boys’ school: Transcript of J O’Grady, T3088: 44–T3089:5 (ACT Day 28).

505 Exhibit 13-0023, Statement of John Kelly, CTJH.500.26001.0001\_R at [15]; Transcript of J O’Grady, T3088:40–T3089:14 (ACT Day 28).

506 Exhibit 13-0003, NSW.0022.002.0014\_R.

507 Exhibit 13-0003, NSW.0022.002.0014\_R.

508 Exhibit 13-0003, NSW.0022.002.0009\_R.

509 Exhibit 13-0003, NSW.0022.002.0014\_R.

510 Exhibit 13-0003, NSW.0022.001.0051\_R at 0053.

511 Exhibit 13-0003, NSW.0022.002.0014\_R.

512 Transcript of J O’Grady, T3091:32–45 (ACT Day 28).

513 Transcript of J O’Grady, T3096:11–27 (ACT Day 28); Exhibit 13-0003, CCI.0029.00001.0220\_R at 0230.

514 Exhibit 13-0012, Statement of Margaret Jan O’Grady, STAT.0282.001.0001\_R at [13].

515 Transcript of J O’Grady, T3092:25–43 (ACT Day 28).

516 Transcript of J O’Grady, T3092:39–43 (ACT Day 28).

517 Exhibit 13-0003, CCI.0029.00001.0252\_R at 0253

518 Exhibit 13-0003, CCI.0029.00001.0252\_R at 0254.

519 Exhibit 13-0003, CCI.0029.00001.0207\_R at 0207.

520 Exhibit 13-0003, CCI.0029.00001.0219\_R.

521 Exhibit 13-0003, CCI.0029.00001.0219\_R at 0219.

522 Transcript of J O’Grady, T3093:26–46 (ACT Day 28).

523 Exhibit 13-0003, CCI.0029.00001.0217\_R at 0217.  
524 Exhibit 13-0003, CCI.0029.00001.0217\_R at 0218.  
525 Exhibit 13-0032, Statement of Brother Turton, CTJH.500.28001.0016\_R at [42].  
526 Exhibit 13-0032, Statement of Brother Turton, CTJH.500.28001.0016\_R at [25].  
527 Exhibit 13-0032, Statement of Brother Turton, CTJH.500.28001.0016\_R at [45].  
528 Exhibit 13-0032, Statement of Brother Turton, CTJH.500.28001.0016\_R at [47].  
529 Exhibit 13-0032, Statement of Brother Turton, CTJH.500.28001.0016\_R at [47];  
Transcript of A Turton, T3587:33–46 (ACT Day 32).  
530 Exhibit 13-0032, Statement of Brother Turton, CTJH.500.28001.0016\_R at [48];  
Transcript of A Turton, T3588:1–4 (ACT Day 32).  
531 Exhibit 13-0032, Statement of Brother Turton, CTJH.500.28001.0016\_R at [48].  
532 Transcript of A Turton, T3588:35–38 (ACT Day 32).  
533 Transcript of A Turton, T3588:44–45 (ACT Day 32).  
534 Exhibit 13-0032, CTJH.053.11005.0241\_R at [11].  
535 Transcript of A Turton, T3589:30–35 (ACT Day 32).  
536 Exhibit 13-0003, CCI.0029.00001.0207\_R  
537 Exhibit 13-0003, CCI.0029.00001.0207\_R at 0208  
538 Transcript of J O’Grady, T3100:16–40 (ACT Day 28).  
539 Exhibit 13-0003, CCI.0029.00001.0207\_R at 0209–0210.  
540 Transcript of J O’Grady, T3101:2–6, 20-26 (ACT Day 28).  
541 Transcript of J O’Grady, T3138:26–30 (ACT Day 28).  
542 Exhibit 13-0003, CCI.0029.00001.0219\_R. Emphasis in the original.  
543 Transcript of A Turton, T3594:13 (ACT Day 32).  
544 Transcript of A Turton, T3594:29–31 (ACT Day 32).  
545 Transcript of A Turton, T3594:36–39 (ACT Day 32).  
546 Transcript of J O’Grady, T3102:39–47 (ACT Day 28).  
547 Transcript of J O’Grady, T3103:2–6 (ACT Day 28); Exhibit 13-0003, CCI.0029.00001.0220\_R.  
548 Transcript of J O’Grady, T3103:12–20 (ACT Day 28).  
549 Transcript of J O’Grady, T3103:27–33 (ACT Day 28).  
550 Exhibit 13-0012, Statement of Jan O’Grady, STAT.0282.001.0001\_R at [38]–[44].  
551 Exhibit 13-0003, CCI.0029.00001.0215.  
552 Exhibit 13-0003, CCI.0029.00001.0215 at 0216.  
553 Exhibit 13-0003, CCI.0029.00001.0219\_R.  
554 Exhibit 13-0003, CCI.0029.00001.0219\_R. Emphasis in the original.  
555 Exhibit 13-0032, Statement of Brother Turton, CTJH.500.28001.0016\_R at [50].  
556 Transcript of A Turton, T3590:17–22 (ACT Day 32).  
557 Exhibit 13-0003, CCI.0029.00001.0121\_R at 0125.  
558 Exhibit 13-0003, CCI.0029.00001. 0121\_R at 0125.  
559 Exhibit 13-0003, CCI.0029.00001. 0121\_R at 0125.  
560 Exhibit 13-0032, Statement of Brother Turton, CTJH.500.28001.0016\_R at [59].  
561 Exhibit 13-0003, CCI.0029.00001.0219\_R.  
562 Transcript of A Turton, T3591:1–T3592:37 (ACT Day 32).  
563 Transcript of A Turton, T3593:22–25 (ACT Day 32).  
564 Transcript of A Turton, T3592:39–47 (ACT Day 32).  
565 Transcript of A Turton, T3593:22–32 (ACT Day 32).  
566 Transcript of A Turton, T3594:33–39 (ACT Day 32).

