

**ROYAL COMMISSION INTO INSTITUTIONAL
RESPONSES TO CHILD SEXUAL ABUSE**

**Public Hearing - Case Study 50
(Day 251)**

Level 17, Governor Macquarie Tower
1 Farrer Place, Sydney

On Monday, 20 February 2017 at 10am

Before:

The Chair:	Justice Peter McClellan AM
Before Commissioners:	Justice Jennifer Ann Coate
	Mr Bob Atkinson AO APM
	Mr Robert Fitzgerald AM
	Professor Helen Milroy
	Mr Andrew Murray

Counsel Assisting:	Ms Gail Furness SC
	Mr Stephen Free

1 MS FURNESS: Thank you, your Honour. Your Honour, the
2 hearing today will hear from a panel of those associated
3 with the Truth, Justice and Healing Council in respect of
4 their proposal in relation to a Catholic Professional
5 Standards company.

6
7 <FRANCIS JOHN SULLIVAN, sworn: [10.03am]

8
9 <NEVILLE JOHN OWEN, sworn: [10.03am]

10
11 <MARK BENEDICT COLERIDGE, on former oath: [10.03am]

12
13 <EXAMINATION BY MS FURNESS:

14
15 MS FURNESS: Mr Owen, can I begin with you. Could you
16 tell the Royal Commission your full name?

17
18 THE HON. NEVILLE OWEN: Neville John Owen.

19
20 MS FURNESS: And the relative position you have to this
21 hearing?

22
23 THE HON. NEVILLE OWEN: Since the middle of 2014, I have
24 been the Chair of the Truth, Justice and Healing Council.

25
26 MS FURNESS: And, archbishop, your full name?

27
28 ARCHBISHOP COLERIDGE: Mark Benedict Coleridge.

29
30 MS FURNESS: You are the Archbishop of Brisbane?

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32 ARCHBISHOP COLERIDGE: The Archbishop of Brisbane.

33
34 MS FURNESS: Mr Sullivan, your full name?

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36 MR SULLIVAN: Francis John Sullivan, and I'm the Chief
37 Executive of the Truth, Justice and Healing Council.

38
39 MS FURNESS: How long have you held that position?

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41 MR SULLIVAN: I was formally appointed in December 2012.

42
43 MS FURNESS: Mr Owen, I think you are the second Chair of
44 the Truth, Justice and Healing Council; that's right?

45
46 THE HON. NEVILLE OWEN: Correct.

47

1 MS FURNESS: Perhaps if I could start with you, Mr Owen,
2 and could you tell the Royal Commission what the purpose
3 and role of the Truth, Justice and Healing Council is?
4

5 THE HON. NEVILLE OWEN: The Truth, Justice and Healing
6 Council was set up by Catholic Religious Australia, which
7 is the body that represents about 180 or so of the major
8 religious congregations, and the Australian Catholic
9 Bishops Conference, which represents the dioceses and
10 eparchies in Australia, and it was set up for the purpose
11 of creating a situation where the Church could, wherever
12 possible, speak with one voice in its dealings with the
13 Royal Commission.
14

15 MS FURNESS: "With one voice" - you refer to dioceses and
16 orders rather than individuals within those?
17

18 THE HON. NEVILLE OWEN: That's correct.
19

20 MS FURNESS: The Royal Commission can assume, I take it,
21 that where the Council has published views, those views
22 represent the views of the members?
23

24 THE HON. NEVILLE OWEN: That's my understanding.
25

26 MS FURNESS: Given your role and purpose, is it intended
27 that the Council will have any ongoing role in relation to
28 the implementation of whatever policies the Church ends up
29 adopting?
30

31 THE HON. NEVILLE OWEN: It is likely, I think, that the
32 Truth, Justice and Healing Council will go out of
33 existence. It was set up for a particular purpose, that
34 is, to liaise with the Royal Commission. That is now
35 coming towards an end, and I doubt very much that the
36 Truth, Justice and Healing Council as a council will
37 continue to exist after the Royal Commission has reported.
38 The timing of its demise will of course be a matter for the
39 supervisory group.
40

41 In relation to Catholic Professional Standards
42 Limited, we will be available to assist the directors and
43 the members in the implementation phase of that, which
44 would include the passing on of the knowledge that we have
45 developed concerning the preparation and implementation of
46 standards, but we wouldn't have any formal ongoing role.
47

1 MS FURNESS: Therefore, to understand the intentions
2 towards implementation, the Royal Commission must look
3 towards those members of the Church who are involved in
4 that work?

5

6 THE HON. NEVILLE OWEN: The company was only formed late
7 last year. It was publicly announced in late November. It
8 is very much in its embryonic stage. There are three
9 initial directors who have been appointed, and they are
10 going about the task of appointing a chief executive
11 officer and assembling the remainder of the board. In
12 terms of the intention, I think probably it is the Truth,
13 Justice and Healing Council at the moment that is best
14 placed to assist the Commission in understanding what the
15 intention was and is behind the establishment of the
16 company.

17

18 MS FURNESS: But the proposals in relation to the work
19 going forward and the various policies and procedures which
20 the Royal Commission has been provided with - that lays
21 with those who are the leadership of the Church now?

22

23 THE HON. NEVILLE OWEN: It does, it does, and of course
24 primarily with the directors of the company.

25

26 MS FURNESS: In terms of the policies and procedures of
27 the individual dioceses?

28

29 THE HON. NEVILLE OWEN: I'm sorry, I misunderstood you.
30 No, the policies and procedures of the individual dioceses
31 remain with the dioceses, and gradually, as CPS comes into
32 its operational phase, it will liaise with the dioceses and
33 the congregations in relation to those policies and
34 procedures.

35

36 MS FURNESS: CPS being the Catholic Professional Standards
37 company?

38

39 THE HON. NEVILLE OWEN: Correct.

40

41 MS FURNESS: Can I then turn to the details of the
42 company. In your submission to the Royal Commission, which
43 is exhibit 50-004, tab 1, which is the tender bundle for
44 the hearing, it begins on page 90 of that document. Do you
45 have it with you, Mr Owen?

46

47 THE HON. NEVILLE OWEN: I do.

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MS FURNESS: You begin in the first paragraph by acknowledging that the Church's professional standards in relation to child protection allegations have not been consistently and adequately applied by all Church authorities?

THE HON. NEVILLE OWEN: Correct.

MS FURNESS: Those professional standards can be found in what documents?

THE HON. NEVILLE OWEN: Mainly in Towards Healing and in Integrity in Ministry and in Integrity in the Service of the Church.

MS FURNESS: What about the Melbourne Response?

THE HON. NEVILLE OWEN: The Melbourne Response is a separate issue, yes.

MS FURNESS: In terms of consistency, the Melbourne Response clearly differs from Towards Healing?

THE HON. NEVILLE OWEN: It does.

MS FURNESS: But you are not referring specifically to that in the first paragraph?

THE HON. NEVILLE OWEN: No, we are referring to inconsistency within the other standards as well.

MS FURNESS: So the way in which, in relation to Towards Healing, individual dioceses applied it?

THE HON. NEVILLE OWEN: Correct.

MS FURNESS: That is in relation to application rather than content. So is it the case we're to understand that no issue is being taken with the content; it's more how, indeed, it has been applied?

THE HON. NEVILLE OWEN: I think that's fair, yes. The content is the content. The words are there. But it has become clear through the case studies, and generally, that there has been inconsistent application of the words in Towards Healing and perhaps also in the other standards.

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MS FURNESS: Coming further down the page, you refer to a criticism of Towards Healing of the in-house nature of the process. Do you see that?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: Again, that's in relation to case studies and the Church's own view, I take it, of its policy?

THE HON. NEVILLE OWEN: Certainly in relation to the case studies. I think as with most things in life, people take different views. I couldn't make a statement that says that all Church authorities have the same view of that, but many do.

MS FURNESS: The concern was about the independence, the transparency and the lack of a mechanism for supervision and enforcement?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: Presumably the new proposed body, or the fact that it's in existence but as yet has not become operational, is designed to deal with those three issues probably among other issues?

THE HON. NEVILLE OWEN: In a way, the area of complaints handling has to be looked at separately because the core functions of the Catholic Professional Standards would involve the setting of standards in a wide range of areas. One of those will be complaints handling. To the extent that it does set standards in relation to complaints handling, the intent would certainly be to address the deficiencies in Towards Healing that have been identified.

MS FURNESS: The matters that I've just referred to aren't limited to complaints handling, I don't think, Mr Owen. The first is the in-house nature of the process, that is, that it was being carried out by people associated with the Church; is that right?

THE HON. NEVILLE OWEN: There is a difficulty, I think. If you take the view that was expressed, for example, by Father Tom Doyle that one of the real failings of the Church here is its failure to acknowledge and to use a pastoral approach to its dealings with survivors, it's

1 difficult to take everything outside.

2

3 In my thinking, I like to differentiate between what
4 I call claims resolution on the one hand and complaint
5 handling on the other. Now, some people will want their
6 claim resolved. That can go outside the Church. Other
7 people will want the Church to take responsibility for what
8 has happened. So I find it difficult to see how it can, as
9 a broad statement, always be something other than in-house.

10

11 MS FURNESS: In terms of transparency or being subjected
12 to scrutiny, that, I take it, is a reflection of the
13 processes not being publicly known and various deeds of
14 release and the like?

15

16 THE HON. NEVILLE OWEN: Yes, and not having a mechanism by
17 which the public can assess the adequacy of the procedures.

18

19 MS FURNESS: Thank you. You then refer to another
20 criticism, that those involved in dealing with a particular
21 case have been poorly chosen or insufficiently skilled or
22 trained?

23

24 THE HON. NEVILLE OWEN: Yes.

25

26 MS FURNESS: That's in relation to those within the
27 dioceses who were dealing with the complainants and
28 ultimately resolving the complaints?

29

30 THE HON. NEVILLE OWEN: Yes.

31

32 MS FURNESS: Again, the idea is to set up a structure
33 which resolves that as well as the other issues?

34

35 THE HON. NEVILLE OWEN: Well, that will provide the
36 guidance for resolving those sorts of problems.

37

38 MS FURNESS: Thank you. You then refer to the Council
39 recommending to the ACBC, the Conference, and the Catholic
40 Religious Australia that a new independently structured
41 company be established to set professional standards and to
42 monitor and report on their implementation?

43

44 THE HON. NEVILLE OWEN: Yes.

45

46 MS FURNESS: When you say "independently structured",
47 that's independent from whom?

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2 THE HON. NEVILLE OWEN: Can I sound a little donnish here?

3
4 MS FURNESS: By all means, Mr Owen.

5
6 THE HON. NEVILLE OWEN: We do not shy away from the fact
7 that this company is not structurally independent of the
8 institutional Church. The institutional Church will fund
9 it. It is the same issue that arose and that Ms Devlin
10 addressed in her evidence concerning the Irish model. So
11 we don't shy away from that. It is not structurally
12 independent.

13
14 I've written from time to time on issues relating to
15 governance, directors duties and so on, and I've always
16 taken a view that you must distinguish between structural
17 independence and functional independence. I have always
18 been concerned about the terminology that we use in the
19 corporate field about independent directors. I think that
20 is misleading, because every director must be independent.
21 If they are not independent, then they can't fulfil their
22 fiduciary duties.

23
24 So you look at functional independence, and by
25 "functional independence" I mean the capacity to bring an
26 objective, dispassionate and informed mind to the
27 decision-making process. When we talk about "independent"
28 in that submission and in the structure of Catholic
29 Professional Standards, what I'm referring to is functional
30 independence - a situation where those who are operating
31 the company, managing the company and making the decisions
32 at that level will be functionally independent.

33
34 MS FURNESS: So we should read that paragraph as, instead
35 of "independently structured", "functionally structured so
36 as to be independent"?

37
38 THE HON. NEVILLE OWEN: Correct.

39
40 MS FURNESS: Moving down the page of your submission, you
41 refer to the focus of attention on setting and auditing
42 compliance with professional standards and that the company
43 will not investigate or deal with individual complaints.
44 In terms of the dealing with individual complaints, is it
45 proposed that the complaint handling process which now sits
46 within either Towards Healing or the Melbourne Response
47 will continue?

1
2 THE HON. NEVILLE OWEN: That's a matter for the company,
3 and that is something that the standards will have to
4 address because, as the Commission will have seen,
5 particularly last week, there are other models that are now
6 operating. So there are numerous ways of approaching these
7 problems.

8
9 What we had hoped - and this was one of the
10 assumptions underlying this - was that there would be
11 a government administered redress scheme so that what
12 I call claims resolution could be done outside the Church
13 and people, the survivors, who choose to go down that route
14 can do so. So the individual complaints that come to the
15 Church authority will still be dealt with by the Church
16 authority but subject to the guidelines, the standards and
17 the principles that are set by Catholic Professional
18 Standards Limited.

19
20 It's going to require a pretty significant period of
21 consultations to work out how best to do that. Would you
22 go to one national model? Would you allow each Church
23 authority to develop its own model, provided that they
24 always complied with the set of standards, policies and
25 principles that are in the standards set by Catholic
26 Professional Standards? That's something that I can't
27 answer today, Ms Furness, but that is where this will have
28 to go.

29
30 MS FURNESS: So it is expected that the company will set
31 the standards and, as part of that process, perhaps
32 a consultation process, advise whether or not a national
33 scheme is preferable to various independent schemes?

34
35 THE HON. NEVILLE OWEN: Correct.

