



Royal Commission
into Institutional Responses
to Child Sexual Abuse

Statement

Name John Dalzell
Address Known to the Royal Commission
Occupation Legal Practitioner
Date 14 March 2014

1. This statement made by me accurately sets out the evidence that I am prepared to give to the Royal Commission into Institutional Responses to Child Sexual Abuse. The statement is true and correct to the best of my knowledge and belief.
2. This statement is made in response to a letter of request from Mr Tony Giugni dated 7 March 2014 in which 14 questions have been posed to me.
3. What follows are my answers preceded by the questions posed in Mr Giugni's letter. I note that some of the matters that I am being asked about relate to communications to and from me which occurred almost ten years ago. Due to the passage of time, I have been unable to recall many details, particularly about the identity of certain instructors in relation to certain steps that were taken during the litigation. As I have stated below, there were several individuals from the Archdiocese who provided instructions as well as an employed lawyer from the Church's insurance company. These instructions were provided over several years. The instructions were received sometimes in meetings but more often than not they were provided in writing by email. During the court proceedings, the instructions were almost always taken over my mobile telephone.

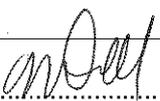
Signature: *John Dalzell*

Witness: *MP Vidone*

4. I have looked only at those documents behind the transcript references which are specifically referred to in Mr Giugni's letter to me and I have not undertaken a more general perusal of the documents which form the litigation (or Towards Healing) tender bundle. I have also read the statement signed by Cardinal Pell and dated 24 February 2014.
5. This statement is provided under section 6DD of *Royal Commissions Act 1902* (Cth) and section 17(2) of the *Royal Commissions Act 1923* (NSW) and is provided in response to a summons issued to me by the Commission and dated 10 March 2014.

Who was Corrs' principal instructor on behalf of each of the first and second defendants in the matter and, generally, how were instructions sought and conveyed?

6. From memory, the principal instructor for Cardinal Pell was Dr Michael Casey; the Cardinal's Private Secretary. I cannot recall whether Danny Casey, the Archdiocesan Business Manager was also an "instructor" per se, but I do recall attending several meetings in which he was present. I cannot recall ever receiving instructions directly from Cardinal Pell, although I do recall attending a small number of meetings in which he was present. Instructions from the Trustees of the Archdiocese of Sydney (**Trustees**), were principally provided by the Chancellors of the Archdiocese, Mgr Brian Rayner and his successor, Fr (as he then was) John Usher. Also Mr Dominic Cudmore, although from memory, he left the Archdiocese shortly after the litigation commenced. I also recall that Ms Marita Wright, a lawyer in the employ of Catholic Church Insurances Limited, also attended several meetings at the Archdiocese offices in the Polding Centre and, from time to time, provided instructions on discrete issues such as costs. Instructions were generally provided by email or telephone (to my office telephone, or when in Court, to my mobile telephone) or, less frequently, at face-to-face meetings at the Polding Centre or at the offices of Corrs Chambers Westgarth (**Corrs**).

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From whom did the "wrong defendant" defence originate?

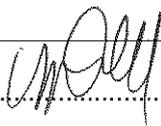
7. By the "wrong defendant" defence, I am assuming this is a reference to Mr Ellis' claim against the Trustees for the alleged acts of Fr Duggan. Although not a term of art, it was often referred to as the "proper defendant" approach by me and by the lawyers acting for the Cardinal and the Trustees. My earliest recollection of the liability of the Trustees for actions of members of the clergy being discussed was some time towards the latter half of 2004. I recall that it was not long after the statement of claim had been received by Corrs in or about September 2004, and it was discussed during a telephone conference while I was employed at Corrs. Each factual allegation against the Trustees contained in the statement of claim was discussed and instructions were taken. I also recall that the role of the Archdiocesan Council of Bishops in relation to clergy was also discussed in that telephone conference. Dr Michael Casey, Corrs' partner Paul McCann and I participated in that telephone call. There may have been other solicitors present, but I cannot recall. The liability of the Cardinal was also discussed, but as Cardinal Pell was not the Archbishop or even present in the Archdiocese during the time of the alleged abuse, I recall that this issue was not discussed at any length¹.

On whose instructions was the "wrong defendant" defence advanced?

8. I cannot recall. But I assume that in light of the instructions regarding the role played by the Trustees in the appointment, supervision and discipline of clergy and after consideration of the relevant legislation which incorporates the Trustees, and in light of the legal advice provided on these issues, a decision was made and conveyed to the Corrs' lawyers concerning the position that was to be taken regarding the Trustee' liability. I do recall discussing the role and activities

¹ I recall this part of the discussion was centred on whether the Archbishop of Sydney was a juridical office.

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of the Trustees and their legislative objectives² many times with a number of persons from the Archdiocese.

Why was the option to mediate at the onset closed down, and on whose instructions? (T230, 231)

9. I cannot recall who instructed on this issue and I don't know why the decision was made; but I do remember being briefed about the failed attempt to compromise Mr Ellis' claim through mediation in the Towards Healing program (which in that process was called, from memory, "facilitation"). I recall that there had been an issue about Mr Ellis not wishing to sign a deed of release and for that reason the attempted settlement through Towards Healing was unsuccessful.

Why was Mr Ellis' abuse not admitted in response to the notice to admit facts, and on whose instructions? (T241, 241A, 245)

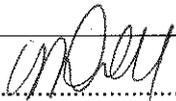
10. I cannot recall who instructed on this issue and do not know why the decision was made.

What was Mgr Rayner's view on disputing or not admitting Mr Ellis' abuse in the light of the Eccleston report and what Mgr Rayner had said at the Towards Healing facilitation as referred to in T260?

11. I cannot recall what Mgr Rayner's view was on the allegations made by Mr Ellis (if I ever knew that view).

Why, and on whose instructions, was the non-admission of Mr Ellis' abuse maintained even after the Stephen Smith affidavits were presented, your interview with Judith Penton supported the fact of the abuse, and the second report of Dr Phillips was served? (T266, 267, 282, 284, 297)

² With reference to the *Roman Catholic Church Trust Property Act 1936* (NSW)

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12. I cannot recall who instructed on this issue and I do not know why the decision not to admit fact of the abuse was made.

Why, and on whose instructions, was the fact of Mr Ellis having been an altar server and the fact of his abuse disputed in April 2006? (T326)

13. I cannot recall who instructed on this issue.

Was the tactical position that was taken with regard to Dr Phillip's first report as reflected in T256 and T257 known to and/or approved by Corrs' instructor(s)? If so, by whom?

14. I cannot recall who approved the approach taken with regards to Dr Phillip's report. I assume that the approach taken would have been on instructions – but I cannot recall who provided those instructions.

On whose instructions was the first report of Dr Phillip objected to on 28 July 2005 at the hearing?

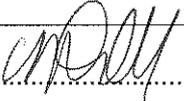
15. I cannot recall who instructed on this issue.

On whose instructions was Begg & Associates' request for a mediation following the judgment of Patten AJ refused? (T305, 314, 315)

16. I cannot recall who provided the instructions about mediation after the judgment of Patten AJ was handed down. Having read the exchange in the documents at T314 and T315, it would seem likely that those instructions were conveyed to me by Dr Casey.

On whose instructions was the first affidavit of Stephen Smith dated 27 July 2004 objected to in the hearing on 28 July 2004?

17. I cannot recall who instructed on this issue.

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