

Witness Name: Father Timothy Duckworth

Statement No.: WITN0253001

Dated: 23 September 2020

ROYAL COMMISSION OF INQUIRY INTO ABUSE IN CARE

FIRST WITNESS STATEMENT OF FR TIMOTHY DUCKWORTH

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

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I, Timothy Duckworth, will say as follows:-

Introduction

1. My full name is Timothy Duckworth. I am the Provincial of the New Zealand province of the Society of Mary (**Society**).
2. We are made up of both priests and brothers, and are often known as the Marist Fathers and Brothers. While our congregations have similar names, we are independent of the Marist Brothers and Marist Sisters.
3. I have been in this role since 1 February 2020. My tenure is for three years and may be renewed for a maximum of another three years by a majority vote of the members of the Society in New Zealand.
4. My evidence outlines the Society's approach to redress, and how it has changed over time. In that sense, my evidence is from the male religious perspective of how redress is approached. It is specific, however, to the Society – I cannot speak to how other male religious orders approach redress.

My background

5. I commenced ten years of training for priesthood in the Society in 1973 before ordination in 1982. I have been a priest for 38 years and have served the Society and the Church in a wide variety of ministries and apostolates. I have a long history in secondary education, having taught at St Patrick's Silverstream, St John's Hastings and St Bede's Christchurch in my earlier years of priesthood. At St Bede's College I was also the Dean of Boarders.
6. Since then, I have worked with religious orders as facilitator at chapters and assemblies, with dioceses, for not-for-profit organisations as well as in commercial enterprises. I have also served on the St Bede's, St Patrick's Wellington, Hato Paora College Feilding and St John's College Hastings boards, and on the Good Shepherd College Senate in Auckland.

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7. I have been part of the Society's New Zealand Provincial Council since 1997 and was Vicar Provincial from 2002-2004, a role I returned to in 2016. I was also the Provincial Bursar, and in 2018 I was appointed by the Superior General of the Society to its international General Finance Committee.
8. Crisis management and experience in professional standards have also been part of my ministry. After a sabbatical year in 2005, I resumed ministry in facilitation and supervision and worked on special projects for the New Zealand Province in 2006. These projects included the reconfiguration working party, Youth Ministry and the reorganising of the Logos Project for youth development in Auckland.
9. I have a number of educational qualifications: a Baccalaureate in Theology, LTCL in speech, a BA in Psychology and Zoology, a Diploma in Teaching and a Masters in Organisation Development from Loyola in Chicago.

An overview of the Society

Background

10. The Society is a congregation of priests and brothers established in France in 1816. It received approval from Rome in 1836.
11. Bishop Jean-Baptiste Pompallier arrived in New Zealand in 1838 with a small group of Marist priests and brothers. They were the first of many Marist missionaries who came to New Zealand.
12. Marists are not restricted to one particular work or ministry. In New Zealand, Marists work in parishes; among Māori communities; in schools as administrators, teachers, and chaplains; with young people in a variety of settings, in communication, music ministry, spiritual direction, retreats, and Catholic tertiary education; as well as with the disadvantaged in the community.

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13. The international leadership of the Marists is based in Rome and consists of the superior general and a group of general assistants drawn from the congregation's provinces and districts (units) around the world. In New Zealand, the Society is led by a Provincial and a Provincial Council based in Wellington. They are elected by the members of the Society every three years.
14. In New Zealand, the Society's involvement has been predominantly in education. The Society founded secondary colleges in New Zealand. These include, in order of establishment, St Patrick's College, Wellington (1885); St Bede's College, Christchurch (1911); and St Patrick's College, Silverstream (1931).
15. In cooperation with the diocese in which they were founded, other colleges were established, being St Patrick's High School (later Roncalli College), Timaru (1938); St Augustine's College (later Cullinane College), Whanganui (1941); St John's College, Hastings (1944); Hato Paora College, Cheltenham (1947); and Pompallier College, Whangarei (1971). One of the primary reasons for the Society coming to New Zealand was to minister to Māori. Members of the Society who had worked in this field were keen to establish a College specifically for Maori boys, which resulted in Hato Paora College being opened.
16. After the Private Schools Conditional Integration Act 1975 was passed, all of these colleges were integrated into the State system between 1979 and 1984. St Patrick's College, Wellington, St Bede's College, Christchurch, and St Patrick's College, Silverstream remain under the proprietorship of the Society.
17. From integration, colleges that had boarding establishments had boards of proprietors that ran the boarding side of the college. Presently, no members of the Society are involved in hostels – only two are involved as teachers in schools.