36
37 MS FURNESS: Just continuing over - this is on page 91 of
38 your submission - you refer to the company not being
39 structurally independent but functionally independent,
40 subject to the reserve powers. You then refer to the
41 reserve powers a little later on. Perhaps you can explain
42 those?

43
44 THE HON. NEVILLE OWEN: Can I say that in corporate
45 organisations that have developed in the Catholic world
46 over the last 20 or so years - and this was a matter to
47 which one of the witnesses in the first week referred - to

1 see reserve powers is not uncommon. They differ from time
2 to time. But what it means is that you are looking at
3 uncharted waters, often, for an organisation, and this is
4 an example. This is going into areas that the bishops and
5 the congregational leaders have not before been. So there
6 are some reserve powers which are there to assist everyone
7 to get confidence in the system. Do you want me to go --

8
9 MS FURNESS: Certainly.

10
11 THE HON. NEVILLE OWEN: How would you like me to do this?

12
13 MS FURNESS: I'm happy if you want to complete your
14 answer, or if that is sufficient for your purposes, we can
15 move on, Mr Owen.

16
17 THE HON. NEVILLE OWEN: I'm happy.

18
19 MS FURNESS: We will come to the terms of the document
20 shortly. The primary goal of it is to set the standards
21 and enforce those standards that it has set?

22
23 THE HON. NEVILLE OWEN: Correct, and to educate and train.

24
25 MS FURNESS: If you continue down, you refer to the
26 authorities being required to enter into a contract with
27 the company and agree that compliance will be audited and
28 the results made public. How will that requirement be
29 effected?

30
31 THE HON. NEVILLE OWEN: Which requirement?

32
33 MS FURNESS: The requirement of the authorities to enter
34 into a contract.

35
36 THE HON. NEVILLE OWEN: It will be much the same as the
37 Irish experience, where there will be dealings between
38 Catholic Professional Standards Limited and the Church
39 authorities - that's the dioceses and the major religious
40 institutions - in which the nature of the contractual
41 arrangement will be hammered out.

42
43 Now, as we heard from Ms Devlin, that has gone through
44 changes from time to time and I have no doubt that that's
45 what will happen here, but it will be a case of
46 consultation, drafts, redrafts and then a contractually
47 binding arrangement by which the Church authorities agree

1 to honour and comply with the standards and to submit
2 themselves to audit of the level of their compliance and
3 application of those standards and to take on board the
4 public reporting of the results of the audit.

5
6 MS FURNESS: Are you expecting that each of the major
7 dioceses and orders will participate?

8
9 THE HON. NEVILLE OWEN: Yes.

10
11 MS FURNESS: And that expectation is based on
12 consultation?

13
14 THE HON. NEVILLE OWEN: That expectation comes from the
15 fact that the approval to this initiative was given by both
16 the Australian Catholic Bishops Conference, which is
17 constituted by the dioceses and eparchies, and by Catholic
18 Religious Australia, which is constituted by the major
19 religious organisations.

20
21 THE CHAIR: Mr Owen, Towards Healing, I think, was
22 a product of the bishops, wasn't it?

23
24 THE HON. NEVILLE OWEN: Yes.

25
26 THE CHAIR: As I understand it, and I think you have
27 confirmed, it hasn't always been applied by the different
28 dioceses?

29
30 THE HON. NEVILLE OWEN: Correct, yes.

31
32 THE CHAIR: How can we have confidence, then, going
33 forward with this new initiative?

34
35 THE HON. NEVILLE OWEN: Because there is an audit
36 requirement that wasn't in that initial arrangement, and it
37 is an audit requirement which will be backed by public
38 reporting.

39
40 THE CHAIR: But how do we know they will all come in?

41
42 THE HON. NEVILLE OWEN: We can only go on the fact that
43 this has been through a long period of discussion and
44 consultation. Various views were expressed. All sorts of
45 reservations were expressed and held from time to time. So
46 I think the fact that there has been an endorsement by
47 those two bodies is one thing that you can go on. And the

1 nature of the discussions which have been carried out gives
2 me, certainly, some confidence. I can't give any
3 guarantees.
4

5 I think Ms Devlin said that in the rewrite of their
6 memoranda of understanding or memoranda of agreement, there
7 are some that are still outside the tent. I can't give any
8 guarantees, but those two things - the nature of the
9 discussions and the endorsement by the organisations - are
10 things that you, the Commissioners, could look at to have
11 some confidence that this is more than just window dressing
12 or words.
13

14 MS FURNESS: Is it intended that the bishop or provincial
15 enter into the contract?
16

17 THE HON. NEVILLE OWEN: Correct.
18

19 MS FURNESS: The responsibilities, nevertheless, remain
20 with the diocese or order?
21

22 THE HON. NEVILLE OWEN: Yes.
23

24 MS FURNESS: So the standards are created by the body,
25 and, when promulgated, those standards are required,
26 through the contract with the bishop, to be followed?
27

28 THE HON. NEVILLE OWEN: Yes.
29

30 MS FURNESS: Then it is the responsibility of the bishop
31 to ensure that that happens?
32

33 THE HON. NEVILLE OWEN: Correct.
34

35 MS FURNESS: How does the bishop ensure that those beneath
36 him comply? How is that intended to work?
37

38 THE HON. NEVILLE OWEN: That is something that will no
39 doubt be part of this overall system. There is some level
40 of that already, for example, with the Catholic Education
41 systems, and we've heard that there are different models.
42 In the case of a Catholic Education system which is
43 responsible to government but which is acting on
44 a delegated authority from the bishops, as is the case in
45 Western Australia, for example, there are mechanisms in
46 place, reporting mechanisms, between the directors of
47 Catholic Education and the Catholic Education Commission

1 and between the Catholic Education Commission and the
2 directors and the bishops. So in some areas, that is
3 already in place, but I would imagine that there will be
4 guidance notes similar to the ones about which Ms Devlin
5 spoke, which will go into detail on that sort of thing.
6

7 It comes back to something that Commissioner Murray
8 mentioned about stress testing: how do you stress test all
9 of this? These are things that just have to be worked out.
10

11 MS FURNESS: In terms of the priest and the bishop, are
12 you suggesting that there might be some form of delegation
13 similar to the Catholic Education Commission?
14

15 THE HON. NEVILLE OWEN: I wouldn't think so - not
16 a delegation as such, other than to the extent to which
17 there is delegation already. Parish priests, for example,
18 do have a certain amount of autonomy separate from the
19 bishop under canon law, so there is already that in place.
20 I wouldn't have thought that there would be express
21 delegation of these sorts of standards, for example,
22 particularly child safety standards. If the bishop adopts
23 a child safety standard or protocol for application within
24 his diocese, I can't imagine that he would delegate to the
25 parish priest an authority, for example, to tinker with it
26 and apply it in part or not at all.
27

28 MS FURNESS: What happens if the parish priest doesn't
29 comply with the standards?
30

31 THE HON. NEVILLE OWEN: Then there is going to be an
32 adverse audit report on the bishop. So the bishop has
33 to --
34

35 MS FURNESS: Perhaps if I could repeat the question for
36 you. What happens if the parish priest doesn't comply with
37 the standards?
38

39 THE HON. NEVILLE OWEN: There will be an adverse audit
40 report that will be published.
41

42 MS FURNESS: What power does the bishop have to require
43 the parish priest to comply with the standards?
44

45 THE HON. NEVILLE OWEN: That is the normal situation that
46 applies in canon law between the bishop and his priest.
47 I can't really take that any further than that. Perhaps

1 someone else on the panel may be able to give you a more
2 specific answer to that, as to what the actual powers of
3 the bishop are to deal with a recalcitrant individual.

4

5 MS FURNESS: If the priest doesn't follow the standards,
6 the bishop has power under canon law to, effectively, stand
7 him down?

8

9 THE HON. NEVILLE OWEN: That's right, yes.

10

11 MS FURNESS: That power would be able to be exercised in
12 relation to failing to comply with the standards, I take
13 it?

14

15 THE HON. NEVILLE OWEN: It could.

16

17 COMMISSIONER MURRAY: Before you move on, Justice Owen -
18 I think you are still referred to in that way?

19

20 THE HON. NEVILLE OWEN: It depends whether it's my
21 grandchildren or someone outside.

22

23 COMMISSIONER MURRAY: One of the difficulties with
24 enforcement is if the person who is subject to enforcement
25 is independent. We understand that whilst there are
26 employee-like relationships between a bishop and a priest,
27 the priest is functionally independent. Therefore, for
28 enforcement and audit to be effective, it would seem to me
29 that not only would the diocese and the bishop have to sign
30 up to the standards, but also the priests, because
31 otherwise they could simply defy, legitimately defy, any
32 enforcement over them.

33

34 Given that peculiar nature of the religious
35 relationship in employment law, do you think that it's
36 necessary for the priests themselves to agree contractually
37 to this obligation?

38

39 THE HON. NEVILLE OWEN: I don't think it would operate
40 where there was a contractual arrangement between the
41 priest and Catholic Professional Standards Limited. I can
42 only speak from the Western Australian experience, but as
43 I understand the safeguarding protocols that operate in the
44 Western Australian environment, the priests sign a code of
45 conduct to be bound by those standards and to apply those
46 standards. That's as I understand it. I may be wrong in
47 that, but that's as I understand it. So that would be the

1 mechanism, I think. But that would not be a code of
2 conduct between the priest and Catholic Professional
3 Standards Limited; it would be between the priest and his
4 ordinary.

5
6 MS FURNESS: So it is the case that existing standards
7 imposed by contract or law, legislation, such as
8 educational standards and out-of-home care standards, will
9 not be replicated or otherwise interfered with by the
10 standards that the company will set?

11
12 THE HON. NEVILLE OWEN: That was a linchpin of this
13 arrangement. Particularly the education authorities made
14 it abundantly clear that they didn't want to be put in
15 a position where they were having to do twice the paperwork
16 and undergo twice the audit pain for the same result, so
17 that the standards that are set by governments - for
18 example, the Child Safe Standards in Victoria under the
19 recent ministerial order - will apply and they will have to
20 be honoured. They will be part of the standards, but they
21 won't be separately audited. So if the authority concerned
22 can demonstrate that it has complied with the regulatory
23 regime to the satisfaction of the government regulatory
24 agency, it won't have to do all of that again.

25
26 THE CHAIR: Ms Furness, that noise is just impossible.
27 I think we should adjourn and someone can do something to
28 check the system. It has to be fixed. I am sorry,
29 gentlemen, I think we should stop and just clear it up. We
30 will adjourn for a short time.

31
32 **SHORT ADJOURNMENT**

33
34 MS FURNESS: Your Honour, nothing has actually changed,
35 other than that all of the microphones have been checked.
36 So one has to proceed. If it doesn't work, we will have to
37 adjourn.

38
39 Mr Owen, I was asking you about the standards that are
40 already applied through legislation or contracts, and you
41 have spoken primarily of schools, Catholic schools, which
42 have to comply with various other standards, and they won't
43 be required to comply with the standards that the company
44 ultimately sets; that's right?

45
46 THE HON. NEVILLE OWEN: No, they won't have to duplicate
47 the process of establishing compliance. They will still

1 have to comply with those standards, and those standards
2 will be, by incorporation, part of the overall standards of
3 the system.

4
5 MS FURNESS: I understand that, but the standards that the
6 company will set will be in addition to or the same as and
7 therefore already covered by the school standards?

8
9 THE HON. NEVILLE OWEN: In harmony with and then in
10 addition to areas that are not covered by the government
11 mandated standards.

12
13 MS FURNESS: So that, I take it, it is the same in
14 relation to the Catholic welfare arm that provides
15 out-of-home care and other youth-based services?

16
17 THE HON. NEVILLE OWEN: Yes.

18
19 MS FURNESS: It is too early to tell whether the standards
20 set by the company will significantly extend those or not?

21
22 THE HON. NEVILLE OWEN: Correct.

23
24 MS FURNESS: It is the case, isn't it, that most dioceses'
25 and perhaps orders' engagement with children is through
26 schools and the out-of-home care work?

27
28 THE HON. NEVILLE OWEN: Yes.

29
30 MS FURNESS: So that to the extent that the standards
31 either replicate or don't go further than the existing
32 legislative or contractual standards, the engagement that
33 will be covered by the standards of the company is
34 a relatively small group of children?

35
36 THE HON. NEVILLE OWEN: Yes.

37
38 MS FURNESS: And those will be children who engage with
39 the parish through parish and presbytery activities?

40
41 THE HON. NEVILLE OWEN: That would be one, yes.

42
43 MS FURNESS: And to the extent that the parish priest
44 engages with children in schools, other than, of course, as
45 a teacher?

46
47 THE HON. NEVILLE OWEN: Yes.

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MS FURNESS: Any others?

THE HON. NEVILLE OWEN: There may be organisations, the younger arms of groups like Catholic Youth, for example - it would extend to those as well.

MS FURNESS: The Royal Commission has heard from a number of those agencies, as you know, and their evidence is that nearly all of their activities are funded by Commonwealth or state governments, and with that funding comes conditions. You are conscious of that?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: So to the extent that there are youth arm, as you describe it, activities and it's funded, it will have its own sets of conditions?

THE HON. NEVILLE OWEN: It would do, yes.

MS FURNESS: Can we turn to the constitution of your company, which is appendix C or annexure C to your submission. It begins with 0099 at the top, for the Ringtail reference. If we can turn first to the objects and powers - this is at 5.1 on page 4. Do you have that in front of you?

THE HON. NEVILLE OWEN: I do.

