Submissions in Response to Revised Submissions of Counsel Assisting – Case Study 4

from

the Truth Justice and Healing Council

Royal Commission into Institutional Responses to Child Sexual Abuse

Case Study No. 4 | Towards Healing

15 September 2014
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1 Reflections, and the course of submissions

1 These submissions are made on behalf of the Truth Justice and Healing Council (the Council) and the various Catholic Church bodies granted leave to appear at the four separate hearings together comprising “Case Study 4”, namely the Archdiocese of Brisbane, the Diocese of Lismore, the Marist Brothers, CCI, and the Professional Standards Offices of NSW and Queensland (together, the Church parties).

2 These submission reply to substantially revised submissions issued by senior and junior counsel assisting (CA) on 12 August 2014. Those submissions (the Revised CA Submissions) came into existence in unusual circumstances, which are referred to in section 1.2 below.

1.1 Reflections on the Hearings

3 The Church parties wish to acknowledge again the strength and courage of each of the four victims of sexual abuse who appeared at the hearings and gave evidence. The Church parties support these people, and any others who wish to tell their story to the Commission, wholeheartedly.

4 The hearings were a sobering reminder to the Church parties, and to the whole Church in Australia, that the work which led to the creation and adoption of Towards Healing, and the various subsequent improvements to it, is not finished. There is plainly more to be done by the Church, in order for it to be able to say that it responds effectively to victims of sexual abuse committed by its clergy and personnel in all cases that come forward, and assists victims in every case with their healing.

5 The Church parties readily acknowledge that mistakes were made in the Towards Healing processes which were the subject of these hearings. The Church parties apologise unreservedly for the stress, anxiety and pain those mistakes must have caused the victims and their families and friends. The Church parties are committed to improving their processes, and assure each of the victims in the case studies that they have thought deeply about the problems which have been illustrated in these hearings and will make every effort to ensure they do not occur again.

6 Towards Healing outlines a way in which Church bodies seek to provide a just and compassionate response to victims of child sexual abuse by clergy and religious and other Church personnel.

7 How such a response should be constituted, and calibrated, are difficult questions. One instance of that difficulty is that Towards Healing exists side by side with the civil justice system, with its very different approach to “justice”, and its indifference to “compassion”. Another is that – Towards Healing not being a duplicate common law damages process – there is a real sense in which nothing (not money, not counselling, not human sympathy and compassion) can ever make up for what the victim has suffered.

8 These problems, among many others, are the intractable result of the crime of child sexual abuse.

9 The Church parties acknowledge and accept that Towards Healing is not perfect, in either design or implementation. These four case studies have shone a light on how Towards Healing has worked in practice in particular cases, and the picture revealed has been disappointing in some
respects. The procedures have not always worked as they should have. Yet while such
imperfections are plain, Towards Healing has also succeeded in offering and providing valuable
assistance and support to many victims.

10 These four case studies reflect part of that complex story.

1.2 The course of submissions

11 The four separate hearings in Case Study 4 took place in December 2013 and January 2014.
Thereafter, senior counsel assisting (SCA) served lengthy written submissions (totalling 178
pages) dated 4 March 2014 (the Original SCA Submissions).

12 The Original SCA Submissions dealt with some but by no means all of the evidentiary material,
and then proposed a total of 88 “available findings”, many of which themselves contained sub-
findings. Those proposed “findings” appeared to be put forward as available findings of fact.

13 The Church parties had serious concerns about the general approach, lack of balance and lack of
fairness of the Original SCA Submissions. Those concerns included the following:

(a) the Original SCA Submissions frequently proceeded on the assumed footing that it was
imperative that the terms of the Towards Healing protocol, including every procedural
detail, be followed precisely and exactly, and that any departure from the literal terms of
the document amounted to a breach of the protocol, or an “inconsistency” with it, which
necessarily should attract criticism, sometimes heavy criticism;

(b) such criticism was frequently directed at individuals rather than institutions;

(c) such departures were often used as the basis for a proposed finding that the relevant
individual had not been “just” or “compassionate” - obviously a very serious outcome for
those individuals;

(d) in a number of instances, adverse findings were proposed in relation to individuals
notwithstanding that the substance of the relevant proposition had not been clearly put to
the individual so as to afford the individual a genuine opportunity to answer the thrust of
the relevant proposition or suggested finding;

(e) some of the criticisms of individuals were not sustained by, or fairly based on, the
evidence;

(f) some of the matters which were the subject of proposed findings were relatively minor,
while many others raised no issues of general or institutional or systemic significance;

(g) proposed “findings” that particular people or courses of action were not “just”, or
“compassionate”, were fundamentally inappropriate, given among other things the
necessarily subjective elements involved in any such assessment, and the palpably good
intentions of the individuals concerned;

(h) in many instances the subject matter was simply inapt for a “finding” of “fact” at all - for
example where the subject matter concerned whether the Royal Commission might
consider a particular practice or approach, as revealed or demonstrated by the evidence, to be desirable or appropriate;

(i) the vast majority of the proposed findings were negative in nature, with almost no recognition of positive features of either the process or the evidence;

(j) there was little if any attempt to acknowledge that both the design and the implementation of *Towards Healing* had evolved and developed considerably over the 17 years under review, or to place either the protocol itself, or each of the four case studies chosen (from some 1,700 cases over that period), in its historical context.

14 In the light of such concerns, the Church parties prepared a comprehensive and detailed response to the Original SCA Submissions, dated and lodged on 14 April 2014 (*the April Reply Submissions*). The April Reply Submissions were 157 pages in length, and were the product of considerable time and care, as was necessary having regard to the nature and content of the Original SCA Submissions.

15 The April Reply Submissions addressed the concerns summarised in paragraph 13 above, as well as other general concerns about the Original SCA Submissions. They went on to respond in detail both to all the evidentiary matters dealt with by SCA and also to all the 88 proposed “available findings”.

16 The April Reply Submissions accepted some of the 88 proposed findings but did not accept many others. In some instances that was because the Church parties considered that they were not available on the evidence; in other instances the non-acceptance was a consequence of the manner in which the Original SCA Submissions had been presented. The Church parties were obliged to decline to accept the appropriateness of some proposed “findings” as framed (for example where they were phrased in a rolled up way, as a supposed example of a lack of justice or compassion), even though the Church parties may have accepted that the factual substratum of those proposed findings was accurate.

17 Both the Original SCA Submissions and the April Reply Submissions were in due course posted by the Royal Commission on the Commission’s website, along with the submissions of various other parties. As a result, heavy criticisms of various individuals, which the Church parties in many instances regarded as unfair¹ and which have not been repeated in the Revised CA Submissions, were published to the world at large. That was the cause of considerable dismay and distress for those individuals.

18 However, some time later, in June 2014, both the Original SCA Submissions and the April Reply Submissions, and all other submissions relating to Case Study 4, were removed from the Commission’s website. The Church parties (but apparently not all the other parties) were told that revised submissions were going to be produced by SCA.

19 On 12 August 2014, the Revised CA Submissions were issued. They constitute a radical recasting of the Original SCA Submissions. They are not framed as submissions in reply. Instead, the Revised CA Submissions are put forward as though they merely replace the Original SCA Submissions. Yet they expressly refer to some, and take into account and effectively accept many more, of the points made by the Church parties in the April Reply Submissions.

¹ As to which see sections 2.3, 2.4 and 2.5 below.
The Revised CA Submissions are in four parts, one part for each of the four separate case studies comprising Case Study 4. Paragraphs 1 - 26 of each of those four parts are identical. Paragraphs 10 - 26 respond directly to some but not all of the overriding concerns of the Church parties referred to at paragraph 13 above.

The Church parties’ specific response to those paragraphs 1 - 26 is found in chapter 2 of these Submissions, General Issues.

However, at the outset the Church parties note that the Revised CA Submissions largely accept and adopt (either explicitly or implicitly) much of what was said by the Church parties in the April Reply Submissions. They greatly reduce the attention given to some of the more minor matters. They abandon many of the findings directed at particular individuals. The number of “available findings” has been reduced from 88 to 24. The number of proposed findings relating to justice and compassion has been reduced from 15 to 1.

In our respectful submission, the Revised CA Submissions adopt a notably fairer and more balanced approach to the matter. The Church parties welcome this significant, albeit belated, change in approach.

However, the Council and all the Church parties express their concern about the unfortunate and inappropriate way in which this process has unfolded.

The content and general approach of the Original SCA Submissions were unreasonable and unfair, as appears to have been acknowledged by the major changes made to those submissions as now revised, and compelled the Church parties to produce exhaustive responses which should never have been necessary.

All parties, including the Church parties, have now been asked to submit revised written submissions in response to the completely recast Revised CA Submissions. While the latter are, as noted above, considerably more balanced and reasonable, nevertheless the Church parties have had to revisit the entirety of these four case studies and consider afresh what matters need to be put before the Royal Commission in response thereto. That is a double burden which should not have been necessary.

