



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

Case S ECF 2023 04435
S ECF 2023 04435
Filed on: 12/04/2024 06:13 PM

B E T W E E N:

JANE JONES (A Pseudonym)

Plaintiff

- and -

WALLER LEGAL PTY LTD (ACN 167 030 757)

Defendant

SECOND FURTHER AMENDED STATEMENT OF CLAIM

(Filed pursuant to the Order of the Honourable Justice Gorton made 21 February 2024)

Date of document: 12 April 2024
Filed on behalf of: the Plaintiff

Prepared by:
Rightside Legal
Level 5, 533 Little Lonsdale Street
Melbourne VIC 3000

Solicitor code: 109563
Telephone: (03) 9909 1142
Reference: MM:DP:230714
Email: mmagazanik@rightsidelegal.com.au

A. INTRODUCTION

A.1 Group members

1. This proceeding is commenced by the plaintiff (**Ms Jones**) as a group proceeding pursuant to Part 4A of the *Supreme Court Act 1986* (Vic) on her own behalf and on behalf of all natural persons who:
 - 1.1. claimed to have been sexually and/or physically abused, as a minor, by a person or persons associated with an institution, association or entity (**Institutional Defendant**);
 - 1.2. between 1 July 2015 and 21 September 2023 (**Relevant Period**) were clients of the defendant (**Waller Legal**);

- 1.3. retained Waller Legal to advise them about, and represent them in, their personal injury claim for compensation against an Institutional Defendant in connection with their sexual and/or physical abuse (**Abuse Claim**);
- 1.4. resolved their Abuse Claim against an Institutional Defendant in an out of court settlement prior to a proceeding being commenced or, if a proceeding were commenced, prior to judgment;
- 1.5. are not, and were not during the Relevant Period, a person referred to in ss 33E(2)(b), (d) and (e) of the *Supreme Court Act 1986* (Vic);

(Group Members).

- 2. Immediately prior to the commencement of this proceeding there were seven or more Group Members with claims:
 - 2.1. against Waller Legal;
 - 2.2. which are in respect of, or arise out of, the same, similar or related circumstances (as alleged hereafter);
 - 2.3. which give rise to a substantial common question of law or fact, as set out in section D, below.

A.2 Waller Legal

- 3. Waller Legal, during the Relevant Period:
 - 3.1. was a corporation incorporated according to law and capable of being sued;
 - 3.2. was a law firm (as defined in s 9A of the *Legal Profession Uniform Law*);
 - 3.3. employed one or more associates (as defined in s 6 of the *Legal Profession Uniform Law*);
 - 3.4. was a person within the meaning of s 18 of the *Australian Consumer Law*.
- 4. At all times during the Relevant Period, Vivian Waller was:
 - 4.1. an Australian legal practitioner (as defined in 6 of the *Legal Profession Uniform Law*);
 - 4.2. a principal and director of Waller Legal;

- 4.3. authorised to, and did, supervise employees of Waller Legal, including Australian legal practitioners.
5. During the Relevant Period, Waller Legal held itself out as a law practice which:
 - 5.1. specialised in claims arising from sexual abuse;
 - 5.2. was dedicated to assisting persons who, as children, had been sexually assaulted, or physically, sexually or psychologically abused or neglected;
 - 5.3. adopted a trauma informed practice which, among other features, included:
 - (a) taking time to explain legal processes to clients;
 - (b) empowering clients by giving them as much choice as possible;
 - (c) advocating on behalf of clients;
 - 5.4. had, since 2007, provided legal services to childhood victims of sexual abuse.

Particulars

Statements to the effect alleged were contained on Waller Legal's website; a submission by Dr Waller, dated 11 July 2016, to the Royal Commission into Institutional Responses to Childhood Sexual Abuse; and a submission by Dr Waller, dated 2 February 2018, in response to the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017.

B. CLAIMS OF GROUP MEMBERS

B.1 Retainer with Waller Legal

6. During the Relevant Period, each Group Member entered into an agreement with Waller Legal pursuant to which Waller Legal agreed to represent the Group Member in respect of their Abuse Claim, in consideration for which the Group Member agreed to pay Waller Legal on the terms set out in the agreement (**Retainer**).

Particulars

The Retainer was partly written, partly oral, and partly to be implied. Insofar as it was in writing, it comprised and/or was evidenced by a letter of engagement, and a disclosure statement, and a costs agreement. Insofar as it was oral, it comprised and/or was evidenced by conversation(s) between the Group Member and Dr Waller and/or an associate of Waller Legal to the effect alleged in paragraph 6. Insofar as it was implied, it is to be implied from the matters referred to above, and conduct including the provision of legal services including legal advice by

Waller Legal to a Group Member, the Group Member compromising their claim against the Institutional Defendant by entering into a settlement agreement with the Institutional Defendant (or an agent or representative of the Institutional Defendant), and/or the payment of money to Waller Legal by the Group Member in connection with legal services performed by or on behalf of Waller Legal for the Group Member.

7. There were terms of the Retainer with each Group Member, among others, that:
 - 7.1. Waller Legal would exercise care, skill and diligence in the provision of legal services to and on behalf of the Group Member in connection with their Abuse Claim;
 - 7.2. the Group Member would be liable for payment of Waller Legal's professional fees upon a "successful outcome" of the Group Member's Abuse Claim;
 - 7.3. a "successful outcome" of the Group Member's Abuse Claim included an offer of settlement being made which, in Waller Legal's opinion, represented an appropriate conclusion to the claim;
 - 7.4. the Group Member would be liable to Waller Legal for payment of disbursements:
 - (a) whether or not a successful outcome of the Group Member's Abuse Claim was achieved;
 - (b) within 30 days upon request for payment, which request may be made in advance, as and when the disbursement fell due for payment, or as considered appropriate by Waller Legal;
 - 7.5. Waller Legal was entitled to charge an additional uplift fee of 25% of the total professional fees upon a "successful outcome" being achieved in relation to the Abuse Claim;
 - 7.6. a Group Member was required to accept and follow all reasonable advice given by Waller Legal.

Particulars

The term alleged in 7.1 is a term implied by law into a contract of professional services between a law firm and a client. The terms alleged in 7.2 to 7.6 were in writing and were incorporated in Waller Legal's

disclosure statement given to, and/or costs agreement entered into with, Group Members.

8. The minimum standard of care, skill and diligence to be exercised by Waller Legal in providing legal services to and on behalf of the Group Members pursuant to the Retainer:
 - 8.1. was the standard of a person professing to have specialised skill and experience in claims for compensation against Institutional Defendants arising from sexual abuse and/or physical abuse; and
 - 8.2. which accounted for:
 - (a) the circumstances and characteristics of the Group Members; and
 - (b) the likelihood that Group Members would rely on and follow advice provided by Waller Legal, including the strategy to be adopted, in pursuing the Abuse Claim.

Particulars

The circumstances of Group Members included the fact of their claim of having been sexually and/or physically abused as children; their likely psychological condition given their asserted trauma; their inexperience and unfamiliarity with legal processes and systems for advancing their Abuse Claim; their vulnerability and reliance on Waller Legal arising from at least one or more of the foregoing facts.

The likelihood that Group Members would rely on and follow advice by Waller Legal is to be inferred from the circumstances and characteristics of the Group Members, as alleged above; Waller Legal holding itself out as having particular skill and experience as alleged in paragraph 5, above; the relationship of trust and confidence between a solicitor and client; and the terms of the Retainer, including that if an offer of settlement were made which, in Waller Legal's opinion, represented an appropriate conclusion to the Group Member's Abuse Claim, a Group Member would incur a liability to pay Waller Legal's professional fees and disbursements, and an uplift fee, even if the Group Member rejected the offer, and that a Group Member was obliged to accept and follow all reasonable advice given by Waller Legal.

B.2 Common law duty of care owed by Waller Legal

9. Further, or alternatively, Waller Legal owed each Group Member a duty to exercise reasonable care and skill in the provision of legal services to and on behalf of the Group Member in connection with their Abuse Claim (**Common Law Duty of Care**).
10. The standard of care and skill to be exercised by Waller Legal in discharging its Common Law Duty of Care owed to Group Members was the standard alleged in subparagraphs 8.1-8.2, above.

B.3 Provision of legal services by Waller Legal

11. Pursuant to each Retainer:
 - 11.1. Waller Legal provided legal services to and on behalf of Group Members in connection with their Abuse Claim;
 - 11.2. Group Members paid Waller Legal for the legal services provided by it.

Particulars

The legal services provided by Waller Legal included the services described in paragraphs 12, 17 and 21 below. The fact, amount and dates of payment of money by Group Members for legal services provided by Waller Legal are matters known to Waller Legal.

B.4 Investigation and assessment of Group Members' Abuse Claims

12. During the Relevant Period, Waller Legal provided legal services to and on behalf of Group Members in the investigation and assessment of their Abuse Claims involving one or more of:
 - 12.1. providing advice about steps that should be taken to investigate and assess the Group Member's Abuse Claim;
 - 12.2. obtaining a statement from the Group Member in relation to, among other things, the circumstances giving rise to their Abuse Claim;
 - 12.3. obtaining information from an Institutional Defendant about, among other things, the perpetrator of the abuse inflicted upon the Group Member, and records relating to the Group Member;

- 12.4. obtaining agreement from a Group Member that an expert medical (psychiatric) assessment of the Group Member be undertaken and a report prepared;
 - 12.5. attending to the engagement and briefing a medical expert, including:
 - (a) identification of an expert to undertake the assessment and prepare a report;
 - (b) providing the expert with a letter of instructions, including questions to be addressed in their report;
 - (c) providing the expert with materials relating to the Group Member;
 - (d) arranging for the Group Member to attend upon the expert;
 - 12.6. reviewing any report prepared by the medical expert; and
 - 12.7. obtaining information from the Group Member about past medical expenses.
13. At the time of the commencement of the Relevant Period, Waller Legal knew or ought to have known, as was the fact, that:
- 13.1. in cases involving negligently inflicted injury upon a minor, courts in Australia had awarded damages for diminution in earning capacity resulting in loss of past and/or future earnings (**economic loss**);
 - 13.2. victims of sexual and/or physical abuse, perpetrated when the victim was a minor, had received compensation for economic loss in claims made against an institution associated with the perpetrator of the abuse;
 - 13.3. the value of claims for economic loss for childhood victims of sexual and/or physical abuse, could be significant.

Particulars

Waller Legal's knowledge of the facts alleged is to be inferred, by reason of, among other things, its being a law firm specialising in assisting victims of childhood sexual abuse to pursue claims for compensation, and decisions of Australian courts, including:

As to 13.1, see for example: *Bullock v Miller* (1987) 13 Tas R 129; *Burford v Allan* (1993) 60 SASR 428. As to 13.2, see for example: *S v Corporation of the Synod of the Diocese of Brisbane* [2001] QSC 473; *SB v State of New South Wales* (2004) 13 VR 527; *McCrae v Boys Scouts Association* [2007] NSWDC 196; *DC v State of New South Wales* [2016] NSWCA 198;

Erlich v Leifer [2015] VSC 499; *Hand v Morris* [2017] VSC 437; *Perez v Reynolds* [2020] VSC 537. As to 13.3, see for example: *McCrae v Boys Scouts Association* [2007] NSWDC 196; *XY v Featherstone* [2010] NSWSC 1366; *Hand v Morris* [2017] VSC 437; *MC v Morris* [2019] NSWSC 1326.

