



**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION
GROUP PROCEEDINGS LIST**

S ECI 2023 ~~04435~~ Case S ECI 2023 04435

Filed on: 30/01/2024 11:17 AM

BETWEEN:

JANE JONES (A Pseudonym)

Plaintiff

-and-

**WALLER LEGAL (A FIRM)
WALLER LEGAL PTY LTD (ACN 167 030 757)**

Defendant

FURTHER AMENDED WRIT

**Filed pursuant to Regulation 36.03 of the Supreme Court (General Civil Procedure) Rules 2015
Filed pursuant to the Order of The Honourable Justice Gorton made 7 December 2023**

Date of Document: ~~21 September 2023~~ ~~25 September 2023~~ ~~4 December 2023~~
12 December 2023

Filed on behalf of: The Plaintiff

Prepared by:
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TO THE DEFENDANT

TAKE NOTICE that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, YOU MUST GIVE NOTICE of your intention by filing an appearance within the proper time for appearances stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by—

- (a) filing a “Notice of Appearance” in the prothonotary’s office, 436 Lonsdale Street, Melbourne, or, where the writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff’s address for service, which is set out at the end of this writ.

IF YOU FAIL to file an appearance within the proper time, the plaintiff may OBTAIN JUDGMENT AGAINST YOU on the claim without further notice.

THE PROPER TIME TO FILE AN APPEARANCE is as follows—

- (a) where you are served with the writ in Victoria, within 10 days after service;
- (b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the writ in Papua New Guinea, within 28 days after service;
- (d) where you are served with the writ in New Zealand under Part 2 of the *Trans-Tasman Proceedings Act 2010* of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
- (e) in any other case, within 42 days after service of the writ.

FILED: ~~21 September 2023~~ 25 September 2023 4 December 2023
12 December 2023

Prothonotary

THIS WRIT is to be served within one year from the date it is filed or within such further period as the Court orders.

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION
GROUP PROCEEDINGS LIST

S ECI 2023 04435

BETWEEN:

JANE JONES (A Pseudonym)

Plaintiff

-and-

WALLER LEGAL (A FIRM)
WALLER LEGAL PTY LTD (ACN 167 030 757)

Defendant

FURTHER AMENDED STATEMENT OF CLAIM

Filed pursuant to Regulation 36.03 of the Supreme Court (General Civil Procedure) Rules 2015
Filed pursuant to the Order of The Honourable Justice Gorton made 7 December 2023

Date of Document: ~~21 September 2023~~ ~~25 September 2023~~ ~~4 December 2023~~
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Filed on behalf of: The Plaintiff

Prepared by:
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NOTE: In this pleading of the claim of the representative Plaintiff and the group members, the following definitions apply:

“Economic loss” means the loss of a Plaintiff’s capacity to earn income (and superannuation) caused or materially contributed to by any act or omission or intentional conduct (**“tort”**) of a tortfeasor, and any injury caused by such act, omission or conduct (**“injury”**);

“Proper economic loss claim” means a claim for economic loss, available in law to a person (**“the claimant”**) as part of a cause of action for damages at common law for injury and loss caused or materially contributed to by a tort (whether made in the course of negotiations without issuing proceedings, or in the course of pursuing a claim for damages in a court), for which cause of action the claimant seeks to obtain, to the maximum extent possible at law, damages and compensation for their injury and loss, and which claim is properly prepared, assessed and claimed, by the taking of the following steps by a lawyer acting for the claimant;

- (a) Seeking and obtaining evidence;
 - (i) Of the periods of time in which the claimant had suffered, or was likely in the future to suffer, economic loss;

- (ii) That some or all of the claimant's capacity to earn income was caused or materially contributed to by the tort and the injury;
 - (iii) Of how much income the claimant, but for the tort and the injury, could have earned in the periods that economic loss was suffered or was likely in the future to be suffered;
 - (iv) Of any income earned by the claimant in the periods of time in which the claimant had suffered past economic loss, and any income that the claimant was likely to earn in any future period in which they were likely to suffer economic loss;
- (b) Utilising the evidence obtained in accordance with a (i) –(iv) above, and assessing and calculating the likely value or quantum of the claim for economic loss which would, in accordance with the applicable legal principles for assessing such a claim (including any applicable discounts for present receipt and negative contingencies), restore the claimant to the position they would have been in, and would in the future be in, but for the tort and consequent injury, if awarded as part of a verdict or judgment by a court;
- (c) Advising the claimant of the value or quantum in (b), and of any deduction that the lawyer considers should be applied to that quantum for risk of not being able to prove that the tortfeasor was liable in any litigated proceeding of the claim, and obtaining instructions to pursue a claim for damages and compensation including a claim for economic loss in that sum (whether made in the course of negotiations without issuing proceedings, or in the course of issuing or pursuing a claim for damages in a court);
- (d) Making a claim, or demanding the economic loss (together with any other damages claimed), from the party potentially liable in law for the tort and for the payment of the sum of the likely value or quantum of the claim for economic loss assessed and calculated in accordance with (b) and (c) above;
- ~~(e) Only advising, and effecting and concluding, settlement by the claimant, of the claim for compensation or damages, upon the agreement of the party potentially responsible and liable for the tort and injury, to payment (together with any other damages claimed) of the sum of the likely value or quantum of the claim for economic loss assessed and calculated in accordance with (b) above or upon a compromise of the claim which resulted in the payment by the party responsible for the tort and injury, of a majority of the said sum or value so assessed and calculated.~~

The group members

1. The Plaintiff, Jane Jones, brings this proceeding on her own behalf and pursuant to the provisions of Part 4A of the *Supreme Court Act 1986 (Vic)*, on behalf of all persons who:

- (a) suffered personal injury resulting from
 - (i) an act or omission in relation to the person when they were a minor, that was physical abuse or sexual abuse; and
 - (ii) psychological abuse (if any) that arises out of that act or omission; and who;
- (b) had a right of action being a cause of action against a party (or parties) allegedly responsible or liable in law for the said act or omission and personal injury (“**the tortfeasor**”) which cause of action included claims or entitlements for damages for non-economic loss and economic loss; and who
- (c) after 1 July 2015, retained, or continued to retain (“**the retainer**”), the defendant as their lawyer, to obtain damages in and for their cause of action (“**the previous claim**”); and who
- (d) In the course of the retainer, entered into a settlement agreement for, and to resolve, their cause of action for damages with the tortfeasor and which agreement purported to forever determine the claimant’s rights to pursue damages for the cause of action (“**the settlement agreement**”); and who
- (e) As a consequence, in the course of the retainer, of the alleged negligence of the Defendant and/or the breach of contractual terms (express or implied) by the Defendant;
 - (i) Were never advised by the Defendant of the likely or potential quantum of a properly assessed claim for economic loss, or of their proper economic loss claim; and
 - ~~(i.)~~ (ii) Did not before entering into the settlement agreement with the tortfeasor, make, pursue or demand from the tortfeasor, a proper economic loss claim or a sum calculated or assessed in accordance with the making of a proper economic loss claim or a sum for properly assessed economic loss; or
 - ~~(ii.)~~ (iii) Did not in, and as a consequence of the settlement agreement, receive damages or compensation for their proper economic loss claim ~~from the tortfeasor~~ or a sum for properly assessed economic loss from the tortfeasor from the tortfeasor; and who,
- (f) Has not subsequently to the settlement agreement, obtained or received a sum for their economic loss calculated in accordance with a proper economic loss claim, or a sum for properly assessed economic loss, from the tortfeasor; and who,
- (g) Can not now, as a result of the alleged negligence of the Defendant, and/or the breach of contractual terms by the Defendant, make a claim for economic loss, and has lost the chance and opportunity to obtain the

damages for their proper economic loss claim, or a sum for properly assessed economic loss, from the tortfeasor; and who

- (h) has consequently suffered loss of a valuable chose in action and suffered economic loss;

or are persons who have a claim against the Defendant arising from the same, similar or related circumstances (“**the group members**”).

2. At the time of commencement of this proceeding, there are seven or more group members.

PARTICULARS

The lawyers for the representative plaintiff act for 10 persons whose claims meet the description in paragraph 1 and they are aware of other potential claimants who meet the description.

Common questions

3. The claims of the Plaintiff and the group members all give rise to substantial common issues of law or fact including;

(a) Does a lawyer ~~What are the requirements and obligations of a lawyer,~~ pursuant to their legal duty of care at law, or pursuant to implied terms of a retainer by a client, in a claim for damages or compensation for personal injuries caused by acts or omissions of a tortfeasor, have an obligation to advise with respect to advising about the types and amounts of damages available to the client, and adviseing as to the likely quantum of such damages, and then seeking to recover such damages as are so advised;

(b) Is it a breach of a lawyer’s duty to their client (and/or breach of an implied contractual term) for a lawyer, retained to recover damages at common law for a client in an historic child sexual abuse claim, to:

- (i) fail to advise as to the types and amounts of damages available; and/or
- (ii) fail to assess and advise the likely quantum of each type of damages available; and/or
- (iii) fail to pursue each of the types of damages available, unless specifically receiving informed instructions not to do so, after advising the client of the types, amounts and quantum of damages available, and the nature and extent of the risks and costs to the client in pursuing the damages by litigation; and/or
- (iv) fail to take reasonable steps to properly investigate and, if determined to be viable, obtain evidence to support a claim for loss of economic capacity; and/or

- (v) fail to explain to the client the types, amounts and quantum of damages available, and the nature and extent of the risks and costs to the client in pursuing the damages by litigation, in a manner that enabled him or her to come to a rational and informed decision whether to accept or reject any offers made, or whether to pursue by litigation, each head of damages available in their claim, including for loss of economic capacity; and/or
- (vi) Fail to investigate, assess and advise the client of the likely quantum of, and seek to recover as fully as possible, damages for loss of economic capacity if such a claim is available to the client; and/or
- (vii) Advise settlement of a claim without allowing for a substantial allowance in the sum agreed for damages for each head of damages available, or alternatively without clearly explaining in a manner which enabled the client to understand why the settlement sum so advised should be accepted and the available damages not be pursued so that the client clearly understands and can give the lawyer specific informed instructions on the issue; and/or
- ~~(viii) Advise settlement of a claim without considering recent decisions of superior courts as to liability issues and the assessment of damages in similar claims for in claims for similar injuries, so as to be informed, and to thereupon inform the client as to the existence of those decisions and the consequences thereof for the client's claim, including whether to accept offers made and/or to issue the claim and pursue it in litigation;~~
- (c) Whether the definition set out above of a proper economic loss claim properly sets out in law the common law or contractual obligations of a lawyer retained by a client where the client has a potential claim for economic loss as part of their cause of action for damages in a personal injuries claim against a tortfeasor, and where the client seeks to obtain in, and for, their cause of action, to the maximum extent possible at law, the damages and compensation commensurate with the injuries and loss caused by the tortfeasor;
 - ~~(d) Whether a lawyer who is retained by a client who has an apparent entitlement to claim damages for economic loss as part of their cause of action for personal injury damages against a tortfeasor, is obliged, as part of the obligations of their retainer, or at common law, to advise the client of their entitlement to make a claim for economic loss and the likely quantum or value of such a claim;~~
 - ~~(e) Whether the failure of a lawyer to give the advice in (d) above to the said client is in breach of their duty of care to, or a breach of an implied term of the retainer with the client;~~
 - (f)(d) Whether a lawyer who is retained by a client who has an entitlement to claim damages for economic loss as part of their cause of action for

personal injury damages against a tortfeasor, is obliged, as part of the obligations of their retainer, or at common law, to claim from the tortfeasor, the client's entitlement to a claim for economic loss, unless there was a clear reason in law or on the facts of the client's case, why the claim for economic loss could not be made and the lawyer clearly advised the client of that reason, ensured the client understood the reasons and received instructions not to make the claim for that reason;

~~(g)(e)~~ Whether the failure of the lawyer to comply with the obligations in (f) is a breach of their duty of care to, or a breach of an implied term of the retainer with, the client;

~~(h)(f)~~ Whether the failure of a lawyer to make a proper economic loss claim or a properly assessed claim for economic loss, for a client when such a claim is available to the client, and there is no clear reason in law or on the facts of the client's case why the claim could not be made, constitutes a breach of the lawyer's duty of care to, or breach of an implied term of the retainer with, the client;

~~(i)(g)~~ Whether a lawyer who is retained by a client in a personal injury claim, to bring that claim against a tortfeasor, is obliged to advise that client as to the likely range of total damages available in that claim;

~~(j)(h)~~ Whether a lawyer who is retained by a client in a personal injury claim, to bring that claim against a tortfeasor, and does not advise that client as to the likely range of total damages available in that claim prior to settling that claim is in breach of the lawyer's duty of care to, or in breach of an implied term of the retainer with, the client;

~~(i)~~ Is it negligent for a lawyer who is retained by a client in a personal injury claim for childhood sexual abuse, to fail to assess the client's economic loss claim and to fail to advise the client of such assessment, and to fail to claim against the tortfeasor a claim for proper economic loss, or alternatively a claim for properly assessed economic loss;

~~(j)~~ Did the Defendant, acting for clients in a personal injuries claim for historic childhood sexual abuse, have a usual practice, not to make or pursue a claim for economic loss or for the full assessed value of the economic loss but to make a claim for a lesser sum or amount by way of a claim for loss of opportunity or a buffer?

