

**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 MICHAEL HILL

1. Br Hill stands by the frank admission that, at times, his actions which were examined in Case Study 43 were "naïve" (Hill T18117: 29-30).
2. Br Hill respectfully requests that the Commission analyse his handling of the complaints relating to Brother Dominic and Brother Patrick in the context in which he found himself at the time – in particular the limited information provided by complainants. 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 Hill'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 Hill 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

262 It is submitted that Brother Hill knew:

(a) By July 1996, that CNO had made a complaint against Dominic alleging an inappropriate comment. It is likely that Brother Hill knew the allegation also concerned inappropriate touching.

(b) By July 1996, that CNO had made a statement to the police at Goodna.

(c) By July, that police at Goodna wished to (and did) interview Dominic about CNO's allegation.

(d) By March 1997, that the police had reported to Mr Mullins that it was unlikely proceedings would be brought 'in the near future'.

5. The events which gave rise to the complaint made by CNO occurred at St Peter Claver's College, Riverview (Riverview) which is and was at the time operated by the Brisbane Catholic Education Centre (CEC).
6. The Marist Brothers appointed Br Dominic to his role at the school; however, the monitoring of his day-to-day conduct was the responsibility of the CEC (Hill 18067: 9-17, 29-33).
7. In the circumstances Br Hill's involvement with the complaint made by CNO was limited to the information provided to him by the CEC, Br Dominic or the lawyer representing Br Dominic (Mullins).

8. Br Hill gave evidence that Br Dominic informed him of a complaint made by CNO. He stated that the information provided by Br Dominic was that the complaint related to inappropriate comments only (STAT.1178.001.0001 [62], Hill T18066: 18-26) and that the complaint was being investigated by the Catholic Education Office (Hill T18067: 29-33). Br Hill stated that he reproached Br Dominic for this inappropriate behaviour, classing it as a 'gross boundary violation' (Hill T18069: 34-47).
9. Following the disclosure made by Br Dominic to Br Hill, Br Hill contacted the employee at the CEC who was responsible for the investigation, Diane Goosem. Br Hill's uncontested evidence is that Ms Goosem confirmed that the CEC would handle the investigation and any necessary disciplinary action and confirmed that the complaint was limited to inappropriate comments (STAT.1178.001.0001 [63], Hill T18067: 47 – T18068: 4). At the conclusion of the investigation the CEC reported to Br Hill the outcome which included that Br Dominic would not be stood down (Hill T18067:1-3),
10. Br Hill gave consistent and firm evidence that he was not informed of any inappropriate touching by Br Dominic or Ms Goosem and that he expected that the CEC would have informed him of the nature of serious allegations if they were aware of them (Hill 18069: 17-20).
11. There is no evidence that Brother Hill knew the allegation also concerned inappropriate touching, and the submission by counsel assisting that he did is mere speculation.

263 It is not clear on the documents whether Mr Mullins informed Brother Hill on or around 16 December 1996 that police were intending to charge Dominic in the New Year (1997). However, it is submitted that it is probable that he did so. Mr Mullins was engaged by Brother Hill, and the Marist Brothers paid Mr Mullins legal fees. Mr Mullins reported developments in Dominic's criminal matter to Brother Hill. It is more likely than not that this very significant information would have been communicated to Brother Hill at the time.

12. The available evidence shows that Mullins reported to Br Hill on the developments of the criminal investigation relating to CNO on 6 August 1996. The purpose of the letter (CTJH.053.07165.0058_R) was to advise that Br Dominic had instructed Mullins and Mullins to act and enclosing an invoice to date.
13. It is submitted that Br Hill, as Provincial of the Marist Brothers, approved the funding of Br Dominic's legal costs with respect to the complaint of CNO, but that this was limited to a third party funding arrangement and Mullins and Mullins was acting for and advising Dominic, not Br Hill or the Marist Brothers.

