

**Witness Name:** Br Timothy John Graham

**Statement No.:** 001

**Dated:** 28 September 2021

**ROYAL COMMISSION OF INQUIRY INTO ABUSE IN CARE**

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**WITNESS STATEMENT OF BR TIMOTHY JOHN GRAHAM**

**FILED ON BEHALF OF  
THE BISHOPS AND CONGREGATIONAL LEADERS OF THE CATHOLIC CHURCH IN  
AOTEAROA NEW ZEALAND**

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**As amended at 28 September 2021 in response to the Inquiry's request for supplementary  
evidence**

I, Br Timothy John Graham, says as follows: -

### **Introduction**

1. My full name is Timothy John Graham. I am the Provincial of the Oceania Province of the Hospitaller Order of St John of God (**Order**). I was appointed to the role of Provincial in 2007. In this role, I am responsible for responding to complaints of abuse that are made to the Order and engaging in any redress processes.
2. I am a qualified psychologist. I joined the Order on 20 January 1977. In my time in the Order, prior to becoming Provincial, I served in the following roles: as postulant, scholastic and novice master, and as Prior of the Brothers' communities at Richmond, Morisset and Christchurch. Between 2002 and 2004 I was a Provincial Councillor. I also have served on the Service Boards at Morisset, the separate and combined Melbourne Boards, and on the three New Zealand Boards. I did not act as an Acting Provincial at any time during Br Peter Burke's tenure as Provincial (my predecessor).
3. I was the Prior of the community in Christchurch from October 2002 to February 2005, where I was also a part-time volunteer for St John of God Waipuna, a social services provider for youth (**Waipuna**). This period was the only appointment I have had that was based in New Zealand. Prior to my appointment as Provincial in 2007, I had a number of appointments throughout Australia, in Richmond, Ashgrove, Burwood, Greensborough and other communities.
4. At Waipuna, my role and responsibilities were limited to offering pastoral support to the Waipuna staff, attending staff gatherings and missions, and offering pastoral support during professional formation in-services. I did not have professional contact with Waipuna's clients, though from time to time I did meet with some as part of the interface between the Waipuna Board and its target demographic.
5. During this period, I spent the second six months of 2004 on sabbatical out of New Zealand on other placements. I do not recall there being a Sub-Prior in the Christchurch community at the time I was away, but Br Kevin Lawson would have been the most senior member of the community for the period I was on sabbatical. Br Kevin did not hold a formal role during this time.
6. For the first three months of the six months I was away from Christchurch I undertook an international placement with the Order in India, in the community in Velloor. The purpose

was to take some personal time to rest and experience living for an extended period in a different culture. The second three months was spent at the “Sange Programme” in Santa Fe. This programme was a spiritual and religious life development programme of a type undertaken by many members of religious institutes. It is common practice for religious and clergy to undertake such programmes throughout their lives.

7. I am making this statement in response to the New Zealand Royal Commission of Inquiry into Abuse in State Care and the Care of Faith-based Institutions (**Inquiry**). The Inquiry has requested evidence from the Order in relation to Marylands Residential School (**Marylands School**), the Hebron Trust and other related matters. The Inquiry has asked a number of specific questions, and where appropriate, I set these out in the statement. After the first version of this evidence was filed, further questions were asked by the Royal Commission and I have responded to these questions, to the extent that I can, in this amended document.
8. While I set out evidence relating to Marylands in this brief, I did not work at Marylands School and have no direct knowledge of it or of the Christchurch community while it was operating. By the time I was the Prior to the Christchurch community in 2002, the school was owned and operated by the Ministry of Education. Nor do I have a background in education or disability. Accordingly, in making this statement, I have referred to the Order’s collective history, documents and refer to a number of matters which are outside my direct knowledge. As I expand later, we have limited records from Marylands School.
9. I further note that I am unaware of the details of the complaints and redress processes in other dioceses or congregations. Unless stated otherwise, my statement should be read as applying only to the Order.

### **Background of the Hospitaller Order of St John of God**

10. To assist the Inquiry, this statement first sets out some background information on the Order.
11. The Hospitaller Order of St John of God was founded in the 16<sup>th</sup> Century in Granada, Spain. The Order is devoted to the care of the sick and undertakes a wide range of health and social services activities.

- 12.** The Order is a lay congregation and consists mostly of lay Brothers (who are not ordained). While usually lay congregations do not have priests, the Order is different in that some of its Brothers are ordained as priests.
- 13.** In addition to professing the three vows of religion that are traditional with religious orders in the Catholic Church (poverty, chastity and obedience), members of the Order profess a fourth vow – a vow of Hospitality. By this vow they give their lives to the service of the sick and socially disadvantaged.
- 14.** To carry out its mission, the Order has historically been involved building and operating hospitals (both medical and psychiatric), aged care facilities, medical clinics, medical schools, social welfare agencies and facilities for children with intellectual disabilities and epilepsy.
- 15.** At the international level, the Order is governed by a Prior General with the assistance of general councillors, based in Rome. There are 22 provinces and each is run by a Provincial. Each Provincial is accountable to the Prior General in Rome. New Zealand is part of the Oceania Province, which also covers Australia and Papua New Guinea.
- 16.** The Prior General is first and foremost the bond of union of the whole Order; he, more than anyone else, has the duty of protecting and faithfully fostering the special spirit of the Order among our Brothers and in their works. The Prior General must therefore reflect the genuine charism of the Order and its apostolic ideal of charity, bearing in mind wise traditions and encouraging new initiatives suitable for the specific time and place.
- 17.** The authority of the General extends over all the Provinces, communities, hospitaller works and Brothers in the Order. During his term in office the General will personally, or through a delegate, make at least one canonical visitation to all the communities and works of the Order. If there is sufficient cause with regard to the common good, the General can remove or transfer any Brother from any position or office whatsoever, in accordance with the norms laid down in the General Statutes of the Order.
- 18.** The General Councillors collaborate with the Prior General in the government of the Order. They provide the Prior General their advice with fidelity, sincerity and in full freedom whenever they are asked and whenever they consider it warranted. Together with the Prior General, they constitute the General Definitory. There are other offices that help with the General government of the Order, but are not necessarily connected to the

General Councillors (for example the office of Procurator General, Bursar General and Secretary General).

- 19.** A Provincial is assisted by a Provincial Council. The Provincial Council is made up of Brothers within the Order. How the Provincial Council operates, and what matters it provides assistance on is largely at the discretion of the Provincial.
- 20.** While always recognising the authority of the General Chapter and the General, the Provincial Chapter is the extraordinary governing mechanism of the Province; it takes place every 4 years. It represents in a special way the inter-communion of the different local communities and their communion with the entire Order. The Provincial Chapter is celebrated every four years and is convened by the General. The following have the obligation to take part in the Provincial Chapter, as members by right:
- (a) the General, or his Delegate, as President;
  - (b) the Provincial or Vicar Provincial;
  - (c) the Provincial Councillors;
  - (d) the Provincial Delegates who govern any Provincial Delegations; and
  - (e) Vocals.
- 21.** A vocal is elected from the province and they speak on issues as they pertain to the whole of the province. They can vote on any matters which require voting.
- 22.** Given the importance of the Provincial Chapter to the life and apostolate of the Province all the Brothers making up the Province take a part in preparing for the Provincial Chapter, or in its celebration, according to the specific tasks of each individual.
- 23.** At the Provincial Chapter the state of the Province is examined under each aspect of the Brothers' religious life; the decisions and guidelines of the General Chapter are put into operation, as they relate to the local circumstances and requirements. It is during the Provincial Chapter that other general decrees helpful to the good of the Province are promulgated. In addition, the following are elected or appointed:
- (a) the Provincial;

- (b) at least two Provincial Councillors;
  - (c) the Provincial Delegates;
  - (d) the Local Superiors; and
  - (e) the Masters of Novices and Scholastics.
- 24.** The elections are carried out by secret ballot, and the person who obtains an absolute majority of the votes of those present is declared elected. If there are two inconclusive ballots a third is taken wherein the two candidates with the greatest number of votes in the second ballot are candidates. If that vote also results in equal vote, then the Brother who has been in solemn vows the longest is considered elected, and if both made solemn vows at the same time, the elder of the two is elected.
- 25.** The Provincial bears the main responsibility for the fostering and development of the religious life and all formation and apostolic activities of the Province. The authority of the Provincial extends over all the communities and works and all the Brothers in the Province. In the course of his four-year term in office, he will make at least one canonical visitation to each of the communities and works in the Province.
- 26.** The Provincial Councillors collaborate with the Provincial in a fraternal spirit in the government of the Province. The Provincial Councillors give the Provincial their opinions and advice, not only when he asks them, but whenever they consider it helpful for the common good. Together with the Provincial they constitute the Provincial Definitory. Not unlike the General Government, in the Provincial Government there are also the offices of Bursar and Secretary to assist in governing.
- 27.** A Provincial Conference is celebrated in each Province at least once between each Provincial Chapter.
- 28.** At the local or community level, each community or house of Brothers is led by a Prior. Priors oversee the community life of a group of Brothers resident together in community, usually in one house or facility. They have oversight of the works of the Brothers of that community.
- 29.** By virtue of his office, the Prior is the spiritual head of the community, and has the authority granted him by the universal law of the Church and the specific laws of the Order. He is charged with invigorating and enthusing the Brothers in their spiritual life.

He should ensure (and insist) a fraternal spirit exists, and that the Constitutions and other norms of the Order are observed, paying special attention to ensuring that the requirements of community life are met. He should approach his Brothers frequently in open dialogue and should listen to them in a friendly manner, finding out about their hopes and needs, in order to help them pursue the aim of the religious life. The Prior should be a model of right action for all, admonishing the restless, encouraging the fainthearted, welcoming the sick, and being patient with all. As the person in charge of the religious family, the Brothers should show him due respect and give him proper assistance in the performance of his task.

- 30.** The Order has rules concerning visitations and these are set out in the Order's constitutional document – the General Statutes. However, there are no rules relating to visitation of institutions run by the Order.
- 31.** The General Statutes only require that “canonical visitations” occur. These visitations are undertaken by both the Prior General and Provincial. Generally speaking (the General Statutes have been revised several times), the Provincial and Prior General are required to visit the Brothers' communities once in each of the respective terms of the Provincial (previously once in 3 years, now 4 years), and the Prior General (once in 6 years).
- 32.** The purpose of canonical visitations is to check in with the Brothers' spiritual observance as individuals, and the spiritual 'health' of the community. They were not primarily concerned with the institutions and services that operated within a community.
- 33.** Over recent decades, the Order's size has reduced significantly. It now has a worldwide membership of approximately 1,000.

#### *Establishment of Oceania Province*

- 34.** The Order first arrived in Australia in 1947 when two Brothers arrived from Ireland, where it had been established since 1879. The Order came to Australia to care for people experiencing disadvantage.<sup>1</sup> The following year a further six Irish Brothers arrived. The Order grew very quickly at first and established ministries in New South Wales and Victoria.
- 35.** In 1950, the Order opened a residential special school for boys with learning difficulties in Morisset, New South Wales, known as Kendall Grange School. It also opened schools

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<sup>1</sup> HEB.0001.0001 p 2.

in Victoria at Cheltenham in 1953, which transferred to Greensborough in 1969 and was then known as Churinga, and an adult training centre at Lilydale known as Yarra View.

36. For a long time, each community in the Province was operationally independent. The local Prior was responsible for management and oversight. Oversight from the Provincial was limited. This oversight consisted of approval being required for financial expenditure over a certain amount (as set by the Provincial); for the purchase and sale of property; and for significant changes to the use/structure of community buildings. Around the mid-1980s aspects such as finances and insurance were centralised within the Province.
37. Consistent with this, the Order's New Zealand activities were largely independent of Australian activities. Members of the Order would transfer between Australia, New Zealand and Papua New Guinea where such need arose, but each community was run independently with little oversight from the Australian-based Provincial. Brothers were transferred between communities to meet operational and staffing needs. These transfers were common and typically every three years or so, at the direction of the Provincial.
38. In the 1990s, there were approximately 70 Brothers in Oceania. This is the period when the highest number of Brothers were with the Province.
39. The numbers of Brothers in New Zealand have always been small. During the 1990s, ten Brothers belonged to the Christchurch community but not all at the same time. The most at any one time in the Christchurch community was four members of the Order. For a short period, there was a community in Hastings.
40. Only two Brothers remain in New Zealand. They are both New Zealanders and chose to retire in New Zealand, to be close to their families. Both Brothers were nurses, are retired from those roles and are provided for by the Order. Elsewhere in the Province, there are 15 Brothers living in Australia and eight Brothers in Papua New Guinea.
41. The Province has no Brothers in training, and given the diminution and aging of its members, it has made the decision not to take future members. The last Brother entered the Order in Papua New Guinea in 2009.
42. In 2007, the Order's Australia and New Zealand operations were transferred to Saint John of God Australia Ltd (**SJOGAL**), a Public Juridic Person. A Public Juridic Person is a concept in canon law that allows an entity to function in the name of the Catholic Church. This transfer of operations occurred because the Order's membership in the Province

was diminishing and becoming increasingly elderly, resulting in difficulty with meeting governance responsibilities. This means that in Australasia, the Order has not had any civil or canonical responsibility for activities run by SJOGAL since 2007.

