



Supreme Court New South Wales

Medium Neutral Citation:

BDS2 v CEG2 [2025] NSWSC 1291

Hearing dates:

31 March, 1 April, 16 April 2025

Date of orders:

3 November 2025

Decision date:

03 November 2025

Jurisdiction:

Common Law

Before:

Weinstein J

Decision:

- (1) Judgment for the plaintiff in the sum of \$1,495,395.00.
- (2) The defendant is to pay the plaintiff's costs of the proceedings on the ordinary basis unless a party is able to demonstrate an entitlement for some other costs order.
- (3) Liberty to apply on seven (7) days notice if further or other orders are required including as to costs.
- (4) The exhibits and subpoenaed material are to be returned forthwith. Any exhibits returned must be retained intact by the party or person who produced that material until the expiry of the time to file an appeal or until any appeal has been determined.

Catchwords:

TORTS — trespass to the person — assault and battery — historical sexual misconduct — sexual abuse — serious physical abuse — claim for damages for psychiatric harm

LIMITATION OF ACTIONS — personal injury — child abuse — legislative removals of previous limitation periods — meaning of serious physical abuse — where serious physical abuse established

Legislation Cited:

Civil Liability Act 2003 (Qld) ss 2, 4 11, 11A, 61, 62, 86
Evidence Act 1995 (NSW) ss 91, 92, 178
Limitation Act 1969 (NSW) s 6A
Limitations of Actions Act 1974 (Qld) s 11

Cases Cited:

AA v PD [2022] NSWSC 1039
Amalgamated Television Services Pty Ltd v Marsden
[2002] NSWCA 419
Bain v Altoft (1967) Qd R 32

Briginshaw v Briginshaw (1938) 60 CLR 336
Cellarit Pty Ltd v Cawarra Holdings Pty Ltd [2018] NSWCA 213
Chevally v Industrial Court of New South Wales [2011] NSWCA 357
Clancy v Plaintiffs A, B, C and D; Bird v Plaintiffs A, B, C and D [2022] NSWCA 119
Cullen v Trappell (1980) 146 CLR 1; [1980] HCA 10
Estate of the late Geoffrey Croft v MTH [2025] HCADisp 231
Gersbach v Gersbach [2018] NSWSC 1685
Gorman v McKnight [2020] NSWCA 20
Hartnett v Trustees of the Roman Catholic Church for the Diocese of Wilcannia-Forbes [2025] NSWSC 128
John Pfeiffer Pty Ltd v Rogerson (2000) 203 CLR 503; [2000] HCA 36
Lange v Australian Broadcasting Corporation (1997) 189 CLR 520; [1997] HCA 25
Lawrence v Province Leader of the Oceania Province of the Congregation of the Christian Brothers [2020] WADC 27
Lim v Lim [2023] NSWCA
MTH v State of New South Wales [2025] NSWCA 122
Prince Alfred College Inc v ADC (2016) 258 CLR 134; [2016] HCA 37
Province Leader of the Oceania Province of the Congregation of Christian Brothers v Lawrence [2021] WASCA 77
Qantas Airways Ltd v Gama (2008) 167 FCR 537; [2008] FCAFC 69
Ramsey v Denton [2021] NSWCA 310
Re Metal Storm Ltd (in liq) (No 2) [2019] NSWSC 1682
Todorovic v Waller (1981) 150 CLR 402
Trustees of the Roman Catholic Church for the Diocese of Maitland-Newcastle v AA [2025] NSWCA 72

Texts Cited:

Australian Law Reform Commission, *Evidence* (Interim Report No 26, 1985)
 Royal Commission into Institutional Responses to Child Sexual Abuse (Final Report, 2017)

Category:

Principal judgment

Parties:

BDS2 (Plaintiff)
 CEG2 (Defendant)

Representation:

Counsel:
 R Royle (Plaintiff)

Defendant (self-represented)

Solicitors:

Wyatts Lawyers & Advisors (Plaintiff)

File Number(s): 2022/00251864

Publication restriction: Pursuant to s 7 of the Court Suppression and Non-Publication Orders Act 2010 (NSW), publication of the name of the parties and any information tending to reveal the identity of the parties is prohibited except as may be necessary for the proper conduct of the proceedings. This publication restriction applies throughout the Commonwealth of Australia until the death of the plaintiff, or until further order.

JUDGMENT

Introduction

- 1 The plaintiff, known as BDS2, is the defendant's daughter. By Amended Statement of Claim filed 15 September 2022, she seeks damages for his alleged sexual and physical abuse of her. The plaintiff alleges that the defendant physically abused her throughout her childhood and that he sexually abused her on multiple occasions over a two-week period when she was 17 years old.
- 2 The defendant was initially represented by solicitors, who filed a Notice of Appearance on 20 September 2022 and a Defence on 18 January 2024. However, the defendant's solicitors filed a Notice of Ceasing to Act on 20 November 2024. The defendant has been self-represented since that time, including at the hearing before me in March and April 2025.

The Pleadings

- 3 The plaintiff pleaded a case of trespass to person, alleging both assault and battery. She claims general damages, aggravated damages, damages for economic loss in the past and in the future, interest and costs.
- 4 BDS2 particularises the assaults and batteries as follows:-
- (1) The defendant came naked into the plaintiff's bedroom and touched the plaintiff all over her body.
 - (2) The defendant touched the plaintiff in a sexual manner and invited and encouraged the plaintiff to touch him in a sexual manner.
 - (3) The defendant attempted to insert his penis into the plaintiff's vagina through her underpants.
 - (4) The defendant gave alcohol to the plaintiff and made her watch pornographic movies.
 - (5) The defendant offered the plaintiff \$300 to bend over the bed for him.
 - (6) The defendant exposed his penis to the plaintiff.
 - (7) The defendant requested the plaintiff to wax his genital region.
 - (8) The defendant came into the plaintiff's bedroom when she was asleep.
 - (9) The defendant then proceeded to touch the plaintiff's breasts underneath her pyjamas and push his erect penis up against the top of her legs and bottom.
 - (10) The defendant sucked the plaintiff's nipples.
 - (11) The defendant digitally penetrated the plaintiff's vagina.
 - (12) The defendant forced the plaintiff to touch his penis.
 - (13) The defendant masturbated in front of the plaintiff.
 - (14) The defendant would watch the plaintiff shower through the bathroom window.
 - (15) The defendant physically assaulted the plaintiff by kicking down a bathroom door into the plaintiff.
 - (16) The defendant physically assaulted the plaintiff by slapping her across the face and bashing the plaintiff into a brick wall.
 - (17) The defendant physically assaulted the plaintiff by hitting her with a belt.
 - (18) The defendant verbally abused the plaintiff by threatening to kill her and attempting to physically assault her during committee meetings with the Jehovah's Witnesses.
 - (19) The defendant prevented the plaintiff from speaking to anyone to whom he believed she would report the incidents.
 - (20) The defendant stalked and intimidated the plaintiff after she had left the family

home.

- 5 The plaintiff alleges that the assaults, sexual assaults and batteries particularised above occurred on no fewer than five occasions in or about October 1988, while the physical abuse occurred regularly throughout the plaintiff's life until she was 17.
- 6 The defendant denies each of the particulars alleged by the plaintiff, save for the allegation that the defendant "digitally penetrated the plaintiff's vagina". The defendant admits to digitally penetrating the plaintiff's vagina for a short amount of time on one occasion. The defendant says this occurred at the plaintiff's request and amounted to the totality of any physical contact between him and the plaintiff during the two-week period in October 1988.
- 7 In a Joint Memorandum, the parties identified the following facts and issues which remained in dispute:-
- (1) The allegations of sexual abuse, except for the particular that the defendant digitally penetrated the plaintiff's vagina which is admitted;
 - (2) Whether the plaintiff is or was restricted in disclosing the defendant's actions;
 - (3) Whether there was a risk of harm to the plaintiff by the defendant's actions;
 - (4) Whether the plaintiff has been able to perform her day-to-day activities without restriction;
 - (5) The extent of any psychiatric harm suffered by the plaintiff (if any); and
 - (6) The extent of any economic loss suffered by the plaintiff.

Evidence

Exhibits

- 8 The following material was tendered by the plaintiff, without objection:-
- (1) Evidentiary statement of the plaintiff dated 26 July 2024;
 - (2) Supplementary evidentiary statement of the plaintiff dated 28 March 2025;
 - (3) Report from Dr Clayton Smith, consultant psychiatrist dated 24 January 2023;
 - (4) Report of Dr Mary-Ellen O'Hare, consultant psychiatrist dated 18 November 2021;
 - (5) Clinical notes of Dr Evelyn Lamari, general practitioner;
 - (6) University documents;
 - (7) Letter from Queensland Police Service ("QPS") dated 2 March 2022;
 - (8) The plaintiff's notices of assessment for the tax years 1991 through to 2017 and

individual tax returns for the years 2004 to 2020;

- (9) The plaintiff's annual investment income reports for the years 2010 to 2021;
- (10) The plaintiff's payment summaries for the years 2015 to 2022;
- (11) Amended verdict and judgment record;
- (12) Indictment (undated) naming the defendant as the accused;
- (13) Statement of the plaintiff in relation to the Royal Commission into Institutional Responses to Child Sexual Abuse ("the Royal Commission") dated 10 July 2015;
- (14) QPS witness statement by the plaintiff dated 12 September 2000;
- (15) Addendum statement of the plaintiff dated 29 November 2004;
- (16) Victim impact statement of the plaintiff dated 2 December 2004;
- (17) Letter from the plaintiff to "Brothers" dated 19 December 1995;
- (18) Letter from the Watchtower Bible & Tract Society of Australia Society to the plaintiff dated 26 February 1996;
- (19) A copy of the Queensland Public Service Officers and Other Employees Award – State 2015; and
- (20) Schedule of out-of-pocket expenses allegedly incurred by the plaintiff.

9 The following material was tendered by the defendant, without objection:-

- (1) Facebook posts by the plaintiff between 2021 and 2025;
- (2) The defendant's evidentiary statement dated 25 February 2025; and
- (3) A bundle of documents regarding the defendant's penis.

The plaintiff's evidence

10 The plaintiff is a 52-year-old woman. She is married, has four children, and lives in the United States of America. She gave evidence by audiovisual link. She relied on and adopted two evidentiary statements dated 26 July 2024 and 28 March 2025. She was examined by her counsel Mr Royle and then cross-examined by the defendant.