Further particulars may be provided prior to trial.

14. Further, during the Relevant Period, Waller Legal knew or ought to have known, as was the fact, of the matters alleged in:

- 14.1. paragraph 13.1, above;
- 14.2. paragraph 13.2, above;
- 14.3. paragraph 13.3, above.

Particulars

The plaintiff refers to and repeats the particulars to paragraph 13, above. Further, the plaintiff relies on the statements of Dr Waller on pages 8-10 of her submission, dated 2 February 2018, in response to the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017.

B.4.1 First Breach of Retainer and First Breach of Duty

15. During the Relevant Period Waller Legal, in breach of Retainer, failed to exercise care, skill and diligence, in that it was obliged to, but did not, advise Group Members to the effect that, having regard to the matters in paragraphs 13.1 to 13.3, above, reasonable steps should be taken to investigate and assess the economic loss component of the Group Member's Abuse Claim, which steps included at least:

- 15.1. obtaining a statement from the Group Member addressing at least their education and work history; the impact of the sexual abuse and/or physical abuse on their education and employment; any career path and related ambition that the Group Member held; the education history, and careers, of the Group Member's mother, father, siblings or other close relatives; the Group Member's attempts at education later in life and jobs they had sought (whether attained or not);
- 15.2. obtaining records relating to the Group Member's education and work history;

- 15.3. obtaining the Group Member's tax returns and tax office records;
- 15.4. as part of any report obtained from an expert psychiatrist about the condition of the Group Member, obtaining an opinion about the effect of the sexual abuse and/or physical abuse on the education of the Group Member and their employment prospects, functioning and progression in the workplace, including work history;
- 15.5. calculating past and future lost earnings (including superannuation) of the Group Member or engaging a financial expert who is supplied with appropriate assumptions to provide such a report;

(First Breach of Retainer).

Particulars

As to the appropriate assumptions alleged in sub-paragraph, the plaintiff refers to 15.1, and additional assumptions may include possible education and possible career paths of the Group Member but for the alleged sexual abuse and/or physical abuse.

- 16. Further or alternatively, during the Relevant Period Waller Legal breached its Common Law Duty of Care by reason of the matters alleged in paragraph 15, above
(First Breach of Duty).

B.5 Resolution strategy of Group Members' Abuse Claims

- 17. Further, during the Relevant Period, Waller Legal had a practice of advising, and did advise, Group Members to the effect that they should attempt to resolve their Abuse Claims:
 - 17.1. by inviting the relevant Institutional Defendant to attend an informal settlement conference;
 - 17.2. by not commencing a proceeding against the Institutional Defendant prior to seeking to resolve the Abuse Claim at an informal settlement conference;
 - 17.3. by prior to or as part of an informal settlement conference, providing to the Institutional Defendant:
 - (a) medical documents relating to the Group Member including any expert reports from a medical practitioner;

- (b) documents or a statement containing the history of the Group Member's Abuse Claim;
- 17.4. by attending, whether personally or through a representative, an informal settlement conference with the Institutional Defendant (in person, or by telephone or other electronic means) represented by Waller Legal and/or counsel;
- 17.5. in lieu of making a "formal claim" of compensation for economic loss Group Members should seek a nominal sum, or an amount for loss of an opportunity.

Particulars

The advice was either in writing, oral, and/or to be implied. Insofar as it was in writing, it compromised and/or was evidenced in correspondence between Waller Legal to the Group Member containing recommendations to the effect alleged. Insofar as it was oral, it compromised and/or was evidenced by conversation(s) between the Group Member and Dr Waller and/or an associate of Waller Legal to the effect alleged. Insofar as it was implied, it compromised and/or was evidenced by an informal settlement conference with an Institutional Defendant having been arranged and/or conducted prior to a proceeding being commenced; by the provision of documents or information as part of that process; what was said at the settlement conference on behalf of the Group Member; and by the terms of settlement entered into with the Institutional Defendant.

B.5.1 Second and Third Breaches of Retainer

- 18. In advising Group Members in the terms alleged in the preceding paragraph Waller Legal, in breach of Retainer, failed to exercise care, skill and diligence, in that it was obliged but failed to advise Group Members that:
 - 18.1. commencing a proceeding did not preclude the Group Member from seeking to resolve their Abuse Claim prior to a trial;
 - 18.2. it was standard practice, after commencing a proceeding, for a mediation to be conducted prior to trial;
 - 18.3. a high proportion of litigated claims for personal injury, including claims for psychiatric injury, settle before trial;
 - 18.4. if the Group Member sought to resolve their Abuse Claim after the commencement of a proceeding (instead of prior to litigation), it would be

doing so in circumstances where there was, for the Institutional Defendant, an increased threat of an adverse outcome if the proceeding were not settled prior to trial, including:

- (a) a legal liability for loss and damage suffered by a Group Member;
- (b) a liability to pay the costs of the Group Member;
- (c) an adverse legal precedent for cases of sexual and/or physical abuse involving the Institutional Defendant; and/or

18.5. by reason of the matters alleged in sub-paragraphs 18.1 to 18.4 above, that if the Group Member commenced a proceeding against the Institutional Defendant, the Group Member may settle their Abuse Claim for a higher sum than any amount agreed in the course of an informal settlement conference;

(Second Breach of Retainer).

19. Further, in breach of Retainer, Waller Legal failed to exercise care, skill and diligence, in that it failed to advise Group Members that they should, after taking reasonable steps to investigate and assess claims for economic loss, including those alleged at paragraph 15 above, seek compensation for, or an amount reflecting the true value of, their economic loss **(Third Breach of Retainer).**

B.5.2 Second and Third Breaches of Duty

20. Further or alternatively, during the Relevant Period, Waller Legal breached its Common Law Duty of Care by reason of the matters alleged in:

- 20.1. paragraph 18, above **(Second Breach of Duty)**; and/or
- 20.2. paragraph 19, above **(Third Breach of Duty).**

B.6 Settlement of Group Members' Abuse Claims

21. During the Relevant Period, Waller Legal had a practice of providing legal services to and on behalf of Group Members in connection with the settlement of Group Members' Abuse Claims involving either or both of:

- 21.1. representing a Group Member at an informal settlement conference and/or mediation of the Group Member's Abuse Claim, including:

- (a) providing advice about settlement offers;
 - (b) negotiating on behalf of the Group Member;
 - (c) providing advice about proposed final terms of settlement; and/or
- 21.2. briefing counsel to represent a Group Member at an informal settlement conference and/or mediation of the Group Member's Abuse Claim to provide the legal services alleged in sub-paragraphs 21.1(a) to (c), above.

Particulars

As to 21.1(a), the advice about settlement offers includes: (1) advice about offers made or to be made, including as to their quantum (in total and/or by reference to available heads of damage) and any non-price terms; and (2) offers received from the Institutional Defendant.

As to 21.1(c), the proposed terms of settlement mean the terms, including quantum and non-price terms, which, if agreed by the Group Member, would resolve the Group Member's Abuse Claim.

B.6.1 Fourth and Fifth Breach of Retainer and Fourth and Fifth Breach of Duty

22. In providing the legal services to or on behalf of Group Members alleged in the preceding paragraph, Waller Legal, in breach of Retainer, failed to exercise care, skill and diligence, in that it:

22.1. had a practice, which it applied to Group Members, whereby, despite being obliged, it failed to provide advice about:

- (a) settlement offers to be made on behalf of the Group Member;
- (b) settlement offers received from the Institutional Defendant; and/or
- (c) the proposed final terms of settlement on which the Group Member's Abuse Claim would be resolved;

taking into account (for each of (a) to (c) above) a properly assessed claim for economic loss by reference to evidence and analysis specific to the individual Group Member (**Fourth Breach of Retainer**);

22.2. failed to:

- (a) pursue sufficiently, or at all, in settlement negotiations, on behalf of Group Members compensation for economic loss arising from the Group Member's Abuse Claim; or

- (b) brief counsel representing a Group Member with instructions, or sufficient supporting material, to pursue, in settlement negotiations, on behalf of Group Members compensation for economic loss arising from the Group Member's Abuse Claim;

(Fifth Breach of Retainer).

- 23. Further or alternatively, during the Relevant Period, Waller Legal breached its Common Law Duty of Care by reason of the matters alleged in:

- 23.1. paragraph 22.1, above (**Fourth Breach of Duty**); and/or

- 23.2. paragraph 22.2, above (**Fifth Breach of Duty**).

B.6.2 Sixth and Seventh Breach of Retainer and Sixth and Seventh Breach of Duty

- 24. Further, Waller Legal, in breach of Retainer, failed to exercise care, skill and diligence in adopting a practice of, and in fact, advising Group Members that the terms of settlement that were entered into between the Group Member and Institutional Defendant were reasonable for the Group Member to agree to when such terms were not reasonable in that:

- 24.1. the amount agreed to be paid by the Institutional Defendant:

- (a) did not include an amount for economic loss suffered by the Group Member;
- (b) alternatively to sub-paragraph (a), included only an amount for economic loss which had been arrived at other than by analysis of evidence of the kind referred to in paragraph 15 above specific to the Group Member;
- (c) alternatively to sub-paragraphs (a) and (b), the settlement sum did not reflect the true value of the whole Abuse Claim, including general damages;

(Sixth Breach of Retainer); and/or

- 24.2. the terms of settlement provided that the Group Member released the Institutional Defendant in respect of any claim for economic loss, when:

- (a) no claim for economic loss had been made by or on behalf of the Group Member;
- (b) if a claim for economic loss had been made by or on behalf of the Group Member, the settlement sum included only a nominal amount for economic loss;

(Seventh Breach of Retainer).

Particulars

The advice provided by Waller Legal was provided at or shortly after the informal settlement conference and/or mediation. The provision of the alleged advice is to be inferred from Waller Legal's representation of the Group Member at and/or in connection with the informal settlement conference and/or mediation; the Group Member's reliance on Waller Legal in the provision of legal services under the Retainer; and the Group Member's entry into terms of settlement with the Institutional Defendant. Further particulars may be provided following discovery.

- 25. Further or alternatively, during the Relevant Period, Waller Legal breached its Common Law Duty of Care by reason of the matters alleged in:
 - 25.1. paragraph 24.1, above (**Sixth Breach of Duty**); and/or
 - 25.2. paragraph 24.2, above (**Seventh Breach of Duty**).

B.7 Misleading or deceptive conduct

B.7.1 First Representation and First ACL Contravention

- 26. At all times during the Relevant Period, Waller Legal represented to Group Members that it applied specialist skill and expertise in its provision of legal services (**First Representation**).

Particulars

The plaintiff refers to and repeats paragraph 5, above. Further, in written disclosure statements and costs agreements entered into with Group Members, Waller Legal stated that it was entitled to an uplift fee in relation to its conduct of the matter because of the "extensive, complex and specialised knowledge and skill required to conduct the matter", and because of the "amount and complexity of the facts, evidence and documents to be considered".