~~(k)~~ If a lawyer acting for a client in a personal injuries claim for historic childhood sexual abuse, has a policy, or a usual practice, not to make or pursue a claim for economic loss (or for the full assessed value of the economic loss) except in exceptional circumstances, fails to advise the client at the earliest available opportunity of;

~~(i)~~ the policy or the practice; and/or

- ~~(ii) — the reasons why the lawyer adopts and applies the policy or the practice; and/or~~
- ~~(iii) — the exceptional circumstances in which the policy or practice will not be applied; and/or~~
- ~~(iv) — the likely quantum of the full assessed value of a claim for economic loss if made; and/or~~
- ~~(v) — the likely difference in the quantum of damages the client might receive if the policy or practice is applied in their claim; and/or~~
- ~~(vi) — the options available to the client should they wish to pursue a claim for economic loss or to maximise the damages sought from the tortfeasor (including to terminate the retainer and instruct another lawyer);~~

~~is such failure a breach of the lawyer's common law duty or contractual obligations to the client;~~

(k) If the Defendant, acting for a client in a personal injuries claim for historic childhood sexual abuse, had a usual practice, not to make or pursue a claim for economic loss (or for the full assessed value of the economic loss) did they have a duty or obligation to advise the client of that practice and the potential consequences of that practice for their claim?

(l) If a lawyer acting for a client in a personal injuries claim for historic childhood sexual abuse, has a policy, or a usual practice, not to properly assess, or to make or pursue a claim for the full assessed value of economic loss except in exceptional circumstances, but rather to pursue a claim described as a claim for "loss of opportunity" or a "buffer claim for economic loss" and which claim which is of lesser value than an economic loss claim as it does not involve a proper assessment or calculation of the client's claim for economic loss, and if the lawyer fails to advise the client at the earliest available opportunity of;

- ~~(i) — the policy or the practice; and/or~~
- ~~(ii) — the reasons why the lawyer adopts and applies the policy or the practice; and/or~~
- ~~(iii) — the exceptional circumstances in which the policy or practice will not be applied; and/or~~
- ~~(iv) — the differences between a claim for economic loss and a claim made pursuant to the policy or practice; and/or~~
- ~~(v) — the likely quantum of the full assessed value of a claim for economic loss if made; and/or~~

~~(vi) the likely difference in the quantum of damages the client might receive if the policy or practice is applied in their claim; and/or~~

~~(vii) the options available to the client should they wish to pursue a claim for full economic loss or to maximise the damages sought from the tortfeasor (including to terminate the retainer and instruct another lawyer);~~

~~is such failure a breach of the lawyer's common law duty or contractual obligations to the client;~~

(l) Is it negligent or a breach of duty, if the Defendant, in a claim for damages arising from child sexual abuse, failed to assess the client's economic loss and failed to make a claim for economic loss and instead made a claim for a lesser sum or amount by way of loss of opportunity or a buffer that did not reflect the actual economic loss suffered by the client?

(m) Whether it makes a difference to the obligations and duties of the lawyer in (a) to (l) above if the lawyer is, or claims to have, a specialist skill, and/or significant experience in acting in claims of the type in which they are retained by the client;

~~(n) whether a person whose claim arises in the same, similar or related circumstances as pleaded in paragraph 1 (a) to (h) above has a cause of action in damages against their lawyer if they establish a breach by the lawyer of the duty of care or a breach by the lawyer of an implied term of the retainer therein alleged.~~

~~(n) Was the reason for the Defendant not making an assessment of, and pursuing a claim for proper economic loss or a properly assessed claim for economic loss the application of a usual practice by the lawyer not to claim a loss of earnings component?~~

The Defendant

4. The Defendant is a firm of legal practitioners carrying on a legal practice in Collingwood in the State of Victoria and can be sued in that name in the State of Victoria.

The Plaintiff's sexual abuse

5. The Plaintiff was born on [REDACTED], and, [REDACTED], was sexually abused by Brother Grant Ross, a Redemptorist Brother, that is, a Brother who was a member of the Congregation of the Most Holy Redeemer, a Roman Catholic religious order ("**the Redemptorists**") ("**the sexual abuse**").

PARTICULARS OF THE SEXUAL ABUSE

- 5.1 Brother Ross, also known as Brother Benignus, was part of the Redemptorist community at the Redemptorist St Mary's Monastery at Wendouree, and, as part of his pastoral duties for the Order, went to the Plaintiff's family home in Ballarat ("**the home**") just before Christmas [REDACTED] to offer pastoral care and support to the Plaintiff's family which comprised the Plaintiff's mother, father [REDACTED]
- 5.2 The Plaintiff's mother and father were devout Catholics and the family attended church at St Mary's, where Br Ross, [REDACTED] [REDACTED] got to know, and earn the trust and respect of the Plaintiff and the rest of her family;
- 5.3 Br Ross thereafter, in conformance to his duties as a Redemptorist Brother, attended the home on a regular basis to provide pastoral care and assistance to the Plaintiff's mother in raising their children, usually whilst the Plaintiff's father was working as a [REDACTED] [REDACTED];
- 5.4 Br Ross spent significant amounts of time at the home and also took the children in his car to other places, including the Redemptorist Monastery where he gave the children, including the Plaintiff, ice creams from a large freezer;
- 5.5 Br Ross often brought meals to the home that were prepared by the Redemptorists at the St Mary's Monastery;
- 5.6 On many occasions between [REDACTED] during his regular visits to the Plaintiff's family home, Br Ross committed sexual assaults and batteries on the Plaintiff;
- 5.7 The first incident of sexual abuse by Br Ross of the Plaintiff took place when Ross placed the Plaintiff, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED];
- 5.8 [REDACTED] [REDACTED] [REDACTED] [REDACTED];
- 5.9 [REDACTED] [REDACTED] [REDACTED];

5.10 [REDACTED]

5.11 [REDACTED]

5.12 [REDACTED]

The Redemptorists' knowledge

- 6. Prior to the abuse of the Plaintiff, the Redemptorists knew or ought to have known that the Plaintiff and her siblings were at risk of being sexually abused by Br Ross.

PARTICULARS OF KNOWLEDGE

- 6.1 Br Ross abused children prior to the period that he was abusing the Plaintiff [REDACTED]
- 6.2 During the period the Plaintiff was abused, Br Ross sexually abused at least two other children at the Monastery [REDACTED] and this was, or ought to have been identified and known to the Redemptorists;
- 6.3 The Redemptorists knew that from [REDACTED] Br Ross had a special interest in the Plaintiff's family and attended their home on many occasions, to deliver meals prepared at the Monastery, and provide pastoral care to assist with the children;
- 6.4 Further, [REDACTED] the Plaintiff and members of her immediate family regularly attended at the St Mary's Monastery for mass and to collect meals and it was therefore known to the Redemptorists at the Monastery that the Plaintiff's family had [REDACTED]
- 6.5 The Redemptorist Fathers had existed since the 1700s as a Congregation within the Catholic Church and operated in many countries around the world and by December [REDACTED] the Redemptorists knew of the fact that children had been sexually abused by Catholic clergy in various Catholic institutions around the world and in Australia, including by the Redemptorists;

- 6.6 The Redemptorists knew that as an Order it had failed to inform and educate all Redemptorist Brothers that:
- (i) Canon law decreed child sexual abuse to be a serious sin and crime;
 - (ii) Child sexual abuse was a serious criminal offence;
 - (iii) Any suspicion or report of child sexual abuse had to be taken seriously and reported to Brothers in a position of authority.

NOTE: Further particulars will be provided after completion of discovery and the return of subpoenas in this proceeding.

Sexual abuse - consequences

7. As a consequence of the sexual abuse, the Plaintiff suffered severe and debilitating psychiatric injuries with consequential impacts on her work, daily living, ability to earn income and personal relationships, from the date of the abuse until the present time and which will continue for the rest of her life.

PARTICULARS OF INJURIES FROM THE SEXUAL ABUSE

- 7.1 Chronic post-traumatic stress disorder with panic attacks, dissociative symptoms and agoraphobia;
 - 7.2 Alcohol use disorder;
 - 7.3 Suicidal ideation and attempted suicide;
 - 7.4 The Plaintiff further refers to and relies upon the Report of Dr SK Brann, consultant psychiatrist, obtained by the Defendant, dated 16 December 2019.
8. As a result of the sexual abuse and the injuries from the sexual abuse, the Plaintiff's;
- 8.1 Ability to learn;
 - 8.2 Concentration and focus on lessons;
 - 8.3 Enjoyment of school and learning;
 - 8.4 Participation and engagement in her lessons and learning at school;
 - 8.5 Willingness to be at school and to learn; and
 - 8.6 Results, marks and grades in her school subjects;
- were significantly and adversely affected or destroyed.

9. As a consequence of the sexual abuse and the injuries from the sexual abuse, the Plaintiff could not and did not complete her secondary education, obtained for herself the first employment she could, and left the home where the abuse had occurred, as soon as she could, all of which negatively impacted upon, and compounded, the effects of the injuries caused by the sexual abuse and her capacity to earn income.
10. The sexual abuse and the injuries from the sexual abuse caused other significant detriments and difficulties in the Plaintiff's life including morbid fears and anxiety and an inability to concentrate and focus on her work, issues with trust and some aspects of obsessive-compulsive behaviour, that negatively impacted upon, and compounded, the effects of, the injuries caused by the sexual abuse and her capacity to earn income.

PARTICULARS

The Plaintiff refers to and relies on the assessment of economic loss pleaded in paragraph 58 below.

11. Further to 10, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Liability of the Redemptorists

12. The sexual abuse and consequent injuries and loss, including the Plaintiff's loss of capacity to earn income, were caused or materially contributed to, by the breach of a non-delegable duty by, and/or negligence of, the Redemptorist Order, its Provincial, Provincial Council, management, its Priests, Brothers, employees, appointees, servants and/or agents with actual or ostensible authority, and/or by the assaults and/or the acts, omissions and/or breach of duty of the Priests, Brothers, employees, appointees, servants and/or agents of the Redemptorists, for which the Redemptorists were vicariously liable.