567 Transcript of A Turton, T3594:36–39 (ACT Day 32).

568 Transcript of A Turton, T3595:2–5 (ACT Day 32).

569 Exhibit 13-0003, CCI.0016.00011.0110\_R.

570 Exhibit 13-0003, CCI.0029.00001.0151 at [14].

571 Transcript of A Turton, T3597:44–47 (ACT Day 32).

572 Transcript of A Hunt, T3487:3–36 (ACT Day 31).

573 Exhibit 13-0003, NSW.0022.002.0014\_R.

574 Exhibit 13-0003, NSW.0022.002.0014\_R.

575 Exhibit 13-0003, NSW.0022.001.0051\_R.

576 Exhibit 13-0003, NSW.0022.001.0051\_R.

577 Exhibit 13-0003, NSW.0022.001.0051\_R.

578 Exhibit 13-0003, NSW.0022.001.0051\_R at 0053.

579 Transcript of A Hunt, T3500:30–32 (ACT Day 31).

580 Transcript of A Hunt, T3500:38–T3501:23 (ACT Day 31).

581 Transcript of A Hunt, T3501:5–14 (ACT Day 31).

582 Transcript of A Hunt, T3451:6–13 (ACT Day 31).

583 Transcript of A Hunt, T3452:2–4 (ACT Day 31).

584 Transcript of A Hunt, T3451:1–4 (ACT Day 31).

585 Transcript of A Hunt, T3485:24–30 (ACT Day 31).

586 Transcript of A Hunt, T3451:15–17 (ACT Day 31).

587 Transcript of A Hunt, T3452:2–4 (ACT Day 31).

588 Transcript of A Hunt, T3477:35–44 (ACT Day 31).

589 Transcript of A Hunt, T3478:36–38 (ACT Day 31).

590 Transcript of A Hunt, T3479:36–40 (ACT Day 31).

591 Transcript of A Hunt, T3490:3–8 (ACT Day 31).

592 Transcript of A Hunt, T3490:13–25 (ACT Day 31).

593 Transcript of A Hunt, T3490:33–37 (ACT Day 31); Transcript of A Hunt, T3491:26–35 (ACT Day 31).

594 Exhibit 13-0029, Statement of Brother Anthony Hunt, CTJH.500.29001.0001\_R at [36].

595 Exhibit 13-0029, Statement of Brother Anthony Hunt, CTJH.500.29001.0001\_R at [37].

596 Exhibit 13-0003, CCI.0029.00001.0159\_R at [16].

597 Exhibit 13-0003, CCI.0029.00001.0159\_R at [16].

598 Transcript of A Hunt, T3493:7–22 (ACT Day 31).

599 Transcript of A Hunt, T3494:19–35 (ACT Day 31).

600 Transcript of J O’Grady, T3118:19–47 (ACT Day 28).

601 Exhibit 13-0012, Annexure JO1, CCI.0029.00001.0020\_R at 0232.

602 Exhibit 13-0012, Annexure JO1, CCI.0029.00001.0020\_R at 0232.

603 Transcript of J O’Grady, T3121:12–25 (ACT Day 28).

604 Transcript of J O’Grady, T3121:40–T3122:6 (ACT Day 28).

605 Transcript of J O’Grady, T3122:1–10 (ACT Day 28).

606 Transcript of A Hunt, T3476:30–45 (ACT Day 31).

607 Transcript of J O’Grady, T3122:8–11 (ACT Day 28).

608 Transcript of J O’Grady, T3122:13–34 (ACT Day 28).

609 Exhibit 13-0023, Statement of Mr Kelly, Annexure JK1, CTJH.500.26001.0001\_R at 0151.

610 Exhibit 13-0023, Statement of Mr Kelly, CTJH.500.26001.0001\_R at [30].

611 Transcript of J Kelly, T3418:26–31 (ACT Day 30).

612 Exhibit 13-0003, CTJH.053.28002.0035\_R.

613 Transcript of J Kelly, T3418:39–47 (ACT Day 30).  
614 Transcript of J Kelly, T3419:1–2 (ACT Day 30).  
615 Transcript of J Kelly, T3424:39–47 (ACT Day 30).  
616 Transcript of J Kelly, T3425:3–4 (ACT Day 30).  
617 Exhibit 13-0003, CCI.0016.00011.0110\_R.  
