

**Witness Name:** Sr Susan Jayne France

**Statement No.:** WITN0255001

**Dated:** 18 September 2020

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

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**FIRST WITNESS STATEMENT OF SR SUSAN JAYNE FRANCE  
CONGREGATIONAL LEADER, NGĀ WHAEA ATAWHAI O  
AOTEAROA  
SISTERS OF MERCY NEW ZEALAND**

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

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I, Sr Susan Jayne France, will say as follows: -

## **Introduction**

1. My full name is Susan Jayne France. I usually use the shorter name Sue France. I am a vowed Sister, or religious, in the Congregation of Ngā Whaea Atawhai o Aotearoa Sisters of Mercy New Zealand (**Sisters of Mercy**), and am the present Congregational Leader. I use the words “we” and “our” elsewhere in this evidence to include all members of that Congregation and its precursors, as I am giving the evidence primarily as a representative of the Sisters of Mercy in New Zealand.
2. My evidence seeks to respond to the Scoping Document for the faith-based redress investigation. My evidence is largely confined to the processes for redress of the Sisters of Mercy, the largest female congregation in New Zealand. I cannot speak to the experiences of other congregations. I understand evidence of the development of “*Te Houhanga Rongo - A Path to Healing*” (**APTH**) and of the National Office of Professional Standards (**NOPS**) is being provided in the statements of Cardinal John Dew and Philip Hamlin. My evidence therefore does not focus on those developments, except where I had direct involvement, or when describing the response of the Sisters of Mercy Congregations.
3. By way of background, my evidence also seeks to give the Royal Commission (**Commission**) an overview of the nature of the Sisters of Mercy as a religious institution, our relationships with other Catholic institutions, and the changing involvement of the Sisters of Mercy in the care of children and young people in New Zealand. In my view, it is important for the Commission to understand how simultaneously independent and interlinked the different entities within the Catholic Church in New Zealand are.

## Background

4. I have been a teacher and, later, a counsellor and psychotherapist. I studied at Otago University where I obtained a BA. In 1984, I then went to Loreto Hall Catholic Teachers' College in Auckland and gained a Diploma in Teaching in 1984. Shortly after I began university study I entered the then Dunedin Congregation, where I completed novitiate and took my final vows in 1981.
5. As a professed Sister I was encouraged to further my education in ways that extended me and were in keeping with our charism (or "purpose") of Mercy; after a period of about 10 years secondary teaching in Dunedin and Southland, I studied, taught and practiced counselling and psychotherapy over a period of 20 years, attaining in 2006 a PhD in pastoral counselling from Loyola College in Maryland, USA. For the last three years of that period I worked as a psychotherapist at St Luke Institute in Silver Spring, Maryland. I worked with a wide variety of people who presented with issues including trauma, addictions, personality disorders, depression and anxiety.
6. Between 2007 and 2014 I worked in Dunedin as a counsellor and psychotherapist in private practice, a significant part of my work being with survivors of sexual abuse. I was an ACC approved sensitive claims counsellor.
7. In August 2019, I was elected to be the Congregational Leader for the Sisters of Mercy for a 5-year term. I took up my role in December 2019. I was a member of the Congregation's leadership team (of five Sisters) in the previous term 2015-2019 as deputy leader, and in that capacity participated in decisions relating to complaints. I was also aware of the development of the terms of reference of the Royal Commission and have participated in the Congregation's initial responses.
8. I have been a member of the National Professional Standards Committee, now the National Safeguarding and Professional Standards Committee since

2009, representing the Congregational Leaders' Conference. My statement does not describe these in any detail, nor does it address my time on the Dunedin Diocese Sexual Abuse Protocol Committee (of which I was a member and secretary from 1995 to March 2001). I can, however, address any questions on these topics, to the best of my ability and memory, should the Commission wish to ask about these bodies and their work.