18. Today, there are approximately 100 priests and brothers within the New Zealand Province of the Society. The Society of Mary also has groups of approximately 1,500 lay people associated with it who live and do works in the spirit of the Society. There are many hundreds of members of groups such as The Association of Mary and Marian Mothers. People involved in these organisations interact with priests and brothers of the Society who often act as chaplains to these groups.

Membership

19. Training as a Marist Priest or Brother within the Society takes place at the Marist Seminary in Auckland, at the Society's English-speaking International Novitiate, at the Catholic Theological College in Auckland and then, later on, at the Marist International Theologate in Rome.
20. The training, or "formation" process begins by joining the Marist Seminary community, generally for a period of one to two years. During this time Marist seminarians:
- (a) live as part of the Marist Seminary Community;
 - (b) are introduced to the Marist life;
 - (c) work out whether they would like to go to Novitiate and become a Marist; and
 - (d) study at Catholic Theology College towards a Bachelor of Theology degree.
21. When a Marist seminarian decides he wants to further his life as a Marist, he applies to go to the Marist International Novitiate. He makes this application to me as Provincial, who on the advice of the formation staff at the Seminary and having consulted my provincial councillors, forwards the application to the Superior General of the Society in Rome.

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22. Successful applicants will then be invited to join with other English-speaking novices and go to the International Novitiate for a year. At the end of the Novitiate the Marist seminarian is professed as a Marist and is entitled to place SM (for Society of Mary) after his name. He then returns to New Zealand to study once again at Good Shepherd College and complete his Bachelor of Theology degree.
23. After a further one year's study, the Marist seminarian travels to Rome to study for five years with other Marist seminarians from around the world.
24. During the summer holidays the seminarian will go on pastoral placement, generally to one of the various Marist missions around the world.
25. After taking his perpetual vows in Rome the seminarian returns to New Zealand to (where applicable) be ordained as a priest. After ordination, a newly ordained priest can expect to be placed in a supportive Marist community either in New Zealand or in an international setting.

How the Society interacts with the dioceses and the wider Catholic Church

26. Religious congregations are not part of the diocesan hierarchical structure of the Church, although they work closely with the hierarchy of the Church. A religious order or congregation comes to a particular diocese at the invitation of the local bishop and serves there under mutual agreement.
27. The accountability lines of members of religious congregations of pontifical right (i.e. not part of a diocese) are complex. This is particularly the case if, as with the Society, the congregation includes both priests and brothers. Where a member of the Society works in a diocesan ministry, such as a parish, the member is responsible for his ministry to the diocese. For his personal wellbeing and behaviour, the responsibility is with the Society.

28. As Provincial, I am responsible for the Society within New Zealand. We liaise in a collaborative way with other districts or provinces of the Society in other countries and with the General Administration in Rome. There are seven provinces and four districts worldwide. The provinces and districts are spiritually connected and share the same founding “constitutional” documents, but are otherwise independent from each other.
29. Membership of the Society is under the aegis of the Superior General in Rome. Priesthood comes with ordination which is conferred by the local bishop. A priest in whatever ministry he is in serves under the bishop and his fidelity to the teachings of the Catholic Church is assured through the bishop. Ultimately, a bishop could refuse a member of a religious congregation the right to minister in his diocese.
30. The right of a priest to minister in a diocese is given by the local bishop (the ordinary). This right is called “having faculties” in the diocese – a type of “licence to operate” – and the right to practice as a priest is determined by having faculties to minister. Faculties can be removed from a priest by the local bishop or by the provincial of the Society.
31. In each ministry, principles of subsidiarity apply. What can be done at the local level is usually dealt with there. A local ministry is not under the day-to-day direction of a higher authority (the Provincial, Provincial Council or Bishop). A non-religious way to understand this is to see each ministry as a franchise, rather than a branch. Members of the Society are accountable to their local superior and ultimately to the Provincial.
32. A member of the Society can transfer from the New Zealand Province to another unit within the Society. This frequently happens when a member is appointed to another unit as a missionary. A member of the New Zealand Society may also transfer back to his original unit or to a third unit on completion of his assignment. The General Administration may also appoint a member of a unit to an international position, or a member of the unit may be elected to an international position.

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33. In practice in New Zealand the bishops and religious congregations work closely together in a number of areas, including education, pastoral care and parishes. In 1982, the New Zealand Catholic Bishops Conference (**NZCBC**) and the Congregational Leaders Conference of Aotearoa New Zealand (**CLCANZ**) formed the "Mixed Commission" as a vehicle for their partnership. Before this, each congregation would liaise with local bishops separately. These changes came about after the Second Vatican Council had taken place, which had better-defined the place and role of religious congregations within the church. The Mixed Commission became a forum for dioceses and congregations to share their work with one another and to plan and determine policy and procedures.

