

AUSTRALIA / JUDGMENT

VLS3 v Osborne

[2026] NSWSC 1184**COURT**

Supreme Court

DECIDED

29 September 2026

BEFORE

Sirtes J

CASE / FILE NUMBER

2023/00433743

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Source record

Supreme Court

New South Wales

Medium Neutral Citation: VLS3 v Osborne [2026] NSWSC 1184**Hearing dates:** 17–20 August 2026**Date of orders:** 29 September 2026**Decision date:** 29 September 2026**Jurisdiction:** Common Law**Before:** Sirtes J

Decision: (1) Verdict and judgment for the Plaintiff against the Second Defendant in the sum of \$461,046.02.
(2) The Second Defendant is to pay the Plaintiff's costs.

Catchwords: TORTS – historical sexual abuse – where second defendant pleaded guilty to 10 charges of indecent assault in 1987 – three charges related to plaintiff – abuse on Council grounds established – abuse occurring at the school not established
EVIDENCE – probative value of two expert reports – expert reports assumed all abuse alleged occurred – only some of the abuse established on facts – expert reports of value
DAMAGES – general damages – aggravated damages – exemplary damages where second defendant already served sentence – aggravated damages awarded – exemplary damages not awarded
DAMAGES – past and future loss of earning capacity – paucity of evidence not bar to recovery – damages for past and future loss of earning capacity awarded
COSTS – judgment below \$500,000 – commencement in Supreme Court warranted

Legislation Cited: Civil Liability Act 2002 (NSW), Pt 2, s 3B
Civil Procedure Act 2005 (NSW), ss 56, 100
Evidence Act 1995 (NSW), ss 81, 91, 92, 97, 140, 178
Uniform Civil Procedure Rules 2005 (NSW), rr 42.1, 42.34

Cases Cited:	Baxter v Obacelo Pty Ltd (2001) 205 CLR 635; [2001] HCA 66 Briginshaw v Briginshaw (1938) 60 CLR 336; [1938] HCA 34 Cachia v Hanes (1994) 179 CLR 403; [1994] HCA 14 Carter v Walker (2010) 32 VR 1; [2010] VSCA 340 Croucher v Cachia [2016] NSWCA 132 Graham v Baker (1961) 106 CLR 340; [1961] HCA 48 Gray v Motor Accident Commission (1998) 196 CLR 1; [1998] HCA 70 Lederer Group Pty Ltd v Hodson (2024) 337 IR 55; [2024] NSWCA 303 Longman v The Queen (1989) 168 CLR 79; [1989] HCA 60 MBP (SA) Pty Ltd v Gogic (1991) 171 CLR 657; [1991] HCA 3 New South Wales v Ibbett (2006) 229 CLR 638; [2006] HCA 57 Paric v John Holland (Constructions) Pty Ltd (1985) 59 ALJR 844; [1985] HCA 58 Ramsey v Denton (2021) 98 MVR 340; [2021] NSWCA 310 Rixon v Star City Pty Ltd (2001) 53 NSWLR 98; [2001] NSWCA 265 SR v Trustees of the De La Salle Brothers [2023] NSWSC 66 State of New South Wales v Moss (2000) 54 NSWLR 536; [2000] NSWCA 133 State of New South Wales v Zreika [2012] NSWCA 37 Van Haren v Van Ryn [2023] NSWSC 776 Watson v Foxman (1995) 49 NSWLR 315 Willmot v Queensland (2024) 283 CLR 339; [2024] HCA 42
Category:	Principal judgment
Parties:	VLS3 (Plaintiff) State of New South Wales (First Defendant) Rex Thomas Osborne (Second Defendant)
Representation:	
Counsel:	SE McCarthy (Second Defendant)
Solicitors:	RMB Lawyers (Second Defendant) Plaintiff (self-represented)
File Number(s):	2023/00433743
Publication restriction:	The Plaintiff's name has been anonymised pursuant to s 7 of the Court Suppression and Non-Publication Orders Act 2010 (NSW).

JUDGMENT

The Plaintiff, who is anonymised in this judgment as VLS3, brought these proceedings against the State of New South Wales (Department of Education) as First Defendant and Rex Thomas Osborne as Second Defendant. The Plaintiff settled her claim against the State of New South Wales on 23 October 2025 and received a sum of money pursuant to that settlement.

This judgment concerns the extant claim against Mr Osborne. It is agreed that he was engaged (whether casually or part-time) by the First Defendant as a groundskeeper at a school (the School) located in Parkes and operated by the First Defendant.

The Plaintiff was born in May 1980 and adopted as a very young child. She had no relationship with her biological parents and always regarded her adoptive parents as her parents. The Plaintiff's mother died about 10 years ago. Her father remains alive. She has an adoptive sister, who is the biological child of her adoptive parents and is five years older than the Plaintiff.

Both the Plaintiff and her sister attended the School. The Plaintiff alleges that she was three or four years old the first time Mr Osborne sexually abused her. The Plaintiff claims that the abuse continued until she was in Year Three (though since the Plaintiff started school in 1985 and the abuse was reported to police in March 1987, she would have been in Year Two).

Pleadings

The Statement of Claim (SOC) was filed on 30 November 2023, some 40 years after the first pleaded incident.

The alleged abuse

The SOC bifurcates the allegations of abuse into two periods. The First Period is defined as the period from 1983 to 1985, beginning when the Plaintiff was three years old. At this time, the Plaintiff was not yet a pupil of the School but would accompany her mother, who worked in the canteen, to the School. In her (second) evidentiary statement, the Plaintiff recounts accompanying Mr Osborne while he carried out his duties as groundskeeper. She says she spent considerable time with Mr Osborne.

The Second Period is from 18 February 1985 to 1987, during which time she was a pupil of the School.

Abuse alleged during the First Period

The SOC alleges that, during the First Period, she spent time with Mr Osborne on School grounds. While spending time together, the Plaintiff says, Mr Osborne would hold her hand. The SOC further alleges that, during the First Period:

the Plaintiff sat with Mr Osborne on a ride-on mower. It is said that he rubbed the Plaintiff's arms, legs and body;

on "many occasions", when the Plaintiff accompanied Mr Osborne to the School shed, he sexually abused her. On each occasion, at least one of the following occurred:

Mr Osborne kissed the Plaintiff;

Mr Osborne made the Plaintiff unzip his overalls;

Mr Osborne touched the Plaintiff on her arms, legs and body, both above and beneath her clothing;

Mr Osborne exposed his penis and forced the Plaintiff to touch and rub his penis;

Mr Osborne forced the Plaintiff to lick his penis; and

Mr Osborne taught the Plaintiff how to use her tongue while kissing.

Abuse alleged during the Second Period

The Plaintiff alleges that, on multiple occasions in 1986 and/or 1987, Mr Osborne would come to the Plaintiff's classroom and ask the teacher to excuse the Plaintiff. After being excused by her teacher, the Plaintiff says that Mr Osborne would take her to the shed and one or more of the acts listed at [8(2)] above occurred.

That abuse is also alleged to have occurred off School grounds when the Plaintiff started going on walks with Mr Osborne before and after school and on weekends. The Plaintiff states that Mr Osborne would take her to the Council paddocks where he is said to have touched and digitally penetrated the Plaintiff's vagina and anus, rubbed his penis on the Plaintiff's vagina, and forcefully kissed the Plaintiff on the lips.

The SOC pleads that the injuries she has suffered as a result of the abuse are as follows:

Post-Traumatic Stress Disorder;

Persistent Depressive Disorder;

Polysubstance Use Disorder;

Gambling Disorder; and

Axis B Personality Disorder.

I note that "Axis B Personality Disorder" is not a recognised DSM-5 disorder, but I take it that the SOC is referring to a "Cluster B Personality Disorder". Cluster B is a group of personality disorders within the DSM-5 rather than a diagnosis in its own right.

Mr Osborne denies the entirety of the alleged abuse. He admits that he spent time with the Plaintiff on School grounds, although he says this was not often. He also admits that the Plaintiff rode on the lawn mower with him but denies rubbing her arms, legs and/or body.

Cause of action

The SOC is a curiously drafted document. The allegations of negligence and vicarious liability against the First Defendant span 16 paragraphs, but only five paragraphs are devoted to the claim against Mr Osborne. That brevity has, to some extent, been achieved by the incorporation of the definition of "Abuse" from the claim pleaded against the First Defendant, but the cause of action relied upon against Mr Osborne is not identified.

Mr Osborne took no issue with this and has met the claim largely on the facts. In so far as no issue has been taken by him, I will deal with the claim on the basis that it is a claim in assault and battery.

The 33 particulars of continuing disabilities range from irritability through to phobic avoidance behaviour and anger. Those particulars, extracted from the Plaintiff's Statement of Particulars, are set forth in Schedule 1 of this judgment. The Plaintiff also claims past and future out-of-pocket expenses, past economic loss, loss of superannuation, future economic loss and future loss of superannuation.

The Statement of Particulars seeks an amount of \$400,000 for general damages, together with aggravated and exemplary damages, each in the sum of \$50,000. The Plaintiff seeks interest on half of the general damages amount (\$200,000) calculated at 2% per annum from 1987 until the filing date in 2023. The interest claimed is \$144,000.

In her closing submissions, the Plaintiff provided the particulars of her past economic loss, past loss of superannuation, future economic loss and future loss of superannuation.

Approach to the evidence

Actual persuasion in historical sexual abuse claims

Notwithstanding the forensic difficulty a plaintiff meets in attempting to prove allegations of child abuse that may have happened a considerable time ago, I must nevertheless "feel an actual persuasion" that the facts alleged did occur before finding the same: *Briginshaw v Briginshaw* (1938) 60 CLR 336; [1938] HCA 34 (*Briginshaw*) at 361–362 (Dixon J). This principle of fact-finding is applied through s 140(2) of the Evidence Act 1995 (NSW) (the Evidence Act).

When, as here, a question arises in a civil proceeding as to whether a crime has been committed, the standard of persuasion is the same as upon other civil issues: *Briginshaw* at 363. However, in such circumstances, weight is to be given to the presumption of innocence and "exactness of proof is expected": *Briginshaw* at 363.

Witness honesty and reliability

In circumstances where the events in issue occurred decades ago, I must be mindful that ordinary experience demonstrates that the human memory is fallible for a variety of reasons, and ordinarily the degree of fallibility increases with the passage of time: *Watson v Foxman* (1995) 49 NSWLR 315 at 319; *Longman v The Queen* (1989) 168 CLR 79; [1989] HCA 60 at 107–108; *Willmot v Queensland* (2024) 283 CLR 339; [2024] HCA 42 at 353–354 [30].

While my assessment of a witness's honesty is an integral part of my fact-finding approach, the circumstances are such that a witness's reliability is a more important consideration.

