

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

CASE STUDY 43:

**THE RESPONSE OF CATHOLIC CHURCH AUTHORITIES IN
THE MAITLAND-NEWCASTLE REGION**

SUBMISSIONS ON BEHALF OF BROTHER ALEXIS TURTON

**CARROLL
& O'DEA
LAWYERS**

1. Br Turton stands by the concessions that he made in his evidence as to his failures, with hindsight, to apply current best practice in this difficult area of supervising personnel subject to his leadership in relation to their dealings with children and young persons.
2. Br Turton respectfully requests that the Commission analyse his handling of the complaints relating to Brothers Patrick and Dominic from the circumstances in which he found himself - in particular the limited understanding of offender behaviour and complaints handling as reflected in the relevant Church protocols at the time. It would be entirely unfair to judge his actions at the time in the light of hindsight.
3. Counsel assisting has identified a number of failings on Br Turton's part. It is respectfully submitted that a proper analysis of the facts and circumstances of the handling of complaints relating to Brothers Dominic and Patrick demonstrates that, while flawed, Br Turton responded to complaints to the best of his ability working with the limited information he had and within the church protocols and guidelines, which were considered best practice at the relevant times.
4. The following submissions deal with those of counsel assisting which are extracted in bold.

Brother Dominic

210 Brother Turton should have taken steps to investigate CNM's complaint. He did not interview CNM. There was no reason for Brother Turton to require a 'direct approach' by CNM to the Marist Brothers before investigating the complaint. It was not for the complainant to 'present his case' and agitate for action to be taken; that was a matter for Brother Turton, as Provincial. It was wrong to accept the reassurance of Dominic that there was nothing to the complaint without further inquiry, particularly in circumstances where Dominic held a current teaching position and was a principal of a school.

5. If faced with the same situation today, Br Turton would not have acted as he did in waiting for the claimant to make contact with him or relying upon the reassurance of Br Dominic.
6. In 1994 the relevant Church protocol was that a person in Br Turton's position should defer to Fr Brian Lucas for advice on how to handle the matter. It is uncontested that Br Turton followed the relevant Church protocol.

7. Also, Br Turton's contemporaneous notes make it clear that the issue of CNM's schizophrenia was taken as affecting the accuracy of his complaint. Whether that would be the case today, with better learning on mental health issues, is not relevant.
8. Regrettably, the advice which Br Turton received was not equivalent to current best practice, a fact which reflects the fact that Br Turton and others have now gained a deeper understanding of offender behaviour and complaint handling.
9. It is submitted that while Br Turton did not respond to the complaint by CNM in the way which he would have today with the benefit of experience, an adverse finding against Br Turton should not be made in circumstances where to have acted differently would have resulted in him contravening the relevant Church Protocol and the advice he had been given by Fr Lucas.

222 Brother Turton did not contact CNM to advise him that there had now been a complaint against Dominic at Riverview. He said he was 'still waiting' for a direct approach by the complainant and a medical clearance so did not follow up. When asked if he reported the fact that there had been a further complaint to Father Hackett, he said 'No, I didn't, no.'

10. Br Turton respectfully notes that while the CNM complaint related to genital fondling, the subsequent report from Riverview was specifically clarified as not involving genital fondling (Turton T17956: 19-24).
11. The Riverview report could not be classified as a 'further complaint' because the uncontested evidence given by Br Turton is that the report came to him in the form of a 'hearsay comment' which was to be investigated by the CEC who would make appropriate reports to the Provincial (who by that stage was Br Hill) if necessary for follow up (Turton T17957: 44 – T17958: 5).
12. There was no complaint to refer back to Fr Hackett, nor any information to suggest that another person had been assaulted as CNM had claimed. What information Br Turton could have given to Fr Hackett, or to CNM, which would have been of any use is unclear.

231 Brother Turton had no specific recollection of informing Brother Hill of the complaints about Dominic during a handover process. Brother Hill said he was not aware of the complaints, and he had no recollection of Brother Turton telling him about them. It is submitted the most likely reason neither of them has a specific recollection of a discussion about these matters is because it did not occur. The information was important and Brother Turton should have told Brother Hill about it.

13. Br Turton agrees that information about Br Dominic was important to have told Br Hill.
14. Br Turton gave evidence that he thought it likely that he had informed Br Hill about Br Dominic during the handover period (Turton T17961: 26-28). All Br Hill was able to say was that he had no recollection of that.
15. In any event there was a clear record kept of the known information about the CNM complaint (Exhibit 43-9 CTJH.053.07170.0256_R) on file which was available to Br Hill at the time of the handover.

