

UNDER the Inquiries Act 2013
IN THE MATTER of the Royal Commission of Inquiry into Historical Abuse
in State Care and in the Care of Faith-based Institutions

ROYAL COMMISSION INTO ABUSE: MARYLANDS HEARING

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

9 February 2022

 **Simpson Grierson**
Barristers & Solicitors

Sally McKechnie
Telephone: +64 4 499 4599
Email: sally.mckechnie@simpsongrierson.com
DX SX 11174
Wellington

To: The Chair and Commissioners

1. Tēnā koutou i tēnei ahiahi Madam Chair, Commissioners. Ko Sally McKechnie ahau.
2. I appear as counsel for Te Rōpū Tautoko, on behalf of the Catholic bishops and congregational leaders. We acknowledge Madam Chair, Commissioners, Counsel Assisting, fellow counsel, survivors and survivor networks, and all those watching elsewhere.
3. We acknowledge that this hearing is being held during troubling times for our country. COVID-19 has impacted the ability of survivors and advocates to be present in the public gallery to take part in this hearing. It has also restricted the ability for representatives of the Church to be here in person and to bear witness to survivor experiences.
4. In the public gallery this morning is Auxiliary Bishop of Auckland Michael Gielen and Chair of Te Rōpū Tautoko, the group representing all Catholic dioceses and congregations in the Inquiry. There are two retired St John of God Brothers remaining in New Zealand who were to [REDACTED] attend the length of the hearing to hear survivors and acknowledge their stories. Sadly this will need to be done by following the hearing remotely. This does not reduce the Church's commitment to listen to every word and commit to the change that this process must result in. The Church is present, and it is listening.

Introduction and acknowledgements

5. The bishops and congregational leaders of the Catholic Church in Aotearoa New Zealand acknowledge those survivors who suffered abuse while in the care of the St John of God Brothers at Marylands, those who were abused by Bernard McGrath at Hebron, those who were harmed at St Joseph's Orphanage, and all other survivors.
6. They acknowledge your bravery in making the courageous and difficult decision to engage with this Inquiry. We acknowledge all survivors who are watching this hearing, either here in the room or remotely. As has been acknowledged before, including in this Commission the abuse

which occurred to children and young people while in the care of the Catholic Church is deeply shameful and should never have happened.

7. Te Rōpū Tautoko, on behalf of all the bishops and congregational leaders recognise that you, the survivors, were and are still the most vulnerable. If you needed to be cared for, then you should have been safe in the care of the Church. The fact that you were not safe and you were harmed is indefensible and a shame on all the Church. For this, and when we didn't respond as we should have to your disclosures and reports of abuse, the bishops and congregational leaders are deeply sorry.
8. The Provincial of the St John of God Brothers, Br Timothy Graham, will be giving evidence later in this hearing. He offers his deep apologies and regret for what happened to you while in the care of the Brothers.
9. We are not here to question the evidence of survivors. We are here to listen to survivors describe their experiences, to reflect on past wrongs, and to learn how the Church can ensure that proper redress and healing takes place for survivors of abuse, and then decide what practical steps are to be implemented as a result of this process. The Church is already working to improve processes but this will never cease. Constant change and improvement for the good of survivors is paramount.
10. In my opening remarks this morning I intend to cover three main areas. These are covered in more detail in the written submissions that have been filed to accompany this oral presentation.
11. First, it may be helpful to Commissioners to provide a brief overview of the St John of God Brothers; their work at Marylands; its relationship with the St Joseph's Orphanage run by the Sisters of Nazareth; its closure; and the subsequent separate establishment of the Hebron Trust by Bernard McGrath,
12. Second, I will outline the evidence the Inquiry will hear from the Church's two witnesses, Br Timothy Graham and Archbishop Paul Martin; and I will touch on the written evidence filed with the Inquiry which will not be traversed in this hearing.