### **The Sisters of Mercy**

9. The Sisters of Mercy were founded by Catherine McAuley in Dublin in 1831. Two of that original congregation were the first religious sisters to come to New Zealand, arriving in Auckland in 1850 in response to an invitation from Bishop Pompallier, the Roman Catholic Bishop of Auckland.
10. A brief history of the foundations of the Sisters of Mercy in New Zealand is set out in the Preface to our Constitutions.<sup>1</sup> Many Mercy congregations were founded through the latter part of the 19th century in towns and cities of the South Island. By the 20th century there were four congregations based in Auckland, Wellington, Christchurch, and Dunedin recognised as Congregations of Pontifical Right under revised Constitutions in 1926. The four congregations associated as a federation in 1968 (**Federation**) and later unified their constitutions in 1985. In 2005, the four congregations united.
11. The origins of the Sisters of Mercy were, in Catherine McAuley's vision, for the service of the poor, sick and ignorant: in particular, women and children. There are now nine international groupings of Sisters of Mercy. All Mercy congregations are linked by our common heritage of the mission and vision of Catherine McAuley, which is expressed variously in the sister congregations depending on their local circumstances and the needs of the communities they serve. We have an international association which enables information sharing and collaboration between the independent groups.

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1 Ngā Whaea Atawhai o Aotearoa Sisters of Mercy New Zealand *Constitutions*, 24 September 2015, [007.0002.0001].

12. Since foundation, the Sisters of Mercy have been engaged in the provision of education, health care, and social services. Over time the way in which these services have been delivered has evolved in response to need and resources available. While the mission has remained focussed on education, healthcare and social and community services, the ministries the sisters now undertake have become more diverse. This evolution has been brought about by a number of factors, including change in social needs; a desire to once again be more actively associated with the service of the poor; and response to the needs of the wider community.
  
13. Our own composition, numbers and resources have also changed significantly over time. In the period of the Commission's primary focus, 1950-1999, the four congregations were separately constituted institutions, each with its own leadership. The numbers of Sisters in each congregation at the start of that fifty-year period would have been in the hundreds, while at its end there were far fewer. In 1964, there were 822 Sisters professed in New Zealand: 265 in the Auckland congregation, 217 in Wellington, 202 in Christchurch and 134 in Dunedin, and a further 58 women who were yet to take final vows. While the use of the major city (also the diocesan seat) in each congregation's name suggests concentration in those centres, many Sisters were based in smaller places within the region - the West Coast had convents in Westport, Hokitika and Greymouth, for example, which were part of the Christchurch congregation but largely independent for practical day to day purposes.
  
14. We have provided information to the Commission about institutions that were established by and/or significantly administered by the Sisters of Mercy in New Zealand between 1950 and 1999. It is fair to say we had largely moved away from the care of children in institutions other than boarding schools, by the late 1970s. It was a gradual process over time, partly in response to changes in social policy, the growing realisation that children were better served in family home settings, and a movement away from large institutions. Some of our homes became family-type homes, while buildings designed to accommodate larger numbers were no longer used. Sisters were also moving away from

institutional ministries and more into community ministries – at the same time our lives were becoming less institutional, our communities smaller. We had to find ways of living in community with one another while residing in much smaller dwellings than the archetypal convent.

15. As mentioned, I joined the Dunedin congregation in 1978. In 1982, that congregation comprised 89 professed Sisters and two yet to take final vows, living in a variety of places. Even then, the ages of the members tended to the upper end (50 and over): only 20 of the 89 were under 50, and 24 were over 70. Most of us were engaged in education, health care, pastoral care and social work.
16. The present unified Congregation in Aotearoa numbers 156 women, of whom 32 are aged 90 or over, with a further 54 aged between 80 and 89 years of age. We relatively young women aged under 80 comprise roughly half of the total membership (80 in total). None of us is under 40.
17. How we work in, and with, the communities we serve has of course changed significantly from the days when Sisters in large numbers were available to staff schools, care homes, and hospitals and assist in parish and diocesan ministries. For example, we do not operate any residential institutions for the care of children, and we have not done so for over 30 years. We have not been directly or incidentally involved in residential care in the last 15 years, with one exception where we supported whānau housing which was run by Māori for Māori in West Auckland (which is no longer operating).
18. Largely, we now work in community development organisations in partnership with tangata whenua and with community groups. An example of that would be in Auckland with Te Waipuna Puawai Mercy Oasis, which is a community development organisation with bases in Ellerslie and Glen Innes. Another example would be Te Ukaipo Mercy Initiatives for Rangatahi which is focussed on development of youth, with a large focus on Māori youth.