MS FURNESS: You can see that is:

- (i) promote the safety of,*
- (ii) prevent abuse and/or misconduct ...*
- and*
- (iii) respond to allegations ...*

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: So that covers the complaint handling process as well?

THE HON. NEVILLE OWEN: It does.

MS FURNESS: Then, secondly:

Entering into contractual arrangements ...

1
2 THE HON. NEVILLE OWEN: Yes.
3
4 MS FURNESS: That's the matter you have referred to
5 before?
6
7 THE HON. NEVILLE OWEN: Correct.
8
9 MS FURNESS: By that means or mechanism, the authorities
10 will have compliance checks?
11
12 THE HON. NEVILLE OWEN: Correct.
13
14 MS FURNESS: And then education and training and auditing
15 compliance?
16
17 THE HON. NEVILLE OWEN: Yes.
18
19 MS FURNESS: Just in relation to (d), auditing compliance,
20 is that proposed to be done by an external auditor?
21
22 THE HON. NEVILLE OWEN: I would imagine so. That's the
23 thinking, that Catholic Professional Standards Limited
24 would accredit external audit agencies and it would be the
25 external audit agencies that would conduct the audits.
26
27 MS FURNESS: Thank you. Turning over to 5.3, there is
28 reference there to the reports - that is, the compliance
29 reports - being:
30
31 *... made public unless the Board resolves*
32 *that the information:*
33 *(a) has the potential to cause harm to*
34 *Church Contacts ...*
35
36 THE HON. NEVILLE OWEN: Yes.
37
38 MS FURNESS: Can you help us with "Contacts"?
39
40 THE HON. NEVILLE OWEN: "Church Contacts" is a defined
41 term in the constitution and it relates to, in this
42 context, effectively, children and vulnerable adults who
43 come into contact with the Church, who are either in the
44 care of the Church or who have some association with
45 Church. In other words, it is the identification of the
46 people to whom the protective mechanism is addressed.
47

1 MS FURNESS: The clause doesn't refer to redacting or
2 otherwise limiting the publication to protect those people,
3 but I take it that would be anticipated?
4
5 THE HON. NEVILLE OWEN: Yes. By nature, I'm in favour of
6 principles rather than prescription. I don't like clauses
7 in agreements that go on for pages and pages.
8
9 MS FURNESS: However, you would appreciate that it is
10 extremely broad to say "has the potential to cause harm to
11 Church Contacts" --
12
13 THE HON. NEVILLE OWEN: I do.
14
15 MS FURNESS: -- when, indeed, most of the work to be done
16 will be with vulnerable people?
17
18 THE HON. NEVILLE OWEN: Yes, I accept that.
19
20 MS FURNESS: The second one, "is inaccurate"; the third,
21 "is likely to cause confusion or to mislead the public" -
22 again, very broad?
23
24 THE HON. NEVILLE OWEN: It is.
25
26 MS FURNESS: And then "could endanger public safety"?
27
28 THE HON. NEVILLE OWEN: Yes.
29
30 MS FURNESS: Taking all of these four together, it could
31 be argued that they provide very large reasons for not
32 publishing?
33
34 THE HON. NEVILLE OWEN: Yes, that's one way of
35 interpreting it, but I can only go on the intention that is
36 behind this. The teeth in this system is public reporting.
37
38 MS FURNESS: That's why I take you to these clauses,
39 Mr Owen. I understand that, and that's clear from what you
40 have said earlier. However, this clause seems to provide
41 extraordinary power to the board not to publish?
42
43 THE HON. NEVILLE OWEN: Yes, it does. It does. But the
44 intention is that public reporting will be the norm.
45
46 THE CHAIR: Mr Owen, it may be that public confidence in
47 this body won't be enhanced, though, by a clause that is so

1 broad.

2

3 THE HON. NEVILLE OWEN: Well, it's in its embryonic
4 stages, your Honour. This, I suppose, is an easy answer.
5 There is a lot yet to be worked out, and if the board, for
6 example - or, as you say, through expressions of public
7 concern, perhaps coming from what happens today, perhaps as
8 the mechanisms work themselves out - if the constitution
9 needs to be changed, then there is a mechanism for doing
10 that.

11

12 THE CHAIR: The question is who judges the need for the
13 change? That's the issue. I mean, the Church proffers
14 this as the, as it were, current position, and if, as you
15 accept, there is such a broad discretion in the board not
16 to publish, then people might think that this will never
17 change; there won't be publication.

18

19 THE HON. NEVILLE OWEN: That is not the intention. It
20 never was the intention. Throughout the discussions in
21 which I've been involved, it was made clear that this was
22 the mechanism by which accountability would be held into
23 the system. The drafting is there. I can't take it any
24 further than that, your Honour.

25

26 MS FURNESS: Then in terms of membership, at the bottom of
27 that page, there is reference to the members being (a) the
28 Australian Episcopal Conference, which is effectively the
29 Catholic Religious? No, I'm sorry --

30

31 THE HON. NEVILLE OWEN: No, that's the Bishops Conference.

32

33 MS FURNESS: That's the Bishops Conference. Then (b) is
34 the Catholic Religious?

35

36 THE HON. NEVILLE OWEN: Yes.

37

38 MS FURNESS: And then (c) is "any other entity that is
39 admitted as a Member". Is there intended there to be
40 anyone else identified?

41

42 THE HON. NEVILLE OWEN: The logical one would be the
43 umbrella body just recently established for the ministerial
44 public juridic person. I think there are 11 or 12 of them
45 that have assumed the missions of various religious
46 congregations, in health and education in particular. That
47 would be one body that could come in under the "any other".

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MS FURNESS: Has that body given an indication to come in yet or not?

THE HON. NEVILLE OWEN: No. They have been involved in discussions, but like Catholic Professional Standards Limited itself, they are still feeling their way.

MS FURNESS: If we can come to clause 35, this is the clause that regulates the number of directors. You see that it is between 3 and 9 directors, and the nomination committee shall take into account considerations in clause 39, to which I will come, and:

... the Member Representatives shall by resolution determine whether a candidate ... shall become a Director.

So it is the case that, effectively, the archbishops and the provincials determine who is a director; is that how we read that?

THE HON. NEVILLE OWEN: Correct. It's the members - the members act through their member representatives. That's the efficiency part. But it will be the member representatives who will make the appointment of the directors.

MS FURNESS: And, shortly, that means the archbishops and the provincials?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: Thank you. At clause 36.4 there is reference to:

When electing a Director, Member Representatives should consider whether the Board is comprised of an appropriate range of skills.

Do you see that?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: Then the considerations by the nomination committee are in clause 39, and the first is:

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*... a commitment to and understanding of
the philosophy and work of the Company ...*

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: That can best be understood with reference to
the objects of the company?

THE HON. NEVILLE OWEN: Correct.

MS FURNESS: Secondly:

*... exemplifies the Company's vision,
mission and core values ...*

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: What's the source of that for the nomination
committee?

THE HON. NEVILLE OWEN: I would imagine - most
organisations these days develop mission statements, and
I think that's what that is referring to. The company will
develop a mission statement, and that will then be one of
the guiding principles for use by the nominations
committee.

MS FURNESS: This will be, in effect, directors that will
be appointed when vacancies arise rather than the initial
directors; is that right?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: Then the third one is:

*... demonstrates a commitment to and
understanding of the philosophy and works
of the Church ...*

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: Effectively, a committed Catholic?

THE HON. NEVILLE OWEN: No, not at all. Could I give you
an example?

1 MS FURNESS: Certainly.
2
3 THE HON. NEVILLE OWEN: I've been involved with a large
4 number of Catholic educational establishments, secondary
5 schools in particular. In my time, the most effective
6 deputy principal was a person who was totally committed to
7 the philosophy and works of the Church, and he was
8 a Baptist.
9
10 MS FURNESS: So a religious person, just not of the
11 Catholic faith?
12
13 THE HON. NEVILLE OWEN: In that particular example.
14 I can't think of any others that you would say were
15 agnostic, but there may have been.
16
17 MS FURNESS: You understand looking at the considerations
18 by the nomination committee in (a), (b) and (c), it is
19 almost inevitable to assume that the directors will be
20 committed Catholics?
21
22 THE HON. NEVILLE OWEN: I don't think that's right.
23
24 MS FURNESS: No?
25
26 THE HON. NEVILLE OWEN: No, I don't.
27
28 MS FURNESS: That's by reference to what you have given as
29 an example in (c) of somebody who could be committed to the
30 work of the Church but of a different faith?
31
32 THE HON. NEVILLE OWEN: Yes, I would take it a little bit
33 further than that. I think that an organisation like this,
34 to fulfil its role, will need a broader range of thinking
35 than simply people who are committed Catholics.
36
37 MS FURNESS: Although that is an essential consideration,
38 according to the clause?
39
40 THE HON. NEVILLE OWEN: Being a committed Catholic?
41
42 MS FURNESS: Being "committed to and understanding the
43 philosophy and works of the Church".
44
45 THE HON. NEVILLE OWEN: That's different to being
46 a committed Catholic. People can, I think, have
47 a commitment to the sorts of values and ideals that are

1 central to the gospel values of the Catholic Church and yet
2 not be Catholics.

3

4 MS FURNESS: I don't quite understand that, Mr Owen, but
5 unless you want to explain it further, we can move beyond
6 that.

7

8 THE HON. NEVILLE OWEN: Well, I don't think I can.

9

10 MS FURNESS: Thank you. Then coming over to the reserve
11 powers that you referred to earlier, the effect of the
12 reserve powers is that the approval of the archbishops and
13 provincials is necessary before any of these matters become
14 effective?

15

16 THE HON. NEVILLE OWEN: Correct.

17

18 MS FURNESS: The first is:

19

20 *Adoption or amendment of any Professional*
21 *Standard ...*

22

23 THE HON. NEVILLE OWEN: Yes.

24

25 MS FURNESS: One of the key objects of the company is to
26 set those standards?

27

28 THE HON. NEVILLE OWEN: Yes.

29

30 MS FURNESS: Secondly:

31

32 *Approval of the strategic plan, business*
33 *plan and annual budget ...*

34

35 which is fairly standard?

36

37 THE HON. NEVILLE OWEN: Yes.

38

39 MS FURNESS: Thirdly:

40

41 *A decision to terminate membership ...*

42

43 THE HON. NEVILLE OWEN: I have a problem with that,
44 because the directors don't have a power to terminate
45 membership.

46

47 MS FURNESS: Well, no, because the membership are those

1 who appoint the board?

2

3 THE HON. NEVILLE OWEN: I think that's a decision to
4 terminate membership of the company.

5

6 MS FURNESS: These powers are:

7

8 *... the approval of the Member*
9 *Representatives shall be required as*
10 *a pre-requisite to any decision of the*
11 *Board becoming effective ...*

12

13 So you are assuming that the board, in this case, would say
14 to the membership, "We want to terminate one of you",
15 and --

16

17 THE HON. NEVILLE OWEN: What I'm saying is I think -
18 I haven't used this phrase for a long time - it is
19 inelegantly drafted. I don't think it should be there at
20 all, because the board has no power to terminate membership
21 of the company.

22

23 MS FURNESS: Then (d) is:

24

25 *Taking any disciplinary action against*
26 *a Catholic Entity concerning non-compliance*
27 *with Professional Standards ...*

28

29 That's perhaps the second key aspect of the objects of the
30 board, to set the standards and then audit compliance and
31 take action; is that right?

32

33 THE HON. NEVILLE OWEN: Yes.

34

35 MS FURNESS: So effectively what is reserved to the
36 members is the key work the company, isn't it?

37

38 THE HON. NEVILLE OWEN: Again, can I say, reading this
39 closely over the last few days, I would make the same
40 comment: I think it's inelegantly drafted. I don't think
41 it is actually a reserve power, and I say that because the
42 directors don't have a power to discipline.

43

44 MS FURNESS: Is there any reference in the constitution to
45 disciplining?

46

47 THE HON. NEVILLE OWEN: No.

1
2 MS FURNESS: The reference is only to auditing compliance?

3
4 THE HON. NEVILLE OWEN: And publication.

5
6 MS FURNESS: So the constitution, other than the reserve
7 power, doesn't provide for what to do if a bishop doesn't
8 comply with the standards?

9
10 THE HON. NEVILLE OWEN: That's right. I'm using the word
11 "teeth" because I'm trying to avoid the use of the word
12 "sanction", but the teeth is publication. There are no
13 other disciplinary functions.

14
15 MS FURNESS: The effect of this in the reserve powers is
16 nullified by the fact that the board doesn't have any of
17 the powers to give effect to (d); is that what you are
18 saying?

19
20 THE HON. NEVILLE OWEN: Yes. I could proffer a view as to
21 why it might be there, if that would help the
22 Commissioners?

23
24 MS FURNESS: Certainly.

25
26 THE HON. NEVILLE OWEN: The wording is "disciplinary
27 action against a Catholic Entity". There is no contractual
28 relationship between a Catholic entity and Catholic
29 Professional Standards Limited. It may be that what that
30 is there for is to reinforce the view that the only body
31 that could discipline a Catholic entity within the
32 structures of canon law would be a bishop. Now, those
33 disciplinary powers are limited. It would be for others to
34 tell you what they are or what they may be.

35
36 I think it may be there out of an abundance of caution
37 to indicate that it is not the role of CPS to discipline
38 Catholic entities. But in my view, again, the drafting is
39 not particularly happy because I don't think that there is
40 a power to discipline, and therefore it can't be a reserve
41 power.

42
43 MS FURNESS: So in the event that there wasn't compliance
44 with the standards by a bishop, then would you see that
45 canon law provisions, whatever they might be, would have
46 a part to play in relation to the bishop rather than this
47 constitution?