618 Exhibit 13-0032, Statement of Brother Turton, CTJH.500.28001.0016\_R at [66].  
619 Transcript of A Turton, T3602:11–13 (ACT Day 32).  
620 Transcript of A Turton, T 3602:34–40 (ACT Day 32).  
621 Exhibit 13-0032, Statement of Brother Turton, CTJH.500.28001.0016\_R at [65].  
622 Exhibit 13-0003, CCI.0029.00001.0151\_R at [13].  
623 Exhibit 13-0003, CCI.0029.00001.0151\_R at [13].  
624 Exhibit 13-0003, CCI.0029.00001.0151\_R at [15].  
625 Exhibit 13-0032, Statement of Brother Turton, CTJH.500.28001.0016\_R at [66].  
626 Exhibit 13-0032, Statement of Brother Turton, CTJH.500.28001.0016\_R at [66].  
627 Exhibit 13-0032, Statement of Brother Turton, CTJH.500.28001.0016\_R at [66].  
628 Exhibit 13-0032, Statement of Brother Turton, CTJH.500.28001.0016\_R at [67].  
629 Transcript of G Sutton, T3981:34–T3983:2 (ACT Day 36).  
630 Exhibit 13-0032, Statement of Brother Turton, CTJH.500.28001.0016\_R at [67].  
631 Transcript of G Sutton, T3981:34–T3983:2 (ACT Day 36).  
632 Transcript of G Sutton, T3980:13–26 (ACT Day 36).  
633 Transcript of G Sutton, T3981:8–24 (ACT Day 36).  
634 Exhibit 13-0021, Statement of Mr Holdsworth, CTJH.500.24001.0001\_R at [34].  
635 Exhibit 13-0021, Statement of Mr Holdsworth, CTJH.500.24001.0001\_R at [36].  
636 Transcript of J Holdsworth, T3379:2–4 (ACT Day 30); Exhibit 13-0021, Statement of Mr Holdsworth, CTJH.500.24001.0001\_R at [38].  
637 Exhibit 13-0021, Statement of Mr Holdsworth, CTJH.500.24001.0001\_R at [27] and [37].  
638 Transcript of J Holdsworth, T3379:38–40 (ACT Day 30); Exhibit 13-0021, Statement of Mr Holdsworth, CTJH.500.24001.0001\_R at [38]–[39].  
639 Transcript of J Holdsworth, T3380:25–30 (ACT Day 30).  
640 Transcript of J Holdsworth, T3380:38–40 (ACT Day 30).  
641 Transcript of J Holdsworth, T3381:10–18 (ACT Day 30).  
642 Transcript of J Holdsworth, T3395:24–36 (ACT Day 30); Transcript of J Holdsworth, T3396:1–5 (ACT Day 30).  
643 Transcript of J Holdsworth, T3406:40–T3407:21 (ACT Day 30).  
644 Transcript of J Holdsworth, T3395:27–31 (ACT Day 30).  
645 Transcript of A Turton, T3609:1–10 (ACT Day 32).  
646 Transcript of A Turton, T3610:1–10 (ACT Day 32).  
647 Transcript of A Turton, T3609:33–35 (ACT Day 32).  
648 Exhibit 13-0032, Statement of Brother Turton, CTJH.500.28001.0016\_R at [74].  
649 Transcript of A Turton, T3609:40–42 (ACT Day 32).  
650 Exhibit 13-0032, Statement of Brother Turton, CTJH.500.28001.0016\_R at [74].  
651 Transcript of G Sutton, T3983:45–T3984:7 (ACT Day 36).  
652 Transcript of A Turton, T3609:44–46 (ACT Day 32).  
653 Transcript of A Turton, T3610:1–7 (ACT Day 32).  
654 Transcript of A Turton, T3610:11–14 (ACT Day 32).  
655 Transcript of J Holdsworth, T3394:23–40 (ACT Day 30).  
656 Exhibit 13-0021, Statement of John Holdsworth, CTJH.5000.24001.0001\_R at [42]; Transcript of J Holdsworth, T3395:18–19 (ACT Day 30).