27. The First Representation:
- 27.1. was an ongoing representation during the course of the Retainer between each Group Member and Waller Legal;
 - 27.2. was conduct in trade or commerce.
28. The First Representation involved conduct that was misleading or deceptive, or likely to mislead or deceive, in that:
- 28.1. Waller Legal had a practice of not applying specialist skill and expertise in advising Group Members about, and then investigating, considering, and pursuing, claims for economic loss;
 - 28.2. Waller Legal did not apply specialist skill and expertise in advising Group Members about, and then investigating, considering, and pursuing, claims for economic loss.

Particulars

As to paragraph 28.1 the plaintiff refers to and repeats paragraphs 3, 6, 11, 12, 13, 14, 15, 17, 19, 21, 22.1, 24.

As to paragraph 28.2 the plaintiff refers to and repeats paragraphs 3, 6, 11, 12, 13, 14, 15, 17, 19, 21, 22, 23, 24.

29. Insofar as the First Representation was a representation as to a future matter, Waller Legal did not have reasonable grounds for making the representation.

Particulars

Waller Legal did not have reasonable grounds by reason of its practice as alleged in paragraph 28.1, and the particulars sub-joined thereto, and its failure to attach any qualifications to the First Representation in respect of its conduct of the Abuse Claims.

30. By reason of the matters alleged in paragraphs 3, 6, 11, and 26 to 29 above, in respect of the First Representation, Waller Legal engaged in conduct in contravention of s 18 of the *Australian Consumer Law* in respect of each Group Member during the Relevant Period (**First ACL Contravention**).

B.7.2 Second Representation and Second and Third ACL Contravention

31. During the Relevant Period, Waller Legal had a practice of representing to Group Members, and did represent to Group Members, at the time relevant to their claim, that the terms of settlement that were entered into between the Group Member and Institutional Defendant were reasonable for the Group Member to agree to (**Second Representation**).
32. The Second Representation was made in trade or commerce.
33. The Second Representation involved conduct that was misleading or deceptive, or likely to mislead or deceive, in that:
 - 33.1. the amount agreed to be paid by the Institutional Defendant included:
 - (a) no amount for economic loss suffered by the Group Member; or
 - (b) an amount for economic loss suffered by the Group Member which was less than they were entitled to because the amount had not been properly assessed by reference to evidence and analysis specific to that Group Member;
 - 33.2. the terms of settlement provided that the Group Member released the Institutional Defendant in respect of any claim for economic loss, when either:
 - (a) no claim for economic loss had been made by or on behalf of the Group Member;
 - (b) if a claim for economic loss had been made by on behalf of the Group Member, the settlement sum included only a nominal amount for economic loss.
34. By reason of the matters alleged in paragraphs 3, 6, 11, 31, 32, and 33.1 above, in respect of the Second Representation, Waller Legal engaged in conduct in contravention of s 18 of the *Australian Consumer Law* in respect of each Group Member during the Relevant Period (**Second ACL Contravention**).
35. By reason of the matters alleged in paragraphs 3, 6, 11, 31, 32, and 33.2 above, in respect of the Second Representation, Waller Legal engaged in conduct in

contravention of s 18 of the *Australian Consumer Law* in respect of each Group Member during the Relevant Period (**Third ACL Contravention**).

B.8 Causation

B.8.1 First Breach of Retainer and First Breach of Duty

36. By reason of the First Breach of Retainer, and/or First Breach of Duty:

36.1. Waller Legal did not obtain instructions from Group Members to, and did not, take reasonable steps to investigate, and to obtain, documents, statements or reports supporting the economic loss component of the Group Members' Abuse Claims;

36.2. Waller Legal did not perform a proper assessment of the economic loss component of the Group Members' Abuse Claims;

36.3. Waller Legal did not seek instructions from Group Members to, and did not, pursue claims for compensation for loss suffered by Group Members with reference to a proper assessment of the economic loss component of the Group Members' Abuse Claims, and which therefore did not reflect the true value of those claims;

36.4. Group Members compromised their Abuse Claims for an amount less than what they would have obtained but for the First Breach of Retainer and/or First Breach of Duty.

37. Had Waller Legal discharged its obligations to Group Members, and not engaged in the First Breach of Retainer and/or First Breach of Duty:

37.1. Waller Legal would have been instructed by Group Members to take, and would have taken, reasonable steps to investigate, and to obtain, documents, statements or reports supporting Group Members' economic loss components of their Abuse Claims;

37.2. Waller Legal would have performed a proper assessment of Group Members' economic loss components of their Abuse Claims;

37.3. Waller Legal would have been instructed to pursue, and would have pursued, claims for compensation for loss suffered by Group Members with reference

to a proper assessment of Group Members' economic loss, and which therefore reflected the true value of the Group Members' Abuse Claims;

- 37.4. Group Members would have been compensated for their Abuse Claims for an amount greater than what they received pursuant to their terms of settlement with Institutional Defendants.

B.8.2 Second Breach of Retainer and Second Breach of Duty

38. By reason of the Second Breach of Retainer and/or Second Breach of Duty:

- 38.1. Group Members were not able to make an informed decision about:

- (a) whether to commence proceedings in respect of their Abuse Claims without going to an informal settlement conference (before proceedings were commenced);
- (b) whether to refuse to compromise their Abuse Claim at an informal settlement conference having regard to the terms of settlement proposed by the Institutional Defendant and to instead:
 - (i) demand a larger settlement sum be paid by the Institutional Defendant before compromising their Abuse Claim; or
 - (ii) commence proceedings;

- 38.2. Waller Legal did not obtain instructions to commence proceedings or, alternatively, to insist upon a larger settlement sum being paid by the Institutional Defendant before Group Members compromised their Abuse Claim;

- 38.3. Group Members compromised their Abuse Claims for an amount less than what they would have obtained but for the Second Breach of Retainer and/or Second Breach of Duty.

39. Had Waller Legal discharged its obligations to Group Members, and not engaged in the Second Breach of Retainer and/or Second Breach of Duty:

- 39.1. Waller Legal would have been instructed by Group Members to:

- (a) commence proceedings in respect of their Abuse Claims; or

- (b) demand a larger settlement sum be paid by the Institutional Defendant before compromising their Abuse Claim and, if an appropriate settlement sum were not then offered having regard to the true value of the Abuse Claim, to commence proceedings;

39.2. Waller Legal would have taken the steps in (a) or (b) above;

39.3. Group Members would have been compensated for their Abuse Claims for an amount greater than what they received pursuant to their terms of settlement with Institutional Defendants.

B.8.3 Third Breach of Retainer and Third Breach of Duty

40. By reason of the Third Breach of Retainer and/or Third Breach of Duty:

40.1. Waller Legal did not obtain instructions from Group Members to seek compensation for, or an amount reflecting the true value of, their economic loss as part of their Abuse Claim;

40.2. Waller Legal did not seek compensation for, or an amount reflecting the true value of, Group Members' economic loss as part of their Abuse Claim;

40.3. Group Members compromised their Abuse Claims for an amount less than what they would have obtained but for the Third Breach of Retainer and/or Third Breach of Duty.

41. Had Waller Legal discharged its obligations to Group Members, and not engaged in the Third Breach of Retainer and/or Third Breach of Duty:

41.1. Waller Legal would have been instructed by Group Members to seek compensation for, or an amount reflecting the true value of, Group Members' economic loss as part of their Abuse Claim;

41.2. Waller Legal would have pursued compensation for, or an amount reflecting the true value of, Group Members' economic loss as part of their Abuse Claim;

41.3. Group Members would have been compensated for their Abuse Claims for an amount greater than what they received pursuant to their terms of settlement with Institutional Defendants.

B.8.4 Fourth Breach of Retainer and Fourth Breach of Duty

42. By reason of the Fourth Breach of Retainer and/or Fourth Breach of Duty:
- 42.1. Group Members were not able to, as part of any settlement negotiation with Institutional Defendants about the Group Member's Abuse Claim:
- (a) make an informed decision about settlement offers the Group Member should make;
 - (b) assess and decide, on an informed basis, how to respond to settlement offers received from the Institutional Defendant;
 - (c) make an informed decision about the proposed final terms of settlement on which the Group Member's Abuse Claim would be resolved;
- 42.2. Waller Legal did not obtain instructions from Group Members to demand an appropriate settlement sum be paid by the Institutional Defendant before the Group Member compromised their Abuse Claim;
- 42.3. Group Members compromised their Abuse Claims for an amount less than what they would have obtained but for the Fourth Breach of Retainer and/or Fourth Breach of Duty.
43. Had Waller Legal discharged its obligations to Group Members, and not engaged in the Fourth Breach of Retainer and/or Fourth Breach of Duty:
- 43.1. Group Members would have been able to:
- (a) make an informed decision about settlement offers the Group Member should make;
 - (b) assess and decide, on an informed basis, how to respond to settlement offers received from the Institutional Defendant;
 - (c) make an informed decision about the proposed final terms of settlement on which the Group Member's Abuse Claim would be resolved;
- 43.2. Waller Legal would have obtained instructions from Group Members to refuse to compromise the Group Members' Abuse Claims for the amount which the Institutional Defendants agreed to pay;

- 43.3. Group Members would have been compensated for their Abuse Claims for an amount greater than what they received pursuant to their terms of settlement with Institutional Defendants.

B.8.5 Fifth Breach of Retainer and Fifth Breach of Duty

- 44. By reason of the Fifth Breach of Retainer and/or Fifth Breach of Duty:
 - 44.1. Waller Legal did not obtain instructions from Group Members to demand a larger settlement sum be paid by the Institutional Defendant before the Group Member compromised their Abuse Claim;
 - 44.2. Waller Legal did not obtain instructions from Group Members to refuse to compromise Group Members' Abuse Claims for the amount which the Institutional Defendants agreed to pay;
 - 44.3. Group Members compromised their Abuse Claims for an amount less than what they would have obtained but for the Fifth Breach of Retainer and/or Fifth Breach of Duty.
- 45. Had Waller Legal discharged its obligations to Group Members, and not engaged in the Fifth Breach of Retainer and/or Fifth Breach of Duty:
 - 45.1. Waller Legal would have obtained instructions from Group Members to demand a larger settlement sum be paid by the Institutional Defendant before the Group Member compromised their Abuse Claim;
 - 45.2. Waller Legal would have obtained instructions from Group Members to refuse to compromise the Group Members' Abuse Claims for the amount which the Institutional Defendants agreed to pay;
 - 45.3. Group Members would have been compensated for their Abuse Claims for an amount greater than what they received pursuant to their terms of settlement with Institutional Defendants.