As a result of the very substantial changes in the Revised CA Submissions, the Church parties have prepared the following revised submissions on each of the four case studies. These submissions (the Revised Reply Submissions) are considerably shorter than the April Reply Submissions, for the reasons outlined in paragraphs 19 - 23 above. However, the Church parties also adopt and reiterate chapter 1 (“General Issues”) of the April Reply Submissions.2

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2 The Church parties note that in paragraph 79 of chapter 1 of the April Reply Submissions the abuse of Mrs Isaacs is referred to as having occurred in 1968-69. The correct time period is 1967-68.
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Blackstone Chambers

Jane Needham SC  
13th Floor St James' Hall

John Gooley  
Blackstone Chambers

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15 September 2014
2 General Issues

2.1 Towards Healing and the concept of redress

1 Towards Healing is a national scheme which has been in operation since 1996. Over 1,700 people have chosen to use it. Some have been unhappy, to a greater or lesser extent, with the process or the outcome, but the evidence demonstrates that it has provided an effective source of redress for many.

2 As the Church parties observed in the April Reply Submissions, Towards Healing offers a person who has been abused, by a priest or religious or other Church personnel, the opportunity (through a facilitation) to tell his or her story, personally and directly, to someone in authority in the Church, who will accept responsibility for what happened to him or her, acknowledge the damage he or she has suffered, give a sincere apology, and offer pastoral care and reparation: see TJHC September 2013 Submission, section 1 paragraph 1, p 11; Opening T2495:1-10.

3 In those ways, Towards Healing offers a form of redress to victims of child sexual abuse by Church personnel.

4 In the Melbourne Archdiocese, as the Royal Commission is aware, since 1996 a different form of redress has been offered by the Church to victims, known as the Melbourne Response. Under that scheme, an independent Commissioner investigates the complaint of abuse, and if he upholds the complaint an amount of monetary compensation can be awarded by an independent Compensation Panel, up to a cap which is presently $75,000.

5 A counselling service called Carelink is also made available to complainants, who thereby are given access to free counselling and related services on an un-capped, indefinite basis.

6 No other non-government institution in Australia has instigated a national redress scheme for victims of child sexual abuse. Towards Healing stands alone in that regard.

7 The two Church schemes are, as is apparent, conceptually and structurally different. For example, under Towards Healing there is a particular emphasis on the importance of pastoral care and support, and on a meeting between the victim and a senior person from the relevant Church Authority. The amounts paid by way of reparation are uncapped, and are determined by each relevant Church Authority, usually after discussion with the victim, with the result that those amounts can and do vary considerably from case to case and from Church Authority to Church Authority. By contrast, under the Melbourne Response, there is a particular emphasis on the independence of the three component parts of the scheme from the Archdiocese, there is usually no meeting with a senior person from the Church, and the amounts of compensation are less variable as a result both of the cap and of their being decided upon by a standing Compensation Panel.

8 The Royal Commission is charged with considering among other things whether a redress scheme or schemes might be desirable or appropriate for victims of institutional child sexual abuse, and if so what form such a scheme or schemes might take. So far as the Church parties are aware, Towards Healing is the only national non-government scheme currently in existence in Australia.
In its recent public hearing in relation to the *Melbourne Response*, Case Study 16, the Royal Commission specifically inquired into such matters as the rationale for the scheme, the historical context within which it came into being, the reasons for its being shaped as it was, and who was consulted in relation to its development. However, in Case Study 4 in relation to *Towards Healing*, a similar approach was not taken. There was simply a narrow focus on four particular cases out of 1,700, each of them necessarily unique to its own facts.

As a result the case study made virtually no attempt to explore how the scheme has worked for the many others who have accessed *Towards Healing*. No evidence was sought or adduced from the people who designed the scheme or from those who have been involved in reviewing it. A submission by the Church parties that “for many, many people, *Towards Healing* has been a source of compassion and support which has been of real value to them” was met with an apparently sceptical “call” for “data” supporting that proposition. The Church parties duly provided the Commission with a good deal of material in response to that “call”, and also adduced evidence from numerous witnesses to the effect that in their extensive experience *Towards Healing* had indeed been of such value to many people. None of that material or that evidence has been referred to in either the Original SCA Submissions or the Revised CA Submissions.

These matters are of concern to the Church parties. One reason for that concern is that in the Original SCA Submissions there was an indication (at paragraph 2) that “submissions about *Towards Healing* generally will be made at a later time”, but in the Revised CA Submissions (also at paragraph 2), there is no such indication.

On the other hand, the Revised CA Submissions now contain paragraph 4, which lists twelve topics now described as “systemic issues”, which it is said “will be the subject of further consideration by the Royal Commission.” The topics listed are not discussed or analysed, nor are they put forward as matters to which responses or comments are sought. Yet such topics would seem to go to the heart of what the Commission should be considering.

However, the Revised CA Submissions deal only, as did the Original SCA Submissions, with the details of what happened in the four selected cases. They do not attempt any overall assessment or analysis of *Towards Healing* as a way of affording redress to victims, or of its history or its strengths and weaknesses.

In these circumstances, the Church parties are uncertain as to whether there is to be a further opportunity at some future time for “submissions about *Towards Healing* generally”.

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3 See also section 2.5 below.
4 Opening address by Mr Gray SC, 9 December 2013, at T2499:21.
5 T2746:28.
6 Letter from Gilbert + Tobin to Tony Giugni dated 23 May 2014 with enclosures.
7 The following material was enclosed at Part A of the 23 May 2014 letter: letters of appreciation; handwritten notes; facilitation reports; emails; answers to questionnaires and the like. The following material was enclosed at Part B with the 23 May 2014 letter: Joan Isaacs’ diary entry dated 22 April 1999; Bernadette Rogers’ evidence in Ingham at T2939:33; Emma Fenby’s evidence in Ingham at T2990:36; Emma Fenby’s evidence in Ingham at T2992:3; Deacon Wallace’s evidence at T3028:3; Patrick Mullins’ evidence in Ingham at T2902:15; Brother Turton’s evidence in DG at T3228:14; DK’s evidence in DK at T3309:40; DL’s evidence in DK at T3323:41; Michael Salmon’s evidence in Ingham/DK at T3605:31 and at T3616:34; Statement of Michael Salmon in Ingham in paragraphs 109-110, 112; Evidence of Bishop William Morris at T668:16 of the Public Hearing (Case Study 6, Day Q6) held on 24 February 2014; Evidence of Brazil at transcript page T5737:40 of the Public Hearing (Case Study 6, Day Q6) held on 24 February 2014; Evidence of Msgr Usher at transcript page T6378:21 of the Public Hearing (Case Study 8, Day 61) held on 25 March 2014; Evidence of Msgr Usher at transcript page T6386-T6388 of the Public Hearing (Case Study 8, Day 61) held on 25 March 2014; Evidence of Archbishop Philip Wilson at transcript page TSA1487:3 of the Public Hearing (Case Study 9, Day SA12) held on 24 March 2014.
15 In case there is not to be such an opportunity, the Church parties respectfully refer the Royal Commission to the submission by the Council in response to Issues Paper 2, lodged on 30 September 2013 (TJHC September 2013 Submission), and to the opening address by Mr Gray SC on 9 December 2013, at transcript pages 2490 to 2504 (Opening). As discussed in some detail in those submissions, the features of Towards Healing as a means of offering redress to victims include the following:

(a) it has a written protocol setting out its purpose, approach and procedures, which is publicly accessible;

(b) it has been subject to a series of independent reviews, and has been updated and amended in line with the recommendations emerging from those reviews;

(c) it works through a nation-wide network of state and territory offices;

(d) it is a flexible and informal process, readily adaptable to meet an individual victim’s needs;

(e) it provides a supported entry process for victims, through the use of trained contact persons to meet victims and assist them in telling their story;

(f) it emphasises the pastoral and healing aspects of the process, including by involving the Church Authority in the process;

(g) it ensures that a senior representative from the Church Authority hears in person from the victim;

(h) it provides the victim with a direct apology, given personally by a Church Leader;

(i) the possible forms which reparation might take are not limited, and can include, for example, any one or more of provision of counselling, payment of various expenses (sometimes on an ongoing basis), and a lump sum payment;

(j) the nature and amount of any reparation payment is discussed and agreed by consensus, on an individual basis, rather than determined by an external adjudicator;

(k) there is no cap on the amount which can be paid by way of financial reparation.

2.2 Towards Healing as a Code

16 The Revised CA Submissions in paragraphs 10 to 16 comment upon the concerns expressed by the Church parties, in the April Reply Submissions, in relation to the inappropriateness of treating Towards Healing as an inflexible code whose every procedural detail must be followed to the letter.

17 The propositions advanced in the April Reply Submissions (to the effect that the protocol is and was always intended to be a flexible one) have been interpreted in the Revised CA Submissions as serving merely to “excuse and justify” departures from and inconsistencies with the protocol, and as amounting to a submission that the “principles and procedures [of Towards Healing] are in effect optional”.

18 This is a distortion of the point that was made by the Church parties. The Church parties dealt with this subject matter in particular at chapter 1.3, paragraphs 16 - 24 of the April Reply Submissions. The Church parties repeat and reiterate those submissions.  