Background

- 11 The plaintiff described her upbringing in the Jehovah's Witnesses ("JW") church community. She says that her family first became involved with the JW when she was about four or five years old. She said that when the family later moved to North Queensland, they joined a JW congregation.
- 12 The plaintiff explained that the JW are taught that the man is the head of the household and responsible for his family. She said that the religion teaches children that God requires them to be absolutely obedient to their father. She said that her father would

- 13 often quote scriptures about how God required her to be obedient to him in every way. The plaintiff gave evidence that the defendant held the position of a Ministerial Servant within the JW congregation, a responsibility which gave the defendant additional authority, credibility and reverence within the JW community and which he took very seriously. The plaintiff explained that disagreeing with a Ministerial Servant was considered tantamount to disagreeing with God, and could result in being “disfellowshipped”.
- 14 The plaintiff said that the defendant ensured that everyone in her family displayed strict compliance with religious rules. The plaintiff said that the defendant used religious rules to control every aspect of the family’s day-to-day activities. All of the children were expected to study the bible, pray before every meal and read daily scriptures. The plaintiff was required to attend religious meetings at least three times a week and to preach every weekend. The family was not permitted to read anything other than JW literature and they were forbidden from associating with people outside the JW community.

Physical Abuse

- 15 The plaintiff said that while the defendant presented himself as spiritual, respectful and kind to members of the congregation, at home he had a very short fuse and he would often become violent and abusive.
- 16 Any failure to comply with the defendant’s rules resulted in some form of punishment, often involving the use of physical violence. This included being belted, slapped, hit, punched, or having her hair pulled. The plaintiff said that she mostly received “beltings”, which is a reference to a leather belt which the defendant would use to hit the plaintiff. The plaintiff reported that the defendant would “belt” her all over her body, and that this would cause welts which would often bleed.
- 17 The defendant also punched her on her arms and legs with his fist, while at other times he would use an open hand to “whack” her across the back of her head or slap her across the face. On occasion, the “whackings” would cause her to have a black eye. He would also grab a handful of her hair and pull it aggressively.
- 18 The plaintiff said that the defendant deployed physical punishments until she was aged 17. When she was a teenager, the defendant’s physical violence was so frequent that it was a normal everyday occurrence.
- 19 The plaintiff described a number of examples of specific incidents of physical violence, including one occasion where the defendant continuously beat her because she could not stop crying, and another where the plaintiff locked herself in the bathroom and the defendant broke down the bathroom door. The plaintiff said the defendant would beat her if she so much as turned her head towards someone she was forbidden from speaking to, and that he would sometimes punish her for things she had not done.

Sexual abuse

- 20 The plaintiff said that in October 1988, when she was about 17 years old, her mother took her siblings to see Expo 88 in Brisbane. The plaintiff explained that she had been working at a local restaurant to save money to buy a car and she decided to remain at home. Her mother and siblings were away for about two weeks. The plaintiff says that the defendant sexually assaulted her on a number of occasions during this two-week period.
- 21 The plaintiff described several specific incidents. Not long after her family had left for the Expo, the defendant called the plaintiff into his bedroom and asked her to wax the pubic hair on the shaft of his penis. The plaintiff says that the defendant pulled his shorts down and exposed the part of his penis which he wanted the plaintiff to wax for him. The plaintiff says she refused and walked away.
- 22 Subsequently, the plaintiff alleges that the defendant came into her room one night when she was asleep and climbed into her bed. The plaintiff says that she was woken up by someone lying next to her, and could feel an arm over her body, a hand touching the top of her breast and something hard pressing against the top of her legs and bottom. She says that she knew that it was the defendant because he was the only other person in the house. She says that she asked the defendant what he was doing. He said words to the effect that he was cold and wanted to “snuggle up”.
- 23 The plaintiff says that the defendant moved his body closer to her, put his hand under her pyjamas onto her breast and began rubbing and playing with her nipples. The plaintiff says that the defendant then began to suck her nipples. The plaintiff says she protested and asked the defendant to stop. The defendant told her that it was okay because he was her father and said words to the effect of “be obedient to your father”.
- 24 The plaintiff says that the defendant then put his hand between her legs and began rubbing her vagina with his fingers. The plaintiff says that she felt and could see his finger going in and out of her vagina. She repeatedly attempted to push his hand away. The plaintiff says that she was too frightened to do anything too aggressive as she feared what the defendant would do if he became angry. The plaintiff says that this episode lasted for about an hour. She says that she does not recall why the defendant stopped touching her, but that she remembers saying to the defendant words to the effect of “stop”, “I want to go to sleep” and “leave me alone”.
- 25 After this event the plaintiff began locking her bedroom door, but the defendant would bash on the door and tell her that if she didn’t open it he would take the door off. This occurred on two further occasions while the rest of the family was away at Expo 88.
- 26 The plaintiff described an occasion when the defendant gave her alcohol and made her watch pornographic movies with him. The plaintiff says that one night while she was eating dinner in the lounge room, the defendant told her he had some videos for them to watch. The plaintiff says that he then got up and put on a pornographic film showing a

man having sexual intercourse with a woman. The plaintiff says that the defendant gave her something to drink and told her to drink it. The plaintiff said she began to feel tired, so she told the defendant that she was going to bed and then left.

27 The plaintiff described another occasion during the two-week period when the defendant called her into his bedroom and told her to come and give him a kiss goodnight. The plaintiff says she went up and gave him a kiss on the cheek. The next thing she remembers was lying on the left side of the bed. The defendant then began to touch her breasts above her clothing. He then put his hands under her pyjamas, touched her breasts and began playing with her nipples. He lifted her top up and sucked on her nipples. She says she repeatedly told the defendant to "stop". She says that he told her to "be quiet", to "stop talking" and to "be obedient. I am your father."

28 The plaintiff says that the defendant then lay on top of her and began to move his body up and down, pushing the bottom half of his body very forcefully against her vagina. The plaintiff says that she could feel his penis pushing against her vagina above her clothing, and then could feel his penis in her vagina on the outside of her clothing. The plaintiff said that it felt like he was trying to put his penis into her vagina but that her clothes were preventing it. The plaintiff says that as he kept pushing, she could feel him inside of her a little bit through her pyjamas.

29 While the defendant was doing this, he was also touching her breasts. The plaintiff says that the defendant then took her pyjamas off, climbed on top of her and attempted to put his penis in her vagina through her underpants. The plaintiff says she could feel his penis in her vagina and that this caused her pain. The defendant then allegedly began to try and take the plaintiff's underpants off, but the plaintiff prevented it. The plaintiff says she was scared and continued to protest, but the defendant kept telling her to be quiet by saying "shhh, someone will hear".

30 The plaintiff says she tried to move away from her father but was unable to move because of his body weight. She says she was only able to turn herself away from the defendant so that she was on her side facing away towards the sliding door to the bathroom. The plaintiff says the defendant then moved her legs apart and pushed himself against her back. She could feel his erect penis against her bottom and between the top of her legs. The plaintiff again told the defendant to stop, and the defendant again told her to be quiet and to be obedient to him. She felt the defendant trying to push his penis through her underpants.

31 The plaintiff recalled another incident during the two-week period when she caught the defendant watching her while she was in the shower. The plaintiff says that she was showering one morning before work. She looked out the window of the bathroom and saw the defendant outside staring in at her, with a smile on his face. The plaintiff says that she told the defendant to stop "perving" at her, and tried to cover herself by

crouching down, but when she looked up the defendant was still there. The plaintiff says that she then covered herself with a towel and left the bathroom and went and got ready for work in her room.

32 On another occasion the plaintiff says that she went with the defendant on his motorbike to a JW event. The plaintiff says that when they returned home, she remarked that her back was sore from the ride. The defendant then began to massage the plaintiff's back. The plaintiff says the defendant then moved his hands lower and started touching her in places she did not want him to. She asked him to stop but he responded by saying "shhh, be quiet. I am your father. Be obedient."

33 The plaintiff says that the final time she remembers the defendant sexually assaulting her during that two week period was just before the rest of the family came home from the Expo. The plaintiff says that the defendant called her into a bedroom at the end of the house. The defendant was allegedly standing in the room and had no clothes on from the waist down. The plaintiff says that the defendant told her that he wanted her "to touch it".

34 The defendant then allegedly grabbed the plaintiff's hand and began pulling it towards his penis. The plaintiff says that she could see that the defendant's penis was erect and that he was circumcised. The plaintiff says that the defendant caused her to touch his penis by pulling her hand onto it. The plaintiff tried to pull her hand away and told the defendant that she did not want to touch it.

35 The plaintiff says that the defendant then began to touch his penis in front of her. He allegedly stroked his penis back and forth while saying the words "like this".

36 The defendant is then alleged to have said "I want you to do something else for me. I will give you \$300 to help you with your car and \$300 after if you bend over the bed". The plaintiff replied that she did not want to do that and that she did not need the money.

37 The defendant allegedly become angry at her. The plaintiff says that he grabbed her around the waist and tried to move her towards the side of the bed. The plaintiff says that she felt very scared. The defendant allegedly instructed her to bend over and pushed her down onto the bed. The plaintiff says that she cannot remember what she was wearing but that she could feel him pushing his penis between her legs and trying to force his penis into her vagina through her clothing. She began yelling words to the effect of "stop touching me" and "stop hurting me".

38 She says that she eventually managed to break away from him. The defendant allegedly tried to grab her and pull her back towards him, but she was able to get away and out of the bedroom. She says that she then ran out the front door of the house and

around the outside of the house with the defendant chasing her. She then ran over to the back corner of the fence in the backyard and through a gate into her neighbour's backyard.

- 39 The plaintiff says that when her family returned home, the defendant became obsessed with monitoring her movements and personal interactions. She was forbidden from speaking to several people within the congregation who had expressed concern about the way that the defendant had been treating her. She also says that the defendant would have her siblings and other people monitor her behaviour and report back to the defendant, who would "flog" her if he learned that she was speaking to anyone that she was not allowed to. The defendant would also tell her family and members of the congregation that she was "mental", "headstrong", "rebellious", a "nutcase", a "troublemaker" and that she served the devil.

Reporting the abuse

- 40 The plaintiff says that she eventually reported the defendant's sexual assaults to the JW Elders ("Elders") in the congregation in early 1989. After she reported the abuse, the plaintiff says that the defendant confronted her in the family home and yelled words to the effect of "what have you been saying to the Elders behind my back?". The plaintiff says that the defendant then slapped her across the face so hard that her head and body hit the brick wall behind her. The plaintiff says that she yelled at him, called him a pervert and then fled the house to stay with a neighbouring family.
- 41 The plaintiff says that she lived away from the family home with the neighbouring family for a period, during which time the defendant would stalk and harass her. She described an incident where the defendant confronted the neighbouring family in public and demanded to speak to the plaintiff. The plaintiff says that when the family drove away, the defendant followed the family home and had to be prevented from seeing the plaintiff.
- 42 The plaintiff says that the Elders conducted a "Judicial Committee Hearing" into her allegations against the defendant. At this hearing, the plaintiff says that the Elders had her put the allegations of sexual assault to the defendant. The plaintiff says that when she did so, the defendant yelled at her, threatened to "flog" and "hit" her, and said words to the effect of "Just wait until I get out of this room!" The plaintiff says that the defendant had to be repeatedly told to sit back down by the Elders. The plaintiff remembers the defendant then telling the Elders that the plaintiff had "seduced" him.
- 43 The plaintiff says that a second JW Judicial Committee Hearing took place sometime later. At that hearing, the plaintiff again reported what had happened to her. According to the plaintiff, one of the Elders then said to the room of Elders, "Can [the defendant]

confirm what he did to [BDS2] for her sake?" The defendant, who allegedly had his head in his hands and his elbows on his knees, then said words to the effect of "Yes, I stepped out of line."