PARTICULARS

- 12.1 The Plaintiff refers to and repeats paragraphs 5 and 6 and the particulars subjoined thereto;
- 12.2 The Plaintiff relies upon the admissions made by the Provincial of the Redemptorists Fr John Hodgson CSSR in a letter to the Plaintiff dated 20 June 2020 which stated, inter alia, "I apologise that the Redemptorists at the monastery allowed Grant Ross to come into your home unchecked, and I apologise for our negligence that placed you in harm's way... There is no excuse for the abuse you suffered and no excuse for the neglect we showed towards a family that has been so good to us.";

- 12.3 The Plaintiff relies upon the Canon Law, authority, Rules, instruction, direction and control of the Redemptorists over Br Ross, and the obligations upon him to comply with his vows of chastity and obedience and compliance with the Rules, and the obligation to report sexual abuse of children, prior to and during the sexual abuse;
- 12.4 The Plaintiff relies upon decisions of this Honourable Court in cases of historical childhood sexual abuse, as to duty of care, breach of duty, the interpretation of the *Legal Identity of Defendants (Organisational Child Abuse) Act 2028 (Vic)*, and vicarious liability in Catholic Religious organisations;
- 12.5 Br Ross used the role, trust and authority of his position as a Redemptorist Brother, including the exercise of pastoral care and Christian charity, and his role of being involved with young people, bestowed upon him by the Redemptorist Order, to gain access to the Plaintiff, and thereupon used that as the opportunity and the occasion to achieve intimacy with, and to sexually abuse, the Plaintiff, who was a vulnerable child;
- 12.6 At all material times Brother Ross acted with the actual or ostensible authority of the Redemptorists in carrying out pastoral duties in visiting, assisting, and providing food to, the Plaintiff and her family;
- 12.7 In providing pastoral care and pastoral visits to the Plaintiff through its appointee, agent and representative, Br Ross, the Defendant owed the Plaintiff a non-delegable duty of care;
- 12.8 The Plaintiff relies upon the *Legal Identity of Defendants (Organisational Child Abuse) Act 2028 (Vic)* for the purpose of attribution of liability of the Redemptorists for the assaults, acts and omissions of its Priests, Brothers, management members, appointees servants and agents.

Loss and damage from sexual abuse

13. The sexual abuse and the Plaintiff's consequent injuries, caused by the negligence of the Redemptorists, and/or assaults, and/or acts and/or omissions for which the Redemptorists were vicariously liable, caused the Plaintiff to suffer loss and damage, including loss of capacity to earn income and economic loss (hereinafter referred to as "**loss of economic capacity**" and/or "**economic loss**").

PARTICULARS

- 13.1 The Plaintiff repeats paragraphs 5 to 12 above and the particulars subjoined thereto;
- 13.2 The Plaintiff has suffered pain, suffering, loss of enjoyment of life and loss of the amenities of life;

- 13.3 The Plaintiff has incurred medical and like expenses and will in the future incur such expenses;
- 13.4 The Plaintiff sustained the injuries, did not complete her education, left the home where the abuse occurred as soon as she was able and took the first employment she could, which resulted thereafter in the Plaintiff, when she was able to work, earning a significantly lower income than she would have done but for the abuse, and as a consequence of the sexual abuse and consequent injuries, she has suffered long periods of unemployment, has been unable to train and learn new skills to increase her income or gain promotions, advancements or more remunerative work in the jobs she was doing, and she will struggle for the balance of her working life to obtain employment and earn the income which she would otherwise have been able to earn;
- 13.5 If she had not been sexually abused and suffered the injuries, the Plaintiff would have remained at school and completed her education, undertaken further education or training and obtained remunerative employment, would have maintained consistent employment and would have been able to train and learn new skills to increase her income or gain promotions, advancements or more remunerative work in the jobs she was doing;
- 13.6 But for the sexual abuse and the injuries from the sexual abuse, the Plaintiff's capacity to earn income would have resulted in her earning a significantly higher income over her working life than she has done, and will do;
- 13.7 As a result of the injuries, in addition to lowly remunerative employment at times when she was able to work, as a consequence of the sexual abuse and the injuries, the Plaintiff has lost the capacity to work, had periods where she was unable to work at all, including between 2009 and 2019, suffered a total loss of capacity to earn income and did not earn income, and will likely in the future suffer further such inabilities, loss of capacity and loss of income.

Events in 2015-2019 leading to settlement of the Plaintiff's claim in 2020

14. On 1 July 2015, amendments made to the *Limitation of Actions Act 1958 (Vic)* limitations legislation, by the *Limitation of Actions Amendment (Child Abuse) Act 2015* came into operation, providing that limitation did not apply to causes of actions founded on personal injury of a person resulting from physical or sexual abuse while the claimant was a minor, and psychological abuse which arose out of the other abuse.
15. On 10 July 2015 the Defendant wrote to Carroll & O'Dea Lawyers for the Redemptorists stating that they acted for the Plaintiff and that the Plaintiff was willing to engage in "a settlement conference process".
16. On 17 July 2015 Carroll & O'Dea Lawyers wrote to the Defendant seeking particulars of the Plaintiff's claim for economic loss.

17. On 21 July 2015, the Defendant solicited the Plaintiff's instructions to act for her in a claim for compensation against the Redemptorists.
18. On 5 October 2015, the Defendant wrote to a client who was a survivor of historical childhood institutional sexual abuse, and advised the client as to the firm's usual practice concerning damages for economic loss in such a claim, by stating;

"We note that in claims relating to childhood sexual abuse, it is quite difficult to formulate a formal loss of earnings component. This is because the abuse occurred when victims were children and so there are no prior earnings to compare. For this reason we do not usually include a formal loss of earnings component in claims unless:

1. *The client had a particular realistic career in mind as a child, and can substantiate their potential ability to have attained that career (school reports showing good grades, family career paths, attempts at related TAFE, University Courses or apprenticeships etc);*
 2. *The client can provide information regarding the average yearly income of the desired career correlating to the years the client may have been in the job;*
 3. *Full financial records are provided by the client which show their income is less than what they would have earned in their desired career."*
19. On 5 October 2016 the High Court delivered judgement in the case of *Prince Alfred College Incorporated v ADC* [2016] HCA 37 ("**PAC**") setting out the relevant approach which was to be applied by Courts in Australia to cases of vicarious liability for sexual abuse of children at schools.
 20. On 11 January 2017, the Plaintiff retained the Defendant to act for her in a claim against the Redemptorists, pursuant to a Costs Agreement executed by the Plaintiff on that date.
 21. In a submission dated 2 February 2018 to a Federal Government Committee concerning the proposed Commonwealth Redress Scheme in the Institutional Childhood Sexual Abuse Bill, Dr Vivian Waller, the principal lawyer of the Defendant, wrote that "persons accepting a Redress payment should exercise caution because they would have to give up their common law rights in circumstances where Redress had a cap of \$150,000 and did not allow for certain heads of damages including past or future loss of earnings"; that "recent court decisions had shown the common law rights of sexual abuse survivors could be "substantial"; that it was "critical" that survivors considering giving up their common law rights be told the estimated value of their claim; and that "it would be a travesty of the highest order to fail to advise survivors of the viability and potential value of their common law rights".

22. On 1 July 2018, the *Legal Identity of Defendants (Organisational Child Abuse) Act 2018* (“**the Legal Identity Act**”) came into operation in Victoria, abolishing the defence based upon the unincorporated nature of religious institutions, orders and entities, relied upon by such institutions, orders and entities, before and after the decision of the New South Wales Supreme Court and Court of Appeal in *Trustees of the Roman Catholic Church v Ellis & anor* [2007] NSWCA 117; 70 NSWLR 565 (“**the Ellis defence**”).
23. On the 31 May 2019, the Defendant wrote a letter to the Plaintiff seeking her further instructions and advising her that: “We note that there has been some helpful law reform recently which has greatly improved the prospects of your claim. We would be pleased to speak with you about these developments.”
24. On 21 October 2019, the Defendant wrote a letter to the Plaintiff confirming the Plaintiff’s instructions to act on her behalf in a common law claim against the Redemptorist Fathers for the abuse by Br Ross which occurred in her family home, in his car and at the Redemptorist Monastery in Wendouree [REDACTED]
25. On 11 November 2019, the Defendant sought and obtained instructions from the Plaintiff regarding the impacts of the sexual abuse on her schooling and her inability to work since 2009.

The Defendant’s expertise

26. At all material times, the Defendant had held itself out as being a specialist and highly experienced in the area of acting for and obtaining damages for victims of historical institutional sexual abuse claims.

PARTICULARS

- 26.1 In a statement dated 11 July 2016 to the Royal Commission into Institutional Responses to Childhood Sexual Abuse the Defendant by its Principal, Dr Vivian Waller stated;

WALLER LEGAL

...3. Since 2007 Waller Legal has worked exclusively to provide legal representation to those who have suffered sexual abuse. The firm generally does not do any other kind of legal work. The Principal Solicitor is Dr Vivian Waller. Waller Legal has a total of 17 staff members and is located in Collingwood, Victoria. Waller Legal currently works with survivors in Western Australia, the Northern Territory, New South Wales, Queensland, Tasmania and Victoria.

4. Dr Vivian Waller has worked in the sexual assault field since her admission to practice in 1995. She completed her articles at Slater & Gordon in 1994 and worked for that firm during the early litigation against the Christian Brothers and St John of God Brothers. She subsequently worked at Maurice Blackburn for approximately 10

years, where, in 2005, she established the Sexual Assault Unit. We understand this was the first legal practice in Australia dedicated to the provision of legal services to those who had been sexually abused. In 2005 Dr Waller completed a PhD on Limitation Periods in Child Sexual Assault Litigation in Victoria and post-traumatic stress disorder.

5. In 2007 Dr Waller left Maurice Blackburn to set up Waller Legal, a firm dedicated to working with survivors of sexual assault. Waller Legal currently represents approximately 750 clients seeking compensation and acknowledgement in relation to allegations of sexual abuse. Predominantly these matters relate to child sexual abuse, although some relate to the sexual abuse of adults. In addition, we have represented 20 survivors and related witnesses in five Royal Commission hearings

(Case Studies 16, 22, 28, 30 and 38).

6. Waller Legal adopts a trauma informed practice approach to the provision of legal services. Legal services are provided with an awareness that a sexual assault survivor may be triggered or re-traumatised by the legal process. We attempt to minimise this wherever possible. Key features of this approach include:

- (a) The provision of trauma informed training to our legal and non-legal staff;
- (b) Taking the time to explain the process to clients;
- (c) Obtaining any documents which may be available in which the client has already given an account of events to see if it is possible to avoid taking a further statement;
- (d) Empowering clients by giving them as much choice as possible. For example, by providing them with the option to meet in person or talk by telephone, bring a support person or come alone, write things down themselves or talk it through;
- (e) Travelling interstate and to remote locations to meet clients who may experience difficulty with travel or telephone communication;
- (f) Exploring alternative dispute resolution ("ADR") processes where possible;
- (g) Negotiating with Defendants about tailoring dispute resolution processes to accommodate the needs of individual clients;
- (h) Advocating on behalf of clients and ensuring that they do not have any direct contact with defendants, such as church personnel, unless they choose to; and

(i) *Exploring ways to include pastoral responses where appropriate.*

26.2 In a statement made on 21 September 2012 to the Victorian Parliamentary Inquiry into handling of child abuse by religious and other non-government organisations, the Defendant, by its Principal, Dr Vivian Waller, stated;

I am the principal solicitor of Waller Legal, a law practice dedicated to the legal representation of those who have suffered injury as a result of being the victim of a crime, particularly those who have been subject to sexual assault and/or other forms of child abuse. Waller Legal aims to provide legal advice and representation to those who have endured child abuse, sexual assault and psychiatric injury. The practice offers a No Win No Charge arrangement so lack of funds will never be a reason for lack of access to justice.

I have been representing victims of sexual assault since I was admitted to the practice of law in 1995. I was articled at Slater & Gordon in 1994 and as an articled clerk and junior solicitor worked, in part, on sexual assault matters against the St John of God Brothers and the Christian Brothers. In 1997 I commenced employment with Maurice Blackburn where I represented sexual abuse victims for 10 years. Whilst at Maurice Blackburn I set up Australia's first dedicated legal practice unit for the representation of those who have been sexually assaulted, the Sexual Assault Unit. Also while at Maurice Blackburn I acted for Carol Stingel in her successful High Court Appeal against Geoff Clark (Stingel v Clark [2006] HCA 37 (20 July 2006)).

The key issue in that matter was the statute of limitations periods as applicable to delayed onset post traumatic stress disorder consequent upon a sexual assault. I have completed a PhD on Limitation Periods in Child Sexual Assault Litigation in Victoria at the University of Melbourne.

Waller Legal was established in February 2007. Our practice areas include making applications to the Victim of Crimes Assistance Tribunal, making Applications for compensation under the provisions of the Sentencing Act, and conducting County and Supreme Court civil litigation...