- 657 Transcript of J Holdsworth, T3395:18–19 (ACT Day 30).
- 658 Transcript of J Holdsworth, T3394:45–47 (ACT Day 30).
- 659 Transcript of J Holdsworth, T3404:40–43 (ACT Day 30).
- 660 Transcript of J Holdsworth, T3395:13 (ACT Day 30).
- 661 Transcript of J Holdsworth, T3394:39–40 (ACT Day 30).
- 662 Exhibit 13-0024, NSW.0032.001.0009\_R. ADQ was still a child, which is no doubt why the notification was received by the department.
- 663 Exhibit 13-0025, NSW.0022.010.0290\_R; Exhibit 13-0025, NSW.0022.010.0286\_R.
- 664 Exhibit 13-25, NSW.0022.010.0290\_R.
- 665 Exhibit 13-25, NSW.0022.010.0286.
- 666 Exhibit 13-0025, CTJH.053.12003.0829 at 0830.
- 667 Exhibit 13-0025, CTJH.053.07044.0109.
- 668 Transcript of A Turton, T3614:29–32 (ACT Day 32).
- 669 Exhibit 13-0042, Statement of Detective Senior Constable Donna Lawrence, STAT.0294.001.0001\_R at [39].
- 670 Exhibit 13-0042, Statement of Detective Senior Constable Donna Lawrence, STAT.0294.001.0001\_R at [41].
- 671 Transcript of G Sutton, T3993:20–24 (ACT Day 36).
- 672 Transcript of A Turton, T3702:38–T3703:2 (ACT Day 32).
- 673 Exhibit 13-0003, CCI.0016.00011.0110\_R.
- 674 Exhibit 13-0038, TEN.0009.001.0001 at 0002.
- 675 Exhibit 13-0038, TEN.0009.001.0001. The average Towards Healing Payment has been calculated including payments for both financial support and compensation.
- 676 Exhibit 13-0038, TEN.0009.001.0001.
- 677 Marist Brothers and Truth Justice and Hearing Council, *Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, in response to Submission of Counsel Assisting Case Study 13*, 11 December 2014, para 632.
- 678 Marist Brothers and Truth Justice and Hearing Council, *Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, in response to Submission of Counsel Assisting Case Study 13*, 11 December 2014, para 632.
- 679 Exhibit 13-0003, CTJH.053.12001.3336\_R at 3337.
- 680 Exhibit 13-0003, CTJH.053.12001.3336\_R.
- 681 Exhibit 13-003, CTJH.053.12001.3381\_R at 3381.
- 682 Transcript of J Crowe, T4012:3–17 (ACT Day 36).
- 683 Transcript of J Crowe, T4022:11–13 (ACT Day 36).
- 684 Transcript of J Crowe, T4010:30–43 (ACT Day 36).
- 685 Transcript of J Crowe, T4010:30–43 (ACT Day 36).
- 686 Transcript of J Crowe, T4021:24–47 (ACT Day 36).
- 687 Transcript of J Crowe, T4022:4–13 (ACT Day 36).
- 688 Transcript of J Crowe, T4025:42–47 (ACT Day 36).
- 689 Transcript of J Crowe, T4026:1–17 (ACT Day 36).
- 690 Exhibit 13-0003, CCI.0066.00009.0013\_R; Exhibit 13-0003, CCI.0070.00002.0041\_R; Exhibit 13-0003, CCI.0067.00005.0097\_R.
- 691 Clause 13 of each of Exhibit 13-0003, CCI.0066.00009.0013\_R; Exhibit 13-0003, CCI.0070.00002.0041\_R; Exhibit 13-0003, CCI.0067.00005.0097\_R.
- 692 Exhibit 13-0003, CTJH.053.07089.0352\_R at 0353.
- 693 Transcript of J Crowe, T4012:25–31 (ACT Day 36).
- 694 Transcript of J Crowe, T4022:4–19 (ACT Day 36).
- 695 Transcript of J Crowe, T4027:19–33 (ACT Day 36).