- 43.** The Order is a member of SJOGAL with the sole responsibility of jointly appointing, with the other members of SJOGAL, the trustees who have the civil and canonical governance responsibilities. The Order's appointed representative is currently not a Brother. We have appointed Sr Linda Ferrington RSC as our representative.
- 44.** SJOGAL has no responsibilities in responding to reports of abuse at Marylands or any other institution that was run by the Order prior to 2007.
- 45.** As I was appointed Provincial in 2007, my involvement in decision-making that led up to the final decision to transfer the Order's operations to SJOGAL was limited. However, I understand that SJOGAL, which had already been established by the Sisters of Saint John of God, was chosen as its healthcare services aligned closely with the Order's services and due to its willingness to take on all the Order's services.

### **Training and formation**

- 46.** I understand that the Inquiry seeks certain information on training and formation within the Order.

#### *The process of formation and entering the Order generally*

- 47.** The current training period for the Order consists of three stages of formation:
- (a) twelve months' postulancy;
  - (b) two years' novitiate; and
  - (c) six years of scholasticate when the Brother renews his vows annually.
- 48.** I outline each of these below:
- (a) **Postulancy (12 months):** During this period of formation the candidate is introduced to the basics of religious life generally and the Order specifically. The

candidate receives some limited experience of apostolic or service provision under the direction of a trained Brother or lay staff member.

While I do not know what occurred in Marylands, from my experience Postulants would generally have had little contact with the students. Postulants would work in roles in support of the Brothers' community and the students. This work would have involved housekeeping, laundry, chapel and kitchen cleaning type roles. However, postulants may be based at schools for these tasks.

- (b) **Novitiate (2 years):** During this period of formation the candidate is exposed to more in-depth studies in the areas of theology, history and culture of the Order. In the first year of the novitiate, the candidate undertakes limited apostolic or service provision experience under the direction of a trained Brother or lay staff member. In the second year more extensive periods of service provision experience is undertaken, again under the direction of a trained Brother or lay staff member.

No novices would have had a community placement at Marylands School.

- (c) **Scholasticate (6 years):** The focus during this period of formation is on professional training, which for the Province focused on three areas – teacher training, welfare studies and nursing. Ongoing theological and spiritual formation is a further important training emphasis.

49. In the past, the postulancy and novitiate for the Oceania Province were located at the Order's houses in Morisset and Richmond. New Zealanders who joined the Order did some minor formation in community life as postulants before they were sent across to Australia to complete their period of postulancy and enter the novitiate.
50. First vows are made at the completion of the two-year novitiate period and are renewed annually for a period of six years. Final vows are made after the six-year period. The vows are standard for all Brothers and comprise four vows: poverty, chastity, obedience and hospitality, and the Order has a standard form that these vows take.<sup>2</sup>

*Psycho-sexual assessment during selection and training process*

- 51.** Up until the early 1970s no psycho-sexual assessment of candidates was undertaken, which reflected the assessment processes prevalent in society and religious life at the time. From the early 1970s onwards, Brothers had an initial psycho-sexual assessment undertaken by an external psychologist before entering the novitiate.<sup>3</sup>
- 52.** The introduction of psychosexual assessments in the 1970s would have been on account of what had developed as best practice at the time for assessing new candidates. Those Brothers who were already professed did not undergo these assessments.
- 53.** The assessments involved the completion of various psychosexual tests, for example the MMPI Test (Minnesota Multiphasic Personal Inventory Test) and also involved an interview with a Psychologist. It is my recollection that a psychologist by the name of Fr Des O'Donnell (an Oblate Priest) was the leading psychological practitioner for many congregations at the time. It is my recollection that in the 1990s there were candidates assessed by the Encompass Program prior to their entering the Order.
- 54.** I am not aware whether the psychosexual assessments in the 1970s or 1980s revealed any particular issues of concern regarding any particular candidate, but can say that in relation to such assessments undertaken in the 1990s, no significant issues were identified.

*Training and education regarding educating children and children with disabilities*

- 55.** As a general reflection, just as the levels of training and expertise required of both public and private educational providers have become increasingly more sophisticated over the decades, so has the level of training within the Order. Brothers working in schools would be expected to have the same level of education training as their lay counterparts. A number of Brothers also had specific special education training.
- 56.** I understand that before a Brother would be appointed to a school for students with intellectual disabilities, the Order would have required that the Brother undertook appropriate training for working with students with disabilities. I am aware that a number of Brothers at the beginning of the Order's work with students with intellectual disabilities received specialist training as was available at the time. Others, like myself, started

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3 For example, 013.0001.0100 p 77.

working with children with either a Dip Ed or B. Ed and undertook specialist in-service training.

- 57.** Further, given the Order's charism, many of the Order's members were trained in related areas, such as nursing, medicine and psychology.<sup>4</sup>
- 58.** The Order did not provide any specific training for residential care. However, with the increase of residential staff after the rebuilding of Marylands School (discussed further below), I understand in-service training was provided for residential care staff.
- 59.** To my knowledge, the Order does not hold any formal policy, or other documentation, on training and education requirements of its Brothers, or any lay teachers and assistants, in respect of Marylands School.

*Training relating to different cultural needs*

- 60.** During postulancy and novitiate, there was no education on the indigenous / first nations peoples of either New Zealand or Australia. Unfortunately, this was the norm in previous decades, not only in religious formation but throughout society generally. There was no training on the cultural needs of any other groups either.
- 61.** I believe that Brothers who trained in New Zealand educational, welfare and health facilities would have had some degree of training on the cultural needs of Māori and other groups. But it would have been up to those facilities and the local community of Brothers as to what training they provided or accessed.

*Reports of abuse by novices in New Zealand*

- 62.** I understand the Inquiry seeks information concerning any reports of abuse made by novices in New Zealand prior to their profession of vows. All postulants and novices received their formation training in Australia, so no novice would have reported abuse in New Zealand during their period of formation.

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4 For example, 013.R296.0013.

*The process of leaving the Order*

- 63.** There are five processes for leaving the Order:
- (a) Prior to making final (or perpetual) vows at the end of formation a Brother may choose not to renew his temporary vows, which are taken annually during formation, and leave the Order.
  - (b) A Brother may exit the Order while still in temporary vows following consultation with and approval of the Provincial and his Council.
  - (c) Professed Brothers may vote out someone who is currently going through formation and has not yet made final vows.
  - (d) If a Brother has made final vows, he may seek permission from the Holy See through the Superior General to leave the Order and be dispensed from the obligation of his vows. If the Brother is an ordained priest, there is a process sometimes referred to as laicisation and known formally as dismissal from the clerical state. Because non-ordained Brothers are not clerics the process is simpler and relates to the vows (or promises) made to the Brothers.
  - (e) Canon law provides for the possibility of a Brother to be dismissed from the Order for serious civil and canonical reasons. The Province has not exercised this canonical process as all Brothers who have left the Order in the Province have done so voluntarily.

**The Order's arrival in Christchurch and involvement in Marylands School**

- 64.** Marylands School was operated by the Brothers in Christchurch between 1955 and 1984. It was first based on a site in Middleton and moved to the Halswell site in 1968.
- 65.** I have set out hereunder an outline of the school's history from the documents and records the Order holds.

### ***Establishment of Marylands School in the 1950s***

- 66.** In April 1955, the Order arrived in Christchurch and set up residence at Marylands School in Middleton.<sup>5</sup>
- 67.** Our historical records show that in 1954, discussions were held about the possibility of the Order running Marylands School. Documentary records show two instances of these discussions: firstly, on 2 September 1954 between Archbishop of Auckland James Liston and the Order's then-Provincial Br Killian,<sup>6</sup> and secondly on 14 October 1954 between Bishop of Christchurch Edward Joyce and the Superior General of the Order, who was visiting New Zealand.<sup>7</sup>
- 68.** During these discussions Bishop Liston first proposed that the Order take over the running of Marylands School (which was being run by the Picpus Fathers at that time) as a home for "delinquent" or "difficult" boys.<sup>8</sup> However, it appears that this proposal was not accepted, most probably because the Order had not previously run schools for children with dysfunctional backgrounds, but had run schools for children with intellectual disabilities. At this time, the Order had run similar models in Ireland and Australia.<sup>9</sup>
- 69.** In November 1954 Bishop Joyce officially invited the Order to Christchurch, and offered the Marylands property to the Order. The Picpus Fathers had closed their school in late-1954.
- 70.** Although the Order was in Christchurch at the Bishop's invitation, the Order's Christchurch activities were run largely independently from the diocese of Christchurch.

### ***Marylands school - Middleton***

- 71.** Marylands School was officially opened by Bishop Joyce on 21 August 1955.<sup>10</sup> A report from 6 December 1955 provides the following description:<sup>11</sup>

*Marylands is situated in the buildings which used to be used as St Joseph's Home, Middleton. Most of the buildings are two storied and wooden and are situated in a very pleasant 44 acre farm. The dormitories are of various sizes,*

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5 005.0007.0034 pp 3 and 5.  
 6 005.0007.0026 p 3.  
 7 005.0007.0026 pp 1-2 and 6-7  
 8 005.0007.0026 pp 1-3  
 9 005.0007.0026 pp 6-7  
 10 005.0007.0029 p 5  
 11 005.0007.0015 p 2.

*some of them quite small. There are two large classrooms in the main administration block, a pleasant chapel, a swimming pool, and the surroundings are extremely pleasant, fields, grass areas and trees.*

- 72.** The following map provides a rough outline of the property in Middleton that Marylands School was situated on during this period:



- 73.** Although a school called 'Marylands' was previously run by the Picpus Fathers, there was a period of several months where Marylands School was closed prior to its opening by the Order in August 1955. There was a key change from the previous school run by the Picpus Fathers: under the Picpus Fathers, the boys who attended were considered difficult or troublesome; under the Order, it was boys with intellectual disabilities.
- 74.** Documents relating to the property that the Middleton Marylands School was situated on show:
- (a) between 1916 and 1956, the property was owned by the Sisters of Nazareth;<sup>12</sup>
  - (b) on 3 October 1956, the property was transferred to the Catholic Bishop of Christchurch;<sup>13</sup>

12 TAU.0002.0014.

13 TAU.0002.0015.

- (c) on 15 December 1957, the property was transferred to the Order;<sup>14</sup>
- (d) on 17 October 1966 the Crown acquired part of the Property for the purposes of Sunnyside Mental Hospital;<sup>15</sup> and
- (e) on 2 October 1968, the remainder of the property was transferred out of religious ownership to the Chairman Councillors and Inhabitants of the County of Waimairi.<sup>16</sup>

**75.** The Order had no more involvement with the site after the balance of the land was sold in 1968.

*Marylands school – Halswell*

**76.** In December 1968, Marylands relocated to 26 Nash Road, Halswell.<sup>17</sup> This property is also referred to as the Aidanfield or Mt Magdala site. Marylands School was run by the Order at this site until its closure in 1984. At that time, the school was taken over by the Ministry of Education and is still run as a school today. The Brothers had no involvement in Marylands School after 1984.

**77.** Documents relating to the property that the Halswell Marylands School was situated on show:

- (a) on 6 July 1960, legal title was transferred to the Good Shepherd Convent Trust Board;<sup>18</sup>
- (b) on 3 November 1969, the Order acquired the property;<sup>19</sup> and
- (c) the Order owned the land until 22 April 1982, when the property was transferred to the Ministry of Education by Gazette notice.<sup>20</sup>

**78.** Over time, parts of the Halswell site was used for two different purposes. First, as mentioned, the School was moved there and began operating from this site in late 1968.

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14 Ibid.  
 15 TAU.0002.0013.  
 16 TAU.0002.0015.  
 17 005.0007.0003.  
 18 TAU.0002.0020.  
 19 TAU.0002.0021.  
 20 TAU.0002.0012.

Secondly, on 29 May 1970, the Order opened the St John of God Hospital on the Halswell site.<sup>21</sup> This was also known as Halswell Hospital. This hospital still operates today.