B.8.6 Sixth Breach of Retainer and Sixth Breach of Duty

- 46. By reason of the Sixth Breach of Retainer and/or Sixth Breach of Duty:

- 46.1. Group Members were advised that the terms of settlement to be entered into with the Institutional Defendants to compromise Group Members' Abuse Claims were reasonable;
 - 46.2. Waller Legal did not obtain instructions from Group Members to demand a larger settlement sum be paid by the Institutional Defendant before the Group Member compromised their Abuse Claim;
 - 46.3. Waller Legal did not obtain instructions from Group Members to refuse to compromise Group Members' Abuse Claims for the amount which the Institutional Defendants agreed to pay;
 - 46.4. Group Members compromised their Abuse Claims for an amount less than what they would have obtained but for the Sixth Breach of Retainer and/or Sixth Breach of Duty.
47. Had Waller Legal discharged its obligations to Group Members, and not engaged in the Sixth Breach of Retainer and/or Sixth Breach of Duty:
- 47.1. Group Members would not have been advised that the terms of settlement to be entered into with the Institutional Defendants to compromise Group Members' Abuse Claims were reasonable;
 - 47.2. Waller Legal would have obtained instructions from Group Members to demand a larger settlement sum be paid by the Institutional Defendant before the Group Member compromised their Abuse Claim;
 - 47.3. Waller Legal would have obtained instructions from Group Members to refuse to compromise the Group Members' Abuse Claims for the amount which the Institutional Defendants agreed to pay;
 - 47.4. Group Members would have been compensated for their Abuse Claims for an amount greater than what they received pursuant to their terms of settlement with Institutional Defendants.

B.8.7 Seventh Breach of Retainer and Seventh Breach of Duty

48. By reason of the Seventh Breach of Retainer and/or Seventh Breach of Duty:
- 48.1. Group Members were advised that the terms of settlement to be entered into with the Institutional Defendants to compromise Group Members' Abuse Claims were reasonable;
 - 48.2. Waller Legal did not obtain instructions from Group Members not to provide a release to the Institutional Defendant in respect of any claim for economic loss of Group Members;
 - 48.3. alternatively to sub-paragraph 48.2, if a release were to be provided to the Institutional Defendant in respect of any claim for economic loss of Group Members, Waller Legal did not obtain instructions from Group Members to refuse to compromise Group Members' Abuse Claims for the amount which the Institutional Defendants agreed to pay;
 - 48.4. Group Members compromised their Abuse Claims for an amount less than what they would have obtained but for the Sixth Breach of Retainer and/or Sixth Breach of Duty.
49. Had Waller Legal discharged its obligations to Group Members, and not engaged in the Seventh Breach of Retainer and/or Seventh Breach of Duty:
- 49.1. Group Members would not have been advised that the terms of settlement to be entered into with the Institutional Defendants to compromise Group Members' Abuse Claims were reasonable;
 - 49.2. Waller Legal would have obtained instructions from Group Members not to provide a release to the Institutional Defendant in respect of any claim for economic loss of Group Members;
 - 49.3. alternatively to sub-paragraph 49.2, if a release were to be provided to the Institutional Defendant in respect of any claim for economic loss of Group Members, Waller Legal would have obtained instructions from Group Members to refuse to compromise Group Members' Abuse Claims for the amount which the Institutional Defendants agreed to pay;

- 49.4. Group Members would have been compensated for their Abuse Claims for an amount greater than what they received pursuant to their terms of settlement with Institutional Defendants.

B.8.8 First ACL Contravention

50. By reason of the First ACL Contravention:

- 50.1. Group Members entered into, and maintained, Retainers with Waller Legal;
- 50.2. Group Members did not enter into a Retainer with another law firm (**Alternative Firm**) which had specialist skill and expertise which would have been applied in its provision of legal services in connection with the Abuse Claims.

51. Had Waller Legal not engaged in the First ACL Contravention:

- 51.1. Group Members would not have entered into, or maintained, Retainers with Waller Legal;
- 51.2. Group Members would have entered into Retainers with an Alternative Firm;
- 51.3. the Alternative Firm would have discharged its obligations to the Group Member in the manner which it is alleged that Waller Legal ought to have done but failed to do;
- 51.4. Group Members would have been compensated for their Abuse Claims for an amount greater than what they received pursuant to their terms of settlement with Institutional Defendants.

B.8.9 Second ACL Contravention

52. By reason of the Second ACL Contravention:

- 52.1. Waller Legal did not obtain instructions from Group Members to demand a larger settlement sum be paid by the Institutional Defendant before the Group Member compromised their Abuse Claim;
- 52.2. Waller Legal did not obtain instructions from Group Members to refuse to compromise Group Members' Abuse Claims for the amount which the Institutional Defendants agreed to pay;

- 52.3. Group Members compromised their Abuse Claims for an amount less than what they would have obtained but for the Second ACL Contravention.
- 53. Had Waller Legal not engaged in the Second ACL Contravention:
 - 53.1. Waller Legal would have obtained instructions from Group Members to demand a larger settlement sum be paid by the Institutional Defendant before the Group Member compromised their Abuse Claim;
 - 53.2. Waller Legal would have obtained instructions from Group Members to refuse to compromise the Group Members' Abuse Claims for the amount which the Institutional Defendants agreed to pay;
 - 53.3. Group Members would have been compensated for their Abuse Claims for an amount greater than what they received pursuant to their terms of settlement with Institutional Defendants.

B.8.10 Third ACL Contravention

- 54. By reason of the Third ACL Contravention:
 - 54.1. Waller Legal did not obtain instructions from Group Members not to provide a release to the Institutional Defendant in respect of any claim for economic loss of Group Members;
 - 54.2. alternatively to sub-paragraph 54.1, if a release were to be provided to the Institutional Defendant in respect of any claim for economic loss of Group Members, Waller Legal did not obtain instructions from Group Members to refuse to compromise Group Members' Abuse Claims for the amount which the Institutional Defendants agreed to pay;
 - 54.3. Group Members compromised their Abuse Claims for an amount less than what they would have obtained but for the Third ACL Contravention.
- 55. Had Waller Legal discharged its obligations to Group Members, and not engaged in the Third ACL Contravention:
 - 55.1. Waller Legal would have obtained instructions from Group Members not to provide a release to the Institutional Defendant in respect of any claim for economic loss of Group Members;

- 55.2. Group Members would have preserved, and subsequently pursued, a claim for economic loss against an Institutional Defendant assessed by reference to evidence and analysis specific to the individual Group Member;
- 55.3. alternatively to sub-paragraph 55.1 and 55.2, if a release were to be provided to the Institutional Defendant in respect of any claim for economic loss of Group Members, Waller Legal would have obtained instructions from Group Members to refuse to compromise Group Members' Abuse Claims for the amount which the Institutional Defendants agreed to pay;
- 55.4. Group Members would have been compensated for their Abuse Claims for an amount greater than what they received pursuant to their terms of settlement with Institutional Defendants.

B.9 Loss and damage

56. By reason of:

- 56.1. the First Breach of Retainer, Second Breach of Retainer, Third Breach of Retainer, Fourth Breach of Retainer, Fifth Breach of Retainer, Sixth Breach of Retainer, and/or Seventh Breach of Retainer, individually or in combination, Group Members suffered loss and damage;
- 56.2. the First Breach of Duty, Second Breach of Duty, Third Breach of Duty, Fourth Breach of Duty, Fifth Breach of Duty, Sixth Breach of Duty, and/or Seventh Breach of Duty, individually or in combination, Group Members suffered loss and damage;
- 56.3. the First ACL Contravention, Second ACL Contravention, and / or Third ACL Contravention, individually or in combination, Group Members suffered loss and damage.

Particulars

The loss and damage suffered comprises: (1) the difference between the amount for which the Group Member settled their Abuse Claim and the amount that they would have obtained from the Institutional Defendant but for the breach(es) or contravention(s) alleged above, or the value of the chance to compromise their Abuse Claim for its true value; and (2) the difference between the amount paid by the Group Member to Waller Legal

and the true value of the legal services provided by Waller Legal having regard to the breaches and contraventions alleged above.

C. CLAIMS OF THE PLAINTIFF

C.1 Background

57. The Plaintiff (**Ms Jones**) was born on 9 June 1970 and, as at the date of this Second Further Amended Statement of Claim, is 53 years old.

58. Ms Jones:

58.1. was raised by her parents, in Ballarat;

58.2. was raised in the Catholic faith;

58.3. attended primary school at St Alipius Primary School until second grade and then the Richard Street Primary School.

59. Ms Jones had five brothers and sisters.

60. During Ms Jones's childhood, her father was employed as a psychiatric nurse at a hospital, and her mother performed home duties.

C.2 Abuse

61. Brother Benignus (also known as Grant Ross) was, between the date he professed in 1939 and his death in June 1993, a member of the Congregation of the Most Holy Redeemer (**Redemptorists**).

62. In December 1975, Brother Benignus was appointed to St Mary's Monastery, Wendouree, Ballarat.

63. Between around December 1975 and 1978, Brother Benignus committed repeated acts of sexual abuse against Ms Jones and her siblings.

64. The sexual abuse perpetrated by Brother Benignus against Ms Jones, as alleged in the preceding paragraph, included:

64.1. whilst at the home of Ms Jones's family, Brother Benignus:

- (a) placed Ms Jones, when aged around 5, on his lap whilst he sat at a kitchen table talking to her mother and ran his hand under Ms Jones's underwear and rubbed her vagina with his fingers;

- (b) purported to assist in putting Ms Jones to bed, and kissed her on the mouth and rubbed and fondled her genitals under her nightwear;
- (c) whilst sitting at the family dining table or on a sofa watching television, pulled Ms Jones onto his lap and rubbed and engaged in grinding his penis onto her;

64.2. Ms Jones witnessing what she believed to be the sexual abuse of her brother by Brother Benignus;

64.3. abusing Ms Jones away from the family home, including in his car and at the Redemptorist monastery;

(the Abuse).

C.3 Retainer with Waller Legal

65. On a date between about 8 November 2016 and 11 January 2017, Ms Jones entered into an agreement with Waller Legal pursuant to which Waller Legal agreed to represent her in respect of claim for compensation for her Abuse (**Redemptorist Abuse Claim**), in consideration for which Ms Jones agreed to pay Waller Legal on the terms set out in the agreement.

Particulars

Ms Jones received a letter of engagement and advice dated 11 November 2016 referring to a conversation on 8 November 2016 between Dr Waller and Ms Jones, and a written costs agreement and disclosure statement dated 11 November 2016, which was signed by Ms Jones on 11 January 2017. Prior to that date, Waller Legal wrote to solicitors for the Redemptorists, including by letter dated 10 July 2015, purporting to act on behalf of Ms Jones.

66. On or about 30 July 2019, Waller Legal determined to cease acting for Ms Jones pursuant to the agreement referred to in the preceding paragraph.

Particulars

The plaintiff refers to a written file closure sheet dated 30 July 2019.

67. On or about 28 August 2019, Ms Jones instructed Waller Legal to continue to act for her in respect of the Redemptorist Abuse Claim.

Particulars

The plaintiff refers to a Waller Legal file note dated 28 August 2019.

68. On or about 13 November 2019, Ms Jones signed a further costs agreement and disclosure statement pursuant to which Waller Legal agreed to represent her in respect of the Redemptorist Abuse Claim, in consideration for which Ms Jones agreed to pay Waller Legal on the terms set out in the agreement (**Plaintiff's Retainer**).

Particulars

The costs agreement and disclosure statement was in writing dated 14 October 2019, and accompanied by a letter of engagement and advice of the same date. The costs agreement and disclosure statement was signed by Ms Jones on or about 13 November 2019.

