

FILED
27 MAY 2025



NOTICE OF APPEAL

COURT DETAILS

Court	Supreme Court of New South Wales, Court of Appeal
Registry	Sydney
Case number	2025/00099362

TITLE OF PROCEEDINGS

Appellant	Albert John Hartnett
First Respondent	Trustees of the Roman Catholic Church for the Diocese of Wilcannia-Forbes
Second Respondent	Trustees of the Marist Brothers
Third Respondent	Mercy Support Limited

PROCEEDINGS IN THE COURT BELOW

Title below	Hartnett v Trustees of the Roman Catholic Church for the Diocese of Wilcannia-Forbes & Ors (No 7) [2025] NSWSC 128
Court below	Supreme Court of New South Wales
Case number below	2022/288425
Dates of hearing	5-9, 12-16, 19-20, 22-23 February 2024, 10 December 2024
Material date	28 February 2025
Decision of	Campbell J

FILING DETAILS

Filed for	Albert Hartnett, Appellant
Filed in relation to	Whole of decision below
Legal representative	Tatiana White, North Star Law
Legal representative reference	TW:21696
Contact name and telephone	Tatiana White (02) 9188 7875
Contact email	tatiana@northstarlaw.com.au

HEARING DETAILS

This notice of appeal is listed for directions at 18 June 2025 at 9:00 AM

TYPE OF APPEAL

Personal injury – other

DETAILS OF APPEAL

- 1 This appeal is brought under ss 101(1)(a) and (2)(r)(i) of the *Supreme Court Act 1970* (NSW).
- 2 This notice of appeal is not filed pursuant to leave to appeal.
- 3 The appellant has filed a notice of intention to appeal on 13 March 2025, which was served on the proposed First Respondent, Second Respondent and Third Respondent.
- 4 The appellant appeals from the whole of the decision below.

APPEAL GROUNDS

- 1 The trial judge erred in finding that the Appellant was not assaulted by Sister Marietta Green, including by the use of a long wooden ruler.
- 2 The trial judge erred in finding, by inference, that Sister Marietta Green administered physical discipline (assault) as corporal punishment to the Appellant, in circumstances where:
 - a. The Appellant did not allege he was assaulted in that manner;
 - b. Sister Marietta Green did not give evidence that she assaulted the Appellant in that manner; and
 - c. Sister Marietta denied ever hitting the Appellant.
- 3 The trial judge erred in finding, by inference, that the physical discipline (assault) administered as corporal punishment to the Appellant by Sister Marietta Green was justified as lawful chastisement, in circumstances where:
 - a. Sister Marietta Green denied ever hitting the Appellant;
 - b. The Respondents adduced no evidence as to the Appellant's conduct, and surrounding circumstances, precipitating the physical discipline (assault), and why that conduct of the Appellant reasonably justified the use of physical discipline (assault) so as to be justified as reasonable lawful chastisement;
 - c. The trial judge made no findings as to the quality and force of the physical discipline (assault) administered by Sister Marietta Green to the Appellant;

- d. Sister Marietta Green gave evidence that the Appellant was a well-behaved child who did not require physical discipline (assault); and
 - e. The use of physical discipline was prohibited at the School at the time and the Respondents adduced no evidence as to what was a reasonably acceptable system and practice of reasonable lawful chastisement as of the time of the Sister Marietta Green use of physical discipline (assault) administered as corporal punishment.
- 4 The trial judge erred in construing the statutory definition of “serious physical abuse” as defined in s 6A of the *Limitation Act 1969* (NSW), in circumstances where:
 - a. The trial judge did not have regard to the Second Reading speech;
 - b. The trial judge conflated the notion of “serious physical abuse” with “severe physical abuse”; and
 - c. The trial judge held that only conduct amounting to criminal conduct could satisfy the statutory notion of “serious physical abuse”.
- 5 The trial judge erred in finding Sister Marietta Green was a person of good character, and attributing weight to that finding, in circumstances where:
 - a. Sister Marietta Green admitted to using physical discipline (assault) on Ms Margaret Dixon, an infant Aboriginal child; and
 - b. Sister Marietta Green was counselled by Brother Hollamby for administering physical discipline (assault) to Ms Janine Monaghan, an infant Aboriginal child.
- 6 The trial judge erred by accepting the evidence of Sister Green that she never used an implement to administer physical discipline (assault) to any student throughout the entirety of her teaching career, in circumstances where:
 - a. Mr Martin Haimes gave evidence that he received physical discipline (assault) by Sister Marietta Green when a student in her class in South Australia in 1976; and
 - b. The trial judge accepted Mr Martin Haimes’ evidence as accurate; and
 - c. Mr Martin Haimes’ evidence was adduced to establish Sister Marietta Green’s tendency to use implements to administer physical discipline (assault) to her students, including the Appellant.