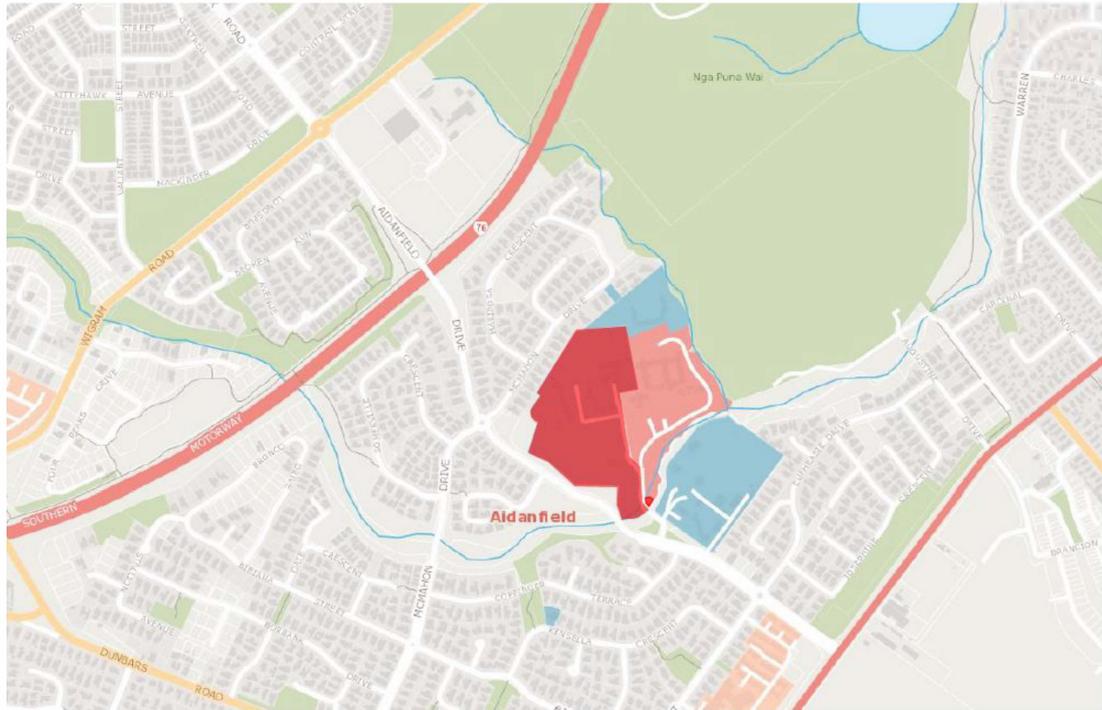
- 79.** The Order no longer has any responsibility for the hospital. In 1984 the St John of God Health and Disability Trust was established to run the Hospital.<sup>22</sup> It is now run by the St John of God Hauora Trust, owned and controlled by SJOGAL. The Order has no civil or canonical responsibility for any services operated by the St John of God Hauora Trust.
- 80.** Finally, the Christchurch community of Brothers lived at the Halswell site. It was this community that I was the Prior of in the early 2000s. It is recorded on our appointment records as “Christchurch”.
- 81.** For the period that Marylands school and the hospital were operating, the community Prior oversaw the community of Brothers and both institutions. However, the two institutions were staffed separately and both had a Brother responsible for the institution’s operation. Those Brothers in turn reported to the Prior. Some Brothers worked at the school (either in teaching roles or in roles as boarding school staff) and others worked at the hospital, often in nursing roles. All Brothers were all members of the Christchurch community. Typically, the Brothers who worked at the hospital lived in quarters on the hospital side of the site. The Brothers who had roles in the school typically lived in the villas at the school. They came together for meals.

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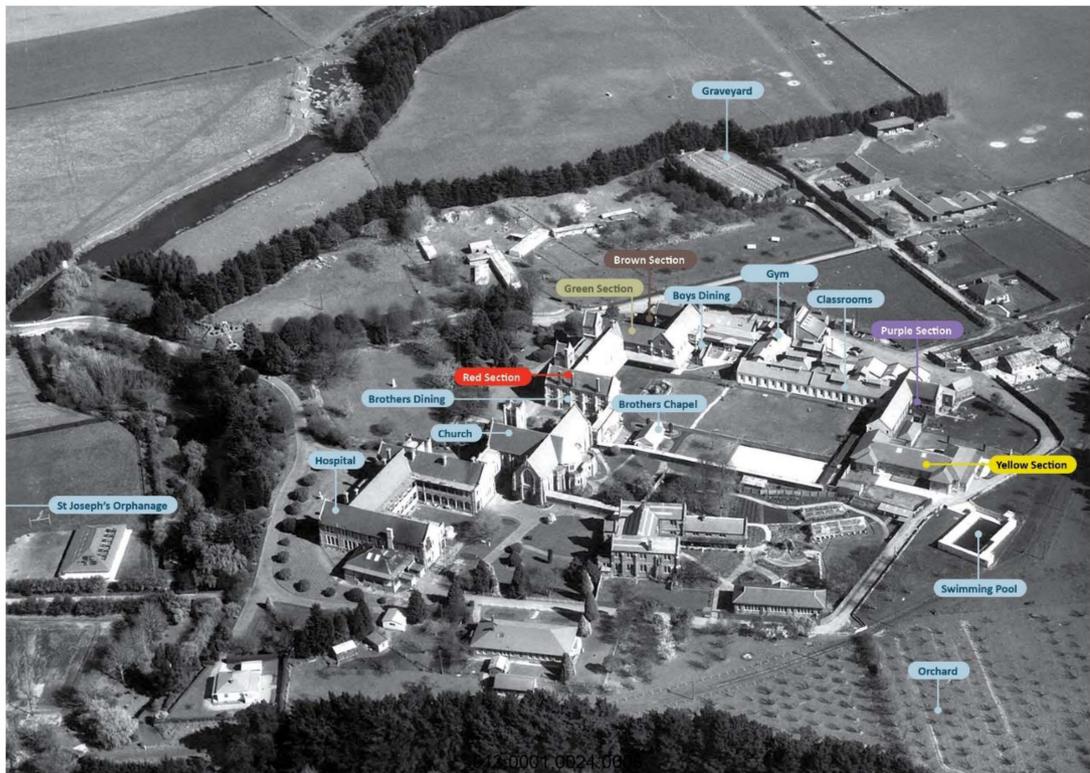
21 HEB.0001.0001 p 2 and 013.0001.0033.

22 HEB.0001.0001 p 3.

82. The following map provides an indication of where the Marylands school (dark red) and the St John of God Hospital (light red) were situated in Halswell:



83. The following undated photo from before Marylands School was renovated in the 1980s outlines the key buildings on the Halswell site:



- 84.** As is marked on the photo, St Joseph's Orphanage was on the neighbouring property. It is separated from the Order's Halswell site by a small river, some of which can be seen on the top left of the photo.
- 85.** The red, green, brown, purple and yellow sections denote different villas where students lived and slept.<sup>23</sup> I do not know how students were allocated which section they slept in.
- 86.** Apart from Marylands School and the hospital at Halswell, the only other facilities that the Order has operated in New Zealand, were an aged care facility in Hastings called the Holy Family Home, which the Order took over in the mid-1990s, and a social welfare service called Hebron/Waipuna, which the Order was involved in from the mid-1980s. I speak more about Hebron / Waipuna below.
- 87.** In 1983 the Brothers withdrew from Marylands School and the Department of Education took over the running of the school.<sup>24</sup> This decision came after a period of negotiation between the Order and the Department of Education. The documents indicate that this was primarily a financial decision, as the Order could no longer afford to operate the school.
- 88.** I understand the Inquiry seeks evidence relating to the decision to cease funding Marylands and what date funding ceased. A statement written by the Order on this decision sets out two reasons for ceasing to be involved in Marylands: the number of Brothers and financial considerations.<sup>25</sup> While I do not know the exact date that funding ceased, it appears this occurred at the end of 1983.<sup>26</sup>

## **Operation of Marylands School**

### *Admission process*

- 89.** I have some understanding of what the admission process was when Marylands School first opened in 1955, from a circular issued in December 1955.<sup>27</sup> The circular is from a Senior Psychologist from the Department of Education, and is addressed to "all educational psychologists and area organisers of special classes in New Zealand".

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23 For example 013.0001.0013 p 4; 013.0001.0096 p 15.  
 24 013.0003.0849  
 25 013.0003.0849  
 26 005.0007.0093.  
 27 005.0007.0015.

- 90.** The circular details that a child would be admitted in the following way:
- (a) first, a parent would apply to Marylands School for admission, and the Brothers at Marylands School would consider the child's suitability;
  - (b) the Brothers would then request the child to see a referring psychologist; and
  - (c) the referring psychologist would make a written report, which would include "Binet IQ range, comments on the boys behaviours during psychological examination, together with comments from teachers or any details of previous education which the child may have had".<sup>28</sup>
- 91.** It appears that boys within the IQ range of 50 – 60 could be referred, and that any boy with Down's syndrome (referred to as "mongols" in the circular) with an IQ range of 40 – 50 could also be considered.
- 92.** I do not know whether this admission process was followed during the entirety of Marylands' operation or whether it changed at all. I understand that approximately 550 pupils attended Marylands between 1955 and 1984.
- 93.** The Order does not hold any information regarding the cost of sending a student to Marylands School. However, I am advised that through research undertaken by Dr Claire Stewart, Te Rōpū Tautoko holds some documents relating to fees charged in the mid-late 1970s.
- 94.** In particular, from the documents located by Dr Stewart, it appears that:<sup>29</sup>
- (a) the fees were paid through a mixture of contributions from the parents of the students and subsidies from the Government;
  - (b) the amount of fees charged per student changed over time, but the exact amounts and frequency of these changes is largely unknown; and
  - (c) there was some discretion at times in the fees charged per student.

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28 005.0007.0015 p 3.

29 CSX.0001.0096; CSX.0001.0098; CSX.0001.0138; CSX.0001.0226.

*Staff*

- 95.** I cannot say for sure how many Brothers served at Marylands School. However, not all of the Brothers appointed to Christchurch did and some, including myself, were only resident in Christchurch after Marylands School was handed over to the Government. Many Brothers only worked in the Hospital and had limited involvement in Marylands School. Some Brothers not involved in the day to day running of Marylands School would still have had limited involvement in the School for a variety of reasons.
- 96.** In terms of educational qualifications, we do not hold records of qualifications from lay staff members. We hold some qualifications of members of the Order who served at Marylands School.<sup>30</sup>

*Information that we do not hold about the operation of Marylands School*

- 97.** The Inquiry has requested information on topics that the Order, to the best of my knowledge, holds little or no information on:
- (a) The Order holds no records and information identifying children who attended Marylands School who identified as Māori, Pacific people, people with disabilities, people with mental illness, or any other vulnerable group. However, as Marylands School was a school for boys with intellectual disabilities (as that term was understood in the 1950s-80s), I assume that many of the students would, by today's standards, be people with disabilities. Some of the records we hold from the redress process record an individual's ethnicity but this is rare and was not recorded in a systemic manner.
  - (b) The Order holds no records on the extent to which the Order facilitated communication and ongoing relationships between the students at Marylands School and their parents, guardians, families, whānau, hapū, iwi, and/or communities. My only understanding on this is that during holidays many of the students would go to their respective homes, which were often outside of Christchurch.
  - (c) The Order holds no records relating to medical treatment and services provided by external medical practitioners to students.

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30 For example, 013.R107.0008; 013.R191.0001; 013.R102.0002; 013.R027.0010.

- (d) The Order holds no records of annual budgets detailing the costs associated with operating Marylands School and a breakdown of funding sources. There are some historical records of donations from the community to support the work of the school. We also have some information on state funding, and I detail this further below.
- (e) The Order does not hold any visitation reports specifically relating to Marylands, however it does hold canonical visitation reports in relation to the Christchurch community generally.<sup>31</sup> As I have already stated, visitations by the Prior General and Provincial were concerned with the communities of Brothers who shared a common life rather than any individual institution. Sometimes these Brothers were in one institution and all were involved in its operations. But often communities have Brothers living in them with differing works and ministries or states of life (eg retired).

- 98.** The Order does not hold any of the students' files from the time they were at Marylands School or other similar records. As we have previously advised the Inquiry, we understand that these files (to the extent they existed) were on site at Marylands School when the operation of the school passed from the Order to the Ministry and the Ministry took control of them.
- 99.** I am unaware of what the Ministry may have done with these records and where they are now – if they still exist.

## **Oversight of Marylands School**

### *State oversight*

- 100.** My understanding is that State involvement in Marylands School occurred in four main ways.
- 101.** Firstly, as a school, Marylands School would have been subject to normal education regulations. We do not hold any records of reports made by any government education authority during this time. However, Brothers who were resident in our Christchurch community, but not teachers at Marylands School, have spoken of regular “inspections” by education authorities.

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31 013.0004.0105.

- 102.** Secondly, there was involvement of state psychologists and social workers. To be admitted to Marylands School, a referral from a psychologist was required.<sup>32</sup> I understand that several, if not most, of the psychologists that provided referrals were at the Ministry of Education.
- 103.** From the records we hold<sup>33</sup> we assume that there was significant involvement of State agencies in referring or recommending to parents that Marylands School would be suitable for their child.
- 104.** It is not clear from our records if the referring persons were acting for a state agency, however we see, as example, referrals from:
- (a) Dr E.M Glennie – Health Department Christchurch;<sup>34</sup>
  - (b) Mr. W.J. Armstrong – Area organiser of Special Classes, Dunedin;<sup>35</sup>
  - (c) Health Department, Christchurch;<sup>36</sup> and
  - (d) Child Welfare and Psychological Services.<sup>37</sup>
- 105.** In many instances, the records we have state that the recommendation was from 'Psychological Services'. From 1966, this constitutes the majority of recommendations. Recommendations were also made by several Catholic and non-Catholic persons and entities.
- 106.** Thirdly, many children had social workers who came to visit periodically. We do not hold any records of visits made by social workers assigned to residents of Marylands School. However, Brothers who were resident in our Christchurch community (again not teachers at Marylands School) have spoken of Social Workers coming to Marylands School to visit residents.
- 107.** Fourthly, the State provided funding to Marylands School for both the property's purchase and its operation. It appears that the Order may have received capital funding when it

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32 005.0007.0015.