1
2 THE HON. NEVILLE OWEN: Correct.
3
4 MS FURNESS: And whether or not there is a role in canon
5 law for that, for the moment we just don't know?
6
7 THE HON. NEVILLE OWEN: I don't know. Sorry, I can't
8 explain it.
9
10 MS FURNESS: Thank you. Now, the members appoint the
11 first directors?
12
13 THE HON. NEVILLE OWEN: Yes.
14
15 MS FURNESS: And subsequent directors after a vacancy
16 arises - is that still the members?
17
18 THE HON. NEVILLE OWEN: Yes.
19
20 MS FURNESS: You will know that under the Irish scheme
21 that Ms Devlin described the other day, after the first
22 vacancies arise, the chair of the board appoints the
23 directors.
24
25 THE HON. NEVILLE OWEN: I heard Ms Devlin say that. I can
26 only assume that she is talking about a practice that has
27 developed because in the constitution of the Irish company,
28 articles 32 and 34 indicate that it is exactly the same
29 system as the Australian model, which is that the members
30 appoint the directors. I can only assume she is talking
31 about a practice that has developed.
32
33 MS FURNESS: And that practice could or could not develop
34 here?
35
36 THE HON. NEVILLE OWEN: My memory from reading the Irish
37 constitution is that they don't have a nominations
38 committee - they don't have provision for a nominations
39 committee.
40
41 MS FURNESS: That's right.
42
43 THE HON. NEVILLE OWEN: To that extent, our system is more
44 structured. So that practice might develop, but if you are
45 going to comply strictly with the constitution, it would
46 need to go through and get a recommendation from the
47 nominations committee.

1
2 MS FURNESS: Do you have a view on whether that is
3 a preferable approach or not?
4
5 THE HON. NEVILLE OWEN: Me personally?
6
7 MS FURNESS: Yes.
8
9 THE HON. NEVILLE OWEN: I think boards should be
10 self-renewing. My preference would be to follow a practice
11 similar to the Irish model, but that's not what the
12 constitution says.
13
14 MS FURNESS: No, but the constitution could be amended?
15
16 THE HON. NEVILLE OWEN: The constitution could be amended,
17 yes.
18
19 MS FURNESS: Is there any provision for the directors to
20 have a stated duration of directorship?
21
22 THE HON. NEVILLE OWEN: I think there is. I'm not sure
23 where it is, but I think it's a three-year term.
24
25 MS FURNESS: Thank you. In terms of the training of
26 directors, you will have heard there has been a deal of
27 evidence about the necessity to train those who have roles
28 in relation to child protection more broadly, and that
29 includes directors. Is there any proposal in relation to
30 that?
31
32 THE HON. NEVILLE OWEN: Are you talking about directors of
33 the state Professional Standards Offices or directors of
34 this company?
35
36 MS FURNESS: Directors of this company.
37
38 THE HON. NEVILLE OWEN: I would be very surprised if the
39 directors didn't involve themselves in training, because
40 this is a very specialised area, child protection, and also
41 the protection of vulnerable adults is a very specialised
42 area. It is the way of the "corporate" world these days
43 that directors do involve themselves in training.
44
45 MS FURNESS: Modern governance would tell us that the
46 directors should be trained?
47

1 THE HON. NEVILLE OWEN: Correct, yes.
2
3 MS FURNESS: Who appoints the staff?
4
5 THE HON. NEVILLE OWEN: The directors.
6
7 MS FURNESS: With the approval of the members?
8
9 THE HON. NEVILLE OWEN: There is nothing in the
10 constitution that says that. I notice that that is the
11 case in the Irish constitution, that it is actually I think
12 the sponsoring body that approves the appointment of the
13 CEO and the senior staff, but under this constitution, it
14 would be the standard conventional system where it is the
15 directors, not the members, that appoint the CEO and the
16 senior staff, or all staff.
17
18 MS FURNESS: How is the appointment of the CEO
19 progressing?
20
21 THE HON. NEVILLE OWEN: As I understand it, there is
22 a head-hunter who has been engaged, and the process of
23 finding candidates and short listing is reasonably well
24 advanced, but I haven't had an update for some weeks.
25
26 MS FURNESS: Is there a budget that has been set?
27
28 THE HON. NEVILLE OWEN: That is outside my knowledge.
29 I don't know.
30
31 MS FURNESS: You will recall from Ms Devlin's evidence
32 that the resources were provided by the bishops and
33 provincials based on how much money they had, effectively.
34
35 THE HON. NEVILLE OWEN: Yes.
36
37 MS FURNESS: Is it expected that a similar approach will
38 happen here?
39
40 THE HON. NEVILLE OWEN: As far as I'm aware, the funding
41 model as between the members has not been finalised.
42
43 MS FURNESS: During the course of the last two weeks,
44 there has been much mention of governance and the like, and
45 there has been some evidence that without the necessary
46 resources, initiatives - which could include this - either
47 perform inadequately or fail because they just don't have

1 enough money. Has anything been put in place that you are
2 aware of here to make sure that that doesn't happen?

3
4 THE HON. NEVILLE OWEN: No, and the same situation
5 applies. In all of the discussions in which I have been
6 involved, there is a recognition that this body must be
7 properly resourced. It is recognised that that was one of
8 the problems with the National Committee for Professional
9 Standards. It must be resourced. You are quite right, if
10 it is not, it will fail.

11
12 MS FURNESS: Who is responsible for making sure it is, as
13 opposed to providing the funds?

14
15 THE HON. NEVILLE OWEN: It comes back to the Australian
16 Catholic Bishops Conference and Catholic Religious
17 Australia.

18
19 MS FURNESS: You have indicated that the teeth of the
20 company are in the publication of the audits; is that
21 right?

22
23 THE HON. NEVILLE OWEN: Yes.

24
25 MS FURNESS: Is it proposed to publish any other
26 information in addition to the audits?

27
28 THE HON. NEVILLE OWEN: As I understand it, there will be
29 the annual reports. This company, again as I understand
30 it, will have its statutory reporting obligations. Also,
31 I think it either is or is to be registered under the
32 charities and not-for-profits legislation, so that carries
33 with it some reporting functions. It would publish an
34 annual report, in much the same way as Ms Devlin has
35 described and is in the papers for the Irish model.

36
37 MS FURNESS: Is it anticipated that that annual report
38 will include statistics on numbers and outcomes of
39 complaints at all?

40
41 THE HON. NEVILLE OWEN: That's my understanding, that it
42 would. I can't be specific. But, yes, I think - certainly
43 there will be statistical information and I am assuming
44 that part of that statistical information will go to the
45 outcomes and handling of complaints.

46
47 MS FURNESS: There will need to be some arrangement in

1 relation to the redress scheme, however it ultimately
2 looks, so that that information will be conveyed via
3 a reporting mechanism, a public reporting mechanism?
4

5 THE HON. NEVILLE OWEN: Yes, because we are going to be
6 operating in at least two compensatory and complaints
7 handling systems, yes.
8

9 MS FURNESS: Is it proposed that outcomes for priests and
10 religious the subject of complaints and/or redress be
11 published?
12

13 THE HON. NEVILLE OWEN: Individuals?
14

15 MS FURNESS: Yes.
16

17 THE HON. NEVILLE OWEN: I don't know. No, I don't know
18 that.
19

20 MS FURNESS: The United States system, which I'm sure you
21 are aware of - its annual report, which is in the tender
22 documents, contains pages and pages of statistics. Have
23 you had a look at those?
24

25 THE HON. NEVILLE OWEN: I have, yes.
26

27 MS FURNESS: Is it something that the Council can answer -
28 not now but perhaps by the end of this week - by reference
29 to those pages and pages of statistics, what it is intended
30 be published, by using that as a benchmark?
31

32 THE HON. NEVILLE OWEN: I doubt it, Ms Furness, because
33 that would be, in a way, binding the directors. That's
34 a decision for the directors. I am quite happy - quite
35 happy - to give you some information as to what the
36 thinking of the Council has been, but I can't take it that
37 one step further and bind the directors.
38

39 MS FURNESS: No, my question was the intention of the
40 Council in respect of it. So I think from what you have
41 just said, you could provide that?
42

43 THE HON. NEVILLE OWEN: Yes.
44

45 MS FURNESS: Thank you. Perhaps if I could ask whether
46 that is possible to be done by Thursday?
47

1 THE HON. NEVILLE OWEN: I am having a nod from my right.
2 Yes.
3
4 MS FURNESS: That's probably all you need, Mr Owen, is
5 a nod from your right. Thank you. Now, as you would know,
6 in terms of good governance, there is usually a process of
7 review of the work of a company or the process to be
8 followed by a company; do you accept that?
9
10 THE HON. NEVILLE OWEN: I do.
11
12 MS FURNESS: And there is in respect of this company and
13 its work?
14
15 THE HON. NEVILLE OWEN: I think it is specifically
16 provided for.
17
18 MS FURNESS: And you would expect that?
19
20 THE HON. NEVILLE OWEN: Absolutely.
21
22 MS FURNESS: In terms of the standards which are to be
23 set, equally it would be expected that within a reasonable
24 period of time, they would be reviewed?
25
26 THE HON. NEVILLE OWEN: Yes.
27
28 MS FURNESS: Much as Ms Devlin provided?
29
30 THE HON. NEVILLE OWEN: Correct.
31
32 MS FURNESS: One of the issues that she specifically
33 raised was in relation to data sharing --
34
35 THE HON. NEVILLE OWEN: Yes.
36
37 MS FURNESS: -- and the difficulties, obviously working
38 within their particular legal framework, that have arisen
39 in relation to data sharing between different dioceses and
40 the company. What do you think will happen in that area
41 with this company?
42
43 THE HON. NEVILLE OWEN: Under our privacy laws, I think
44 there will be similar problems. Some of them may be able
45 to be cured by the contractual arrangements that are
46 entered into, but for others there may need to be some sort
47 of legislative assistance. I haven't developed my thinking

1 because I haven't actually needed to address that
2 particular issue, but the sorts of problems to which
3 Ms Devlin referred I think will also occur here because of
4 our privacy laws.

5
6 MS FURNESS: I don't think there is a constitutional
7 problem in quite the same way that she described there, but
8 certainly there are a number of laws here as well as
9 contractual provisions?

10
11 THE HON. NEVILLE OWEN: Yes, that's right. But that's why
12 I say that some of that may be able to be cured by the
13 contractual arrangements through the memorandum of
14 understanding.

15
16 MS FURNESS: But it would be an issue that would need to
17 be on the members' or board's table very early on, wouldn't
18 it?

19
20 THE HON. NEVILLE OWEN: I'm sure it will be, because it's
21 fundamental.

22
23 MS FURNESS: It's also fundamental to publishing
24 statistics?

25
26 THE HON. NEVILLE OWEN: Correct.

27
28 MS FURNESS: You will also know from Ms Devlin's evidence
29 that she has a safeguarding review process - that's perhaps
30 more my language than hers. Do you understand what I mean?
31

32 THE HON. NEVILLE OWEN: Yes.

33
34 MS FURNESS: Where members can sign up to be part of this
35 process where the board engages external people to review
36 what they are doing in that area?

37
38 THE HON. NEVILLE OWEN: Are you talking about what she
39 referred to as the national case management scheme?
40

41 MS FURNESS: I was referring to the safeguarding review,
42 which was somewhat different, I thought. The case
43 management was more in relation to individual cases, was it
44 not?

45
46 THE HON. NEVILLE OWEN: Yes, it was.
47

1 MS FURNESS: And the review was more broadly about
2 policies and processes.

3
4 THE HON. NEVILLE OWEN: Mmm-hmm.

5
6 MS FURNESS: Anything that the Council has thought of in
7 relation to the broader reviews, or do you think the
8 compliance process will cover that?

9
10 THE HON. NEVILLE OWEN: I think that would probably be
11 part of the compliance process. The use of external
12 accredited auditors is one thing, but I think there may
13 well be a need to get other assistance from outside to
14 ensure that what is being done is in accordance not only
15 with what the company thinks are appropriate standards but
16 which general experience dictates likewise.

17
18 MS FURNESS: That's in relation to the creation of the
19 standards, and I will come to that. This is more looking
20 at whether or not the work of, let's say, a diocese as
21 a whole is complying with the terms of the standards but
22 also the principles?

23
24 THE HON. NEVILLE OWEN: I'm sorry, that is what I was
25 referring to.

26
27 MS FURNESS: Thank you. Now, the case management
28 committee that she referred to is a body, again, that
29 a member can join that provides information on more
30 individual cases; is that your understanding?

31
32 THE HON. NEVILLE OWEN: Yes.

33
34 MS FURNESS: Is that something the Council has considered?

35
36 THE HON. NEVILLE OWEN: From my perspective, not until we
37 heard Ms Devlin's evidence. As far as I'm concerned, that
38 has a lot to recommend it, but, again, I can't bind the
39 directors. The constitution would be broad enough, under
40 its education and training function, to provide for that
41 sort of a mechanism. That's something that the directors
42 will be apprised of.

43
44 MS FURNESS: That is an issue that would relate closely,
45 I suggest, with the developing of the complaint handling
46 standards and also how it fits in with the redress
47 processes?

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THE HON. NEVILLE OWEN: Yes, and particularly if this develops in the way that the Church authorities can adopt different methods of complaint handling. That would, I think, have added significance.

MS FURNESS: Complying with the standard, but nevertheless the practice differing between dioceses, although it is said that they comply with the standards or principles?