69. There were terms of the Plaintiff's Retainer, among others, that:
- 69.1. Waller Legal would exercise care, skill and diligence in the provision of legal services to and on behalf of Ms Jones in connection with the Redemptorist Abuse Claim;
 - 69.2. Ms Jones would be liable for payment of Waller Legal's professional fees upon a "successful outcome" of the Redemptorist Abuse Claim;
 - 69.3. a "successful outcome" of the Redemptorist Abuse Claim included an offer of settlement being made which, in Waller Legal's opinion, represented an appropriate conclusion to the claim;
 - 69.4. Ms Jones would be liable to Waller Legal for payment of disbursements:
 - (a) whether or not a successful outcome of the Redemptorist Abuse Claim was achieved;
 - (b) within 30 days upon request for payment, which request may be made in advance, as and when the disbursement fell due for payment, or as considered appropriate by Waller Legal;
 - 69.5. Waller Legal was entitled to charge an additional uplift fee of 25% of the total professional fees upon a "successful outcome" being achieved in relation to the Redemptorist Abuse Claim;

- 69.6. Ms Jones was required to accept and follow all reasonable advice given by Waller Legal.

Particulars

The term alleged in sub-paragraph 1 is a term implied by law into a contract of professional services between a law firm and a client. The terms alleged in sub-paragraphs 2 to 6 were in writing.

70. The standard of care, skill and diligence to be exercised by Waller Legal in providing legal services to and on behalf of Ms Jones pursuant to the Plaintiff's Retainer:
- 70.1. was the standard of a person professing to have specialised skill and experience in claims for compensation against Institutional Defendants arising from sexual abuse and/or physical abuse; and
- 70.2. which accounted for:
- (a) the personal circumstances and characteristics of Ms Jones; and
 - (b) the likelihood that Ms Jones would rely on and follow advice provided by Waller Legal, including the strategy to be adopted, in pursuing the Abuse Claim.

Particulars

The personal circumstances of Ms Jones included the fact of her claim of having been sexually and physically abused as a child; her education; her historical employment, lack of current employment and constrained financial circumstances; her limited social contact and external support; her impaired psychological condition including alcoholism; her inexperience and unfamiliarity with legal processes and system; her vulnerability and reliance on Waller Legal arising from the foregoing facts.

The likelihood that Ms Jones would rely on and follow advice by Legal Waller is to be inferred from the personal circumstances and characteristics of Ms Jones, as alleged above; Waller Legal holding itself out as having particular skill and experience as alleged in paragraph 5, above; the relationship of trust and confidence between a solicitor and client; and the terms of the Plaintiff's Retainer, including that if an offer of settlement were made which, in Waller Legal's opinion, represented an appropriate conclusion to the Redemptorist Abuse Claim, Ms Jones would incur a liability to pay Waller Legal's professional fees and disbursements, and an uplift fee, even if Ms Jones rejected the offer, and that Ms Jones was obliged to accept and follow all reasonable advice given by Waller Legal.

C.4 Common law duty of care owed by Waller Legal

71. Further, or alternatively, Waller Legal owed Ms Jones a duty to exercise reasonable care and skill in the provision of legal services to and on behalf of Ms Jones in connection with the Redemptorist Abuse Claim (**Jones Duty of Care**).
72. The standard of care and skill to be exercised by Waller Legal in discharging the Jones Duty of Care was the standard alleged in sub-paragraphs 70.1 and 70.2, above.

C.5 Provision of legal services by Waller Legal

73. Pursuant to the Plaintiff's Retainer:
 - 73.1. Waller Legal provided legal services to and on behalf of Ms Jones in connection with the Redemptorist Abuse Claim;
 - 73.2. Ms Jones paid Waller Legal for the legal services provided by it.

Particulars

The legal services provided by Waller Legal included the services described below. Waller Legal's charged Ms Jones \$33,000 in professional fees and \$4,874 in disbursements, which amounts were deducted from the settlement sum (\$240,000 agreed to be paid to Ms Jones by the Trustees of the Redemptorist Fathers).

C.6 Investigation and assessment of the Redemptorist Abuse Claim

74. During the Relevant Period, Waller Legal provided legal services to and on behalf of Ms Jones in the investigation and assessment of the Redemptorist Abuse Claim involving:
 - 74.1. providing advice about steps that should be taken to investigate and assess the Redemptorist Abuse Claim;
 - 74.2. obtaining instructions from her in relation to, among other things, the circumstances giving rise to the Redemptorist Abuse Claim;
 - 74.3. obtaining information from the Redemptorist Fathers about, among other things, Brother Benignus;
 - 74.4. obtaining Ms Jones's agreement that an expert medical (psychiatric) assessment of her be undertaken and a report prepared;
 - 74.5. attending to the engagement and briefing a medical expert, including:

- (a) identification of an expert (Dr Susan Brann) to undertake the assessment and prepare a report;
 - (b) providing Dr Brann with a letter of instructions, including questions to be addressed in their report;
 - (c) providing Dr Brann with materials relating to Ms Jones;
 - (d) arranging for Ms Jones to attend upon Dr Brann;
- 74.6. reviewing the report of Dr Brann dated 16 December 2019;
- 74.7. obtaining information from Ms Jones about past medical treatment;
- 74.8. obtaining information about Ms Jones's schooling, employment and earnings history.

Particulars

Ms Jones instructed Waller Legal that, among other things, she struggled through school, was unable to focus in class, she could not make friends, and she did not get on well with teachers. Ms Jones instructed Waller Legal that she finished school when she was 15 years old and worked at a local supermarket. She further instructed that she later worked at a conveyancing firm as a secretary, but was unable to continue in the role and had not been employed for a number of years. Ms Jones said that she felt her schooling and employment outcomes had been affected by the sexual abuse she had suffered; and that she struggled with depression and anxiety and found it hard to leave the house. She instructed that there was no family history of depression, save that her brother (also sexually abused by Brother Benignus) had committed suicide. On about 2 December 2019, Waller Legal obtained Ms Jones's Commonwealth government records relating social security receipts and income tax.

In the expert report prepared by Dr Brann, she made a diagnosis of chronic post-traumatic stress disorder with panic attacks, dissociative symptoms and agoraphobia and alcohol use disorder, all caused by the Abuse. Dr Brann also concluded that Ms Jones's "difficulty in concentration and focus and education and subsequent employment are all related to the pervasive impact of the abuse when she was a young child" and that the Abuse "had a major negative impact" on Ms Jones's "educational capacity and subsequent work history".

75. At the time of the commencement of the Plaintiff's Retainer in late 2019, Waller Legal knew or ought to have known, as was the fact, that:
- 75.1. in cases involving negligently inflicted injury upon a minor, courts in Australia had awarded damages for economic loss;

- 75.2. victims of sexual and/or physical abuse, perpetrated when the victim was a minor, had received compensation for economic loss in claims made against an institution associated with the perpetrator of the abuse;
- 75.3. the value of claims for economic loss for childhood victims of sexual and/or physical abuse, could be significant and depended to significant extent on the circumstances of the individual plaintiff.

Particulars

The plaintiff refers to and repeats the particulars to paragraph 13 above.

- 76. Further, during the course of the Plaintiff's Retainer, Waller Legal knew or ought to have known, as was the fact, of the matters alleged in:
 - 76.1. Paragraph 75.1, above;
 - 76.2. Paragraph 75.2, above;
 - 76.3. Paragraph 75.3, above.

Particulars

The plaintiff refers to and repeats the particulars to paragraph 14, above. Plaintiff's Retainer with Waller Legal concluded on about 21 August 2020.

C.6.1 First Breach of Plaintiff's Retainer and First Breach of Duty

- 77. In breach of the Plaintiff's Retainer, Waller Legal failed to exercise care, skill and diligence, in that it was obliged to, but did not, advise Ms Jones to the effect that, having regard to the matters in paragraphs 74.6 and 74.8 (including the particulars thereto) and 76.1 to 76.3, above, further steps should be taken to investigate and assess the economic loss component of Ms Jones's Redemptorist Abuse Claim, including:
 - 77.1. the preparation of assumptions regarding Ms Jones's past and future employment, having regard to, among other things:
 - (a) her parents' qualifications, education and employment histories and income;
 - (b) her career aspirations;
 - (c) her previous forms of employment;

- (d) the nature and duration of her partner's employment and their stable relationship;
 - (e) no history of family depression;
- 77.2. calculating past and future lost earnings (including superannuation) of Ms Jones based on the foregoing information or engaging a financial expert who is supplied with appropriate assumptions to provide such a report;

(First Breach of Plaintiff's Retainer).

78. Further or alternatively, Waller Legal breached the Jones Duty of Care by reason of the matters alleged in paragraph 77.1 to 77.2, above **(First Breach of WL Duty)**.

C.7 Resolution strategy of Ms Jones's Redemptorist Abuse Claim

79. Further, Waller Legal advised Ms Jones to the effect that she should attempt to resolve the Redemptorist Abuse Claim by an approach involving:
- 79.1. inviting the Redemptorists to attend an informal settlement conference;
 - 79.2. not commencing a proceeding against the Redemptorists prior to seeking to resolve the Redemptorist Abuse Claim at an informal settlement conference;
 - 79.3. prior to the informal settlement conference, providing to the solicitors for the Trustees of the Redemptorist Fathers, among other things, the report of Dr Brann, and a statement containing the history of the Plaintiff's Abuse Claim;
 - 79.4. instead of seeking compensation for economic loss, based on a proper assessment of Ms Jones's facts and circumstances and a quantification of her economic loss, seeking an amount described as being for "loss of opportunity".

Particulars

The plaintiff relies on the letter from Waller Legal to Carroll & O'Dea Lawyers dated 10 July 2016; the letter of engagement dated 11 November 2016 from Waller Legal to Ms Jones; the letter of engagement, and costs agreement and disclosure statement, both dated 14 October 2019 from Waller Legal to Ms Jones; and the letter dated 21 January 2020 from Waller Legal to Carroll & O'Dea Lawyers.

C.7.1 Second and Third Breaches of Plaintiff's Retainer

80. In advising Ms Jones in the terms alleged in the preceding paragraph Waller Legal, in breach of the Plaintiff's Retainer, failed to exercise care, skill and diligence, in that it was obliged but failed to advise Ms Jones that:

- 80.1. commencing a proceeding did not preclude her from seeking to resolve her claim prior to a trial;
- 80.2. it was standard practice, after commencing a proceeding, for a mediation to be conducted prior to trial;
- 80.3. a high proportion of litigated claims for personal injury, including claims for psychiatric injury, settle before trial;
- 80.4. if Ms Jones sought to resolve her claim after the commencement of a proceeding (instead of prior to litigation), she would be doing so in circumstances where there was, for the Trustees of the Redemptorist Fathers, an increased risk of an adverse outcome if the proceeding were not settled prior to trial, including:
 - (a) a legal liability for loss and damage suffered by Ms Jones;
 - (b) a liability to pay the costs of Ms Jones;
 - (c) an adverse legal precedent for cases of sexual and/or physical abuse involving Brother Benignus and the Redemptorist Fathers; and/or
- 80.5. by reason of the matters alleged in sub-paragraphs 80.1 to 80.4 above, that if Ms Jones commenced a proceeding against the Trustees of the Redemptorist Fathers, she may settle her claim for a higher sum than any amount agreed in the course of an informal settlement conference;

(Second Breach of Plaintiff's Retainer).