The course of the trial

Pausing here, it is necessary to say something about the hearing. Shortly before the hearing commenced, the Plaintiff, who is self-represented, served a court book on Mr Osborne. The Plaintiff's court book was 2,058 pages long, far larger than Mr Osborne's, which was around 200 pages. The index to the Plaintiff's court book included a large number of documents produced

under subpoena from various third parties, including the NSW Police, the NSW Department of Education and various medical centres in Orange and Forbes. Because of the size of the Plaintiff's court book, Mr McCarthy, who appeared as Counsel for Mr Osborne, indicated to the Court on the first day of the hearing that he would struggle to digest all the material in it with sufficient speed to properly develop his evidential objections. At my request, Mr McCarthy prepared a document, provided to the Court at the commencement of the hearing on day two, which identified those documents that he did not object to, with a very significant, and unsurprising, proviso that he had still not considered the vast volume of material sufficiently so as to take meaningful evidential objections.

While this approach was understandable at the opening of the hearing, it proved problematic. I was concerned by the uncertain status of the material in the Plaintiff's court book to which Mr Osborne could still object.

Shortly before the morning tea adjournment on day two of the hearing, after the conclusion of Mr Osborne's evidence in chief, the Plaintiff sought an adjournment until the next day. She was clearly affected by the prospect of cross-examining Mr Osborne. I granted that adjournment.

When the hearing recommenced at 11am the following morning, Wednesday 19 August 2026, the Plaintiff informed the Court that her laptop had been stolen the previous night. She was, therefore, not in a position to proceed. As the matter was ahead of schedule, I adjourned to the following afternoon.

During the nearly 1.5 days during which the hearing was adjourned, the Court was able to examine the Plaintiff's court book and located documents of substantial significance. However, they were not among those documents to which Mr Osborne did not object.

On the evening of 19 August 2026, out of my concern about the status of those documents, I directed Mr Osborne to send to my chambers, by 5pm on Friday 21 August 2026, a schedule of objections with respect to the balance of the material in the Plaintiff's court book.

The next day, 20 August 2026, the Plaintiff cross-examined Mr Osborne and the hearing concluded.

When I received Mr Osborne's objections, they consisted of four items, one of which concerned numerous documents across 261 pages. Each objection was on the basis of relevance. In circumstances where the Court was able to consider a significant number of documents throughout the Plaintiff's court book during the nearly 1.5 days while the matter was adjourned, it is not clear why Mr Osborne's legal representatives were not able to do so.

The Plaintiff wished to put the entirety of the documents in her court book before the Court. Even so, during cross-examination, she conceded that she herself had not considered many of the documents because her court book was prepared by her former solicitors.

Because of the Plaintiff's inability to deal with evidential objections (to the extent they were made) and Mr Osborne's inability to make such objections to the court book, it fell nearly entirely upon the shoulders of the Court to assess the material and exclude what is, in the Court's assessment, irrelevant or otherwise inadmissible.

This is unfortunate in a number of respects. First, the Court is forced to deal with evidential objections without the assistance of the parties' arguments as to why such documents should be included or excluded. Secondly, parties to a civil proceeding are under a duty to assist the Court to further the overriding purpose, being the just, quick and cheap resolution of the real issues in the proceedings: s 56(1), (3) of the Civil Procedure Act 2005 (NSW). Neither party provided the Court much assistance concerning the admissibility of in excess of 2,200 pages of documentation, some going to liability and others going to damages. The Plaintiff, when applying to have the hearing adjourned after her laptop was stolen, said "I didn't realise I was going to have to go through 3,000 pages". Putting to one side the exaggeration in the number of pages, while it is true that the Plaintiff was self-represented and the court book was prepared by her former solicitors, the vast majority of the material she would have to go through was from her own court book.

The Plaintiff's decision to represent herself caused some difficulties during her cross-examination of Mr Osborne. Not only is the Plaintiff without legal qualifications, she was also, in the circumstances, required to confront the man she has accused of sexually abusing her when she was a child. It was apparent to me that the Plaintiff found that exercise deeply confronting. This is a matter that I must factor into my assessment of the Plaintiff's demeanour, both in and out of the witness box.

Although the Plaintiff seemed at times frustrated or truculent when speaking, I regarded this as an expression of her anxiety and the stress of representing herself in such a painful matter. At no point did I doubt the authenticity of her efforts, both in making submissions and cross-examining Mr Osborne. I draw no adverse inference from her conduct.

Across the hearing, the Plaintiff was accompanied at the Bar table by two McKenzie friends. The first gentleman attended for the first two days. Without intending any disrespect, I did not observe that the gentleman in fact provided the Plaintiff with much comfort or assistance in her conduct of the hearing. On the third day, the Plaintiff was accompanied by a different McKenzie friend. This second McKenzie friend appeared to provide the Plaintiff with greater comfort and support.

Police investigation of Mr Osborne

Before analysing the evidence, it is important to note that the criminal prosecution file included by the Plaintiff in her court book reveals that Mr Osborne was prosecuted on 10 counts relating to four child complainants in 1987, including the Plaintiff (the 1987 Charges). Whilst I acknowledge that fact, I have not, in general, considered the evidence in relation to those other complainants. If tendered as tendency evidence, that evidence would be inadmissible as the Plaintiff did not

give Mr Osborne notice of her intention to adduce tendency evidence: s 97(1)(a) of the Evidence Act. In any event, such evidence does not assist me in arriving at a determination as to the Plaintiff's reliability. However, I have relied upon a single answer that Mr Osborne gave in a police statement that related to another child complainant. This goes to the narrow factual issue of where the lawn mower, on which the Plaintiff alleges she was sexually assaulted, was stored at the time of the alleged offending. I have used that answer only as evidence of where the mower was stored, not for any tendency purpose.

It is also necessary to record that Mr Osborne pleaded guilty before Judge Moore at the District Court at Condobolin on 30 September 1987 and was sentenced on 11 December 1987 at the District Court in Sydney. He received a non-custodial sentence across all 10 counts: a two-year good behaviour bond (with a \$1,000 recognisance) on one count of committing an act of indecency, and a 300-hour community service order with reporting to Probation and Parole at Forbes.

In his closing written submission, Counsel for Mr Osborne submitted that no certificate of conviction has ever come to light in the course of the proceedings. He continued that, pursuant to s 91(1) of the Evidence Act, evidence of a conviction is not admissible to prove the existence of a fact that was in issue in that proceeding. Mr McCarthy's written closing submissions also sought to address me on whether the facts of this case fall within the range of circumstances where a certificate of conviction can prove a fact in issue. For reasons I will arrive at shortly I need not decide whether a conviction was recorded.

Section 91(1) is not the end of the analysis. Section 92(2) provides that in a civil proceeding, s 91(1) does not prevent the admission or use of evidence that a party has been convicted of an offence (subject to certain exceptions which do not apply here). Although a certificate under s 178 of the Evidence Act is a convenient means of proof, it is not the only one.

Mr Osborne has not objected to the admission of the evidence produced by the District Court at Condobolin to the extent the material relates to charges against Mr Osborne for the indecent assault of the Plaintiff (i.e. not the other complainants). Mr Osborne, in his police statement, provided evidence he engaged in physical contact with the Plaintiff, including touching her buttocks, breast and upper thigh. However, he denied ever touching the Plaintiff's vagina. Nevertheless, a plea of guilty is an admission by a party of the elements of the charge, and each charge alleged that Mr Osborne touched the Plaintiff's vagina. As I discuss below, it is this evidence, taken together with the Plaintiff's contemporaneous statements to police, Ms Sakrouge and Dr Saha, that is probative of the facts in issue rather than any conviction.

Assessment of the Plaintiff's evidence

I have given consideration to the nature and extent of corroborating evidence supporting the Plaintiff's claim.

Credibility and demeanour

The Plaintiff was cross-examined for a considerable period of time by Mr McCarthy. Her demeanour in the witness box was quite curious. She appeared detached and derealised. However, I found her to be compliant, attentive to the questions and willing to make concessions, including blunt self-assessments, in a way that was quite disarming. I formed the view that the Plaintiff was an honest witness. This does not mean that I accepted her evidence unequivocally, owing to the disaggregated nature of honesty in contradistinction to reliability.

As I have already said, the Plaintiff's reliability as a witness in a case of historical sexual abuse is a more important consideration than her honesty.

Reliability of the Plaintiff's recollection

Because of the police investigation of Mr Osborne and his eventual guilty pleas in relation to acts of indecent assault against four children, there are contemporaneous records which can be used as a metwand to assess the Plaintiff's reliability.

First evidentiary statement

Despite the Plaintiff seeking to rely only on her later statement, the Plaintiff's first evidentiary statement (the First Statement) dated 21 September 2023 formed part of her court book and is relevant to my consideration of her reliability.

In the First Statement, the Plaintiff said she was first sexually abused by Mr Osborne at the age of three or four. She said it continued up until she was seven years old. It ceased once it was reported to NSW Police which, I note, occurred before she turned seven.

The Plaintiff said that she met Mr Osborne at around the age of three. His wife worked alongside the Plaintiff's mother at the School canteen and it was there that the Plaintiff says she was introduced to Mr Osborne. In her First Statement, the Plaintiff acknowledged that her statement to police in 1987 (the 1987 Statement) says she met Mr Osborne during Christmas time when she was skating at a basketball court while he was watering the garden and mowing the lawn. Nevertheless, the Plaintiff maintains that her first memory of meeting Mr Osborne was on School grounds when she accompanied her mother.

The Plaintiff, in her First Statement, recounted spending time with Mr Osborne while he would perform duties such as mowing the lawn which, she states, was in clear view of the kindergarten teacher's classroom. At this time, the Plaintiff was not yet a pupil of the School. She merely accompanied Mr Osborne while her mother worked in the canteen.

In the course of accompanying Mr Osborne, the Plaintiff says he would take her to the School shed. Once there, the Plaintiff said that Mr Osborne would rub his fingers on her vagina and breasts. The Plaintiff recalls the touching initially began above the clothes but progressed to touching underneath her clothes. She says she was forced to unzip his overalls. The Plaintiff recounted being forced to touch Mr Osborne and being directed to lick and rub his penis.

In the First Statement, the Plaintiff said that after she began attending the School as a pupil, she would still go on walks with Mr Osborne before or after school, on weekends or on school holidays, sometimes accompanied by her sister. They would meet outside of the School and, the Plaintiff claims, Mr Osborne would give her sister a task so he and the Plaintiff would be alone. When the two were separated, the Plaintiff says she was abused. The Plaintiff says that the abuse included Mr Osborne digitally penetrating the Plaintiff's vagina and anus.

In what she describes as Years One to Three, the Plaintiff says she was regularly excused from her class at Mr Osborne's request. She says she would then assist Mr Osborne in his duties. He would take the Plaintiff to the School shed and sexually abuse her.

The Plaintiff said her father found out about the abuse because he overheard the Plaintiff's sister ask her, whilst they were in the shower, whether she had been touched on her breasts by Mr Osborne. The Plaintiff responded "yes". Her father questioned the Plaintiff about Mr Osborne's behaviour. Her mother eventually called the police.

Second evidentiary statement

The Plaintiff has sought to rely on her second evidentiary statement (the Second Statement) dated 12 April 2024. The Second Statement largely repeats the events outlined in the First Statement, sometimes verbatim.

However, there are some amendments which bear on the issues before me. First, the Second Statement omits any reference to the discrepancy between her 1987 Statement and her current statement with respect to the circumstances in which she first met Mr Osborne.