19. We have two Sisters still engaged directly teaching in schools, or actively involved with students. Our engagement with the five secondary schools we still own is in partnership with non-vowed Catholic community members via a management Trust; each school also has a Board of Proprietors which includes a Sister, but in no case is that Sister the chair.

### *Membership*

20. To become a Sister of Mercy, a woman must request consent from the Congregation Leader and Council to be admitted to the novitiate. This happens after a period of inquiry and learning about the Sisters of Mercy.
21. The novitiate is a period of two years of learning about religious life through prayer, spiritual direction and study. The novice will then seek profession of vows for a limited time with the Congregation with the consent of the Congregation Leader and the Council (the leadership team).
22. The sister makes her vows to God. After temporary profession, the sister may request to make her final vows which are for life, becoming a perpetually professed sister. Until final profession of vows the sister is guided by a formation director. Once she is finally professed she continues to be responsible to the community as a whole and to the leadership of the Congregation in the living out of her vows.
23. Whether sisters live singly, as is common practice today, or in a group, they meet together for prayer and for mutual support as a community. Any major decisions regarding community and ministry of a sister are made in consultation with the leadership of the Congregation.

## Self-government as a religious institution

24. The Sisters of Mercy are a separate religious institution, and although very much part of the wider Catholic church we are not answerable to the Bishop (or priests), where we live. Ngā Whaea Atawhai o Aotearoa Sisters of Mercy New Zealand is a religious congregation or institute of pontifical right within the Roman Catholic Church. The “pontifical right” means that it has been approved by a formal decree of the competent Catholic Church authority, the Congregation for Consecrated Life and societies of Apostolic Life (**CICLSAL**) in Rome.
25. Each religious congregation of pontifical right has a constitution that is approved by Rome. Each religious congregation has the right to live in accord with its particular form of life as determined by its Constitutions. Our Constitutions contain a description of our history and special mission, and set out how a woman becomes a member, our vows, and how we govern ourselves.
26. The consent of a diocesan bishop is required for a religious congregation to live and work within a diocese. The Bishop’s consent includes the right for members of the congregation to exercise the institute’s apostolic works in accord with their particular form of life. The Bishop does not in any way control or govern the congregation.
27. The Sisters of Mercy exercise autonomy in the ownership and management of their works, while respecting the rights of the bishop in his administration of the works of the diocese. We each aim to express in our sphere the mission of the Church, the service of God and God’s people.



28. We have also had responsibility for our own record-keeping as to the engagement of our members in the works of our congregation, and that has had to be provided for as part of our administration. After decades of gradual reshaping of our physical centres of activity, we have not always been able to retain or preserve records that are as complete as we would wish. Many of the schools and homes we served in or administered have long since closed and the women who worked in them have died or are of very advanced age. It was not realised during the height of our activity in education and care of children (roughly 1940s to 1970s) that the records would have the importance they do for those children many years later.

#### *Leadership*

29. The leadership of the Sisters of Mercy – the Congregational Leader and the Council – are elected by members of the Congregation for a five-year term.

#### **History of redress for claims of abuse by Sisters of Mercy**

##### *Early 1990s*

30. I cannot speak to the existence or content of claims made before the 1990s to any Sisters of Mercy Congregation or to individuals about instances of abuse in care. If such claims were made, I suspect they may have been dealt with informally. Our current written records refer to the first complaint being made in 1993.
31. From 1990 onward, we (and here I mean the wider Catholic Church in New Zealand, along with the general public) became more aware of the possible extent of long term harm caused to children by their experiences of abuse, and of the significant numbers of possible survivors. Initially, our focus was on addressing sexual abuse, later broadening to include other forms of abuse, including a recognition that some elements of what was seen as normal or acceptable at the time may have in fact been abusive as experienced by a

vulnerable person. The change in public consciousness and attitudes that started at around this time has given rise to legislative changes, such as the repeal of the protection against criminal prosecution for physical 'disciplining' of children.