44 The plaintiff reported her allegations to the QPS in September 2000. She provided a statement on 12 September 2000 detailing the defendant's assaults and a further statement dated 29 November 2004 detailing her reports to the Elders. Both statements are broadly consistent with the account set out above.

45 In 2013, the plaintiff contacted the Royal Commission. In 2014, the Royal Commission asked her to attend a private session, where she shared further information relating to her abuse. In 2015, the plaintiff agreed to give evidence publicly to the Royal Commission. The plaintiff provided a statement dated 10 July 2015 to the Royal Commission. It too is broadly consistent with the history set out above.

Damage

46 The plaintiff attempted suicide after she reported the abuse to the Elders. She described the shame, humiliation and stigma of being labelled a victim of incest. She spoke of the emotional impact of the criminal proceedings which followed her reports to the police.

47 The plaintiff reported feeling worthless and defeated to this day as a result of the harm caused by the defendant's actions. She feels that no matter what she does or what she achieves, she will never be able to escape the effects of the harm caused by the defendant. She described the impact on her relationships with her mother, her siblings and her extended family. She says that she is treated as an outcast by her family.

48 The plaintiff reported suffering from nightmares and struggling with ongoing anxiety. She says that she lives her life in a hyper-alert state. She has difficulty socialising with people outside of her immediate family, so that she rarely forms new friendships and generally has difficulty trusting people. She feels anxious that her social interactions may be interpreted as sexual.

49 The plaintiff says that she finds it difficult to love and accept herself. She says that she feels dirty and spends a lot of time bathing and scrubbing herself in an effort to feel clean.

50 The plaintiff says that the defendant's actions towards her have impacted upon every sexual experience she has had since the assaults. The plaintiff reports that during her recent treatment for cancer, she opted to have a bilateral mastectomy, in part out of a hope that removing both breasts would help rid her of the memory of the defendant's

abuse. She struggles to identify the difference between a loving and a controlling relationship. She says that she has experienced controlling and abusive behaviour in her marriages which she attributes to the defendant's abuse.

51 The plaintiff says that she spends most days trying to distract herself from thinking about the future, so that she does not have to think about how depressing and pointless her efforts have been to erase what the defendant did to her.

52 The plaintiff described the impact of the abuse on her efforts to study and on her career. The plaintiff reported working for many years as a hair technician and business manager at a hair salon. She says that she had always intended to continue her education, but that she did not have the mental capacity to pursue further study until many years later. She obtained a law degree in 2017 and joined the QPS in 2018 and, following her admission as a solicitor, worked as a prosecutor in the Traffic Unit of the QPS.

53 The plaintiff was medically retired from the QPS in 2022. Prior to her retirement, she had a psychiatric assessment to determine whether she suffered from a cognitive impairment. The plaintiff was medically assessed by Dr Mary Ellen O'Hare who reported that the plaintiff did not have a cognitive impairment but rather had post-traumatic stress disorder ("PTSD") and that she was incapable of performing the requirements of her position.

54 The plaintiff gave evidence that she did not feel capable of handling the pressure of returning to any form of work.

55 The plaintiff was cross-examined by the defendant. He put to the plaintiff that he was uncircumcised, contrary to her account of her observations of his penis. He suggested to her that aside from the one occasion when she consented to digital penetration, her allegations of sexual abuse were lies. He further suggested that she was capable of providing services as a victim's rights advocate which (presumably) demonstrated that she was capable of employment. He put to her that she was a strong and capable woman. He suggested that she had had dysfunctional and violent relationships with partners after the alleged abuse which had caused her emotional trauma. He suggested to the plaintiff that he had never physically abused her and that he only smacked her on the bottom, and on occasion with a wooden spoon.

Dr Clayton Smith

56 Dr Clayton Smith is a consultant psychiatrist. He was commissioned by the plaintiff to prepare a medico-legal report regarding the plaintiff's psychiatric condition. Dr Smith assessed the plaintiff by audio visual link on 17 November 2022 and reported on 4 January 2023. He was examined by Mr Royle and cross-examined by the defendant.

History

- 57 At the time of the assessment, the plaintiff was 51 years old. She had three adult children with her first husband and a teenage daughter with her second husband. Her daughter lived with her in the United States while the rest of her children lived in Australia. Dr Smith noted that her second son has mental health issues and that the plaintiff reported that she had lost contact with him.
- 58 The plaintiff told Dr Smith that she had travelled to the USA for a holiday but had been prevented from returning to Australia due to the outbreak of the COVID-19 pandemic. The plaintiff reported that she had recently been diagnosed with breast cancer, for which she had undergone surgery and would soon start chemotherapy.
- 59 The plaintiff told Dr Smith about her upbringing in the JW community, that her family was dysfunctional, and that, as her parents' relationship deteriorated, there was violence in the home. The plaintiff told Dr Smith that she was forced to assume a parental role and that she looked after her mother, her little brother and her sisters. The plaintiff said that the children went to mainstream schools but that they were not allowed to socialise with anyone outside of their religion. She reported that her father was obsessed with her and was extremely controlling.
- 60 The plaintiff had a vague recollection from the age of about 7 of someone heavy on top of her. She says she has trouble remembering the details of this event, but that she panics at the feeling of anyone's weight on her. She reported that her father was controlling and would compare her with her older sisters, and that he would hit her if he called her name and she was not before him immediately. She said that the house did not have proper doors and that if she did lock her door, her father would take it off the hinges. She confirmed that when she would get dressed, her father would sometimes stand in the corner watching her. The plaintiff reported that when the man she would eventually marry expressed an interest in her to her father, her father became jealous.
- 61 The plaintiff told Dr Smith about her father sexually assaulting her at about the age of 17, during the period when her mother had travelled to Expo 88 in Brisbane and the plaintiff was left alone with her father. The plaintiff confirmed the particulars of abuse described in her statement to the Royal Commission dated 10 July 2015. Dr Smith observed that the plaintiff meets the DSM-5 criteria for PTSD.
- 62 The plaintiff told Dr Smith that she tried to escape her family by working and saving money for a car. However, her father gave the car to her sister, who the plaintiff said vindictively destroyed the car motor, preventing her from getting away.
- 63 The plaintiff said that she married her husband at the age of 18. The marriage was sanctioned by the JW church and lasted approximately 7 years. The plaintiff said that her husband was psychologically controlling, demeaning, demoralising and objectifying, and that he had a pornography addiction. The plaintiff said that she tried to leave the relationship, but the JW church would not let her. She tried to earn money during the marriage, by making things and selling them at the markets. Her husband never helped

her with the children. She had concerns that he might touch them in light of his pornography addiction. The plaintiff told Dr Smith that she eventually left her husband and that they lived separately in the same house for a time until her brother rented a house for her.

64 The plaintiff reported that she told the Elders about her father's sexual abuse, but they did not believe her and would not let her report it to police. The plaintiff says that they would not let her discuss the matter unless her father was present, and that her father had threatened to kill her if she spoke to them alone. The plaintiff told Dr Smith that her father was reinstated back into the JW church and that she believed that if she reported the allegations to the police, she would be shunned and disfellowshipped.

65 The plaintiff told Dr Smith that her father was eventually convicted in 2004 for indecently assaulting her and that he was incarcerated for three years. The criminal proceedings reportedly took six years over three trials. The plaintiff told Dr Smith that she was frightened of her father, and about what he might do to her when he got out of gaol. The plaintiff said that there was a protection order in place against her father for 10 years, but this was eventually discontinued as a result of a technicality. The plaintiff then described an incident where she attended a beauty event in Brisbane and saw her father sitting across from her with his (new) wife.

66 The plaintiff said that she completed an apprenticeship in hairdressing and supplemented her income with government benefits. She told Dr Smith that she enjoyed earning an income and feeling independent. The plaintiff said that her children became her reason for living and gave her purpose.

67 The plaintiff reported having a fear of men generally. She had problems shampooing men's hair during her hairdressing training, and she would feel physically ill when customers would tell her that they loved her massaging their heads. The plaintiff told Dr Smith that she struggled to breathe when she was around men and that she was so distressed by working around "creepy people" that she eventually worked for herself and would only take on clients whom she knew personally or through word of mouth. At university, she had difficulties sitting next to strange men.

68 The plaintiff said that she started university in 2011, studying for a law degree. She completed her studies while working and looking after her children. Her degree was delayed because of her involvement in the Royal Commission.

69 The plaintiff was initially unable to get a legal job following the Royal Commission. She said that after she gave evidence as a survivor, she was told that employers "don't hire victims". She said that she was eventually able to volunteer with Brisbane prosecutions and thereafter was able to obtain a job with the QPS. She was first employed as an administrative officer before becoming a prosecutor.

70 The plaintiff said that she was medically discharged from the QPS following a protracted absence from work after the disclosure of her childhood sexual abuse to her superiors. The plaintiff told Dr Smith that her supervisors had used her sexual abuse history to imply that she had a cognitive impairment and could not perform the

requirements of her role. She took leave on 4 February 2020 due to the stress of the consequent alleged bullying and harassment and has never returned to work. The plaintiff told Dr Smith that her work with the QPS had destroyed her faith in the “system”. She felt unsafe and her health deteriorated. She told Dr Smith that she had difficulty sleeping and was later diagnosed with narcolepsy.

71 The plaintiff described being physically and emotionally exhausted. She said that she has trauma-themed nightmares and that she wakes in a panic about once a week. She considered not pursuing treatment for her cancer because she felt so “exhausted by life”.

72 The plaintiff told Dr Smith that she struggles to interact with other people. She is not interested in forming new friendships. She said that she found life easier during COVID-19 as she was able to avoid people. She regularly has panic attacks and most of her energy during the day is used to keep her anxiety in check.

73 The plaintiff told Dr Smith that her anxiety causes her to avoid or to forget to eat. The plaintiff said that she did not trust her own judgement and would often second guess and “gaslight” herself. She often feels guilty and has difficulty setting boundaries and often finds herself compulsively apologising.