The early history of redress for the Society

The beginnings

34. Claims of sexual abuse and sexual misconduct are today handled by the Society's Sexual Abuse Protocol Committee (**SAPC**). Its genesis can be traced back to the mid-1990s. The late Fr Stuart O'Connell was Provincial at this time, with the late Fr Patrick Beasley as his vicar.
35. While I was not involved at this time, it appears that when an allegation was made to the Society in the 1980s and early 1990s, it usually responded in an ad hoc manner. The Society does not hold detailed complaint records from this time. Some complaints may have been dealt with at a local level. If a person wrote a letter to the Provincial, then the Provincial responded. If the complaint was made to the Society through a lawyer, then it is likely that the Society sought the services of a lawyer to respond. If the police approached the Society, then the Society cooperated with them.

36. We do hold some records for the respondents in some early complaints (the distinction between complaint and respondent files is described later in my statement). Records indicate that psychological assessment and treatment was sought for men accused of wrong-doing. Sometimes this involved treatment in Australia. In my view, the nature of recidivism for sexual offending was not well understood in the late 1980s and early 1990s, by us or those providing the treatment – it was thought that the drivers behind the offending could be “cured”.
37. In 1992, the NZCBC appointed a committee led by Cardinal Williams to examine the sexual abuse protocol that had been recently issued by the Australian Bishops' Conference.¹
38. Minutes from our Provincial Council meetings record the discussion that was taking place in the Society at the time:²
- (a) In October 1992, the late Fr Craig Larkin attended an Auckland seminar on sexual violence. Our Provincial Council noted that there should be a protocol in place for such purposes, and noted that the New Zealand Bishops and Congregational Leaders were drawing up protocols.
 - (b) In September 1993, our Provincial Council discussed the draft Society of Mary protocol.
 - (c) In March 1994, the minutes show that there was feedback arising from the Mixed Commission's meeting held earlier that year. It was noted that each diocese and congregation should have their own protocols and guidelines at hand for dealing with allegations of criminal behaviour.

1 Excerpt from Mixed Commission meeting minutes, 28 Feb 1992, [017.0001.0002].

2 Extracts from Provincial Council meeting minutes, 1992-1994, [017.0001.0001].

- (d) In May 1995, the Provincial Council noted that CLCANZ were developing a protocol to be observed in cases of allegations of sexual abuse by a religious.³ The Council agreed that this, when approved, should be the official set of guidelines for the Society, with Diocesan Protocol Committees available to be used by the Society.
39. In April 1996, the Congregational Leaders had approved the final version of the "Protocol for Dealing with Allegations of Sexual Abuse by Religious".⁴ At this time, the Society agreed to be guided by the Protocol.
40. In July 1996, the Council agreed that the Provincial and Vicar Provincial should make a confidential oral report to the Provincial Chapter regarding issues on sexual abuse.
41. Later in 1996, Fr Pat Bearsley from the Society attended the "Consultation of Episcopal Committees on Child Sexual Abuse" in Illinois. This was an international meeting of English-speaking Bishops' conferences. Fr Bearsley's attendance was as a representative of the NZCBC and he reported back to the NZCBC on the issues raised in respect of child sexual abuse by clergy.⁵

The development of A Path to Healing and the Society's role

42. The Society was deeply involved in the creation of the national protocol document, *Te Houhanga Rongo – A Path to Healing (APTH)*.⁶ Fr Bearsley was the initial author of it, having drawn on the experience of the Consultation meeting in Illinois and basing it in part on the Australian "Toward Healing" document.

³ Extracts from Provincial Council meeting minutes, 1995-1996, [017.0001.0004].

⁴ CLCANZ *Suggested Procedures in Cases of Allegations of Sexual Abuse by a Religious*, 8 March 1996, [NZC.0001.0357].

⁵ Fr Patrick Bearsley SM, Report on the Consultation of Episcopal Committees on Child Sexual Abuse, 9 June 1996, [NZC.0001.0016].

⁶ National Office for Professional Standards, *Te Houhanga Rongo – A Path to Healing*, as at February 2020, [NOP.0001.0033].