19 The Church parties certainly accept that Towards Healing provides criteria by which its implementation may be judged. However, they do not accept that it is never appropriate to deviate from the Towards Healing procedures in individual cases. Departures from the protocol need not be or reflect, and should not be treated as, a failure to honour its spirit and intent. They may indeed reflect precisely the opposite, namely a determination to honour its spirit and intent by taking a different and more appropriate approach in the particular circumstances of an individual case. Such departures are by no means necessarily a sign that there has been any failure to adhere to the values of justice and compassion.

20 However, the Church parties note that notwithstanding the comments made at paragraphs 10 to 16, the Revised CA Submissions in each of the four case studies have in fact significantly modified and reduced the available findings, such that there are now far fewer criticisms founded on a mere departure from the Towards Healing protocol. The Church parties welcome that change, which amounts to a more reasonable and balanced approach.

2.3 Justice and Compassion

21 The Revised CA Submissions in paragraphs 13 to 14 also comment upon the concerns expressed by the Church parties, in the April Reply Submissions, in relation to the way in which the Original SCA submissions and the original proposed findings contained therein had repeatedly proceeded on the assumed footing that wherever there was an instance of a procedure prescribed by the protocol not being followed, or being followed imperfectly or incompletely, that amounted to a failure of justice and/or compassion.

22 The Revised CA Submissions focus (in paragraphs 13 to 14) on the particular question of whether there needed to be evidence of the meaning of these words. That focus avoids dealing with the substance of what was being said by the Church parties, namely that if the Church parties, and in particular individuals, are to be saddled with heavy findings of a Royal Commission to the effect that they have not met the standards of justice and/or compassion, then fairness and justice also demand that they be given a chance to be told what is said to be the content of that standard that they are alleged to have failed to meet.

23 The Original SCA Submissions used each of the terms “just” and “compassionate” as a yardstick by which to measure and evaluate certain conduct, without ever defining or explaining the type or nature of the conduct which the Commission (or the individual concerned) would (or should) recognise as meeting that yardstick.

24 The Church parties dealt with this subject matter in particular at chapter 1.7, paragraphs 42 - 67 of the April Reply Submissions. The Church parties repeat and reiterate those submissions.

25 The Church parties again note, however, that notwithstanding the comments made in paragraphs 13 and 14 of the Revised CA Submissions, in fact in the body of the Revised CA Submissions all
but one of the original fifteen proposed available findings which contained the words "just/ice" or "compassion/ate" have been withdrawn. Only proposed finding 2 in relation to Mrs Isaacs’ case study contains such words. The Church parties welcome that change also, which again reflects a more reasonable and balanced approach.

2.4 Procedural Fairness

26 In the April Reply Submissions, the Church parties submitted that adverse findings should not be proposed against a witness where the substance of the relevant proposition had not been put to that individual directly and fully so as to afford the individual a genuine opportunity to answer the thrust of the suggested finding: see in particular section 1.4, paragraphs 25 - 28 of those submissions.

27 In paragraphs 18 to 19 of the Revised CA Submissions, it is stated that “this submission is not accepted”. That is a remarkable stance, both wrong in law and unfortunate as a general approach by counsel assisting in a Royal Commission.

28 However, the Church parties note that the Revised CA Submissions then in fact go on, in paragraphs 20 (second sentence), 21 and 22 (first sentence), in substance to acknowledge the very point which the Church parties were making. The Church parties welcome that acknowledgement, and urge the Commission to accept the submission of the Church parties.

29 The Church parties also note that, again, with few exceptions (which are dealt with in sections 3 - 6 of these submissions), the Revised CA Submissions (unlike the Original SCA Submissions) do not in fact propose adverse findings against individuals in circumstances where procedural fairness was not afforded in this way.

2.5 Availability of other witnesses

30 Paragraphs 24 to 26 of the Revised CA Submissions take issue with what the Church parties said in section 1.8 of the April Reply Submissions, especially at paragraphs 76 - 78, as to the availability of other and wider evidentiary material concerning the development and operation of Towards Healing.

31 The Church parties repeat and reiterate section 1.8 of the April Reply Submissions. The Church parties did offer to make available evidence from witnesses on the development of the Towards Healing process generally, such as Sr Angela Ryan and Bishop Geoffrey Robinson. The response to that proposal was that the Commission did not want to receive evidence on that issue, but wished to restrict itself to the four case studies.

32 In addition, or as an alternative, the Church parties also offered to provide a presentation on the development and practical operation of Towards Healing. Such a presentation might have provided the Commission with useful information and context in advance of the hearings, for example on topics such as the historical setting, canon law, and the nature and extent of existing data and records.

33 That offer was not tied to any particular venue (as is asserted in paragraph 24 of the Revised CA Submissions). The proposal was a genuine and open attempt to ensure that the Commission had
as much information as the Church parties could provide about the background and functioning of the Towards Healing process. The Church parties remain more than willing to provide such information, whether by way of such a presentation or otherwise.

### 2.6 Generally as to possible findings

34 If the Royal Commission were disposed to consider or make an adverse finding in any interim or final report which is different in substance to the findings now proposed in the Revised CA Submissions, or where a relevant individual had not been afforded the opportunity to address the factual substance of such a finding, the Church parties request that notice be given of any such proposed finding and that the Church parties be invited to make submissions on it should they wish to do so.
3 Isaacs

3.1 Introduction

1 For this case study, the Church parties to which leave to appear was granted were the Council, the Catholic Archdiocese of Brisbane (the Archdiocese), the Office of Professional Standards, Queensland (PSO QLD), and Catholic Church Insurance (CCI) (together, the Church parties).

2 The Commission heard evidence from several witnesses in the case study regarding practices that were adopted in implementing Towards Healing in the Archdiocese in the late 1990s and early 2000s. It is clear that some of these early practices had a negative impact on the Towards Healing experience for Mrs Isaacs, and may well have done so for other complainants.

3 Such practices included:

(a) separating the financial component of the process from the pastoral aspects of the facilitation process;

(b) relying heavily on advice from insurers and lawyers, particularly with respect to matters of financial reparation / compensation without the requisite level of episcopal oversight;

(c) the use of deeds of release containing confidentiality clauses.

4 The present Archbishop of Brisbane, Archbishop Coleridge (appointed 2012), gave evidence that:

...we have been on a very long journey. In some ways, 14 years is not long at all, but in terms of what we have, as a church, learnt in that time, it has been quite remarkable. Things that were quite customary in the late 1990s, when Towards Healing was first implemented, would be judged totally unacceptable now.

5 Archbishop Coleridge gave as an example the perhaps misguided over-reliance of advisers:

Bishops and major superiors were like rabbits caught in a headlight. They didn’t know how to respond. That’s why, when a seemingly trusted and competent professional, like a lawyer or an insurer, came forward, saying, “This is the way forward”, bishops and major superiors were inclined to breathe a sigh of relief and say, “Yes, you are right”.

6 It is submitted that, as Archbishop Coleridge also observed, some of the failings in the handling of Mrs Isaacs’ case (particularly after the Towards Healing facilitation had occurred) may be attributed to a “drastic failure of oversight”, principally by the former Archbishop. The Archbishop readily accepted that this would be “totally unacceptable” now, although such lack of oversight...
was not uncommon in earlier times and undoubtedly impacted upon the handling of Mrs Isaacs’ case.

OVERVIEW OF JOAN ISAACS’ TOWARDS HEALING PROCESS

3.2 Joan Isaacs’ Evidence About the Abuse [Revised Submissions 27 - 33]

7 The Church parties generally accept the summary of evidence set out in paragraphs [27] to [33] of the Revised CA Submissions in relation to Mrs Isaacs (the Revised Submissions).

3.3 Criminal Trial [Revised Submissions 34 - 38]

8 The Church parties generally accept the summary of evidence set out in paragraphs [34] to [38] of the Revised Submissions.

9 In relation to paragraph [35], it is noted that the document which Dr Spence provided to Mrs Isaacs in September 1996 was the almost-finalised Towards Healing. That document described in detail, in a form accessible to victims, each step of the Towards Healing process.

3.4 Towards Healing Process [Revised Submissions 39 - 59]

10 The Church parties generally accept the summary of evidence set out in paragraphs [39] to [52] and [57] to [59] of the Revised Submissions. However the Church parties respectfully draw attention to the following additional features of the evidence.

11 In relation to paragraphs [40] - [50], Dr Robertson’s evidence in relation to the information provided to Mrs Isaacs prior to the facilitation was that:

(a) his handwritten note of 22 February 1999 that he spoke to Joan Isaacs and “explained about facilitated meetings” was consistent with his usual practice of explaining how the Towards Healing process worked;

(b) he had difficulty accepting that he did not explain the facilitation process to her; and

(c) nevertheless, he was sorry that Mrs Isaacs felt she was not adequately informed about what would happen at the facilitation.