- 7 The trial judge erred by failing to make findings, and give reasons, for the trial judge's decision to reject the Appellant's witnesses, in circumstance where:
 - a. The trial judge treated the Appellant's witnesses as forming part of a "camp" and considered the evidence on a "camp" basis;
 - b. The trial judge failed to explain why the eyewitness accounts of Mr Charles Edwards, Mr Lesley Leonard and Mr Terence Hines of the Appellant being assaulted by Sister Marietta Green were rejected; and
 - c. The trial judge failed to explain why the Appellant's witnesses adduced for a tendency purpose were not accepted for the asserted tendency.
- 8 The trial judge erred by accepting the evidence of Sister Marietta Green, in circumstances where:
 - a. The trial judge's acceptance of Mr Martin Haines' evidence that Sister Marietta Green hit him (assaulted) with an implement when he was a student in South Australia in 1976 incontrovertibly contradicted Sister Marietta Green's evidence denying ever using an implement to administer physical discipline (assault) to any student over the course of her entire teaching career;
 - b. The trial judge's acceptance of Brother Hollamby, the school's principal, that he reprimanded Sister Marietta Green for physically disciplining Ms Janine Monaghan following receipt of a complaint from her grandmother, which was not recalled by Sister Marietta Green;
 - c. The trial judge found that Sister Marietta Green had put her best foot forward in minimising her evidence about the physical discipline (assault) that she administered to students, which was a finding by the trial judge that the trial judge did not accept Sister Marietta Green's evidence on a matter important to the dispute between the parties; and
 - d. The trial judge did not accept Sister Marietta Green's evidence on distinguishing a "whack" from a "smack", and in what circumstances a whack/smack was used by her, which was a finding by the trial judge that the trial judge did not accept Sister Marietta Green's evidence on a matter important to the dispute between the parties.

- 9 The trial judge erred by accepting the evidence of the “teacher’s aides”, in circumstances where:
 - a. The trial judge accepted the evidence of Brother Hollamby, the school’s principal, that he reprimanded Sister Marietta Green in the presence of one of the teacher’s aides for physically disciplining (assaulting) Ms Janine Monaghan following receipt of a complaint from her grandmother, which was not recalled by any of the teacher’s aides called to give evidence in the case; and.
 - b. The teacher’s aides evidence denied the evidence that Sister Marietta Green gave about Sister Marietta Green’s approach to physical discipline, in circumstances where the trial judge treated that outcome as being the product of the teacher’s aides’ respect and admiration of Sister Marietta Green, which was a finding that evidence from the teacher’s aides on that matter was not reliable.
- 10 The trial judge erred in finding that the Appellant was not assaulted by Mr Alex “Sweeney” Dixon.
- 11 The trial judge erred in finding that the Appellant was not assaulted by Mr Alex “Sweeney” Dixon by way of physical discipline (assault), in circumstances where:
 - a. Mr Alex “Sweeney” Dixon admitted to giving the Appellant a “smack on the side” (assault); and
 - b. The trial judge found that the appellant was subjected to physical discipline (assault) by Mr Alex “Sweeney” Dixon.
- 12 The trial judge erred in finding, by inference, that the physical discipline (assault) administered as corporal punishment to the Appellant by Mr Alex “Sweeney” Dixon was justified as lawful chastisement, in circumstances where:
 - a. Mr Alex “Sweeney” Dixon admitted to administering physical discipline (assault) on the Appellant;
 - b. The Respondents adduced no evidence as to the Appellant’s conduct, and surrounding circumstances, precipitating the physical discipline (assault), and why that conduct of the Appellant reasonably justified the use of physical discipline (assault) so as to be justified as reasonable lawful chastisement;
 - c. The trial judge accepted Brother Hollamby’s evidence that he cautioned Mr Alex “Sweeney” Dixon not to administer physical violence on students;

- d. The trial judge made no findings as to the reason for Mr Alex “Sweeney” Dixon’s use of physical discipline (assault), including by his role at the school;
 - e. The trial judge made no findings as to the quality and force of the physical discipline (assault) administered by Mr Alex “Sweeney” Dixon to the Appellant; and
 - f. The use of physical discipline was prohibited at the School at the time and the Respondents adduced no evidence as to what was a reasonably acceptable system and practice of reasonable lawful chastisement as of the time of Mr Alex “Sweeney” Dixon’s use of physical discipline (assault) administered as corporal punishment.
- 13 The trial judge erred in finding, by inference, that Mr Alex “Sweeney” Dixon was a person of good character, and attributing weight to that finding, in circumstances where:
- a. Mr Alex “Sweeney” Dixon admitted to using physical discipline (assault) on the Appellant;
 - b. Mr Alex “Sweeney” Dixon admitted to using physical discipline (assault) in the manner pleaded by the Appellant;
 - c. Brother Hollamby admitted to cautioning Mr Alex “Sweeney” Dixon against the use of physical violence against students; and
 - d. Mr Alex “Sweeney” Dixon admitted, and it was accepted by the trial judge, that he had a conviction for domestic violence incident in November 1993.