43. On 2 December 1997, then-Auxiliary Bishop John Dew sent the draft *APTH* to the Society (and other congregations) for comments and feedback.⁷
44. *APTH* was accepted and finalised at the Mixed Commission's Conference between 1-3 March 1998.⁸
45. The Society signed up to *APTH* from the beginning. The 2000 Provincial's Report to the Chapter⁹ records that the provincial leadership had set in place policies and procedures for responding to accusations of abuse by Marists; further, it records that *APTH* is in place. By 2001, the provincial leadership was to have established a team to assist the Society to respond to accusations of sexual misconduct by its members.¹⁰ This became the Sexual Abuse Response Team, described below.

Suggestions to improve APTH

46. The Society provided its feedback on *APTH* in December 2000 by way of a submission by Fr Denis O'Hagan.¹¹ While I was not involved in that feedback, it was noted that we (i.e. the Society) had a concern that there was a lack of consistency in approach throughout New Zealand – this was the product of numerous Protocol Committees approaching *APTH* in their own way.
47. The Society accepted the second amended *APTH* protocol in March 2001.¹²

7 Letter from Auxiliary Bishop John Dew to Congregational Leaders, 2 December 1997, [017.0001.0009].

8 Mixed Commission AGM meeting minutes, 3 March 1998, [017.0001.0010].

9 Extract from Provincial Chapter Provincial's Report, 2000, [017.0001.0014].

10 Extract from Provincial Chapter Provincial's Report, 2000, [017.0001.0014].

11 Society of Mary submissions on *Te Houhanga Rongo – A Path to Healing*, December 2020, [017.0001.0013].

12 Extracts from *Te Houhanga Rongo – A Path to Healing*, March 2001, [017.0001.0015].

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The development of the Society's Sexual Abuse Protocol Committee

The developments in the early 2000s

48. The then-Provincial Fr Larkin appointed a social worker in 2001 to assist Fr O'Hagan with responding to complaints. At this time, Fr O'Hagan was the Councillor responsible for overseeing allegations of sexual abuse on behalf of the Provincial (later known as the Delegate).
49. In 2002, media worldwide began to focus on sexual abuse, particularly within the Catholic Church. This focus in part, in my view, resulted in a large number of people coming forward to make complaints to the Society in New Zealand.
50. In response, the Society established a Sexual Abuse help line. The help line received a large number of complaints: not only regarding the Society but also other Catholic dioceses and congregations, other denominations, the military, the police and cases that involved relatives and acquaintances of the complainants.
51. Complaints were referred to the appropriate authority, with the permission of the complainant. Advice and support were suggested to complainants. We sought to respond to complaints that related to the Society in a timely manner.
52. In April 2002, I was appointed to lead the Sexual Abuse Response Team. As part of this, I became the "Delegate" for the Society. I note that:
 - (a) The Delegate was responsible for managing the redress process from initial contact to final resolution, guided by *APTH* and the Society's policies and protocols.

- (b) Social workers and advisors were also appointed on the team to provide support to the complainant.
 - (c) Lawyers and psychologists were consulted as and where we considered it to be appropriate.
53. At this stage, the team consisted of Kitty McKinley (a senior social work practitioner) another social worker, an administrator and me. A counsellor and an ex-Police officer (and later a lawyer) were appointed to the Committee in 2003.
54. The Provincial retained the final decision-making responsibility for the Society.
55. The Society developed the document "Sexual Abuse and Boundary Violations: Principles and Procedures for Responding to Complaints" (**Sexual Abuse and Boundary Violations Policy**).¹³
56. The first version was approved in June 2002 (and updated in 2006), at which time the Society was a signatory to *APTH*. The 2006 version of the policy stated that:

"The Society of Mary is committed to make a compassionate, just and professional response to individuals who make a complaint of sexual abuse or misconduct against a member of our Order.

The following procedures and policies form a Pastoral Pathway that will enable some healing for the complainant, will hold the offender accountable for his actions and will assist our Order to face up to changes it must undertake to ensure the wellbeing of its members and those to whom we minister."

13 Society of Mary Sexual Abuse and Boundary Violations Principles and Procedures for Responding to Complaints, 2006, [017.0001.0021].