74 The plaintiff reported having intrusive thoughts about the abuse on a daily basis. She told Dr Smith that she listens to positive affirmations compulsively and that if she does not do this, memories and thoughts of the abuse crowd her mind.

75 The plaintiff told Dr Smith that she opted for a double mastectomy as part of her cancer treatment in the hope that removing her breasts would help rid her of the memory of the abuse. She described feeling disconnected from her children, saying that there was no warm glow when she hugged them and that she felt dead inside.

76 The plaintiff told Dr Smith that she has difficulty gauging the difference between loving and controlling relationships. She said that her children appear to be adversely psychologically affected by her trauma. She described difficulties with concentration and emotional regulation during her studies. She said that she has difficulties with consistency and sticking to a routine.

77 The plaintiff told Dr Smith that she had not had suicidal thoughts for the last six months but that her anxiety had been elevated. She told Dr Smith that, during the period after she reported the abuse to the Elders, when she was being threatened and stalked by her father, she heard voices including whispers and people talking. However, she otherwise denied psychotic symptoms, or symptoms of mania or hypomania.

78 The plaintiff told Dr Smith that she attempted suicide at 18 years of age after being blamed and shamed for the abuse by people in the JW community.

79 The plaintiff recalled seeing a female general practitioner on a regular basis and seeing a psychologist “for a bit”. She later sought psychological help in the context of an abusive relationship following the end of her first marriage. She had treatment with a psychologist while living in Townsville, and began seeing a trauma psychologist after

moving to Brisbane. She continued to speak with this psychologist monthly, although she told Dr Smith that her psychological treatment had been impacted by her physical health issues. The plaintiff said she has been referred to a psychiatrist by her general practitioner and was diagnosed with PTSD. She denied a history of recurrent self-harm, suicide attempts, or presentations to mental health services or emergency departments.

80 The plaintiff told Dr Smith that she drank excessively after leaving her religion, but said that she has been abstinent since having children. The plaintiff was diagnosed with breast cancer in July 2022. She also has a history of fibromyalgia, sinus problems, Graves' disease, Hashimoto's disease, narcolepsy, muscle tension, and psychogenic dysphonia. The plaintiff told Dr Smith that her fibromyalgia caused her constant pain and disturbed her sleep.

81 The plaintiff told Dr Smith about a variety of medications which she takes on a regular basis for her health conditions. She was prescribed the anti-depressant sertraline during the worst of her marital abuse and had previously taken Buspirone for her anxiety but stopped because it made her feel numb. She told Dr Smith that she avoided psychotropic medication because she worried about losing control of herself and she preferred to use work as a distraction instead.

Opinion

82 Dr Smith described the plaintiff as pleasant and cooperative, and observed that she became distressed and tearful at times. He noted that her thought content reflected trauma and depressive themes. She described dissociative experiences. Dr Smith believed that the plaintiff's intelligence was in the high average range.

83 Dr Smith was of the view that the plaintiff meets the DSM-5 criteria for chronic PTSD, which had persisted for more than three months and was not attributable to another cause. Dr Smith observed that her psychological difficulties are consistent with a history of early life trauma exposure during a critical period of physical, psychological and social development, and also accords with her diagnosis of complex PTSD.

84 Dr Smith believed that the plaintiff did not have a pre-existing injury or condition before her father's abuse, although he observed that the plaintiff had a complex developmental history given that she had been raised in a "cult-like" environment characterised by subservience to men, coercion and control. Dr Smith considered that several subsequent factors had exacerbated and aggravated her underlying PTSD including relationships attendant with domestic violence, family dysfunction, work related difficulties, stress associated with the Royal Commission, legal issues, her son's mental illness, and more recently her cancer diagnosis with an uncertain prognosis.

85 In Dr Smith's opinion, the plaintiff's condition was caused by the sexual abuse perpetrated by her father. He observed that the abuse caused the PTSD which occurred during a critical period of physical, psychological and social development,

resulting in profound and long-lasting negative effects which have extended well into adulthood.

86 Dr Smith observed that the plaintiff's symptoms are chronic, fluctuating and pervasive, and have thwarted her efforts to function at a high level. He believed that the impacts of the plaintiff's trauma have had wide ranging implications for her education, career, vocational capacity, and her ability to work in a full time or part time role until retirement. Dr Smith thought that the plaintiff is unlikely to cope with the complex interpersonal and cognitive demands of a role as a lawyer.

87 In Dr Smith's opinion, the plaintiff has a moderate impairment in her social and recreational capacity, in view of her social isolation and limited capacity to form new relationships, and that she has a mild impairment to her domestic capacity as she lacks the drive, energy and motivation required to perform activities of daily life on a consistent basis.

88 Dr Smith expressed the view that the plaintiff requires weekly sessions of trauma informed psychotherapy for at least two years. He also recommends specialist treatment by a psychiatrist on a monthly basis for at least two years. He observed that the plaintiff could also require other more assertive treatment options including neurostimulation. He recommended consideration of treatment with psychotropic medication under the supervision of a psychiatrist. He noted that the cost of these treatments will be considerably higher while the plaintiff is living in the USA relative to the cost if she were in Australia, as she will be ineligible for the Pharmaceutical Benefits Scheme and Medicare rebates.

89 In Dr Smith's opinion, the plaintiff's prognosis is guarded. He observes that her symptoms are chronic and entrenched. She is dealing with a serious medical condition with an uncertain prognosis, isolated in another country where she has limited social support.

90 The defendant cross-examined Dr Smith. In answer to the defendant's questions, Dr Smith observed that childhood trauma sets people up for increased trauma in their relationships. He agreed that the plaintiff's subsequent stressors have had an impact on her mental health and have aggravated her underlying PTSD. He said that the evidence is clear that people who are sexually abused as children are at an increased risk of further trauma throughout their life and this would inevitably translate into difficulties in the workplace, and difficulty feeling safe and dealing with conflict. Dr Smith believed that the plaintiff's allegations of serious physical abuse had contributed to her current symptomology as well as being raised in a "cult-like" coercive environment.

Additional medical, education and employment documents

91 The plaintiff tendered her academic transcript from University.

92 The plaintiff also tendered clinical notes for the period between September 2013 and March 2014, from Dr Evelyn Lamari, who was her treating general practitioner at that time. The notes disclose that the plaintiff had on several occasions reported, *inter alia*,

poor sleep, stress & anxiety, and associated difficulties with her law studies. Exhibited with the clinical notes was a medical certificate dated 15 September 2015, provided by Dr Lamari on behalf of the plaintiff, and addressed to the Law Faculty. The certificate states that, at the date of the certificate, the plaintiff had been experiencing symptoms of anxiety and depression, along with some features of PTSD, and notes that she had recently given evidence to the Royal Commission in relation to her experiences of sexual abuse. The certificate suggests a deferral of the plaintiff's examinations and an extension of the deadline for submitting her thesis.

93 The plaintiff also tendered the medico-legal report of Dr Mary Ellen O'Hare, dated 18 November 2021, which was commissioned by the QPS in the context of the plaintiff's extended absence prior to her medical retirement from the QPS in 2022. The plaintiff was medically examined by Dr O'Hare, who made a diagnosis of PTSD, in remission, and Adjustment Disorder with Anxiety, in full remission. Dr O'Hare was of the view that the plaintiff was not and would never be fit to perform her normal duties, and there were no accommodations which would enable her to safely return to her role.

94 The plaintiff also tendered a letter, dated 2 March 2022, addressed to the plaintiff from Carolyn Harrison, Executive Director of the Legal Division of the QPS. The letter explained that, in view of the conclusions expressed by Dr O'Hare in her report of 18 November 2021, Ms Harrison was satisfied that it was neither appropriate or practicable to transfer the plaintiff to an alternative role with the QPS, and that she had therefore determined that the plaintiff should be retired from her role, with effect from 1 April 2022.

Financial records

95 A number of financial records were tendered by the plaintiff, which establish her financial position in the years since the abuse is said to have occurred. These include:-

- (1) Notices of Assessment issued by the Australian Taxation Office from 1991 through to 2017. The plaintiff's year of peak earnings was in the tax year 2010/2011 when her taxable income was \$49,038;
- (2) Individual Tax Returns for the years 2004 to 2020;
- (3) Annual Investment Income Reports for the years 2010 to 2021; and
- (4) Payment Summaries for the years 2015 to 2022.

Documents from criminal proceedings

96 The plaintiff tendered a certificate of conviction from the defendant's criminal trial in the District Court of Queensland in 2004, along with an earlier indictment from 2002. The documents were tendered pursuant to s 178(2) of the *Evidence Act 1995* (NSW) as evidence of the defendant's convictions. The plaintiff submitted that the certificate could

be relied on in these civil proceedings despite the effect of s 91 of the *Evidence Act*, as the document comes within the exception in s 92 to both the operation of s 91 and the hearsay rule. The defendant did not object to the tender of the certificate.

97 The certificate of conviction records that the defendant was convicted of five counts of unlawful and indecent assault for which he was sentenced to a term of imprisonment of 18 months, and one count of attempted rape for which he was sentenced to a term of imprisonment of three years. The offences were recorded as having occurred between 29 April 1988 and 31 October 1988.

98 An indictment demonstrated the defendant was tried on six counts for sexual offences against his daughter BDS2.

Evidence of prior complaint

99 Various other documents were tendered by the plaintiff, taken from different points in time in the years since the abuse is alleged to have occurred and which also record the plaintiff's allegations against her father. No objection was taken to the tender of any of these documents. I admitted them, however, on a limited basis as evidence of prior complaint by the plaintiff, pursuant to s 136 of the *Evidence Act*. The documents include:-

- (1) A letter dated 19 December 1995 from the plaintiff to the Watchtower Bible & Tract Society of Australia (the name of the Australian branch of the JW), in which the plaintiff set out the allegations of sexual abuse by her father. These allegations are entirely consistent with her evidence in these proceedings;
- (2) A reply from the Watchtower Bible & Tract Society of Australia dated 26 February 1996, in which it confirmed receipt of the plaintiff's letter and noted that enquiries would be made into the matters raised by the plaintiff;
- (3) A statement provided by the plaintiff to the QPS dated 12 September 2000, with a clarifying addendum dated 29 November 2000, in which the plaintiff set out the allegations of sexual abuse by her father, also entirely consistent with her evidence in these proceedings;
- (4) A victim impact statement of the plaintiff dated 2 December 2004 in which the plaintiff set out the impact of her father's sexual abuse on her life; and
- (5) A statement provided by the plaintiff to the Royal Commission dated 10 July 2015, in which the plaintiff details, *inter alia*, the physical and sexual abuse perpetrated by her father. I observe that the plaintiff's allegations in that forum are entirely consistent with her evidence in this case.