ORDERS SOUGHT

- 1 The Appeal be allowed.
- 2 The Orders of the Court below made on 28 February 2025 be set aside.
- 3 These proceedings be remitted to the Court below for a new trial.
- 4 In the alternative to Order 3 above, Verdict and Judgment for the Appellant against the Respondents in a sum reassessed by this Court.
- 5 The Respondents pay the Appellant’s costs of the proceedings in the Court below, as agreed or assessed.
- 6 The Respondents pay the Appellant’s costs of these appeal proceedings, as agreed or assessed.

UCPR 51.22 CERTIFICATE

I certify under UCPR 51.22(2) that the amount in issue in this appeal exceeds the specified amount under s 101(2)(r)(i) of the *Supreme Court Act 1970* (NSW)

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the [Legal Profession Uniform Law Application Act 2014](#) that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the appellant that court fees will be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

Capacity

Date of signature



Solicitor on record

27 May 2025

Note:

1. This notice must be served personally unless non-personal service under UCPR 10.18 is permitted.
2. A copy of this notice must be filed in the court below in accordance with UCPR 51.42.

NOTICE TO RESPONDENT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the orders sought in the notice of appeal and for the appellant's costs of bringing these proceedings.

Before you can appear before the court, you must file at the court an appearance in the approved form.

HOW TO RESPOND

Please read this notice of appeal very carefully. If you have any trouble understanding it or require assistance on how to respond to the notice of appeal you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the notice of appeal from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

Court forms are available on the UCPR website at www.ucprforms.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address	Supreme Court of New South Wales, Court of Appeal Law Courts Building Queen's Square Level 5, 184 Phillip Street Sydney NSW 2000
Postal address	GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272

PARTY DETAILS

A list of parties must be filed and served with this notice of appeal.

[on separate page]

FURTHER DETAILS ABOUT APPELLANT

Appellant

Name	Albert John Hartnett
Address	65 Margaret Crescent, Dubbo NSW 2830

Legal representative for appellant

Name	Tatiana White
Practising certificate number	48654
Firm	North Star Law
Address	Suite 101, Level 1 12 Mount Street North Sydney NSW 2060
PO Box	Po Box 340, North Sydney NSW 2059
Telephone	(02) 9188 7875
Email	tatiana@northstarlaw.com.au

DETAILS ABOUT RESPONDENTS

First respondent

Name	Trustees of the Roman Catholic Church for the Diocese of Wilcannia-Forbes
Address	15 Johnson Street, Forbes NSW 287

Second respondent

Name	Trustees of the Marist Brothers
Address	Suite 5.01, 247 Coward Street, Mascot NSW 2020

Third respondent

Name	Mercy Support Limited
Address	720 Heidelberg Road, Alphington VIC 3075

NOTICE TO DEFENDANT*1*

PLEASE READ THIS NOTICE AND THE ATTACHED DOCUMENT VERY CAREFULLY

IF YOU HAVE ANY TROUBLE UNDERSTANDING THEM YOU SHOULD GET LEGAL ADVICE AS SOON AS POSSIBLE

Attached to this notice is a *Notice of Appeal* ("the attached process") issued out of the *NSW Court of Appeal*.
Service of the attached process outside *NSW* is authorised by the *Service and Execution of Process Act 1992*.

YOUR RIGHTS

If a court of a State or Territory other than *NSW* is the appropriate court to determine the claim against you set out in the attached process, you may be able to:

*2*have the proceeding stayed by applying to the *NSW Court of Appeal*.

*3*apply to the *NSW Court of Appeal* to have the proceeding transferred to another Supreme Court or a federal court.

If you think the proceeding should be stayed or transferred you should get legal advice as soon as possible.

CONTESTING THIS CLAIM

If you want to contest this claim, you must take any action set out in the attached process as being necessary to contest the claim.

*4*If you want to contest this claim, you must also file an appearance*5* in the *NSW Court of Appeal*.

The appearance*5* must contain

*7*an address in Australia where documents can be left for you or sent to you.

*8*your address.

*1*If the person to be served is not described in the process as a "defendant" substitute the correct description.

*2*Omit if the court of issue is a Supreme Court.

*3*Omit if court of issue is not a Supreme Court.

*4*If the defendant need not enter an appearance (as defined in section 14 of the Act) in order to contest the claim, omit this paragraph and the remainder of the form.

*5*If the document that must be filed is not called an appearance, substitute the correct name.

*6*If the issuing court has allowed a shorter period than 21 days for filing an appearance, substitute that shorter period and disregard the next paragraph.

If the law of the State or Territory of issue would allow a longer period than 21 days for filing an appearance in the case of service within the State or Territory, substitute that longer period. If that law would allow different periods for service within the State or Territory, depending on the place of service, and at least one of those periods would be longer than 21 days, substitute the longest of those periods.

NB: This note is a summary, for guidance only, of subsections 17 (1) and (1A) of the Act. The applicable period under those provisions must be stated.

*7*Include if the appearance is required to set out an address for service.

*8*Include if the appearance is not required to set out an address for service.