The second matter concerns questions of causation. In her First Statement, the Plaintiff stated that she was currently exploring her past trauma and focussing:

"on my first trauma, specifically adoption. In the past I have tried to focus on my traumas at once, the adoption, sexual abuse, and domestic violence. There is a lot of trauma to work past but I'm making progress."

There is no equivalent of this in the Second Statement. Not only is the parallel "Treatment" section of the Second Statement expanded with the named providers and dates of treatment, but the Plaintiff omits any reference to concurrent adoption/domestic violence trauma work or to adoption being her therapeutic priority. This bears directly on the causal-apportionment dispute between Dr Jungfer and Dr Chalk to which I shall return below. The First Statement does state, unequivocally, that the Plaintiff was working on adoption trauma without any mention of sexual abuse trauma, which she states she had focussed on "in the past".

Another change is worth noting. The Second Statements adds the allegation that, while on School grounds, the Plaintiff and Mr Osborne “were in open view of any teachers or other staff who would have been walking in the area”. This was not stated in the First Statement. The addition may have been directed to the claim against the First Defendant. Generally, the changes situate the sexual assault on School grounds more clearly than in the First Statement.

The 1987 Statement

The Plaintiff’s contemporaneous statement to police dated 19 March 1987 was produced pursuant to the subpoena issued to the NSW Police. The Plaintiff was six years old at the time she made that statement. In it, she recounted three instances of abuse which informed three separate charges against Mr Osborne:

Charge 1 occurred at “the laying down spot”. She alleged that Mr Osborne asked her to open her legs and that he subsequently pulled her pants down and placed his hand on her vagina about three times.

Charge 2 occurred at a log that was known by locals as “the horse”. The Plaintiff alleged that, whilst she was sitting in front of Mr Osborne on the horse, he reached around to the Plaintiff and placed his hand on her vagina. She tried to pull his hand away.

Charge 3 occurred while Mr Osborne carried the Plaintiff on his shoulders. The Plaintiff alleged that Mr Osborne felt her bottom and vagina while she tried to push his hand away.

Mr Osborne’s police statement

Mr Osborne’s police statement is a significant, contemporaneous and partially corroborative piece of evidence which he provided soon after the complaint was made and before any prospect of civil litigation, albeit undoubtedly in the tall shadow of potential criminal charges. As there were not, at that time, any allegations of penetration, oral sex or threats, he was not asked about them. His admissions, however, do corroborate the Plaintiff’s 1987 Statement as to a base level of physical contact.

As to Charge 1, Mr Osborne admitted removing the Plaintiff’s pants but claimed this was only to locate “meat ants” that were bothering her. He denied doing so in the manner alleged and also claimed that the Plaintiff’s sister was present.

As to Charge 2, Mr Osborne admitted placing his hand between the Plaintiff’s legs but claimed this was only to lift her from that position to sit behind him. He denied reaching around the front of her body as the Plaintiff described.

As to Charge 3, Mr Osborne admitted holding her bottom and “pinching” her but denied anything more.

In his statement, Mr Osborne denied touching the Plaintiff’s vagina on any of these occasions.

The report of Ms Sakrouge

Between October and December 1988, the Plaintiff attended three counselling sessions with Gabriella Sakrouge. Ms Sakrouge wrote that she and the Plaintiff had worked on addressing the Plaintiff's anger towards Mr Osborne and her experience of the assault. Ms Sakrouge prepared a report dated 15 December 1988 for a Victims Compensation Tribunal claim.

Under the section sub-heading "Circumstances of the Child Sexual Assault", Ms Sakrouge made the following observation:

"In [VLS3]'s statement to the police and in the reading of 'Stepping Out' (a book written for victims of sexual assault) she disclosed that she experienced digital stimulation both vaginal and anal and touching on her breasts."

To be clear, the 1987 Statement given by the Plaintiff did not contain those allegations. I interpret Ms Sakrouge as saying that these matters were disclosed to her. This evidence is significant. It corroborates the Plaintiff's evidence during cross-examination that she disclosed such information to a counsellor; but, more significantly, it dispels any notion of there having been an absence of disclosure, as regards digital stimulation both vaginally and anally, until the Plaintiff's First Statement.

Ms Sakrouge's report also outlines various behavioural changes that had occurred in the Plaintiff as reported by her mother. It records her feelings of shame and anger, and that she was scared.

The report of Dr Saha

Dr Saha was an obstetrician and gynaecologist who saw the Plaintiff for a consultation on 18 July 1988, presumably also for the purposes of the Plaintiff's Victims Compensation Tribunal claim. This consultation was nearly a year and a half after the Christmas holidays of 1986–1987 when the events informing the 1987 Charges occurred. The report is dated 15 December 1988. However, I have no reason to believe the observations reported were not made at the 18 July appointment, as opposed to Dr Saha making retrospective observations nearly five months after the appointment.

The report notes the Plaintiff was suffering from frequent nightmares and struggled to relax. The Plaintiff told Dr Saha that Mr Osborne had "touched all over [her] body" and he had inserted his finger into her vagina when he was molesting her. Dr Saha's physical examination did not reveal any "abnormality", though, as Dr Saha noted, such examinations are of limited use if they occur a not insubstantial amount of time after the abuse.

Discrepancies between accounts

The First and Second Statements considerably intensify the severity of Mr Osborne's abuse compared to the Plaintiff's 1987 Statement and the reports of Ms Sakrouge and Dr Saha. The time during which the abuse occurred is also extended. That intensification and extension dilute the degree to which I am persuaded by the First and Second Statements. The most pertinent differences across the evidence discussed are as follows:

onset and duration of abuse: the 1987 Statement records no reference to any abuse before the school holidays, namely December 1986 to late January 1987. There is no reference to earlier years or anything occurring at the School, the shed, the oval or on the lawn mower. The Second Statement asserts that abuse began at age three or four (1983–1984) at the School (oval, shed, bin collection) and continued for four years to 1987, escalating to digital penetration, masturbation and oral sex;

nature of the touching: the 1987 Statement refers to Mr Osborne placing his hands on the Plaintiff's private parts, both outside and under her clothing, on the described occasions. There was no assertion that Mr Osborne exposed himself to the Plaintiff, nor of being made to lick or rub Mr Osborne's penis or being penetrated by him in any way;

threats to ensure silence: the 1987 Statement contains no reference to any threat, knife or warning to the Plaintiff not to tell anyone about the alleged abuse. Those allegations are included in the Second Statement, where the Plaintiff claims that Mr Osborne told her not to tell anyone; that he threatened to kill the Plaintiff's mother, sister and cats; and that she observed him to carry a pocketknife. I note, however, that the threat to hit her (though not to kill her family or cats, or that Mr Osborne carried a weapon) is recorded in Ms Sakrouge's report;

disclosure of events: in the 1987 Statement, the Plaintiff stated that she directly disclosed Mr Osborne's abuse to her father. In her First Statement, the Plaintiff says she made that disclosure only after her father overheard her discussion with her sister;

involvement of sister: the 1987 Statement records the Plaintiff's sister being present throughout the Plaintiff's holiday walks with Mr Osborne. Both girls are described as being part of the same walk on each occasion. In the Second Statement, the Plaintiff's sister is said to have sometimes been present on the walks and would be separated from her by Mr Osborne.

In her Second Statement, the Plaintiff sought to explain the disparity by saying that she did not tell the police about most of the abuse because she was scared, confused and only disclosed part of the abuse to police. This is something of an understatement.

The disparity here is not minor. There is a chasm between the abuse now alleged and the limited, though still extremely serious, abuse disclosed in the 1987 Statement. Equally, the circumstances in which the 1987 Statement was given would have been confronting for a six-year-old child. I do note, however, a letter contained in the Plaintiff's court book from the Crown Prosecutor's Chambers at Parramatta to the Director of Public Prosecutions. That letter includes the following observation:

"[VLS3] is a delightful little girl who will speak quite freely about the alleged incidents. However, her responses may become fanciful in respect of other non-important issues."

(Emphasis added.)

I have no reason to suspect this is anything but a direct observation of the author of the letter. It suggests the Plaintiff spoke openly about the abuse she suffered which was the subject of the 1987 Charges whilst being more fanciful about other, less significant, matters. My use of it is limited to its suggestion that the Plaintiff spoke freely about the abuse.

I add that the Plaintiff's statement that she did not tell the police about most of the abuse because she was scared does not explain why she did not disclose that more extensive abuse to other people, such as her parents, Ms Sakrouge and Dr Saha. By "more extensive abuse", I mean the abuse contained only in the Plaintiff's First and Second Statements, not her 1987 Statement.

Of course, incomplete disclosure by a child of sexual abuse does not indicate that later disclosures are untrue (or even incorrect). In this case, the substantial intensification of the allegations, the Plaintiff's inconsistent histories to Dr Jungfer and Dr Chalk, the Plaintiff's different versions of her first meeting with Mr Osborne and the passing of decades since the abuse leave me unpersuaded that the allegations, which do not appear in her contemporaneous (or near-contemporaneous) accounts, occurred.

For those reasons, I do not accept the Plaintiff's evidence in her Second Statement in relation to instances of sexual abuse which are not included in her 1987 Statement or her accounts reproduced in the reports by Ms Sakrouge and Dr Saha. To be clear, I am not suggesting that it would have been sufficient for the Plaintiff to satisfy her burden of proof by showing that the allegations had been made at that time, whether in her 1987 Statement, to Ms Sakrouge or to Dr Saha. Allegations of sexual abuse in civil proceedings require exactness of proof to satisfy the Briginshaw standard.

Mr Osborne's evidence

Credibility and demeanour

Mr Osborne was 85 years old at the time of the hearing. In his evidentiary statement, Mr Osborne says that he has good general health for his age. However, he had hearing difficulties and was aided in cross-examination by a Court-supplied hearing loop.

Mr Osborne was not argumentative. He attempted to answer the questions as best he could, often in the form of a simple “yes” or “no”, which was generally all that was necessary to answer the questions put to him in cross-examination.

I found him to be an honest witness. But, again, reliability is a more important consideration in proceedings that concern acts committed some 40 years ago.

Reliability of Mr Osborne’s recollection

Mr Osborne was candid about the limits of his memory in respect of events that are alleged to have happened in the 1980s. In his evidentiary statement, which was prepared after both of the Plaintiff’s evidentiary statements, Mr Osborne says he remembers being charged with offences concerning children. He also says he remembers being sentenced to community service for those offences. He says he does not remember the details of the charges. This impacts upon his reliability.

His evidence can best be described as a blanket denial of the abuse alleged in the SOC. He says “[m]any of the allegations are new and I do not believe they were raised in the original court proceedings against me”. He is correct about this. Mr Osborne specifically denies the allegations that he exposed his penis, kissed the Plaintiff, or touched her anus or vagina.

My assessment of Mr Osborne’s reliability is affected by inconsistencies between his evidence in his evidentiary statement and the evidence he gave during cross-examination. For example, in cross-examination, Mr Osborne denied ever having contact with children while carrying out the work he completed at the School. Yet in his evidentiary statement he said:

“From time to time if I was mowing the lawn I allowed students to have a ride on my lap. I considered it innocent and not inconsistent with the practices of the time. There was very little discussion of child abuse back then. I never appreciated that these kind gestures could be seen as being wrong.”