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57. It is important to note that “boundary violations” and “sexual misconduct” extend beyond sexual abuse and other criminal wrongs. When I use the term “boundary violations”, I am referring to any conduct of a sexual nature that is inconsistent with a witness to (or vow of) chastity or a breach of religious professional standards.
58. This Sexual Abuse and Boundary Violations Policy was our way of implementing *APTH*. It contained notes on more practical issues to guide the team within the congregation responding to matters. Amongst other things, it advised the team to “strongly recommend” to complainants, where a case was criminal, to go to the police. Guidelines were established in respect of meeting and supporting complainants as part of this process. We sought to focus on the complainant – the Policy recorded that asking a question such as “What will be helpful to you as we seek to resolve this?” was appropriate.
59. Phone and/or written complaints were received by the team, assessed for urgency and an intervention plan was made and carried out.
60. An intervention plan was made for the complainants to assist them with moving forward with their lives. As part of that, a social worker and priest visited the complainant. In some circumstances, the complainant did not want to meet with a member of the Society and declined to do so. The interview was guided by the complainant. Considerations as to how the complaint was managed included cultural needs, appropriate meeting venue and/or family and professional support being available for the complainant. Every effort was made to cause the least stress and inconvenience to the complainant and to their support networks.
61. Counselling was suggested/offered at this stage to assist with the healing and rebuilding of the complainant and their family’s lives. Where possible, an assessment was done to check that the complainant was safe and information on how to access counselling support was offered and made available if requested.

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62. The Sexual Abuse and Boundary Violations Policy provided for ways in which a complainant could indicate how they intended to move forward in their life. This could be by further meetings or by continued pastoral care. Options were offered to the complainant to assist them with healing and the reintegration of their lives. For example, further counselling may have been offered or an ex gratia payment.
63. The Sexual Abuse and Boundary Violations Policy provided for interviews of the respondent too. The allegations were put to them, to invite a response. If the allegation was admitted, the respondent was stood down from ministry. Where the respondent was deceased, the team assessed the complaint and made a judgement "on the balance of probabilities". If a complaint was denied by the respondent but found to be upheld, the result would have been a stand-down from ministry.
64. On 10 September 2002, I attended a meeting to discuss the financial implications of sexual abuse claims. It was a meeting of diocesan representatives and representatives of male religious congregations.¹⁴ A few points arose from that discussion:
- (a) First, the fundamental approach continued to be based on agreed protocols, pastoral concern for victims and sensitive dialogue with those victims. We found that above all, victims wanted to be heard and believed, and assured that offenders were not in a position to reoffend. Some victims, but certainly not all, sought financial payments.
 - (b) Financial commitments were limited, (given, for example, stewardship had to be exercised over resources that were given to the Society for charitable and pastoral purposes).
 - (c) In some circumstances, complainants would be advised that support for them could be accessed through ACC.

14 Consensus from a Meeting to Discuss the Financial Implication of Sexual Abuse Claims, 10 September 2002, [001.0002.0143].

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(d) The Society consulted lawyers to arrive at the guidelines for ex gratia payments and the quantum of such. These were not to be made public. This was in line with what we were advised was common practice with an ex gratia payment.

65. At this stage, the Society had adopted the sum of \$30,000 as a maximum ex gratia payment after consultation with legal advisers and other agencies.¹⁵ This amount could, however, be increased depending on the circumstances and nature of offending.

Moving forward

66. In 2004, the Provincial Council discussed historical cases of sexual abuse and the way in which they have been handled in the past. Reparation was discussed. There were various views expressed on the matter, but most supported some sort of reparation in both financial and prayerful modes.¹⁶

67. Fr O'Hagan and I had meetings with members of the Society in Auckland, Wellington and Christchurch. The purpose of these meetings was to inform the members of the allegations that had been made to the Society and our pastoral response to the complainants. They were informed how they should compassionately and professionally deal with any complainants that might approach them. A secondary purpose of the meetings was to support the members who were shocked by the actions of some members of the Society. We asked any members of the Society that had offended to fully cooperate with investigations that we or the police might make.

68. On 15 December 2006, the Society agreed to be a signatory to the updated *APTH*.¹⁷ The Society also accepted the revised *APTH* in 2010.¹⁸

15 Memorandum from Bishop Patrick Dunn to Cardinal and Bishops, 20 June 2003, [001.0002.0146].

16 Extracts from Provincial Council meeting minutes, 2002-2004, [017.0001.0016]; Extracts from Provincial Council meeting minutes, 2002-2004, [017.0001.0018]; Extract from Provincial Chapter Provincial's Report, 2004, [017.0001.0019].

17 Letter from Fr Denis O'Hagan to John Jamieson, 15 December 2006, [017.0001.0020].

18 List of New Zealand Congregations accepting A Path to Healing, 15 April 2010, [017.0001.0022].

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The Society's Sexual Abuse Protocol Committee

69. As I noted above, the Society's Sexual Abuse Response Team became the Sexual Abuse Protocol Committee. The SAPC is a group of experienced professional people who work sensitively with anyone who makes a complaint of sexual abuse or boundary violation against a member of the Society. It has been operational since 2004.
70. Members are drawn from a range of professions including counselling, therapy, social work, law, and includes former police officers. The membership comprises both Catholics and people from other faith traditions and of no particular faith. In keeping with the level of professionalism expected from committee members, each has a contract and an appointment duration of three years.
71. A member, at most two, of the Society is also on the Committee. Their role is to share their knowledge of the Society's work, communities and practices.
72. I served on this Committee formally for five years, from 2002 to 2005 and from 2008 to 2010 and have given advice to members of the committee since that time until I took up my current role.