THE HON. NEVILLE OWEN: Yes, that's right.

MS FURNESS: That would leave you in the situation you are in today, firstly, in relation to the Melbourne Response standing outside, but, secondly, in relation to inconsistent application of Towards Healing?

THE HON. NEVILLE OWEN: Yes. That has to be avoided.

MS FURNESS: How can it be avoided under this company structure?

THE HON. NEVILLE OWEN: Because the standards will give guidance as to principles to which whatever the model is that is being used by a particular Church authority - that must comply with those particular standards. Those standards will be backed by - they will be at the level of principles and policies, but I would imagine that they will also be supplemented by strong guidance notes. So the actual operation of the adopted model will have to be within the confines that are developed within that overall framework of assistance mechanisms.

MS FURNESS: That sounds like a description of Towards Healing.

THE HON. NEVILLE OWEN: No, it's not, because Towards Healing - as I understand the criticism, the tying together aspect of Towards Healing was never really properly implemented, and so that's why the inconsistencies developed.

If you had more direct standards, policies and guidance, then the likelihood of these inconsistent approaches developing would be lessened. You are never going to be able to eliminate that unless you have a single standard approach, and, even then, I suppose, it depends on

1 the way the individual person approaches them. Without
2 that, without that strong guidance and something tying it
3 all together, there is a danger of inconsistency arising
4 again, just as it has in Towards Healing.

5
6 MS FURNESS: But the Council, certainly, to the extent
7 that it has influence in this respect, acknowledges the
8 inconsistencies in Towards Healing and the reason for
9 reducing or eliminating that inconsistency, and that
10 approach will be told to or at least influence the work of
11 the company?

12
13 THE HON. NEVILLE OWEN: It will certainly be told to the
14 company, and I would hope it influences the work of the
15 company.

16
17 MS FURNESS: Thank you. Your Honour, I'm about to move on
18 to a different topic.

19
20 THE CHAIR: Will you be much longer with these gentlemen
21 today?

22
23 MS FURNESS: A little bit.

24
25 THE CHAIR: All right. We will take the short
26 adjournment.

27
28 **SHORT ADJOURNMENT**

29
30 MS FURNESS: Could I turn to you, archbishop. Your
31 diocese, the Archdiocese of Brisbane, is one of the
32 authorising Church bodies for the Council; that's right?

33
34 ARCHBISHOP COLERIDGE: That's right.

35
36 MS FURNESS: In addition, I think you are a member of the
37 supervisory group?

38
39 ARCHBISHOP COLERIDGE: I am, and a member of the Truth,
40 Justice and Healing Council as well, and the National
41 Committee for Professional Standards.

42
43 MS FURNESS: With the supervisory group, what role does
44 that play with the Council?

45
46 ARCHBISHOP COLERIDGE: It was simply to supervise the work
47 of the Council and to advise the Council on what might be

1 the best way forward. It was to keep in touch with the
2 work of the Council, the bishops and the major superiors,
3 so to facilitate a kind of exchange between the Council and
4 the bodies which established it.

5

6 MS FURNESS: The supervisory group has clergy and
7 religious?

8

9 ARCHBISHOP COLERIDGE: Indeed. It has what is called the
10 Permanent Committee of the Bishops Conference, which is
11 a group of about six or seven bishops, most of them fairly
12 senior, and then a smaller group of religious superiors.

13

14 MS FURNESS: The Council itself has laypeople as well as
15 clergy?

16

17 ARCHBISHOP COLERIDGE: It is predominantly lay, and there
18 are two bishops who sit on the Council - myself and
19 Bishop Wright.

20

21 MS FURNESS: As Mr Owen has given evidence, the prime
22 purpose of the company is to set standards. In the
23 Council's submission, there is reference to the sorts of
24 areas in which standards might be set. I wanted to ask
25 you, archbishop, what you consider to be the areas in which
26 standards should be set?

27

28 ARCHBISHOP COLERIDGE: In the end, it would be any area
29 that the board decided, but some of the areas are quite
30 obvious. One is the handling of complaints, in other
31 words, dealing with abuse that has happened but also
32 proposing standards that embody preventative measures.
33 That would be a crucial part of the setting of standards.
34 Then a third part would have to do with the process of
35 education, which would look, as would the other two areas,
36 to shifting the culture.

37

38 MS FURNESS: Education of whom?

39

40 ARCHBISHOP COLERIDGE: Education across the board, but
41 particularly those who have responsibility, including
42 bishops and major superiors, but anyone who is involved
43 with young people - clergy certainly. Education
44 understood, therefore, in the broader sense and in an
45 ongoing way.

46

47 MS FURNESS: What about seminary training?

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ARCHBISHOP COLERIDGE: Absolutely.

MS FURNESS: Selection of positions such as parish priests?

ARCHBISHOP COLERIDGE: Yes, that would certainly have to come into it. Selection of people across the board, but clearly the clergy are in a very strategic position, so there would have to be a standard, I think, that would touch upon the selection of people to be parish priests or to hold any position of clerical responsibility in the Church.

MS FURNESS: What about standards in relation to taking disciplinary action against priests or dismissal, leaving aside canon law?

ARCHBISHOP COLERIDGE: That could certainly happen, and it may in fact help, in a process that can be difficult and very complex. As a bishop, I would welcome any guidance that CPS might be able to offer that was consonant, obviously, with canon law. Again, CPS with its standards wouldn't supplant canon law but would work harmoniously with it. If there were standards proposed that could help in that process, I for one, and I think many of the bishops and others, would welcome them.

MS FURNESS: Given the role of members on the board, I take it that you consider that you would be able to speak frankly to the directors as to the areas in which you think you and your fellow bishops would benefit from advice?

ARCHBISHOP COLERIDGE: There would certainly be that open exchange, but I would be very hesitant, certainly in these early stages, of giving any impression of wanting to lay down the law or tell the directors what to do. I think they need to be helped in a process of induction, but the last thing they would need, I think, is to have bishops or others breathing down their neck or telling them what to do.

I have spoken already with the three directors that we have but in a way that is deeply respectful of their independence, because given what Mr Owen has said about functional independence rather than structural, I think people like me - as a member representative, I need to be

1 very sensitive to the need to respect that functional
2 independence.

3
4 MS FURNESS: Who are the three board members?

5
6 ARCHBISHOP COLERIDGE: Justice Geoffrey Giudice,
7 Mr John Watkins and Ms Patricia Faulkner.

8
9 MS FURNESS: They were appointed, obviously, recently,
10 given the company was established I think in November?

11
12 ARCHBISHOP COLERIDGE: They were appointed subsequent to
13 the launch of the company in November, so at the very end
14 of last year.

15
16 MS FURNESS: They are paid, presumably, for their work?

17
18 ARCHBISHOP COLERIDGE: There has been some discussion
19 about remuneration, and it has only been resolved in quite
20 recent times, but, yes, they are remunerated appropriately.

21
22 MS FURNESS: Are they part time or full time?

23
24 ARCHBISHOP COLERIDGE: They are part time.

25
26 THE CHAIR: I am sorry, the transcription people have
27 missed the name of the judge.

28
29 ARCHBISHOP COLERIDGE: Justice Geoffrey Giudice, Federal
30 Court judge, retired. He was also Chair, I think, of the
31 Fair Work Commission.

32
33 COMMISSIONER MURRAY: He was a former head of the body
34 that preceded the Fair Work Commission.

35
36 ARCHBISHOP COLERIDGE: G-I-U-D-I-C-E, Italian for "judge".

37
38 MS FURNESS: There has been a deal of evidence over the
39 last couple of weeks about the interaction with canon law,
40 particularly in relation to disciplinary matters and the
41 role of the CDF. Is that an area where you think that you
42 and fellow bishops and religious would benefit from
43 standards?

44
45 ARCHBISHOP COLERIDGE: It could well be. What is
46 certain - and I think this has emerged in earlier
47 sessions - is that a neglect of canon law in many ways has

1 been one of our problems - not an excessive dependence upon
2 it but, rather, a neglect of it. I was very interested in
3 listening to Ms Devlin speak the other day, when she spoke
4 about how helpful canon law can be if it is appropriately
5 interpreted and applied. So if there could be a standard
6 that helped the bishops to draw upon the considerable
7 resources of the canons, again, I certainly would welcome
8 it and I think others would, too.

9
10 MS FURNESS: The need for diversity in the Church - is
11 that a standard that you would like to see available?

12
13 ARCHBISHOP COLERIDGE: That could be a little too broad.
14 By "diversity", do you mean the involvement of laypeople
15 and perhaps women at the point of governance or - it's not
16 clear to me immediately what you mean by "diversity".

17
18 MS FURNESS: Do you have your own understanding of what
19 "diversity" means in the context of the Church?

20
21 ARCHBISHOP COLERIDGE: I have my own understanding and
22 experience. The Catholic Church is extraordinarily
23 diverse.

24
25 MS FURNESS: So what are the components that make up the
26 diversity you have identified?

27
28 ARCHBISHOP COLERIDGE: Ethnic diversity; the diversity
29 that exists between the Church in urban settings and rural
30 settings; the Church of the young and the not so young.
31 Someone once said that the motto of the Catholic Church
32 should be, "Here comes everybody." Diversity is, I think,
33 one of the hallmarks of a Church that calls itself
34 Catholic - universal. But if you look at the concept of
35 diversity in a narrower sense, so who governs in the
36 Church, then of course you have to speak in different terms
37 about diversity.

38
39 MS FURNESS: So diversity in terms of governance - is that
40 something for which a standard could be devised that would
41 assist you and your colleagues?

42
43 ARCHBISHOP COLERIDGE: I could certainly see that, as long
44 as it wasn't motherhood and apple pie, if I could put it in
45 those terms - stated in such a broad and obvious way as to
46 be less than really helpful. If there were specific
47 standards devised to foster the process already taking

1 place of broadening the base of decision-making in the
2 Church, then, again, that would seem to me to be a very
3 creative thing.

4

5 MS FURNESS: What about a standard on transparency in
6 terms of decision-making and the preparation of written
7 reasons and record-keeping?

8

9 ARCHBISHOP COLERIDGE: Yes, I think, again, that could be
10 very helpful. Record-keeping has been at times one of our
11 problems, certainly, and anything that would generate
12 a greater transparency of a kind appropriate to the Church
13 I think would be a very positive move.

14

15 MS FURNESS: Thank you. Archbishop, is there anything you
16 want to add to what Mr Owen has said this morning?

17

18 ARCHBISHOP COLERIDGE: Perhaps I should just touch upon
19 the relationship between bishop and priest. Mr Owen
20 touched upon it but deferred to others, and I may be one of
21 those others.

22

23 I don't think it's realistic to think of a priest in
24 a diocese entering into a contract with this new company,
25 but I do think it's worth bishops considering some kind of
26 formal agreement with people like clergy, but I wouldn't
27 exclude others either, entering into some kind of formal
28 agreement with them that they will be part of this general
29 compliance, because although the duty to comply applies
30 primarily to the Church authority - to the bishop, in this
31 case - it has to include the whole community. It can't be
32 just the Church authority.

33

34 Now, if a priest fails to abide by the duty to comply,
35 I then, as the bishop, do have a duty, even though, in the
36 strict sense, he is not my employee. But were this to be
37 a pattern of non-compliance, I would be obliged to act.

38

39 What would acting mean? It would mean, in the first
40 place, I would sit down and speak very directly to the
41 priest and seek an explanation from him. If there was
42 still a failure to comply, I would have to consider other
43 options, such as standing him aside from his parish
44 appointment or even removing his faculties.

45

46 So there are sanctions available - these are serious
47 sanctions, to stand a man aside or to remove his

1 faculties - but given the seriousness of what we are
2 discussing, they are measures that I would consider, and it
3 is not unthinkable that such measures could be touched upon
4 by new standards that were proposed.

5
6 MS FURNESS: Canon law, I take it, wouldn't preclude you
7 standing a man down or removing his faculties for the
8 reason of non-compliance with a standard which was the
9 subject of a contract to which he was party?

10
11 ARCHBISHOP COLERIDGE: Well, again, I wouldn't speak of it
12 as a contract. I would enter into the contract with CPS.
13 But if he was consistently in breach of something that
14 might be a formal agreement with me as the bishop, then
15 I would have to act.

16
17 MS FURNESS: And canon law wouldn't preclude you from
18 doing that?

19
20 ARCHBISHOP COLERIDGE: It wouldn't.

21
22 MS FURNESS: Thank you.

23
24 THE CHAIR: Archbishop, you heard the discussion before
25 the adjournment about clause 5.3 of the constitution.
26 I raised the provisions of that clause with Mr Owen. It is
27 the one that provides the discretion not to publish. Do
28 you understand why there will be people who will react
29 adversely to such a broad discretion?

30
31 ARCHBISHOP COLERIDGE: Yes, I can. For me, it is
32 important to note that it's the board that makes the
33 decision. It wouldn't be the member representatives.
34 Nonetheless, I think as it's phrased, it has the potential
35 for a range of interpretations, some of which could
36 certainly give the impression that it's an attempt to
37 resist the publication of the information. Without that
38 publication, this whole proposal lacks teeth.

39
40 THE CHAIR: It just falls to the ground, doesn't it?

41
42 ARCHBISHOP COLERIDGE: Precisely.

43
44 THE CHAIR: Yes.

45
46 ARCHBISHOP COLERIDGE: Might I also say, your Honour, that
47 in general terms - and I think Mr Owen touched upon this -

1 there are elements of the drafting of this constitution
2 which even now, in the light of this final hearing and the
3 discussions that it has prompted - there are elements of
4 the drafting which will have to be revisited, but that can
5 be done. I personally think that's one of them, and
6 Mr Owen has already touched upon the reserve powers.