Those inconsistencies, as well as Mr Osborne’s admission that he does not recall the circumstances which led to the 1987 Charges, taken together with inconsistencies in his evidence I refer to below, mean that I must be cautious when relying on Mr Osborne’s evidence.

Determination on issue of abuse

First Period

Abuse while riding the lawn mower

In her Second Statement, the Plaintiff says she remembers sitting on Mr Osborne’s lap and riding the lawn mower in the First Period while her mother worked in the canteen. The Plaintiff says that the kindergarten teacher during this time would have seen the Plaintiff riding on the lawn mower with Mr Osborne when he was mowing the oval. When raising this allegation directly, the Plaintiff says, relevantly:

“I also remember when Mr Osborne was mowing the lawn on the school oval, I would ride on the mower by sitting on his lap. I would sit on his lap for the whole time it took him to mow the oval. When I was sitting on his lap, he would rub my legs and arms. The touching would increase the more that we mowed together.”

When the Plaintiff put to Mr Osborne that she rode on the lawn mower with him, he replied “[n]ot at the school”. That is a curious qualification, as Mr Osborne later gave evidence that he only ever mowed the lawns at the School. In any event, Mr Osborne, in his Defence, admits that the Plaintiff rode on the lawn mower with him but denies any inappropriate touching.

Counsel for Mr Osborne also accepted that the Plaintiff accompanied Mr Osborne on the lawn mower once. However, during his cross-examination of the Plaintiff, he put to her that the only occasion that happened was on a weekend or during the holidays. Mr McCarthy suggested to the Plaintiff that this must have been the case because Mr Osborne was self-employed and worked full-time during the entire period the abuse is alleged to have occurred.

To my mind, the attack on the Plaintiff’s recollection of accompanying Mr Osborne on a ride-on mower, particularly the question as to whether it was outside of normal school hours, is a proxy for the factual issue of whether Mr Osborne attended to his duties at the School while the Plaintiff would have been there. During the First Period, that would have been during school hours. If he was working at his own business elsewhere during those hours, it is unlikely the abuse alleged to have occurred during school hours, in the First or Second Period, occurred.

In support of this proposition is the evidentiary statement of Mr Wayne Osborne, Mr Osborne’s son, dated 18 August 2026. His evidentiary statement addresses the narrow issue of Mr Osborne’s work schedule. He says his father only ever did outdoor maintenance and lawn work at the School on weekends as he worked in his own business from Monday to Friday. While I do not doubt his honesty, I do doubt the strength of his evidence. He says that he only attended the School as a pupil from 1975 to 1981. He also states he attended school, presumably high school, from 1983 to 1987. Assuming he attended school during normal school hours, it is difficult to accept he was fully aware of his father’s activities and whereabouts during those times.

Annexure D to Mr Osborne’s evidentiary statement is the School’s newsletter from Term 3, 1985. It reports that Mr Osborne was heard mowing the School’s lawn at 3am. While, presumably, no one else would be at the School at 3am, I do not regard the newsletter as evidence of anything other than that Mr Osborne mowed the lawn early in the morning once. Mr Osborne said only that he did so “sometimes”.

Mr McCarthy’s case, informed by Mr Wayne Osborne’s evidentiary statement, contradicts Mr Osborne’s own evidence. In his evidentiary statement, Mr Osborne stated the following:

“Teachers at the school were obviously aware of any activities I [sic] that I usually conducted during hours when there were people at the school. I was there in plain sight and the mower was very noisy.”

That is not to say I am persuaded that the Plaintiff rode on the lawn mower with Mr Osborne during school hours. Rather, given Mr Osborne's own evidence, I cannot exclude the possibility that he attended to his groundskeeping duties during school hours and that the Plaintiff rode with him at those times.

It is not necessary for me to make a positive finding as to whether the Plaintiff rode the mower with Mr Osborne during school hours, on a weekend or during school holidays. There was no suggestion in the Plaintiff's 1987 Statement, or in the reports of Ms Sakrouge and Dr Saha, regarding Mr Osborne touching the Plaintiff's arms, legs and body whilst they rode the lawn mower. For this reason, the Plaintiff has not discharged her onus of proving that her allegations of abuse while riding the lawn mower occurred.

Abuse in the School shed

Did the Plaintiff accompany Mr Osborne to the shed?

The Plaintiff claims that, during the First Period, she often accompanied Mr Osborne into the School shed and that he would there sexually abuse her. For the allegation of abuse to be made out, the Plaintiff must first establish that she accompanied Mr Osborne to the shed.

The Plaintiff's evidence is that the School shed was located next to "the oval" and the kindergarten teacher's classroom. She says the shed stored play equipment and maintenance equipment, including the mower. The Plaintiff says that she helped Mr Osborne with pulling out equipment from the shed to set up on the School grounds for recess and lunch.

In his cross-examination, Mr Osborne denied ever having access to the shed at the School. He maintained that his work at the School was limited to mowing the School grounds. Furthermore, in his evidentiary statement, Mr Osborne said that the mower was kept at his house across from the School. That evidence is supported by his police statement in relation to one of the other 1987 Charges. The statement reads as follows:

"Q.16 What sort of mower was it that she was riding on?"

A. Ride on mower.

Q.17 Where is that mower now?

A. Its [sic] in the garage at my place."

That statement, though made in 1987, after the First Period, makes plausible his denial of having access to the School shed. Even assuming the shed stored maintenance equipment and play equipment, it is not evident that Mr Osborne was required to access that equipment to fulfil his duties at the School. I do not see why the location where the mower was stored would have changed between 1985 and 1987.

Accordingly, I accept Mr Osborne's evidence that he did not have access to the shed. It follows that I am not persuaded that the Plaintiff accompanied Mr Osborne to the inside of the shed.

Did Mr Osborne sexually abuse the Plaintiff in the shed?

Even if I accepted that the Plaintiff frequently accompanied Mr Osborne to the shed, I nonetheless do not feel an actual persuasion that the abuse alleged to have occurred in the shed took place. That is because there is no contemporaneous complaint from the Plaintiff regarding any abuse in the shed, let alone with the frequency and in the way graphically described in the SOC.

Second Period

The Second Period concerns abuse that allegedly occurred while the Plaintiff was a pupil of the School.

Abuse in the School shed

The Plaintiff pleads that Mr Osborne would come to the Plaintiff's class and ask that she be excused to accompany him in performing his duties around the School. It is then said that Mr Osborne took the Plaintiff to the shed and one or more of the acts of abuse detailed at [8(2)] above occurred.

The Plaintiff's evidence in her First and Second Statements of sexual abuse occurring in the shed is uncorroborated by any contemporaneous account and, as such, my caution concerning uncorroborated allegations applies equally here. In the absence of such evidence, I am not able to make a positive finding that any of the abuse alleged to have occurred in the shed took place.

Abuse before or after school, during the holidays or on weekends

The Plaintiff alleges that Mr Osborne, either before or after school, during school holidays or on weekends, took the Plaintiff to the Council grounds beside the School and would there sexually assault the Plaintiff.

Mr Osborne denies the allegation in its entirety. He denies ever going on walks with the Plaintiff outside of school hours. The evidence contained in his 1987 answers, set out below, demonstrates the opposite and has a significant bearing on his reliability.

In her Second Statement, the Plaintiff interchangeably refers to the "Council grounds" and "Council paddocks". It appears to me that both terms refer to the place where the abuse that informed the 1987 Charges occurred. I will use the term "Council grounds". Mr Osborne's own police statement, where he responds to questions about the incident at "the horse", supports this conclusion. In that interview, Mr Osborne stated:

"We were walking along the path heading down to a dam in the corner of the paddock. I think it was [VLS3's] idea, she said, 'Look it's a horse.'"

I take it that where the Plaintiff's Second Statement refers to the "Council paddocks", it means the bushland where Charges 1, 2 and 3 took place. In the document "Facts in the Matter P – v – Rex Thomas Osborne", which informed the 1987 Charges, this area is referred to as the "Common".

As I have said, Mr Osborne, in his evidentiary statement, maintains that he does not remember the events which informed the 1987 Charges.

In any event, the probative evidence in relation to these allegations comprises the statements Mr Osborne and the Plaintiff gave to the police in 1987. Mr Osborne's interview with police which formed his statement recorded the following questions and answers in relation to Charge 1:

"Q.7 [VLS3] has alleged that sometime in the Christmas holidays just gone, you pulled her pants down and touched her on the vagina. What do you say about that?"

A. The incident that you are referring to is when she got bitten by ants. She said she was bitten by something so I said to her 'Give us a look.' We did find something, there was meat ants.

Q.8 Can you remember the date this occurred?

A. No idea.

Q.9 Where did it occur?

A. It was up in what she refers to as the sitting spot. Its [sic] up in the common up there.

Q.10 Can you remember what she was wearing at the time?

A. No, dress I think it was I dont [sic] know what colour.

Q.11 She has claimed that you said to her, 'Just open your legs I want to take your pants down.' What do you say about that?

A. I said, 'I forget the exact words to tell you the truth.'

Q.12 She has alos [sic] alleged that she was trying to keep her legs squeezed together. What do you say about that?

A. May be through embarrasment [sic] or whatever.

Q.13 He [sic] has alleged that you placed your hand on her vagina. What do you say about that?

A. No.

...

Q.17 She alleged that you placed your hand on her vagina three time [sic], what do you say about that?

A. No

Q.18 Was there anyone else present at the time?

A. [Mr Osborne says VLS3's sister was there]

Q.19 What was [VLS3's sister] doing?

A. She was just there not doing anything, just standing to the side. It was her that seen them, She [sic] yelled out 'Ants!'"

The following questions and answers are recorded in the police interview that are relevant to Charge 2:

"Q.23 I am now going to ask you a number of questions about an alleged sexual assault committed on [VLS3] in the Christmas holidays just gone, at a place she refers to as the 'Horse' when she says you touched her on the vagina. I want you to understand that you are not obliged to answer my questions unless you wish as anything you say will be recorded and may later be used in evidence. Do you understand that?"

A. Yes.

Q.24 Do you recall the incident that Just refered [sic] to?

A. Yes I think I do, yes.

Q.25 What can you tell me about it?

A. We were walking along the path heading down to a dam in the corner of the paddock. I think it was [VLS3's] idea, she said, 'Look it's a horse.' We walked over [VLS3] got on the front of the log, she was the rider, she had the dog leash around the root on the end. I was behind her and [VLS3's sister] was behind me. Not long after the two were bickering between themselves...I think I picked her up with me left hand [sic]. I did put me hand between her legs and picked her up and swung her around to the back spot...

...

Q.28 She has alleged that when you pulled her back to you, you placed your hand on her vagina. What do you say about that?

A. No.

Q.29 She has also alleged that she tried to push your hand away. What do you say about that?

A. Only because she didnt [sic] want to get off the log."

The following questions and answers are recorded in the police interview that are relevant to Charge 3:

"Q.33 Can you recall the incident I have just mentioned?"

A. Yeah I think I can yeah.

Q.34 What can you tell me about it?