Current approach to redress under *A Path to Healing*

73. In respect of the Society's current process to redress involving sexual abuse and sexual misconduct against clergy or religious, the Society has adopted the 2020 revision of *APTH*. I understand that *APTH* is described more fully in Mr Hamlin's statement.

74. The Society's approach to implementing *APTH* is unique among the New Zealand congregations and dioceses. Complaints are not typically referred to NOPS, or to the centralised Complaints Assessment Committee. If a complaint relates to a member of the Society, then NOPS will refer the complaint to the Society's delegate who refers the complaint to the SAPC. If the complainant is unhappy with the SAPC process, then they can seek a review through NOPS. *APTH* expressly acknowledges and permits the unique approach that the Society has adopted.¹⁹
75. In taking this path, the Society has wanted to be in more direct contact with complainants, so that we can respond to them quickly and directly. Having a professional and independent committee has been important to us so that we are not making judgements without good counsel. As far as I am aware, the Provincials have always acted as recommended by the SAPC.
76. In respect of the Society's approach to *APTH*, a general outline for a complaint of sexual abuse or sexual misconduct is as follows:
- (a) Complaints are received by the SAPC. Initial contact with the complainant is made by the Delegate or appointee, over the phone where possible. An outline of the process is communicated to the complainant, with an invitation to engage in *APTH*.
 - (b) Two members of the SAPC (one being a Society member) will be assigned to meet with the complainant to receive their complaint with respect and sensitivity, to offer practical assistance and to explain the process which is to be followed. An offer of pastoral care such as counselling may be made.
 - (c) Sometimes a complainant may not want to involve the police. If, however, the offending is of a criminal nature, we encourage people to go to the police and will give them every assistance to do so.

¹⁹ National Office for Professional Standards, *Te Houhanga Rongo – A Path to Healing*, as at February 2020, [NOP.0001.0033], at [4.8].

- (d) The Delegate will inform the Provincial if, on the face of it, the complaint requires investigation under *APTH*. The respondent is informed of the complaint.
- (e) The Provincial then stands down the Marist from ministry while the investigation is in process. The SAPC is notified by the Delegate and investigators are appointed.
- (f) The complainant and the respondent are both interviewed. Others may also be interviewed.
- (g) The investigators provide a report to the SAPC, then the SAPC makes a decision as to whether the complaint is, on balance, substantiated. Recommendations as to what steps are required to redress the offending are made to the Provincial. The Provincial acts on the recommendations and makes a decision on what action takes place in respect of both the complainant and respondent, and anything necessary to safeguard against further offending. The Provincial discusses what steps the Delegate will take to complete the process with the complainant and progress to resolution.
- (h) When an apology is recommended, it is the Provincial who provides it, often in person and also in writing.
- (i) When the police become involved in a complaint, the SAPC will await the outcome of the police investigation. In cases where the police do not prosecute or when people chose not to involve the police, the investigation and conclusion is reached by the SAPC, following the process outlined above.

The redress approach when *APTH* does not apply

77. In some circumstances where *APTH* does not apply because the complaint does not relate to sexual abuse or sexual misconduct by a member of the Society, the Society has assisted the complainant in response to their particular situation. This has involved counselling, pastoral care and in some cases financial assistance.
78. Complaints are hugely varied. Complaints of sexual abuse and sexual misconduct can range from what we would call "boundary violations" (i.e. sexual misconduct that is inconsistent with the religious obligations of the Marists) through to sexual violation. The majority of complaints are of sexual abuse or sexual misconduct, but there have also been complaints of non-sexual physical and psychological abuse.
79. Complainants seek different outcomes from our redress process. For some complainants, being heard, believed and their hurt acknowledged is all that they wish for. Some just want to tell the Society what happened to them as part of a healing process. Some seek financial redress. Many complainants also ask what measures have since been put in place to prevent further abuse.
80. Above all, I have found that most complainants want an acknowledgement that what was done to them was wrong.

Decisions in respect of respondents

81. For decisions made in respect of respondents, the Society follows the process set out in *APTH*, as outlined in Mr Hamlin's statement.