32. In the early 1990s, therefore, there was growing awareness in the New Zealand Catholic church that protocols needed to be established to respond to sexual misconduct. At that time, the New Zealand Catholic Bishops Conference distributed a draft protocol "Pastoral Approach to Complaints of Sexual Misconduct by Clergy"<sup>2</sup>. "Sexual misconduct" extended beyond criminal wrongs, and included conduct that was inconsistent with a witness to chastity, or was a breach of professional standards.

#### *Developments in the mid-1990s*

33. At the 1995 leadership meeting of the Christchurch Sisters of Mercy, it was agreed that an Advisory Committee should be formed to look at procedures in cases of alleged sexual abuse.<sup>3</sup> I was not present at this meeting.
34. Mercy Congregations developed their own formal complaint processes. For example, the Wellington congregation drafted "Procedures in Cases of Allegations of Sexual Abuse by a Sister of Mercy",<sup>4</sup> with the fifth draft of these prepared on 5 May 1996. Similar procedures were developed by the other Congregations through the Federation.
35. These procedures laid out a series of principles to be observed by the Congregational Leader, including (among others) taking all allegations seriously, acting with urgency, and providing assistance from qualified therapists and counsellors for both victim and accused. If the Diocesan Bishop agreed, the diocesan advisory committee was to be used to investigate

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2 New Zealand Catholic Bishops Conference, *A Pastoral Approach to Complaints of Sexual Misconduct*, September 1993, [006.0002.0053].

3 Extract from agenda for Christchurch Leadership Team meeting, 1995, [007.0001.0002].

4 Draft *Sisters of Mercy (Wellington) Procedures in cases of allegations of sexual abuse by a Sister of Mercy*, 5 May 1996, [007.0001.0005].

a complaint where available – if not, then an “expert resource team” was to be appointed, with competencies in questioning techniques, knowledge of sexual abuse issues, and law, both general and canon.

36. The draft procedures provided for a Deputy to be appointed from the Congregation, who would assist with a preliminary investigation. The written mandate to the diocesan advisory committee or expert resource team would seek a report back as to:
  - (a) whether there was any substance to the allegations;
  - (b) whether further investigation was required; and
  - (c) what further steps were recommended.
  
37. If the preliminary investigation found the allegation(s) substantiated, the accused would be informed of that. If abuse was admitted, the Congregational Leader was to determine whether the religious should resign from any ministry, undertake any therapy or accept any other conditions. The victim was to be informed, and appropriate aid, which could include financial assistance, offered. The victim was also to be asked whether they wished to inform the Police. Even if the answer was negative at that stage, and the disciplinary process was then undertaken according to Church law, the victim was to be informed that their right to report to the Police at a later stage still existed.
  
38. If the accused denied the substantiated allegations, she could still be invited to resign or be transferred while further investigation occurred; and the same provisions as to victim's rights to inform the Police were to be observed as in the case of an admission.

39. Alongside these draft procedures, as part of the Congregational Leaders Conference of Aotearoa New Zealand (**CLCANZ**), on 8 March 1996 the four Mercy Congregations adopted "Suggested Procedures in Cases of Allegations of Sexual Abuse".<sup>5</sup> The CLCANZ, of which we are a member, is the umbrella body for the leaders of the religious congregations in New Zealand. It promotes, supports and represents religious life within the Catholic Church and coordinates cooperation between congregations and the NZCBC – it does not have a supervisory authority over its members.
40. I attended a meeting of Diocesan Protocol Groups and Representatives of Religious Orders on 19 October 1996. I wrote a report of that meeting. The issues and concerns relevant to redress that were discussed included:<sup>6</sup>
- (a) The conflict between pastoral needs and the requirements of both canon law and civil law. By "civil law", I mean the laws of New Zealand, including criminal law;
  - (b) The different requirements of law, professional ethics and morality;
  - (c) What would be done about a member found to have abused, after treatment has taken place. Concern was expressed that this needed development at the national level for some form of criteria for such a person to return to ministry. Professional supervision was emphasised; and
  - (d) The need for awareness about the effects of sexual abuse on a victim or survivor.