100 Whilst the defendant did not object to the admission of the evidence noted above, I have used it as complaint evidence relevant only to the credibility of the plaintiff, i.e. the fact of the plaintiff's complaints and the circumstances in which she made them make it more likely that her evidence about the sexual and physical abuse is truthful.

Pay rates

- 101 The plaintiff tendered a bundle of documents from the Queensland Industrial Relations Commission relating to the Queensland Public Service Award and its later incarnations, covering the years 2003 to date.

Expenses

- 102 After the close of the plaintiff's case, the plaintiff also tendered a schedule of out-of-pocket expenses allegedly incurred by the plaintiff. The defendant did not object to the tender of that material.

The defendant's evidence

- 103 The defendant is a 77-year-old man who lives with his wife in Western Australia.
- 104 The defendant prepared an evidentiary statement dated 25 February 2025. He said that he suffered from a stroke three years ago, which has impacted his attention span, short term memory, and cognitive function, and that his evidentiary statement was prepared with the help of his wife, who he describes as his carer. He also provided a further document, styled as "Objections" to the evidence of the plaintiff, in which he identified those aspects of the plaintiff's evidence which he denied. He gave evidence by audiovisual link and was cross-examined by Mr Royle.
- 105 The defendant described the plaintiff's account of events as a "gross exaggeration at best" and says that some aspects were "outright lies".
- 106 In response to the specific allegations of sexual abuse, the defendant denied each of the plaintiff's allegations save for the incident where the plaintiff described the defendant inserting his fingers into her vagina. The defendant explained that incident as follows. The plaintiff had planned on marrying at about the age of 18 and she had been exploring natural methods of birth control, including one which involved tracking the changes in the vaginal mucus. The defendant said that the plaintiff told him that she did not know how to do this, and that he told her that she had to insert her fingers into her vagina and "feel what mucus there is". The defendant said that the plaintiff then told him to show her what he meant. The defendant said that he was hesitant, but that the plaintiff insisted, and he conceded that he then briefly digitally penetrated the plaintiff. He regrets his "poor judgement" to this day.
- 107 The defendant said that none of the other allegations of sexual abuse described by the plaintiff are true.
- 108 In response to the specific allegation that the defendant grabbed the plaintiff's hand and pulled it onto his circumcised penis, the defendant said that he has never been circumcised and therefore this allegation must be a lie.
- 109 The defendant characterised the specific allegations of physical abuse made by the plaintiff as "gross exaggerations of innocent everyday occurrences, typical of average family life". The defendant denied the plaintiff's characterisation of him as abusive and

having a short fuse. The defendant acknowledged that he and his wife occasionally deployed corporal punishment against the children, using their hands, a wooden spoon and “on rare occasions” a belt. However, the defendant denied that the physical punishments were daily occurrences and denied that such punishments were applied only, or disproportionately, to the plaintiff. The defendant said that the discipline received by the children in his household was never excessive and neither was it ever “executed in a blind rage”. The defendant said that the discipline employed by the defendant and his wife was not uncommon in Australian homes and schools in the 1980s.

110 Further, the defendant said that the plaintiff’s description of him being violent is inconsistent with the plaintiff being unafraid to stay alone with him during the two weeks when the rest of the family went to Expo 88. The defendant said that at no time during the period of the alleged abuse does the plaintiff describe him being violent or having a short fuse. The defendant said that the suggestion that he was routinely violent is inconsistent with the plaintiff’s account of her continuously refusing his alleged inappropriate requests during the week.

111 Mr Royle cross-examined the defendant, who vigorously denied the allegations of both sexual and physical abuse. He accepted that he hit the plaintiff with a wooden spoon, and accepted that his use of a belt on the plaintiff’s body may have left welts.

Social media posts

112 The defendant tendered various social media posts taken from the plaintiff’s social media profiles, in which she explicitly identifies herself by the pseudonym and case study number that were assigned to her for the purposes of the Royal Commission, and where she encourages her followers to publish and use her story.

113 The defendant contended that the plaintiff’s social media activity establishes that the plaintiff self-identifies as a “strong person” who “speaks her mind” and will not be intimidated. The defendant contended that this contradicts the plaintiff’s claims of becoming a “lonely, timid, depressed, vulnerable person” as a consequence of the abuse. The defendant said that the plaintiff’s social media posts also demonstrate that the plaintiff is relentlessly pursuing a “crusade” on social media and other platforms, against (I infer) the defendant and the JW religion more broadly. The defendant said that to the extent the plaintiff may feel “alienated” or labelled as a “victim” of incest, that has been the consequence of her own decisions to broadcast her case on social media over the years since the incidents are alleged to have occurred. The defendant said that no one is forcing the plaintiff to disclose the alleged abuse and that she volunteers the information “at every opportunity”.

Penis-related documents

- 114 The defendant also tendered a bundle of documents relating to the appearance of his penis. These documents were tendered to establish that the defendant was uncircumcised, apparently for the purpose of contradicting the plaintiff's description of the defendant's penis and thereby establishing her account as false.
- 115 The bundle included:-
- (1) a scanned copy of undated handwritten clinical notes, which appear to disclose that the defendant has had a "partial circumcision";
 - (2) a letter dated 14 December 2002, under the hand of the defendant, explaining that he had not been circumcised but did undergo a meatotomy operation when he was around 28 years old (which involves the surgical removal of part of the tip of the penis for therapeutic reasons) and that he referred to this procedure as a "circumcision" in conversations with his family for the sake of simplicity; and
 - (3) a letter dated 6 March 2003 from Dr Albane Yuen at Loganholme Family Medical Centre, in which Dr Yuen stated that the defendant had been physically examined and his penis did not resemble a circumcised penis.

Applicable law

- 116 The alleged sexual and physical abuse particularised in the Statement of Claim is alleged to have taken place in Queensland in or about October 1988. The plaintiff submits that the law of Queensland applies, in conformity with the decision in *John Pfeiffer Pty Ltd v Rogerson* (2000) 203 CLR 503; [2000] HCA 36 at [102] ("*John Pfeiffer*"):-
- "... The *lex loci delicti* should be applied by courts in Australia as the law governing all questions of substance to be determined in a proceeding arising from an intranational tort. And laws that bear upon the existence, extent or enforceability of remedies, rights and obligations should be characterised as substantive and not as procedural laws."
- 117 I accept that in this case, the law of Queensland governs all questions of substance, while the law of NSW governs all questions of procedure. Liability, and the extent of any damages, are properly questions of substance and are therefore governed by the law of Queensland.
- 118 The *Civil Liability Act 2003* (Qld) ("CLA") sets out the substantive statutory regime applicable to any civil claim for damages for harm in Queensland: s 4 of the CLA. Section 2 of the CLA provides that the Act is taken to have commenced on 2 December 2002, with certain enumerated provisions commencing on assent.
- 119 Chapter 2 of the Act concerns civil liability for harm. As Mr Royle observed, s 86 of the CLA provides that the only provisions in Ch 2 which are relevantly retrospective are those contained in Pt 2A. That Part is concerned only with liability of institutions for child abuse and is not presently applicable.
- 120 Chapter 3 of the CLA is concerned with the assessment of damages for personal injury. Section 61 in that chapter relevantly provides that:-

61 Assessment by court of injury scale

(1) If general damages are to be awarded by a court in relation to an injury arising after 1 December 2002, the court must assess an injury scale value as follows—

...

121 Section 62 similarly provides:-

62 Calculation of general damages

(1) For an injury arising after 1 December 2002, general damages must be calculated under this section.

...

122 On any view, the alleged injury in this case arose prior to 1 December 2002, and prior to the commencement of the CLA. The claim does not fall within the retrospective provisions in Pt 2A of Ch 2, as the defendant is not an institution for the purpose of that Part. The plaintiff accordingly submits, and I accept, that the CLA has no application to any part of the instant claim. It follows that both liability and damages are to be determined at common law. There is but one common law of Australia: *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 at 536; [1997] HCA 25; *John Pfeiffer* at [66].

Liability

Limitation period for claims sexual abuse and serious physical abuse of a child

123 The abuse particularised in this case is alleged to have taken place (and the plaintiff's cause of action therefore crystallised) over 35 years ago.

124 It has been held by the High Court that the question of the application of a statute of limitation is "necessarily antecedent to the determination of any issue in the proceedings relating to liability": *Prince Alfred College Inc v ADC* (2016) 258 CLR 134; [2016] HCA 37 at [112] (French CJ, Kiefel, Bell, Keane and Nettle JJ). The application of any limitation period is a question of substance, not procedure, and is governed by the *lex loci delicti*: see *John Pfeiffer* at [100]. The applicable statutory limitation regime is therefore that contained in the *Limitations of Actions Act 1974* (Qld). It prescribes a standard 3-year limitation period for actions in trespass: see s 11.

125 The plaintiff, however, submits that her claim is not barred by the 3-year time limit, because of the carveout contained within s 11A(1) which provides as follows:-

(1) An action for damages relating to the personal injury of a person resulting from the abuse of the person when the person was a child—

(a) may be brought at any time; and

(b) is not subject to a limitation period under an Act or law or rule of law.

126 Abuse of a child is relevantly defined by s 11A(6) as follows:-

(6) In this section—

abuse, of a child, means—

(a) sexual abuse or serious physical abuse of the child; or

(b) psychological abuse of the child perpetrated in connection with sexual abuse or serious physical abuse of the child.