13. Finally, in the spirit of the Inquiry's inquisitorial processes I will outline the questions the Catholic Church will be hoping can be answered through the duration of the next week, and how they will be listening and learning about what can be done to ensure this dark chapter of the Church's history is never repeated again.
14. Before I commence, two preliminary clarifications may be helpful for Commissioners.
15. First, when I refer to the "Church" I mean the collective views of the 49 constituent congregations and dioceses which make up the "Catholic Church in Aotearoa New Zealand". Commissioners by now will be familiar with the structure and make-up of the Catholic Church in New Zealand, and the independence each diocese and congregation has from each other. When I refer to "Te Rōpū Tautoko" I mean the group formed by the Catholic bishops and congregational leaders for the purpose of engaging with the Inquiry. And I will often refer to the St John of God Brothers simply as "the Brothers".
16. Secondly, throughout the hearing, you may notice Catholic witnesses referring to some of the Brothers by their name without the title of "Brother". This is in not meant to downplay the Brothers' involvement in Marylands, or their offending as Brothers. It will reflect the fact that these Brothers left the Order of St John of God Brother and as such are not referred to using that title.

History of the St John of God Brothers, Marylands, and Hebron in New Zealand

Reliance on historical records

17. In accounting for the Brothers' arrival in New Zealand and operation of Marylands, evidence provided to the Inquiry is heavily reliant on historical records and documents. Very few Brothers who worked at Marylands are still alive or able to contribute substantively to this hearing.

The Brothers' arrival in Christchurch and involvement in Marylands

18. Marylands was a school for intellectually disabled children in Christchurch, was run by the St John of God Brothers from 1955 to 1984. The Brothers are a religious order founded in Spain in the 16th Century. The order is devoted to the care of the sick and undertakes a wide range of health and social services activities. The Brothers operations in New Zealand were overseen by the Oceania Province, headed by a Provincial based in Australia.
19. The Brothers no longer have an active presence in New Zealand. Two St John of God Brothers remain living in New Zealand, both are New Zealanders and chose to retire in New Zealand to be close to families. Both were nurses working at the St John of God Hospital, and one man had a role as Prior in the final year that Marylands was open. Both intended to be here today, and are watching the live-stream. The Provincial, Brother Timothy Graham, and members of the order will be watching the hearing from Australia via the live-stream.
20. The Brothers took over the operation of Marylands in 1955 from the Picpus Fathers. The Fathers had run a different school on the site and it was not for disabled children. The Picpus Fathers' involvement in Marylands is outside the scope of this case study, and minimal evidence has been requested or provided in this regard.
21. Marylands was first based on a site in Middleton, and moved to the Halswell site in 1968. The buildings were purchased by the Ministry of Education in 1982, with the Ministry taking over the running of the school in 1984 and renaming it Hogben School. It is now currently known as Halswell Residential College. Few of the original buildings remain as a result of the 2010 and 2011 Christchurch earthquakes, and extensive redevelopment.
22. In May 1970 the Brothers opened the St John of God Hospital on the Halswell site adjacent to Marylands. The hospital still operates today, however the Brothers no longer have any responsibility for it. During its operation in the 1970s and 1980s, Brothers lived on site at Halswell and worked either in the hospital or in the school. Brothers in the hospital had

their own living quarters, while Brothers in the school lived in the residential sections. The Brothers came together for community events, prayer, meals etc but the two institutions – Marylands School and the St John of God Hospital, were run independently.

23. Marylands was a school for children with disabilities. However, those classifications are different to how they would be used today and many of the boys at Marylands would likely now be supported to be educated in the state schooling system.
24. The St John of God Brothers no longer hold much information or records from Marylands. What was held would have been transferred over to the Department of Education when they took over in 1984. Much of the information in Br Timothy Graham's evidence has been supplemented with research from Archives New Zealand or other sources. The Brothers do not hold any student files, and the Brothers are unaware of what the Crown may have done with these records and where they are now, if they still exist.
25. It is timely to mention the St Joseph's Orphanage operated by the Sisters of Nazareth. It was situated on a neighbouring property, several hundred metres from Marylands and separated by a small river. St Joseph's Orphanage does not fall within the scope of the Marylands case study. However, the evidence of some survivors who were residents of both St Joseph's and Marylands includes details of abuse at both institutions. The Church does not seek to question any of the evidence put forward by survivors, and the Sisters of Nazareth will be watching this hearing listening to the stories of those who were harmed in their care. However, no evidence about the operation of St Joseph's Orphanage was sought from the Sisters.