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5 CLCANZ, *Suggested Procedures in Cases of Allegations of Sexual Abuse by a Religious*, 8 March 1996, [007.0001.0003].

6 Sr Sue France, Report from the meeting of diocesan Protocol Groups and representatives of religious Orders, 19 October 1996, [006.0002.0008].

41. Several recommendations were formulated to be made to the Mixed Commission, including the need for a national protocol document (which became later APTH).
42. I have reviewed the minutes of the Federation's AGM in March 1998. At that meeting, it was agreed that a committee be set up to look at our procedures in light of the National Protocol, and the new document from Australia called *Integrity in Ministry* – the latter dealt with all forms of abuse, not just sexual.<sup>7</sup>
43. I do not recall whether any committee was in fact set up after this, and have not found any references to one in our archives. As I note below, however, all four congregations adopted APTH so some review must have taken place. I was already familiar with *Integrity in Ministry* and recommended to the Sisters of Mercy that we consider adopting it for New Zealand. While working on my M.Sc in the United States, I had become interested in what was happening in the area of professional standards for professionals in ministry, including clergy. I became aware of *Integrity in Ministry* from an Australian colleague I had studied with, and I thought it would be helpful for us.

#### *The development of A Path to Healing*

44. On 2 December 1997, the then-Auxiliary Bishop John Dew provided the Congregational Leaders with a final draft of *A Path to Healing* for our responses, with a view to it being ratified and accepted at the Mixed Commission's meeting the following year.<sup>8</sup> I was not part of the working party that prepared APTH, and understand Cardinal John Dew will discuss this in his evidence.
45. In 1998 the Bishops and congregational leaders finalised APTH, which became the national protocol for dealing with complaints of sexual abuse and misconduct by priests and religious.

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<sup>7</sup> Extract from the minutes of the Federation of the Sisters of Mercy AGM, March 1998, [007.0001.0008].

<sup>8</sup> Letter from Auxiliary Bishop John Dew to Congregational Leaders, 2 December 1997, [007.0001.0007].

46. All four Mercy Congregations were signatories to APTH from its inception in 1998. Each referred all sexual abuse complaints to the diocesan protocol committees (and later to the NOPS). This practice continued with the formation of the united Congregation, Ngā Whaea Atawhai o Aotearoa Sisters of Mercy in 2005.

#### *Redress in the late 1990s*

47. In 1997, the Sisters of Mercy developed “Draft Procedures for Dealing with Allegations of Abuse at Orphanages, Institutions, and Ministries Conducted by the Sisters of Mercy”<sup>9</sup> (**Allegations of Abuse Guidelines**). These were to extend to all forms of abuse, not just sexual.
48. In January 1999, the above procedures were amended and designed to sit alongside APTH.<sup>10</sup> The Federation of our four congregations at that time developed a booklet, outlining the procedures of APTH, and a checklist for the congregations to follow. The booklet, accepted at the Federation's 19 March 1999 AGM,<sup>11</sup> made clear that, in responding to complaints:
- (a) all complaints must be taken seriously and given a sympathetic and attentive hearing;
  - (b) responding to the allegations was to be accorded urgency; and
  - (c) the Congregation had an obligation to assist respondent Sisters, including providing counselling and psychological help, accessing legal advice, and maintaining the right to due process of law.

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9 Draft *Procedures for Dealing with Allegations of Abuse at Orphanages, Institutions and Ministries Conducted by the Sisters of Mercy*, 3 March 1997, [007.0001.0006].