A. I think it was when we were going home once. She was lingering behind like she does sometimes. She said she was tired. I picked her up and sat her on my hands like this, (INDICATES CUPPED HANDS BEHIND BACK) I think this time she referring [sic] to is when I was giving her a bit of a trounce, throwing her up and down. We were abit [sic] out of sorts 'cause she didnt [sic] get her own way. I picked her up like this, (INDICATES CROUCHED DOWN WITH HANDS CUPPED BEHIND BACK) I was holding her bottom and pinching her. She said, Stop [sic] but I took it to be stop bouncing her up and down. That was sort of when we were walking along.

Q.35 She has alleged that she was sitting on your shoulders when you touched her on her vagina and bottom. What do you say about that?

A. She was hanging on, yeah, right. (INDICATES ARMS ROUND NECK)

Q.36 When she was sitting on your shoulders while she alleged you touched her vagina and bottom she claims she told you to stop. Can you remember that?

A. Yes she said stop it, or dont [sic], I think was the word she used.

Q.37 She has alleged that she tried to push your hand away, can you remember that?

A. Not specifically, she was holding on. I didnt [sic] want to put her down I think she wanted to get down. That would have defeated the purpose of getting her home quickly."

There is before me a letter dated 4 September 1987 sent to the Solicitor for Public Prosecutions by a firm of solicitors in Parkes who acted for Mr Osborne in relation to the 1987 Charges. The letter outlines that the firm had instructions to enter a plea of guilty to five of the 10 counts. In relation to Charge 3, the firm submitted:

"because the allegation is uncorroborated the jury would be unlikely to accept the child's account but accept the innocent explanation advanced by our client."

This submission appears to have been abandoned. A letter signed by the Solicitor for Public Prosecutions discloses that Mr Osborne pleaded guilty to 10 charges before Judge Moore. Evidently, Mr Osborne pleaded guilty to all those charges that were laid against him. Moreover, it does not appear, apart from attempting to preclude reliance on the certificate of conviction, which is not before the Court, that Mr Osborne sought to engage with the evidence produced by the District Court at Condobolin in relation to the charges against him. I acknowledge that Mr Osborne's statement was made in the shadow of potentially multiple counts of sexual abuse of minors. However, to the extent his statements are inculpatory, I have no reason to believe his admissions were untrue.

That is not to say that the abuse alleged in the SOC to have occurred on the Council grounds has been established. The abuse there alleged exceeds, first, the abuse admitted to by Mr Osborne and, secondly, the abuse alleged in the Plaintiff's 1987 Statement.

Did Mr Osborne touch and/or penetrate the Plaintiff's vagina with his fingers?

Mr Osborne denied ever touching or penetrating the Plaintiff's vagina with his fingers.

There is, within the Plaintiff's court book, a document dated 30 September 1987. I am not certain that the Plaintiff's court book includes the entire document. It does not contain a title, nor is it addressed to anyone. Although the document's precise origin is unclear, it was produced by the District Court at Condobolin as part of the court file in relation to the 1987 Charges. At the bottom of the page is Mr Osborne's name and signature, above which is the following text:

"In relation to the incidents such as the horse I didn't set anything up, or encourage them, but when the children were fighting I took the opportunity to touch the girl's private parts.

I know I was touching the private parts but I had an excuse and saw it as an opportunity to touch their private parts. It was of interest in a mild sexual way but not in terms of arousal.

I was interested to look at [description matching VLS3] when the opportunity arose.

There was in interest [sic] there when she had ants in her pants. There was an interest, the opportunity arose, I wanted to do it. It was never intended to do anything further than touch them.

It did occur to me that touching them could give rise to a complaint.

I was worried about what happened but I didn't go any further because I was satisfied with the opportunities that arose to touch them. I wanted to do it because it gave me some pleasure in a mild sort of way."

In this document, Mr Osborne appears to not only admit touching the Plaintiff's vagina, he also to say that the touching was motivated by a "mild" sexual interest.

Even in the absence of an explanation of the document's exact nature and the circumstances in which Mr Osborne came to sign it, the document possesses substantial probative value. No issue was raised regarding the authenticity of Mr Osborne's signature, nor was the document the subject of any objection in so far as it related to the Plaintiff (objection was taken to the document as it related to charges against Mr Osborne for sexual abuse of other victims). I have taken the document into account as an admission: s 81 of the Evidence Act.

I have already discussed the salient aspects of Dr Saha's report at [70] above. I next turn to Ms Sakrouge's report.

The most significant matter recorded in Ms Sakrouge's report is the following:

"In [VLS3]'s statement to the police and in the reading of 'Stepping Out' (a book written for victims of sexual assault) she disclosed that she experienced digital stimulation both vaginal and anal and touching on her breasts...Using the book, [VLS3] pointed out that from the offender she also experienced suggestive comments, having things put in her vagina or anus and that he threatened to hit her if she disclosed."

The 30 September 1987 document, the 1987 Statement and the Plaintiff's evidence persuade me that Mr Osborne touched her vagina. Her complaints to Ms Sakrouge and Dr Saha persuade me that he also digitally penetrated her vagina. In making this finding, I have had regard to the fact that the account upon which Ms Sakrouge's report is based was communicated to her by the Plaintiff nearly two years after the Plaintiff was sexually assaulted by Mr Osborne. I have also considered the fact that the Plaintiff did not explicitly disclose to police that her vagina was digitally penetrated by Mr Osborne in her statement. I do not regard Mr Osborne's statement that he "didn't go any further" than touching as a reliable account of the outer limits of his conduct.

Notwithstanding Mr Osborne's present denial that he ever touched the Plaintiff's vagina and his statement in the 30 September 1987 document that he touched "private parts", the Plaintiff's complaint to Ms Sakrouge and Dr Saha satisfy me Mr Osborne did digitally penetrate the Plaintiff's vagina.

Did Mr Osborne touch and/or penetrate the Plaintiff's anus?

The extract from Ms Sakrouge's report recounts the Plaintiff experiencing digital stimulation of the anus, and that "things" were put in the Plaintiff's vagina and anus. The precise nature of those "things" is unspecified.

The Plaintiff did not recount digital penetration by Mr Osborne of her anus to Dr Saha. Taken together with the absence of any complaint regarding digital anal penetration to the police, the report only to Ms Sakrouge does not satisfy me to the necessary standard that Mr Osborne digitally penetrated the Plaintiff's anus. Nor am I satisfied that Mr Osborne touched the Plaintiff's anus. The only record of that allegation is Ms Sakrouge's report, which refers to "stimulation", an allegation that was not repeated to Dr Saha or to the police.

Balance of abuse alleged to have occurred during walks

The balance of the abuse said to have occurred during walks with Mr Osborne included:

Mr Osborne exposing his penis;

Mr Osborne rubbing his penis on the Plaintiff's vagina; and

Mr Osborne forcefully kissing the Plaintiff on the lips.

These allegations are raised for the first time in these proceedings. Owing to the heightened need for persuasion, the introduction of these allegations 36 years after the event, taken together with the failure of the Plaintiff to mention these matters to police, Ms Sakrouge or Dr Saha, I do not feel an actual persuasion that this abuse occurred.

I do not otherwise find that Mr Osborne exposed his penis at the Council grounds, that he rubbed his penis on the Plaintiff's vagina, or that he forcefully kissed the Plaintiff on the lips.

I add that, though Mr Osborne denies matters which I have found to have occurred, I consider that those denials are indicative of an absence of recollection rather than any dishonesty.

Findings as to liability

I am satisfied on the strength of the evidence that Mr Osborne engaged in some, but not all, of the acts constituting battery against the Plaintiff (the elements of which I discuss below). More specifically, I make the following findings:

Mr Osborne engaged in the conduct recounted by the Plaintiff to the police as the Plaintiff described it;

whilst it is not possible, owing to the passage of time and the Plaintiff's young age, to identify the precise number of occasions that this conduct occurred, I am satisfied, to the requisite standard, that the incidents occurred multiple times during walks on the Council grounds in or about the 1986–1987 Christmas school holidays. Doing the best I can, I estimate that they occurred more than three times, and from the ages of four or five to almost seven years of age;

the conduct involved, amongst other things, the touching of the Plaintiff's breasts and that he digitally penetrated her vagina;

I accept that Mr Osborne made a threat to the Plaintiff as identified in Ms Sakrouge's report; and

I do not find that any conduct first raised in the Plaintiff's First and Second Statements, and not raised with the police, Ms Sakrouge or Dr Saha, occurred.

Damages

Section 3B(1)(a) of the Civil Liability Act 2002 (NSW) (the CLA) operates to preclude the application of that Act to civil liability for "sexual assault or other sexual misconduct" (subject to certain exceptions which do not apply here). Section 3B(1)(a) is engaged here such that the assessment of damages is dictated by the common law as opposed to Pt 2 of the CLA.

The amount claimed for general damages is in the sum of \$400,000, plus aggravated and exemplary damages of \$50,000 each, together with interest on half of the general damages calculated at 2% per annum.

General damages are typically awarded for loss that cannot be precisely quantified. They compensate for past and future pain and suffering and loss of amenities.

In *SR v Trustees of the De La Salle Brothers* [2023] NSWSC 66 (SR), Cavanagh J observed the following at [170]–[172]:

"170 Assessing damages for historical sexual abuse presents as a difficult task because much of the evidence which might ordinarily be presented in a claim for personal injuries in respect of loss and damage subsequent to the tortious conduct of the defendant is no longer available. That is, in some respects, a reflection of the fact that the ordinary limitation periods which generally apply to personal injuries claims do not necessarily apply in these types of matters. By virtue of the Limitation Amendment (Child Abuse) Act 2016 (NSW) that commenced on 17 March 2016 and operates

retrospectively, there is no limitation period applicable to proceedings where the action for damages relates to 'personal injury to a person resulting from an act or omission that constitutes child abuse of the person' (s 6A(1) of the Limitation Act 1969 (NSW)).

171 It is thus important to observe that the assessment of loss in these types of claims is very much a matter of impression, based on the available evidence, and having regard to what must be the ordinary incidents of life, some good and some bad, which might befall a person over a 30-year period. Assessment of damages is not merely a mathematical exercise. Whilst it may be convenient for the plaintiff to present his assessment of damages by way of mathematical formula (assuming, as he does for the purposes of the case, that he is entitled to be compensated for loss for every year of his life since the abuse), the Court must approach the task more cautiously. Regard must be had to the power of each party to adduce evidence which establishes, corroborates or refutes the plaintiff's narrative.

172 It is appropriate to remember what Sir Garfield Barwick said in *Arthur Robinson (Grafton) Pty Ltd v Carter* (1968) 122 CLR 649, in terms of the assessment of damages:

'14...It ought to be a fair and reasonable compensation for the injuries received. A fair compensation is, of course, less than the removal of the disabilities which the injuries to be compensated entail. It is compensation to the particular claimant, bearing in mind what he was, what he now is, and how he is likely to meet his disabilities...

16. Too little emphasis it seems to me is usually given to the moderation with which the assessment of damages for personal injuries should be essayed by the jury. Mere statement that the compensation is to be fair does not seem to me to be enough. The concept of fairness, with its concomitant moderation, needs explanation and emphasis and the jury needs to be carefully and specifically warned against attempting a perfect compensation. As I shall later point out, they should also be warned against any pseudo scientific or seemingly mathematical calculations. (at p 657)
17. It must be remembered that the plaintiff and the injuries are prominent in the trial. However much deficiencies in the evidence as to the extent of the injuries may be thought to be supplied by reliance on the maxim that all things are presumed against the wrongdoer, fairness is denied if in the assessment of damages as well as in the decision as to liability the position of the defendant is ignored and left out of sight. Emphasis on fairness may well be coupled with a warning against the inclusion of any punitive elements in the assessment. (at p 657)."