Hebron Trust

26. Few Brothers alive today have any direct knowledge of the establishment of the Hebron Trust by Bernard McGrath in the late 1980s. What can be said has been collated from documents held by solicitors for the Trust and other historical accounts.

27. Br Timothy Graham's evidence discusses the establishment and operation of Hebron Trust. A detailed briefing paper on Hebron Trust has been filed with the Inquiry.
28. Hebron Trust began, informally, in 1986, when the Bishop of Christchurch, Denis Hanrahan, saw a growing problem with homeless young people or "street kids" in Christchurch, and invited the Brothers to establish a youth ministry to support at-risk kids. It is clear from the records that the only connection between Marylands School and Hebron Trust is Bernard McGrath, who offended against young people at both Marylands and Hebron. No other Brothers are accused of abuse of young people at Hebron.
29. Before I move on to outline the evidence which will be provided by Catholic evidence, we must pause to confront the horrific abuse which occurred at Marylands and at Hebron.
30. Br Timothy Graham's evidence outlines the records that are held about the nature and extent of abuse at Marylands.
31. We must confront the fact that Bernard McGrath, a member of the St John of God Brothers 1968 and 1996, is one of Australasia's worst sexual offenders against children. Following a three-year jail sentence in 1993, he was convicted of 21 offences in 2006. Most recently, he was convicted of 64 offences against 12 boys in Australia. He is currently serving a sentence of 33 years in prison in Australia for his offending, and will likely die in prison. He offended not only at Marylands and Hebron, but in institutions in Australia. All of his offending was against vulnerable young people. It is likely that, had his New Zealand offending been prosecuted under modern prosecutorial standards, his convictions would be far more numerous and his prison time much greater. Allegations reported to St John of God relating to McGrath account for almost 5% of the reported abuse held by Catholic Church authorities in New Zealand.
32. Bernard McGrath was not the only man to offend against children at Marylands. The evidence will show that in total, 26 men, including Brothers and employees of the Order, have allegations of abuse made against them for offending against over 100 children at Marylands. The

nature and extent of this offending is at the extreme end and is likely to be only matched by the scale of offending which took place in the worst state institutions.

33. The St John of God Brothers, and the leaders of the Catholic Church deeply regret the failure to keep these children safe while they were in their care. The Church carries deep shame for this dark chapter of their history.
34. The seriousness of the offending is reflected in the redress process undertaken by the Brothers, which is likely the largest amount of redress provided by a single non-Crown institution for offending in New Zealand. The Brothers welcome last year's interim redress report proposing an independent redress process.

Evidence on behalf of the Church

35. Two Catholic Church leaders will be giving oral evidence during this hearing: Br Timothy Graham, Provincial of the Hospitaller Order of St John of God; and Archbishop Paul Martin, Coadjutor Archbishop of Wellington, former Bishop of Christchurch and current Apostolic Administrator of the Christchurch Diocese.
36. Two further witnesses provided written statements: Monsignor Brendan Daly, canon law expert; and Lee Robinson of Christchurch law firm Saunders Robinson Brown, who acted for the Brothers in New Zealand on matters including redress during the 1990s and 2000s.
37. Te Rōpū Tautoko has further provided a number of briefing papers to the Inquiry, including a report from researcher Claire Stewart on the operation of Marylands and societal context of the time; the history and workings of the Hebron Trust and statistics on the extent of abuse at Hebron by Bernard McGrath; the involvement of the Picpus Fathers in Marylands prior to the St John of God Brothers; the nature and extent of abuse at Marylands, including details of redress; and the response to and treatment of offenders by the Brothers.