I currently represent 50 men who allege that they were physically and/or sexually abused by various Christian Brothers. I currently represent a further 25 clients who allege that they were physically and/or sexually abused by Catholic Clergy other than Christian Brothers. Over the years that I have been in practice I would estimate that I have represented hundreds of sexual assault victims who allege abuse by religious clergy. I feel that I am suitably experienced to comment upon the practices, policies and protocols employed by Catholic organisations in response to allegations of sexual abuse.

26.3 On the Defendant's public website on 30 October 2016, the Defendant represented;

Waller Legal is a high profile legal practice dedicated to assisting people who have been sexually assaulted and people who were physically, sexually or psychologically abused or neglected when they were a child.

We listen. We act. Our job is to help people to obtain compensation. We also represent witnesses at Royal Commission hearings and we agitate for law reform and a National Redress Scheme.

We look after child abuse survivors. Unlike other firms, we don't do anything else.

WHY CHOOSE WALLER LEGAL?

- *Experienced, independent and fearless legal advice.*
- *Dedicated representation of sexual assault survivors since 1995.*
- *Strength in numbers. Chances are, we are already involved in cases against the same offender, institution or defendant.*
- *We have an extensive archive of data that we can use to research and corroborate your case.*
- *We are not new to the scene. We are a well-established legal practice that has been dedicated to this type of work since day one. Dr Waller has been representing survivors since 1995 – long before the Parliamentary Inquiry or Royal Commission were announced.*
- *Waller Legal was established in 2007 and has always specialised in sexual assault and victims of crime matters.*
- *We work closely with victim support groups, psychologists, the Centres Against Sexual Assault (CASAs), mental health care professionals, the broader legal profession and the community.*
- *No claim is too big or too small. From a straightforward application to the Victims of Crime Tribunal to complex High Court Appeals, Waller Legal has the relevant experience.*

27. The statements and representations set out in the previous paragraph were intended by the Defendant to convey, and did convey, including to the Plaintiff, the meaning and belief that the firm was specialised, highly experienced, and a leader in the legal profession in the provision of legal advice for, the representation in legal claims of, and the recovery of compensation for, persons who had suffered institutional childhood sexual abuse.

2019 retainer

28. On 14 November 2019, the Plaintiff, under the name Jane Jones, again retained the Defendant to act, or to continue to act, for her, in a claim against the Redemptorists to obtain the maximum possible amount of damages for the sexual abuse and the injuries, and the Plaintiff signed a Costs Agreement with the Defendant, dated 13 October 2019, but executed by the Plaintiff on 14 November 2019 (“**the retainer**”).
29. The retainer was subject to the express terms of the retainer, and to the terms of retainer of a legal practitioner in Victoria implied by law, including;
 - (a) an implied term to act on the Plaintiff’s behalf with the reasonable care and skill of an expert legal practitioner specialising in claims for childhood sexual abuse, and;
 - (b) an implied term to advise the plaintiff with reasonable care and skill, the standard for which was, in the circumstances, the standard of a specialist legal practitioner acting for injured survivors of institutional childhood sexual abuse.
30. At all material times in the course of the retainer, the Defendant owed the Plaintiff a duty to take reasonable care to;
 - 30.1 Advise the Plaintiff with reasonable care and skill;
 - 30.2 Act in the Plaintiff’s best interests with reasonable care and skill;

the standard of care of which was the standard of a specialist expert legal practitioner acting for injured survivors of institutional childhood sexual abuse.

Scope and obligations of Duty of Care owed by the Defendant

31. In the circumstances, the obligations and scope of the duty of care owed by the Defendant to the Plaintiff, required the Defendant to take reasonable care to:
 - 31.1 Act according to the Plaintiff’s informed instructions;
 - 31.2 Fully and carefully advise the Plaintiff of her rights and entitlements at law and of the nature and extent of any risks to the Plaintiff in pursuing her rights and entitlements at law;
 - 31.3 Advise the Plaintiff as to, and take steps consistent with, the Plaintiff’s interests, such as would maximise her entitlements at law, having proper regard to any risks;
 - 31.4 Not take steps contrary to the Plaintiff’s best interests;

- 31.5 Maximise, as far as reasonably possible, without subjecting the Plaintiff to undue risks of adverse costs, the damages entitlements available at law to the Plaintiff;
- 31.6 Familiarise itself with judgments, awards and publicly available settlements in claims for childhood sexual abuse which had resulted in similar injuries and losses to those of the Plaintiff, so as to advise the Plaintiff thereof and as to the likely quantum of damages attainable in her claim;
- 31.7 Obtain evidence of, and assess, the likely quantum of the Plaintiff's claim for economic loss;
- 31.8 Obtain all damages entitlements reasonably open to the Plaintiff at law including general damages for pain and suffering and special damages for loss of economic capacity;
- 31.9 Carefully explain to the Plaintiff her rights and entitlements to compensation and damages;
- 31.10 Provide the Plaintiff with sufficient information and advice regarding the Plaintiff's entitlements such that the Plaintiff could make informed decisions and provide informed instructions regarding the quantum to be sought in, and the steps to be taken to obtain, the Plaintiff's entitlements;
- 31.11 Subject to an overriding duty to the Court as officers of the Supreme Court of Victoria, to act solely in the interests of the Plaintiff to advise her, and to seek to obtain the Plaintiff's entitlements to the fullest extent possible;
- 31.12 Immediately advise the Plaintiff where there was any conflict of interest between its own interests and those of the Plaintiff, and would thereafter act in accordance with the Plaintiff's instructions and interests, with respect to such conflict, including, if necessary, by ceasing to act for the Plaintiff;
- 31.13 To advise the Plaintiff as to her entitlements at law including fully as to her prospects and quantum and the nature and extent of any risks in pursuing and enforcing such entitlements by legal proceedings;
- 31.14 Explain and advise why any steps in her claim were taken by the Defendant, or that should, in the Defendant's opinion be taken, and why any steps were not taken or why any steps should, in the Defendant's opinion, not be taken;
- 31.15 Pursue by negotiation or, failing that, litigation, a proper economic loss claim for the Plaintiff for her loss of economic capacity and consequent past and future economic loss caused by the sexual abuse and the consequent injuries as hereinbefore pleaded, which were caused or materially contributed to, by the negligence of the Redemptorist Order, its Provincial, Provincial Council, management, its Priests, Brothers,

appointees, servants and/or agents and/or by the assaults and/or breach of duty of the Priests, Brothers, appointees, servants and/or agents of the Redemptorists, for which the Redemptorists were vicariously liable;

- 31.16 If the Plaintiff's entitlements could not be maximised by any negotiation or dispute resolution process with the Redemptorists, unless instructed to the contrary, after advising the Plaintiff as to her rights and entitlements and as to the nature and extent of any consequential risks, issue and pursue proceedings in Court to obtain and maximise the Plaintiff's entitlements including a proper economic loss claim;
- 31.17 Fully and carefully explain to the Plaintiff and be sure that she understood, all material facts and matters regarding her claim and her entitlements that would reasonably affect her decision to settle her claim for any sums offered by the Redemptorists, or alternatively, reject such offers and pursue a litigated claim.
32. The Defendant, in the course of the retainer, was, or became, aware, of all of the matters pleaded at paragraphs 5 to 22 above.
33. In the course of the retainer, the Plaintiff provided the Defendant with instructions and information concerning the sexual abuse, her injuries, her employment history and available financial and employment records.

Events late 2019-2020 leading to settlement

34. The Defendant on 18 November 2019, requested a report from Dr S K Brann consultant psychiatrist. The Defendant instructed Dr Brann that:
- “Jane believes her education and employment history have been impacted by the abuse of Grant Ross... Please comment upon Jane's educational and work history. In your opinion was it adversely effected by the abuse by Brother Grant Ross?”*
35. On 3 December 2019, at the request of the Defendant, the Plaintiff attended a meeting with Consultant Psychiatrist Dr S K Brann at the Ballarat Library, and Dr Brann provided the Defendant with a medico-legal report of her findings dated 16 December 2019, which opined, inter alia;
- (a) That the Plaintiff suffered from chronic PTSD with panic attacks, dissociative symptoms and agoraphobia and alcohol use disorder;
 - (b) that the Plaintiff's moderately severe post-traumatic stress disorder and the alcohol use disorder evolved as a consequence of the sexual abuse;
 - (c) that the Plaintiff's difficulties with trust, sexual intimacy and relating to partners emotionally have been contributed to by the years of sexual abuse;

- (d) that the Plaintiff's difficulty in concentration, focus, education and subsequent employment are all related to the pervasive impact of the abuse when she was a young child;
 - (e) that the abuse had a major negative impact on the Plaintiff's educational capacity and subsequently her work history, because of all of her symptoms and that fear and anxiety, for any child is very likely to cause interference with focus and concentration, as it did with the Plaintiff.
36. On 20 January 2020, the Defendant wrote to the solicitors for the Redemptorists enclosing the report of Dr Brann and stating, inter alia;

"Ms Jones makes a claim for general damages and future medical expenses... There is no formal claim for loss of earnings but there is a claim for loss of opportunity and impact on Ms Jones' education.

Dr Brann opines that 'the abuse had a major negative impact on [Ms Jones'] educational capacity and subsequently her work history' (Brann p 18). Ms Jones instructs that she struggled with her mental health throughout her career. Ms Jones has been unemployed for the past 10 years, despite only being 50 years old. Ms Jones states that she 'couldn't handle' work because of her symptoms. Ms Jones reserves the right to make a future claim for past, present and future loss of earnings."

37. An informal settlement conference was held on 8 May 2020, via Zoom, between solicitors from the Defendant, Dylan Rae-White and Caitlin Vaughan, and the solicitors for the Redemptorists and Redemptorist representatives Father John Hodgson (Provincial) and Father Bill Goldman (Professional Standards Officer). The Plaintiff spoke with Mr Rae-White and Ms Vaughan on the telephone before, during and after the settlement conference.

Relevant judgments and settlements in sexual abuse matters

38. Prior to 8 May 2020, there had been many judgments, and some settlements publicly disclosed, for survivors of sexual assault and psychiatric injury similar to the Plaintiff, including the following;
- 38.1 *S v The Corporation of the Synod of the Diocese of Brisbane* [2001] QSC 473; a claim of childhood sexual abuse until 1990 whilst the plaintiff was a boarder at Toowoomba Grammar. A jury awarded \$415,000 for pain and suffering and \$400,000 in exemplary damages plus \$14,000 for about a year of lost earning capacity;
 - 38.2 In *SB v State of NSW* [2004] VSC 514 Redlich J awarded general damages of \$195,000 and damages for three years of intermittent future loss of economic capacity of \$60,000;

- 38.3 *"Am" v "Kw"* [2005] NSWSC 876 the plaintiff suffered psychological injuries from sexual assaults which were perpetrated upon him by the defendant when aged six to 10, he was entrusted in the care of the defendant in his capacity as a babysitter. The plaintiff was born on 11 August 1982 and was 23 at trial and in remunerative employment. Harrison As J awarded \$246,000 for general damages, and \$100,000 for economic loss in damages of \$444,745;
- 38.4 In *McCrae v Boys Scouts Association* [2007] NSWDC 196, the plaintiff was sexually abused by his scout leader from around 1999 to 2002. He was awarded \$31,450 for past out of pocket expenses, \$100,000 for future out of pocket expenses, \$111,600 for past economic loss, \$18,832 for interest on past economic loss, \$400,000 for future economic loss, \$471,000 for general damages, \$36,000 for interest on past general damages and \$100,000 for exemplary damages, giving a total of \$1,268,882;
- 38.5 In *Gregory v State of New South Wales* [2009] NSWSC 559, the plaintiff was subject to bullying at an agricultural college causing psychiatric injury. He was awarded non-economic loss of \$247,500, future loss of earning capacity of \$196,378 and future superannuation loss of \$24,858 in a total of \$468,736;
- 38.6 In *K v. G* [2010] QSC 13 the defendant sexually abused the plaintiff between 1996 and 2003, when she was aged eight to 15. The Court awarded damages of \$629,855 including general damages of \$80,900 and damages for past and future economic loss, superannuation and interest of \$313,000;
- 38.7 In *P v R* [2010] QSC 139, the plaintiff was born in March 1989. The assaults occurred in 1997, when she was eight years old. The court assessed damages in the sum of \$439,907.04 including general damages and interest of \$90,000, past economic loss of \$17,074.80 with interest of \$6,000.00, past superannuation \$1,536.73 with interest of \$500.00, future economic loss of \$150,000 and future superannuation of \$13,500, aggravated damages of \$50,000 and exemplary damages of \$50,000;
- 38.8 In *XY v Featherstone* [2010] NSWSC 1366, the plaintiff was a ward of the state. On the weekends, he was placed into the care of a "special friend" who groomed and sexually abused the plaintiff over a five-year period. The plaintiff was awarded \$350,000 for general damages, \$127,500 for interest on past general damages, \$724,593 for past economic loss, \$655,899 for interest on past economic loss, \$45,069 for past superannuation, \$34,477 for interest on past superannuation, \$877,353 for future economic loss, \$78,961 for future superannuation and \$69,560 for future out of pocket expenses, giving a total of \$2,963,412.