These principles are germane in this case.

Cause of action and causation

An assault consists of intentionally creating in another person an apprehension of imminent harmful or offensive contact: *Rixon v Star City Pty Ltd* (2001) 53 NSWLR 98; [2001] NSWCA 265 at 113 [57] (Sheller JA, Priestley and Heydon JJA agreeing). A defendant who directly causes physical contact with a plaintiff will commit a battery unless the defendant proves that they were “utterly without fault”: *Croucher v Cachia* [2016] NSWCA 132 at [21] (Leeming JA).

In *Van Haren v Van Ryn* [2023] NSWSC 776 (Van Haren), Chen J observed that, in certain cases, it is impossible to separate the component parts of an assault and battery claim for the purposes of assessing damages. His Honour said at [29]–[30]:

“29 Typically, but not invariably (a battery can be inflicted upon an unexpected victim), assault occurs before battery: it is, in that situation, often called ‘assault and battery’. Here, each incident of abuse (including the car abuse) involved a battery...and all but certainly involved an assault in the moments leading up to the battery.

30 In those circumstances, it is, in my view, impossible to sensibly separate the respective parts of each of the events of abuse for the purposes of assessing damages in relation to each cause of action (viz., assault and battery) where, as here, the claim is based (and only based) on psychiatric injury caused by such conduct...”

The Plaintiff in these proceedings only claims for psychiatric injury. The only claim for physical injury is for liver damage, said to be caused by alcohol use consequential to the sexual abuse. On the other hand, the SOC does not disclose any set of facts giving rise to an assault only. The Plaintiff’s claim regarding Mr Osborne threatening to kill her family and cats is not mentioned in the SOC. Because of this, Chen J’s observations are apt. Given the impossibility of separating acts into their component parts of assault and battery, I will proceed on the basis that the cause of action is for trespass to the person and, consistently with *Van Haren*, damages are to be assessed globally, without attempting to separate the two torts.

Causation is a question of fact which is to be determined by looking at the events which occurred and assessing the causal link between the tortious conduct and those events: SR at [193].

Accordingly, it is necessary for the Plaintiff to establish that, but for the abuse inflicted upon her by Mr Osborne, she would not have suffered the losses she claims. Once battery has been established, immediate harm and consequential damage are compensable: *Carter v Walker* (2010) 32 VR 1; [2010] VSCA 340 (Carter) at [215(11)] (Buchanan, Ashley and Weinberg JJA). Further, the “boundary of entitlement is set by the conception of ‘natural and probable consequences’ (or ‘results’)”: Carter at [215(11)]. Where an injury has several causes, damages attributable to the tort are assessed by apportionment.

Interest on general damages

The exercise of awarding general damages also involves awarding interest on the portion of those general damages awarded for any past suffering. The basis for this has been explained by the High Court in *MBP (SA) Pty Ltd v Gogic* (1991) 171 CLR 657; [1991] HCA 3 at 663:

“The function of an award of interest is to compensate a plaintiff for the loss or detriment which he or she has suffered by being kept out of his or her money during the relevant period.”

The inquiry as to general damages is twofold and requires not only a finding of an appropriate quantum but also an apportionment of that quantum between past and future loss. The Plaintiff will only be entitled to interest on the amount apportioned to damages for past suffering.

Psychological injuries

The Plaintiff relies upon the expert reports of Dr Patricia Jungfer and Dr John Chalk, both of whom are psychiatrists. Dr Jungfer undertook an assessment of the Plaintiff for the purpose of these proceedings on 5 June 2023. Dr Chalk’s report, it seems, was obtained by the First Defendant. His assessment was undertaken on 8 July 2024.

Dr Jungfer

Dr Jungfer’s detailed report sets forth many aspects of the Plaintiff’s background including use of alcohol, drugs, gambling, family life, schooling, children, work, medical history, and psychiatric history. Dr Jungfer’s report notes the following:

“Psychiatric History: [VLS3] commenced mental health treatment at 11 or 12. [VLS3] can recall the first counsellor was Gabriele [sic] who was with the children’s health clinic. This treatment related to the sexual abuse. [VLS3] has had counselling on and off since then. If she feels she needs support, she will see someone. ... Presently she is having counselling related to her adoption, this has been for the past six months. Since [VLS3’s former partner] and the domestic violence, she has seen psychiatrists, psychologists, and counsellors. 2-3 years ago, she saw a psychiatrist at the request of her counsellor who wanted [VLS3] on medication. [VLS3] did not want medication in the context of her previous drug use. 2-3 years ago she was prescribed antidepressants, but she did not fill the prescription. There have been no admissions or suicide attempts. [VLS3] did not have an abnormal grief reaction to her mother’s death because she saw this as a release of her mother’s suffering.”

Dr Jungfer’s note that the Plaintiff first saw a counsellor at 11 or 12 cannot be correct, as the Plaintiff consulted Ms Sakrouge when she was eight. I do not treat this historical inconsistency as significant.

Dr Jungfer also set out, in the following terms, the history she received from the Plaintiff:

“4.3. The abuse started with [VLS3] being on his lap as Rex would mow the lawn. He would rub her legs and arms touching her. The touching increased as time went on.”

4.4. The touching became more sexual, initially over her clothes. He would take her to the shed, and at these times she would kiss him, he would touch her on the vagina or have her hold his penis and rub the penis.

4.5. [VLS3] has a recollection she knew it was wrong, but he would reassure her. She was told not to tell anyone. He always had a ‘treat’ for her such as a lolly or bubble gum after the abuse. She thinks as time went on she just went along with the abuse.”

The section in which Dr Jungfer deals with the Plaintiff’s history of “presenting complaints” identifies that the key reason the Plaintiff sees counsellors “is that she is in relationships with men that hurt her”. The mood experiences and anxiety recorded in Dr Jungfer’s report are not tied to the sexual abuse but, rather, to the successive relationships with two male partners.

The report records trauma symptoms experienced by the Plaintiff whenever she is reminded of Mr Osborne. This can occur when she sees his family, experiences certain smells she associates with him, and during sex. She attributes her poor relationship choices and risky sexual behaviour to the sexual abuse.

Of some interest is Dr Jungfer’s observation that the Plaintiff described herself as being “sexually abused from the age of four to probably nine or ten”. That is inconsistent with other observations in the report as well as the Plaintiff’s own evidence that any sexual abuse ceased in early 1987 when she was not even seven years of age.

Dr Jungfer diagnosed the Plaintiff with Post-Traumatic Stress Disorder, Persistent Depressive Disorder, Polysubstance Use Disorder (in remission), Gambling Disorder and probable “Axis B Personality Disorder”. As I have said, “Axis B Personality Disorder” is not a recognised disorder in the DSM-5, but I take it that Dr Jungfer is referring to Cluster B Personality Disorder.

In her concluding remarks, Dr Jungfer attributes 70% of the Plaintiff’s current clinical presentation to the abuse that she experienced at the hands of Mr Osborne and 30% to other traumas in her adult life, including domestic violence. In Dr Jungfer’s opinion, had the abuse not occurred:

“it is unlikely that [VLS3] would have her current psychiatric illness as it is unlikely she would have engaged in these abusive relationships, or had the acting out behaviour as an adolescent. It is unlikely that she would have had the drug use. It is probable she would have achieved more educationally and been more successful occupationally.”

Dr Chalk

Dr Chalk interviewed the Plaintiff by audio-visual link on 8 July 2024.

By comparison with the more limited history of abuse conveyed by the Plaintiff to Dr Jungfer, Dr Chalk noted the following in relation to the Plaintiff’s account of the abuse:

“She reported being sexually abused over a period of several years from before she attended school. This seems to have gradually increased over time. It involved touching, kissing, touching his penis, his touching her vagina, and performing oral sexual [sic] on him, including kissing, touching and licking his penis. She was digitally raped. She also believes that, on one occasion, he may have attempted to penetrate her, although she has ‘blocked it out’.”

There are large overlaps, in terms of information, between the histories and information obtained by Dr Jungfer and Dr Chalk. However, it is unclear why the extent of the sexual abuse recorded by Dr Chalk is markedly different from that recorded by Dr Jungfer. This is especially peculiar in circumstances where Dr Jungfer was retained by the solicitors who, at the time, acted for the Plaintiff; while Dr Chalk, as I have said, was seemingly retained by the First Defendant. It may be expected that, ordinarily, a fuller history would be given to the Plaintiff’s own expert. Suffice it to say, Dr Chalk has based his assessment of the Plaintiff on the history of sexual abuse she recounted to him, namely that “she was groomed, and this ultimately led to oral intercourse, digital rape and at least an attempt at vaginal intercourse, although she acknowledged that her recollection of that is quite vague”.

Dr Chalk’s diagnosis of the Plaintiff is almost exactly the same as Dr Jungfer’s. Dr Chalk primarily attributes the Plaintiff’s difficulties to the abuse she suffered as a child at the hands of Mr Osborne. He does not think that other factors had been “of profound relevance” outside of her personal relationships, which he attributed to the Plaintiff’s childhood abuse. He considers her injuries to be consistent with the claims made by her. He opines that the Plaintiff has suffered from a psychiatric injury but, unlike Dr Jungfer, does not think apportionment is necessary. Rather, he opines that the Plaintiff’s relationships have “undoubtedly” been affected and troubled by the abuse causing difficulties in affective emotional regulation as well as with significant anxiety and depression stemming from the alleged abuse. He notes that while the Plaintiff’s life has stabilised to a significant degree, she undoubtedly has a permanent psychiatric injury.

Experts not required to give evidence at trial

Among the idiosyncrasies of the trial was that neither Dr Jungfer nor Dr Chalk was required for cross-examination. Mr McCarthy invited the Court to reject their evidence on the basis that both doctors made their diagnoses on the assumption that the Plaintiff’s reported history of sexual abuse was accurate. Mr McCarthy submitted that if the Court rejected the alleged nature or duration of the sexual abuse, either in whole or in part, the reports of both Dr Jungfer and Dr Chalk would be of little probative value.

In his written submissions, Mr McCarthy stated the following:

“The Court simply cannot know where the opinions of those doctors would have landed if they had been asked to assume, for instance, facts consistent with [that the abuse allegations in the Plaintiff’s 1987 statement were true but the later allegations were not].”

While Mr McCarthy was correct in identifying the Court's conundrum, that conundrum was created by his own client's forensic choices.

This places the Court in an invidious position. It is without assistance as to whether there is a linear relationship between the duration and nature of the sexual abuse and the diagnosis made by both doctors. Furthermore, as regards Dr Jungfer, it is unclear whether those matters would have intruded upon her apportionment of 70% in relation to the sexual abuse as compared to other causally related factors. None of this has been explored.