14. The next correspondence between Mullins and Br Hill is dated 3 March 1997 (CTJH.053.70050.0137_R). That letter suggests that Br Hill was first informed of the potential that Br Dominic might be charged in March 1997. The letter makes no reference to previous discussions or correspondence indicating that there had been previous discussions. The letter conveys that there is no time pressure relating to the complaint, Br Dominic was overseas and it was proposed not to follow up with the police.
15. It is respectfully submitted that there is no evidence to support a finding that Br Hill was aware that the complaint of CNO involved potentially criminal behaviour until March 1997.

299 It is submitted that CQP's evidence ought to be accepted in full. CQP presented as an honest and forthright witness. He gave clear and coherent evidence of his experiences and his conversation with Brother Hill. It was not put to CQP that he was mistaken or that he was lying. It should be accepted that the conversation with Brother Hill occurred as described by CQP.

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303 It is submitted that Brother Hill's evidence about his conversation with CQP was untruthful.

16. These submissions from 299-303 are made at the end of a close analysis by counsel assisting of relevant evidence.
17. The conclusion at 303 is vigorously resisted.
18. Ultimately, the Commission is being asked to 'accept in full', as counsel-assisting phrases it in [299], the evidence of one participant to a conversation of 5-10 minutes duration occurring over 20 years ago that neither participant made a note of nor apparently ever addressed their mind to again until the Royal Commission hearings over the evidence of the other participant.
19. It is submitted that this finding is just not available to the Commission, upon application of well-accepted and everyday standards of forensic evaluation, and the *Briginshaw* test.
20. Counsel-assisting submitted that CQP "*gave clear and coherent evidence of his experiences and his conversation with Br Hill*". [299].
21. With respect, this seems to merely be picking up that CQP's statement dated 13 October 2016 was to the point and understandable; that he adhered to it in his oral testimony on 9 December 2016; and that in context there are available assumptions

that may be made now, with hindsight, using the evidence of the context surrounding that conversation, and which may support CQP's evidence.

22. However, when weighing up these factors the following competing factors should also be considered.
23. CQP conceded that it had taken him a few weeks to commit his memory of the conversation to writing – (CQP T24661). (This must have been the case – Br Hill's testimony that apparently triggered CQP coming forward was given on 7 September 2016 and the statement was dated 13 October 2016). One would expect it to be coherent and clear. Yet even so, his statement contained formulaic repetitions and much lack of clarity, despite what counsel assisting submits.
24. It was no great feat to be consistent with his statement in his testimony of 9 December 2016 – he read it out, it was in front of him during his cross-examination, and it is to be expected that he would adhere to it rigidly in the circumstances he was in.
25. 'The circumstances he was in' included being identified and accepted by the Commission, indeed everyone in the hearing room (including Br Hill), as a 'survivor' of the personal abuse he alleged. There was no challenge to his evidence in that regard – other than an attempt to clarify the details of the relevant assault (so that what he then might have said about it to someone 24 years later could also be tested) by putting to him the proposition that it was improbable that he could feel for certain on his back the furtive rubbing there by Br Dominic, in a classroom setting, of an erect penis through his and CQP's clothing (which for Br Dominick included his cassock). However this line of cross-examination was disallowed (see at T 24666-24667).
26. He was also assured at this point of his testimony by his Honour the presiding Commissioner that 'it was clear '(T24667:7-8).
27. With respect, he must have then been emboldened somewhat to firm up his account - which he immediately did. See at T 24667:20 when he stated that words not in quotes but set out in narrative form in paragraph 26 of the statement that he had prepared over several weeks and prefaced by the caveat "*I cant recall the exact words*", (which caveat he used in respect of other conversations from around the same time that he was recalling – see paragraphs 20, 21, 22, and 29) were now in fact the exact words.
28. It is submitted that CQP's demeanour under cross-examination was unimpressive. Although nervous, understandably, he was unnecessarily combative, and at times evasive (see e.g. at T2661-24665:19), and the deliberate change in meaning of "*impression*" at T 24666:16-21.