7
8 THE HON. NEVILLE OWEN: Ms Furness, would you mind if
9 I re-enter the fray on that particular issue?

10
11 MS FURNESS: Certainly.

12
13 THE HON. NEVILLE OWEN: Your Honour, I've been reflecting
14 on what you said, and there is one other thing that I would
15 like to throw in to the mix in thinking about this. I'm
16 not going back on anything I said about the breadth of that
17 provision. It is this: you can't read it without
18 reference to the object, the main object, of this company,
19 and because it is a power of the board, you can't read it
20 absent the fiduciary duty of a director to act in the best
21 interests of the company and only for proper purposes,
22 which certainly in 2008 was the law, that they were
23 fiduciary duties.

24
25 But if you go back to the preamble, which is on the
26 first full page, the last sentence of the preamble refers
27 to the national professional standards seeking to promote
28 accountability and transparency and therefore trust in the
29 life of the Church. The directors, in exercising the power
30 not to publish in clause 5.3, would have to be acutely
31 aware of their fiduciary duty that involves, in part, those
32 words in the object. I just add that.

33
34 THE CHAIR: There might be some who would say, Mr Owen,
35 that there is a real conflict there. To not publish
36 because it might mislead the public - how could that ever
37 be a legitimate reason not to publish something that is
38 otherwise accurate?

39
40 THE HON. NEVILLE OWEN: All I'm saying, your Honour, is
41 that you couldn't divorce that from the fiduciary nature of
42 the duty which the directors will have to act in the best
43 interests of the company. I just add that as a further
44 consideration.

45
46 COMMISSIONER MURRAY: Before you move on, Ms Furness,
47 archbishop, I'm going to ask you a question, and it's not

1 exclusive to the Catholic Church; it is an issue for all
2 faith-based organisations and secular organisations, and
3 that's the issue of managing risk.
4

5 Principle 7 of the corporate governance principles
6 says that organisations should recognise and manage risk.
7 If we look at what has been before the Royal Commission and
8 been before your Catholic Church, tremendous financial and
9 reputational damage and damage to patronage has resulted
10 from the Church's bad handling of child sexual abuse
11 issues, their occurrence, their reporting and their
12 continuance.
13

14 Is there anything in this new organisation, the
15 professional standards organisation, which will focus on
16 really educating bishops and priests, the managers of
17 Catholic business, on risk and to avoid that risk and its
18 terrible consequences in future?
19

20 ARCHBISHOP COLERIDGE: Given that education is one of the
21 prime purposes of this new entity, I would certainly expect
22 that that would be an essential element of its work, to
23 continue and develop further the process of education,
24 which leads to a far greater and more sophisticated
25 understanding of risk management and what it involves.
26 So I would see that as essential to the work of Catholic
27 Professional Standards Limited.
28

29 COMMISSIONER MURRAY: I have asked you that question
30 deliberately, because I have picked up an inference - and
31 it's certainly not yours, but I have picked up an
32 inference amongst some commentators - that this child abuse
33 issue is historical and there is not as much need to worry
34 about it in the future. I personally disagree with that.
35 And I stress, I don't see it as your view. But that does
36 mean that the constant emphasis of risk and the avoidance
37 of any sense of a cover-up has to be absolutely critical to
38 the operation of this company. Would you agree?
39

40 ARCHBISHOP COLERIDGE: I agree totally with that and I am
41 deeply suspicious - and that's putting it mildly - of
42 scenarios that talk about this as merely something of the
43 past, an apocalyptic sense that it was all bad back then
44 and everything is right now.
45

46 What is abundantly clear to me, Commissioner, is that
47 there is no room whatsoever for complacency. Given the

1 nature of what we are dealing with, a lot of the stuff we
2 are dealing with is historic, but that says very little in
3 one angle on things. So any sense of complacency, that
4 there is no need for a great vigilance and to work harder
5 and harder and harder at developing a culture of vigilance
6 that makes for real safeguarding, I think has to be
7 rejected. I see this move, in fact, as one way to guard
8 against that kind of complacency that I do hear voiced
9 myself from time to time, but I reject it out of hand.

10
11 MS FURNESS: Could I move to you, Mr Sullivan. Just
12 firstly dealing with redress, you have made some public
13 comments in relation to embracing the Commonwealth
14 Government's response to the Royal Commission's
15 recommendation. Are you able, on behalf of your
16 authorising Church bodies, to opt in to the scheme?

17
18 MR SULLIVAN: No.

19
20 MS FURNESS: So any opting in by the Council is mere
21 commentary on what you would like to see happen?

22
23 MR SULLIVAN: Certainly the comments we made are
24 consistent with the Church leadership's support for
25 a national redress scheme, and when the announcement was
26 made by the Prime Minister, in the broad, that was the type
27 of scheme that our Church leadership supports. That's why
28 we said, in the broad, we can opt in. But I gather there
29 will be, I think, constitutional issues between the
30 Commonwealth and the states over how opting in will occur
31 for any non-government organisation into a scheme that is
32 run by the Commonwealth.

33
34 MS FURNESS: So is it the case, as you understand it, just
35 dealing with the Catholic Church, that each bishop and
36 provincial or major religious superior has to opt in for
37 their particular area of work?

38
39 MR SULLIVAN: Practically speaking, yes.

40
41 MS FURNESS: As you understand it, there may be an issue
42 that if the state, for whatever reason, doesn't opt in, the
43 Catholic authority within that state may have difficulties
44 opting in?

45
46 MR SULLIVAN: It's my understanding that that is the
47 current advice on the table at the Commonwealth level, but

1 I haven't seen it --
2
3 THE CHAIR: Nor have we, Mr Sullivan. Nor have we. So
4 this is what you have been told by someone?
5
6 MR SULLIVAN: In the months leading up to - straight after
7 the announcement, there was a couple of months of informal
8 consultation by the task force from Prime Minister and
9 Cabinet.
10
11 THE CHAIR: Do we know who has given this advice?
12
13 MR SULLIVAN: I can only assume it is one of the
14 Commonwealth agencies that give advice around
15 constitutional matters.
16
17 THE CHAIR: Do you know what is said? Is it said that
18 a non-government body cannot contract with the
19 Commonwealth? Is that what is being said?
20
21 MR SULLIVAN: I haven't read it because I haven't seen it
22 in writing, but at two meetings that I've been at, it was
23 expressed by the Commonwealth officers from Prime Minister
24 and Cabinet that they had advice to that effect, that
25 organisations that would like to opt in to the proposed
26 Commonwealth scheme would only be able to do so if their
27 state government had agreed to - now, don't hold me to the
28 technical terms, but, in effect, opt in. It may not mean
29 that the state government itself would participate, but it
30 enabled those organisations within that state or
31 jurisdiction to participate. I don't understand the fine
32 detail.
33
34 THE CHAIR: It would be remarkable if a state stood in the
35 way.
36
37 MR SULLIVAN: Well, I hope no state will stand in the way,
38 because of the real reason why we need a national scheme.
39
40 MS FURNESS: As part of the work that has been done in
41 recent time by the Council and presumably the leadership of
42 the Church, a Catholic Ministry Register has been created?
43
44 MR SULLIVAN: Yes.
45
46 MS FURNESS: The purpose of that register is to what?
47

1 MR SULLIVAN: As I understand it, the work has been done
2 by the National Committee for Professional Standards. They
3 initiated the work such that priests in a particular
4 diocese, through their bishop and religious leader, will be
5 put on a register. That register will obviously be clear
6 about credentials, qualifications, where they have come
7 from, how long they have served - that type of thing. It
8 is part of this whole process of being more transparent
9 about where priests have come from, if they have
10 transferred from a particular diocese or country - that
11 type of thing.

12
13 MS FURNESS: What about complaints?

14
15 MR SULLIVAN: I'm not aware if it covers that. It may; it
16 may not.

17
18 MS FURNESS: Discipline?

19
20 MR SULLIVAN: Same. I don't know for sure.

21
22 MS FURNESS: There is reference to good standing and
23 a finding of good standing in relation to individual
24 priests or religious.

25
26 MR SULLIVAN: Yes.

27
28 MS FURNESS: Can you help us with whether that includes
29 any complaints, substantiated or otherwise, or disciplinary
30 action that has been taken against them being included?

31
32 MR SULLIVAN: It was my understanding it does, but maybe
33 Archbishop Coleridge may know more.

34
35 MS FURNESS: Archbishop?

36
37 ARCHBISHOP COLERIDGE: If I may, Ms Furness. If there
38 have been allegations against a priest, and certainly if
39 they are substantiated, he doesn't qualify for registration
40 on this Australian Catholic Ministry Register, the purpose
41 of which was to create a consistent national registry,
42 which is much harder than it sounds.

43
44 Now, if a priest doesn't appear on the ACMR, then the
45 understanding is that the Church authority that is
46 inquiring about the priest would contact the Church
47 authority who is responsible for the priest and would talk

1 directly and perhaps seek documentation about those
2 allegations. So it's not as if every priest is registered.
3 Not at all. And certainly where there have been
4 allegations made and allegations substantiated or
5 convictions incurred, then they would not appear on the
6 ACMR.

7
8 MS FURNESS: And the bishop who was interested in
9 a particular fellow - if he didn't find him on the ACMR, he
10 could conclude it was an administrative error or he could
11 contact the person at the place where he knows the priest
12 has come from?

13
14 ARCHBISHOP COLERIDGE: What he would do - and this is the
15 understanding of this whole initiative - is that he would
16 then contact the bishop from the place where this priest is
17 coming and would say, "What is the reason for the
18 non-registration of this priest who wants to come to my
19 diocese, for instance to celebrate a wedding?" The two
20 bishops would then talk, and there may in fact be an
21 exchange - and this has happened from time to time - of
22 documentation that would give more detail of the
23 allegations.

24
25 MS FURNESS: Wouldn't it be easier, archbishop, to have
26 all the priests on the register and perhaps a red flag
27 against some of them?

28
29 ARCHBISHOP COLERIDGE: That has been considered, but the
30 decision was to move in this other direction.

31
32 MS FURNESS: Does it work, do you think?

33
34 ARCHBISHOP COLERIDGE: Again, it is in its embryonic
35 stage. Getting it up and running has been a far greater
36 task and more complex than we imagined. So it's hard to
37 know, but if it doesn't work, then we will simply have to
38 revisit it.

39
40 MS FURNESS: I take it that it is a register that is
41 available only to those within the Church?

42
43 ARCHBISHOP COLERIDGE: Technically no. It would be
44 available to anyone. Certainly the prime purpose of it was
45 to notify other Church authorities of the standing of this
46 or that priest, but what it means is that each priest who
47 is registered has a particular code number and that is then

1 fed in to the website and you then access the data on that
2 priest.

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Now, if someone had access to that code number, whether Church personnel or not, he or she could access the data. But the understanding initially was that it would be an intra-Church initiative.

MS FURNESS: And it would be at the initiative of the priest to say, "I want to be registered"?

ARCHBISHOP COLERIDGE: No, it was at the initiative of the Church authorities. It was compulsory.

MS FURNESS: It still is?

ARCHBISHOP COLERIDGE: It still is.

MS FURNESS: So a Church authority who had a man ordained and working within his diocese would be required to enter details about that man on to the register?

ARCHBISHOP COLERIDGE: That's my understanding.

MS FURNESS: Is there a requirement that that bishop pursue access to records perhaps before his time to understand what indeed was known about that priest?

ARCHBISHOP COLERIDGE: That would certainly happen and it's one of the reasons why, in my own diocese, we have done a rather exhaustive culling of the data from years past.

MS FURNESS: That is by reference to hard copy data that is within the bishop's office; is that right?

ARCHBISHOP COLERIDGE: That's right, the clergy files.

MS FURNESS: To the extent that the clergy files don't contain any of that material, then that would be the end of it?

ARCHBISHOP COLERIDGE: If there were gaps in the clergy file - and there are - then that would create a difficulty. We can only work with what we have, or what has emerged, perhaps, as a result of this Royal Commission.

1 MS FURNESS: Given that there has been evidence of
2 documents being not created, moved or destroyed in one way
3 or another, that creates quite a significant problem for
4 the credibility of the register, doesn't it?

5

6 ARCHBISHOP COLERIDGE: I don't think it does for priests
7 who are still living and working. It does if you are
8 looking back upon the deceased priests; it would create
9 problems. But we are registering those who are still
10 living and still working, and there is far less of the gaps
11 and silences in the files in more recent times than there
12 were in the past. So we haven't struck that as a major
13 problem in assembling this register.

14

15 MS FURNESS: You wouldn't know, archbishop; if the
16 documents weren't there, you wouldn't know?

17

18 ARCHBISHOP COLERIDGE: Again, I can only say we can only
19 work with what we have. So far, the lack of documentation
20 hasn't been a major stumbling block.

21

22 MS FURNESS: I take it that the person has to agree to
23 their name being placed on the register?

24

25 ARCHBISHOP COLERIDGE: If any priest balked at it, again,
26 the Church authority would want to know why, because it is
27 an obligatory thing for all clergy. If someone said,
28 "I don't want to be registered", or refused to be, then the
29 question would be, "Why?", and we would simply have to work
30 our way through that.

31

32 MS FURNESS: The "frequently asked questions" indicate
33 that the person will not have their name placed on the
34 register without their cooperation.