- 38.9 In *GGG v YYY* [2011] VSC 429, the plaintiff was abused by his uncle as a child. The plaintiff did not seek damages for economic loss. The Court awarded \$200,000 for general damages and \$17,000 for special damages, giving a total of \$217,000.
- 38.10 In *M v Nesbit* [2012] NSWDC 152, the plaintiff was assaulted by a teacher and boarding master at Knox Grammar School. The Court ordered damages of \$250,000 for general damages, \$131,250 for interest on general damages, \$100,000 for past economic loss, \$100,000 for future economic loss, \$13,082 for past out of pocket expenses, \$9,900 for future out of pocket expenses, \$25,000 for aggravated damages, and \$50,000 for exemplary damages, giving a total of \$679,232.
- 38.11 In *B v Reineker* [2015] NSWSC 949, the plaintiff was sexually abused by a teacher at her school between 2001 and 2008. The Court awarded damages of \$350,000 for general damages, \$60,000 for interest on general damages, \$33,000 for past out-of-pocket expenses, \$183,000 for future out-of-pocket expenses, \$325,000 for past economic loss, \$117,000 for interest on past economic loss, and \$160,000 future economic loss, giving a total of \$1,228,000;
- 38.12 *TB v State of New South Wales and Quinn; DC v State of New South Wales and Quinn* [2015] NSWSC 575; two sisters who had been abused by their step father brought a claim against the Department of Protective Services for not having removed them from home when an officer became aware that the daughters were being abused. General damages were assessed at \$377,500 and \$269,000 respectively and past and future economic loss at \$1,313,789 for TB and \$700,219.90 for DC;
- 38.13 In *Erlich v Leifer* [2015] VSC 499, the Plaintiff was abused by the principal of the Adass Israel School. The Court ordered damages of \$300,000 for general damages, \$50,358 past economic loss (noting that the plaintiff's opportunities for earning were limited by her orthodox religious community), \$501,422 for future economic loss, \$156,007 for past medical expenses, \$16,641 for future medical expenses, \$150,000 in exemplary damages against the offender and \$100,000 in exemplary damages against school, giving a total of \$1,274,420;
- 38.14 *Hand v Morris* [2017] VSC 437; The 51-year-old plaintiff was sexually abused by his teacher at 9 years of age and sustained psychiatric injury in the form of an anxiety disorder. General damages were assessed at \$260,000 and past and future economic loss at \$420,000;
- 38.15 In *The Age* on 14 August 2017 a report was published titled, "Fifty years after a mum first raised the alarm, men get \$7m for teacher's abuse." The article stated: "Ten men abused as children by a paedophile teacher who was shuffled between primary schools for 14 years have been paid more than \$7 million by the Victorian government. Robert Leonard Morris, 72, started abusing boys the year he began teaching in 1966... Ten of his victims, now aged in their 40s and 50s, were awarded compensation

following civil action in which the government accepted it was legally responsible for Morris' crimes. The settlements for Morris' crimes significantly exceed what the Catholic Church has paid out. Victims received an average \$46,000 under the Melbourne Response and a \$270,000 average settlement for those who tried to sue, according to a 2015 Age analysis. Two survivors of Morris' abuse received between \$1.5 and almost \$2 million; thought to be record figures in Victorian sex abuse claims;

- 38.16 *Gersbach v Gersbach* [2018] NSWSC 1685. A 35-year-old plaintiff was sexually assaulted by her father over a ten-year period from the age of four until the age of 14. The claim was dismissed on the basis the plaintiff did not discharge her onus of proof; however, damages were assessed on a hypothetical basis and general damages notionally allocated at \$300,000.
- 38.17 *MC v Morris* [2019] NSWSC 1326 was a claim by a plaintiff who was sexually assaulted between the ages of 13 and 15. General damages were assessed at \$400,000, interest on general damages for past suffering \$115,000, past economic loss (wages) \$840,000, past economic loss (superannuation) \$92,400, interest on past economic loss \$676,363, future economic loss (wages) \$1,079,483, future economic loss (superannuation) \$152,963 in a total award of \$3,510,513;
- 38.18 In *The Age* on 30 July 2019 an article headlined "Geelong College pays \$1,000,000 to sexual assault victim" reported that "A 63-year-old man abused by a teacher at Geelong College more than 50 years ago has received a \$1 million settlement from the exclusive school just hours before the matter was due to reach court";
- 38.19 In *Lawrence v Province Leader of the Oceania Province of the Congregation of the Christian Brothers* [2020] WADC 27, a claim litigated to judgment after limitation and Ellis defence barriers had been removed by legislation in WA, the plaintiff was a child migrant, placed in the care of the Christian Brothers from age eight. He was sexually abused by a number of Christian Brothers and a lay teacher. In a judgment delivered on 11 March 2020, General damages were assessed at \$400,000 and past and future economic loss at \$1,020,000;
- 38.20 A claim in the Supreme Court of Victoria *Perez v Reynolds & Anor* [2020] VSC 537 was heard from 26 to 29 May 2020, 1 to 4 June 2020 and 10 June 2020. Judgment was delivered by Forbes J on 26 August 2020. A 47 year old plaintiff who had been sexually abused by his primary school teacher was awarded general damages of \$265,000 and damages for past and future economic loss of \$1, 269,000;
- 38.21 In *The Age* on May 20, 2021, an article headlined " Ex-Wesley College student wins record settlement over abuse by two teachers" reported that "A former Wesley College student has received a \$3 million record settlement for institutional child abuse in Victoria, after he was sexually

assaulted by two former teachers in the 1970s... Lawyers acting for Wesley College only agreed to the landmark settlement on the third day of a Supreme Court trial in March, despite being aware both Mr McMillan and Mr Heywood had ended their careers in disgrace.". The Defendant had previously acted for the plaintiff in this claim in 2019.

39. As an expert legal firm in the field of compensation for injuries caused by childhood sexual abuse, prior to and on 8 May 2020, the Defendant knew or should have known of the damages awards and settlements at 38.1 to 38.19 above, and that settlements and awards of damages in claims then proceeding before the courts, were likely to be achieved in amounts consistent with, and similar to, the amounts in 38.20 and 38.21.

Defendant's knowledge of legal issues

40. By 8 May 2020, the Defendant knew that in respect of any proceedings issued on behalf of the Plaintiff in her claim against the Redemptorists;
- 40.1 no defence pursuant to the *Limitation of Actions Act 1958* could represent a barrier to the Plaintiff obtaining damages from the Redemptorists;
- 40.2 no defence pursuant to the Ellis Defence, or based upon the unincorporated nature of the Redemptorists Order could represent a barrier to the Plaintiff obtaining damages from the Redemptorists;
- 40.3 the High Court judgment in PAC assisted the Plaintiff in a claim for damages against the Redemptorists founded upon the vicarious liability of the Redemptorists for the acts and omissions and assaults of Brother Ross, and acts and omissions of members of the Redemptorists;
- 40.4 there had been other allegations of sexual abuse made against Brother Ross, about which the Redemptorists knew or ought to have known, as pleaded in paragraph 6 above;
- 40.5 The Plaintiff would have a strong chance of establishing the liability of the Redemptorists for the injuries, loss and damage of the Plaintiff if the matter were to be pursued to a verdict or judgment;
- 40.6 the Plaintiff had been diagnosed with serious psychiatric injuries as a consequence of the sexual abuse;
- 40.7 the Plaintiff had a claim available to her against the Redemptorists for loss of economic capacity which had resulted in significant long-term past and future economic loss and the Defendant was aware of the matters pleaded in paragraphs 13.4 to 13.7 and 33 to 36 above;
- 40.8 the Plaintiff would need to have her rights and entitlements, including as to liability issues, risks and types and amounts of damages available to her, fully and carefully explained;

- 40.9 the types and amounts of damages which the Plaintiff would be likely to receive if her claim proceeded to a judgement or verdict were likely to be consistent with, or above, the range of damages awarded in the cases pleaded at 38.1 to 38.19 and particularly those pleaded between 38.11 and 38.19, and that the Plaintiff had reasonable prospects of obtaining damages consistent with the award shortly thereafter made as pleaded in 38.20.
41. Throughout the period of the retainer, the Plaintiff was reliant upon advice of the Defendant as to the heads of damages available to her and believed that the Defendant would, consistent with its stated expertise and its duty to her, seek and obtain the maximum damages available to her pursuant to all the constituent heads of damages in her cause of action, including for her loss of capacity to earn income and her past and future economic loss.
42. At the time of the settlement conference, the Plaintiff wanted to obtain from the Redemptorists, to the maximum extent possible at law, damages and compensation for her injury and loss, including for her past and future loss of economic capacity, and, failing that, wished to litigate her claim to obtain such damages and compensation, and she instructed the Defendant accordingly.

Defendant's breach re economic loss claim

- 42A. Throughout the course of the retainer, including at the time of the settlement conference, the Defendant had a usual practice in claims relating to childhood sexual abuse, like the Plaintiff's, not to assess, or to make a claim from the tortfeasor for economic loss ("the usual practice").
- 42B. Throughout the course of the retainer including at the time of the settlement conference, the Defendant did not advise or inform the Plaintiff of the usual practice.
- 42C. Further to 42A and 42B, the Defendant consistent with the usual practice, did not make a claim for economic loss from the tortfeasor in the Plaintiff's claim:
- (a) Without informing the Plaintiff of the usual practice.
 - (b) Despite the Plaintiff providing to the Defendant her financial records.
 - (c) Despite the Plaintiff retaining the Defendant to obtain the maximum possible damages for her sexual abuse and consequent injuries.
 - (d) Despite the matters referred to in the report of Dr Brann of 16 December 2019 pleaded above.
 - (e) Despite a staff member of the Defendant on 11 November 2019 taking instructions from the Plaintiff about her work history which included the sentences: "I always struggled mentally at work. I really couldn't handle it."

42D. The Defendant did not make the Plaintiff an exception to its usual practice of not claiming economic loss, nor tell the Plaintiff about its usual practice of not claiming economic loss, at any stage during the proceeding, despite:

- (a) The Plaintiff providing to the Defendant her financial records.
 - (b) The Plaintiff retaining the Defendant to obtain the maximum possible damages for her sexual abuse and consequent injuries.
 - (c) The matters referred to in the report of Dr Brann of 16 December 2019 pleaded above.
 - (d) A staff member of the Defendant on 11 November 2019 taking instructions from the Plaintiff about her work history which included the sentences: "I always struggled mentally at work. I really couldn't handle it."
43. In breach of the duty owed to the Plaintiff as her lawyer, or alternatively in breach of the implied terms of the retainer, prior to the settlement conference with the Redemptorists, the Defendant did not assess nor make, nor pursue or demand from the Redemptorists, a proper economic loss claim or a sum calculated or assessed in accordance with the making of a proper economic loss claim, nor assess and make any claim for loss of the Plaintiff's economic capacity or economic loss.
44. Further to 43, the Defendant also breached its duty and the implied terms, in that it failed to advise the Plaintiff that it had not assessed, nor made, a proper economic loss claim nor that it had not pursued or demanded damages in accordance with a proper economic loss claim from the Redemptorists, nor that it had not assessed and made any claim for loss of the Plaintiff's economic capacity or economic loss, and the Plaintiff, by the time of the settlement conference was entirely unaware of what her economic loss claim (and hence her total claim for damages) might be worth if fully prepared, assessed and pursued to verdict or judgment.