- 696 Transcript of J Crowe, T4027:19–33 (ACT Day 36). Although we note that a claimant received a payment of \$50,000 through the Towards Healing process.
- 697 Transcript of J Crowe, T4023:31–T4024:5 (ACT Day 36).
- 698 Transcript of J Crowe, T4024:7–19 (ACT Day 36).
- 699 Exhibit 13–0026, Statement of Francis Anthony Brennan, STAT.0280.001.0001 at [4].
- 700 Exhibit 13–0003, CCI.0029.00001.0215.
- 701 Exhibit 13–0026, Statement of Francis Anthony Brennan, STAT.0280.001.0001 at [3].
- 702 Exhibit 13–0026, Statement of Francis Anthony Brennan, STAT.0280.001.0001 at [8].
- 703 Exhibit 13–0027, Statement of Simone Czech, STAT.0283.001.0001\_R at [52]–[56].
- 704 Exhibit 13–0027, Statement of Simone Czech, STAT.0283.001.0001\_R at [47].
- 705 Exhibit 13–0027, Statement of Simone Czech, STAT.0283.001.0001\_R at [12]–[14].
- 706 Exhibit 13–0027, Statement of Simone Czech, STAT.0283.001.0001\_R at [15].
- 707 Exhibit 13–0027, Statement of Simone Czech, STAT.0283.001.0001\_R at [16].
- 708 Exhibit 13–0027, Statement of Simone Czech, STAT.0283.001.0001\_R at [15]–[17].
- 709 Exhibit 13–0027, Statement of Simone Czech, STAT.0283.001.0001\_R at [24].
- 710 Exhibit 13–0027, Statement of Simone Czech, STAT.0283.001.0001\_R at [26].
- 711 Exhibit 13–0027, Statement of Simone Czech, STAT.0283.001.0001\_R at [32].
- 712 Exhibit 13–0027, Statement of Simone Czech, STAT.0283.001.0001\_R at [33].
- 713 Exhibit 13–0027, Statement of Simone Czech, STAT.0283.001.0001\_R at [37].
- 714 Exhibit 13–0003, NSW.0022.001.0051\_R; Exhibit 13–0003, NSW.0022.002.0014\_R.
- 715 Exhibit 13–0027, Statement of Simone Czech, STAT.0283.001.0001\_R at [49]–[51].
- 716 Exhibit 13–0042, Statement of Detective Senior Constable Donna Lawrence, STAT.0294.001.0001\_R.
- 717 Exhibit 13–0042, Statement of Detective Senior Constable Donna Lawrence, STAT.0294.001.0001\_R at [5].
- 718 Exhibit 13–0042, Statement of Detective Senior Constable Donna Lawrence, STAT.0294.001.0001\_R at [18].
- 719 Exhibit 13–0042, Statement of Detective Senior Constable Donna Lawrence, STAT.0294.001.0001\_R at [38].
- 720 Exhibit 13–0042, Statement of Detective Senior Constable Donna Lawrence, STAT.0294.001.0001\_R at [38].
- 721 Exhibit 13–0042, Statement of Detective Senior Constable Donna Lawrence, STAT.0294.001.0001\_R at [39].
- 722 Exhibit 13–0042, Statement of Detective Senior Constable Donna Lawrence, STAT.0294.001.0001\_R at [46].
- 723 Exhibit 13–0042, Statement of Detective Senior Constable Donna Lawrence, STAT.0294.001.0001\_R at [42].
- 724 Exhibit 13–0027, Statement of Simone Czech, STAT.0283.001.0001\_R at [15].
- 725 Exhibit 13–0027, Statement of Simone Czech, STAT.0283.001.0001\_R at [20].
- 726 Exhibit 13–0027, Statement of Simone Czech, STAT.0283.001.0001\_R at [20].
- 727 Exhibit 13–0042, Statement of Detective Senior Constable Donna Lawrence, STAT.0294.001.0001\_R at [48].
- 728 Exhibit 13–0042, Statement of Detective Senior Constable Donna Lawrence, STAT.0294.001.0001\_R at [50].
- 729 Exhibit 13–0042, Statement of Detective Senior Constable Donna Lawrence, STAT.0294.001.0001\_R at [51].
- 730 Exhibit 13–0035, Annexure NH1, STAT.0281.001.0003
- 731 Exhibit 13–0003, CTJH.053.07077.0214\_R and CTJH.053.07072.0063\_R.
- 732 Exhibit 13–0003, CTJH.053.07072.0063\_R.
- 733 Marist Brothers and Truth Justice and Hearing Council, *Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, in response to Submission of Counsel Assisting Case Study 13*, 11 December 2014, para 2.
- 734 Exhibit 13–0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [155]–[159].
- 735 Marist Brothers and Truth Justice and Hearing Council, *Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, in response to Submission of Counsel Assisting Case Study 13*, 11 December 2014, paras [9]–[10], emphasis in the original.
- 736 Marist Brothers and Truth Justice and Hearing Council, *Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, in response to Submission of Counsel Assisting Case Study 13*, 11 December 2014, para [13].