232 Brother Turton's response to the complaint by the staff member was inadequate. He sought to avoid responsibility for the complaint by saying it was a matter for the CEC. He did not, however, inform the CEC of the prior complaint of abuse of CNM, take any steps to inquire with the CEC as to their response, or refer the complaint to the new Provincial, Brother Hill.

16. The information received by Br Turton is more properly described as a report of suspected behaviour, not a complaint. There was no specific complaint or complainant identified, only a "concern" that is was "common knowledge" that Br Dominic is known to be over-familiar with the male students" (Exhibit 43-9 CTJH.053.70050.0033).
17. Upon receiving the information Br Turton asked further questions of the staff member to ascertain the nature of the concerns, specifically that they did not involve sexual contact (Turton T17956: 19-24) and that the information was being handled by Bev Patterson at the CEC who would refer any relevant findings back to the Marist Brothers at the conclusion of the investigation (Turton T17954: 18-24).
18. The complaint by CNM was similarly unclear as there had been no direct approach from the complainant and Br Turton understood that the complainant was mentally unwell and may not have provided Fr Hackett with accurate information. Br Turton was following the advice given to him which was to wait for CNM to approach the Marist Brothers so that his complaint could be verified and investigated.
19. It would be improper and not in accordance with basic principals of natural justice for Br Turton to have provided unverified information about unrelated behaviour to the CEC who were in the process of conducting their own investigation of unverified hearsay relating to Br Dominic.
20. Further, Br Turton received the information when he had retired from his position as Provincial. It is submitted that his decision to allow the CEC to conduct its inquiries and report any findings or concerns to the incumbent Provincial was entirely

reasonable, given the paucity of verified information available and that the Riverview complaint was described to him as hearsay in nature.

Brother Patrick

384 Particularly in light of the information already known to Brother Turton about similar historical incidents, this further contemporaneous incident should have caused Brother Turton great alarm and prompted an effective response to deal with the ongoing risk that Patrick posed to the safety of children. As Brother Turton said, there was a pattern of behaviour that needed to be acknowledged. It should have alerted him to the fact that Patrick was still in a position to touch students in a sexually inappropriate way, and was still engaging in this conduct.

21. The contemporaneous incident involving two students from Ashgrove did cause alarm to Br Turton. After learning of these complaints Br Turton, as he had done on the prior three occasions, followed the relevant protocols of the time and referred these new complaints together with all the previous ones to Fr Spence to investigate and advise.
22. Br Turton was not involved in the investigation but received advice from Fr Spence that the complaint by the two Ashgrove students had been investigated in accordance with the Church protocol in place at the time by Fr Spence and resulted in a finding that the behaviour of Br Patrick was not a serious incident at all (Turton T17984: 32-35)
23. Accordingly it is submitted that it was not unreasonable that Br Turton left Br Patrick in the supervised school environment. He had been specifically advised that it was safe to do so.

385 The supervision arrangements described by Brother Turton were grossly inadequate. It should have been obvious to Brother Turton that children at Marist College Ashgrove were presently at risk of sexual abuse by Patrick. He should have recognised this risk, and removed Patrick from a school environment entirely. He did not do so, and this was a significant failing on his part as Provincial.

24. Br Turton accepts that it was an unacceptable risk for Br Patrick to be in a school environment and would not have taken that risk if he were faced with the same situation today.
25. Br Turton only asks that his actions are considered in light of the fact that he sought and received advice from Church leaders in accordance with the protocol in place at the relevant time (Fr Lucas, Fr Spence and possibly Fr Usher) as to how to respond to

the complaints and the issue of Br Patrick. On each occasion he was advised that the precautions in place were suitable.

26. Br Turton regrets that he did not act differently and remove Br Patrick from the school environment, however, to do so would mean he would have been ignoring the advice of the Church personnel appointed to advise people in the position of Br Turton.

393 The report by CQZ was yet another report about Patrick touching students. Brother Turton regarded it as not adding any new or different information to what was already available from the three complaints he had received since 1991. This was not the case – CQZ's report added to the increasingly compelling picture that Patrick had a tendency to touch children in a sexually inappropriate manner. Brother Turton should have recognised this. It was obvious. It does not assist Brother Turton that CQZ did not give him further detail about what he meant. Brother Turton already had sufficient information about Patrick inappropriately touching students to clearly understand that a reference by CQZ to Patrick being 'touchy-feely' was a reference to sexually inappropriate conduct that needed to be addressed. Brother Turton should have taken steps to remove Patrick permanently from a school environment where he continued to have access to children. He did not do so and this was a serious failure on his part.