12 In relation to paragraph [52], Mr Rolls gave evidence that at the time of Mrs Isaacs’ claim, there were two insurance policies with possible application to Mrs Isaacs’ claim, one with CCI (a 1994 Special Issues Policy) and one with Queensland Insurance Company (QIC). He said a concern at the time of writing the letter to Bishop Gerry dated 19 April 1999 was to ensure that no step

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16 Gerry T2723.17-23; Coleridge T2730:46-47.
17 Ex 4-2 at Tab 4.
18 Ex 4-5, at paragraphs [30] and [46]; Ex 4-2 at Tab 46.
19 T2564:47.
20 Ex 4-5 at paragraph [43].
21 Ex 4-7 at paragraph [39].
22 Ex 4-2 at Tab 18.
be taken which might jeopardise any claim by the Archdiocese against the QIC policy.23 The second half of the letter is focused on that issue. Mr Rolls also gave evidence that it was his recollection that it was also relevant to what he said in the first half.24

13 In relation to paragraphs [53] – [56], the Church parties note that Mr Rolls’ letter dated 19 April 1999 was not prescriptive as to what Dr Farrelly could or could not say at the facilitation. Its language was quite different: “I have suggested…”, “he will…”, etc. Moreover, Dr Farrelly told the Commission that he did not view his telephone conversation with Mr Rolls prior to the facilitation as “instructions”.25 He said he was willing to be advised by people who had experience in these matters26 and that consulting with those persons regarding insurance, compensation, liability and other matters appeared to be the prudent thing to do.27

14 Dr Farrelly said that within the context of the facilitation he was a “reasonably free agent”. He told the Commission:

“… when you look at the actual meeting, apologies were given, compensation was discussed, so even though Laurie and I had obviously had a discussion, as is obvious from the “drinks night” note, at the actual meeting the matters didn’t follow what’s written down there in note form.”28

15 In relation to paragraphs [57] – [59], the Church parties note that at the time of Mrs Isaacs’ complaint, Dr Farrelly had been, for five years prior to Mrs Isaacs’ facilitation, Judicial Vicar of the Regional Tribunal of Brisbane for the five dioceses of Queensland.29

3.5 Facilitation [Revised Submissions 60 - 70]

16 The Church parties generally accept the summary of evidence set out in paragraphs [60] to [70] of the Revised Submissions. However the Church parties respectfully draw attention to the following additional features of the evidence.

17 Ms Rogers gave evidence that her practice was to read material provided in advance of a facilitation in order to understand a victim’s needs.30 She said she would have seen the letter from Dr Robertson setting out the agenda and that she would have been aware “that was what the complainant wanted to talk about.”31 She said she knew that Mrs Isaacs’ needs were “apology, counselling, compensation.”32

18 Whilst she could not now independently recall Mrs Isaacs’ facilitation,33 Ms Rogers said her usual practice on the day of a facilitation was to meet with each party separately first to give them an opportunity to get to know her and to discuss the facilitation process and their expectations.34 During the facilitation, she would have the victim speak about their abuse and its impact upon

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23 Ex 4-7 at paragraph [46].
24 Ex 4-7 at paragraph [46].
27 T2644:45 - T2645:2.
29 Ex 4-10 Farrelly at paragraph [10].
32 T2617:25-27.
33 Ex 4-8 Rogers at paragraph [21].
34 Ex 4-8 at paragraph [17].
them and have the Church Authority listen. She would then encourage discussion around the victim’s needs.\textsuperscript{35} As is apparent from the whole of the evidence, Mrs Isaacs did indeed speak about the abuse and its impact upon her, Dr Farrelly as the Church Authority did listen and there was discussion of the three needs identified by Mrs Isaacs, namely, apology, counselling and compensation.

19 In relation to paragraphs [62] and [63], Mrs Isaacs gave evidence that after she finished telling her story at the facilitation, Dr Farrelly said words to the effect that “It just churns my guts” and “I don’t know how you survived what you survived”.\textsuperscript{36} Mrs Isaacs said she felt that Doctor Farrelly really “got it in his heart and in his stomach what happened to me” and that she felt it was a genuine comment.\textsuperscript{37}

20 Mrs Isaacs said Dr Farrelly then said words to the effect that “I’m offering you an apology. I’m very sorry you’ve had to go through all of what you’ve been through.”\textsuperscript{38} Dr Farrelly told the Commission, in answer to a question as to whether he regarded himself at that point as complying with Mr Rolls’ suggestions:\textsuperscript{39}

\begin{quote}
At the time I would have apologised to Mrs Isaacs, Laurie Rolls would have been the furthest thing from my mind.
\end{quote}

21 With respect to paragraph [67], it seems clear on the evidence that neither Mr Deed nor Mrs Isaacs put forward anything at the facilitation meeting in respect of what amount of compensation was being sought.\textsuperscript{40} Mrs Isaacs indeed said that at the time of the facilitation she had “no idea what sort of amount would be considered or how it would be determined.”\textsuperscript{41}

22 Mrs Isaacs added that Mr Deed said to her at the conclusion of the facilitation that he wanted (thereafter) to put together “a very good compensation request” for her. Mrs Isaacs said she understood that she would be seen by a psychiatrist and an accountant in that regard, and that Mr Deed would also engage a barrister to assess the aspect of damages.\textsuperscript{42}

23 Consistently with that approach, a letter from Mr Deed to Dr Robertson dated 27 April 1999 stated, amongst other things:

\begin{quote}
Could you also inform Father Farrelly that we are in the process of putting a submission together concerning a claim for compensation. Once we have it to hand, we will forward it to you and also Father Farrelly for the Church’s consideration.\textsuperscript{43}
\end{quote}

24 Such a submission was eventually sent to the Archdiocesan lawyers on 31 August 1999.\textsuperscript{44}

25 With respect to paragraph [68], the Church parties note that in her letter to Dr Farrelly dated 26 April 1999, Mrs Isaacs described the opportunity to be heard by the Church at the facilitation as a “crucial element to my healing process.”\textsuperscript{45}

\begin{footnotes}
35 Ex 4-8 at paragraph [18].
36 Ex 4-3 Isaacs at paragraph [27]; Ex 4-2 at Tab 23.
37 Ex 4-3 at paragraph [28].
38 T2653:36-38.
39 T2651:30-T2652:2.
40 Ex 4-3 at paragraph [30].
41 Ex 4-3 at paragraph [32].
42 Ex 4-2 at Tab 29.
43 Ex 4-3 at paragraph [37] Tab 40.
\end{footnotes}
3.6 Written Apology [Revised Submissions 71 - 73]

26 The Church parties generally accept the summary of evidence set out in paragraphs [71] to [73] of the Revised Submissions. However the Church parties respectfully draw attention to the following additional features of the evidence.

27 Bishop Gerry gave evidence that whilst Mr Rolls' letter of 19 April 1999 referred to a limitation on the form of oral apology to be offered at the facilitation, it was not his usual practice to impose such a limitation, and that when he subsequently himself offered Mrs Isaacs a written apology, he did not include any such limitation but rather offered an unqualified apology.46

28 This he did do. The written apology included the following:

As I mentioned in my previous letter, I have been appointed by the Archbishop as the “Church authority” to act in the name of the Archdiocese in Towards Healing processes.

I write now in this capacity to say how sorry I am for what you suffered at the hands of Frank Derriman who was a priest of the Archdiocese at the time.47

29 The written apology, as it noted, was from Bishop Gerry in his capacity as the Church Authority. That is, it was an apology on behalf of the Archdiocese. Whatever views others might have had, what Bishop Gerry signed and sent (within 10 days of the facilitation) was an unqualified apology as he testified.

30 Bishop Gerry also was adamant that he himself took responsibility for all and any changes to the draft apology which Father Farrelly had prepared.

31 Further, whatever may have been the reason for the removal of the sentence in question from the 30 April letter, it is respectfully submitted that the reason plainly was not – on the part of Bishop Gerry – to take care to avoid language which might cause legal or insurance difficulties later. So much is apparent from the terms of Bishop Gerry’s earlier letter of 19 March 1999,48 which include the following:

“...I acknowledge that your earlier experience, when you turned to those from whom you might have expected support, was totally disappointing and distressing. I would like to think that our understanding of the anguish that you have suffered is better today …”

32 Bishop Gerry gave evidence that he deeply regretted that he had not met face-to-face with Mrs Isaacs to hear her speak of her pain directly49 and that he had missed a number of opportunities to establish a personal rapport with her, which again, he deeply regretted and apologised for.50

45 Ex 4-2 at Tab 25.  
46 Ex 4-12 at paragraph [30].  
47 Ex 4-2 at Tab 22.  
48 Ex 4-2 at Tab 15.  
49 Gerry T2719.19-31.  
50 Gerry T2719.33-40.
3.7 Negotiations relating to compensation [Revised Submissions 74 - 81]

33 The Church parties generally accept the summary of evidence set out in paragraphs [74] to [81] of the Revised Submissions. However the Church parties respectfully draw attention to the following additional features of the evidence.

34 In relation to paragraph [79] and the letter dated 27 October 1999 from Thynne & Macartney, as has been acknowledged to the parties by solicitors assisting the Commission, the following words have been omitted from the end of the part that has been quoted:

“[it is our expectation that] … ex-gratia cash compensation will not be paid in response to the above very substantial common law claim.” [emphasis added]

35 The letter also then went on:

“The resources of the Archdiocese are directed towards supporting the Towards Healing program. It is our belief that on-going support under the Towards Healing program, which can take into account issues involving treatment expenses will be available to your client.”

36 It is respectfully submitted that the full text of the Thynne & Macartney letter establishes both that Mrs Isaacs’ lawyer had already made it clear that “this matter was now to be litigated” and that the solicitors for the Archdiocese were accordingly dealing with the claim on the footing – advanced by Mr Deed – that it was a common law claim for damages.