Particulars

Waller Legal advised Ms Jones that "If successful, litigated claims can result in greater compensation" and that "the defendant can be ordered to pay a portion of your legal costs", but failed to advise Ms Jones of the matters alleged in sub-paragraphs 80.1 to 80.4 above. The plaintiff refers to the letter of engagement dated 14 October 2019 from Waller Legal to Ms Jones. The likelihood that the Trustees of the Redemptorist Fathers would seek to avoid a trial and instead resolve Ms Jones's claim, is further

evidenced by the letter dated 12 June 2020 from the Provincial Office of the Redemptorist Fathers to Ms Jones.

81. Further, in breach of the Plaintiff's Retainer, Waller Legal failed to exercise care, skill and diligence, in that it failed to advise Ms Jones that she should, after taking reasonable steps to investigate and assess her claim for economic loss, including those alleged at paragraph 77 above, seek compensation for, or an amount reflecting the true value of, her economic loss (**Third Breach of Plaintiff's Retainer**).

Particulars

The breach occurred despite: (1) Waller Legal inviting Ms Jones to inform it whether she would like Waller Legal to investigate an economic loss component to her claim, and Ms Jones providing Waller Legal with access to copies of ATO and Centrelink documents to do so; (2) Dr Brann's expert opinion that Ms Jones's schooling and career prospects had been significantly impacted by the Abuse; (3) Ms Jones's own view that her career was affected by the Abuse; (4) the fact that Ms Jones had been unable to complete school and had been unable work for a number of years.

C.7.2 Second and Third Breaches of WL Duty

82. Further or alternatively, Waller Legal breached the Jones Duty of Care by reason of the matters alleged in:
- 82.1. paragraph 80, above (**Second Breach of WL Duty**); and/or
- 82.2. paragraph 81, above (**Third Breach of WL Duty**).

C.8 Settlement of the Redemptorist Abuse Claim

83. Waller Legal provided legal services to and on behalf of Ms Jones in connection with the settlement of the Redemptorist Abuse Claim by representing Ms Jones at an informal settlement conference with the Trustees of the Redemptorist Fathers, including by:
- 83.1. providing advice about settlement offers;
- 83.2. negotiating on behalf of Ms Jones;
- 83.3. providing advice about proposed final terms of settlement.

C.8.1 Fourth and Fifth Breaches of Plaintiff's Retainer and Fourth and Fifth Breaches of WL Duty

84. In providing the legal services to or on behalf of Ms Jones alleged in the preceding paragraph, Waller Legal, in breach of the Plaintiff's Retainer, failed to exercise care, skill and diligence, in that it:

84.1. failed to provide advice about:

- (a) settlement offers to be made on behalf of Ms Jones;
- (b) settlement offers received from the Trustees of the Redemptorist Fathers; and
- (c) the proposed final terms of settlement on which Ms Jones's claim would be resolved;

taking into account (for each of (a) to (c) above) a properly assessed claim for economic loss by reference to evidence and analysis specific to Ms Jones **(Fourth Breach of Plaintiff's Retainer)**;

84.2. failed to pursue sufficiently in settlement negotiations, on behalf of Ms Jones, compensation for economic loss arising from her Abuse **(Fifth Breach of Plaintiff's Retainer)**.

Particulars

By letter dated 21 January 2020 from Waller Legal to Carroll & O'Dea Lawyers, Waller Legal stated that "there is no formal claim for loss of earnings but there is a claim for loss of opportunity". In the course of the settlement conference on 8 May 2020, Ms Jones was advised that to claim the full amount of her economic loss she would need to go through court, without her being advised that an economic loss claim could be pursued in any settlement negotiation with the Trustees of the Redemptorist Fathers (whether in or out of court), and without being advised on the quantum of her economic loss claim (based on steps having been taken such as those alleged in paragraph 77 above). Ms Jones was further advised that a sum of \$240,000 (to resolve the entirety of her claim) was "within the range", when the "range", including for economic loss and damages, had not been properly assessed and advised upon. Despite Waller Legal being informed, by email dated 24 April 2020, prior to the settlement conference, that the Trustees for the Redemptorist Fathers "would probably benefit from hearing submissions from your end as to assessment of liability, quantum, etc", no evidence-based submissions or persuasive position was advanced by Waller Legal on behalf of Ms Jones in respect of her economic loss claim.

85. Further or alternatively, during the Relevant Period, Waller Legal breached the Jones Duty of Care by reason of the matters alleged in:

85.1. paragraph 84.1, above (**Fourth Breach of WL Duty**); and/or

85.2. paragraph 84.2, above (**Fifth Breach of WL Duty**).

C.8.2 Sixth and Seventh Breaches of Plaintiff's Retainer and Sixth and Seventh Breaches of WL Duty

86. Further, Waller Legal, in breach of the Plaintiff's Retainer, failed to exercise care, skill and diligence in advising Ms Jones that the terms of settlement to be entered into between her and the Trustees for the Redemptorist Fathers were reasonable for her to agree to when such terms were not reasonable in that:

86.1. the amount agreed to be paid by the Trustees for the Redemptorist Fathers:

- (a) did not include an amount for economic loss suffered by Ms Jones;
- (b) alternatively to sub-paragraph (a), included only an amount for economic loss which had been arrived at other than by analysis of evidence of the kind referred to in paragraph 77 above specific Ms Jones;
- (c) did not reflect the true value of the Redemptorist Abuse Claim, including for general damages;

(**Sixth Breach of Plaintiff's Retainer**); and/or

86.2. the terms of settlement provided that Ms Jones released the Trustees for the Redemptorist Fathers (among others) in respect of any claim for economic loss arising from the Abuse, when no formal claim for economic loss had been made on behalf of Ms Jones (**Seventh Breach of Plaintiff's Retainer**).

Particulars

By letter dated 21 January 2020 from Waller Legal to Carroll & O'Dea Lawyers, Waller Legal stated that "there is no formal claim for loss of earnings" and no such claim was pursued on behalf of Ms Jones at or following the settlement conference on 8 May 2020.

Despite Waller Legal stating in that same letter of 21 January 2020 that Ms Jones "reserves the right to make a future claim for past, present and future loss of earnings", all such rights were compromised by the deed of

settlement entered into by Ms Jones, the Trustees of Redemptorist Fathers, and Brother David Hawke (in his capacity as Provincial of Fathers of the Congregation of the Most Holy Redeemer (the **Institute**)). Clause 2 of the deed provided that Ms Jones released and discharged both those parties, as well as Brother Benignus, including any servant or agent of the Institute, “from all actions, suits, claims and demands of every description, which she now has or might have, has had or, which could afterwards be asserted... arising out of all or any of the acts, facts and circumstances constituted by the Claims” (where “Claims” was defined to mean the unlawful assault, sexual abuse and otherwise mistreatment by Brother Benignus, resulting in loss, damages and injuries).

The provision of the advice is to be inferred from Waller Legal’s representation at and/or in connection with the informal settlement conference; Ms Jones’s reliance on Waller Legal, and a statement made to Ms Jones at the settlement conference to the effect that the amount of \$240,000 was “within the range”, and subsequently on 14 May 2020 that it would not be unreasonable to resolve Ms Jones’s claim for \$240,000.

87. Further or alternatively, during the Relevant Period, Waller Legal breached the Jones Duty of Care by reason of the matters alleged in:

87.1. paragraph 86.1, above (**Sixth Breach of WL Duty**); and/or

87.2. paragraph 86.2, above (**Seventh Breach of WL Duty**).

C.9 Misleading or deceptive conduct

C.9.1 First WL Representation and First WL ACL Contravention

88. At all times during the Plaintiff’s Retainer, Waller Legal represented that it would apply specialist skill and expertise in its provision of legal services in connection with the Redemptorist Abuse Claim (**First WL Representation**).

Particulars

The plaintiff refers to and repeats paragraph 5, above. Further, in written disclosure statements and costs agreements entered into with Ms Jones, Waller Legal stated that it was entitled to an uplift fee in relation to its conduct of the matter because of the “extensive, complex and specialised knowledge and skill required to conduct the matter”, and because of the “amount and complexity of the facts, evidence and documents to be considered”.

89. The First WL Representation:

89.1. was an ongoing representation during the course of the Plaintiff’s Retainer;

89.2. was made in trade or commerce.

90. The First WL Representation involved conduct that was misleading or deceptive, or likely to mislead or deceive, in that Waller Legal had a practice, which it applied to Ms Jones, of not applying specialist skill and expertise in advising clients who were survivors of child sexual and physical abuse about, and then investigating, considering, and pursuing, claims for economic loss.

Particulars

The plaintiff refers to and repeats paragraphs 3, 65, 73, 74, 75, 76, 77, 79, 79, 81, 83, 84, 86.

91. Insofar as the First WL Representation was a representation as to a future matter, Waller Legal did not have reasonable grounds for making the representation.

Particulars

Waller Legal did not have reasonable grounds by reason of its practice as alleged in paragraphs 28.1 and 90, and the particulars sub-joined thereto, and its failure to attach any qualifications to the First Representation in respect of its conduct of the Abuse Claims.

92. By reason of the matters alleged in paragraphs 3, 65, 73, and 88 to 91 above, in respect of the First WL Representation, Waller Legal engaged in conduct in contravention of s 18 of the *Australian Consumer Law* (**First WL ACL Contravention**).

C.9.2 Second WL Representation and Second and Third WL ACL Contraventions

93. Waller Legal represented to Ms Jones that the terms of settlement that she entered into in respect of the Redemptorist Abuse Claim were reasonable for her to agree to (**Second WL Representation**).

Particulars

Ms Jones was advised by Waller Legal at the settlement conference to the effect that the amount of \$240,000 was “within the range”, and subsequently on 14 May 2020 that it would not be unreasonable to resolve Ms Jones’s claim for \$240,000.

94. The Second WL Representation was made in trade or commerce.

95. The Second WL Representation involved conduct that was misleading or deceptive, or likely to mislead or deceive, in that:
- 95.1. the amount agreed to be paid to Ms Jones included:
- (a) no amount for economic loss suffered by her;
 - (b) alternatively to sub-paragraph (a), only an amount for economic loss which had been arrived at other than by analysis of evidence of the kind referred to in paragraph 77 above specific Ms Jones;
- 95.2. the terms of settlement provided that Ms Jones released the Trustees for the Redemptorist Fathers (among others) in respect of any claim for economic loss arising from the Abuse, when no formal claim for economic loss had been made on behalf of Ms Jones.
96. By reason of the matters alleged in paragraphs 3, 65, 73, and 93 to 95.1 above, in respect of the Second WL Representation, Waller Legal engaged in conduct in contravention of s 18 of the *Australian Consumer Law* (**Second WL ACL Contravention**).
97. By reason of the matters alleged in paragraphs 3, 65, 73, and 93 to 95.2 above, in respect of the Second WL Representation, Waller Legal engaged in conduct in contravention of s 18 of the *Australian Consumer Law* (**Third WL ACL Contravention**).