29. Also the apparent assumption (although not directly spelt out) in counsel assisting's submissions at [300] that Br Hill had contacted CQP because it had been conveyed to Br Hill by Bp Malone that CQP had complained about Br Dominic is not well made.
30. CQP agreed that he had never spoken directly to Bp Malone, only to Mr Bowman. Mr Bowman was not called.
31. There was no evidence of Bp Malone as to what he had told Br Hill, other than after Bp Malone was advised of 'warning bells' around Br Dominic (T 17763:11) he contacted Br Hill and said "*it doesn't sound very good for this guy...*" (T 17763:13). There was no evidence from either Bp Malone or Br Hill that Bp Malone told Br Hill the source of the warning bells.
32. It is not 'entirely implausible' that Br Hill would contact CQP, to check on the 'warning bells' conveyed by Bp Malone. CQP was a person Br Hill had met in the Brotherhood and who had looked up to him, and who Br Hill knew to be a former student of Br Dominic at the relevant time. Those are entirely plausible reasons.
33. Neither is it correct for counsel-assisting to submit at [300] that "*It is also entirely implausible that, if this coincidental phone contact had occurred, CQP would not have indicated to Brother Hill that he was the person who had contacted Bishop Malone and that the complaints related to abuse of him by Dominic*".
34. For a start, CQP had not contacted Bp Malone at all.
35. Also, CQP himself stated in his carefully prepared statement at [27] that: "*I was nervous to discuss these matters with Brother Hill and I was shaken to receive the call. I understood the gravity of the situation – that a man's career was on the line and that a Principal could be stood down*". This lays a clear foundation for him to have been quite circumspect in what he said.
36. CQP then goes on in his statement at [28] to state that it was his 'belief' that he made it clear that the conduct by Br Dominic was sexual. His words - and despite the submissions to the contrary, it is reasonable to take them as a deliberate and fair caveat placed by him upon the reliability of his memory of this conversation as he made his statement some 20 years after.
37. Also, with respect counsel-assisting is not correct in stating at [299] that "*It was not put to CQP that he was mistaken ...*". It was put to him in effect. He was asked "*To say 'I believe' means you may have some doubt?*" (T24666:12-13).
38. Finally on this point of counsel assisting's submissions that "*CQP ought to be accepted in full*" and therefore the conclusion reached that the competing evidence

given by Br Hill was untruthful, 'logic' doesn't come into it, despite counsel-assisting's submission at [302]. Forensic judgments as to veracity are meant to be made upon an assessment of the weight of evidence.

39. It is submitted here that an orthodox and fair testing of the weight of the competing evidence using well-settled forensic techniques cannot resolve the competing versions to the required standard. It is submitted that the only appropriate finding available to the Commission is that the terms of the conversation between CQP and Br Hill cannot be determined to the level of comfortable satisfaction required before making a condemnatory finding against Br Hill. The submission of counsel assisting at [303] should be rejected.

315 Brother Hill did not have a recollection of consulting with Brother Turton to determine if other allegations had been made against Dominic and his evidence was that they were no longer in regular contact. Brother Hill should have checked the files on Dominic, particularly if he was unable to or did not make inquiries with Brother Turton. Had he done so, he likely would have seen that there had been at least two prior allegations against Dominic.

40. Br Hill accepts it was appropriate to conduct further inquiries of the available records relating to Br Dominic. The evidence given by Br Hill is that he probably did conduct those inquiries although he has no specific memory of doing so (Hill T18083: 28-30).
41. There is insufficient evidence to support a finding that Br Hill failed to check the available records, or that this would have revealed at least two prior allegations.

316 Brother Hill should have informed the CEC of the new allegations brought to his attention as they were relevant to assessing the appropriate response to the complaint by CNO. He did not and Dominic remained in his position as principal of Riverview for another six months.