27. Br Turton accepts that it was an unreasonable risk to have Br Patrick in a school environment by the time he received the complaint from CQZ but repeats the submissions above.
28. By the time Br Turton received the complaint from CQZ he did not doubt veracity of the other historical complaints he had received or the information provided by CQZ.
29. The evidence given by Br Turton about the information provided by CQZ being "nothing new" was in relation to his thinking as to whether the supervision measures in place were adequate (Turton T17991: 33-38).
30. The inquiries conducted by Br Turton revealed that the information provided by CQZ was earlier in time with respect to the other complainants and of a less serious nature. The bulk of CQZ's complaint was of physical punishment and racial vilification. Br Patrick was a minor part of that and there was nothing overtly sexual alleged about him.
31. Notwithstanding Br Turton's concession, with hindsight, that having Br Patrick in a school environment was inappropriate, it is respectfully submitted that it was a reasonable view the supervision regime in place did not need to be altered based on the nature of the complaint raised by CQZ.

418 It is submitted that Brother Turton had no reasonable basis to conclude that the 'remote contact [Patrick] has with students would be considered not to be dangerous at all' or provide an opportunity for him to behave inappropriately. He knew that, in fact, this was not the case. Patrick had sufficiently close contact with students at Marist College Ashgrove, in his present position as a remedial tutor, to touch students. A complaint had been made less than twelve months earlier. Brother Turton knew that no changes had been made to the supervision arrangements for Patrick since that incident.

32. The outcome of the investigation carried out about the two Ashgrove students which had been made 12 months earlier resulted in advice to Br Turton that the behaviour complained of at that time was not of concern (Exhibit 43-9 Tab 42 CTJH.053.70013.0043_R) and based on this outcome there were no changes made to the supervision arrangement over Br Patrick.
33. While Br Turton accepts that it was an unacceptable risk which he would not make if given the same choice today to allow Br Patrick to remain in a teaching environment, it is respectfully submitted that in light of the advice and recent investigation which had been conducted when he formed the view that Br Patrick was not dangerous around children, it was a reasonable, albeit in hindsight, incorrect view.

419 Further, what Brother Turton told the Ashgrove Superior and the principal was not the whole story. He did not tell them all that he knew about other complaints about Patrick. Notwithstanding the demonstrated inadequacy of the supervision arrangement for Patrick, it should have been obvious to Brother Turton that those required to supervise him should have been given all of the relevant information. This was a plainly inadequate response.

34. A fair reading of the evidence is that although Br Turton did not tell the Superior the full details of the allegations, the Headmaster, Br Heinrich was well aware of the full extent of the allegations and had been informed of the progression of available information since receipt of the first complaint in early 1991 (Exhibit 43-9, Tab 42 CTJH.053.70013.0043_R).
35. Given that the role of the Superior is completely unrelated to the school environment and is restricted to the orderly running of a religious community, it was not unreasonable for Br Turton to provide the Superior limited information, particularly in light of the fact that Br Heinrich, who was in charge of the education (and child protection) at Ashgrove, had a detailed knowledge of the allegations.

428 There is no evidence that Patrick received counselling during his time at Crossroads in relation to his problem of touching students in a sexually inappropriate way. There is also no evidence that any communication was made or recommendation given to the Marist Brothers by anyone at Crossroads that it was safe to return Patrick to a school environment. It may be inferred that no such recommendation was made and that there was no basis for the Marist Brothers to conclude that the risk posed to children by Patrick had materially diminished. Returning Patrick to a role in which he provided remedial tutoring to students at Marist College Ashgrove was wrong, and it was in total disregard for the safety of the students at the school.

36. The issue of the type of counselling which was received by Br Patrick at Crossroads and whether recommendations were made by the people running Crossroads as to whether Br Patrick posed a risk to children was not explored at all by counsel assisting.
37. It is submitted that in those circumstances no inference can fairly be drawn upon the issue of what communications with Crossroads took place or what recommendations were or were not made to the Marist Brothers.

436 The conduct complained of spanned a period of 33 years. There were striking similarities in each of the complaints. The conduct reported by the two boys at Marist College Ashgrove was similar to the conduct that had been the subject of historical complaints. It should have been obvious to Brother Turton that Patrick had engaged in sexual abuse of children in past decades and that this was still occurring in 1992.

38. There is insufficient evidence to establish whether each of the identified complainants were sexually abused or whether they were just uncomfortable with Br Patrick's 'touchy feely' manner - which Br Turton accepts is inappropriate but would not classify as sexual abuse (Turton T17990: 18-20, 30-34).
39. The complaint from the two Ashgrove students was investigated and determined to be of no concern. On that basis it is difficult to see how that behaviour could be described as 'sexual abuse' which was still occurring in 1992.