Br Timothy Graham

38. Br Timothy Graham is the Provincial of the Oceania Province of the Hospitaller Order of St John of God, known as the St John of God Brothers. Br Timothy is a qualified psychologist who joined the Brothers in January 1977, and served as Prior of several communities, including in Christchurch from 2002 to 2005.
39. Br Timothy's evidence is structured in response to a request for evidence from the Inquiry. As a result, it will include a number of references to the absence of information or to questions that Br Timothy does not and likely can never know the answer to.
40. Br Timothy will speak on Marylands and Hebron from his understanding of the historical record, and from the knowledge and experience gained as Provincial. Since becoming Provincial, Brother Timothy has been involved directly in the redress process.
41. The nature of some of Brother Timothy's evidence will be highly sensitive. It will be necessary at places to talk generally and without specificity, in order to protect those survivors who have chosen not to, or are unable to engage with the Inquiry.

Archbishop Paul Martin

42. Archbishop Paul Martin was the Bishop of Christchurch from 2018 until his appointment as Coadjutor Archbishop of Wellington in 2021. He is currently the Apostolic Administrator for the Diocese of Christchurch until a new Bishop is appointed, effectively holding the same rights and responsibilities as a bishop for the diocese.
43. Archbishop Paul Martin's evidence is provided as a result of a request by the Inquiry. The bulk of his evidence is therefore based on historical documents. In relation to matters of opinion, the Archbishop has sought the input of other Bishops before filing his evidence.
44. Archbishop Paul's evidence answers the questions of the application of canon law posed by the Inquiry. Archbishop Paul's evidence also discusses the work of religious institutes and the relationship between bishops and religious congregations in New Zealand. His evidence will

discuss how this relationship operated in the 1950s onward during the period in which Marylands operated. It will touch on oversight, responsibility of religious works, and the working relationship bishops have with leaders and members of religious congregations.

Lee Robinson

45. Lee Robinson is a partner in the law firm Saunders Robinson Brown based in Canterbury.
46. Lee's written evidence was provided as he is one of the few people who have direct knowledge of the Brothers' redress process in the 1990s and early 2000s – in particular the development of what was called the "Pastoral Process" by Br Peter Burke, the then Provincial, in the early 2000s. Peter Burke died in 2010. Lee's evidence is intended to act as a supplement to the evidence of Br Timothy Graham. Lee was also involved in the establishment of the Hebron Trust through his prior work at the firm Malley and Co. He also chaired the St John of God Hospital Trust in Christchurch.

Monsignor Brendan Daly

47. Monsignor Brendan Daly is a priest from the Diocese of Christchurch ordained in 1977. He is the Judicial Vicar in charge of the Tribunal of the Catholic Church for New Zealand.
48. Monsignor Daly is an expert in canon law and he has been asked to provide evidence on the impact of canon law on responses to reports of abuse at Marylands, and the extent to which canon law requirements were applied in the response to and treatment of religious members, in particular any observations about whether canon law may have impeded, or continues to impede, an appropriate response to complaints of harm.
49. Monsignor Daly has been asked to provide this evidence due to the limited knowledge other witnesses have on canon law. Like civil law, expertise in canon law is held by specialists such as Monsignor Daly, and heads of congregations and dioceses will rely on canon law experts and advice in order to ensure their daily operations are consistent with canon law.

50. Monsignor Daly has also offered additional information concerning canon law changes in 2021 which may be relevant and useful for Commissioners to have.
51. Monsignor Daly's evidence is extensive and covers a range of topics, including:
- a. The history of the Brothers' involvement in Marylands.
 - b. The application of canon law generally.
 - c. Application of specific canon law updates, including the *1917 Code*, the *Vatican II* and *Post Vatican II* documents, and the *1983 Code*.
 - d. How entrusted works and proper works operate within a diocese.
 - e. How canon law operated after the 1983 Code was promulgated, including procedures relating to allegations of abuse by priests.
 - f. The issuing of *Sacramentorum Sanctitatis Tutela* in 2021 requiring Rome to supervise investigations into credible complaints of sexual abuse against children.
 - g. Procedures relating to allegations against religious brothers or sisters.
 - h. The issuing of *Vox Estis Lux Mundi* in 2019 which expanded the definition of sexual abuse.
52. Particularly relevant to Marylands, Monsignor Daly's evidence then discusses *what* the Bishop of Christchurch was required to do if they had known about allegations of abuse at Marylands before it closed, and *what* he was required to do if he had known about allegations after Marylands had closed. His evidence covers concepts like compulsory reports, the Seal of Confession, and Priest-Penitent Privilege. It draws conclusions on reporting obligations and the role of the Holy See.
53. Monsignor Daly then undertakes a similar analysis in relation to Hebron Trust, and what the response should be from the Church if the same allegations were to arise today, including the appropriate penalties for abuse by religious brothers and sisters, and lay officials.