Where an expert report has been admitted without objection, but a key factual assumption of the expert in coming to their conclusion is not proven, the expert report will have limited probative value: *Lederer Group Pty Ltd v Hodson* (2024) 337 IR 55; [2024] NSWCA 303 at 99 [248] (Ward P, Leeming JA and Basten AJA agreeing) (*Lederer*). However, that case can be distinguished from the one before me. Before I explain the distinction, some background to *Lederer* is required.

In that case, Hodson, the plaintiff, sought damages for breach of duties owed to him by *Lederer* and Hurex. *Lederer* was the owner-occupier of a shopping centre, while Hurex employed the plaintiff and provided cleaning contractors to *Lederer*. A man died after being hit by a car at the shopping centre. One of Hurex's employees on shift at the time, after becoming aware of the death, felt that he could not complete his shift. Hodson was called to finish that worker's shift. The plaintiff claimed that he suffered psychiatric injury after seeing the deceased's injuries. However, CCTV footage demonstrated that Hodson could not see the deceased's injuries because the deceased had been covered with a white sheet.

The Court of Appeal found that the medical reports relied upon for causation assumed that Hodson saw the deceased and his injuries at the scene. However, Ward P held at [90] that, rather, a colleague showed Hodson CCTV footage of the accident days after the event. The President found at [256] that the primary judge erred in determining causation by relying on medical reports which assumed Hodson had been exposed to the deceased's body at the scene.

In *Lederer*, the unproven assumption (i.e. witnessing the deceased's injuries) was the very mechanism of injury, so that the opinions had no foundation. Here, however, the core assumed fact (sexual abuse of a young child by Mr Osborne) is proven. *Lederer* has no application to the facts as found here. The extent and frequency of Mr Osborne's sexual abuse go to the issues of weight and quantum, not whether the reports have any value.

In the circumstances, the relevant inquiry is whether the case put to the experts is sufficiently like the one under consideration to render the opinion of the expert of any value: *Paric v John Holland (Constructions) Pty Ltd* (1985) 59 ALJR 844; [1985] HCA 58 at 846.

The fact that I have found that only the abuse disclosed in contemporaneous statements occurred, as opposed to all of the abuse alleged in the SOC, and the fact Dr Jungfer and Dr Chalk, reasonably, assumed that the abuse related to them did occur, is something that bears upon the probative value of their reports. There are two factors which bear upon the probative value of the experts' reports. The first is the frequency of the sexual abuse reported to them by the Plaintiff.

The second is the nature of that abuse which, they assumed, included fellatio, rubbing Mr Osborne's penis, and threats to kill her family and cats. However, contrary to Mr Osborne's submission, having found some of the abuse occurred, the expert reports are not of negligible value.

There is no reason to reject the report of Dr Jungfer on the basis that the history of abuse reported to her exceeds that which I have found occurred. The extent of the abuse is reflected in the quantum of damages but not in the reduction I make, of 30%, in reliance on Dr Jungfer's opinion, which I consider remains otherwise valid, well-reasoned and persuasive.

I prefer Dr Jungfer's reasoning to that of Dr Chalk, as it is apparent to me that there are other adult stressors, especially the history of abusive relationships, which merit apportionment. The history provided to Dr Jungfer is sufficiently similar to my findings for me to adopt her conclusions. Those conclusions require an apportionment between tortious and non-tortious causes. The 30% reduction arises for this reason.

Determination on damages

I am satisfied, based on the report of Dr Jungfer, that the Plaintiff suffers from:

Post-Traumatic Stress Disorder;

Persistent Depressive Disorder;

Polysubstance Use Disorder (in remission); and

Gambling Disorder.

For those reasons, I consider that 70% of the Plaintiff's injuries have been caused by the abuse perpetrated by Mr Osborne.

For the purpose of assessing the length of time for which the Plaintiff has suffered these illnesses, it goes without saying that, by way of example, the Plaintiff was not suffering from Gambling Disorder shortly after the abuse was perpetrated.

However, in her report Dr Jungfer makes the following statement:

"It is noted that she experienced nightmares as a child according to the records following the abuse and that this would more probably than [sic] a component of post-traumatic stress and that she had a post-traumatic stress disorder from a young age. Therefore, her current post traumatic [sic] stress disorder has been made more severe by the relationships she has been in and has resulted in a more severe condition."

I am satisfied that the onset of the Plaintiff's Post-Traumatic Stress Disorder was shortly after the abuse occurred in 1987.

Findings on general damages

In his cross-examination of the Plaintiff, Mr McCarthy covered various topics on which he relied in closing submissions to attribute the Plaintiff's clinical presentation to causes other than the abuse. The Plaintiff was asked about four romantic relationships. The Plaintiff was physically abused by her partners in three of those relationships. One of them was sentenced to a term of imprisonment for violence against the Plaintiff.

The Plaintiff said that while the fourth relationship was not physically abusive, it was marked by emotional abuse.

The Plaintiff accepted that her most significant break-up occurred in 2003 or 2004. The following exchange took place while the Plaintiff was being cross-examined:

“Q. And when you discussed this traumatic part of your life with Dr Jungfer you indicated that you think that you were first depressed after the relationship with [VLS3's former partner] when it broke up.

A. Yes, possibly.

...

Q. I'm now just reading from an excerpt from a doctor who you saw in January 2012 at [a local medical centre]. And it appears to be a record of what you told the doctor. You can agree or disagree with that characterisation. At least at that time, you were not worried about anything in particular, and you were not depressed?

A. If I said that, then that's probably possible.”

The Plaintiff discussed her difficulties over the years with a methamphetamine addiction. The Plaintiff said the longest period of frequent methamphetamine use was around five or six years. The Plaintiff says she is now abstinent from illegal drugs.

The Plaintiff appears to enjoy a full social life. She frequently goes to licensed venues, goes out for dinner and occasionally plays poker machines. While she does not consider her gambling habits problematic, she did admit that they have sometimes taken precedence over paying bills. When that occurs, she remedies the situation by working more shifts. The Plaintiff indicated that, when she drinks alcohol at licensed venues, it is only very little.

The Plaintiff said she had tried antipsychotic medication she was prescribed on three occasions but ceased because it “zonked [her] out”. She accepted, during cross-examination, that she had never needed antipsychotic drugs or antidepressants other than on those three occasions.

Mr McCarthy put to the Plaintiff that, on her own case, she has suffered from various psychological injuries for many years and that these injuries affect her daily. However, there was only one mention of childhood abuse in the Plaintiff's clinical records, and even then it was not specified as being childhood sexual abuse. Mr McCarthy asked the Plaintiff whether she agreed that the injuries for which she seeks compensation, as far as they are mentioned in the clinical records, have arisen because of stressors in her adult life, including the series of abusive

relationships and certain employment issues. In response, the Plaintiff said that the abuse is not something she wishes to discuss with doctors, but she has discussed it with friends.

The expert reports satisfy me that the Plaintiff's psychiatric injuries are caused predominantly by the sexual abuse inflicted on her by Mr Osborne. I also accept that the Plaintiff's clinical presentation has been partially caused by the Plaintiff's history of troubled relationships where physical and emotional abuse was a common theme.

I adopt Dr Jungfer's conclusion that 70% of the Plaintiff's current clinical presentation relates to the abuse that she experienced and 30% relates to the experience of the domestic violence and other traumas in her adult life.

The amount I find that the Plaintiff should receive for her psychiatric injuries in general damages is \$225,000.

I have arrived at this amount after taking into consideration:

the nature and extent of the abuse as found;

the Plaintiff's age at the time of the abuse;

the permanence of the injury;

the extent of PTSD in childhood; and

the evidence of the Plaintiff's present functioning.

Aggravated and exemplary damages

The bases for the award of aggravated and exemplary damages were summarised in *State of New South Wales v Zreika* [2012] NSWCA 37 at [60]–[61] (Sackville AJA, Macfarlan and Whealy JJA agreeing):

“60 Aggravated damages are given by way of compensation for injury to the plaintiff which, although frequently intangible, results from the circumstances and manner of the defendant's wrongdoing, while exemplary damages are awarded to punish and deter the wrongdoer. Aggravated damages are assessed from the point of view of the plaintiff, but an award of exemplary damages is based on the conduct of the defendant. However, the same set of circumstances may justify an award of either aggravated or exemplary damages, or both.

61 Exemplary damages go beyond compensation and are awarded as a punishment to the guilty, to deter similar conduct in the future and to reflect “detestation” for the action. Exemplary damages are awarded rarely and not every finding of fault warrants an award. Nonetheless, such damages can be awarded in a wide variety of circumstances. Generally speaking, what is required for an award is ‘conscious wrongdoing in contumelious disregard of another's rights.’”

(Citations omitted.)

In *New South Wales v Ibbett* (2006) 229 CLR 638; [2006] HCA 57 (Ibbett) at [34] the Court endorsed the proposition that it is necessary to determine both heads of compensatory damages (being general damages and aggravated damages) before deciding whether a further award is necessary to serve the objective of deterrence and condemnation. The Court further noted that, where the same circumstances increase the hurt to the plaintiff and also make it desirable for a court to mark its disapprobation of conduct, the court may choose to award one sum which represents both heads of damages and no element more than once: Ibbett at 648 [35].

Findings on aggravated damages

It is clear that Mr Osborne betrayed a fundamental trust reposed in him by the Plaintiff, who was only a child when he sexually abused her. While I do not doubt the Plaintiff may have some fond memories of childhood, Mr Osborne tarnished the Plaintiff's youth.

I assess aggravated damages at \$50,000. In doing so, I have taken into consideration the relationship of trust that arose through the Plaintiff's mother and his own wife and the exploitation of opportunities such as when "the children were fighting", as Mr Osborne wrote in his 30 September 1987 document at [115] above.

Findings on exemplary damages

I will not award exemplary damages in circumstances where Mr Osborne served a sentence for the 1987 Charges. Mr Osborne has been criminally punished for his conduct: *Gray v Motor Accident Commission* (1998) 196 CLR 1; [1998] HCA 70 at 14–15 [40]–[46].

Interest

The Plaintiff is currently 46 years of age. She has suffered from injuries since the age of six, nearly 40 years ago. I expect that she will live for around another 40 years and will still likely suffer from injuries caused (in part) by the abuse. For this reason, I will allocate 50% of the general damages to the past, with interest calculated at 2% per annum from 1987.

I will allow interest for past general damages. An interest rate of 2% per annum accounts for interest being allowed for the entire 39-year period of the claim. This approach is consistent with that taken by Chen J in *Van Haren* at [54].

The calculation is: $2\% \times \$225,000 / 2\% \times 39 = \$87,750$.

Past loss of earning capacity and past loss of superannuation

In her closing submissions, the Plaintiff seeks a buffer in the amount of \$300,000 for past loss of earning capacity. The period for the loss claimed is from the date in 1998 when the Plaintiff turned 18 to the date her closing submissions were served, 27 August 2026. Expressed in weeks, the period claimed is 1,475 weeks. The weekly loss claimed (being $\$300,000 / 1,475$) is just above \$200 per week.