40. **437** It should also have been obvious to Brother Turton that the supervision arrangements in place at Marist College Ashgrove were woefully inadequate. Brother Turton's evidence that the arrangements were working because he received the report of the two boys after it occurred but before something more serious could happen is illogical. The report in fact plainly demonstrated the arrangements were ineffective and hopelessly so. Brother Turton's failure to appreciate this, even in hindsight, demonstrates an ongoing failure to understand the risks posed by Patrick and the type of response that was required.

41. Br Turton accepts that the supervision arrangements were inadequate and inappropriate in the circumstances.

438 Brother Turton failed to recognise the pattern of sexually inappropriate behaviour that was clearly demonstrated in the reports he received. He had a tendency to minimise the significance of the conduct. He failed to find out sufficient detail about the complaints to form a proper understanding of the seriousness of the complaints. He considered each report in isolation without properly appreciating their cumulative significance. At least by the time he received the report of the two boys at Marist College Ashgrove, Brother Turton should have taken steps to remove Patrick from a school environment, immediately. In failing to do so, he did not have regard to the safety and welfare of the students at Marist College Ashgrove, and he put them at ongoing risk.

42. Br Turton gave evidence that he accepted the complaints made and that they were of concern to him (Turton T18003: 24-31).
43. Br Turton gave repeated evidence of trying to elicit particulars of complaints without putting the complainant in an uncomfortable position (T17965:34 – T17966:8; T17967: 25-41; T17986: 11-23; T17991: 16-20).
44. A submission that Br Turton tended to minimise complaints was not put to him, is not supported by the evidence and cannot be made in the circumstances.
45. Br Turton accepts that he should have removed Br Patrick from the school environment earlier.

446 Brother Turton was not asked whether he told Brother Hill about the incident with the two boys at Marist College Ashgrove in his handover to Brother Hill. However, there is no reason not to accept Brother Hill's evidence that he was not told. It is consistent with Brother Turton's failure to recognise the significance of the incident. It is also consistent with Brother Turton not informing Brother Hill of complaints about Dominic when he became Provincial. The information was important and Brother Turton should have told Brother Hill about it.

46. Counsel Assisting rightly points out that Br Turton was not tested on whether he told Br Hill about the incident with two boys at Ashgrove. In the circumstances it is inappropriate to make any adverse findings on the matter.
47. Regardless of any discussion, there was also a record kept of the known information about the complaint (Exhibit 43-9 Tab 42 CTJH.053.70013.0043_R) on record and available to Br Hill at the time of the handover.
48. A submission that Br Turton failed to inform Br Hill of the available information about the incident with two boys at Ashgrove is not available in the circumstances.

514 There was no adequate handover process between Brother Turton and Brother Hill when the former ceased as Provincial and the latter took over. This compounded the poor state of information in the records relating to complaints against Dominic and Patrick. For example, Brother Hill's evidence was that he knew of at least one complaint in relation to Patrick (by CNJ) but that he did not know of others. That was information that should have been communicated by Brother Turton. It is not unreasonable to expect this level of detail about matters of this significance in a handover of leadership of the Order.

515 These deficiencies in record keeping and the absence of an adequate handover process impeded the ability to respond adequately and appropriately to complaints of child sexual abuse, and put other children at risk.

49. While not resiling from the fact that the changeover with Br Turton could have been improved and that the available records are inadequate, Br Turton attempted to give as honest and frank evidence to the Commission as possible, however, were being tested on events which occurred up to 25 years ago.
50. It would be improper to find that information was not shared on the basis that one or both of the parties no longer recall the information.

Conclusion

51. In making these submissions Br Turton accepts that the complaints relating to Brothers Patrick and Dominic could have been handled better and that he would have acted differently if he were in the same position today.
52. Br Turton respectfully requests that the Commission consider the following in evaluating his testimony:
- a. the frank manner in which he gave his evidence; and
 - b. his willingness to make concessions against his own interests; and
 - c. his long and distinguished service as a religious.
53. Further, Br Turton asks that the Commission take into account the difficult situation in which he found himself which included, but was not limited to:
- a. the non-specific nature of the complaints received;
 - b. that he was operating in a period where there was less of an understanding of offender behaviour and complaints handling; and

- c. the fact that on each occasion he received a complaint he adhered to the relevant Church protocol at the time and sought advice including legal advice and followed the advice which he was given.



Peter Skinner

Samuel Griffith Chambers

pskinner@sgchambers.com.au

92674955

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