Limitations of evidence

54. The evidence provided to the Inquiry is limited in a number of ways.
55. First, this evidence is tailored to meet the extent of the scoping document provided by the Inquiry in 2020. Evidence is also provided in response directly to requests from the Inquiry for specific evidence, long before any of the survivor evidence was provided to the Brothers.
56. Other areas have subsequently been traversed in survivor witness or other expert statements. This may lead some survivors to assume that the Church declines to provide context and information pertaining to their particular circumstances. Te Rōpū Tautoko hopes to reassure survivors that this is not the case.
57. In relation to survivor accounts of abuse while in the care of the Nazareth Sisters at St Joseph's Orphanage, some additional context has been provided by Te Rōpū Tautoko and the Sisters to the Inquiry. The Inquiry has confirmed on multiple occasions that this hearing is not wide enough to enquire into specific allegations of abuse at St Joseph's, and the operation of the Orphanage. The Sisters can provide any information they hold should the Inquiry seek it from them about the operation of St Joseph's Orphanage.
58. Second, the evidence is almost wholly reliant on historical documentation. This is particularly difficult in the case of Marylands and Hebron, where the Brothers either no longer hold relevant files or never held files. In the case of Marylands, any files relating to the operation of the school would have been handed over to the state when they assumed responsibility for Marylands in 1984. In relation to Hebron, the Brothers would have held very few files relating to the operation of Hebron's services. Client files and policy documents were held by the Trust, and some documents were transferred to the Brothers' solicitors as part of routine archiving by the current St John of God Hauora Trust.
59. Third, the harm caused at Marylands was many decades ago. The passage of time, and imperfect record-keeping processes has meant that many contemporary records no longer exist. In the process of preparing for this hearing, the Brothers have provided a vast volume of material

they hold which relates to Marylands or Hebron, including all information relating to complaints of abuse.

60. Fourth, the timing of COVID-19 has made preparation for this hearing difficult. We are grateful for the assistance of the Inquiry during document provision from our client's Australian archive, where access was heavily restricted for many months.
61. We are also grateful for the assistance in having Catholic witnesses participate in this hearing by AVL.

Questions/Themes to explore

62. The Church supports this inquiry and these hearings being survivor-focused, and supports survivors being able to share their experiences in a safe and supportive environment. Working through Counsel Assisting, and embracing the inquisitorial nature of this process, the Church has raised a number of themes that they would like the Inquiry to explore with survivors and other witnesses. This is so that the Church can learn from past practices and ensure that now and in the future, its policies and processes, and the way it responds to claims of abuse are in line with best practice, and in line with how the survivor community want to be treated.
63. By the end of these hearings, the Catholic Church hopes that the following themes are able to be explored in a way which complements the work undertaken by the Inquiry in their redress report.

Effective redress

64. Many survivors speak of monetary redress as not being sufficient, even those with proportionally large payments made to them. One witness in his statement speaks of wanting "comfort". The Church would like Commissioners to explore what providing comfort and making amends through effective redress looks like for survivors.
65. The Church acknowledges that different survivors will want different outcomes, and have a different relationship with the Church. Some survivors wish there was a completely independent pathway to redress and want nothing to do with an institution they see, rightly, as being

responsible for harming them. Other survivors maintain a close connection and relationship with the Church and with their faith, and are frustrated when they are not able to deal directly with Church leaders.