35

36 ARCHBISHOP COLERIDGE: But I can't imagine why someone who
37 was in good standing would balk at having their name put
38 on the register. Someone who was not in good standing
39 might, but his name wouldn't be put on the register,
40 anyway.

41

42 MS FURNESS: Therefore, you would expect the bishop that
43 the priest is moving to to ring up and ask the bishop that
44 the priest was leaving as to whether or not the man was in
45 good standing and why his name wasn't on the register?

46

47 ARCHBISHOP COLERIDGE: That's right.

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MS FURNESS: Has that happened?

ARCHBISHOP COLERIDGE: Yes, it has. I've had, I think, two instances in Brisbane and I presume it has happened elsewhere. I can't say that with certainty, but I presume that.

MS FURNESS: Is this an issue that the standards setters in the company could take up - advice on how to set up a registration system that, among other reasons, had the purpose of protecting children?

ARCHBISHOP COLERIDGE: Again, I can only say, as one of the bishops, I would be very open to anything that came from CPS, from the board - a standard that would help us to operate a more effective ministry register.

MS FURNESS: Thank you. Coming back to you, Mr Sullivan, Mr Owen suggested that you might be a more appropriate person to ask questions about the statistics which it is intended - understanding that you are not binding the company - will be published.

MR SULLIVAN: What particularly would you like?

MS FURNESS: Which statistics will be published?

MR SULLIVAN: Oh, I see. Well, a couple of things, if I may. As you know, we have cooperated with the Royal Commission's research project over a number of years now, and prior to that, we tried to do it ourselves, not very successfully, and that's bringing together some type of national database of claims. It really did take the rigour of the Royal Commission to produce that.

It was always envisaged that something like this oversight company could be the place in which a national database could then reside. We never outlined what particular categories would comprise the database, but clearly, given the exercise we've just been through, it would be silly of us not to build on those categories of the current survey. That would be my thinking.

What is important, firstly, as you know, from our own experience, is making sure that whatever we call claims, whatever we call alleged accused, and so on, those

1 categories are as accurate as they can be, and then how you
2 would like to split the stats and do the analysis. But
3 I would have thought the basic categories would be around
4 claims, claimants, alleged abuse, outcome, moneys paid,
5 reporting lines, whether it was reported to the police, or
6 whatever - in other words, pretty similar to the types of
7 criteria that were used in the current survey.

8
9 MS FURNESS: And you would intend that that be made
10 public?

11
12 MR SULLIVAN: Of course.

13
14 MS FURNESS: On a presumably periodic basis, it would be
15 updated?

16
17 MR SULLIVAN: Yes, given the way it took us this long to
18 get this far, I wouldn't say annually but hopefully as
19 regularly as possible and certainly publicly.

20
21 MS FURNESS: The company we've been discussing is
22 a product of the Council's work?

23
24 MR SULLIVAN: Yes.

25
26 MS FURNESS: Are there any other recommendations or
27 changes that have been initiated by the Council in
28 a similar way?

29
30 MR SULLIVAN: When we put in our first major submission to
31 the Royal Commission, we did talk about a number of
32 reforms, one of which was the idea of establishing an
33 oversight body, and this is the product of that.

34
35 If I could just say, getting change in the Catholic
36 Church is heroic, and it takes a lot of time, sometimes to
37 get small changes.

38
39 This type of change, although it has its problems, is
40 quite a significant change. The real driver for this
41 change has been the historic poor performance of Church
42 leaders.

43
44 You will notice in some of our materials that bodies
45 like the Irish body or, say, the US body, or whatever,
46 already exist, and in Australia we had the National
47 Committee for Professional Standards which, for its time,

1 was a real innovation, and over time it has sort of run out
2 of puff. But the real problem is that the Church
3 leadership was never held to account. You have seen this
4 in your own case studies. That's why our Council wanted to
5 go down this pathway of trying to put something in place
6 that could hold Church leaders to account, because, in
7 reality, a bishop is basically, in a technical sense,
8 accountable to the Pope.

9
10 MS FURNESS: So is it the case that the accountability,
11 through this mechanism, is via compulsory audits and
12 publication of the results?

13
14 MR SULLIVAN: Correct. That's the best we can come up
15 with at the moment.

16
17 Can I also say, though, this momentum is also being
18 done because although the Royal Commission has its own
19 considerations and we don't wish in any way to seem to
20 pre-empt it, at the same time, I don't think we could go
21 through four and a bit years of the Royal Commission
22 continually saying that, you know, there's something wrong
23 with the administration of Towards Healing and not begin
24 something to do with that.

25
26 Secondly, if the governments decide to turn around
27 from some recommendation the Royal Commission makes, and in
28 effect, it nearly makes our company superfluous, well,
29 fine. I mean, we're not trying to set up something to ward
30 off something else. If there is a way of doing this
31 better, I'm sure the Church leadership would seriously
32 consider that. I don't want to overstress it - I suppose
33 you can't - but the loss of credibility and trust in the
34 Catholic Church, in the way it has managed this whole, for
35 decades, scandal, in the way we are even now trying to put
36 something together that is new and innovative, and the
37 degree to which people are looking at that and sort of
38 going "hmm", reflects that loss of credibility. Frankly,
39 whatever it takes to regain that credibility will need to
40 be done, including that if there need to be changes to the
41 constitution to tighten up the way people feel it should
42 better reflect the preamble, then so be it.

43
44 MS FURNESS: When you made a statement at the beginning of
45 the hearing, Mr Sullivan, you said in relation to the
46 Church leadership - and I will quote you:

1 *The fact that the Church leadership chose*
2 *to rely on the Truth, Justice and Healing*
3 *Council, a lay-led advisory body, and that*
4 *it has accepted all of its policy*
5 *recommendations is, in itself, a reflection*
6 *of that change.*

7
8 What policy recommendations have you been put up that have
9 been accepted by the Church leadership?

10
11 MR SULLIVAN: It would start with every issues paper
12 response that has come forward to the Royal Commission.
13 Most of the issues papers the Royal Commission has put out
14 are part of its policy development and our formal responses
15 have been designed and compiled by the Council, and we have
16 obviously shown them to the supervisory group, not for
17 approval but for endorsement. None of our positions in any
18 of those position papers or responses has been knocked
19 back.

20
21 This particular recommendation, for an oversight body,
22 was fully unanimously endorsed, not only by the supervisory
23 group but by the two peak bodies at formal plenary
24 meetings.

25
26 Throughout the course of time of the four years you
27 may note that we as a Council have put out sometimes, for
28 want of a better term, model litigant guidelines for
29 assistance in revisiting cases and so on, and leaders
30 within the sector have used those as policy directives,
31 again, not knocking back our position.

32
33 MS FURNESS: But you are not suggesting, Mr Sullivan, that
34 there weren't discussions with the supervisory group and
35 others within the Church leadership before you devised your
36 position?

37
38 MR SULLIVAN: No, no, I'm certainly not suggesting that,
39 because, you know, as good policy goes, there is always
40 consultation around everything. We had draft position
41 papers that went out not just to archbishops and religious
42 leaders but to broader people with competency in the area.

43
44 MS FURNESS: So the extent to which you weren't knocked
45 back reflects what the final document looked like; it
46 doesn't reflect the discussions that went on before that
47 final document was put up.

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MR SULLIVAN: That's true, although any significant position that we wanted to adopt that was in our original drafts wasn't changed.

MS FURNESS: Thank you. Is there anything you wish to add to what Mr Owen had to say?

MR SULLIVAN: No, nothing.

MS FURNESS: Archbishop, is there anything further you wish to say?

ARCHBISHOP COLERIDGE: Perhaps just to say that the establishment of the Truth, Justice and Healing Council itself was in some ways not just a major achievement but a monumental achievement. It was an attempt to shape a one-Church approach, which, when you are dealing with the Catholic Church, is much harder than it sounds.

It was, particularly in the early stages, very difficult to keep everyone in the tent, and the fact that we managed it, I think, again is a very significant achievement and indeed historic in terms of the Catholic Church in Australia.

Catholic Professional Standards Limited seems to me to build upon that achievement and to consolidate it, because, again, for all of these Church bodies to come together and to coordinate and to collaborate in a new way I think is genuinely historic. For me, at least, it is a glimmer of hope in a situation which at times can seem hopeless. But I think it does represent a slow and painful shift of the culture, and I think something has been set in train that I would certainly hope - and I actually think - is unstoppable now.

But, again, I come back to the point that there is no cause whatsoever for complacency. As has emerged in the discussion this morning, this proposal of Catholic Professional Standards Limited is an embryonic proposal. It is aspirational and we can already see the need for some kind of modification.

Similarly, the ministry register is embryonic. So these are initiatives which we have taken, rather than simply wait for the Royal Commission's recommendations and

1 report - which we do, but we felt that we had to act now.

2

3 What we have done may seem modest enough, but I think,
4 in fact, in other terms it is very significant and even
5 historic in terms of the Catholic Church in this country.

6

7 MS FURNESS: Thank you. Mr Owen, is there anything
8 further you wish to say?

9

10 THE HON. NEVILLE OWEN: No, Ms Furness, thank you.

11

12 MS FURNESS: Thank you. Your Honour, I have nothing
13 further.

14

15 THE CHAIR: Ms Needham?

16

17 <EXAMINATION BY MS NEEDHAM:

18

19 MS NEEDHAM: Mr Sullivan, you were asked some questions
20 about the process by which the constitution of CPS was
21 developed and referred to consultation. Could you tell the
22 Commissioners how long that consultation has gone on and
23 what the processes by which it was finalised were?

24

25 MR SULLIVAN: Yes, thank you. We started a process
26 in February 2014 with a concept paper about what an
27 oversight body could look like. In those days, we were
28 talking about an oversight body that was about the
29 protection of children.

30

31 The way things work in the Catholic Church is you
32 firstly need to get some buy-in by the leaders. That was
33 a draft paper and it went for some months. So by the
34 middle of that year, 2014, we had demonstrated that
35 a broader consultation was now required within the Catholic
36 Church.

37

38 To do that, we needed to put in a much more
39 substantial effort in a green paper process, as governments
40 would use it. A green paper process was developed on
41 research, on background papers and the like. We designed
42 all that and got that ready for a process that ran at the
43 beginning of 2015, and that ran for the best part of seven
44 months, where we ran consultations across Australia in
45 every capital city, and this was across individuals with
46 expertise in the Church, in the areas of child protection,
47 obviously in the areas of Towards Healing, in the

1 management of allegations, but also people who understood
2 ministration in the Church and the like. That consultation
3 was run for us by an independent consultant who then wrote
4 a report.

5
6 The report was then given to our Council. We also
7 shared that report with the board of the National Committee
8 for Professional Standards. That was really important, so
9 that they would at least be in the loop about what could
10 end up being their future. And as you will realise, the
11 National Committee for Professional Standards will now
12 merge its functions into this company on a basis on which
13 the company can cope with it. So that took us to the end
14 of 2015.

15
16 By the end of 2015, the Bishops Conference and the
17 religious leaders had signed off on the model. So for the
18 first third of 2016 it was the drafting process, which was
19 given to a firm, as you can see, by the Bishops Conference
20 and religious leaders, to do the drafting.

21
22 From that point on, the drafting of the constitution
23 occurred and now you have the final product.

24
25 MS NEEDHAM: And the final product was launched at the end
26 of last year?

27
28 MR SULLIVAN: Yes.

29
30 MS NEEDHAM: Is it fair to say that this is something that
31 all of the myriad bodies making up the Catholic Church in
32 Australia are prepared to do and to carry out?

33
34 MR SULLIVAN: That's our understanding, yes.

35
36 MS NEEDHAM: You mentioned the rolling of the National
37 Committee for Professional Standards into the new body.
38 Are you aware that 5.1(e) also provides for any state
39 Professional Standards Offices also to be encapsulated in
40 the new body?

41
42 MR SULLIVAN: I am, yes.

43
44 MS NEEDHAM: Have there been any steps down that path as
45 yet?

46
47 MR SULLIVAN: No. The idea in the first instance was for

1 this oversight body to literally replace the National
2 Committee for Professional Standards, because there needed
3 to be change. At one point, there was the option of
4 whether we would just give extra powers to the National
5 Committee for Professional Standards. But as the
6 archbishop has mentioned, there needs to be a culture
7 change, and sometimes structure helps and function helps.
8 It doesn't mean that culture - I'm very alive to what
9 Father O'Hanlon said about culture and breakfast.

10
11 The point is that sometimes a new approach can bring
12 with it changes of behaviour, and that hopefully begins to
13 start to address the underlying cultural issues.

14
15 So this company will take on the functions of the
16 National Committee for Professional Standards, hopefully in
17 a timely way but also in a manageable way. The state-based
18 Professional Standards Offices are separate to that and
19 they may well, for the time being, continue in their role,
20 but making sure that they meet the standards that are
21 required of them, too, by way of timely service of
22 individuals and the like.

23
24 COMMISSIONER MURRAY: Sorry, just on that point, will
25 there be a formal agreement between the state-based
26 authorities and the company?

27
28 MR SULLIVAN: It's possible. When we had the
29 consultations, of course, the obvious point from some was,
30 "Uh-oh, does this mean that the state-based Professional
31 Standards Offices are going to be abolished, or are they
32 going to become branches of the new company?" I think the
33 way it works is that the board of the new company itself
34 will want to consider those things, but the actual state
35 Professional Standards Offices are funded by bishops and
36 religious leaders in that state, so the board would need to
37 get into dialogue with the owners of those state-based
38 offices if there is going to be any change in circumstance
39 or role.

40
41 COMMISSIONER MURRAY: That doesn't answer the question.
42 Do you envisage a formal agreement between the two bodies?