37 Thus once the complex common law claim for damages was served on 31 August 1999, and certainly once legal proceedings were commenced on 9 November 1999, the Archdiocese reasonably believed that the question of compensation was being dealt with at the legal level rather than within Towards Healing.

3.8 Counselling [Revised Submissions 82 - 88]

38 The Church parties generally accept the summary of evidence set out in paragraphs [82] to [88] of the Revised Submissions.

3.9 Monetary Offer [Revised Submissions 89 - 92]

39 The Church parties generally accept the summary of evidence set out in paragraphs [89] to [92] of the Revised Submissions.

3.10 Deed of Release [Revised Submissions 93 - 116]

40 The Church parties generally accept the summary of evidence set out in paragraphs [93] to [116] of the Revised Submissions.

41 With respect to paragraph [105], whilst Dr Spence agreed that he did not do anything with the letter from Mrs Isaacs dated 7 July 2001, a letter from Thynne & Macartney dated 16 August 2001

51 See email from T Giugni to parties on 21 August 2014.
makes clear that Dr Spence did not in fact receive that letter until after the deed had been signed.52

HANDLING OF COMPLAINT BY THE PROFESSIONAL STANDARDS OFFICE QLD

3.11 Information provided prior to facilitation [Revised Submissions 117 - 120]

42 The Church parties generally accept the summary of evidence set out in paragraphs [117] to [120] of the Revised Submissions.

3.12 Attendance of lawyer at the facilitation [Revised Submissions 121 - 126]

43 The Church parties generally accept the summary of evidence set out in paragraphs [121] to [126] of the Revised Submissions. However the Church parties respectfully draw attention to the following additional features of the evidence.

44 In her letter dated 12 February 1999, Mrs Isaacs advised Dr Robertson that she had already "authorised my solicitor Peter Deed to act on my behalf".53

45 In a handwritten note dated 2 March 1999, Dr Robertson noted: “Spoke to Joan Isaacs – she wants Peter Deed at the meeting.”54

46 Dr Robertson gave evidence that he forwarded Mrs Isaacs’ letter of 12 February 1999 to Bishop Gerry on 2 March 1999.55 In that letter, Dr Robertson suggested a process for dealing with Mrs Isaacs complaint, including:

2. I arrange a facilitated meeting for you to meet with Joan Isaacs and her husband [emphasis added] (This could take place when you are feeling better).

47 In her diary entry documenting her facilitation experience, Mrs Isaacs recorded: “I had requested that my support person in this was to be my lawyer, Peter Deed.”56

3.13 Mrs Isaacs’ husband did not attend the facilitation [Revised Submissions 127 - 128]

48 The Church parties generally accept the summary of evidence set out in paragraphs [127] to [128] of the Revised Submissions. However the Church parties respectfully draw attention to the additional features of the evidence referred to at section 3.12 above.

49 Mrs Isaacs was clear that it was not Dr Robertson who told her that there was such a restriction. If it was Mr Deed who did so, as Mrs Isaacs thought was possible, there is no evidence of what enquiry Mr Deed might have made in that regard or to whom.

52 The signed version of the 7 July 2001 letter (dated 9 July 2001) is an attachment to Ex 4-2 at Tab 122, but does not appear in the tender bundle and is enclosed with this submission.
53 Ex 4-3 at Tab 10.
54 Ex 4-5 at Tab 46.
55 Ex 4-5 at paragraph [33], Tab 11.
56 Ex 4-3 at paragraph [32] Tab 23.
3.14 Payment for Mr Deed's fees [Revised Submissions 129 - 133]

50 The Church parties generally accept the summary of evidence set out in paragraphs [129] to [133] of the Submissions. However the Church parties respectfully draw attention to the fact that there is no evidence as to whether any such fees were charged.

3.15 Issue of compensation at facilitation [Revised Submissions 134 - 138]

51 The Church parties generally accept the summary of evidence set out in paragraphs [134] to [138] of the Submissions. However, the Church parties also draw attention to the evidence noted at paragraphs 21 - 24 above.

3.16 Consent in relation to the appointment of facilitation [Revised Submissions 139 - 144]

52 The Church parties generally accept the summary of evidence set out in paragraphs [139] to [144] of the Submissions.

53 However, the Church parties note that the evidence of Mrs Isaacs herself as to whether she was told about Ms Rogers’ appointment as facilitator was somewhat equivocal, and respectfully submit that Dr Robertson’s evidence as to his being “particular” about such matters in his usual practice should be accepted.

54 Accordingly the Church parties do not accept the submission at paragraph [144] of the Revised Submissions, or that the related suggested “available finding” 1 should be made.

HANDLING OF COMPLAINT BY CHURCH AUTHORITY

3.17 Role of advisers during legal negotiations following the facilitation [Revised Submissions 145 - 153]

55 The Church parties generally accept the summary of evidence set out in paragraphs [145] to [152] of the Submissions.

56 However, the Church parties reject the submission in paragraph [153] of the Revised Submissions. They accept that each of the factual assertions in sub-paragraphs (a), (b) and (c) of paragraph [153] is accurate, but submit that no “finding” should be made which is framed by reference to concepts of “justice and compassion”. That is so because:

(1) no accepted or objective meaning of either of those terms has been propounded, nor has any such meaning been put to the witness in question: in this regard the Church parties repeat and rely upon the matters outlined in chapter 1 of the Church parties’ April Reply Submissions, especially paragraphs [42] - [67] thereof; and

57 See Revised Submissions at paragraph [141].
58 See Revised Submissions at paragraphs [142] and [143].
by the time the legal negotiations were under way, and throughout their duration, the Archdiocese reasonably believed that the question of compensation was being dealt with at the legal level rather than within *Towards Healing*: see paragraphs 34 - 37 above.

### 3.18 Deed of Release [Revised Submissions 154 - 155]

57 The Church parties generally accept the summary of evidence set out in paragraph [154] of the Revised Submissions and do not dispute the submission in paragraph [155].

### 3.19 Counselling costs [Revised Submissions 156 - 157]

58 The Church parties do not dispute the submissions made in paragraphs [156] and [157] of the Revised Submissions.

### 3.20 Father Derriman – Discipline [Revised Submissions 158 - 168]

59 The Church parties generally accept the summary of evidence set out in paragraphs [158] to [167] of the Revised Submissions, and do not dispute the submission in paragraph [168].

60 However, the Church parties respectfully note that there was no evidence before the Commission to suggest that Derriman had attempted to hold himself out as a priest or in any way act as a priest since 1970 – a period of some 44 years. Indeed, the evidence was that he has not done so.

### AVAILABLE FINDINGS

#### 3.21 Available findings in relation to handling of complaint by Professional Standards Office QLD

<table>
<thead>
<tr>
<th>Proposed Finding</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Dr Robertson did not adequately consult with Mrs Isaacs in relation to the appointment of a facilitator to allow her to mutually agree on the appointment of Ms Rogers as provided in Part 2, cl. 7.2 of <em>Towards Healing</em> (1996).</td>
<td>Not accepted. See below.</td>
</tr>
</tbody>
</table>

61 As to available finding 1, for the reasons outlined in paragraphs 52 and 53 above, it is submitted that this finding should not be made.
3.22 Available findings in relation to handling of complaint by Church Authority

<table>
<thead>
<tr>
<th>Proposed Finding</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Actions of those representing the Archdiocese of Brisbane were not just and compassionate, as follows:</td>
<td>Not accepted as framed. See below.</td>
</tr>
<tr>
<td>a. The Church, their lawyers and insurer engaged in protracted legal negotiations for a period of over 2 years preceding the monetary offer made to Mrs Isaacs.</td>
<td></td>
</tr>
<tr>
<td>b. The payment of $30,000, which after payment of $20,000 for legal costs, left Mrs Isaacs with a small payment of money.</td>
<td></td>
</tr>
<tr>
<td>c. Despite being of the view that the offer of $30,000 was &quot;mean&quot; Father Spence took no action to either suggest a higher price or to seek to find out if the Archdiocese would contribute to pay any money to Mrs Isaacs.</td>
<td></td>
</tr>
</tbody>
</table>

62 Generally as to available finding 2, the Church parties submit that no “finding” should be made which is framed by reference to concepts of “justice and compassion”, for the reasons outlined at paragraph 56 above.

63 As to available finding 2(a), that finding should be amended as follows:

"Following a claim for damages, the Church, their lawyers and insurer engaged in protracted legal negotiations for a period of over 2 years preceding the monetary offer made to Mrs Isaacs."