C.10 Causation

C.10.1 First Breach of Plaintiff's Retainer and First Breach of WL Duty

98. By reason of the First Breach of Plaintiff's Retainer, and/or First Breach of WL Duty:
- 98.1. Waller Legal did not obtain instructions from Ms Jones to, and did not, take reasonable steps to investigate, and to obtain, documents, statements or reports supporting the economic loss component of the Redemptorist Abuse Claim;
- 98.2. Waller Legal did not perform a proper assessment of the economic loss component of the Redemptorist Abuse Claim;

- 98.3. Waller Legal did not seek instructions from Ms Jones to, and did not, pursue claims for compensation for loss suffered by Ms Jones with reference to a proper assessment of Ms Jones's economic loss, and which therefore did not reflect the true value of Redemptorist Abuse Claim;
 - 98.4. Ms Jones compromised their Abuse Claims for an amount less than what they would have obtained but for the First Breach of Plaintiff's Retainer and/or First Breach of WL Duty.
99. Had Waller Legal discharged its obligations to Ms Jones, and not engaged in the First Breach of Plaintiff's Retainer and/or First Breach of WL Duty:
- 99.1. Waller Legal would have been instructed by Ms Jones to take, and would have taken, reasonable steps to investigate, and to obtain, documents, statements or reports supporting Ms Jones's economic loss claim;
 - 99.2. Waller Legal would have performed a proper assessment of Ms Jones's economic loss claim;
 - 99.3. Waller Legal would have been instructed to pursue, and would have pursued, a claim for compensation for loss suffered by Ms Jones with reference to a proper assessment of Ms Jones's economic loss, and which therefore reflected the true value of the Redemptorist Abuse Claim;
 - 99.4. Ms Jones would have been compensated for the Redemptorist Abuse Claim for an amount greater than she received pursuant to her terms of settlement.

C.10.2 Second Breach of Plaintiff's Retainer and Second Breach of WL Duty

100. By reason of the Second Breach of Plaintiff's Retainer and/or Second Breach of WL Duty:
- 100.1. Ms Jones was not able to make an informed decision about:
 - (a) whether to commence proceedings in respect of the Redemptorist Abuse Claim without going to an informal settlement conference (before proceedings were commenced);
 - (b) whether to refuse to compromise the Redemptorist Abuse Claim at the informal settlement conference having regard to the terms of settlement proposed and to instead:

- (i) demand a larger settlement sum be paid before compromising the Redemptorist Abuse Claim; or
 - (ii) commence proceedings;
- 100.2. Waller Legal did not obtain instructions to commence proceedings or, alternatively, to insist upon a larger settlement sum being paid before Ms Jones compromised the Redemptorist Abuse Claim;
- 100.3. Ms Jones compromised the Redemptorist Abuse Claim for an amount less than what she would have obtained but for the Second Breach of Plaintiff's Retainer and/or Second Breach of WL Duty.
- 101. Had Waller Legal discharged its obligations to Ms Jones, and not engaged in the Second Breach of Plaintiff's Retainer and/or Second Breach of WL Duty:
 - 101.1. Waller Legal would have been instructed by Ms Jones to:
 - (a) commence proceedings in respect of the Redemptorist Abuse Claim; or
 - (b) demand a larger settlement sum be paid before compromising the Redemptorist Abuse Claim and, if an appropriate settlement sum were not then offered having regard to the true value of the Redemptorist Abuse Claim, to commence proceedings;
 - 101.2. Waller Legal would have taken the steps in (a) or (b) above;
 - 101.3. Ms Jones would have been compensated for the Redemptorist Abuse Claim for an amount greater than what she received pursuant to her terms of settlement.

C.10.3 Third Breach of Plaintiff's Retainer and Third Breach of WL Duty

- 102. By reason of the Third Breach of Plaintiff's Retainer and/or Third Breach of WL Duty:
 - 102.1. Waller Legal did not obtain instructions from Ms Jones to seek compensation for, or an amount reflecting the true value of, her economic loss as part of the Redemptorist Abuse Claim;
 - 102.2. Waller Legal did not seek compensation for, or an amount reflecting the true value of, Ms Jones's economic loss as part of the Redemptorist Abuse Claim;

- 102.3. Ms Jones compromised the Redemptorist Abuse Claim for an amount less than what she would have obtained but for the Third Breach of Plaintiff's Retainer and/or Third Breach of WL Duty.
103. Had Waller Legal discharged its obligations to Ms Jones, and not engaged in the Third Breach of Plaintiff's Retainer and/or Third Breach of WL Duty:
- 103.1. Waller Legal would have been instructed by Ms Jones to seek compensation for, or an amount reflecting the true value of, her economic loss as part of the Redemptorist Abuse Claim;
- 103.2. Waller Legal would have pursued compensation for, or an amount reflecting the true value of, Ms Jones's economic loss as part of the Redemptorist Abuse Claim;
- 103.3. Ms Jones would have been compensated for the Redemptorist Abuse Claim for an amount greater than what she received pursuant to her terms of settlement.

C.10.4 Fourth Breach of Plaintiff's Retainer and Fourth Breach of WL Duty

104. By reason of the Fourth Breach of Plaintiff's Retainer and/or Fourth Breach of WL Duty:
- 104.1. Ms Jones was not able to, as part of any settlement negotiation about the Redemptorist Abuse Claim:
- (a) make an informed decision about settlement offers she should make;
 - (b) assess and decide, on an informed basis, how to respond to settlement offers received from the Trustees of the Redemptorist Fathers;
 - (c) make an informed decision about the proposed final terms of settlement on which the Redemptorist Abuse Claim would be resolved;
- 104.2. Waller Legal did not obtain instructions from Ms Jones to demand an appropriate settlement sum be paid before Ms Jones compromised the Redemptorist Abuse Claim;

- 104.3. Ms Jones compromised the Redemptorist Abuse Claim for an amount less than what she would have obtained but for the Fourth Breach of Plaintiff's Retainer and/or Fourth Breach of WL Duty.
105. Had Waller Legal discharged its obligations to Ms Jones, and not engaged in the Fourth Breach of Plaintiff's Retainer and/or Fourth Breach of WL Duty:
- 105.1. Ms Jones would have been able to:
- (a) make an informed decision about settlement offers she should make;
 - (b) assess and decide, on an informed basis, how to respond to settlement offers received from the Trustees for the Redemptorist Fathers;
 - (c) make an informed decision about the proposed final terms of settlement on which the Redemptorist Abuse Claim would be resolved;
- 105.2. Waller Legal would have obtained instructions from Ms Jones to refuse to compromise the Redemptorist Abuse Claim for the amount which the Trustees for the Redemptorist Fathers agreed to pay;
- 105.3. Ms Jones would have been compensated for the Redemptorist Abuse Claim for an amount greater than what she received pursuant to her terms of settlement.

C.10.5 Fifth Breach of Plaintiff's Retainer and Fifth Breach of WL Duty

106. By reason of the Fifth Breach of Plaintiff's Retainer and/or Fifth Breach of WL Duty:
- 106.1. Waller Legal did not obtain instructions from Ms Jones to demand a larger settlement sum be paid before Ms Jones compromised the Redemptorist Abuse Claim;
- 106.2. Ms Jones compromised the Redemptorist Abuse Claim for an amount less than what she would have obtained but for the Fifth Breach of Plaintiff's Retainer and/or Fifth Breach of Duty.
107. Had Waller Legal discharged its obligations to Ms Jones, and not engaged in the Fifth Breach of Plaintiff's Retainer and/or Fifth Breach of WL Duty:

- 107.1. Waller Legal would have obtained instructions from Ms Jones to demand a larger settlement sum be paid by the Trustees for the Redemptorist Fathers before Ms Jones compromised the Redemptorist Abuse Claim;
- 107.2. Ms Jones would have been compensated for Redemptorist Abuse Claim for an amount greater than what she received pursuant to her terms of settlement.

C.10.6 Sixth Breach of Plaintiff's Retainer and Sixth Breach of Duty

- 108. By reason of the Sixth Breach of Plaintiff's Retainer and/or Sixth Breach of WL Duty:
 - 108.1. Ms Jones was advised that the terms of settlement to be entered into to compromise the Redemptorist Abuse Claim were reasonable;
 - 108.2. Waller Legal did not obtain instructions from Ms Jones to demand a larger settlement sum be paid by the Trustees for the Redemptorist Fathers before Ms Jones compromised the Redemptorist Abuse Claim;
 - 108.3. Waller Legal did not obtain instructions from Ms Jones to refuse to compromise the Redemptorist Abuse Claim for the amount which the Trustees for the Redemptorist Fathers agreed to pay;
 - 108.4. Ms Jones compromised the Redemptorist Abuse Claim for an amount less than what she would have obtained but for the Sixth Breach of Plaintiff's Retainer and/or Sixth Breach of WL Duty.
- 109. Had Waller Legal discharged its obligations to Ms Jones, and not engaged in the Sixth Breach of Plaintiff's Retainer and/or Sixth Breach of WL Duty:
 - 109.1. Ms Jones would not have been advised that the terms of settlement to be entered into to compromise the Redemptorist Abuse Claim were reasonable;
 - 109.2. Waller Legal would have obtained instructions from Ms Jones to demand a larger settlement sum be paid before Ms Jones compromised the Redemptorist Abuse Claim;
 - 109.3. Waller Legal would have obtained instructions from Ms Jones to refuse to compromise the Redemptorist Abuse Claim for the amount which the Trustees for the Redemptorist Fathers agreed to pay;

- 109.4. Ms Jones would have been compensated for the Redemptorist Abuse Claim for an amount greater than what she received pursuant to her terms of settlement.

C.10.7 Seventh Breach of Plaintiff's Retainer and Seventh Breach of WL Duty

110. By reason of the Seventh Breach of Plaintiff's Retainer and/or Seventh Breach of WL Duty:

- 110.1. Ms Jones was advised that the terms of settlement to be entered into with the Trustees for the Redemptorist Fathers (among others) to compromise the Redemptorist Abuse Claim were reasonable;
- 110.2. Waller Legal did not obtain instructions from Ms Jones not to provide a release in respect of any claim for economic loss suffered by her;
- 110.3. alternatively to sub-paragraph 110.2, if a release were to be provided by Ms Jones in respect of any claim by her for economic loss, Waller Legal did not obtain instructions from Ms Jones to refuse to compromise the Redemptorist Abuse Claim for the amount which the Trustees for the Redemptorist Fathers agreed to pay;
- 110.4. Ms Jones compromised the Redemptorist Abuse Claim for an amount less than what she would have obtained but for the Sixth Breach of Plaintiff's Retainer and/or Sixth Breach of Duty.