- 127 It is not in dispute that at the time of the alleged abuse, the plaintiff was a child. The plaintiff submits that, in construing the definition in s 11(6)(a), I would give the term “sexual abuse” its ordinary meaning and that the plaintiff’s allegations of sexual abuse satisfy that ordinary meaning. To that end, the plaintiff referred me to the definition to child sexual abuse used in the Final Report of the Royal Commission: see *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, 2017) vol 1 at page 19 [2.13]. The plaintiff also referred me to the comprehensive analysis of the issue by Herron DCJ in *Lawrence v Province Leader of the Oceania Province of the Congregation of the Christian Brothers* [2020] WADC 27 at [65]-[102], which was not subject of the appeal to the Western Australian Court of Appeal (which was dismissed): *Province Leader of the Oceania Province of the Congregation of Christian Brothers v Lawrence* [2021] WASCA 77.
- 128 I accept the plaintiff’s submission. The allegations of sexual abuse particularised by the plaintiff constitute sexual abuse within the ordinary meaning of those words and therefore amount to “abuse” for the purpose of s 11A. The sexual abuse component of the claim therefore engages s 11A(1) and is not subject to the limitation period that would otherwise apply.
- 129 That is only part of the claim, however. The plaintiff submits that the balance of the claim, referable to the physical (as opposed to sexual) abuse of the plaintiff, is also not time barred, as it also constituted abuse of child for the purpose of s 11A(1), and that it was “serious physical abuse” within the meaning in s 11A(6).
- 130 It appears (and it was not submitted otherwise) that that the term “serious physical abuse” has not yet been judicially considered in Queensland. However, the plaintiff referred me to a recent decision of this Court, *Hartnett v Trustees of the Roman Catholic Church for the Diocese of Wilcannia-Forbes* [2025] NSWSC 128 (“*Hartnett*”), in which Campbell J considered the same term in the context of the like provision in the *Limitation Act 1969* (NSW).
- 131 His Honour there observed, at [14], that the term “serious physical abuse” is not defined in the *Limitation Act*, and accordingly the expression should abide its ordinary meaning. His Honour said, at [15]:-

“To ascertain its meaning, the expression must be considered as a whole, but the co-location of “serious” and “abuse” bespeak a high degree of misconduct. Moreover, by the use of the word “physical”, the misconduct must consist of the infliction of injury to the person of the child concerned, other than of a sexual nature, without lawful justification. The juxtapositioning of “sexual abuse” and “serious physical abuse” in the definition strongly suggests one does not include the other although ordinary speech might admit of a significant overlap. Not every assault or battery properly so called would suffice. It must be “serious” signifying an intensity well beyond what is minor or trivial. The requisite intensity can be supplied by either the severity in terms of injurious potential of a blow struck or by the period of time over which there has been ongoing physical abuse of the child. Abuse may cut both ways. It may consist of abuse of lawful

authority over the child; or abuse of the child directly in the sense of ill treatment of the child by injurious misconduct towards the person of the child. As with all factual inquiries, questions of degree are doubtless involved.”

132 His Honour went on, at [16]:-

“[I]t is not necessary to consider whether misconduct said to constitute the serious physical abuse in a given case constitutes a crime, although experience suggests that it very frequently will. As Garling J pointed out in this context in *Gersbach v Gersbach* [2018] NSWSC 1685 (“*Gersbach*”) (at [312]) by reference to *Gray v Motor Accident Commission* (1998) 196 CLR 1; [1998] HCA 70 (at [16]), in turn referring to *Uren v John Fairfax & Sons Pty Ltd* (1966) 117 CLR 118 (at [149]), the “roots of tort and crime” are ‘greatly intermingled’.”

133 As Campbell J recognised, there is a defence of “lawful correction” available to parents and those in *loco parentis* charged with criminal assault against a child in their care, both at common law and under s 61A of the *Crimes Act 1900* (NSW) (although that provision was not in force at the relevant time in that case, and it does not apply in this case in any event). Justice Campbell quoted from the decision of Garling J in *Gersbach v Gersbach* [2018] NSWSC 1685 (“*Gersbach*”) where his Honour said, at [310]:-

“It may be noted that in the relevant time period, the use of reasonable physical force for disciplinary purposes was, under the common law, a defence to any charge of criminal assault. This defence of “lawful correction” provided that parents and those in *loco parentis* were permitted to physically punish their children, provided that the “correction” or chastisement was reasonable, moderate, administered with a proper instrument, and had a proper relation to the age, physique and mentality of the child: see *Police (SA) v G, DM* [2016] SASC 39; (2016) 258 A Crim R 75 ; *Cleary v Booth* [1893] 1 QB 465 ; *R v Terry* [1955] VLR 114 ; *R v Mackie* [1973] Crim LR 54 ; *R v Griffin* (1869) 11 Cox CC 402 .”

134 The plaintiff’s evidence of bleeding after being belted by the defendant on numerous occasions and suffering black eyes as a result of him punching her face, even in the historical context of the 1980s, in my opinion constitutes serious physical abuse. The extent of that abuse does not loom large in the plaintiff’s case, unsurprisingly, because of the significant allegations of sexual abuse, but in my view, it is not time barred as section 11A(1) is engaged. I observe also that Dr Smith did not express the view that any physical abuse, serious or otherwise, contributed to the plaintiff’s PTSD.

135 Accordingly, although I accept the balance of the plaintiff’s evidence in relation to the physical abuse, I find that, other than the bleeding welts and the black eye components, the claim for physical abuse is barred by s 11 of the *Limitations of Actions Act*.

Standard of proof for claims of sexual abuse

136 Unlike the position with respect to the appropriate civil liability regime or the applicable limitation period (which are questions of substance governed by the law of the place of the wrong, to which see above), the rules of evidence, being “rules which are directed to governing or regulating the mode or conduct of court proceedings”, are properly characterised as procedural in nature and are therefore governed by the law of the

forum: see *John Pfeiffer* at [99] (Gleeson CJ, Gaudron, McHugh, Gummow and Hayne JJ) and [192] (Callinan J); *Re Metal Storm Ltd (in liq) (No 2)* [2019] NSWSC 1682 at [7] (Rees J).

137 Accordingly, the *Evidence Act 1995* (NSW) applies. The applicable standard of proof is that provided by s 140 which stipulates that, in civil proceedings of this kind, the Court must be satisfied that the case has been proved on the balance of probabilities, taking into account the nature of the cause of action or defence, the nature of the subject matter of the proceeding, and the gravity of the matters alleged. The statutory formulation in s 140 has been held to reflect the doctrine in *Briginshaw v Briginshaw* (1938) 60 CLR 336 ("*Briginshaw*"): see *Amalgamated Television Services Pty Ltd v Marsden* [2002] NSWCA 419 at [61]; *Cellarit Pty Ltd v Cawarra Holdings Pty Ltd* [2018] NSWCA 213 at [196]-[197]; *Lim v Lim* [2023] NSWCA at [23].

138 In *Briginshaw*, Dixon J held at 362:-

"... [R]easonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences."

139 See also the discussion in *Qantas Airways Ltd v Gama* (2008) 167 FCR 537; [2008] FCAFC 69 at [110] (French and Jacobson JJ) and further discussion at [124]-[139] (Branson J).

140 In *Clancy v Plaintiffs A, B, C and D; Bird v Plaintiffs A, B, C and D* [2022] NSWCA 119 the Court (Bell CJ, Gleeson and Brereton JJA) considered an appeal against the trial judge's findings that Mr Bird had sexually assaulted the plaintiffs, who were young children, while undertaking work at a childcare. The trial judge had concluded that the onus of proof had been met because even though there were issues with the evidence of the child plaintiffs, their evidence was not inconsistent with statements made by Mr Bird to the police. The Court held at [173] that this approach was flawed:-

"What was required was a careful assessment of the strengths and weaknesses of each part of the evidence bearing upon the likelihood of the events having occurred, and a weighing up the whole of the evidence to determine where the probabilities lay... Instead, the approach adopted by the primary judge appeared to start from the premise that Child 2's disclosures were true, and then to ask whether each individual criticism of the evidence in support of the allegations was sufficient to displace that premise. Such an approach in effect reverses the onus of proof."

141 These principles are relevant to these proceedings, involving as they do claims of historical child sexual abuse alleged to have occurred decades ago. As Bell CJ recently observed in *Trustees of the Roman Catholic Church for the Diocese of Maitland-Newcastle v AA* [2025] NSWCA 72 at [1]-[3]:-

"The amendment of the *Limitation Act 1969* (NSW) and cognate statutes in other states and territories to remove any limitation period for common law claims of historic sexual assault was a response to the Royal Commission into Institutional Responses to Child Sexual Abuse.

A body of case law relating to stays of proceedings, litigated through to the High Court, has grappled with some of the forensic challenges which can confront a defendant or defendants in such cases as a result of litigation in relation to events many decades

ago: see, for example, *GLJ v Trustees of the Roman Catholic Church for the Diocese of Lismore* [2023] HCA 32; (2023) 97 ALJR 857 (GLJ); *Willmot v Queensland* [2024] HCA 42; (2024) 98 ALJR 1407 (Willmot); *RC v The Salvation Army (Western Australia) Property Trust* [2024] HCA 43; (2024) 98 ALJR 1453; see also *Moubarak by his tutor Coorey v Holt* (2019) 100 NSWLR 218; [2019] NSWCA 102.

Forensic challenges also confront *plaintiffs* in such cases. The frailties of the human memory, the complexity of which is increasingly recognised and remarked upon by courts on the basis of scientific studies, are generally more pronounced with the passage of time: see, in this regard, *Willmot* at [30] and the cases there cited. The degree of assurance that *Briginshaw v Briginshaw* (1938) 60 CLR 336; [1938] HCA 34 (*Briginshaw*) and s 140(2) of the *Evidence Act 1995* (NSW) (*Evidence Act*) (and its State and Commonwealth equivalents) requires in cases involving serious allegations of what would amount to criminal or gravely immoral conduct is not qualified or modified in cases of historic sexual assault by the abolition of the limitation period for common law claims based upon such conduct: see generally *GLJ* at [56]-[60]. As a matter of practicality, *Briginshaw* and s 140(2) of the *Evidence Act* present a forensic challenge to those who seek to establish serious allegations, decades after the event.”

Finding on the sexual abuse

142 I accept the plaintiff’s evidence in its entirety and I reject the evidence of the defendant in relation to both the sexual and physical abuse (see paragraphs [15]-[40] above). I am satisfied on the balance of probabilities that the sexual and physical abuse occurred in the manner which the plaintiff alleges. I accept the plaintiff’s evidence bearing in mind s 140(2) of the *Evidence Act*, and even in the absence of the documents which were tendered for the limited purpose I have described above.

143 I observe that the certificate of conviction from the defendant’s criminal trial in 2004 was admitted into evidence in these proceedings. As was recently explained in *MTH v State of New South Wales* [2025] NSWCA 122 (“*MTH*”) at [11]-[29] (Adamson JA, Mitchelmore JA and Price AJA agreeing), the combined effect of ss 91, 92 and 178 of the *Evidence Act* is to make a certificate of conviction admissible to prove the fact of conviction and the fact of the commission of the offence, being the fact of each element of the offence, its date and the identity of the offender and, if applicable, the victim. Adamson JA observed that “while the convictions were not conclusive proof that the offences were committed, in the absence of direct evidence to the contrary, they were sufficient to prove the fact of the offending conduct”: at [46].

144 As Adamson JA also observed, ss 92 and 178 were enacted to overcome the common law rule that convictions were not admissible to prove the commission of offences. Her Honour referred to the criticism of the rule expressed by the Australian Law Reform Commission in *Evidence* (Interim Report No 26, 1985) at 441:-

“The rule is unsatisfactory because fundamentally a conviction deserves recognition as evidence that was more likely to be right than wrong that the person was guilty. A conviction is the result of the judicial procedure, designed over centuries to put the material needed to make a correct decision before the court which has a legal duty to form an accurate opinion on the question at hand. To admit this evidence would not conclude the issue but would make available evidence of high probative value. The probative value of a conviction lies in the high standard of proof that must be satisfied before a finding of guilt can be made.”