33 In particular, the Marylands Students Admissions Register – 013.0001.0003.

34 013.0001.0003 p 7, no 48.

35 013.0001.0003 p 7, no 48.

36 013.0001.0003 p 11 no 100.

37 013.0001.0003 p 13, no 123.

was set up in 1955,<sup>38</sup> and received funding at various stages during its operation for things like renovations<sup>39</sup> and to subsidise the attendance of some children.<sup>40</sup>

- 108.** I understand Te Rōpū Tautoko engaged a researcher, Dr Claire Stewart, to do some further research, including researching public archival sources, on this matter. This research has shown significant involvement of the State in partially funding the operations at Marylands School. In the course of her research, documents Dr Stewart found at Archives NZ research shows that:
- (a) Cabinet resolved in November 1972 to fund Marylands' 'operating losses';<sup>41</sup> and
  - (b) in 1973, the Minister for Education committed to rebuilding Marylands School. This commitment involved the Government proposing Government purchase of the site and construction of new school buildings, leased back to the Order (at peppercorn rental) to run.<sup>42</sup>
- 109.** This commitment (also made publicly at the time by the Prime Minister)<sup>43</sup> was made following an inspection by the Minister of Education and the Associate Minister of Finance.
- 110.** Following this, there appears to be a decade long process between 1972 – 1982, leading to both the handing over of Marylands School to the State to run as a State Special School under a new name, and the sale of the Marylands property to the Crown for this purpose. During this period there is evidence of significant State review of, and contribution to, the operational budget of Marylands School.<sup>44</sup>
- 111.** The level of oversight in relation to this funding is hard to ascertain from the documents. However, from the level of specificity in relation to the review of the annual budget, we can assume the State was active in monitoring, at the very least, the costs of the School.
- 112.** To the best of my knowledge, the Order holds no records on the nature and extent of State agency oversight in relation to concerns raised or reports of abuse of children at Marylands School.

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38 005.0007.0014 p 17.

39 CSX.0001.0015.

40 0013.0001.0079.

41 CSX.0001.0002.

42 CSX.0001.0003.

43 cf CSX.0001.0005 and CSX.0001.0007.

44 CSX.0001.0120.

## Hebron Trust

- 113.** The Inquiry has requested evidence about Hebron Trust, an organisation established by Bernard McGrath to provide ministry and services to “street kids” in Christchurch in the late 1980s.
- 114.** As I do not have direct knowledge of the establishment and operation of Hebron Trust, Te Rōpū Tautoko have prepared a briefing paper. The briefing paper was prepared using documents provided by a number of Catholic dioceses and congregations, as well as publicly available information. It provides a narrative summary of how the Hebron Trust was established and operated, including key dates and events.

### *Circumstances in which the St John of God Brothers became involved with and operated the Hebron Trust*

- 115.** The documents show that in 1986, the Bishop of Christchurch, Denis Hanrahan, recognised a growing problem with young homeless people in Christchurch, or “street kids”. Bishop Hanrahan approached the Order and invited them to establish a ministry to support at-risk youth.
- 116.** It is unclear from the documents whether the Order requested Bernard McGrath be the Brothers’ appointee, or whether he volunteered. However, in September 1986 McGrath was appointed to the Christchurch Community and travelled to New Zealand to start scoping out the extent of the need. The briefing paper on Hebron sets out the arrangements with McGrath during this period. McGrath was the only Brother with an operational role at the Hebron Trust.
- 117.** I understand the Order itself never received any funding in relation to children referred to Hebron, apart from the stipends paid by the Diocese of Christchurch for the work of Bernard McGrath as a contribution to the work of the Ministry. All funding arrangements were coordinated on the ground by Bernard McGrath and his team and kept internal to Hebron.
- 118.** The Order’s involvement in Hebron was minimal in the early period of its operation. Bernard McGrath worked under the supervision of Catholic Social Services, however he rarely reported directly to the Bishop himself. He would write periodically to the Order with funding requests for new services and facilities, some of which were granted by the Order,

and some of which were not. The other Brothers in the Christchurch Community had little, if anything, to do with the services being offered by Hebron.

- 119.** By 1990 Hebron was looking to start formalising its structure and status as a legal entity. The Order was seen as the logical choice to take ‘ownership’ of the works in a legal sense from the Diocese, while the Diocese continued to pay Bernard McGrath’s stipend. On 20 May 1991, the St John of God Brothers Hebron Community for Disadvantaged Youths Charitable Trust Board was formally incorporated under the Charitable Trusts Act 1957.
- 120.** The Trust continued under this name until 2003 when it changed its name to St John of God Waipuna Youth and Community Services. As I have already discussed, from 2003 the Order in Australia began the process of transferring our health and care services to a separate private provider. By 2007, the last services in New Zealand under control of the Order were the St John of God Health and Disability Services, and the St John of God Waipuna Youth and Community Services Trust. The assets and services of these two entities were merged into an entity called St John of God Health Care Inc. This entity is owned by SJOGAL.
- 121.** The services provided by the former Hebron Trust are now run independently of the Order and delivered by the St John of God Hauora Trust, the operating arm of St John of God Health Care Inc in New Zealand.
- 122.** In 2013, the St John of God Waipuna Youth and Community Services Trust was formally wound up. Aside from extending invitations to the retired Brothers GRO-C to join community events, the Brothers today have no connection with the St John of God Hauora Trust.

*Financial interests in, and ownership of Hebron Trust properties*

- 123.** The Order has few records relating to interest in or ownership of properties used by the Hebron Trust or Bernard McGrath over this period.
- 124.** I understand that Te Rōpū Tautoko’s solicitors hold a timeline compiled by former Hebron Director Cathy Harrison, which indicates her recollection of negotiations to purchase a house at 187 Halswell Road (known as “Pampuri House”) commenced in October 1989.<sup>45</sup> Pampuri House opened in January 1990 and Bernard McGrath took up residence. No records are held which reveal the ownership details of Pampuri House, but it is assumed

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45 HEB.0001.0004.

the property was purchased by the Order as Hebron Trust had limited access to finance to make such a purchase. I also note that Brothers are not permitted to own property in their own name, so no properties would have been owned by McGrath. It is known that the Order did purchase a property in Rolleston for development and use by Hebron, but the property was sold due to the cost of the development being prohibitive and the property was never used by Hebron (though a rent appears to have been collected by the trustees).<sup>46</sup>

- 125.** This transaction, and possibly the Pampuri House transaction, was handled by Lee Robinson while at O'Malley & Co. I am advised that O'Malley & Co no longer hold any records relating to Hebron (or Marylands).

*The nature of the relationship between Marylands School and the Hebron Trust*

- 126.** As is clear in the briefing paper, there was no relationship between Marylands School and the Hebron Trust. The Order's association with Marylands School ceased in 1984, when ownership and operation of the school was transferred to the Ministry of Education. McGrath's initial scoping exercise of what would become Hebron did not take place until October 1986, and Hebron's first refuge was not established until 1988. Hebron Trust itself was not legally established until mid-1991.
- 127.** Bernard McGrath was the one clear connection between Marylands School and Hebron Trust.
- 128.** In addition, I understand Raymond Garchow, who was later accused of offending against children at Marylands School, was on the administrative board of Hebron from approximately 1992 to 1995 but I understand he had no involvement in the day-to-day operations of Hebron. The first complaint against him that we have a record for was recorded in August 2002. I understand he resigned from the Board in 1995 to go to Papua New Guinea. No allegations against Garchow relate to Hebron.
- 129.** We have reviewed our database of complaint information and record that Bernard McGrath is the only member of the Order who was subject to a report of abuse at both Marylands School and the Hebron Trust. Aside from McGrath, there is one other lay individual who had a complaint against him while a staff member at Hebron. That individual had no connection with Marylands School or the Order.

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46 013.0001.0147 p 4.

*Appointments of individuals made after reports of abuse were received by the Order*

- 130.** Apart from McGrath, our records show that no religious members were appointed to the Hebron Trust board after a report of abuse was received. I provide more detail on Bernard McGrath further below.
- 131.** As far as we can tell from our records, of the Brothers who ever sat on the Board, only Raymond Garchow had complaints of abuse made against him.

*Requests made to the Order for funding of Hebron Trust*

- 132.** The Order holds some records of requests for funding (mostly from Bernard McGrath), however in all but one case, the Order does not hold records of whether it approved these requests:
- (a) On 26 October 1987, Bernard McGrath drafted a proposal to establish a second St John of God community in Christchurch to develop an inner city mission.<sup>47</sup> The proposal asks the Order to purchase or rent a house within the inner city. No specific funding amounts are requested.
  - (b) On 27 July 1988, Bernard McGrath wrote to Provincial Br Pius Hornby to request \$120,000 to purchase a house to use as a refuge.<sup>48</sup>
  - (c) In a 14 June 1989 report from Catholic Social Services, Anne McCormack recommended Hebron Trust attract as much government funding as possible and for the Order to support Hebron by underwriting shortfalls in funding the staff of salaries for three years.<sup>49</sup>
  - (d) On 23 Aug 1989 Bernard McGrath wrote to Br Pius Hornby to request \$150,000 in funding for a safe house, \$15,000 to replace his van, and for the Order to underwrite shortfall of funding for salaries for three permanent staff.<sup>50</sup>
  - (e) On 29 August 1989 Br Pius Hornby wrote to Bernard McGrath stating purchase of a vehicle was approved, and purchase of a house was approved in principle.<sup>51</sup>

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47 013.0001.0147 p 72.  
 48 013.0001.0147 p 206.  
 49 013.0001.0147 pp 29-30.  
 50 013.0001.0147 p 199.  
 51 013.0001.0147 p 198.

### **Nature and extent of abuse at Marylands School**

- 133.** The Inquiry has requested evidence on the nature and extent of abuse at Marylands School.
- 134.** I want to start by acknowledging the nature and extent of abuse at Marylands School. A single instance of abuse is deplorable. That Marylands School, which should have been a safe place of education and learning, was the site of sexual, physical and psychological abuse, committed by some members of the Order against many victims, is horrific.

#### *Allegations of abuse*

- 135.** To assist the Inquiry, Te Rōpū Tautoko's solicitors have prepared a briefing paper with a statistical overview of the offending, which is based on the complaints made to the Order over time. There are a number of important caveats for these records.
- 136.** This document has been prepared from the records we hold of allegations and claims and I acknowledge will not capture all the allegations made. There are a number of records of complainants telling Brother Peter Burke (**Br Peter**), who served as Provincial in the 2000s prior to my appointment, that they had made complaints while they were students at Marylands School and that they had been ignored.
- 137.** There are also allegations that we now have some record of but were not made directly to the Order and for which we have incomplete details. This includes allegations recorded in Police interviews and other later material.
- 138.** Consistently with how all the allegations have been recorded by all Catholic entities for the Inquiry, the subjective view of the complainant has been recorded.

#### *Extent of abuse*

- 139.** I want to acknowledge my understanding of just how severe the abuse at Marylands was. Tragically, survivor accounts describe a wide range of abuse. In many cases the alleged abuse suffered by pupils at Marylands was egregious. We are aware of allegations of punishments amounting to severe physical abuse, instances of physical abuse outside of punishments, and sexual abuse involving rape and other serious sexual offending occurring at Marylands.

140. In terms of the scale of abuse, our records show that allegations of abuse at Marylands have been made by 98 individuals. In some cases, the abuse was not a one-off event, but a sustained occurrence, often over several years.
141. Beyond residents at Marylands School, some allegations of abuse have been made by ex-residents of St Joseph's Orphanage, which was on a neighbouring property. According to these allegations, this abuse occurred when the St Joseph's residents would visit Marylands School.<sup>52</sup>
142. Some complainants have alleged that the offending was committed by multiple members of the Order. In some instances, complainants have alleged that abuse was committed against them by older students, some who have alleged they were abused by Maryland's staff. I acknowledge that allegations of abuse, both substantiated and unsubstantiated, at Marylands School have been made against 21 members of the Order. It is to my deepest shame that such abuse was committed by members of my Order.
143. Finally, the abuse was committed against vulnerable individuals. The victims were school children, many diagnosed with intellectual disabilities; their abusers were their teachers and boarding supervisors. I acknowledge the position of absolute trust that students should be able to put in their teachers and carers, and the power imbalance that exists between these two groups. They should have been safest in our care.
144. It is difficult to know the full extent of abuse suffered by pupils of Marylands School.
145. This is in part due to the redress process being informal. Once the New Zealand complaints surfaced, Br Peter and Michelle Mulvihill (**Michelle**), a former Sister of Mercy, a nurse and psychologist who was contracted by the Order at the time, acted quickly and undertook a redress process in New Zealand with a pastoral focus, which I believe was motivated by a desire to respond to the harm and pain that they saw in the victims.
146. While all allegations were accepted for the redress process, many Brothers denied some or all of the allegations when informed of them. A number of Brothers were interviewed by the Police. In many cases, no charges were laid. Extensive criminal investigations were being undertaken at the same time as many of the claims were being made to the Order in the early 2000s. The Order does not know the detail of these investigations.