64 As to available finding 2(c), the Church parties submit this component should be placed in a context where Dr Spence acknowledged that as far as decisions regarding amounts of monetary payment were concerned, he regarded those as depending on the expertise of lawyers and other advisers. 59 Whilst considering a contribution from Church funds was not a procedure which took place at the time of Mrs Isaacs’ complaint, Archbishop Coleridge said he would offer that contribution today if the need were there. 60

<table>
<thead>
<tr>
<th>Proposed Finding</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Clauses 7 and 8 in the deed of release that was ultimately signed by Mrs Isaacs, effectively imposed an obligation of silence concerning the circumstances which led Mrs Isaacs to make a complaint, which was inconsistent with Part 2, cl. 41.4 of Towards Healing (2000).</td>
<td>Accepted.</td>
</tr>
<tr>
<td>4. Mrs Isaacs received payments for counselling costs only following considerable prompting after the Archdiocese had already agreed to pay. These payments came to an end after the settlement sum was paid.</td>
<td>Accepted.</td>
</tr>
<tr>
<td>5. Father Spence did not convey to Thynne &amp; Macartney, who he was instructing, of his view that the offer of counselling should be continually open even after the settlement sum was paid.</td>
<td>Accepted.</td>
</tr>
</tbody>
</table>

60 Coleridge T2752:15-18.
65 The Church parties accept that each of proposed findings 3, 4 and 5 is available on the evidence.

3.23 Conclusion

66 Mrs Isaacs’ overall experience within Towards Healing was plainly unsatisfactory in significant respects. Although many aspects of the facilitation were positive and appreciated by Mrs Isaacs, the subsequent handling of the issues of compensation and counselling was such as to cause Mrs Isaacs further distress.

67 Archbishop Coleridge identified a “drastic failure of oversight” as the principal underlying cause of those failures, as well as a “fatal confusion” in relation to dealing with reparation or compensation.

68 However, Archbishop Coleridge observed that “remarkable” learnings have been acquired over 14 years in applying Towards Healing, and he made clear that the approach of the Archdiocese today under his leadership is very different.

69 The Archbishop reiterates his sincere apology, on behalf of the Archdiocese, for all the ways in which Mrs Isaacs has suffered between the 1960s and today.

61 Coleridge T2730:5-15.
4 DG

4.1 Introduction

1 The submissions for the DG case study are made on behalf of the Council, the Marist Brothers, the Professional Standards Office for New South Wales and the ACT, and Catholic Church Insurance Limited (CCI) (together, the Church parties).

2 The abuse suffered by DG occurred during the time he was at a Marist Brothers school in the 1970s. In 1994, DG complained to the police who began criminal proceedings against Brother Foster. Shortly before he was due to appear in court in 1999, Brother Foster committed suicide. Some time after the suicide of Brother Foster, DG made a complaint to the Marist Brothers about the abuse suffered by him.

3 Understandably, DG was suspicious of the Church and distrusted the clergy. Initially, he did not want to pursue Towards Healing. For that reason, Brother Hill suggested that solicitors negotiate a settlement.

4 Sometime later, DG obtained advice from a barrister, who was also a member of the Queensland Professional Standards Group. At around that time, DG, through his barrister, indicated a willingness to engage in a mediation process along the lines identified in Towards Healing. However, at a later stage, DG moved away from wanting such a mediation. He indicated an openness to, and ultimately agreed to, a settlement conference, which was quite different from a facilitation envisaged within Towards Healing.

5 Thus, this case study was far from typical, both in its handling generally and the eventual settlement conference, which bore little or no resemblance to a Towards Healing facilitation. This case study demonstrates the fluidity of the process.

6 Some of the findings suggested by counsel assisting to be available in this case study are based on the assumption that every detail of Towards Healing must be strictly observed. As set out in paragraphs 15 to 20 of Chapter 1 of the April Reply Submissions, Towards Healing was not intended to be and is not prescriptive. The response by the Church Authority to a complaint is shaped by the needs of the victim. For that reason, Towards Healing is intended to be flexible.

7 The circumstances of this case study gave rise to the need for a flexible approach to the provisions in Towards Healing. The Church parties submit that such an approach was not inconsistent with the principles or procedures of the protocol.

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62 Submission of the TJHC September 2013 Submission at page 42.
63 Submission of the TJHC September 2013 Submission, paragraph [5], page 43.
4.2 Response to complaints against Brother Foster by the Marist Brothers [Revised Submissions 3 - 19]

4.2.1 Facts

8. The Church parties generally accept the summary of evidence set out in paragraphs [1] to [19] of the Revised CA Submissions in relation to DG (the Revised Submissions). However, the Church parties respectfully draw attention to the following additional features of the evidence.

9. As recorded in the first "AB24" document, created some time between 30 November 1993 and 30 June 1994, it seems clear that at some point during that period Brother Turton confronted Brother Foster with the subject matter of one or more of the complaints which had by that time been received by the Marist Brothers.

10. As partially acknowledged in paragraphs [16] – [18] of the Revised Submissions, Brother Turton surmised from that first "AB24" document that when he did so he must have received an assurance from Brother Foster that those "inappropriate" incidents from 40 years earlier were "not an issue now". (There is no evidence to suggest that there were ever in fact any incidents involving Brother Foster after 1975.)

11. The Church parties accept that Brother Turton did not withdraw Brother Foster from ministry at that time, and that he did not do so until 25 August 1994. Prior to that date, the evidence is that, in respect of the two earlier complaints (one of them anonymous and the other from someone - DR - who wanted no action taken) Brother Turton had taken no other action beyond confronting Brother Foster and receiving his assurance.

4.2.2 Proposed Finding 1

12. The Revised Submissions propose one "available finding" which relates to this topic. That proposed finding, and the response of the Church parties to it, is as follows:

<table>
<thead>
<tr>
<th>Proposed Finding</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Despite having overall responsibility for responding to allegations of child sexual abuse as Provincial of the Marist Brothers at the relevant time, Brother Alexis Turton did not take any action in relation to:</td>
<td>Not accepted in these terms, but see below at paragraphs [13] - [15]</td>
</tr>
<tr>
<td>a. a phone call in 1991 from an anonymous caller who alleged certain things of a sexual nature against Brother Foster</td>
<td></td>
</tr>
<tr>
<td>b. a complaint of child sexual abuse by Brother Foster at St Augustine’s College in the 1950s, which is recorded in a file note dated 30 August 1993</td>
<td></td>
</tr>
<tr>
<td>c. a complaint of child sexual abuse by two brothers, one of whom was possibly Brother Foster, at St Augustine’s College in 1954-5 which is recorded in a letter dated 25 May 1994, and which was received by Brother Turton shortly thereafter</td>
<td></td>
</tr>
<tr>
<td>d. an acknowledgement by Brother Foster in 1993 or 1994 that “there had been two incidents in the Fifties which were inappropriate”</td>
<td></td>
</tr>
</tbody>
</table>

64  Ex 4-38 at tab 5.
65  As acknowledged in the Revised Submissions at [15].
13 It is not the case that Brother Turton took no action at all in relation to the complaints referred to in
1(a) - (c), as the prefatory words to Proposed Finding 1 suggest. He confronted Brother Foster, by
no later than 30 June 1994, and he received the assurances given by him. Further, within another
two months, that is by 25 August 1994, he withdrew him from ministry.

14 The Church parties therefore accept that Brother Turton took no further action in relation to the
four matters referred to at (a) - (d):

- prior to 25 August 1994;
- other than confronting Brother Foster and receiving an assurance that two “inappropriate”
  incidents from the 1950s were “not an issue” now.

15 However, the way the proposed finding is phrased not only fails to reflect the two bullet points in
the preceding paragraph, but also fails to reflect, as it is submitted that in fairness it should, the
following matters:

(a) As to each of proposed components (a), (b) and (c), the evidence is that Brother Turton did
    not personally become aware of any of these things until some time in 1994.

(b) As to proposed component 1(a), it should in fairness be noted that the anonymous caller
    was not very coherent and could not be followed up by the Marist Brothers.

(c) As to proposed component 1(b), it should in fairness be noted that the victim the subject of
    the complaint did not want any publicity or to take any action.

4.3 DG’s police complaint [Revised Submissions 20 - 36]

4.3.1 Facts

16 The Church parties generally accept the summary of evidence set out in paragraphs [20] to [35]
of the Revised Submissions. However, the Church parties respectfully draw attention to the
following additional features of the evidence.

17 Paragraph [22] of the Revised Submissions contains extracts both from Brother Turton’s
statement, Ex 4-40 (the first two quoted paragraphs in CA paragraph [22]) and from his oral
evidence at T3213 (the third quoted paragraphs in CA paragraph [22], itself drawing together two
separate passages from the transcript). In his statement he had not recalled whether Brother
Foster had specifically mentioned the police; but in his oral evidence he indicated that Brother
Foster had done so. In both parts of his evidence, what Brother Turton did recall was that Brother
Foster had conveyed to him that it was or could be a “serious matter”.

18 Brother Turton’s evidence ultimately was, therefore, that his withdrawal of Brother Foster from
ministry was based on two factors, namely the apparent seriousness of the matter and the
apparent involvement of the police.
19 There is no evidence that as at that time Brother Turton knew that Brother Foster had been “interviewed” by the police (as in fact he had). The reference to “interview” at T3213:3 appears to be a reference to the “interview” between Brother Turton and Brother Foster.

20 The Church parties accept that Brother Hill did make the concession noted in paragraph [30] of the Revised Submissions. However, it is respectfully noted that the omission in question was in circumstances where both the victim’s identity and the details of the wrongdoing were unknown, and the document in question was a circular to Marist Brothers one of whose number had just committed suicide.