42. Br Hill accepts that he did not inform the CEC of the allegations which were brought to his attention by Bishop Malone which are accepted to have been brought to his attention in the middle of 1996.
43. The complaint brought to his attention by Bishop Malone was unspecific and limited to an impression that Br Dominic has engaged in inappropriate conduct in the past (Hill T18082: 19-36). In order to seek further details Br Hill contacted CQP as a former student to ascertain the nature of the inappropriate conduct.
44. Br Hill's evidence is that CQP disclosed boundary violations which he had witnessed happening to other students, limited to "generalised inappropriate touching", but not

that CQP had experienced abuse himself and nothing to the degree described by CQP in his evidence before the commission (Hill T24675: 10-16).

45. It is respectfully submitted that Br Hill's recollection of the information provided to him by CQP should be preferred.
46. In any event, the Commission ought find that both CQP and Br Hill were witnesses of truth who did their best to assist the Commission on this issue.
47. Accordingly, Br Hill was in a position where he had been provided limited information about inappropriate touching, with no complainant to verify any allegations. While that information was sufficient to withdraw his appointment as headmaster in light of community sentiment, Br Hill did not have sufficient, verified particulars with which inform third parties such as the CEC.

317 No action was taken by Brother Hill to seek to have Dominic removed from his position as principal of Riverview in the latter half of 1996, notwithstanding the objections to his appointment to St Francis Xavier's. This strongly suggests that Brother Hill's motivation was to protect the Marist Brothers from scandal, rather than to protect the children of either school from the risk of sexual abuse by Dominic.

48. The issue of Br Hill being motivated by avoiding scandal was not put to Br Hill. It would be inappropriate to make a finding to that effect.
49. Notwithstanding the above, it is submitted that Br Hill's evidence about the limited information he was provided by Bishop Malone and CQP placed him in a position where there was insufficient evidence to immediately remove Br Dominic, who was employed by, and was under the day to day supervision of, the CEC.
50. Br Hill gave evidence that if he had been in possession of the facts as he now understands them he would have acted differently. For example, his decision to send Br Dominic to the Wellsprings Programme in 1997 would have been "a ridiculous decision" if he had been armed with the facts as he now understands them (Hill T24693: 2-6) and Br Hill's failure to appropriately apologise or follow up with CQP is on account of the fact that Br Hill was not informed by CQP that he was a victim himself.
51. It is respectfully submitted that a fair reading of the evidence supports a finding that Br Hill was not in possession of the entirety of the evidence given by CQP and other victims of Br Dominic. Had Br Hill been in possession of the further information given to the Commission he would have acted differently. In the circumstances a finding that

Br Hill took insufficient steps to respond or was motivated by the preventing scandal is not available.

318 The reasons recorded in the minutes of the Provincial Council meeting for Dominic not taking up the appointment were false. Brother Hill and Bishop Malone each gave evidence that the appointment was withdrawn as a direct consequence of being informed of historical allegations of sexually inappropriate behaviour by Dominic. It was the collective responsibility of the Provincial Council to record accurate and frank minutes. To record in the minutes that ill-health was the reason Dominic did not take the appointment was deliberately misleading. It created the impression on the record that no complaints had been received. It was deliberately misleading and did, in fact, mislead Brother Carroll.

52. Bishop Malone gave evidence that he could not recall the nature of the complaints he received but that there were 'warning bells' which he detected, which "*were the sort of warning bells around issues of inappropriate sexual behaviour*" (Malone T17763: 10-11, 29-30, T17764: 3-4).
53. Br Hill conducted further inquiries through CQP to ascertain the nature of the 'warning bells' which Bishop Malone had raised and it is his evidence that CQP only disclosed what Br Hill understood to be "generalised inappropriate touching" which he witnessed but did not experience himself (Hill T24675: 10-16).
54. It is respectfully submitted that the decision to withdraw the appointment was a result of inappropriate touching but not behaviour which could be classified as 'historical allegations of sexually inappropriate behaviour by Dominic'.
55. While Br Dominic was experiencing ill-health at the time his posting was withdraw, Br Hill accepts and regrets that the Provincial Council minutes make no reference to the complaints raised by Bishop Malone.
56. There was no evidence as to who recorded the Provincial Council minutes or whether the complaint raised by Bishop Malone was discussed in that meeting. In the circumstances a finding that the records were deliberately misleading is not available.