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52 For example 013.C198.0001 p 2 and 013.X021.0002 p 1.

- 147.** In terms of criminal charges, five members of the Order have had charges laid against them in New Zealand:
- (a) two members of the Order were convicted and sentenced of offending in New Zealand – Bernard McGrath (on two separate occasions) and Br Rodger Moloney;
  - (b) Br Raymond Garchow (who was ordained a priest in 1987) and another Brother (granted name suppression) had charges laid by the NZ Police which were ultimately stayed by the New Zealand courts; and
  - (c) Br William Lebler had charges laid, but was not extradited from Australia to appear before the New Zealand courts, due to his age and health.

*The movement of Brothers between different communities*

- 148.** Whilst, as noted above, the Order only became aware of the vast majority of alleged offending from 2002 onwards, long after Marylands School had closed, I wish to recognise the movement of Brothers throughout the alleged periods of offending.
- 149.** Brothers were routinely rotated between schools or communities after a number of years in each one. This was for operational reasons and based on the service needs of each facility. Further, Brothers who were yet to make their final profession of vows were moved to expose them to different ministerial expressions of the Province.
- 150.** To our deep regret and shame, we now realise that this system was vulnerable to exploitation by abusers and those who sought to cover up their abuse. The system of moving Brothers regularly around different communities, and particularly in McGrath's case, allowed abuse to go undetected. This meant that abusers were not stopped when they should have been and people were abused when this abuse was avoidable. Had the Brothers and hundreds of co-workers in our facilities been aware of the criminal behaviours being perpetrated then, I would hope, we would have responded immediately and vigorously. At the time, that such behaviour could have been possible was unimaginable.
- 151.** In addition to the system's vulnerability to exploitation, I am now aware that historically, the Order responded inadequately to some allegations of abuse. The Order has recently received historic documents that it did not otherwise hold as part of a litigation process in

Australia and by requesting information from the NZ Police through the Official Information Act 1982. These documents include statements made in the 1990s and early 2000s by former leadership, which acknowledge that the Order's leadership were aware of some allegations of abuse in the 1960s, 70s and 80s but nevertheless moved Brothers between institutions or allowed them to remain within the institutions those allegations related to.<sup>53</sup>

- 152.** The Order recognises that this was wrong. We profoundly regret the abuse that was allowed to happen both because this system was in place and because fundamentally inadequate responses were taken at the time to allegations of abuse.
- 153.** On behalf of the Order, I offer my sincere and unconditional apologies to the victims and survivors who have suffered abuse while in our care both at Marylands and in other institutions.

*Deaths of children at Marylands School*

- 154.** The Inquiry have requested information about the deaths of children at Marylands. I have no direct knowledge of these matters and Te Rōpū Tautoko has provided a briefing paper, based on the documentary evidence that the Brother's hold and secondary information that was provided during the redress process in 2002-2004.

*Why was Marylands School the subject of substantial abuse?*

- 155.** The Inquiry has asked why Marylands School was the subject of such substantial abuse. That is not a question I have an adequate answer for.
- 156.** While as an Order we have sought to respond to all victims who have approached us, we have not undertaken any formal or independent assessment of any kind into why Marylands School was the centre of such abuse.
- 157.** By the time the Order started becoming aware of the extent of the abuse in 2002, it was no longer operating any schools anywhere in the Province. Since this time the Order has thought it of paramount importance to focus its energies on responding to complaints, and addressing the needs of each complainant.

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<sup>53</sup> 013.R406.0017; 013.R406.0018; 013.R406.0020; 013.R406.0021; 013.R406.0022; 013.R406.0023; 013.0002.0006; 013.0002.0036; 013.R282.0298.

## Retreats

- 158.** I understand the Inquiry requests information on any retreats held at Marylands School. To the best of my knowledge no retreats were held onsite at Marylands School. There were however, retreats planned for Brothers who were appointed to Marylands.<sup>54</sup> However, these retreats would likely have been held offsite.<sup>55</sup>
- 159.** We do not have any records of allegations of abuse by a Brother who was at Marylands on retreat.

## Response of the Order to allegations of abuse

### *Bernard McGrath*

- 160.** I commence this section of my evidence by outlining my understanding of the offending of Bernard McGrath. McGrath was a prolific and appalling offender. His actions were deplorable and indefensible. There are 69 allegations made against McGrath in New Zealand, far more than any other member of the Order.

### *McGrath's background*

- 161.** Bernard McGrath is a New Zealander. He joined the Order in 1966 and then spent his novitiate at Kendall Grange in Sydney for two and a half years.<sup>56</sup> He then transferred to do his scholasticate in Burwood, Sydney.<sup>57</sup> Following his scholasticate, McGrath was appointed to the Greensborough community in Victoria in 1972 and Morisset in New South Wales in 1973. Following these appointments, he came to New Zealand in 1974.
- 162.** McGrath has alleged that he was groomed and sexually abused by Br Rodger Moloney during his scholasticate, as well as afterwards during his early community appointments.<sup>58</sup>

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54 013.0001.0009 p 12.

55 For example at the Redemptorist Monastery in North New Brighton - see 013.0001.0013 p 14.

56 013.R282.0150.

57 013.R282.0150.

58 [https://www.stuff.co.nz/the-press/editors-picks/8025621/Catholic-blames-senior-cleric-for-sexual-abuse-cycle;](https://www.stuff.co.nz/the-press/editors-picks/8025621/Catholic-blames-senior-cleric-for-sexual-abuse-cycle)  
013.R282.0159; 013.R282.0299.

*McGrath's offending in New Zealand: 1974 – 1977*

- 163.** McGrath was appointed to the Christchurch community on two occasions. The first was between 12 January 1974 and 25 October 1977. McGrath was again in New Zealand between 19 September 1986 and 1 August 1992, during which he was leading the organisation that would become the Hebron Trust.
- 164.** The Order has received many allegations of offending by McGrath against boys that attended Marylands School. In total, it has been alleged that McGrath offended against 47 boys during his time at Marylands School. The complaints are very serious and contain allegations of rape and other serious sexual offending.
- 165.** I have no personal knowledge of when the Order first became aware of allegations about McGrath. I understand, however, that some within the Order were aware in 1977 of an allegation in respect of the conduct of Bernard McGrath and Moloney.<sup>59</sup> I have been made aware of documents in relation to this allegation including:
- (a) a Police Statement of Br Brian O'Donnell dated 11 June 2003;<sup>60</sup>
  - (b) a Police Statement of Br Brian O'Donnell dated 24 July 2003;<sup>61</sup>
  - (c) an unsigned Statement of Brother Timothy Boxall (given to the Police in or about 2003);<sup>62</sup>
  - (d) Meeting notes made by Br Peter Burke in relation to a meeting with himself, Br Vianney Walsh and two former Marylands staff listed as Catherine and Dorothy dated 24 January 2002;<sup>63</sup> and
  - (e) Meeting notes made by Brother Peter Burke in relation to a meeting with himself, Michelle Mulvihill and Bernard McGrath dated 16 April 2002.<sup>64</sup>
- 166.** Br O'Donnell was the Provincial of the Order between September 1974 until December 1982.

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59 013.R027.0013; 013.0001.0073; 013.R282.0028; 013.0002.0006; 013.0002.0007; 013.0002.0036; 013.R282.0298.  
60 013.0002.0036  
61 013.0002.0006.  
62 013.R027.0013.  
63 013.R282.0298.  
64 013.R282.0299.

167. Having read the statements I note there is some divergence between Br O'Donnell's statements and Br Boxall's statement as well as the 2002 meeting notes made by Br Burke. I note too that it would seem that the 1977 allegations may in fact have occurred in 1976.

*McGrath's offending in New Zealand: 1986 – 1992*

168. As indicated above, McGrath was again in New Zealand between 19 September 1986 and 1 August 1992.<sup>65</sup> During this period, he was in Christchurch, leading the organisation that would become the Hebron Trust. As I have already explained, McGrath was deeply involved in establishing and carrying out the work of the Hebron Trust.
169. The Order holds records that McGrath offended against 22 boys or teenagers in the care of Hebron. Again, the complaints are serious and contain allegations of rape and other serious sexual offending.

*Complaints in the 1990s and the Order's response*

170. I understand that in 1992 two individuals in New Zealand and another in Australia came forward alleging abuse by McGrath.
171. Starting with the New Zealand based-complaints, I understand that on 26 May 1992, the Hebron Trust staff met to discuss an allegation of abuse that had been made two days prior against McGrath.<sup>66</sup>
172. On the records available, I cannot say for certain when exactly the Provincial, Br Joseph Smith (**Br Joseph**), became aware of any allegations. However, in 2000, Br Terry Tehan (a Provincial Councillor at the time) wrote to the Order's solicitors stating that Br Joseph was made aware of the allegation in late May 1992.<sup>67</sup>
173. The Order does not hold any contemporaneous documents of what happened during this period. Our records show that on 11 June 1992, the complainant wrote to McGrath stating that the allegations he made were untrue and that he wished to withdraw the complaint.<sup>68</sup> We hold later documents that indicate McGrath may have influenced the complainant to withdraw his complaint.<sup>69</sup>

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65 013.R282.0297.  
 66 007.0005.0007.  
 67 013.R282.0088.  
 68 013.R282.0132.  
 69 013.C827.0001

- 174.** I understand that a second individual in Christchurch made a complaint to Hebron staff in June 1992.<sup>70</sup> However, the Order holds almost no information about this complaint. It is also unclear whether or when Br Joseph was made aware of this complaint. However, on 8 or 9 August 1992, Br Joseph informed the Council that McGrath was planning to withdraw from Hebron and was preparing to take time for renewal.<sup>71</sup>
- 175.** I am also aware of claims that the New Zealand Police were informed on two separate occasions of McGrath's offending, first in 1991,<sup>72</sup> and then in August 1992.<sup>73</sup> However, I cannot provide any further information on this. The Order does not have any contemporaneous record of having received, or known about these complaints to Police at this time.
- 176.** Regarding the first Australian record of a complaint against McGrath which we hold historical records of, there is a file note written by Provincial Br Joseph that records:<sup>74</sup>
- (a) On the evening of 11 August 1992, Br Joseph received an allegation of abuse by McGrath via telephone.
  - (b) On 12 August 1992, Br Joseph:
    - (i) first sought advice from Brian Lucas (who was on the Special Issues Committee, the precursor to the Australian Bishops' Committee for Professional Standards);
    - (ii) secondly, called the complainant and informed him that "action will be taken immediately in the form of my withdrawal of B from current position, emphasising that he will be away from any possibly harmful situation until allegations can be investigated";
    - (iii) thirdly, sought legal advice from Howard Harrison of Carroll & O'Dea, who advised that McGrath "needs to be interviewed by Brian Lucas and Howard Harrison immediately on return";

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70 013.C827.0001 p 1.  
 71 013.R282.0234.  
 72 013.C698.0072 p 178.  
 73 013.R282.0038 p 5.  
 74 013.0004.0022.

- (iv) fourthly, informed each member of the Provincial Council of the allegation; and
  - (v) fifthly, instructed Br Julian Liddiard, Second Councillor of the Order, to go to Christchurch that evening, withdraw McGrath the next day, and inform the Christchurch community that Bernard would be returning to Australia.
- (c) On 13 August, Br Julian accompanied McGrath back to Sydney. On his return, McGrath stayed with the Burwood community. There is no record of what restrictions were in place once he returned.
- (d) On 15 August, Br Joseph and Brian Lucas met with McGrath. At this meeting, McGrath “told his story”, although it is unclear whether he accepted or denied the allegations.
- 177.** While it appears that an investigation was carried out into this allegation,<sup>75</sup> the Order does not hold any records of what this investigation involved.
- 178.** On 9 September 1992, the Order entered into a deed of settlement with the complainant. The Order entered into a further deed of settlement in around April 1995, in settlement of a further claim brought by the complainant in respect of offending by McGrath.
- 179.** While McGrath was in Sydney in August 1992, he received some form of initial treatment at the Order’s hospital in Burwood.<sup>76</sup> Then, on 25 August, McGrath moved to the USA to take part in a nine-month programme for sexual abusers called the Jemez Programme from 8 September to 28 June 1993.<sup>77</sup> At the conclusion of the programme, the Order was provided with a continuing care programme.<sup>78</sup> McGrath’s continuing care programme involved ongoing therapy and spiritual direction, supervision of his living/work situation, and monthly contact with the Jemez Programme.<sup>79</sup> The cost of that programme was \$5,400 per month and while I do not have a record of the final invoice, I estimate that the Order paid around \$54,000 for Br Bernard’s treatment there.<sup>80</sup>

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75 013.0004.0010 p 2.  
 76 013.R282.0034 p 2.  
 77 013.R282.0040; 013.R282.0092; 013.R282.0103.  
 78 013.R282.0103 p 2-4.  
 79 013.R282.0100 p 5.  
 80 013.R282.0127.