21 Paragraph [36] of the Revised Submissions misstates the evidence. Brother Hill did not “agree” that “his actions following Brother Foster’s suicide give the impression that he was more concerned with protecting the reputation of the Marist Brothers than in ensuring victims got support and that the trust was made public”. Rather, when counsel assisting suggested that some may be left with that impression, he answered “I can understand it being interpreted that way. At the time I wouldn’t have seen myself as actually doing that.”

22 In fact, he did not know the identity of the victim, and no means of ascertaining that identity occurred to him.

23 Brother Hill was, however, “concerned” for the unknown person. That is, subjectively he had sympathy for that person. Consistently with that, when he received DG’s initial letter 12 months later, he was “genuinely saddened” and wanted to show that to DG in person. That concern and that sadness then inform the terms of the letter that he wrote to DG as soon as he did become aware, at that later time, that DG was the person who was the victim of abuse.

### 4.3.2 Proposed Finding 2

24 The Revised Submissions propose one “available finding” which relates to this topic. That proposed finding, and the response of the Church parties to it, is as follows:

<table>
<thead>
<tr>
<th>Proposed Finding</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Brother Turton withdrew Brother Foster from ministry on or about 25 August 1994</td>
<td>Accepted if amended as set out below at paragraph [26]</td>
</tr>
</tbody>
</table>

25 Having regard to the evidence noted in paragraphs [17] to [19] above, the proposed finding as framed conflates two separate matters. Brother Foster had been interviewed by police on 24 August. But the evidence does not establish that Brother Turton knew that that was so, when he withdrew Brother Foster from ministry on 25 August. Rather, what Brother Turton knew, on the evidence, was that Brother Foster had been “contacted” by the police and had declined to make any comment to them.

66 Ex 4-38 at Tab 7.
67 T3135:40–46.
68 T3130:8–42 and T3131:36–43.
69 T3131:36.
70 T3154:10–12.
71 Ex 4-38 at Tab 22; see also T3154:9–14.
72 Ex 4-38 at Tab 6; see also T3211:32-46.
26 Accordingly the Church parties submit that proposed finding 2 should be amended to read:

*Brother Turton withdrew Brother Foster from ministry on or about 25 August 1994 immediately after becoming aware that the matter was or could be serious and that the police had contacted Brother Foster.*

4.3.3 Available Findings Proposed by the Church Parties

27 The Church parties submit that the following additional findings are available on the evidence:

(a) Brother Hill took prompt steps to correct false information which another Marist Brother had given to the media;

(b) Brother Hill’s circular to the Marist Brothers made no attempt to conceal Brother Foster’s suicide or the reason for it.

4.4 DG’s Towards Healing process [Revised Submissions 37 - 48]

4.4.1 Facts

28 The Church parties generally accept the summary of evidence set out in paragraphs [37] to [48] of the Revised Submissions. However, the Church parties respectfully draw attention to the following additional features of the evidence.

29 As to paragraph [41] of the Revised Submissions, Brother Hill gave evidence that whilst his letter dated 16 March 2000 reads that DG had two alternatives, in reality, it did not exclude both possibilities occurring simultaneously.\(^73\) He did not intend the letter to put to DG that he only had two choices; he gave evidence that he was suggesting two possibilities of several.\(^74\)

30 At the time of the suicide of Brother Foster, Brother Hill did not know and “did not see any way of being able to determine” the identity of DG.\(^75\) Brother Hill first became aware of the identity of DG almost a year later on 6 March 2000.\(^76\) At that point, Brother Hill immediately took steps to engage with DG and to provide him with assistance to bring the matter to a satisfactory resolution.\(^77\)

31 Brother Hill did not conceal or avoid any “truth”. While he did not issue a public statement or apology in response to the false statements made to the media, he did take immediate steps to correct those false statements.

32 The Church parties also respectfully refer to the evidence noted at paragraph [23] above, as to Brother Hill’s concern and sadness for the victim.

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73 T3154:30–36.
75 T3131:32–38.
76 Ex 4-39 at paragraph [55].
77 Ex 4-38 at Tab 22.
### 4.4.2 Proposed Finding 3

#### 33

The Revised Submissions propose one “available finding” which relates to this topic. That proposed finding, and the response of the Church parties to it, is as follows:

<table>
<thead>
<tr>
<th>Proposed Finding</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Although the <em>Towards Healing</em> principles commit the Church to truth, humility, and giving first priority to the needs of the victim, the Marist Brothers did not:</td>
<td>Not accepted: see below.</td>
</tr>
<tr>
<td>a. attempt to obtain the information DG requested in his letter of 28 April 2000, namely transcripts of the police interview(s) with Brother Foster relating to his complaint;</td>
<td>The Church parties accept the accuracy of each component (a) to (c).</td>
</tr>
<tr>
<td>b. attempt to ascertain the identity of the complainant in the criminal case against Brother Foster in order to convey to that person, who was DG, the contents of Brother Foster’s suicide letter;</td>
<td></td>
</tr>
<tr>
<td>c. inform DG about matters relevant to his complaint, including:</td>
<td></td>
</tr>
<tr>
<td>i. the contents of Brother Foster’s suicide letter;</td>
<td></td>
</tr>
<tr>
<td>ii. that Brother Foster was removed from his teaching position following DG’s police complaint; and</td>
<td></td>
</tr>
<tr>
<td>iii. that Brother Foster had been the subject of other complaints.</td>
<td></td>
</tr>
</tbody>
</table>

34 The Church parties accept that the Marist Brothers did not do the things referred to in (a) - (c). However, first, none of these omissions amount to:

- (a) any concealment or avoidance of the truth;
- (b) failing to act with humility; or
- (c) failing to give first priority to the needs of the victim,

as the prefatory words of proposed finding 3 suggest.

35 Secondly, as to components (a) - (c) themselves, the Church parties make the following submissions.

36 As to component 3(a), Brother Hill said, not unreasonably it is submitted, that he did not think that the police would give him a transcript of their interview with Brother Foster. He also said that he could not work out what the information might be that DG wanted.\(^78\)

37 As to component 3(b), the Church parties again note that at the relevant time (1999) Brother Hill did not know the identity of the victim, and had no means of ascertaining that identity occurred to him: see paragraphs [22] and [23] above.

38 As to component 3(c), Brother Hill gave thoughtful and sincere answers, which it is submitted were also objectively reasonable, as to why he did not raise things with DG at the initial meeting. He said:\(^79\)

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\(^78\) T3158:10–32.
\(^79\) T3157:39–43.
In my experience, at the first meeting, what the victim or the complainant wants more than anything else is to be listened to, be heard, and particularly to be believed… And my aim in that first meeting was to do precisely that.

Brother Hill also said:80

A. …My primary intention at that meeting, as I have already said, was not only for him to be heard and believed, but the only detail about Foster that I mentioned to [DG] was to confirm the suicide and also to clear up the matter of the way it was reported in local media, and I apologised to him for that.

Q. My suggestion to you, Brother Hill, is that a compassionate response, in accordance with Towards Healing protocols, would have been to engage in a discussion which would include imparting crucial information to Mr [DG]?
A. Not in that first meeting. I don’t agree, no.

Further, when counsel assisting suggested that Brother Hill should have given DG information about the apology and reassurance in the suicide note of Raymond Foster, Brother Hill replied:81

The problem with that is that - well, first of all, the apology certainly, that’s got to be first up. But Foster’s apology, which - if I had said that on the first meeting, too often the victim hears something like, “Forgive and forget, put it behind you, move on”, and we are nowhere near that in the first meeting. It is the beginning of a long process.

To the extent that it may now be suggested that Brother Hill should have told DG about these things at some later time, Brother Hill was not given any opportunity in the witness box to deal with any such suggestion, and should not have any finding of this kind made against him in these circumstances.

4.5 Initial meeting between Brother Hill and DG [Revised Submissions 49 - 59]

The Church parties generally accept the summary of evidence set out in paragraphs [49] to [59] of the Revised Submissions. However, the Church parties respectfully draw attention to the following additional features of the evidence.

Paragraph [53] of the Revised Submissions regarding DG’s understanding of Towards Healing following the initial meeting on 11 May 2000 (the Initial Meeting) needs to be read in the context of DG having said that he was not attracted by the Towards Healing approach, as noted in paragraphs [50] - [52] of the Revised Submissions.

Brother Hill’s file note of the Initial Meeting states:82

I repeated to him options which I had outlined in a previous letter. He is not attracted by the prospect of a Towards Healing line of action, but agreed with my strong suggestion that a settlement be negotiated through two sets of solicitors.

80 T3165:5–17.
82 Ex 4-38 at Tab 31.
43 Given the letter from Brother Hill to DG dated 16 March 2000, it is likely that Brother Hill provided DG with options including that of attending a mediation facility provided by the Towards Healing Resource Group in Brisbane, but did not provide him with any further information on Towards Healing.

44 As DG had indicated an unwillingness on his part to engage with Towards Healing, Brother Hill was attempting to suggest an alternative way forward. In those circumstances he did not consider that it was appropriate to give DG further details regarding the Towards Healing process which he had rejected. Brother Hill said that:

*He had indicated to me that he was, first of all, not interested in church procedures or what appeared to be church-sponsored procedures, so that left me with limited options as to what to suggest to him. Part of what I intended to do with victims when I met with them was to have them – give them the space to set their own pace.*

45 It is submitted that this evidence is consistent with DG’s initial letter which had spelt out in no uncertain terms his deep distrust towards “clergy” and the Marist Brothers.