May 2020 settlement conference and subsequent settlement

45. At the 8 May 2020, settlement conference and during the period immediately following, the Defendant gave the Plaintiff various advices, received various instructions from the Plaintiff and made and received offers of settlement for the Plaintiff's claim.

PARTICULARS

- (i) Prior to offers being exchanged, and according to the Defendant's contemporaneous file notes, Mr Rae-White advised the Plaintiff that:

- (a) if she wanted a “million \$ figure” she would have to go to court and because they were not in court there would be a “discount”; and
 - (b) to claim the “full amount” of economic loss” she would have to go to court, and that he proposed to ask for \$200,000 “to recognise impact in your work”.
- (ii) The Defendant made an opening offer to settle the Plaintiff’s claim at \$600,000 inclusive of costs which purported to include a “loss of opportunity” sum of \$200,000 to recognise the impact on the Plaintiff’s work
 - (iii) The Redemptorists responded with an offer of \$130,000 inclusive and a series of offers were exchanged between the parties. When the Redemptorists offered \$210,000, according to the Defendant’s contemporaneous file notes, Mr Rae-White advised the Plaintiff that: “210k is within the range but a little low. You are welcome to accept it but happy to continue for you. If we keep going, there’d be an increase in costs”.
 - (iv) Mr Rae-White did not advise the Plaintiff what the “range” was, or of the quantum of the top or bottom of the range;
 - (v) The Plaintiff instructed Mr Rae-White she wanted \$300,000 to settle the claim and the loss of wages issue made the offer seem low. Mr Rae-White agreed, but did not offer advice on the quantum of the economic loss claim;
 - ~~(i)~~(vi) The Plaintiff suggested a counteroffer at \$230,000, but Mr Rae-White advised her the Defendant would come up another \$5,000 to \$215,000.
 - ~~(ii)~~(vii) The Plaintiff asked Mr Rae-White: “What could I get at court?”. Mr Rae-White, according to the contemporaneous notes, did not advise the Plaintiff of the amount she could get in a judgment, verdict or settlement in a court process but advised the Plaintiff: “I think you would still do better issuing proceedings. I’m not positive though. Not a lot of claims against the Redemptorists. They’ve been cooperative”;
 - ~~(iii)~~(viii) The Redemptorists’ final offer at the settlement conference was \$240,000 inclusive of costs (which were \$37,874), representing an offer of damages of \$202,126, which was left open until 15 May 2020;
46. On 12 May 2020, Mr Rae-White telephoned the Plaintiff and, according to a file note of the conversation:

- (a) the Plaintiff stated she felt “a little insulted by the offer”; and
 - (b) Mr Rae-White advised the Plaintiff that;
 - (i.) a barrister would have to draft a Statement of Claim;
 - (ii.) it was likely the Redemptorists would ask her to attend a medico-legal examination; and
 - (iii.) “it may be the case we need a forensic accounting report for [the] economic loss component but I’m not sure at this stage”;
 - (iv.) Mr Rae-White did not advise the Plaintiff what compensation, or range of damages ,was achievable at trial or from a litigated process.
47. On 14 May 2020, Mr Rae-White again spoke with the Plaintiff on the telephone. According to contemporaneous file notes:
- (a) the Plaintiff instructed regarding the Redemptorist’s last offer: “it’s an insulting amount but I think I will accept it rather than going further”.
 - (b) Mr Rae-White advised the Plaintiff: “I agree in terms of the amount. My advice is to go to court. Your claim has reasonable prospects but important to consider your health. No sure how far down the process you’d have to go. Not unreasonable to resolve. It’s taken a lot for you to get to this point.”
 - (c) Mr Rae-White did not explain or advise the Plaintiff:
 - (i) what the term “reasonable prospects” meant;
 - (ii) what she might recover as a damages sum via a court verdict or litigated process;
 - (iii) how long a court or litigated process might take to resolve.
48. On 14 May 2020, the Plaintiff, believing that the offer was insulting and insufficient compensation for the sexual abuse, her life time of suffering and her economic loss, but, due to the negligence or breach of contract of the Defendant, completely unaware of the potential value of her claim, including what a court might award her if her claim was litigated, and believing that if she rejected the claim and issued proceedings that she faced increased costs and a risk of losing the claim and having to pay costs to the Redemptorists, instructed the Defendant to accept the offer of \$240,000 inclusive of costs.
49. The Defendant, in a letter to the Plaintiff dated 20 May 2020 which enclosed, and requested the Plaintiff to sign and return, a Deed of Release and a document headed “Instructions to Settle Claim”, represented that “signing this deed of release will end your claim against the Trustees of the Redemptorist Fathers once and for all”. In the “Instructions to Settle Claim” it was represented by the Defendant that the Defendant had provided the following advice to the Plaintiff;

"It has been explained to me, and I understand:

1. *I am required to sign a Deed of Release that brings to an end all claims to compensation in relation to my case on a "once and for all" basis.*
2. *I have been provided with advice about the possibility of pursuing a common law claim by issuing my case in Court.*
3. *I understand that had I chosen to litigate my claim, it may have resulted in an award of damages significantly greater than the settlement amount offered at this time.*
4. *Equally, I understand that there may have been a risk that my case might not have been successful in Court and, if unsuccessful, I could have been liable to pay the legal costs of the Defendant. I am also aware that running a case in Court involves more time and increased legal expenses."*

50. The Defendant did not in the course of the retainer, at any point prior to the informal settlement conference, advise the Plaintiff that the informal process in which she was involved, would, if a settlement were to be achieved, result in accepting a very large discount by comparison to the damages she could obtain in a litigated process, and that she should issue court proceedings to obtain, enforce or maximise her entitlements against the Redemptorists.
51. The Defendant knew or ought to have known that if it did not assess, make or pursue a proper economic loss claim on behalf of the Plaintiff, and that if the Plaintiff's claim was settled or resolved without including a sum commensurate with the damages for loss of economic capacity to which the Plaintiff was entitled, that;
 - (a) the Plaintiff would receive less damages than the sum of damages to which she was entitled;
 - (b) the Plaintiff would suffer a loss by receiving less damages than she would have received if a litigated claim for loss of economic capacity was assessed, made and pursued;
 - (c) the Plaintiff would lose the opportunity to make a claim for loss of economic capacity which she had suffered as a result of the sexual abuse;
 - (d) any sum for which the Plaintiff's claim was settled was likely to be significantly less than had a claim for loss of economic capacity been assessed, made and pursued.
52. The Plaintiff's chose in action being her right of action to claim for damages, and all of the Plaintiff's entitlements, were settled for \$240,000 inclusive of legal costs by the execution of a Deed of Release signed by the Plaintiff on or about 10 June 2020, by which Deed the Plaintiff gave up her right of action and her legal rights

arising from the sexual abuse and the injuries, including any claim for economic loss.

Defendant's negligence re settlement

53. In advising, causing, permitting or failing to advise against and prevent, the settlement of the Plaintiff's claim for a sum equivalent to damages of \$202,106 ("**the damages sum**"), the Defendant was negligent and in breach of the implied terms of the retainer between the Plaintiff and the Defendant.

PARTICULARS

- (a) The damages sum was a manifestly inadequate amount of damages for the sexual abuse and the injuries and loss suffered by the Plaintiff;
- (b) The damages sum was a manifestly inadequate amount of damages for the sexual abuse and the injuries and loss suffered by the Plaintiff having proper regard to the risks of proof of liability and proof of injuries and loss;
- (c) The damages sum was a manifestly inadequate amount of damages for the sexual abuse and the injuries and loss suffered by the Plaintiff having proper regard to the awards of damages made by courts and agreed in settlements pleaded in paragraph 38 above;
- (d) The damages sum was a manifestly inadequate amount of damages for the sexual abuse and the injuries and loss suffered by the Plaintiff having proper regard to the amounts of damages that might be obtained by settlement or judgment or verdict if the Plaintiff commenced and pursued litigation against the Redemptorists;
- (e) The Plaintiff refers to and repeats paragraphs 43 and 44 above;
- (f) The Plaintiff refers to and repeats paragraph 54 and the particulars subjoined thereto;

A. Failing to advise

- (g) The Defendant failed to advise the Plaintiff that the damages sum was a manifestly inadequate amount of damages for the sexual abuse and the injuries and loss suffered by the Plaintiff;
- (h) The Defendant failed to advise the Plaintiff that the damages sum was a manifestly inadequate amount of damages for the sexual abuse and the injuries and loss suffered by the Plaintiff having proper regard to the risks of proof of liability and proof of injuries and loss;
- (i) The Defendant failed to advise the Plaintiff that the damages sum was a manifestly inadequate amount of damages for the sexual abuse and the injuries and loss suffered by the Plaintiff having proper regard to the

awards of damages made by courts and agreed in settlements pleaded in paragraph 38 above;

- (j) The Defendant failed to advise the Plaintiff that the damages sum was a manifestly inadequate amount of damages for the sexual abuse and the injuries and loss suffered by the Plaintiff having proper regard to the amounts of damages that might be obtained by settlement or judgment or verdict if the Plaintiff commenced and pursued litigation against the Redemptorists;
- (k) The Defendant failed to advise the Plaintiff of the damages to which the Plaintiff was entitled, or which she might receive by way of judgment or verdict for sexual abuse and the injuries and loss suffered, if the damages claim was properly assessed;
- (l) The Defendant should have advised, but failed to advise the Plaintiff not to offer, or to settle for the damages sum;
- (m) The Defendant failed to properly and clearly advise the Plaintiff of her good prospects of success in establishing liability against the Redemptorists and proving her injuries and losses, before accepting the offer of the damages sum;
- (n) The Defendant failed to advise the Plaintiff or alternatively to properly advise the Plaintiff as to her rights, entitlements and risks in continuing the litigation if she chose to reject the damages sum offered;
- (o) The Defendant failed to advise the Plaintiff of the matters in (aa) (i) to (v) below;
- (p) Failing to inform, advise and clearly explain to the Plaintiff the risks, benefits and detriments in any claim or court proceedings against the Redemptorists, including as to the absence of significant risk in proving liability, the strength of the claim as to negligence, ostensible authority and vicarious liability and the likelihood that she would likely receive substantially greater damages than \$240,000 inclusive of costs in a verdict or judgment;
- (q) Failing to fully and carefully advise the Plaintiff of her rights and entitlements at law and of the nature and extent of any risks to the Plaintiff in pursuing her rights and entitlements at law;
- (r) Failing to advise the Plaintiff as to, and take steps consistent with, the Plaintiff's interests, such as would maximise her entitlements at law having regard to any risks;
- (s) Failing to provide the Plaintiff with sufficient information and advice regarding the Plaintiff's entitlements such that the Plaintiff could make informed decisions and provide informed instructions regarding the

quantum to be sought in, and the steps to be taken to obtain, the Plaintiff's entitlements;

- (t) Failing to explain and advise the Plaintiff why steps in her claim were taken by the Defendant, or that should, in the Defendant's opinion be taken, and to explain and advise why any steps were not taken or why any steps should, in the Defendant's opinion, not be taken;
- (u) Failing to inform, advise and make the Plaintiff aware, and to be satisfied that the Plaintiff was aware of, and understood, all material facts and matters regarding her claim and her entitlements, that would reasonably have affected her decision to settle her claim for the sums offered by the Redemptorists and for which she ultimately settled her claim.