- 180.** The decision to move McGrath from Christchurch in 1992 was made by Br Joseph Smith. After completing the Jemez Programme in June 1993, McGrath commenced what was to be a six-month stay at the community of Brothers in Apple Valley, California.<sup>81</sup> However, he re-commenced treatment at the Jemez Programme on 29 July 1993 on hearing of possible legal action against him.<sup>82</sup> Following this, it appears that he returned to New Zealand in September to face criminal charges.<sup>83</sup>
- 181.** Following his discharge from the Jemez Programme, McGrath moved to the Order's Apple Valley community in the United States.<sup>84</sup> McGrath again returned to the Jemez Programme in August and September on finding out that he may be subject to further prosecutions.<sup>85</sup>
- 182.** McGrath was convicted and sentenced in December 1993 in Christchurch to three years' imprisonment as a result of offending at Marylands School and during his time at Hebron. From our records, it is hard to know exactly what happened between McGrath exiting the programme in September 1993 and his conviction.
- 183.** In September 1996, Br Joseph Smith (the then Provincial) applied that McGrath be provided an indult (a grant or permission) of secularisation (dispensation) and to leave the Order. This application contained a letter from McGrath requesting the indult of secularisation. Secularisation means that McGrath would be excused from his commitment to his vows and so would no longer be a member of the Order.
- 184.** This indult was granted and in November 1996 McGrath left the Order.

*Scale of McGrath's offending*

- 185.** Although the Order was aware of McGrath's offending pre-2002 due to criminal proceedings and other complaints, the true scale of his offending in New Zealand only came to light from 2002 onwards.
- 186.** The level of McGrath's offending is demonstrated in part by his criminal history:
- (a) in 1993 he was sentenced in Christchurch on 10 charges of child-related indecency, to three years' imprisonment;

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81 013.R282.0035.  
 82 013.R282.0100 pp 1 and 6.  
 83 013.R282.0100 p 1.  
 84 013.R282.0035.  
 85 013.R282.0100 pp 1 and 5.

- (b) in 1997 he was sentenced in Sydney on six counts of indecent assault, to nine months' imprisonment;
- (c) in 2006, he was sentenced in Christchurch on 22 counts of indecency, against 9 victims, to five years' imprisonment;
- (d) in 2018, he was sentenced in Sydney to 33 years' jail for 64 offences against 12 boys at Kendall Grange over seven years; and
- (e) in 2019, he was convicted and sentenced for crimes against another 15 Kendall Grange boys.

**187.** While the Order did fund McGrath's legal expenses in the first two proceedings, Br Peter wrote to McGrath in June 2003 stating that the Order would no longer fund this.<sup>86</sup>

#### *Apology*

**188.** As I have said, Bernard McGrath's actions were deplorable and indefensible. I realise that the fact that he is serving his fourth jail sentence may bring limited comfort to his victims. I have met with many of his victims and I am grateful that they have allowed the Order to be part of their journey.

**189.** While I am very aware that repeated apologies cannot change anything, on behalf of the Order I would like to offer my genuine and unconditional apology to the victims and survivors who have suffered abuse from Bernard McGrath.

#### **The Order's response, knowledge and treatment of other alleged offenders**

**190.** The Inquiry has sought information regarding the responses taken by the Order to reports of abuse at Marylands School in relation to each member of the Order who has been subject to a report of abuse in relation to Marylands School, including information as to the Order's assessment and treatment of those individuals.

**191.** In total, our records show that allegations were made against 21 identified Brothers about harm at Marylands School (including McGrath).

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86 013.R282.0087.

- 192.** On assessment of the records, it appears that at the time of the first recorded allegation of abuse at Marylands School in relation each member of the Order who had an allegation against them, nine of these Brothers were already deceased. Given they were deceased, no steps were able to be taken by the Order as regards those individuals.
- 193.** A further three Brothers had already left the Order. Accordingly, other than the provision of redress in relation to allegations, and supporting survivors to go to police, no disciplinary steps were able to be taken by the Order.
- 194.** As requested, we have provided the files we hold in relation to each remaining member of the Order who was subject to a report of abuse at Marylands School and any relevant treatment they have received.
- 195.** Allegations were also made against two students. The Order has not sought to take any response in respect of these two individuals.
- 196.** As noted above, five of the Brothers were charged by Police with offending and two were convicted. A number of other Brothers who have been accused of harm (and where we have provided redress for the allegations) were interviewed by Police but no charges were brought.
- 197.** As many of the allegations were first made in the early 2000s, Br Peter was the Provincial responsible for the disciplinary and treatment decisions made about the living Brothers at the time.
- 198.** Since I became Provincial in 2007, I have been responsible for these decisions and for the care and supervision of alleged offenders who remain members of the Order. In my view, withdrawal or removal of a Brother from ministry does not necessarily mean an accused cannot retain a connection with the Order.
- 199.** It is my considered professional opinion that it is more socially responsible for us to retain aged offenders within the Order, and under the authority of the religious community. This allows an individualised safeguarding plan to be implemented and actioned. Integrated social monitoring and support, and ongoing psychological evaluation by the Order would not be possible if aged offenders were dismissed. I acknowledge that this is not a universally accepted view. But I strongly believe it represents a more positive management option than reintroducing offenders, whether they be ex-priests, religious or lay people, back into the community with minimal ongoing safeguarding and social and psychological support.

*Oversight of reports of abuse by the Order in Australia and other Church entities*

- 200.** I understand that the Inquiry seeks information about how reports of abuse were handled at the time Marylands School was in operation, including whether these allegations were reported to the Order in Australia, the diocese of Christchurch, other Catholic entities or the Holy See.
- 201.** It is my understanding that all allegations of abuse that were reported to a Brother should have been passed to the local Prior. He should have then contacted the Provincial in Australia who should have dealt with any process, as was the case when Brother Peter and later I became Provincial. I do not know how each disclosure was addressed in each case. Records held by the provincial office in Australia related to disclosures of abuse have been provided to the Commission.
- 202.** The Order has limited documents in relation to reports to other Catholic entities or the Holy See.

**Current approach to members of the Order who are alleged to have committed abuse/  
Ongoing support of offenders**

- 203.** In terms of my involvement in responding to allegations of abuse, and the current approach that the Order takes to members of the Order who are alleged to have committed abuse, generally, the Order manages members convicted of child sexual abuse and those with substantiated claims made against them, as well as those who have made admissions, in broadly the same way. These members:
- (a) remain within the supervisory parameters of the Province, and generally, are advanced in years;
  - (b) are reviewed periodically by the Province Professional Standards Committee; and were the subject of an independent audit in 2020;<sup>87</sup>
  - (c) do not engage in any form of ministry;
  - (d) are required to have an annual psychiatric assessment under a suitably qualified forensic psychiatrist;

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87 013.0002.0008.

- (e) are required to participate in monthly external supervision and spiritual direction;
  - (f) are required to participate in the formation programs of the Province;
  - (g) are supported in place by Clergy and Congregational Care, Catholic Healthcare Marist Health and Wellbeing Services and receive intermittent, unannounced visits; and
  - (h) are a member of a religious community, whose members interact on a daily basis with the individual.
- 204.** The Province's approach is in accordance with the spirit of Australian and New Zealand Church protocols: Towards Healing, Integrity in Ministry, and Te Houhanga Rongo - A Path to Healing.
- 205.** The overriding principle informing the Province's approach is that keeping Brothers within the Province is best practice in ensuring supervisory parameters.
- 206.** In the Oceania Province, the Order has not taken any action under canon law. However, one Brother who was the subject of claims of child sexual abuse voluntarily applied for dispensation of vows in 1996.
- 207.** Of the 21 Brothers who have been accused of harm at Marylands School, I understand that four remain alive. Only one remains a Brother. He is now 75 years old, and lives in an independent living unit in Sydney, with five other Brothers. McGrath is in prison and no longer is a member of the Order.
- 208.** Two of the other men, both of whom left the Order prior to allegations being made against them, remain alive.

*Current Brothers in Ministry*

- 209.** In the Province, the Brothers currently have only 12 Brothers in Ministry, with four Brothers in Australia and eight Brothers in Papua New Guinea.
- 210.** All of these Brothers have been carefully evaluated and safeguards required by the State and the Church are in place to ensure that abuse does not occur. If a complaint was

made today against one of these Brothers, he would be stood down from ministry and the complaint independently investigated.

### *Policies*

**211.** Our policies related to sexual offending have evolved and adapted over the years. They are provided alongside this statement. These include:

- (a) Sexual Abuse Policy of the Brothers of Saint John of God (January 1997);<sup>88</sup>
- (b) Guidelines for Brothers of St John of God in Australia, New Zealand and Papua New Guinea in Implementation of “Towards Healing”: Policies and Procedures of the Province Professional Standards Committee (September 1997);<sup>89</sup>
- (c) Process in Handling Abuse cases (December 2002) prepared by Peter Burke and Michelle Mulvihill;<sup>90</sup>

**212.** Our current approach to safeguarding and response is publicly available on our website. Our policies which are current as at June 2021, are provided with this brief:

- (a) Safeguarding Policy;<sup>91</sup>
- (b) Risk Management Strategy;<sup>92</sup>
- (c) Complaint Handling Policy;<sup>93</sup> and
- (d) Code of Conduct.<sup>94</sup>

**213.** Ultimately, the responsibility for these matters rests with the Provincial in consultation with his Provincial Councillors. Today, the Provincial and Council take advice from the relevant professional support structures that have been established. These are the Province’s Professional Standards Committee and Professional Standards Case Manager, the Province’s legal representatives and insurers, and other resources as deemed appropriate.

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88 013.0001.0102.  
 89 013.C698.0053 pp 1-8.  
 90 013.0001.0001.  
 91 TAU.0002.0008.  
 92 TAU.0002.0010.  
 93 TAU.0002.0009.  
 94 TAU.0002.0007.

- 214.** I am unable to comment specifically on how a Provincial and his Council would have dealt with reports of abuse and other professional standards matters had they arisen. Since 1992 however, the Province has been guided by its Professional Standards Committee in a best practice approach to dealing with what usually are quite complex matters. Equally, since 1992 the Order's legal representatives have provided advice on the just and compassionate handling of allegations of abuse.
- 215.** I cannot comment on what may have occurred in the past or what expectations may have been where a Brother was made aware of a complaint of abusive behaviours of another. Given the structures in the Order and communities, looking back I would have expected a Brother who had received a complaint alleging abusive conduct of another would report that complaint to their Prior. I would have then thought if the circumstances of the complaint warranted such, that the Prior would advise the Provincial of the complaint, and the Provincial would take matters from there.

#### **Expenditure on legal fees for Brothers**

- 216.** The Inquiry has sought information on the payment of legal fees for Brothers subject to allegations of abuse. On 11 December 2020, Te Rōpū Tautoko's solicitors wrote to each law firm and lawyer identified by the Order requesting the total amount, if any, billed to the Order for costs associated with legal advice for, and representation of, any respondent.
- 217.** None of the law firms or lawyers identified by the Order reported any such amount being billed to the Order. However, to my knowledge and from the documents held by the Order, some payment for legal fees was made in relation to the following respondents:
- (a) First, I understand that the Order paid for, or at minimum contributed to, Bernard McGrath's legal fees until around June 2003, at which point it was made clear to him that no further contributions would be made by the Order.<sup>95</sup> However, the amount that was paid by the Order prior to that point is not clear from the records we hold.
- (b) Secondly, in 2008 the Order paid \$50,000 to a former Brother as a contribution to his legal fees, which I understand were in excess of twice that amount.<sup>96</sup> I

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95 013.R282.0087.

96 013.R141.0006 at 2; 013.R141.0009 at 3.

have not named this former Brother as the criminal proceedings were permanently stayed and the Brother was granted permanent name suppression in relation to them.

- (c) Thirdly, I understand that the Order paid for two legal counsel in Australia, Paul Byrne SC and Murugan Thangaraj SC, to represent Br Roger Moloney, Br Raymond Garchow and Br William Lebler in relation to extradition proceedings around 2005-2006. However, we do not hold records of the amount paid for that legal representation. I understand that Mr Byrne is deceased, and our Australian solicitors did speak to Mr Walsh, who instructed Counsel at the time, and were advised that no financial information is available.
- (d) I note that the Order declined to pay for the legal fees of Br Moloney and Br Garchow to defend charges in New Zealand, once extradited.<sup>97</sup>
- (e) Finally, I also understand from the documents we hold that some legal fees were paid for Br Damien Keane,<sup>98</sup> however it is not clear what amount was paid by the Order and what for.