66. What is important for the Church is to understand what the spectrum of effective redress looks like for survivors. Where survivors want to maintain continuing relationships with Church authorities, how could this be better achieved.

Monetary compensation

67. Several witnesses make statements which reflect the fleeting nature of monetary redress, and some of the problems that are caused when significant sums of money are provided, sometimes to an individual who is not used to dealing with such sums. There are examples of witnesses who express regret that monetary redress was immediately spent, reducing the chance for redress to provide long-term support. There are also contrary examples of witnesses who express frustration when Church authorities try to place well-intentioned restrictions on the access to or use of redress.
68. It would be helpful for Commissioners to explore with witnesses what are the appropriate support mechanisms that should be put in place when monetary redress is provided. How can Church authorities provide effective redress in a way which best supports survivors, without being patronising or undermining their ability to be financially independent.

Barriers to making a complaint of abuse to Church authorities or to Police

69. Some witnesses speak of fears that speaking to Police could potentially void a settlement agreement they had reached with Church authorities, requiring them to repay money. We note that this does not appear to have ever happened, and would not be an outcome under modern settlement agreements which often expressly state survivors are encouraged to go to Police where they feel comfortable doing so. Other witnesses describe some of the barriers of coming forward in the first place.

70. The Church asks Commissioners to further explore barriers to making complaints, particularly in relation to Church authorities who a survivor may wish to maintain a connection to.
71. The Church is in a different position to the state in that they often maintain a lifelong connection and pastoral role with survivors, and ongoing redress and pastoral support is often key to a successful outcome for survivors. Any risk that these connections will be jeopardised could be a significant barrier for survivors, so the Church wants to know how it can amend its processes to ensure as few barriers as possible are in place to making a complaint of abuse.

A culturally responsive Church

72. One witness says that the Church needs to be more culturally sensitive and respond to complaints in a culturally appropriate way. Through the National Office for Professional Standards, known as NOPS, the Church has been updating its practices to try and work with survivors in a way which is most appropriate for their particular culture. Individual congregations and dioceses also take different steps to acknowledge the culture of a survivor and engage in a culturally appropriate manner.
73. It would be helpful for Commissioners to explore with survivors what they would like to see from the Church when engaging in the redress process. What practices and processes could be put in place to better equip NOPS and other Church authorities to deal with culturally diverse survivors? What balance should be struck between proposing processes to survivors and responding to their requests?

Failure to recognise harm

74. There is no doubt that Marylands is a very dark chapter of the St John of God Brothers' history, the Catholic Church's history in New Zealand and for our society.
75. No amount of good intention will ever be able to overcome the fact that for many children Marylands represents a place of harm and abuse which some will never be able to recover from.

76. Yet despite these significant failings, the historical record shows that, in terms of meeting the educational need which they were asked to meet for these children, the Brothers were relatively progressive and industry-leading when it came to the education of children with disabilities. Research from Claire Stewart indicates that literature produced by the Brothers appears to be at the leading edge of what was considered “best practice” in the mid-1900s, including references to longitudinal studies of outcomes of children at Marylands.
77. This earned the Brothers a lot of credit and goodwill in the local community, and documents and public reports show how much the community widely supported the annual fetes and galas. It is possible this credit, combined with minimal state oversight practices of the time, meant the kind of scrutiny we would expect under today’s standards, was not applied to the operations at Marylands.
78. This is the final and most important question we hope Commissioners can explore: why was the extensive and serious harm being caused at Marylands not identified and prevented and acted upon at the time by authorities - the Ministry of Education, the Department of Social Welfare, the Police, other Church authorities, and even the international leaders of the Brothers themselves?
79. Many children were failed by many adults at Marylands and the Church welcomes an examination of these issues.

Date: 9 February 2022

S V McKechnie / J R Meager

Counsel for Te Rōpū Tautoko, on behalf of the Bishops and Congregational Leaders of the Catholic Church in Aotearoa New Zealand