43
44 MR SULLIVAN: I don't know what it will be, Commissioner,
45 because it will be up to the board. But if I was on the
46 board, I would be looking at some sort of agreement.

47

1 THE CHAIR: Mr Sullivan - and, archbishop, you might like
2 to respond to this as well - you both mentioned the need
3 for a change of culture.

4
5 MR SULLIVAN: Yes.

6
7 THE CHAIR: What are you talking about?

8
9 MR SULLIVAN: Well, your Honour, if we talk about the
10 matter at hand, which is the whole scandal of child sexual
11 abuse in the Catholic Church, from where I sit and from
12 what I have read and what I have heard over the time, it
13 has ultimately been an abuse of power not only by the
14 perpetrators but by those who have administered the
15 complaints, the abuse itself. There has been an
16 instinctive protectiveness within the institution of the
17 Church to look after itself, to almost be hypersensitive to
18 the risk of image rather than, as Commissioner Murray says,
19 the broader issues of risk management to children.

20
21 Now, that goes to deeper questions around who makes
22 decisions, who participates in decisions, who protects
23 whom. That's culture of an organisation. I would really
24 hope that the new company decides to look at the standards
25 by way of domains. One of the domains would be culture,
26 and there would be a series of standards around that that
27 Church authorities would have to apply and comply with.

28
29 You could easily see within that, if you like,
30 principles around participation in decision-making and
31 consultation and transparency of decisions and how they are
32 reported. That, in a sense, would then force Church
33 authorities to articulate clearly how they go about those
34 crucial decisions and how they actually keep records that
35 people can understand, that are obvious and transparent
36 enough for objective scrutiny - when decisions are made
37 about personnel and who gets to go where, that we don't
38 simply have to be bound by the canons but that improved
39 best practice management arrangements can be put in place,
40 so you have personnel committees, and who sits on them;
41 what level of competence is there of people on those
42 committees? How wide, as Justice Owen said, are we
43 prepared to make membership of those committees? And so
44 on.

45
46 THE CHAIR: Archbishop, do you want to respond?

47

1 ARCHBISHOP COLERIDGE: I agree with everything that
2 Mr Sullivan has said, but just to add my own angle on it,
3 the first shift, it seems to me, and it is cultural, would
4 be at the level of awareness, and that's a massive but
5 essential educational task, an awareness of what child
6 safeguarding really does entail.

7
8 Secondly, then, the point of accountability. This
9 applies to the Church as a whole and to individuals within
10 the Church, like bishops, because there has been
11 a tendency - and I have said this earlier - for bishops and
12 the Church to have a sense of themselves as a law unto
13 themselves. Now, that has to change.

14
15 In coming to the unanimous agreement to support this
16 initiative of Catholic Professional Standards Limited, one
17 of the great questions that exercised the Bishops
18 Conference concerned episcopal governance, which can take
19 many forms in the Church, and has historically, but is
20 regarded as a non-negotiable element of the Church's life
21 and structure. Some felt that this initiative was, in some
22 ways, compromising or undermining the principle of
23 episcopal governance.

24
25 My own view and the view of others was that it is not
26 in any way compromising or undermining the principle of
27 episcopal governance; what it is trying to do is to help
28 people like bishops and other Church leaders to exercise
29 the responsibility which they have patently failed to do.
30 This new form of accountability does represent, in a Church
31 like mine, a genuine cultural shift to new forms of
32 accountability.

33
34 I would also think that it touches upon coordination
35 or collaboration - new forms of coordination and
36 collaboration within the Church, and Catholic Professional
37 Standards is one of those, but also new forms of
38 coordination and collaboration between the Church and the
39 wider society, and this Royal Commission is a dramatic
40 instance of that, so all kinds of new forms of
41 collaboration and coordination, which, again, for us
42 represent cultural change.

43
44 The other thing is a consistency across the board,
45 which is part of what I mean by "coordination". Again, in
46 Australia generally, to have a consistency that reaches
47 beyond the states is not easy. To have it within the

1 Catholic Church, you have difficulty to the power of two.
2 To bring about a genuine consistency of approach will have
3 to represent genuine cultural change.
4

5 But also, and here I conclude, compassion, to address
6 all of these issues in their complexity and their intense
7 practicality, their urgency, but to address them with the
8 sense that the child or the vulnerable person must take
9 priority and that all of these issues must be seen through
10 their eyes. That's what I mean by compassion.
11

12 Now, you might say that's obvious in the case of
13 a Church. Well, yes and no. There have been dramatic
14 failures, as has emerged in the course of this
15 Royal Commission. That kind of perspective on what we are
16 talking about and dealing with does represent another form
17 of cultural change.
18

19 They would be some of the elements of change that
20 I mean when I speak about the need to shift the culture and
21 not just to shift the protocols and procedures. That has
22 to happen. But if that doesn't lead to cultural change,
23 the danger is that we go round and round and round, and the
24 appalling prospect is that we could end up where we
25 started.
26

27 MS NEEDHAM: Moving on to Mr Owen, were you present in the
28 hearing room when Teresa Devlin gave evidence?
29

30 THE HON. NEVILLE OWEN: I was.
31

32 MS NEEDHAM: Hearing her account of the Irish experience
33 with the national safeguarding board, has that informed the
34 answers that you have given today in any way?
35

36 THE HON. NEVILLE OWEN: It has. It has indeed. It
37 resonated with me because I have been around Catholic
38 institutions for many years, and those challenges about
39 which she spoke are always there. So it resonated with me
40 and it has informed a lot of what I have said this morning,
41 and I think it will continue to inform, because what I've
42 noticed is that when I now go back and re-read the Irish
43 documents, I'm learning more from them than I did when
44 I first read them.
45

46 MS NEEDHAM: One of the aspects of her evidence is that
47 they have been doing part of what CPS seeks to do for some

1 considerable time.

2

3 THE HON. NEVILLE OWEN: That's right.

4

5 MS NEEDHAM: In particular, she gave some evidence about
6 the publication of reports in relation to Church
7 authorities. Do you recall that evidence that she gave?

8

9 THE HON. NEVILLE OWEN: I do.

10

11 MS NEEDHAM: And the fact that the reporting didn't happen
12 by the board, but it was left to the Church authorities.

13

14 THE HON. NEVILLE OWEN: Yes.

15

16 MS NEEDHAM: That's not the model that CPS has?

17

18 THE HON. NEVILLE OWEN: Well, we have clause 5, which
19 mandates public reporting, subject to what has been said
20 about clause 5.3, and I have nothing further to say about
21 clause 5.3. So we have a constitutional mandate - sorry,
22 Catholic Professional Standards will have a constitutional
23 mandate to report, and no doubt that will also be taken up
24 in the memoranda of agreement that are entered into.

25

26 MS NEEDHAM: You heard Ms Devlin give evidence that whilst
27 the choice whether to publish or not lay with the
28 particular Church authorities, to this point no-one had so
29 refused to publish. Do you recall that evidence?

30

31 THE HON. NEVILLE OWEN: I do.

32

33 MS NEEDHAM: Does that reflect, to some extent, your
34 differentiation between functional independence and
35 structural independence?

36

37 THE HON. NEVILLE OWEN: Yes, it does. It does. That's an
38 example of it. That's an example of functional
39 independence in operation.

40

41 MS NEEDHAM: The carve-outs in 5.3 - I know you said you
42 didn't want to say anything more about them, but, in your
43 view, does the constitution give the company a power to
44 make the reports either accurate or less confusing or less
45 harmful to the Church contacts?

46

47 THE HON. NEVILLE OWEN: That would certainly be part of

1 the process, you would expect, that if the board of
2 Catholic Professional Standards received an audit report -
3 and bear in mind that that's what it would be - that it
4 thought was inaccurate or could mislead, the natural thing
5 would be to go back to the auditors and seek to have it
6 clarified.

7
8 MS NEEDHAM: Rather than just refuse to publish it, full
9 stop?

10
11 THE HON. NEVILLE OWEN: Well, that's the way I would
12 operate.

13
14 MS NEEDHAM: Yes, and that would be a power that the
15 constitution would give the board?

16
17 THE HON. NEVILLE OWEN: There is nothing in the
18 constitution that would prevent that, and it would be
19 a normal operating procedure.

20
21 MS NEEDHAM: You also referred to a differentiation
22 between standards in relation to claims resolution and
23 standards in relation to complaints handling. Would you
24 like to expand upon that differentiation slightly?

25
26 THE HON. NEVILLE OWEN: What I had in mind when I said
27 that was that I think that if a survivor wished to go
28 directly to civil litigation or the redress scheme, there
29 is the lesser role for the Church authority to play in the
30 handling of that allegation and complaint. So you would be
31 looking, I think, then, more at the model litigant
32 guidelines and compliance with the model litigant
33 guidelines.

34
35 But to the extent that the complaints handling
36 procedure, by the choice of the survivor, is left within,
37 either wholly or partly, the province of the Church
38 authority, then I think the standards would need to be more
39 specific, more exact and more wide ranging.

40
41 MS NEEDHAM: Moving to Archbishop Coleridge, you are one
42 of the member representatives within the company, and you
43 have been appointed by the corporate body of the ACBC; is
44 that correct?

45
46 ARCHBISHOP COLERIDGE: Yes, I was not appointed; I was
47 elected.

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MS NEEDHAM: Elected, I'm sorry. You would be in a position to know the attitude of the ACBC and, presumably, the CRA as to funding the CPS?

ARCHBISHOP COLERIDGE: Yes.

MS NEEDHAM: Is it going to cost more than the NCPS has cost to date?

ARCHBISHOP COLERIDGE: It will cost substantially more, and we have no option on that. I might say that in both bodies, the Bishops Conference and the CRA, there was initially some apprehension about cost, in part because there was this sense that it's going to be a massive bureaucracy, and how are we going to pay for this massive bureaucracy? But in fact the intention, at least, and the reassurance that was given - both bodies - was that this will not be a massive and a massively expensive bureaucracy; it will in fact be very lean, but it will also, over time, be a costly undertaking. The rhetorical question is: do we have a choice? And the answer given by both bodies was: no.

So despite the apprehension initially, there was a very strong, indeed unanimous, commitment to fund CPS in any way that it needs to be funded, because we don't want a repetition of what has happened in the past where an ambivalence or a lack of commitment has led to an under-resourcing, underfunding, and therefore has restricted or even crippled an operation. We certainly don't want that to happen with CPS.

MS NEEDHAM: Thank you. Finally - and this is a question for each of you - various witnesses during the last couple of weeks have expressed a hope that CPS will provide guidance in particular outcomes, and one in particular, which I don't think Ms Furness has mentioned, was the regulation of overseas priests, and I use that only as an example. Have you each taken note of the various expressions by various witnesses and sought to learn from what has been expressed to date?

THE HON. NEVILLE OWEN: I certainly have. The marginal notes in my notebook are full of "CPS?"

ARCHBISHOP COLERIDGE: I have taken very careful note,

1 because this is something that I deal with literally from
2 day to day. We do have very great challenges. They are
3 not impossible to meet, but they are great challenges in
4 this area, and I am very hopeful that CPS will help me and
5 others who have to make decisions to handle the challenges
6 or meet the challenges more effectively than we have.

7
8 MR SULLIVAN: Yes, I've taken note and I think the whole
9 point is that where CPS is at at the moment is a work in
10 progress, and a lot of what has been said in this session
11 and also in the last couple of weeks I think needs to be
12 taken on board.

13
14 MS NEEDHAM: Thank you, your Honour. I have no further
15 questions.

16
17 COMMISSIONER FITZGERALD: Could I just ask one question
18 only, and it's relating to the publication of information.
19 There has been general agreement by the panel that future
20 information would be published in some form.

21
22 In relation to the historic claims, the
23 Royal Commission, based on the surveys that we jointly
24 undertook, published the names of 28 institutions and the
25 number of claims against those institutions. There is
26 another more than 1,000 institutions in the Church that
27 have been disclosed in those surveys - parishes and
28 schools. Would the starting point for transparency be the
29 publication of the institutions by name and the number of
30 claims that have been received in relation to those
31 institutions?

32
33 MR SULLIVAN: Commissioner, in theory, yes. I think you
34 may know that when we were working on the survey results
35 with the Commission, we were concerned about the privacy of
36 some victims - if, for example, we talk about St Francis
37 School, one victim. Of course, some people may identify
38 who that victim is simply by the fact that they knew there
39 was one victim there, and we were worried about whether
40 that would cause some stress in this process.

41
42 I'm certainly not averse to naming the institutions.
43 That was our only concern. So then we said, well, maybe it
44 should be institutions that had more than five people, or
45 something like that. Totally agree with the idea. We have
46 to work out a way in which we don't in some way
47 inadvertently cause stress for some individuals.

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This is certainly where our thinking is at: as far as future reporting, future data collection, and so on, it must lead to enhancing the credibility of the Church in its commitment to being open and not covering anything up. That would be the working principle.

MS FURNESS: Nothing further, your Honour.

THE CHAIR: Thank you, gentlemen. Again, thank you for your contribution. Archbishop, I think you come back to us again on Wednesday or Thursday, so I won't excuse you, but I will excuse the other two. Thank you again. We will adjourn until --

<THE WITNESSES WITHDREW

MS FURNESS: 10 o'clock tomorrow morning, your Honour.

THE CHAIR: 10 o'clock in the morning.

**AT 1.05PM THE COMMISSION WAS ADJOURNED
TO TUESDAY, 21 FEBRUARY 2017 AT 10AM**

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