**218.** I understand that the Inquiry seeks an estimate of total expenditure by the Order on legal fees. Unfortunately, the Order's long time Financial Director passed away in 2019 - he may have been able to provide further assistance on the issue. The Order sought the assistance of its present Financial Director to review those same records to comment. He has advised that he is not able to provide any further assistance or estimate on total expenditure on legal fees, defence costs or extradition costs.

### **Insurance/Catholic Church Insurance Limited**

**219.** The Inquiry has asked for information on the role that Catholic Church Insurance Limited (CCI) had in relation to indemnification of claims of abuse. In order to answer this question, I have sought information from our administrative staff.

**220.** The Order purchased, from time to time, public liability policies with CCI under a variety of cover types and policy wordings. These policies were purchased for all St John of God locations in Australia by the Order. With the exception of two specific policies, most public liability policies purchased from CCI did not cover liability for New Zealand-based claims.

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97 013.R296.0206.  
98 013.R224.0007 at 8.

- 221.** I understand that CCI have always had an issue as to whether or not cover should extend under the Australian Policy for claims arising out of New Zealand, partly on the basis that a premium was never paid in respect of liability issues in New Zealand. However, I understand that some limited claims were reimbursed in part or in full by CCI. I am not aware of any specific denial of indemnity on the part of CCI based on prior knowledge or some other circumstance with respect to complaints arising out of New Zealand.
- 222.** The two exceptions are the Ethical Standards policy (**ETL policy**) and the Master Policy.
- 223.** The ETL policy had no territorial limit and therefore allowed for a limited claim to be made for events in New Zealand. The Order had cover under the ETL policy between 18 January 1993 to 30 June 1995. This meant that claims could be admitted in respect of Brothers whose names were declared during the period of cover. However, this was always subject to the question of knowledge prior to the commencement of cover, and in the case of the policy year 1994/1995, to a retroactive date of 1 January 1976.
- 224.** The Order first obtained cover under the Master Policy on 1 July 1987. From 1 July 1992, the territorial limit of the Master Policy was extended to include cover for liability incurred in New Zealand. However, the policy only applied if the person in question was normally resident in Australia. This allowed for claims relating to one individual Brother.
- 225.** Together these policies were utilised to settle two claims related to Marylands School (for claims relating to abuse by two Brothers) and four claims related to events associated with Hebron (for claims related to abuse by one Brother).
- 226.** The total amount of monies paid by CCI in the indemnification of claims of abuse relating to Marylands School was \$33,982 for two claims.
- 227.** A further amount of \$608,040 for four claims arising from events associated with Hebron.
- 228.** At the time of writing this statement we have difficulty accessing all our physical records in Sydney due to the COVID-19 lockdown. This would include material related to insurance.
- 229.** From a review of material available to me it would appear that no other indemnification was offered by CCI to the St John of God Brothers in respect of Marylands School or other NZ entity.

## Impact of abuse

- 230.** Before I turn to discuss the redress process, I wish to acknowledge the profound impact the abuse will have had on survivors and their families.
- 231.** I am aware that in many cases, victims of abuse go on to suffer from severe depression and other psychological issues. While the causes of severe depression and other psychological injuries are multifactoral (for example, as a result of the childhood experiences in their family, or other life stressors), the abuse suffered at Marylands School appears to have factored in some victims attempting or committing suicide. On documents held by the Order, it appears that there are at least three people who attended Marylands School who are recorded as later [GRO-C]<sup>99</sup> In regards to a fourth alleged [GRO-C], there appears to be conflicting information regarding whether the individual [GRO-C] or died as a result of a motorcycle accident.<sup>100</sup> Our documents also show that approximately a dozen complainants have attempted suicide,<sup>101</sup> some several times, and many more have contemplated committing suicide at some stage.<sup>102</sup>
- 232.** Since the late 1990s, the Order has developed a general understanding of the impacts of sexual abuse.<sup>103</sup> It has not however, undertaken any formal assessment into the impacts of this offending on survivors of Marylands School and the impact on their family / whānau, hapū, iwi or community. Again, as noted above, the Order has focussed its energies on responding to complaints, and addressing the needs of each complainant.

## Redress and engagement with survivors

- 233.** The process of redress and engagement with survivors can be broken down into three separate timeframes. I was not personally involved in this process prior to 2007.

1992 – 2001

- 234.** From a review of the documents I understand, the Order received a limited number of complaints (at least three) of abuse at Marylands School in this time period. It appears that the redress and survivor engagement was formal and followed a legal process.

99 013.C815.0031; 013.C049.0004 p 27; 013.C004.0002 p 15; 013.C416.0001 p 51.

100 013.0001.0003 p 35; 013.C171.0001 pp 1, 3; 013.C049.0004 p 20; 013.C520.0001 p 13; 013.R628.0026 p 1.

101 013.0001.0113 p 3; 013.C049.0004 p 25; 013.C163.0002 p 29; 013.C253.0002 p 6; 013.C292.0001; 013.C359.0001; 013.C562.0003 p 9; 013.C663.0002 p 8; 013.C794.0006 p 256-257; 013.C811.0013 pp 21, 31; 013.C942.0001 p 23.

102 For example, 013.C197.0001 p 22 and 013.C698.0067 p 11.

103 013.0001.0100 at 10.

- 235.** The first complaint we have a record for, where redress was provided, was received on 11 August 1992.<sup>104</sup> The Order entered into a deed of release with the complainant, and agreed without admission of liability to pay \$10,000 together with accommodation costs.
- 236.** Similar agreements were entered into on 12 July 1999 and 3 August 2000 two further complainants, for \$30,000 and \$50,000 respectively.<sup>105</sup>
- 237.** In December 1996 the Australian Catholic Bishop Conference established “Towards Healing”, the Australian equivalent to New Zealand’s “Te Houhanga Rongo: A Path to Healing”. In 1997 the Province Professional Standards Committee (**PPSC**), a committee established by the Order, developed guidelines to implement Towards Healing (**Guidelines**).<sup>106</sup>
- 238.** The Guidelines provided for two processes:<sup>107</sup>
- (a) A **formal process**, where the victim is referred to a contact person of the State Resource group of the Catholic Church (established under Towards Healing). Under this process, the victim receives counselling and other support, is encouraged to make contact with the appropriate State authorities including the Police, and is accorded every opportunity to tell his or her story.
  - (b) An **informal process**, also termed a “pastoral process”. Under this process the Province hears the victim’s story, in a manner recommended by a case worker. The Case Worker recommends an appropriate reconciling strategy. Where recommended the Order facilitates appropriate counselling and therapy. Any matters of compensation must involve the Order’s legal and insurance advisers, who make recommendations to the PPSC.
- 239.** The extent to which the Guidelines were followed in any particular case is unclear. However, from mid-2002 onwards the Order developed a new response, headed up by the then-Provincial Br Peter.

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104 013.C794.0001.

105 013.C029.0001 at 47; 013.C413.0008 pp 11-15.

106 013.C698.0053.

107 013.C698.0053 at 4.

2002 – 2004

- 240.** Between 2002 and 2004, the Order received over 80 complaints. This was in large part due to media attention on Marylands School, and the fact that Br Peter set up a 0800 help line, to enable anyone to make a complaint or query, free of charge, to the Provincial office in Sydney.<sup>108</sup>
- 241.** In December 2002, Br Peter and Michelle Mulvihill set out the process they followed during this time.<sup>109</sup> This process has also been reported by Simon Feely, Br Peter's communications consultant at the time.<sup>110</sup> Simon remains the Order's communication consultant, and provided his report in response to our request for information and documentation relating to Br Peter and Michelle's process.
- 242.** However, to summarise the process it appears:
- (a) Following initial contact by phone, arrangements were made to meet with the complainant in person. Br Peter and Michelle made several trips to New Zealand to meet with each complainant and hear their account first hand.
  - (b) Br Peter would follow up the meeting with a personalised letter to each complainant. Between July and November 2002, Br Peter and Michelle met with at least 60 complainants.
  - (c) Br Peter sent newsletters on a monthly basis to complainants and their families to provide updates.
  - (d) In September 2002, the Order engaged KPMG Legal to consider its pastoral process.<sup>111</sup> KPMG then instructed retired High Court Justice, the Hon Sir Rodney Gallen, to review the process to date. Gallen's report concluded that "the Order has acted appropriately and responsibly".<sup>112</sup>
  - (e) In November 2002, Br Peter sent a letter to each complainant, enclosing "in good faith a one-off payment" of \$1,500. Br Peter made it clear that this would not be part of the final settlement offer.<sup>113</sup>

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108 013.0001.0117 p 1.  
 109 013.0001.0001.  
 110 013.0001.0117.  
 111 013.0001.0117 at 2.  
 112 013.0001.0117 p 24.  
 113 013.0001.0117 p 19.

- (f) Having reviewed each complainant's case, Br Peter would assign the case a "tier" of seriousness, with each tier equating to a different financial sum to be offered. He would then write to the complainant offering this sum as settlement. The sums offered ranged from \$15,000 to \$148,000.<sup>114</sup>
- 243.** Many of the offers were made and accepted in early 2003. However, some complaints were resolved later, if a complainant did not initially accept the offer. There were also further complaints made post-2002 so these were unable to be resolved at the same time as the 2002 complaints.
- 244.** We have records that the impact of this process on victims and survivors was generally positive. For example, following the offer of \$1,500 to complainants in late 2002, many of these complainants wrote back to Br Peter to thank him.<sup>115</sup> There is also correspondence from complainants following the substantive settlement offers that indicate his offer was well received.<sup>116</sup>
- 245.** I had no active role in this process. At that stage I was on the Provincial Council. However, the redress process undertaken during Br. Peter's provincialate was principally managed and implemented by Michelle as the Order's complaints management consultant. My understanding is that Michelle was the architect of this approach. Other Brothers appear to have been excluded from practical pastoral involvement. My only involvement was receiving reports on the redress process as a member of the provincial council and province professional standards committee.
- 246.** I also understand from the documents that I attended a meeting with Br Peter and Lee Robinson, the Order's legal counsel in New Zealand, on 11 September 2003.<sup>117</sup> I don't remember this meeting specifically and have no memories of what was discussed.
- 247.** The complaints process was suspended at the request of the Police due to the criminal investigations under way. This meant that from 2003-2007, relatively few further settlements occurred.

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114 013.0001.0113; 013.0002.0005.

115 013.0001.0117 pp 26-29.

116 013.0001.0117 p 30-31.

117 013.0001.0165.

*My reflections on Br Peter's approach*

- 248.** I believe that Br Peter had a strong personal commitment to bringing justice and healing to people that had been historically abused by members of the Order. He was committed to assisting complainants in whatever way they required and to whatever level. He was pastorally generous in encouraging complainants to seek counselling, and provided interim pastoral gestures whilst a just and compassionate redress outcome was negotiated. My recollection of the Province's redress process at this stage was that many claimants came forward independently of the civil litigation process. A critique that I would offer of the process at the time was the position taken of not requiring deeds of release once a negotiated redress outcome was achieved.
- 249.** One change in the redress process observed by the Province was the adoption of the *Towards Healing* process in Australia and the *Te Houhanga Ronga - A Path To Healing* in New Zealand for responding to claims of historical sexual abuse. The Province adopted these process as part of the broader agreed standardisation of responding to complainants adopted by the dioceses and religious congregations in each country. The adoption of these shared pathways to healing and justice was not supported by Michelle.
- 250.** The major change that occurred in the Province's approach to redressing claims of historical abuse was one that was externally determined. At the beginning of the trajectory of responding to complaints of historical abuse the majority of first contacts with the Province was usually initiated by complainants.
- 251.** In the fifteen years that I have been Provincial the vast majority of complainants have chosen to pursue the pathway of civil litigation, with first contact initiated by their legal representatives. The majority of the cases I have dealt with have been Australian, though I have also responded to a number of New Zealand survivors.
- 252.** My observation of the civil litigation pathway is that the Province is afforded no pastoral agency in the development of the redress process, which is largely determined by the complainant's legal representative and the Province's insurance company. Any ongoing pastoral relation or response is usually limited by the complainant's legal representation in this civil process. A further observation of the civil pathway is that the timeframes, in my opinion, can be excessively long, and again the Province has no temporal agency in this matter.