145 Accordingly, in *MTH*, Adamson JA set out at [61] the proper approach to the admission into evidence of a certificate of conviction as follows:-

“His Honour should have started with the convictions which, had a certificate under s 178 of the *Evidence Act* been tendered, would have amounted to *prima facie* evidence of the elements of each offence. To the extent to which MTH gave evidence of those elements, her evidence would have been corroborated by the certificate. There being no direct evidence to the contrary, the convictions were sufficient to discharge MTH’s onus that they occurred. Other evidence was sufficient to establish that these acts must have occurred while she was living with the Crofts and therefore while she was under the age of 18 years and in their foster care. By starting with MTH’s oral evidence and finding her an unreliable witness, the primary judge disregarded the probative weight of the convictions to prove the elements of the offence.”

- 146 It follows that the plaintiff is entitled to rely on the certificate of conviction (and the accompanying indictment) as *prima facie* evidence of the commission of the offences of attempted rape and unlawful and indecent assault by the defendant against the plaintiff, between 29 April 1988 and 31 October 1988. It is uncontroversial that an element of each of those offences is an absence of consent. I observe that special leave was recently granted by the High Court in *MTH*, although it is not known on which issue: *Estate of the late Geoffrey Croft v MTH* [2025] HCADisp 231.
- 147 The certificate is consistent with and corroborates the account of the sexual abuse given by the plaintiff in her evidence in these proceedings, which I emphatically prefer to any version given by the defendant in any event.
- 148 The plaintiff provided a detailed and coherent account of the relevant period in October 1988 when the sexual and physical abuse is said to have occurred. Her account is consistent with versions that emerge from her numerous prior complaints (in correspondence with the Watchtower Bible & Tract Society in 1995, her reports to the QPS in 2000, her evidence given on oath in no less than three criminal trials between 2002 and 2004, and her statements to the Royal Commission in 2015) as well as the histories which she provided to Dr O’Hare in 2021 and Dr Smith in 2022.
- 149 Accordingly, I accept that the defendant sexually abused the plaintiff in about October 1988 as particularised in the Statement of Claim. I also accept that the defendant physically abused the plaintiff from time to time as set out in her Evidentiary Statement and as alleged in the Statement of Claim. Only the bleeding welts and black eyes, in my view, constitute serious physical abuse.

The consent issue

- 150 The defendant denied each of the plaintiff’s allegations of sexual activity, except for one occasion when he admitted to (consensually) digitally penetrating the plaintiff’s vagina for a short period of time at the plaintiff’s request. The plaintiff denied having consented

to any digital penetration by the defendant, at any point. She also says that the issue of consent is not relevant in any event, on the basis that any purported consent could not have been effective as the admitted conduct was unlawful.

151 This submission was premised on an acceptance that any consensual sexual activity between the plaintiff and the defendant would have necessarily been contrary to the law at the relevant time.

152 The effectiveness of consent to unlawful acts was considered, in a civil context, by the Supreme Court of Queensland in *Bain v Altoft* (1967) Qd R 32 ("*Bain v Altoft*"). That case concerned a claim for trespass arising out of a fight with the defendant in which the plaintiff willingly participated. With respect to the effect of the plaintiff's consent to the battery, Gibbs J stated at 14:-

"It is one thing to say that consent does not amount to a licence to commit a crime; it is another to say that for purposes of deciding civil liability a *de facto* consent should be treated as though it had never been given. I can see no reason of public policy that requires a consent to an illegal act to be treated as void in civil proceedings. ... It would in my view be manifestly unjust if a person who had consented to, or even invited, the doing of an act could afterwards recover damages on the ground that the act was illegal and his consent was therefore void."

153 I note that his Honour's conclusion in that case arose out of significantly different circumstances to the circumstances of the present case.

154 The plaintiff also referred me to the decision in *Gorman v McKnight* [2020] NSWCA 20, to suggest that even actual consent, if established, will not provide a defence for reasons of public policy. In that case, Bell P (as the Chief Justice then was) considered the decision in *Bain v Altoft*, and observed, at [76]-[77]:-

"If consent is pleaded as a defence to the claims, the plaintiffs in each set of proceedings will either put that in issue as a question of fact and/or contend that consent is not an available legal defence to a civil claim for damages for sexual assault of a minor. Issues may arise going to the reality of any apparent consent and/or its availability in circumstances where the plaintiffs may have lacked the maturity to give such consent (see *Marion's Case* at 311). In *Norberg*, La Forest J, delivering the judgment of himself, Gonthier and Cory JJ, observed (at 247) that:

184 "A 'feeling of constraint' so as to 'interfere with the freedom of a person's will' can arise in a number of situations not involving force, threats of force, fraud or incapacity. The concept of consent as it operates in tort law is based on a presumption of individual autonomy and free will. It is presumed that the individual has freedom to consent or not to consent. This presumption, however, is untenable in certain circumstances. A position of relative weakness can, in some circumstances, interfere with the freedom of a person's will. Our notion of consent must, therefore, be modified to appreciate the power relationship between the parties."

In the same case, Sopinka J observed (at 304) that:

"In assessing the reality of consent and the existence and impact of any of the factors that tend to negate true consent, it is important to take a contextually sensitive approach. ... Certain relationships, especially those in which there is a significant imbalance in power or those involving a high degree of trust and confidence may require the trier of fact to be particularly careful in assessing the reality of consent."

cf. *R v Howard* [1966] 1 WLR 13 at 15.

Furthermore, it may well be that, as a matter of common law and informed by the public policy manifest in legislation at the time of the alleged assaults (see [7] above), and considerations of legal coherence, even actual consent, if established, may not be available as a defence: but see *Bain v Altoft* [1967] Qd R 32 at 41 per Gibbs J; cf. W Page Keeton et al (eds), *Prosser and Keeton on Torts* (5th ed, West Publishing Co, 1984) at 124 where it is said:

"If the defendant's conduct is punishable as a crime primarily or substantially because of its harmful consequences to the consenting party, then there is good reason to take the position that consent will not be regarded as effective to bar a tort action, especially if the consenting party is not *pari delicto* or in equal fault, with the defendant."

155 It is unnecessary for me to determine the consequences of any purported consent in this case because I have emphatically preferred the evidence of the plaintiff regarding the incident of digital penetration. I easily conclude that there was no consent to the defendant's digital penetration of the plaintiff. I find the defendant's account of a single instance of consensual digital penetration to be inherently improbable and, at best, a warped account of what in fact occurred. I find that the plaintiff did not consent to any of the sexual activity about which she complains.

The circumcision issue

156 The defendant tendered evidence seeking to establishing that he was not circumcised. He submitted that, given that the plaintiff had described an incident where the defendant had pulled her hand onto what she had described as his "circumcised penis", her whole account of that incident must have therefore been a fabrication.

157 I address this submission for completeness. However, I reject it.

158 As a starting point, the material which the defendant tendered for this purpose reveals that, although the defendant did not undergo a circumcision in the traditional sense, he did have a surgical operation on his foreskin at the age of 26. This is described in the tendered material as a "partial circumcision". The documents also suggest that the defendant in fact referred to the operation as "getting circumcised" when discussing it with his family, including the plaintiff.

159 I infer that this may have caused the plaintiff to develop an understanding (albeit erroneous) that her father's penis was circumcised.

160 In addition, I note the following exchange, which occurred during cross-examination of the plaintiff by the defendant on this topic (at T97.47 – T98.34):-

"HIS HONOUR: [CEG2], I don't want you to lose track of where you were, but are you suggesting to [BDS2] that you are not circumcised? Is that what you're suggesting?

DEFENDANT: Yes, that's true your Honour.

HIS HONOUR: Okay, well you need to say to her it's not true that I'm circumcised, I am uncircumcised.

DEFENDANT

Q. It's not true that I am circumcised. I am not circumcised and never have been and I have the doctor's report right here from the Logan Home Family Medical Centre.

HIS HONOUR: You can try and tender that in due course, but for the moment we'll just ask--

...

Q. The question is he's saying to you it's not true, he is uncircumcised?

A. So when you showed me your penis it was erect and I could not see any foreskin over the head of your penis, and my knowledge at the time as a young girl, I never saw a man's penis, I only saw my little brothers' penises, who were

uncircumcised and had skin covering their entire head. So if it's an anatomical issue that in fact you're, you're, the head of your penis exposed, that's where I would have gotten that assumption from.

Q. Thank you.

HIS HONOUR: Yes, [CEG2], next question?"

(bold emphasis added)

161 The foregoing provides a sufficient basis for me to prefer the plaintiff's version, despite her inaccurate description of the defendant's penis. In my view, any inaccuracy can be ascribed to:-

- (1) the plaintiff's ignorance at the relevant time of the differences in appearance between circumcised and uncircumcised penises; and
- (2) the plaintiff's erroneous (but understandable) belief that the penis which her father had exposed to her was one which was circumcised, a misapprehension that may have been brought about by the defendant describing his penis as "circumcised" when discussing his meatotomy operation with his family.

162 I observe that the plaintiff accepted that her description of the defendant's penis may have been inaccurate. I find that any misdescription or inaccuracy on the plaintiff's part is of very little moment when it comes to the determination of the actual fact in issue: whether, on the occasion in question, the defendant pulled the plaintiff's hand onto his penis. I find that he did.

163 As I have found that the sexual and serious physical abuse has occurred as alleged, I observe that each pleaded instance of abuse amounts to an assault and battery as currently understood in the law of tort. In particular, the established sexual abuse has caused the plaintiff serious psychiatric harm and consequent loss.

Damages

Actuarial Data

164 I adopt the plaintiff's actuarial assumptions. The plaintiff was born on 12 September 1971 and is currently 54 years old. Approximately 36 years have passed since the sexual abuse. Assuming a normal retirement age of 67, the plaintiff has approximately 13 years of her working life ahead of her. This yields a multiplier of 563.3 on the 3% tables. The plaintiff's life expectancy is approximately 33 years, which yields a multiplier of 1099.8 on the 3% tables.

General damages

165 The plaintiff claims general damages in the amount of \$300,000. She relied on the evidence of Dr Smith, and to a lesser extent Dr O'Hare, with respect to the impact that the sexual abuse has had. That evidence is set out above and I do not repeat it. The plaintiff submitted that it demonstrates that the sexual abuse has had a significant

impact on her entire life. The plaintiff submitted that her PTSD caused by the sexual abuse has been aggravated by the various court cases and interactions concerning the sexual abuse, and that it has thwarted her ability to function at a high level.