B. Failing to prepare

- (v) The Defendant failed to assess or alternatively, properly assess the damages to which the Plaintiff was entitled for sexual abuse and the injuries and loss suffered;
- (w) The Defendant failed to seek, obtain or assemble the necessary evidence to calculate the Plaintiff's economic loss;
- (x) The Defendant failed to calculate, assess and quantify the Plaintiff's economic loss;
- (y) The Defendant failed to make an estimate of the Plaintiff's past and future economic loss;
- (z) The Defendant failed to make and pursue a proper economic loss claim;
- (aa) In failing to assess and to prepare, make or pursue a claim for economic loss or for proper economic loss on behalf of the Plaintiff, it was foreseeable and probable that;
 - (i) The amount of damages claimed by the Plaintiff from the Redemptorists at the settlement conference, or thereafter, would be lower than the amount of damages to which the Plaintiff was entitled;
 - (ii) The amount of damages offered by the Redemptorists at the settlement conference or thereafter, would be lower than the amount of damages to which the Plaintiff was entitled;
 - (iii) The amount for which the Plaintiff settled her claim was likely to be lower than the amount of damages to which the Plaintiff was entitled;
 - (iv) The damages sum was lower than the amount of damages to which the Plaintiff was entitled;

- (v) The Plaintiff would receive greater damages by settlement or judgment or verdict if such a claim were properly made and pursued in litigation;

C. Negligent acts and omissions

- (bb) The Defendant failed to comply with or have any or any proper regard to the instructions of the Plaintiff that the sexual abuse and consequent injuries had had a major impact on her education and her work, nor her instructions that she considered the offers received from the Redemptorists insulting and insufficient for what she had suffered;
- (cc) Failing to assure itself, or to ensure, that the Plaintiff understood its advice and could give informed instructions;
- (dd) The Plaintiff was not, before instructions were required from her regarding the final offer made by the Redemptorist, given information about what damages or range of damages could be obtained through a litigated claim and given the clear choice of rejecting the offer and pursuing a litigated claim;
- (ee) Failing to act at all times in the Plaintiff's best interests;
- (ff) Failing to take all steps consistent with its retainer and duty to the Plaintiff to ensure that as far as was possible according to law the Plaintiff would receive the maximum possible quantum of compensation and damages as could be obtained or recovered consistent with the Plaintiff's entitlements at law;
- (gg) The Defendant had a ~~policy or~~ usual practice not to seek or claim proper economic loss, or economic loss, in claims for survivors of childhood sexual abuse, and implemented and applied that ~~policy or~~ practice in the Plaintiff's case without properly informing or advising the Plaintiff about the ~~policy or~~ practice;
- (hh) The Defendant had a ~~policy or~~ usual practice not to seek or claim proper economic loss or economic loss in alternative dispute resolution negotiations in claims for survivors of childhood sexual abuse, and implemented that ~~policy practice~~ in the Plaintiff's case without properly informing or advising the Plaintiff about the ~~policy or~~ practice;
- (ii) If, as was the case, the Plaintiff's entitlements could not be maximised by any negotiation or dispute resolution process with the Redemptorists, the Defendant should have advised the Plaintiff, and, if so instructed after fully advising the Plaintiff as to her rights and entitlements, including the quantum or range of likely damages, and as to the nature and extent of any consequential risks, issue and pursue proceedings in Court to obtain and maximise the Plaintiff's entitlements which step was likely to produce significantly greater compensation for the Plaintiff;

- (jj) The Defendant failed to obtain any proper or objectively reasonable sum for damages or compensation for the Plaintiff's sexual abuse and injury and loss, having proper regard to any objective assessment of the risks of proof of liability and injury, loss and damage in her claim;
- (kk) The Defendant failed to obtain any proper or objectively reasonable sum for damages or compensation for the Plaintiff's sexual abuse and injury and loss, having proper regard to the awards, verdicts, judgments and settlements set out in paragraph 386 above.

Defendant's negligence re no economic loss claim

54. Further to 53 and in the alternative, in failing to assess, make and/or to pursue on behalf of the Plaintiff, and/or in failing to advise the Plaintiff to make or pursue, a claim for proper economic loss or a claim for economic loss, and/or, in causing, permitting, or failing to advise against settlement of the Plaintiff's claim, or in advising the Plaintiff to settle her claim, without a sum for damages for loss of economic capacity or economic loss, the Defendant breached the duty of care and obligations of the duty of care owed to the Plaintiff pleaded in paragraphs 30 and 31 above.

PARTICULARS OF BREACH OF DUTY

- (a) The Plaintiff refers to and repeats paragraphs 42A -42D, 43 and 44 above;
- (b) The Plaintiff refers to and repeats paragraph 532 and the particulars subjoined thereto;

A. Failing to advise

- (c) Failing to advise the Plaintiff that she had a significant and valuable claim for loss of economic capacity despite knowing that the Plaintiff had suffered severe damage to her mental health as a consequence of the sexual abuse; had held low paid jobs largely in the supermarket industry; and since losing her last job in about 2008 at about age 38 (12 years prior to the informal settlement conference) had not worked at all;
- (d) Failing to advise or properly advise the Plaintiff, and to ensure she understood such advice, that she could, and should in her own interests, make a claim for economic loss;
- (e) Failing to advise the Plaintiff that that there were no significant barriers to such a claim, such that if the Plaintiff brought court proceedings she would likely recover significant damages for economic loss;
- (f) Failing to advise the Plaintiff, and to ensure that the Plaintiff understood such that she could give informed instructions, that her claim was likely to succeed on liability and that she could obtain a large sum for economic loss;

- (g) Failing to assess and advise the Plaintiff as to the likely quantum of her claim for economic loss;
- (h) Failing to advise or properly advise the Plaintiff, and to ensure she understood such advice, that she could, and should in her own interests, make a claim for economic loss;
- (i) Failing to give the Plaintiff any proper or informed advice so she could give informed instructions about whether or not to make a claim for proper economic loss;
- (j) Failing to advise, and to ensure the Plaintiff clearly understood that she had a viable and valuable claim for economic loss against the Redemptorists;
- (k) The Defendant had a ~~policy or~~ usual practice not to seek or claim proper economic loss, or economic loss, in claims for survivors of childhood sexual abuse, and implemented and applied that ~~policy or~~ practice in the Plaintiff's case without properly informing or advising the Plaintiff about the ~~policy or~~ practice;
- (l) The Defendant had a ~~policy or~~ usual practice not to seek or claim proper economic loss or economic loss in alternative dispute resolution negotiations in claims for survivors of childhood sexual abuse, and implemented that policy practice in the Plaintiff's case without properly informing or advising the Plaintiff about the ~~policy or~~ practice;
- (m) Failing to advise the Plaintiff;
 - (i) That the Plaintiff at all times had a significant and valuable claim available to her for damages for loss of economic capacity caused by the sexual abuse and its consequences;
 - (ii) That her claim for loss of economic capacity was a substantial one as she had suffered loss of capacity to earn the income she could and should have but for the abuse caused by the negligence of the Redemptorists, its servants and/or agents, from her mid-teenage years until 2020 and likely continuing long into the future;
 - (iii) That the claim for loss of economic capacity had good prospects of success, through negotiation and, should any offers made by the Redemptorists be insufficient, at trial to judgment or verdict;
 - (iv) The Plaintiff had good prospects of succeeding in establishing a substantial claim for economic loss, by negotiation, or failing that, by litigation against the Redemptorists

B. Failing to prepare

- (n) Failing to make, pursue or negotiate a claim for loss of economic capacity;

- (o) The Defendant failed to assess or alternatively, properly assess the damages to which the Plaintiff was entitled for sexual abuse and the injuries and loss suffered;
- (p) The Defendant failed to seek, obtain and assemble the necessary evidence to calculate Plaintiff's economic loss;
- (q) The Defendant failed to calculate, assess and quantify the Plaintiff's economic loss;
- (r) The Defendant failed to make an estimate of the Plaintiff's past and future economic loss;
- (s) The Defendant failed to make and pursue a proper economic loss claim or a claim for properly assessed economic loss;
- (t) In failing to assess and to prepare, make or pursue a claim for proper economic loss, or a claim for properly assessed economic loss on behalf of the Plaintiff, it was foreseeable, and probable, that;
 - (i) The amount of damages claimed by the Plaintiff from the Redemptorists at the settlement conference, or thereafter, would be lower than the amount of damages to which the Plaintiff was entitled;
 - (ii) The amount of damages offered by the Redemptorists at the settlement conference or thereafter, would be lower than the amount of damages to which the Plaintiff was entitled;
 - (iii) The amount for which the Plaintiff settled her claim was likely to be lower than the amount of damages to which the Plaintiff was entitled;
 - (iv) The damages sum was lower than the amount of damages to which the Plaintiff was entitled;
 - (v) The Plaintiff would receive greater damages by settlement or judgment or verdict if such a claim were properly made and pursued in litigation.

C. Negligent acts and omissions

- (u) Stating to the Redemptorists in a letter of 21 January 2020 that there was no formal claim for loss of earnings for the Plaintiff;
 - (i) When it had not sought such instructions from the Plaintiff;
 - (ii) When it had no, or alternatively no properly informed, instructions not to make a claim for economic loss on behalf of the Plaintiff;
 - (iii) When it had not given the Plaintiff any advice so she could give informed instructions about whether or not to make such a claim;

- (iv) When the Plaintiff had a clear and valuable claim for economic loss against the Redemptorists;
 - (v) When it had not informed the Plaintiff that she had a clear and valuable claim for economic loss;
 - (vi) When it had advised the Plaintiff by letter of 21 October 2021 that she potentially had a claim for economic loss;
 - (vii) When it had advised the Plaintiff by letter of 21 October 2021 that it would provide advice to her regarding her claim for economic loss;
 - (viii) When, had the Plaintiff been properly advised about her claim for economic loss, she would have instructed that it be pursued in full measure;
 - (ix) When it had not advised the Plaintiff that the Plaintiff had a strong claim to establish liability against the Redemptorists and that there were no significant barriers to such a claim, such that if the Plaintiff brought court proceedings she would likely recover significant damages including for economic loss;
 - (x) When it had not obtained the necessary evidence to assess, nor had assessed or calculated, and advised the Plaintiff of the likely quantum of her economic loss claim;
-
- (v) Failing to seek instructions and any further information needed from the Plaintiff to pursue a proper economic loss claim;
 - (w) Failing to make, pursue or negotiate a claim for loss of economic capacity;
 - (x) Failing to seek instructions and any further information needed from the Plaintiff to pursue a properly assessed economic loss claim;
 - (y) Failing to offer to the Plaintiff, or to provide the Plaintiff with, the advice regarding her potential economic loss claim, in accordance with its letter of 21 October 2019 to the Plaintiff;
 - (z) Failing to advise or properly advise the Plaintiff, and to ensure she understood such advice, that she could, and should in her own interests, make a claim for economic loss;
 - (aa) Failing to give the Plaintiff any proper or informed advice so she could give informed instructions about whether or not to make a claim for proper economic loss;
 - (bb) Failing to offer to the Plaintiff, or to provide the Plaintiff with, the advice regarding her potential economic loss claim, in accordance with its letter of 21 October 2019 to the Plaintiff;

- (cc) Causing, permitting or failing to advise against and prevent the settlement, or alternatively, advising the Plaintiff to settle (or failing to advise her not to settle) her claim for \$240,000 inclusive of costs when the damages sum, including a claim for proper economic loss, was worth substantially more than that sum;
- (dd) Failing to properly investigate and document the Plaintiff's claim for economic loss, including by obtaining amounts for work or earnings which the Plaintiff might have received but for the sexual abuse and the injuries and consequences of the sexual abuse;
- (ee) Failing to seek advice of counsel as to the quantum of the Plaintiff's economic loss claim and/or the amount for which it should be settled having regard to any risks of proving liability of the Redemptorists or the injuries and economic losses suffered by the Plaintiff;
- (ff) Failing to have proper regard to the expert opinion supporting the Plaintiff's claim for economic loss, upon receiving the advice from Dr Brann pleaded at 35 above, and to thereupon assess and pursue a claim for proper economic loss;
- (gg) Failing to seek expert advice to quantify the potential value of the Plaintiff's economic loss claim from a forensic accountant or actuary;
- (hh) Acting against the Plaintiff's best interests, or alternatively without instructions, or alternatively, without properly informed instructions from the Plaintiff;
 - (i) in failing to assess, prepare, make or pursue a claim for economic loss or proper economic loss;
 - (ii) in informing the Redemptorists that there was no formal claim to be made for the Plaintiff for her loss of earnings;
- (ii) Failing to seek instructions, alternatively properly informed instructions, from the Plaintiff; to pursue a claim for proper economic loss consequential on the sexual abuse and the consequent injuries;
- (jj) The Plaintiff repeats the particulars at (k) and (l) above;
- (kk) Advising the Plaintiff to make an offer the Redemptorists to settle for \$240,000 inclusive of costs which substantially undervalued the Plaintiff's properly assessed claim and entitlements;
- (ll) Causing, permitting or failing to advise against and prevent the settlement, or alternatively, advising the Plaintiff to settle (or failing to advise her not to settle) the Plaintiff's claim for a sum substantially less than it was worth compared with a settlement, judgement or verdict which included damages for a claim for proper economic loss.