- 253.** One suggestion that I would make to the Royal Commission is that it studies the role of the legal industry in any ongoing redress options.
- 254.** When I took over from Br Peter Burke as the Provincial in 2007, a significant number of complaints had been settled in relation to abuse in New Zealand.
- 255.** During Br Peter Burke's time as Provincial, he made a large number of "pastoral payments" to complainants with no formalised settlement documentation. Thereafter the space became more legalized, with the involvement of lawyers and insurers. There was a move towards increased due diligence, case by case assessment and valuation and the documentation of resolutions including the idea that it would be beneficial for victims and appropriate for the Order that a payment be fair, just and reasonable and bring the claim to an end.
- 256.** Accordingly, there was a move not long after my appointment towards the use of deeds of release, with an attached certificate confirming that the plaintiff had been provided with legal advice in respect of the deed and a resolution created in respect of the claim.
- 257.** The Order commissioned the Hon Sir Rodney Gallen to audit the complaints received from New Zealand between June 2002 and March 2003. Sir Gallen noted that Br Peter and Michelle had been cross referencing complaints in order to corroborate allegations as made, and were satisfied that the complaints were justified. Sir Gallen concluded in his report that both in respect of the enquiry and response to complaints of which it is aware, the Order acted appropriately and responsibly, advising complainants that they have been believed, accepting responsibility, and doing what lay within its power to provide at least some means of helping to right in each case a grievous wrong. Sir Gallen further concluded that apologies had been given and financial assistance had been made available, that no attempt has been made to cover up offending, and that the Order endeavoured to provide what might properly be described as a pastoral response.<sup>118</sup>
- 258.** Further in 2008, the Order commissioned Westwood Spice to conduct an independent review of the Order's complaints management process between 1993 to 2007. While the report made a number of recommendations, Westwood Spice concluded that the process used, while not always ideal, had been substantially sound and as far as could be ascertained, conducted with the utmost good faith and best intentions.<sup>119</sup>

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118 013.0001.0115.  
119 013.0002.0009.

2007 – present

- 259.** In the period since I became the Provincial, I have entered into around 54 formal deeds of release with complainants for abuse in New Zealand. Many of these have been additional to previous pastoral payments that complainants had received during Br Peter Burke's tenure.
- 260.** Since I have been the Provincial, we have received around 22 new complaints from New Zealand. These have come directly from complainants, through complainants' representatives and also through NOPS.
- 261.** One of my first steps is to check whether the complainant has legal representation and, if not, ensure that the complainant is provided with access to legal counsel if they should seek it. For example, where a complainant has been in prison, I have asked independent legal counsel from that area to contact the complainant to offer their services, at the Order's cost. If need be, steps can be taken to provide contact details for a number of lawyers with experience in this particular area.
- 262.** We then instruct our lawyers to engage with the lawyer appointed by the survivor to work collegially in terms of obtaining the information required in respect of medical records, Government records and a full statement of complaint and impact and, where necessary, an independent medico-legal investigation.
- 263.** At the same time, we undertake through our office due diligence in terms of cross-checking that the complainant was in our care and that the complaint is coherent in terms of time frameworks. We of course allow for the inaccuracy and confusion that often arises in relation to dates and identification of perpetrators.
- 264.** In all of this, ascertaining when the complaint was first articulated or reported will be a part of the process, but it is designed to be practical, human and victim-focused and to provide us with a basis for our lawyer to work in tandem with the independent lawyer for the victim on an appropriate negotiation process or otherwise.
- 265.** We then confirm that we would like to enter into good-faith negotiations with the complainant or their representative, and offer the opportunity for a face-to-face meeting or other form of apology or acknowledgement at that stage.

*Offer of settlement or other redress*

- 266.** Generally, we will seek legal advice on the appropriate quantum to offer a complainant. This will aim to take into account, among other things, the severity of the abuse inflicted on the complainant, the context in which the abuse occurred and the impacts that the abuse has had on the complainant's life. Based on that legal advice, we will then make an initial offer of settlement, plus reasonable costs and disbursements, on the basis of a deed of release.
- 267.** Sometimes the complainant or their representative will make a counter-offer, which we might accept or make an additional counter-offer. Once an amount has been agreed upon and the complainant has accepted the offer of settlement, I will ask our legal counsel to prepare a deed of release for the complainant and their representative to consider. At this stage, we will generally ask for the complainant's reasonable legal costs to be quantified before finalising the settlement as the Order pays for, or at least contributes to, the complainant's legal costs.
- 268.** The standard deed of release that we enter into will include a payment made on an *ex gratia* basis, plus agreed costs. The payment is made in full and final settlement of the complainant's claims against the Brothers.
- 269.** In the past, our standard deed of release has included a clause requiring that the terms of settlement are confidential to the parties and not to be disclosed.<sup>120</sup>
- 270.** During the period prior to the Australian Royal Commission into institutional responses to child sexual abuse, there was media criticism of "silencing provisions" and around this time many Australian Congregations—including the Order—ceased to use such provisions unless expressly requested by the survivor. However, from time to time a survivor wishes confidentiality, particularly in relation to the agreed figure. The Order obliges with this request when it is made.

*Support following formal settlement*

- 271.** Following this formal process, I will endeavour to assist the complainant with any additional pastoral processes that they might seek. For example, if requested by the complainant, I will personally write a letter to them, on behalf of the Brothers, apologising for what happened to them. Other examples of pastoral support have been meeting face-

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120 For example 013.C377.0001 at 31.

to-face with complainants, providing additional counselling costs, providing letters of apology to complainants' family members and paying for the funeral expenses of a complainant that passed away during the redress process.<sup>121</sup>



**272.** Below I have set out a flowchart demonstrating a typical progression of a complaint. I note that this is a generalised example and acknowledge that each complainant has their own needs that will require flexibility in this process.

*Principles applied in the redress process*

**273.** Both in Br Peter's and my time, considerable thought went into deciding an appropriate pastoral or settlement offer for each complainant. Once we have considered the complaint, we make an offer that reflects:

121 013.C354.0001 pp 31-34.

- (a) the severity and duration of abuse;
- (b) whether there is any corroboration of the complaint;
- (c) the impact of abuse on the complainant over time; and
- (d) the ongoing needs of the complainant.

**274.** The Order has not sought to apply the principles of The Treaty of Waitangi and tikanga Māori in its redress processes. This is not to say that these principles are not important. Rather, it reflects the reality that most of the Order's decision-makers during this time, being Australian born and bred, have had little knowledge of the principles of the Treaty and tikanga Māori, and how these could feed into the redress process.

**275.** We do not have any documented policy of how our redress process considers human rights principles or obligations. However, I would note that in both Br Peter's and my time as Provincial, we have tried to ensure that fairness and natural justice rights are preserved. We hear complaints, and investigate the complaint to ensure basic facts are understood such as whether the complainant was in our care at the relevant time. Where respondents have been alive, we have put the complaint to the respondent to allow him an opportunity to respond to the allegations.

*Engagement with other Catholic authorities and entities regarding redress process and outcomes*

**276.** Both in Br Peter's and my time as Provincial, the complaints and redress processes undertaken by the Order have been largely done in isolation from other Catholic Authorities and entities. With a few exceptions, as outlined below, complainants have come directly to the Order with their complaints and the redress process has taken place either directly with myself, Br Peter Burke and Michelle, or through the Province Professional Standards Committee.

**277.** I am aware of direct engagement with other Catholic entities in relation to seven complaints,<sup>122</sup> three of which have been during my tenure as Provincial.<sup>123</sup>

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122 Complaints made by C413 (who made three separate complaints) and C443.  
123 Complaints made by C047, C661 and C359.

*Engagement with, and support provided to, family members and the community*

**278.** Both in Br Peter's and my time as Provincial, the Order has endeavoured to provide support to the families of victims and survivors. Examples of this include:

- (a) the newsletters that Peter provided in 2002–2003 to the victims and their families;<sup>124</sup>
- (b) funding funeral costs for the family of a victim (the victim in question died in 2000);<sup>125</sup> and
- (c) Funding counselling costs of the mother of a victim who had passed away.<sup>126</sup>

**279.** I particularly want to note the extent of engagement with the wider community since 2002. The Order has worked hard to be transparent with the community and allow every opportunity for community engagement. Examples of this include:

- (a) The "toll-free" 0800 number that Br Peter set up;
- (b) the "To Keep You Informed" newsletters that Peter provided in 2002 – 2003 to the victims and their families; and
- (c) The numerous public acknowledgements and apologies that both Peter and myself have made.

**Breakdowns of total amounts paid out**

**280.** The Inquiry has requested breakdowns of total amounts paid out by the Order. This section sets out, as best as possible, this requested information. While best efforts have been made to provide this information, the information we have sourced from our records or from external sources has limitations and therefore may contain inaccuracies. Where I can, I explicitly state this and why this may be.

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124 013.0001.0117.

125 013.C354.0001 pp 34-35.

126 013.C918.0001.

*Ex-gratia payments and treatment costs for victims and survivors who experienced abuse at Marylands School*

- 281.** Our records indicate that the Order has paid for counselling or other therapeutic costs for 23 complainants, totalling NZD\$201,489.38. However, the Order has provided financial support for counselling for many complainants on an ongoing basis, which is not accurately recorded on the basis of a total sum paid out. As a result, the total amount actually paid by the Order for complainants' counselling or therapeutic treatment is likely to be significantly higher than the amount listed above. Invoices for such treatment are included in the documents that the Order has provided to the Commission.
- 282.** Below is a summary of the ex gratia payments that the Order have recorded through Deeds of Settlement and other formal documentation. I understand that the below amounts may not accurately reflect the full amount paid out before I became the Provincial, as the pastoral payments made by Br Peter Burke were not all recorded in a uniform manner.
- 283.** I also note that several ex gratia payments were made and are recorded in Australian dollars. Where this is the case, Te Rōpū Tautoko's solicitors Simpson Grierson has calculated the equivalent in New Zealand dollars at the time that the ex gratia payment was made.<sup>127</sup>

Form of redress	Number of instances	Total (NZD\$)
Ex gratia ≤ \$12,000	6	36,695
Ex gratia \$12,001 - \$20,000	4	62,000
Ex gratia \$20,001 - \$30,000	1	22,500
Ex gratia \$30,001 - \$40,000	3	103,910
Ex gratia \$40,001 - \$50,000	4	183,000
Ex gratia \$50,001 - \$60,000	2	112,100
Ex gratia \$60,001 - \$80,000	28	1,931,534
Ex gratia \$80,001 - \$100,000	21	1,887,485

<sup>127</sup> <https://www.ofx.com/en-nz/forex-news/historical-exchange-rates/aud/nzd/>

Form of redress	Number of instances	Total (NZD\$)
Ex gratia ≥ \$100,001	9	1,335,951
<b>Total</b>		<b>5,675,175</b>

*Payment of legal fees for victims and survivors who experienced abuse at Marylands School*

- 284.** On 11 December 2020, Te Rōpū Tautoko’s solicitors wrote to each law firm and lawyer identified by the Order requesting the total amount, if any, billed to the Order for costs associated with legal advice for, and representation of, any claimant. All figures are recorded in the amount as at the time of payment and no adjustments for inflation have been made.
- 285.** Carroll & O’Dea (our Australian solicitors) indicated that \$81,154.10 was paid to claimants to provide for legal costs. Their records are unable to determine whether these costs were in \$NZD or \$AUD.
- 286.** Saunders Robinson Brown indicated \$71,000.00 was paid to claimants’ solicitors on account of legal costs.
- 287.** The above amounts are based on the information that has been provided to Te Rōpū Tautoko’s solicitors and is current as at 29 January 2021. My understanding is that the actual amount that the Order has paid to towards complainants’ legal costs is likely to be significantly higher than this, and will be set out in more detail in the documentation that the Order has provided to the Inquiry.

**Concluding comments**

- 288.** In closing, on behalf of the Order I would like to offer my sincere and unconditional apologies to the victims and survivors who have suffered abuse while in our care.
- 289.** I repeat both my own and the Order’s view that the criminal abuse of any person, especially vulnerable children and adults, as deplorable and indefensible. It is totally contrary to our mission and values, which seek to uphold and support the needs of those vulnerable individuals we have the privilege to serve.

- 290.** To subvert this mission and these values is not only a betrayal of victims and their significant others, but also an absolute betrayal of the Gospel values that motivate the Church and the Order.
- 291.** When I joined the Order in 1977, I would never have believed that such terrible things could have taken place or that I, on behalf of the Order, would have to acknowledge and painfully accept allegations of historical criminal abuse. The Brothers shamefully acknowledge the great harm that has been perpetrated by some of our members. All the Brothers daily live the shame of the devastating harm that has been wreaked in the lives of vulnerable people in our care.
- 292.** Since the Order became aware of the vast majority of allegations of offending at Marylands School in 2002, we have sought to manage allegations of historical criminal abuse in a best-practice, victim-centred manner so as not to re-traumatise victims. We have arranged for survivors to obtain the best legal advice in the area of institutional abuse. The Order has sought to support, heal and compensate survivors compassionately and justly as allegations have continued to surface over the last 20 years.
- 293.** We thank the Inquiry for undertaking this important work and we appreciate the opportunity to contribute to this Inquiry.

### **Statement of Truth**

This statement is true to the best of my knowledge and belief and was made by me knowing that it may be used as evidence by the Royal Commission of Inquiry into Abuse in Care.

**Signed:**

**GRO-C**

Br Timothy John Graham

**Dated:**

**28 September 2021**