

7 Civil litigation

7.1 Summary of the litigation and settlement negotiations

In August 1993, on the instructions of VOICES, law firm Slater & Gordon commenced proceedings in New South Wales for some 240 claimants seeking damages from the Christian Brothers and other defendants for physical, sexual or psychological abuse at the institutions in the 1950s, 1960s and early 1970s.²⁹³ In November 1993, Slater & Gordon commenced similar proceedings in Victoria for 23 of those claimants who lived in Victoria.²⁹⁴

From 1994 to 1996, these New South Wales and Victorian proceedings, sometimes referred to as ‘the Slater & Gordon class action’, involved interlocutory, or preliminary, hearings in New South Wales, Victoria and Western Australia; one appeal to the New South Wales Court of Appeal; and three applications for special leave to appeal to the High Court of Australia. The underlying claims of abuse were not heard or determined on their merits on any of these occasions.

In mid-1996, the proceedings were settled by the establishment of a trust fund of \$3.5 million for payments to claimants, with provision for limited lump-sum payments and other needs-based payments.

In addition, \$1.5 million was paid towards Slater & Gordon’s legal costs and disbursements. The Christian Brothers’ legal costs and disbursements totalled at least another \$1.5 million.

The trust fund operated for three years. It made lump-sum payments to 127 men for child sexual abuse as well as other needs-based payments.

7.2 Limitation period issues

In mid-1993, Slater & Gordon began to research and consider the causes of action for damages it might pursue on behalf of the men. It became apparent early in their research that the *Limitation Act 1935 (WA)* would be likely to prevent the men from bringing their claims in Western Australia.²⁹⁵

In 1993, the Limitation Act required that a claim for damages must be brought within six years after the date of the tort. In these cases that meant within six years after the date of the abuse. At the time Slater & Gordon received instructions, the men were already decades outside the limitation period for bringing a claim.

Further, in 1993, this six-year time period could not be extended to allow the men to bring their claims (*Limitation Act 1935 (WA)*).²⁹⁶ At that time limitation legislation in New South Wales and Victoria was potentially more generous to claimants because it gave the courts various discretions to extend time. This could be done for latent injuries and where the claimant had only recently discovered material facts about the cause of action – for example, the identity of the defendant, the extent of the injury or that the injury was caused by the negligence or breach of duty.²⁹⁷