(mm) Putting a claim for damages to the tortfeasor in a sum claimed as a buffer or lost opportunity, such sum not being calculated with any reference to the economic loss suffered by the Plaintiff.

Defendant's breach of implied terms of the retainer

55. Further and in the alternative to 54, in failing to assess, make and/or to pursue on behalf of the Plaintiff, and/or in failing to advise the Plaintiff to make or pursue, a claim for proper economic loss or a claim for economic loss, and/or, in causing, permitting, or failing to advise against settlement of the Plaintiff's claim, or in advising the Plaintiff to settle her claim, without a sum for damages for loss of economic capacity or economic loss, the Defendant breached the implied terms of the retainer with the Plaintiff.

PARTICULARS

The Plaintiff refers to, and repeats the particulars subjoined to paragraph 54 above.

Causation of loss

56. But for the negligence and/or breach of contractual duty pleaded in 53, 54 and 55 above, the Plaintiff would not have settled for the damages sum, would have sought to resolve her claim for payment of damages consistent with a proper assessment of damages for proper economic loss or economic loss, and non-economic loss, and/or failing receipt of such an offer from the Redemptorists, would have issued and pursued such a claim for those damages and losses, by litigation against the Redemptorists, if necessary, to verdict or judgment.
57. If the Plaintiff had proceeded as pleaded in 56, she would have received a payment of damages, consistent with a proper assessment of damages for proper economic loss or economic loss, and non-economic loss, by settlement and if not by settlement would have succeeded in establishing the liability of the Redemptorists to pay such damages and consequently received such damages by judgment or verdict in this Court.

PARTICULARS

The Plaintiff further relies upon the claims made by her sister [REDACTED] and her brother [REDACTED] both also sexually abused as children by Brother Ross, as hereinbefore pleaded, and who also retained and instructed the Defendant to pursue claims for damages on their behalf;

- a. [REDACTED]
- (i) The Defendant represented the Plaintiff's sister [REDACTED] who was abused as a child by Brother Ross. An "informal claim" was initiated against the Redemptorists.

- (ii) In negotiations with the Redemptorists, the Defendant made no claim for economic loss for [REDACTED]
- (iii) On 8 February 2017, [REDACTED] settled her claim by way of deed for \$160,000 inclusive and subsequently paid costs of \$25,000 to the Defendant.
- (iv) In 2022, [REDACTED] retained another law firm, which issued her claim in the Victorian Supreme Court, sought to set aside her prior deed and made a formal economic loss claim backed by a forensic accountant's report.
- (v) By this time, [REDACTED] was suffering from advanced and terminal cancer which eliminated the future portion of her economic loss claim, and the claim for lost earnings was thus confined to the period prior to June 2020 after which her health would not have permitted her to work in any event.
- (vi) On 23 February 2023, [REDACTED] settled her further claim for \$1,325,000 plus retention of the \$160,000 paid under the 2017 deed, plus legal costs to be taxed if they could not be agreed.

b. [REDACTED]

- (i) The Defendant represented the Plaintiff's brother [REDACTED] [REDACTED] [REDACTED] [REDACTED] who was abused as a child by Redemptorist Brother Ross and a Christian Brother, in an informal claim against the Redemptorists and the Christian Brothers.
- (ii) In negotiations with the Redemptorists and the Christian Brothers, the Defendant stated that there was no claim for economic loss for [REDACTED] but rather a claim for loss of opportunity.
- (iii) On 30 June 2017, [REDACTED] settled his claim by way of deed for \$230,000 inclusive and subsequently paid costs of \$45,000 to the Defendant.
- (iv) In 2022, [REDACTED] engaged another law firm, which issued his claim in the Victorian Supreme Court, sought to set aside his prior deed and made a formal economic loss claim backed by a forensic accountant's report.
- (v) On 17 August 2023, [REDACTED] settled his further claim against the Redemptorists and the Christian Brothers for \$1,600,000 plus retention of the \$230,000 paid under the 2017 deed, plus legal costs of \$140,000, a total of \$1,970,000.

58. The Plaintiff's claim for economic loss and a claim for her proper economic loss, calculated at a notional date of 31 May 2020 has been assessed by expert forensic accountants as being \$1,915,168 (before any deduction for vicissitudes or contingencies) based upon the assumption that but for the abuse the Plaintiff would have earned at least Average Weekly Earnings for an Australian female employee, and as \$2,195,473 (before any deduction for vicissitudes or

contingencies), based upon the assumption that but for the abuse, the Plaintiff would have earned at least the Average Weekly Earnings of a tertiary educated Australian female employee.

PARTICULARS

The Plaintiff refers to and will rely on the Report of Vincents Forensic Accountants dated 6 September 2023.

Loss and damage suffered by Plaintiff

59. As a consequence of the breach of its duties of care by the Defendant hereinbefore pleaded, and further and alternatively, the breach of the implied terms of the retainer, the Plaintiff has suffered significant loss and damage.

PARTICULARS

- 59.1 The Plaintiff did not make or pursue a claim for proper economic loss or economic loss;
- 59.2 The Plaintiff received no damages or compensation for her loss of capacity to earn income and economic loss;
- 59.3 The Plaintiff received significantly less damages and compensation than to which she was entitled;
- 59.4 The Plaintiff received significantly less damages and compensation (including for general damages) than which she should have received had the Defendant not breached its duty to her;
- 59.5 The Plaintiff instructed the Defendant to settle her claim with the Redemptorists for significantly less compensation or damages than to which she was reasonably entitled had the Defendant not breached its duty of care;
- 59.6 Had the Plaintiff been properly advised by the Defendant she would not have settled her claim for \$240,000 inclusive of costs but for substantially more, and including damages for economic loss;
- 59.7 The Plaintiff refers to and repeats paragraph 58 above.
- 59.8 Prior to settling her claim with the Redemptorists by Deed of Release, the Plaintiff was, due to the Defendant's breach of duty, unaware of material facts regarding her claim and her entitlements that would have affected her decision to settle her claim, and she would not, had she been so aware, settled her claim for \$240,000 inclusive of costs but would have instructed the Defendant to claim for significantly more, including a claim for economic loss, and/or failing a reasonable offer consistent with her proper entitlements, to litigate her claim in court;

- 59.9 The Plaintiff, by agreeing to settle for the damages sum and signing the Deed of Release with the Redemptorists, was unable to, and forever lost the chance and opportunity to negotiate a higher settlement sum and to bring any further claim for the injuries loss and damage caused by the sexual abuse and consequent injuries including for proper economic loss;
- 59.10 By reason of the Defendant's failure to make and pursue a claim for proper economic loss and/or to advise the Plaintiff of her rights to make and pursue a claim for economic loss, the Plaintiff settled her claim and signed a deed of release forever losing the valuable chose in action represented by her right of action to claim damages, including for economic loss, from the Redemptorists, consequent on the sexual abuse, the injuries and related consequences;
- 59.11 The Plaintiff refers to and repeats paragraphs 7 and 52 above;
- 59.12 The Plaintiff will further rely at trial of her claim on judgments of the Supreme Court of Victoria, including subsequent to the termination of the retainer, as indicative of the way in which the court would have resolved liability issues and assessed damages in the Plaintiff's claim, and which should have been reasonably anticipated by the Defendant, or which resolutions would have applied had the Plaintiff issued and pursued her claim in proceedings in that court at the notional date of hearing of her claim;
- 59.13 The Plaintiff seeks to recover from the Defendant a sum representing the difference between the damages sum and the amount she would have received from the tortfeasor by a judgement on her right of action, but for the negligence and/or breach of contract by the Defendant, assessed at the notional time at which a trial of the claim against the tortfeasor would have been heard in the ordinary course of events.

Admission by Defendant

60. On 1st March 2023, Dr Vivian Waller, the Principal lawyer of the Defendant contacted the Plaintiff and made representations which, taken together with the matters hereinbefore pleaded, and in the circumstances, constitute an admission that the damages sum was an insufficient sum to compensate the Plaintiff for the sexual abuse, and her injuries, loss and damages.

PARTICULARS

Dr Waller's voice message was: "Hello (name), this is Viv Waller, I'm a solicitor, I'm calling from Waller Legal. Our firm looked after you a few years ago in a claim. And we would be keen to have another chat with you because it's now possible to go back and revisit and top-up some of those earlier claims and if you don't already have a solicitor looking after you, we'd be happy to have a chat to you and point you in the right direction. So, um, I, my number is 04xx xxx xxx ... Viv Waller, in relation to getting you some more compensation. If you could just shoot me a text or give me a ring that would be grand. Thanks very much (name). Bye."

Plaintiff and Group Members

61. As a consequence of the matters hereinbefore pleaded the Plaintiff;
- (a) suffered personal injury resulting from;
 - (i) an act or omission in relation to the person when they were a minor, that was physical abuse or sexual abuse; and
 - (ii) psychological abuse (if any) that arises out of that act or omission; and
 - (b) had a right of action being a cause of action against a party (or parties) allegedly responsible or liable in law for the said act or omission and personal injury, which cause of action included claims or entitlements for damages for non-economic loss and economic loss; and
 - (c) after 1 July 2015, retained the Defendant as her lawyer, to obtain damages for her cause of action; and
 - (d) in the course of the retainer, entered into a settlement agreement for, and to resolve, her cause of action for damages with the tortfeasor and which agreement purported to forever determine the Plaintiff's rights to pursue damages for the cause of action; and
 - (e) as a consequence, in the course of the retainer, of the alleged negligence of the Defendant and/or the breach of contractual terms (express or implied) by the Defendant;
 - (i) Was never advised by the Defendant of the likely or potential quantum of a properly assessed claim for economic loss, or of her proper economic loss claim; and
 - ~~(i)~~(ii) Did not before entering into the settlement agreement with the tortfeasor, make, pursue or demand from the tortfeasor, a proper economic loss claim or a sum calculated or assessed in accordance with the making of a proper economic loss claim or a sum for properly assessed economic loss; or
 - ~~(ii)~~(iii) Did not in, and as a consequence of the settlement agreement, receive damages or compensation for her proper economic loss claim from the tortfeasor or a sum for properly assessed economic loss; and
 - (f) has not subsequently to the settlement agreement, obtained or received a sum for her economic loss calculated in accordance with a proper economic loss claim, or a sum for properly assessed economic loss, from the tortfeasor; and

- (g) cannot now, as a result of the alleged negligence of the Defendant, and/or the breach of contractual terms by the Defendant, make a claim for economic loss, and has lost the chance and opportunity to obtain the damages for her proper economic loss claim, or a sum for properly assessed economic loss from the tortfeasor; and
 - (h) has consequently suffered loss of a valuable chose in action and suffered economic loss.
62. Each of the Group Members has similarly to the representative Plaintiff, suffered loss and damage as a result of the negligence and/or breach of implied contractual terms by the Defendant in acting and advising in claims for damages which included or should have included claims for loss of economic capacity, further particulars whereof will be provided.

AND THE PLAINTIFF, AND THE GROUP MEMBERS, CLAIM FROM THE DEFENDANT;

A. DAMAGES

B. INTEREST ON DAMAGES PURSUANT TO STATUTE

C. COSTS

DATED: ~~21 September 2023~~ 25 September 2023 4 December 2023
12 December 2023

**John Gordon
Counsel**

Rightside Legal

Rightside Legal
Lawyers for the Plaintiff

1. Place of trial—Supreme Court of Victoria, 210 William Street, Melbourne, Victoria
2. Mode of trial—Judge and Jury of six
3. This writ was filed by— Rightside Legal, Level 5, 533 Little Lonsdale Street, Melbourne, Victoria

4. The address of the Plaintiff is:

██████████
████████████████████

5. The address for service of the Plaintiff is:

Rightside Legal
Level 5, 533 Little Lonsdale Street
MELBOURNE VIC 3000

The e-mail address for service of the Plaintiff is:

mmagazanik@rightsidelegal.com.au
dpressnell@rightsidelegal.com.au

6. The address of the Defendant is:

2/57 Keele Street
COLLINGWOOD VIC 3066