333 Brother Hill ceased as Provincial in 2001. He said that he would have had a conversation with the Brother who took over from him and told him that Dominic should not have unsupervised contact with children. There is no documentary record of that conversation or of Brother Hill's conclusion.

57. Br Hill accepts that there was no documentary record of his conversation or conclusion that Br Dominic should not have unsupervised contact with children.
58. It is respectfully submitted that his evidence that such a conversation did take place ought to be accepted and supported by the evidence that Br Dominic did not have a role within a classroom with unsupervised access to children for the remainder of his career.

335 That appointment was made notwithstanding the conclusion by Brother Hill that Dominic was not fit to have unsupervised access to children. Although it was not a teaching position, it was an appointment to a school which carried an obvious risk that Dominic could have unsupervised contact with children. Dominic should not have been appointed to any role within a school, given the history of complaints against him and the risk he posed to children.

59. Br Hill accepts that it was an unacceptable risk to have Br Dominic appointed to a non-teaching role within a school.

337 That Dominic could be appointed to another role in a school environment in 2005, despite the 'deafening' alarm bells by 2001, is a serious indictment on the state of communication and record-keeping within the Marist Brothers. At the very least, Brother Hill should have ensured the reasons for Dominic's appointment to a secretarial role outside of a school were properly documented. The appointment was a serious failure on the part of the Marist Brothers, and it should never have happened.

60. Br Hill acknowledges that the reasons for Br Dominic's appointment to a secretarial role outside of a school should have been properly documented. It was Br Hill's evidence that he believes he would have recorded his decision.
61. Despite the apparent absence of a documentary trail, it is open to find that Br Hill's decision to remove Br Dominic from a teaching role was communicated to subsequent leadership teams, as evidenced by the fact that a second secretarial appointment role was made in 2005.
62. In making this submission Br Hill does not resile from his admission that to place Br Dominic in a non-teaching role within a school was an unacceptable risk, albeit a decision he did not personally make.

345 Brother Hill also knew:

a. in July 1996, of a complaint by CNO that included allegations of inappropriate behaviour by Dominic on at least three occasions, and included inappropriate touching

b. in 1996, of a complaint by CQP that Dominic had rubbed his erection against him and other boys in the classroom, touched their legs and put his hand inside their shorts and shirts, at Marist Brothers Hamilton in the 1970s

63. Br Hill's uncontested evidence is that he was only aware of the complaint made by CNO referring to one inappropriate comment.
64. Br Hill's evidence is that CQP did not disclose to him the fact that CQP was sexually assaulted by Br Dominic, or details of students being subjected to behaviour such as Br Dominic rubbing his erection against their backs.
65. Br Hill accepts that he was told by CQP that Br Dominic would touch other students on the head and thigh. It is submitted respectfully that CQP is mistaken recollection of disclosing the further information, including Br Dominic rubbing his erect penis on CQP and other students and touching their chests.
66. It is submitted that Br Hill would have acted differently if he had been armed with the further information. The steps he would have taken would include not referring Br Dominic to the Wellsprings Programme in 1997 and ensuring that he followed up with CQP by initiating pastoral measures and keeping him informed of progress of any investigation which may have been implemented.

Brother Patrick

406 It is submitted that the evidence establishes that Brother Turton told Brother Hill that several complaints had been made about Patrick.

67. Br Hill acknowledged that although he could not recall it, Br Turton may have discussed with him the complaints received about Br Patrick (T18096: 29-30).

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.

68. 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.
69. 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.

459 It is submitted that it was unreasonable of Brother Hill to conclude that, because the police did not proceed to charge Patrick, his job was done. He knew that at this time Patrick was tutoring boarders in the evening at Marist College Ashgrove. He was also aware of other complaints about Patrick from his handover with Brother Turton.