The compensable loss is not a loss of income but the loss of capacity to earn income in a manner productive of financial loss: *Graham v Baker* (1961) 106 CLR 340; [1961] HCA 48 at 347. Awarding a buffer for future economic loss is both well-known and regularly adopted, but the award of a buffer for past economic loss is more unusual: *Ramsey v Denton* (2021) 98 MVR 340; [2021] NSWCA 310 (*Ramsey*) at [58], [61]; *Van Haren* at [60]. Even so, there is no principle which prohibits the awarding of a buffer for past economic loss in an appropriate case: *Ramsey* at [61]. Nevertheless, I do not consider that it is necessary to award a buffer. I will instead award a calculated amount for net weekly loss and multiply that by the number of weeks the Plaintiff would have worked.

There is scant material in the Plaintiff's court book which could be relied upon to support a claim of past economic loss. The material consists of tax returns, some of the Plaintiff's school reports from high school and, of course, the report of Dr Jungfer, which broadly indicates that the Plaintiff would have achieved more, educationally and occupationally, had the abuse not occurred; and the report of Dr Chalk. Other than the reports of Dr Jungfer and Dr Chalk, none of this evidence reflects an actual loss of earning capacity. However, the failure to call evidence of loss of earning capacity does not necessarily result in selection of only a nil or nominal figure as damages for impaired earning capacity: *State of New South Wales v Moss* (2000) 54 NSWLR 536; [2000] NSWCA 133 at 550 [66]; *Van Haren* at [63].

Assessing, and providing evidence of, pre- and post-psychiatric injury income is difficult in circumstances where the Plaintiff was not engaged in any sort of employment before the abuse and was only a young child when it occurred. However, Dr Jungfer recognised that, had the abuse not occurred, the Plaintiff would have achieved more educationally and been more successful in her occupation. Likewise, Dr Chalk states that the Plaintiff's ability to engage in education was impacted by her psychiatric injuries, though there were other factors.

In her Second Statement, the Plaintiff says that she has undertaken and completed several courses from TAFE NSW, including Certificate III in Community Service Welfare, Certificate III in Childcare Studies, and Certificate III in Childcare Services. In cross-examination, the Plaintiff sought to distance herself from this claim, saying that she had gained the certificate, but had not completed the full course. I do not understand quite how the Plaintiff could gain a certificate without completing a course and do not accept that she obtained the certificate in Childcare Services.

In any event, I accept that the Plaintiff's psychiatric issues have impacted her ability to work within the field in which she has qualifications, or at least studied (though I note that she also has qualifications in hospitality). But for the abuse she suffered, I am satisfied she would have enjoyed a more successful career in childcare. I proceed on the basis of data extracted from the Australian Bureau of Statistics.

The Plaintiff's tax statement discloses that, in the financial year ending 30 June 2023, she earned a gross amount of \$54,055. On a simple analysis, the net earnings would be \$44,989. This equals net weekly earnings of \$865.17. This amount plus the approximately \$200 per week net loss would

make her net weekly earnings \$1,065.17. If the average net earnings for a worker in, for example, May 2023, was \$1,387.61 (which is taken from the gross weekly earnings in May 2023 of \$1,838 per the Australian Bureau of Statistics), the Plaintiff's actual earnings plus her claimed net loss of \$200 would still fall below average full-time net earnings in Australia.

To account for the fact that, even if she had successfully pursued a career in childcare, she would have earned less than the average weekly earnings early in her career, I will allow a net weekly loss of \$122.

I will also factor in that the Plaintiff would have taken at least one month off prior to, and three months off after, giving birth. The Plaintiff has five children. Applying across her working life results in 87 weeks of time off. I have made this deduction as I cannot assume that the Plaintiff would be employed full-time, rather than casually, and receive employment benefits such as maternity leave. Each of those births fell within the period of claimed loss. I also propose to deduct an extra 20 weeks to account for various vicissitudes. The Plaintiff said in cross-examination that she suffered from "bouts" of methamphetamine addiction, the longest period of frequent use being five to six years long. That drug use affected her ability to work for about 150 weeks. I accept Dr Jungfer's opinion that, had the abuse not occurred, the Plaintiff is unlikely to have used drugs, and I have found that her Polysubstance Use Disorder is an injury caused by the abuse. I therefore make no deduction for those 150 weeks. In total, the weekly net loss will be multiplied by 1,368 weeks.

The Plaintiff seeks an award for past loss of superannuation calculated at 10% of past loss of earning capacity. Superannuation guarantee contributions are calculated on gross earnings. The Plaintiff's income in the 22/23 Financial Year of \$54,055 is within the 32.5 marginal income tax bracket, so a net weekly loss of \$122 corresponds to a gross weekly loss of \$180.74. I adopt the 10% rate the Plaintiff seeks. The past loss of superannuation is $\$180.74 \times 1,368 \text{ weeks} \times 10\%$, which equals \$24,725.23. \$2,711.10 of that amount relates to the 150 weeks referred to above.

I allow interest under s 100 of the Civil Procedure Act 2005 (NSW) for past loss of earnings and superannuation. I use the same approach as that taken to general damages above, being interest at 2% per annum on the whole of each past economic loss, after reduction, for the 28.36 years from 21 May 1998 to 29 September 2026. Interest on past loss of earning capacity is calculated as $\$122,317.20 \times 2\% \times 28.36$, which comes to \$69,378.32. The amount awarded for interest on past loss of superannuation is calculated as $\$18,120.99 \times 2\% \times 28.36$, which totals \$10,278.23.

On the assumption that the Plaintiff continues to work until the age of 67, the multiplier will be 816. Accordingly, the Plaintiff seeks \$554,880 for future loss of earning capacity. That calculation is based upon a weekly loss of \$680.

The report of Dr Jungfer notes that with appropriate treatment, there is a prospect the Plaintiff's symptoms may be reduced. However, she notes that given the length of time the Plaintiff has been symptomatic and the enduring impact the abuse has had on her personality, she is unlikely to achieve a complete recovery. I consider it appropriate to award damages for future loss until her presumed retirement at 67.

For the reasons given at [195] above, a net weekly loss of \$200 is appropriate for future loss of earning potential given the Plaintiff's current earning capacity and the assumption childcare workers earn less than the average full-time worker. Obviously, this assumes that the Plaintiff continues to earn, roughly, what she was earning in 2023. Using the multiplier of 816, which reflects the period to the Plaintiff's likely retirement, and a 3% discount, gives \$163,200. less 15% to account for vicissitudes, which is an award of \$138,720.

Future superannuation is calculated on the gross equivalent of the future weekly loss. On the basis stated at [198] above, a net weekly loss of \$200 corresponds to a gross weekly loss of \$296.30. Applying the multiplier of 816 and the 15% reduction for vicissitudes gives \$205,513.68. At the superannuation guarantee rate of 12%, which has applied since 1 July 2025, the loss of future superannuation is \$24,661.64.

Past out-of-pocket expenses

The Plaintiff's Statement of Particulars states that a schedule of out-of-pocket expenses would be provided prior to the hearing of this matter. No schedule has been provided, nor has this issue been addressed in her closing submissions. I do not award any damages for past out-of-pocket expenses.

Future out-of-pocket expenses

Dr Jungfer recommended 50 sessions of trauma-informed psychological therapy for the Plaintiff. She estimated the value at \$250–\$300 per session. The Plaintiff also claims for future out-of-pocket expenses for medication. The medication required is unspecified, and in any event the Plaintiff has declined antidepressants and no longer takes antipsychotic medication. I will not award damages for those costs.

For the Plaintiff's claim for future out-of-pocket expenses, I accept her claim for \$3,798.75. It is a lesser amount than Dr Jungfer recommends, and the Plaintiff does not seek more.

Funds management

I will award the Plaintiff \$5,000 for financial advice and funds management. It is apparent from Dr Jungfer's report that the abuse has caused the Plaintiff's gambling disorder. I find that the Plaintiff's gambling impairs her ability to manage the award.

Summary of damages

The Plaintiff has settled her case against the State of New South Wales. She received an amount of \$150,000 in that settlement. The sum awarded to the Plaintiff must be reduced by that amount to avoid overcompensation: *Baxter v Obacelo Pty Ltd* (2001) 205 CLR 635; [2001] HCA 66 at [39] (Gleeson CJ and Callinan J). Moreover, as I have mentioned previously, I rely on Dr Jungfer's opinion that the Plaintiff's psychiatric injuries can be apportioned 70% to the abuse and 30% to other traumatic events the Plaintiff has experienced. I will reduce the Plaintiff's damages by 30% except for in three respects.

First, aggravated damages compensate for the hurt caused by the manner of Mr Osborne's wrongdoing. Secondly, the need for funds management arises from my concern, based on Dr Jungfer's report, that the Plaintiff's gambling will impair her ability to manage her money. Thirdly, the loss of earning capacity and superannuation for the 150 weeks results from drug use caused by the abuse. Dr Jungfer's 30% apportionment relates to various adult traumas, not drug use.

I provide the following table calculating damages:

Head of damage

Amount

Applying 30% deduction

General damages

\$225,000

\$157,500

Aggravated damages

\$50,000

\$50,000

Interest on general damages calculated at 2% per annum from 1987

\$87,750

\$61,425

Past loss of earning capacity

\$166,896

\$122,317.20

Interest on past loss of earning capacity

\$94,663.41

\$69,378.32

Past loss of superannuation

\$24,725.23

\$18,120.99

Interest on past loss of superannuation

\$14,024.15

\$10,278.23

Future out-of-pocket expenses

\$3,798.75

\$2,659.13

Future loss of earning capacity

\$138,720

\$97,104

Future loss of superannuation

\$24,661.64

\$17,263.15

Funds management

\$5,000

\$5,000

Less \$150,000 (see [208] above)

-\$150,000

-\$150,000

Total

\$685,239.18

\$461,046.02

Costs

The sum of \$461,046.02 which I will award the Plaintiff is below the \$500,000 threshold in r 42.34 of the Uniform Civil Procedure Rules 2005 (NSW) (the UCPR). That rule provides as follows:

42.34 Costs order not to be made in proceedings in Supreme Court unless Court satisfied proceedings in appropriate court

- (1) This rule applies if—
 - (a) in proceedings in the Supreme Court, other than defamation proceedings, a plaintiff has obtained a judgment against the defendant or, if more than one defendant, against all the defendants, in an amount of less than \$500,000, and
 - (b) the plaintiff would, apart from this rule, be entitled to an order for costs against the defendant or defendants.
- (2) If the proceedings could have been commenced in the District Court, an order for costs must not be made unless the Supreme Court is satisfied that the commencement and continuation of the proceedings in the Supreme Court was warranted.

I do not consider the rule to be engaged. The rule refers to “all the defendants”. Furthermore, the sum I award is below the threshold is because the First Defendant settled with the Plaintiff for \$150,000. In any event, it was warranted for the Plaintiff to commence and continue her proceedings in this Court. The claim as particularised totalled over \$1.5 million. The amount I have awarded to the Plaintiff flows from my findings that the abuse contained only in her First and Second Statements did not occur. I did not find that the Plaintiff was dishonest in her allegations. I am satisfied that there is no need to depart from the ordinary rule in r 42.1 of the UCPR.

Orders

I make the following orders:

Verdict and judgment for the Plaintiff against the Second Defendant in the sum of \$461,046.02.

The Second Defendant is to pay the Plaintiff’s costs.

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Decision last updated:

29 September 2026

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