10 Draft *Procedures for Dealing with Allegations of Abuse at Orphanages, Institutions and Ministries Conducted by the Sisters of Mercy*, January 1999, [007.0001.0010].

11 Extract from the minutes of the Federation of the Sisters of Mercy AGM, March 1999, [007.0001.0011].

49. Generally, the four congregations had arrangements in place with diocesan Sexual Abuse Protocol Committees to investigate complaints of abuse, or did this on a case by case basis.

#### *The creation of NOPS*

50. The Mixed Commission established the National Committee for Professional Standards and the National Office for Professional Standards (**NOPS**) in 2004.
51. NOPS developed the Catholic Church's safeguarding policy for children and vulnerable adults, and safeguarding resources and training. It was designed to be responsible for monitoring and auditing the compliance of dioceses and religious orders with safeguarding principles and procedures. NOPS is also responsible for responding to complaints of abuse in the Church, and for overseeing the investigation of complaints of sexual abuse against clergy and members of religious orders. Complaints of harm not related to sexual abuse are referred to the specific congregation or diocese involved.
52. The roles and functions of NOPS have evolved over time. I understand Phil Hamlin will discuss this in his evidence. As I noted at the beginning of my evidence, I have been a member of the National Professional Standards Committee (now called the National Safeguarding and Professional Standards Committee) since 2009.

#### **The current process for APTH**

53. I outline below the current process when the Sisters of Mercy receives a complaint of sexual abuse and sexual misconduct against religious. This is with reference to the revised APTH, which was published in February 2020 following consultation with the Catholic dioceses and congregations throughout New Zealand:

- (a) A complaint may be made to the Sisters of Mercy, or to NOPS directly – it is far more common these days for complaints to go directly to NOPS first.
  - (b) An investigation is undertaken by an investigator appointed by NOPS. The investigator's report is sent to the Professional Standards Officer at NOPS. It is then provided to the CAC who come to a conclusion, on the balance of probabilities, as to whether or not the complaint should be upheld. The CAC then must make a recommendation in writing to the Congregational Leader whether the complaint should be upheld on the balance of probabilities.
  - (c) A letter is then received by me (as the congregational leader) from the Complaints Assessment Committee with a recommendation as to whether or not the complaint is upheld. This also includes recommendations regarding the appropriate responses.
  - (d) Any recommendations for further action are considered by the Congregation Leader and the Delegate. Legal advice may also be sought as to any recommended actions, including settlements or financial assistance. The outcome is then communicated to the complainant.
  - (e) The recommendations from NOPS are recommendations only. Ultimately, it is up to the Sisters of Mercy as to what form of redress is offered to the complainant.
54. Whether or not a complaint is upheld, the Sisters of Mercy seek to adopt a pastoral approach towards the complainant. By a pastoral approach, I mean one that is first and foremost a response to the person's spiritual needs, and exploring what can we do to make things better for the complainant.



## The redress process when APTH does not apply

55. The APTH process only applies to complaints of sexual abuse or sexual misconduct. When APTH does not apply to a complaint, the Sisters of Mercy do not have a specific process, but apply a pastoral approach referred to earlier. Complaints are addressed on a case by case basis. They are investigated to the extent we consider appropriate in the circumstances.
56. The complaints we receive vary tremendously. There is no 'one size fits all'. Some of the reasons for this follow:
- (a) Each complainant seeks a different outcome. Sometimes, the opportunity to give expression to the hurt suffered and to receive a respectful hearing is all that is sought. Other complainants may wish to receive a formal apology and support (practical and/or financial) to deal with their trauma or the effects of some of their experiences. Others seek only compensation and minimal contact.
  - (b) Some complaints focus on one incident or a very short period of time in a person's life. Other complaints may involve years of experiences of various levels of intensity.
  - (c) In some cases, the person responsible is either unable to be identified positively as a Sister of Mercy, or turns out on investigation to have been neither a Sister nor under the control of one of our congregations at the time. In these situations, we ask ourselves if we could have prevented the abuse or mitigated its effects. In some cases, there was no reason why a Sister or Congregation would (or could) have known of or suspected the abuse.
57. Above all, when a complaint is received, the first question we ask and explore with the complainant is: what can we do to make things better for the complainant? We have now a general approach that we try to meet the person

where they are and offer ways forward that do not necessarily rely on proof and blame.