70. Br Hill's decision making as to the appropriate steps to take in response to Bishop Malone's letter was not solely informed by the fact that the police did not proceed to charge Patrick.
71. At the time in question Br Hill was aware of a number of facts including that the police chose not to charge Br Patrick; that there had been a number of complaints received; and that Br Turton had implemented a monitoring regime at Ashgrove College with the

principal and counsellor which was, to his knowledge at the time, in successful operation.

72. It is respectfully submitted that while Br Hill's would, with the benefit of hindsight, acted differently, his response at the time was considered and not unreasonable.

460 In light of this further information, Brother Hill should have made further enquiries to satisfy himself that Patrick did not have access to children in a way that might permit inappropriate touching. There is no evidence to suggest he did so. Such enquiries would logically include consulting the records held by the Marist Brothers relating to Patrick, which would have revealed the incident with the two boys during a tutoring session at Marist College Ashgrove only four years prior.

73. The complaint by the two Ashgrove students was investigated in accordance with the Church's Protocol in place at the time and the only available evidence is that there was a finding that the behaviour of Br Patrick was not a serious matter at all (Turton T17984:32-35).

74. The day to day supervision of Br Patrick fell to the principal of Ashgrove College who at the time of the incident with the two boys and in 1996 was Br Terrence Heinrich, who was not called to give evidence.

75. The issue of whether further safeguards were implemented following the complaint made by the two boys was not explored. It is open to find that whatever supervision which was in place by the time Br Hill became Provincial was instituted in consideration of any concerns raised by the complaint by the two boys.

473 Notwithstanding that police did not proceed to charge Patrick, it is inconceivable that CNJ's allegations did not raise alarm bells for Brother Hill, particularly in light of his knowledge of Patrick's ongoing tutoring role. Brother Hill also knew of other complaints about Patrick from his handover with Brother Turton, and of the complaint conveyed by Bishop Malone in 1996.

76. There is no evidence that Br Hill was made aware of the substance of CNJ's police complaint.

77. The day to day supervision of Br Patrick fell to the principal of Ashgrove College who at the time of the incident with the two boys and in 1996 was Br Terrence Heinrich, who was well aware of the history of complaints about Br Patrick. Br Heinrich was not called to give evidence.

474 By this stage, Brother Hill must have recognised that Patrick was a potential danger to children and removed him from the school environment altogether. He did not do so, and this was a serious failure on his part. Brother Hill's failure to take appropriate action meant that children at Marist Brothers Ashgrove, including particularly vulnerable children, were at risk of being sexually abused by Patrick. This was inexcusable.

78. Br Hill accepts that Br Patrick should not have been in a school environment after the complaints which were made against him. However the failure to remove him cannot in all fairness be sheeted home solely to Br Hill.

480 It may be inferred from Patrick's unsigned statement that, as at April 2001, whatever special 'vigilance' or 'supervision' applied, he was then tutoring students in a room without other adults present. Given the history of complaints in relation to him, allowing him that access to children was reckless and in total disregard for the safety of the children at Marist College Ashgrove. It should not have occurred.

79. It is submitted that there is no evidence to support an inference that Br Patrick was tutoring children unsupervised as at April 2001. A proper reading of the unsigned statement is that the tutoring lessons took place in unused dormitory rooms, but not that the rooms were unoccupied by other tutors or adults when tutorials were being conducted.

485 Also on 11 April 2001, Brother Hill wrote to the Brothers informing them of the charges and said it would be inappropriate for him to speculate on the matter but that 'it is evident that a most unfortunate misunderstanding' had occurred. It is submitted that Brother Hill had no basis to tell the Brothers that the complaint was an 'unfortunate misunderstanding', particularly given his knowledge of the serious allegations of inappropriate touching made by CNJ.

80. Whatever the merits of Br Hill's phraseology, which may have been no more than euphemistic, for the reasons submitted above, there should not be finding that he knew of the serious allegations of inappropriate touching made by CNJ.