166 Dr Smith accepted, and the plaintiff conceded, that the plaintiff's various other medical conditions, which included *inter alia* cancer, fibromyalgia, Graves' disease, Hashimoto's thyroiditis, narcolepsy, and psychogenic dysphonia, were all additional background stressors. Dr Smith also acknowledged that the plaintiff had grown up in a dysfunctional "cult-like" environment and that she had been abused by her first husband. However, the plaintiff emphasised Dr Smith's opinion that the childhood sexual abuse was the most significant of the plaintiff's traumas.

167 In the circumstances, I allow \$300,000 in general damages as claimed. A very small component of this sum is attributable to the serious physical abuse suffered by the plaintiff.

Exemplary and aggravated damages

168 The plaintiff submitted that the CLA does not apply, as the relevant sections of the CLA only apply to claims made after the commencement of the CLA (on 2 December 2002) and any retrospective sections are otherwise not engaged (to which see above). The claim is to be assessed at common law, with the consequence that aggravated and exemplary damages are available.

169 The plaintiff does not claim exemplary damages, conceding that the defendant has already incurred punishment in the form of a term of imprisonment. However, the plaintiff claims aggravated damages in the amount of \$100,000, on the basis that the sexual abuse constituted a gross breach of trust between a father and daughter, as well as for the bullying, threats and physical violence perpetrated by the defendant upon the plaintiff.

170 The real aggravation is referable to the sexual abuse, which I find the defendant committed. In *AA v PD* [2022] NSWSC 1039 at [120]-[128] Chen J said the following in relation to aggravated damages:-

"Aggravated damages are a form of general damages, given by way of compensation for injury to the plaintiff, which may be intangible, resulting from the circumstances and manner of the wrongdoing: *State of New South Wales v Ibbett* (2006) 229 CLR 638; [2006] HCA 57 at [31] (Gleeson CJ, Gummow, Kirby, Heydon and Crennan JJ). They are awarded for injury to the plaintiff's feelings caused by insult, humiliation and the like: *Lamb v Cotogno* (1987) 164 CLR 1 at 8 (Mason CJ, Brennan, Deane, Dawson and Gaudron JJ); [1987] HCA 47. That is, they are awarded when the harm done by the wrongful act was aggravated by the manner in which the act was done: *Uren v John Fairfax* (1966) 117 CLR 118; [1966] HCA 40; *State of New South Wales v Abed* [2014] NSWCA 419 at [231] (Gleeson JA, Bathurst CJ and Macfarlan JA agreeing). The entitlement to aggravated damages therefore turns upon establishment of these elements.

...

In order to secure an award of aggravated damages, typically (but not invariably) there must be "conscious wrongdoing in contumelious disregard of another's rights": *Gray v Motor Accidents Commission* (1998) 196 CLR 1; [1998] HCA 70 at [14] (Gleeson CJ, McHugh, Gummow and Hayne JJ). In *State of NSW v Riley* (2003) 57 NSWLR 496; [2003] NSWCA 208 at [138] (Hodgson JA, Sheller JA and Nicholas J

agreeing) (*'Riley'*), explained that whilst the presence of malice was not essential to ground an award of aggravated damages, and gave some guidance on the character of the defendant's wrongful conduct necessary to support such an award:

"Conduct may be high-handed, outrageous, and show contempt for the rights of others, even if it is not malicious or even conscious wrong-doing. However, ordinarily conduct attracting exemplary damages will be of this general nature, and the conduct must be such that an award of compensatory damages does not sufficiently express the court's disapproval ..."

...

As aggravated damages, like compensatory damages, are directed towards injury to (or hurt) feelings, the Court must take care not to "double-count". This is particularly relevant in a case whether the injury relied upon to justify an award of damages is psychiatric, rather than physical, injury. This means that, if a court has awarded damages for hurt feelings as part of ordinary compensatory damages, the award of aggravated damages must only be for the difference justified by this approach; that is, an award of so much as is necessary to bring the damages up to the upper end of the available range: *Riley* at [131]-[133] (Hodgson JA, Sheller JA and Nicholas J agreeing); *State of New South Wales v Radford* (2010) 79 NSWLR 327; [2010] NSWCA 276 at [95]-[96] (Sackville AJA, Beazley and Macfarlan JJA agreeing)."

- 171 That the defendant's conduct was in conscious wrongdoing in contumelious disregard of the plaintiff's rights cannot be overstated. However, as both general and aggravated damages are directed to the hurt feelings of the plaintiff, I must be cautious not to double count, keeping in mind the significant amount of general damages I have found. In all of the circumstances, I allow \$100,000 as claimed. In total, I have allowed \$400,000.

Interest

- 172 The plaintiff also claims an amount of \$144,000 for interest on past general and aggravated damages. The interest is claimed on the basis that the provisions of the CLA do not apply.
- 173 As the plaintiff submitted, the award of interest should be approached in a broad and practical way and should not be allowed to assume disproportionate importance: *Cullen v Trappell* (1980) 146 CLR 1; [1980] HCA 10 at [22]. The plaintiff submitted that the accepted method of calculating interest on damages progressively over time is to halve the rate of interest over the period from the date of injury to date. She submitted that the accepted rate of interest on past general and aggravated damages is 4% or 2% over the accrued period, relying on *Todorovic v Waller* (1981) 150 CLR 402; [1981] HCA 72. The plaintiff arrives at the \$144,000 figure by claiming 2% per year for 36 years on past general damages amount of \$200,000: $\$400,000/2 = \$200,000 \times 0.02 = \$4000 \times 36 \text{ years} = \$144,000$.
- 174 I allow \$144,000.

Past economic loss

- 175 The plaintiff claims a cushion for past economic loss in the amount of \$900,000.
- 176 The plaintiff claims for loss of income from when she left school early after the abuse to date. The plaintiff submits that the grooming, sexual abuse and physical abuse were destructive of her education and that the resulting psychological injuries have impacted

upon her career and employment prospects. The plaintiff relies on the report of Dr Smith to submit that her PTSD has thwarted her ability to function at a high level. The plaintiff says that her legal studies were disrupted and delayed as a result of factors relating to the abuse (such as her involvement in the Royal Commission).

177 The plaintiff acknowledges that she was also occupied with her children when they were very young but notes that she resumed her studies once her daughter reached pre-school age.

178 The plaintiff says that, although she did eventually obtain her Australian legal qualifications, she has since moved to the US and feels unable, as a result of the abuse, to complete the further study that would allow her to convert her Australian qualifications to American qualifications. She is therefore unable to take advantage of her legal qualifications. The plaintiff relies on Dr Smith's opinion that most workplaces are also likely to trigger trauma relating to the abuse in any event.

179 The plaintiff claims for partial loss of income for the period between 1988 to 2018, calculated using the annual difference between her actual earnings over that period (from her employment as a beautician, for example) compared with the amount she was able to earn once she qualified as a lawyer. She claims a relative annual loss of \$25,000 every year for the 30 years between 1988 and 2018, for a subtotal of \$750,000.

180 She then claims a total loss of income from when she was medically retired by the Queensland Police Force in April 2022 to date. She claims \$50,000 per year for each of the 3 years to date, for a further \$150,000 and a total past economic loss amount of \$900,000.

181 Past economic loss in such a case is a very vexing issue. I do not doubt that the plaintiff suffered a diminution in her capacity to earn in the past as a result of the sexual abuse perpetrated by her father.

182 However, there were many events that likely impacted the plaintiff's capacity to earn other than the abuse. The first and perhaps most important is that the plaintiff was raised in a "cult-like" environment which no doubt impacted upon her psychological state and her future educational and employment opportunities. Second, the plaintiff was involved in several abusive relationships which likely affected her ability to earn. Third, the plaintiff was a single mother with significant child-rearing responsibilities. Fourth, the plaintiff has suffered from several disabling medical ailments over and above the PTSD suffered as a result of her father's sexual abuse. Fifth, the plaintiff

moved to the USA by choice. She must mitigate her loss of income as a lawyer by attempting to qualify there, or attempt to find employment which she might be capable of performing.

183 There is no principle which prohibits the award of a buffer for past economic loss in an appropriate case: *Ramsey v Denton* [2021] NSWCA 310 at [61]. In my opinion, taking into account the matters set out above, this is such a case.

184 I observe that there is not a great deal of evidence to rely upon in making such a finding. Doing the best I can, I allow \$15,000 as a net loss for each calendar year since the abuse: $\$15,000 \times 31 \text{ years} = \$465,000$.

Future economic loss

185 The plaintiff claims a future economic loss cushion of \$600,000. The plaintiff claims \$100,000 per year until her predicted retirement at age 67, less a 15% discount.

186 Again, I allow a buffer on the basis that the plaintiff, over the remainder of her working life, will have periods totalling about 3 years when she will be unable to work, and I allow her average net weekly earnings of a professional person of about \$100,000 per year $\times 3 = \$300,000$ (inclusive of superannuation).

Past out-of-pocket expenses

187 I allow \$3700 as claimed for past psychological expenses incurred.

Future out-of-pocket expenses

188 The plaintiff claims the amount of \$211,840 for future out-of-pocket expenses, in accordance with the recommendations made by Dr Smith in his report. This figure is said to comprise the cost (less a discount) of weekly sessions with a psychologist or psychiatrist for life, the cost of mood stabilising medications for life, and the cost of additional monthly psychiatry treatment for a period of at least two years.

189 I allow weekly psychiatric treatment for two years $\$350 \times 101.3 = \$35,455.00$. I allow monthly specialist psychiatric treatment for five years at $\$450 \times 242.60 = \$109,170.00$. I allow medication at \$150 per month for the balance of the plaintiff's life: $\$150 \times 12 = 1800/52 = \$34.62 \times 1099.8 = \$38,070.00$. I allow, in total, \$182,695.00.

Total

190 In summary, I allow damages in the following amounts:-

General damages	\$300,000.00
Aggravated damages	\$100,000.00
Interest	\$144,000.00

Past economic loss	\$465,000.00
Future economic loss	\$300,00.00
Past out-of-pocket expenses	\$3,700.00
Future out-of-pocket expenses	\$182,695.00
TOTAL	\$1,495,395.00

Orders

191 I make the following orders:-

- (1) Judgment for the plaintiff in the sum of \$1,495,395.00.
- (2) The defendant is to pay the plaintiff's costs of the proceedings on the ordinary basis unless a party is able to demonstrate an entitlement for some other costs order.
- (3) Liberty to apply on seven (7) days notice if further or other orders are required including as to costs.
- (4) The exhibits and subpoenaed material are to be returned forthwith. Any exhibits returned must be retained intact by the party or person who produced that material until the expiry of the time to file an appeal or until any appeal has been determined.

Amendments

24 November 2025 - Amended to give effect to further suppression (pseudonymisation) orders made on 24 November 2025.

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.

Decision last updated: 24 November 2025