### **Decisions made in respect of respondents**

#### *Referrals to Police*

58. If we were to receive a direct complaint of any possible criminal offending by a Sister still living, it would be referred to Police if the complainant agreed.
59. I am not aware of any such complaint or referral having occurred.

#### *Referring respondents to the Holy See/The Vatican*

60. The practice for clergy for reporting serious abuse to the Holy See does not apply to religious; religious women are not ordained.
61. It is possible for the Congregation to apply to the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life in Rome to dismiss a member from the Congregation for grave reasons. This has happened once in the last 50 years, to my knowledge, and did not involve abuse.
62. If a Sister who had been found to be responsible for abuse was still within the Congregation and in active ministry at the time, it would be the responsibility of the Congregational Leader and Council to remove her from any ministry that could involve any opportunity to repeat the abuse; and to provide active guidance to the Sister concerned – such as guidance about the Sister's living situation, her involvement in the wider community and any public activity.
63. At this point, to the best of my knowledge, there has been no complaint of abuse sustained against a Sister of Mercy who is still in active ministry.

## Litigation and settlement of claims

64. We have not used lawyers or sought legal advice in respect of the creation or implementation of our policies, procedures, or processes, as already described.
65. We have taken legal advice when dealing with individual complaints, but not as a matter of course. The decision as to whether and in what respect to obtain legal advice and assistance has been made by the Congregation's leadership.
66. From the records I have access to, I understand that there have been four sets of civil proceedings filed against the Sisters of Mercy involving claims of historic physical, sexual and/or emotional abuse. I have not been personally involved in any of them, as I was not part of the leadership of the relevant congregation at the relevant time, and I was not a witness or potential witness in any of the cases. Three of the proceedings named the Wellington congregation as a defendant, in each case in conjunction with others (the Archdiocese and Catholic Social Services in two cases, and the Crown in the other). All were defended.
67. The only one of the civil cases that proceeded to full trial was the case that was reported as *A v Roman Catholic Archdiocese of Wellington*.<sup>12</sup> That case involved the experiences of a person who had been at St Joseph's Orphanage in Upper Hutt as a child in the 1970s and also was a pupil at the local parish school, at that time staffed largely by Sisters, later going to St Mary's College in Wellington where she was a boarder for a time. She was also placed with Catholic families during the period, often through Catholic Social Services. Her claims encompassed a wide range of harms and a significant period of time. Some claims were around institutional practice (such as failure to nurture and emotional abuse) and others were against individual Sisters, caregivers and people who were able to have contact with her as a result of

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12 *A v The Roman Catholic Archdiocese of Wellington* [2008] NZCA 49, [NOP.R275.0029].

placements. It was a huge and complex case. The claimant was legally aided and the extent of claims including the amount of damages sought was significant. Ultimately all of the claims were dismissed after a hearing of 22 days in the High Court. It took the Judge nearly 11 months to complete her judgment, which was then appealed, but upheld by the Court of Appeal.

68. Although I was in the United States pursuing my studies at the time, I remember a great deal of concern amongst not only the Wellington but the other congregations. In particular, I remember that there was a real desire among the sisters that the claims could have been addressed otherwise than by a court case – a wish that it could have been some other form of mediation or a meeting of persons, that this was not going to be helpful for people, and most of all that it would likely hurt the person who was making the claims rather than lead to healing.
69. Unfortunately, I understand that was the outcome and that person was left without redress for a significant period. From her own account she was additionally traumatised by the process. Recently she has returned to us through a different legal representative. An ex gratia payment has been made to her. We made it in recognition that although she did not succeed in her case against us, our care of her was not as we would have wished.
70. The case also caused significant and lasting distress to some Sisters involved in the case, whose conduct of many years before was subject to close and hostile scrutiny. Others who knew the claimant as a child were upset to learn details of her sad history, and that of some of her witnesses, that were not known to them at the time. The overwhelming feeling about the case amongst us was sadness and regret that it had not been possible to address the hurtful experiences of the past with the claimant in a less adversarial way.
71. We do not have any policy about future civil claims. If we are again named as a defendant in proceedings, we will need to take legal advice. The experience I have outlined, as well as our current policies regarding complaints generally,