82. As soon as a complaint of sexual abuse or misconduct is made about a male religious within the Society, that person is immediately stood down from ministry. By "ministry", I mean any kind of public-facing involvement with people, including any type of capacity where people would refer to that person as a priest. We take a broad definition of ministry – being "out of ministry" means that the person cannot even concelebrate a public Mass with other members of the Society.
83. As Provincial, I have the authority to remove a priest's faculties when sexual abuse or sexual misconduct has been established or admitted. This is essentially being removed from ministry. They would not be permitted to concelebrate a fellow Society member's funeral, for example.
84. The steps described above are separate from laicisation, which I understand is described in Cardinal Dew's statement. I also note that the withdrawal from ministry does not necessarily mean a respondent cannot retain a connection with the Society. It may be decided that it is preferable to offer housing to such a person within a Society community. In my view, keeping a respondent within the congregation allows a greater degree of control over them, where they can be monitored. If all ties were severed, no opportunity to control their behaviour would exist.
85. We do inform complainants about what happens to respondents after a complaint is upheld. A significant number of alleged respondents were deceased at the time a complaint was made.

Criteria and quantum for monetary and non-monetary redress

86. Financial redress is a delicate matter and our approach is to offer an ex gratia payment. Account is taken of the severity of the harm done, the severity of the crime committed, the number of occasions the offending happened, the situation of the complainant at the time the abuse occurred and now, the need for ongoing counselling or other professional help and any other factors that are pertinent. Such factors have at times resulted in the ex gratia amount exceeding the guideline that we had previously recommended be the maximum.
87. As with all our ministry, the criteria the Society uses are based on compassion and supporting and reaching out to those who are in need. For many of our complainants, sufficient redress could not be found through police investigation or legal pathways. This may be because evidence of offending was not easy to find or prove, because of the time elapsed since the offending, because of the death of the respondent, or the desire of the complainant not to follow a more public pathway to resolution.
88. The Society chose a 'pastoral process' over a more rigorous 'proof-based process' on which to consider complaints. Individual complaints were assessed on the 'balance of probabilities' that events were 'more probable or likely' to have occurred than not. In some instances, complaints did not meet the threshold to establish a probability the events occurred, but we accepted the complaints anyway: a commitment to a pastoral approach afforded the complainant a holistic pathway to achieve an outcome that met their needs.
89. From time to time, there have been discussions within the Society (and with the wider Church) regarding the quantum of payments and non-monetary support resulting from complaints processes.

90. After considering legal advice, it was decided that ex gratia payments of up to \$30,000 could be offered. No more than \$10,000 was to be paid out to victims of deceased members of the Society. We took this approach because we felt there was no opportunity for the deceased respondent to provide a response, and consequently we adopted a lower threshold for accepting a complaint as upheld.
91. The Society has made it clear that it will not enforce any confidentiality clause recorded in any deed of settlement. Most agreements did not include a confidentiality clause. Some complainants did request a confidentiality clause and this was put into the settlement document at their request. Initially, legal advice was to include such a clause, but this clause was removed by the Society around 2003.
92. Before making any payment, it was (and remains) the Society's view that every effort must be made to address the other needs of the complainant and to effect such reconciliation and healing where possible. This will include ensuring that the complainant receives adequate professional assistance and has sufficient time to work through the various issues that may arise.
93. The Society uses a template deed of settlement in respect of sexual abuse and has provided a copy to the Commission.²⁰ It records that the complainant is encouraged to seek legal advice and is advised that they still may make a complaint to Police. The template deed is not confidential.

²⁰ Society of Mary template Deed of Settlement, [017.0001.0027].
Confidential information: not for distribution

Litigation and legal advice

94. We do not hold a record of legal fees, so this information cannot be provided to the Commission. It is rare for the Society to have recourse to a lawyer, except where we are responding to an approach from a lawyer; the Society has, however, sought legal advice about complaints and redress from time to time.
95. As far as I am aware, civil proceedings in New Zealand have only been filed against the Society in one case, which was settled out of court. We do not have any overarching strategy or legal defences for such claims. It remains the Society's intention to help people rather than to enter into civil proceedings.

Access to information

96. The Society has a policy in place for access to its archives.²¹ The policy was last reviewed on 23 May 2019. Requests for access to any information regarding living members and former members are processed according to the Privacy Act 1993.
97. Files are organised in filing cabinet by name. Complaint and complainant files are treated as one and the same. Material is held together, filed under the complainant's name. Within the file, material is held in reverse chronological order.
98. Material about the respondent relevant to the complaint, such as interviews, are held in the complaint file. The respondent's personal file includes a wide range of material, including all correspondence between them and the Provincial, records of placements, details about their lives and so on.