505 It is submitted that Brother Hill's evidence that Task Force Argos narrowed or qualified their request for information from the Marist Brothers to only those complaints which were the subject of a police investigation is illogical and inherently unlikely. The documentary evidence records the clear and broad terms of the request. Information about prior police investigations was available to Detective Sergeant Marsh, and indeed he obtained some of that information, through enquiries with his counterparts at NSW Police.

81. It is true that there is documentary evidence which records a broad request.
82. Br Hill's evidence is that the original broader request was qualified and narrowed during a phone conversation with Detective Sergeant Marsh.
83. Br Hill said that he had a fairly clear memory of the conversation (Hill T18112: 5) whereas Detective Sergeant Marsh conceded that he had no recollection of the conversation and his evidence was given entirely based upon the diary records he kept at the time, which do not assist upon this issue.
84. In contrast, Br Hill's recollection of events is supported by the file note prepared by Pat Mullins on 12 April 2001 which states:

Det Sgt Scott March, Task Force Argos

What?>

Never been charged with any criminal offence

(Exhibit 43-42 CTJH.053.70016.0137_R)

A fair reading of this handwritten note is that during a phone conversation between Pat Mullins and D/S Marsh the question of 'what information did the police require' was asked, to which the response was that they required confirmation that Br Patrick had 'never been charged with a criminal offence'.

85. It is submitted that Br Hill's evidence should be preferred over D/S Marsh's and that there is no basis to make a finding that it is illogical or inherently unlikely that the scope of the police's request was narrowed.

507 In any event, had the request been limited in the manner contended by Brother Hill (to complaints that had been the subject of police investigation) his response was still deficient. He did not refer to the fact that there had been two separate complaints to police: one by CNJ in 1998 and another by CNK in 1993, about which Brother Hill was aware.

86. It is uncontested that Br Hill had referred the handling of the police request to Mr Mullins.
87. If there was a deficiency in the production of documents to the police then Br Hill is only responsible for it to the extent that he should have taken a more active role in the dealing with the police on this issue. He regrets that.
88. D/S Marsh was informed by Br Hill that there were multiple complaints made against Br Patrick (Hill T18109: 1-16). If the documents provided by Mullins in response to his request were deficient then he would have more likely than not sought the further

documentation available in light of his knowledge that there had been several complaints already.

89. Br Hill was a member of the National Committee for Professional Standards from its inception in 1996 to 2007. Part of his role on this committee was to develop policy, procedures and protocols for responding to complaints made against Church personnel (Statement of Br Hill STAT.1178.001.0001 [23]). One of the principal tenets of these policies developed (such as the Towards Healing Protocol) was that Church entities were to fully co-operate with police at all times. Br Hill respectfully submits that he has always to the best of his ability adhered to all the protocols and policies he developed.

509 It is submitted that Brother Hill's evidence that he informed Detective Sergeant Marsh verbally of the other complaints documented on Patrick's file should be rejected.

510 It follows that:

- a. Brother Hill's fax to Detective Sergeant Marsh on 11 April 2001, in which he stated having checked the archives that Patrick was 'the subject of a complaint brought to the attention of my predecessor in 1993' and 'the police made further investigations', and**
- b. Brother Hill's instruction to Mr Mullins, which resulted in Mr Mullins letter to Detective Sergeant Marsh on 18 April 2001, that the Marist Brothers records reveal that Patrick had never been charged with a criminal offence, were not responsive to the request by Task Force Argos. Each failed to disclose the prior complaints of CQY, CQZ, CNK or the two boys at Marist College Ashgrove which were documented on the file.**

90. It is submitted that Br Hill's evidence should be preferred to the interpretation proposed by counsel assisting.
91. A fair reading of the facts reveals that Br Hill acted in accordance with the modified requests made to him, as subsequently clarified by Pat Mullins with the police, and not in a way which was deficient or misleading.

Conclusion

92. In making these submissions Br Hill 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..
93. Br Hill respectfully requests that the Commission consider the following in evaluating his testimony:
- a. the frank manner in which he gave his evidence;
 - b. his willingness to make concessions against his own interests; and
 - c. his long and distinguished service as a religious.
94. In particular, Br Hill 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.

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