will be significant factors in our decision-making. I am sure that we would look to try to explore all other options to address and, if possible, resolve the complaint.

*Criteria and quantum for monetary and non-monetary redress*

72. We have not had a standardised approach to the criteria for monetary and non-monetary redress.
73. In preparation for the Commission, we have reviewed the complaints for which we have records. No formal criteria have been applied, and the processes for resolution and outcomes have varied. Some payments to complainants have been in response to a claim and documented in a formal record of settlement, and others have been agreed to informally.
74. Of the records we hold, they show that complaints are sometimes made to us about the actions of men – either male religious or priests we have had some involvement with, or lay employees. In these cases, we consider what we could have known or did know, and how we can help the complainant.
75. In addition, we now always offer to meet with complainants and their support persons at our expense, and in a location that best suits the complainant, including in Australia. The offer to meet is made during the process of considering the complaint. It is not necessarily seen as “redress” because in some cases it is the first opportunity for the complainant to articulate their experience to us directly, and they may only after that decide what redress they are seeking.

76. As I have outlined above, each complainant seeks a different outcome. Redress takes a wide range of forms. The processes are often different between complainants, depending on what type of engagement takes place. Sometimes an apology is all that is sought, for example. Even if a complaint is “not upheld”, that is not the end of the redress process as far as we are concerned. An ongoing pastoral relationship is still sought and offered to a complainant going forward, if that is something that would assist them. Our overriding goal is to provide assistance and care, and we look to do that where it is needed.

*Total expenditure on legal costs.*

77. I confirm we have sought legal advice on specific complaints from time to time. We do not keep a record of legal fees incurred specifically in complaint-related matters, so we cannot provide this information to the Commission.

**Access to information**

78. Our Congregation Archive was founded on 12 December 2005, following the unification of the four congregations. The Archives Policy was last reviewed on December 2018.<sup>13</sup>
79. Unfortunately, as mentioned earlier, the information we hold about people who were in our care in the 1950s to 1980s is unlikely to be comprehensive. We do usually have records of entry to, presence in, and departure from care where the home or placement was administered by one of the congregations or a constituent entity. These records provide names and date of birth. Where we looked after children who could not be looked after by their parents, there are some records of financial contributions to their upkeep or of the transfer of state child support. We may have school rolls and records of academic achievement for individual children.

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13 Ngā Whaea Atawhai o Aotearoa Sisters of Mercy New Zealand *Archives Policy*, December 2018, [007.0001.0015].

80. We rarely hold health information, and there was little in the way of detailed notes of children's progress or any special needs that they might have had.
81. We usually hold a record showing in what work and location each Sister was placed from year to year.
82. We have developed a template for those wishing to gain access to materials held in our Archives, and the Privacy Act is referenced in Archives Policy.<sup>14</sup> We require photo identification as proof of identity to ensure the information is sent to the right person.<sup>15</sup>

### **Conclusion**

83. We acknowledge the harm that victims and survivors have suffered. Our hope is that redress going forward can be a positive experience which both enables healing and promotes safeguarding within the Catholic Church.

### **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**

Sr S J France

**Dated: 18 September 2020**

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14 Ngā Whaea Atawhai o Aotearoa Sisters of Mercy New Zealand *Application for Access to the Archives*, [007.0001.0013].  
15 Ngā Whaea Atawhai o Aotearoa Sisters of Mercy New Zealand *Request to Release Information form*, [007.0001.0012].

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