111. Had Waller Legal discharged its obligations to Ms Jones, and not engaged in the Seventh Breach of Plaintiff's Retainer and/or Seventh Breach of WL Duty:

- 111.1. Ms Jones would not have been advised that the terms of settlement to be entered into to compromise the Redemptorist Abuse Claims were reasonable;
- 111.2. Waller Legal would have obtained instructions from Ms Jones not to provide a release in respect of any claim for economic loss suffered by her;
- 111.3. alternatively to sub-paragraph 111.2, if a release were to be provided by Ms Jones in respect of any claim for economic loss, Waller Legal would have obtained instructions from Ms Jones to refuse to compromise the Redemptorist Abuse Claim for the amount which the Trustees for the Redemptorist Fathers agreed to pay;

- 111.4. Ms Jones would have been compensated for the Redemptorist Abuse Claim for an amount greater than what she received pursuant to her terms of settlement.

C.10.8 First WL ACL Contravention

- 112. By reason of the First WL ACL Contravention:

- 112.1. Ms Jones entered into, and maintained, the Plaintiff's Retainer with Waller Legal;
- 112.2. Ms Jones did not enter into a retainer with an Alternative Firm which had specialist skill and expertise it would have been applied in its provision of legal services in connection with the Redemptorist Abuse Claim.

- 113. Had Waller Legal not engaged in the First WL ACL Contravention:

- 113.1. Ms Jones would not have entered into, or maintained, the Plaintiff's Retainer with Waller Legal;
- 113.2. Ms Jones would have entered into a retainer with an Alternative Firm;
- 113.3. the Alternative Firm would have discharged its obligations to Ms Jones in the manner which it is alleged that Waller Legal ought to have done but failed to do;
- 113.4. Ms Jones would have been compensated for the Redemptorist Abuse Claim for an amount greater than what she received pursuant to her terms of settlement.

C.10.9 Second WL ACL Contravention

- 114. By reason of the Second WL ACL Contravention:

- 114.1. Waller Legal did not obtain instructions from Ms Jones to demand a larger settlement sum be paid by the Trustees for the Redemptorist Fathers before Ms Jones compromised the Redemptorist Abuse Claim;
- 114.2. Waller Legal did not obtain instructions from Ms Joens to refuse to compromise the Redemptorist Abuse Claim for the amount which the Trustees for the Redemptorist Fathers agreed to pay;

- 114.3. Ms Jones compromised the Redemptorist Abuse Claim for an amount less than what she would have obtained but for the Second WL ACL Contravention.
- 115. Had Waller Legal not engaged in the Second WL ACL Contravention:
 - 115.1. Waller Legal would have obtained instructions from Ms Jones to demand a larger settlement sum be paid by the Trustees for the Redemptorist Fathers before Ms Jones compromised the Redemptorist Abuse Claim;
 - 115.2. Waller Legal would have obtained instructions from Ms Jones to refuse to compromise the Redemptorist Abuse Claim for the amount which the Trustees of the Redemptorist Fathers agreed to pay;
 - 115.3. Ms Jones would have been compensated for the Redemptorist Abuse Claim for an amount greater than what she received pursuant to her terms of settlement.

C.10.10 Third WL ACL Contravention

- 116. By reason of the Third WL ACL Contravention:
 - 116.1. Waller Legal did not obtain instructions from Ms Jones not to provide a release in respect of any claim for economic loss suffered by her;
 - 116.2. alternatively to sub-paragraph 116.1, if a release were to be provided by Ms Jones in respect of any claim for economic loss suffered by her, Waller Legal did not obtain instructions from Ms Jones to refuse to compromise the Redemptorist Abuse Claim for the amount which the Trustees for the Redemptorist Fathers agreed to pay;
 - 116.3. Ms Jones compromised the Redemptorist Abuse Claim for an amount less than what she would have obtained but for the Third WL ACL Contravention.
- 117. Had Waller Legal discharged its obligations to Ms Jones, and not engaged in the Third WL ACL Contravention:
 - 117.1. Waller Legal would have obtained instructions from Ms Jones not to provide a release in respect of any claim for economic loss suffered by her;

- 117.2. Ms Jones would have preserved, and subsequently pursued, a claim for economic loss against the Trustees for the Redemptorist Fathers assessed by reference to evidence and analysis specific to Ms Jones;
- 117.3. alternatively to sub-paragraph 117.1 and 117.2, if a release were to be provided to the in respect of any claim for economic loss of Ms Jones, Waller Legal would have obtained instructions from Ms Jones to refuse to compromise the Redemptorist Abuse Claim for the amount which the Trustees for the Redemptorist Fathers agreed to pay;
- 117.4. Ms Jones would have been compensated for the Redemptorist Abuse Claim for an amount greater than what she received pursuant to her terms of settlement.

C.11 Loss and damage

118. By reason of:

- 118.1. the First Breach of Plaintiff's Retainer, Second Breach of Plaintiff's Retainer, Third Breach of Plaintiff's Retainer, Fourth Breach of Plaintiff's Retainer, Fifth Breach of Plaintiff's Retainer, Sixth Breach of Plaintiff's Retainer, and/or Seventh Breach of Plaintiff's Retainer, individually or in combination, Ms Jones suffered loss and damage;
- 118.2. the First Breach of WL Duty, Second Breach of WL Duty, Third Breach of WL Duty, Fourth Breach of WL Duty, Fifth Breach of WL Duty, Sixth Breach of WL Duty, and/or Seventh Breach of WL Duty, individually or in combination, Ms Jones suffered loss and damage;
- 118.3. the First WL ACL Contravention, Second WL ACL Contravention, and/or Third WL ACL Contravention, individually or in combination, Ms Jones suffered loss and damage.

Particulars

The loss and damage suffered comprises: (1) the difference between the amount for which Ms Jones settled the Redemptorist Abuse Claim and the amount that she would have obtained from the Trustees for the Redemptorist Fathers but for the breach(es) or contravention(s) alleged above, or the value of the chance to compromise the Redemptorist Abuse Claim for its true value; and (2) the difference between the amount paid by Ms Jones to Waller

Legal and the true value of the legal services provided by Waller Legal having regard to the breaches and contraventions alleged above.

D. COMMON QUESTIONS OF FACT AND LAW

D.1 General

- 119. Did Waller Legal hold itself out in the manner alleged at paragraph 5 above.
- 120. Did the terms of the Retainer which Waller Legal entered with Group Members include those alleged at paragraph 7 above?
- 121. Was the standard of care, skill and diligence to be exercised by Waller Legal in providing legal services to and on behalf of Group Members as alleged in paragraph 8 above?

D.2 First Breaches of Retainer and Duty

- 122. Did Waller Legal provide legal services to and on behalf of Group Members of at least the kind alleged at paragraph 12 above?
- 123. At the start, and throughout the duration, of the Relevant Period, did Waller Legal know or, given its position and expertise, ought it to have known, of the matters alleged in paragraphs 13 and 14 above?
- 124. Was Waller Legal obliged by the Retainer to advise Group Members that reasonable steps should be taken to investigate and assess the Group Member's economic loss claim, including by taking the steps alleged at sub-paragraphs 15.1 to 15.5?
- 125. Further or alternatively, was Waller Legal so obliged by the applicable standard of care which applied to Group Members?

D.3 Second Breaches of Retainer and Duty

- 126. Did Waller Legal have the practice of advising Group Members alleged in paragraph 17 above?
- 127. Was Waller Legal obliged by the Retainer to advise Group Members of the matters alleged in paragraph 18 above, namely that having regard to the matters alleged if the Group Member commenced a proceeding against the Institutional Defendant, they

may settle their Abuse Claim for a higher sum than any amount agreed in the course of an informal settlement conference?

128. Further or alternatively, was Waller Legal so obliged by the applicable standard of care which applied to Group Members?

D.4 Third Breaches of Retainer and Duty

129. Was Waller Legal obliged by the Retainer to advise Group Members in the terms alleged at paragraph 19 above, namely that they should, after taking reasonable steps to investigate and assess claims for economic loss, including those alleged at paragraph 15 above, seek compensation for, or an amount reflecting the true value of, their economic loss?
130. Further or alternatively, was Waller Legal so obliged by the applicable standard of care which applied to Group Members?

D.5 Fourth and Fifth Breaches

131. Did Waller Legal have the practice alleged in paragraph 21 above, in representing Group Members at informal settlement conferences or briefing counsel to so represent them?
132. Did Waller Legal have the practice alleged at paragraph 22.1 above, namely providing advice about:
- 132.1. settlement offers to be made on behalf of the Group Member;
 - 132.2. settlement offers received from the Institutional Defendant; and/or
 - 132.3. the proposed final terms of settlement on which the Group Member's Abuse Claim would be resolved;
- without taking into account (for each of 132.1 to 132.3 above) a claim for economic loss assessed by reference to evidence and analysis specific to the individual Group Member?
133. Was Waller Legal obliged by the Retainer to advise Group Members about settlement offers made and received, and the proposed final terms of settlement in the terms alleged at paragraph 22.1 above?

134. Further or alternatively, was Waller Legal so obliged by the applicable standard of care which applied to Group Members?

D.6 Sixth and Seventh Breaches of Retainer and Duty

135. Did Waller Legal have a practice of advising Group Members in the terms alleged in paragraph 24 above, namely that the terms of settlement they had reached with Institutional Defendants were reasonable?
136. Did the terms of settlement which the Group Members entered with Institutional Defendants provide that the Group Member released the Institutional Defendant in respect of any claim for economic loss?

D.7 First ACL Contravention of Retainer and Duty

137. Did Waller Legal make the First Representation to Group Members as alleged in paragraph 26 above?
138. If the answer to the question in paragraph 137 above is yes, then did such representations amount to conduct in trade or commerce within the meaning of the *Australian Consumer Law*?
139. Was the First Representation an ongoing representation during the course of the Retainer?
140. Was the First Representation a representation as to a future matter?
141. If the answer to the question in paragraph 140 is yes, then did Waller Legal have reasonable grounds to make those representations?
142. Did Waller Legal have the practice alleged at paragraph 28.1 above, namely not applying specialist skill and expertise in advising Group Members about, and then investigating, considering, and pursuing, claims for economic loss?
143. If the answer to paragraphs:
- 143.1. 137 to 139 and 142 above; or
- 143.2. 137 to 142 above;
- is yes, did Waller Legal engage in conduct in contravention of s 18 of the *Australian Consumer Law* in respect of each Group Member during the Relevant Period?

D.8 Second ACL Contravention

144. Did Waller Legal have the practice of making the Second Representation as alleged in paragraph 31 above?
145. If the answer to the question in paragraph 144 above is yes, then did such representations amount to conduct in trade or commerce within the meaning of the Australian Consumer Law?
146. If the answer to the question in paragraph 144 above is yes, then was the Second Representation an ongoing representation during the course of the Retainer?
147. If the answer to the question in paragraph 144 above is yes, then was the Second Representation a representation as to a future matter?
148. If the answer to the question in paragraph 147 is yes, then did Waller Legal have reasonable grounds to make those representations?

AND THE PLAINTIFF CLAIMS ON HER OWN BEHALF AND ON BEHALF OF THE GROUP MEMBERS:

- A. Damages.
- B. Damages pursuant to s 236 of the ACL.
- C. Interest pursuant to statute.
- D. Costs.
- E. Such further or alternative relief as the Court sees fit.

Dated: 12 April 2024

M D Rush

J R C Gordon

A D James-Martin

.....
Rightside Legal
 Solicitors for the Plaintiff