737 Transcript of J Crowe, T3973:30–31 (ACT Day 35).

738 Marist Brothers and Truth Justice and Hearing Council, *Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, in response to Submission of Counsel Assisting Case Study 13*, 11 December 2014, para [15].

739 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [32].

740 Exhibit 13-0037, Annexure JC3, CTJH.053.32001.0039 at [32].

741 As extracted at Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [32]. For complete document see also 13-0037, Annexure JC3, CTJH.053.32001.0039 at [32].

742 Transcript of A Turton, T3698:39–T3699:9 (ACT Day 32).

743 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [48].

744 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0371.

745 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0371.

746 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0371.

747 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [32].

748 Exhibit 13-0037, Annexure JC4, CTJH.053.07068.0114 at 0115.

749 Exhibit 13-0037, Annexure JC5, CTJH.500.07068.0017\_R at 0118.

750 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [37].

751 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [33].

752 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [41].

753 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0371.

754 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [56].

755 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [41].

756 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [127].

757 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [44] and [46].

758 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0365.

759 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0371.

760 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0371.

761 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [57].

762 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0365.

763 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [76]–[77].

764 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0373.

765 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0373.

766 Transcript of J Crowe, T4051:36–44 (ACT Day 36).

767 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0365.

768 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [17], [60].

769 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [66].

770 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [88].

771 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [70].

772 Exhibit 13-0037, Statement of Jeffrey Crowe, CTJH.500.31001.0001\_R at [30]; Exhibit 13-00037, Annexure JC1, CTJH.053.32001.0174 at 150.2.

773 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0366.

774 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0366.

775 Exhibit 13-0003, CTJH.053.24002.0363\_R at 0367.











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