²¹ Society of Mary Marist Archives Access Policy, 23 May 2019, [017.0001.0025].
Confidential information: not for distribution

99. The Society's files are further split into living and deceased members. Once a member dies or leaves the Society, their personal file is moved into a different set of filing cabinets.
100. The Society has, in my view, a comprehensive record of complaints from the late 1990s onwards. They typically record all correspondence, meetings, and decisions made in the complaints process. Where an investigation took place, records of this investigation, such as transcripts of interviews, will also be held on the file. Settlement agreements will also be held on the files, as will any litigation records and correspondence with counsel.

Reflections on the approach to redress

101. In my years of working with complainants, I have often thought about the process we use and our approach to redress. Before *APTH*, the Society dealt with approaches of complainants through lawyers and with legal advice. That was partly because a number of early complaints came to us from lawyers. *APTH* was developed, in my view, as a genuine attempt to respond to complainants in a pastoral way, that would hopefully lead to healing. I have never been greatly enamoured with using legal processes and lawyers to resolve these matters. The natural adversarial roles that legal processes adopt often lead to antagonistic and unhelpful adversarial positions.
102. In many cases there are factual disputes and recollections can be frail and human. Furthermore, documentation was rarely comprehensive and proof was hard to establish, especially where the respondent was deceased.

103. If the Society had based its responses to complaints only on proven assertions, then few cases would have been resolved. The very nature of sexual abuse means that few people report it at the time of the abuse and often very little proof exists. The Society does not have a criminal investigation branch nor a legal branch. I believe that the best place that criminal cases are investigated is by the police. The police do not, however, investigate cases where the respondent is deceased, and sometimes do not prosecute cases where a significant length of time has lapsed since the abuse occurred. This is an issue, as many who have been abused as minors do not start to deal with what happened to them until they reach their forties or fifties, and often not until after the respondent has died.
104. As has been stated above, most determinations regarding complaints are made on the balance of probabilities – and this is easier of course when there is more than one complaint (and more than one complainant) about the same respondent. But that does not mean that where a person is the sole complainant that they are not due the same compassion, pastoral care and assistance. When a complainant tells their story in tears and explains the impact of the abuse, we try to assist them as best we can. We have often accepted a case on the “balance of probabilities” without investigating each and every detail of the allegation. When someone comes forward and makes a complaint to me, my first thought is not to conduct a forensic investigation, which can be damaging for a complainant.
105. While we attempt to assist complainants as best we can, there are also other persons involved in each case. Where the respondent is dead, we also need to take into account that their family members may still be alive.

106. Cases vary a great deal. While I do not want to go into detail of allegations, some have been very serious and very damaging for those abused. In other cases, events that seem objectively less serious can still have done huge harm. In my experience, judgements made about the severity of the damage, by other people who did not suffer the abuse, do no justice to the harmed person and the harm they experienced. Some people are very hurt by sexual abuse that might be seen by a court as less major than some other cases.
107. As *APTH* has been further revised, I believe that we (as a Church) run the risk of a prescriptive and legal approach hampering what I consider should be a pastoral response. We advertise the process as a path to healing but in many cases, unfortunately, what ensues is a path to legal dispute and of further upset for the complainant. On occasion, and in my view, lawyers, the media and sometimes even counsellors can hamper a complainant's progress, rather than enhance it.
108. What is possible? While I favour a strongly pastoral approach focused primarily on what an individual needs toward growth and healing, if a formal investigation of facts is required, then my view is that a fully independent investigative body would be an advantage for complaints of abuse, particularly for complaints that cannot be dealt with by the police.
109. There are many factors in play in this process: truth, harm, responsibility, resolution and healing. While I consider that a pastoral response is most likely to support a complainant, it is not always successful. A pastoral response is not the same as a court finding. An ex gratia payment is not the same as compensation, and a restoration of faith and relationship is not the same as a deed of settlement. In trying to be all things to all others, unfortunately, what should be the path to healing can sometimes be a path to further hurt. We try to assist each complainant. However, not everything that is desired can be achieved, or is even possible.

Conclusion

110. Our approach to redress is an attempt to use restorative justice to help complainants to heal. Our endeavours are sometimes successful and sometimes fail. Restorative justice depends on everyone approaching the situation with a careful, respectful and gentle approach. I have been privileged to be present at sincere moments of real healing with complainants and have tried hard to help them to move forward in their lives. Because it deals with raw emotion, hurt and often long felt sadness, it is not always possible to achieve everything that is hoped for. We continue to attempt to assist people in their path to healing.

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

Dated:

23 September 2020