46 Paragraph [55] of the Revised Submissions refers to some but not all of the evidence which Brother Hill gave as to why he said some things but not others at the Initial Meeting. The Church parties respectfully refer to paragraph [38] above where Brother Hill’s oral evidence is more fully extracted. As is apparent from that evidence, and as submitted at paragraph [38], Brother Hill’s decision to act as he did was thoughtful, sincere and objectively reasonable.

47 The Church parties make a similar response to paragraph [58] of the Revised Submissions.

4.5.2 Available Findings Proposed by the Church Parties

48 The Church parties submit that the evidence supports findings that:

(a) Brother Hill arranged to travel to regional Queensland, to meet with DG personally, within two months of receiving his initial complaint.

(b) Brother Hill thereafter left it to DG to decide how he wished to proceed, including as to whether or not to choose Towards Healing, given his expressed disinclination at that stage to do so.

(c) At the conclusion of the Initial Meeting, Brother Hill invited DG to contact him again in his own time.

83 Ex 4-38 at Tab 22.
84 T3192:26–46.
85 T3179:29–37.
86 T3159:24–33; see also T3160:26–27.
4.6 2001 Contact with the Marist Brothers [Revised Submissions 60 - 81]

4.6.1 Whether DG’s complaint proceeded through Towards Healing

49 The Church parties generally accept the summary of evidence set out in paragraphs [60], [61], [63] to [69], [71] to [77] and [79] to [81] of the Revised Submissions. However, the Church parties respectfully draw attention to the following additional features of the evidence.

50 Mr Byrne acted as counsel for DG from some time prior to 20 September 2001 until the conclusion of the eventual settlement conference in June 2002. In addition, by no later than 6 November 2001 DG also had a firm of solicitors acting for him, Bill Cooper & Associates. From 20 September 2001 onwards, all correspondence on behalf of DG was handled by his barrister or his solicitor.

51 On 20 September 2001, Mr Byrne sent the letter to Brother Rodney, referred to in the Revised Submissions at paragraph [61], which was ultimately received by Brother Hill. Amongst other things, the letter stated (emphasis added):

My client has expressed an openness to engage in a mediation process along the lines identified in Towards Healing (the Dec 2000 version)…

52 The Church parties submit that paragraph [62] of the Revised Submissions does not accurately or completely summarise the whole of the relevant evidence, especially in these respects:

(a) Brother Hill’s view was that Mr Byrne’s letter of 20 September 2001 represented “a change of [DG’s] position from a rejection of the Towards Healing process to an openness to engage in the final part of the Towards Healing protocol, the mediation” (emphasis added);

(b) Brother Hill’s view was that:

A. Part of the Towards Healing process was being accepted, only part.

Q. And that part was what, exactly?

A. The mediation;

(c) What Brother Hill then agreed to at T3172:9–12 was that, “at that stage” (ie the time of Mr Byrne’s correspondence), it was clear that “that” (ie the approach summarised in (a) and (b) above) was what was wanted by DG for the Towards Healing process;

(d) But at a later stage (not mentioned in this context in the Revised Submissions), DG’s preferred approach changed again.

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87 Ex 4-38 at Tab 49.
88 Ex 4-38 at Tab 36.
89 T3168:34–37; see also T3170:5–14.
90 T3170:5–9.
53 Brother Hill understood DG’s preference in the way outlined at (a) to (c) of the preceding paragraph, that is, as limited to the final part of the protocol: 91

... Because all the initial stages, in a sense, were irrelevant in this particular case – the contact person, the assessment. I mean, there was no doubt as to the facts of the complaint. There was no – it would have been illogical to go through a contact person, followed by an assessment stage. That, in effect, had been done by the police.

54 Brother Hill considered that Mr Byrne had fulfilled the role of the contact person. 92 Brother Hill did not accept that a contact person was required to be appointed given that: 93

All the matters dealt with by the contact person and the assessor if there is going to be an assessment to take place – all of that becomes irrelevant in this particular case, because we’re much further down the track. What we are up to here is the actual mediation process.

55 Similarly, Brother Hill did not accept that the “contact report” should have been referred to the Director of Professional Standards. 94 His view was that “[DG] is saying at the moment, ‘Yes, I am interested in following the mediation path of Towards Healing’, but all the preliminary steps have already been accomplished”. 95

56 Brother Hill’s answers emphasised in the Revised Submissions, accepting that he understood the letter from Mr Byrne to be “a request for Towards Healing” and that he “understood that [DG] had shifted the position that [he] had earlier understood and had now elected Towards Healing”. 96 need to be understood in the above context. Brother Hill plainly considered that “at that stage”, what DG was asking for, or “electing”, was part only of what Towards Healing provided for, namely the final mediation / facilitation phase. All the other steps, namely the provision of a contact report and an assessment, had been completed.

57 It is submitted that Brother Hill’s statement at paragraph [77] (quoted at paragraph [64] of the Revised Submissions) is accordingly to be understood in that way. That is: “Some other appropriate approach, not being [the whole of] Towards Healing”, was indeed needed.

58 Brother Hill considered, correctly it is submitted, that this was “not a normal Towards Healing case”. 97 He stated that “There are so many differences. First of all, it started off as a police matter. And the suicide. There’s very little resemblance between this particular case and what is envisaged in the Towards Healing protocol.” 98 Counsel assisting stated that this was “common ground”. 99

59 On 25 October 2001, Carroll & O’Dea, the solicitors for the Marist Brothers, sent a letter to Mr Byrne, which confirmed that Brother Hill had “issued instructions that some form of mediation process should now be put together to assist the parties to bring these issues to closure” (emphasis added). 100 It is submitted that those instructions amounted to an acquiescence by the

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91 T3168:39–46.
92 T3174:36–37.
93 T3174:10–14.
94 T3175:16–19.
95 T3175:46–3176:1.
97 T3169:12.
98 T3169:12–16.
99 T3169:18–19.
100 Ex 4-38 at Tab 40.
Marist Brothers in the kind of hybrid process which Mr Byrne had floated in his 20 September 2001 letter (“a mediation process along the lines identified in Towards Healing”).

60 But DG subsequently, through his lawyers, changed his position again. He moved away from wanting a mediation (“along the lines of Towards Healing”) by first indicating openness to, and then agreeing to, a settlement conference (something not involving a mediator or a facilitator and thus quite different from what was envisaged within Towards Healing).101

61 By that stage, therefore, DG through his lawyers was expressly choosing not to proceed by way of Towards Healing at all. The sequence was as follows:

(a) After an exchange of correspondence between the lawyers for the parties, on 14 December 2001, the solicitors for CCI, Ebsworth & Ebsworth, sent a letter to the solicitors for DG, Bill Cooper & Associates, which stated that they would contact them again to “arrange either a mediation or settlement conference”;102

(b) On 1 March 2002, Ebsworth & Ebsworth contacted Bill Cooper & Associates to ask whether they “envisaged[d] a structured mediation or a settlement conference”;103

(c) On 28 March 2002, Bill Cooper & Associates responded to Ebsworth & Ebsworth to confirm “our client is willing to participate in either an informal without prejudice settlement conference or mediation”;104

(d) On 17 April 2002, Ebsworth & Ebsworth wrote to Bill Cooper & Associates. They stated “We consider it appropriate to meet you and your client in [redacted] and to proceed by way of an informal settlement conference”.105

62 In summary, then, the evidence shows that:

(a) At first, DG expressed an unwillingness to engage in Towards Healing;106

(b) Later, DG (through his lawyers) expressed an openness to engage in “a mediation process [only] along the lines identified in Towards Healing”;107 - at a point by which all of the initial stages of a standard Towards Healing process either had effectively already occurred or were not necessary;108

(c) Third and finally, DG (through his lawyers) expressed a willingness to proceed by way of settlement conference rather than by way of mediation, and thus in the end did not adopt any part of Towards Healing.109

63 In relation to paragraph [70] of the Revised Submissions, Brother Hill’s evidence was a little different. He accepted that the reason he endeavoured to avoid a public apology was “probably”
to protect the reputation of the Catholic body. But he also clarified that it was not to protect the reputation of the Brothers, so much as to protect the people at the school at the time.

64 The Church parties do not accept the submission made in paragraph [78] of the Revised Submissions for a number of reasons. First, as outlined above, what was taking place was not a Towards Healing process. DG had not chosen that option. With the assistance and advice of his solicitors and counsel, he had adopted a different course, in which the Marist Brothers had acquiesced. Second, the “approach” the subject of the criticism in paragraph [78] was one taken by lawyers, namely Ebsworth & Ebsworth, on instructions not from the Marist Brothers but from CCI, for whom that firm also acted in the DG matter. That approach, on the part of CCI and the lawyers, was unremarkable, dealing as they were with a negotiation of a claim being advanced outside Towards Healing. Third, there is no evidence that the “approach” in question was referred to, or the subject of any instructions from, the Marist Brothers.

4.6.2 Available Findings Proposed by the Church Parties

65 The Church parties submit that the evidence supports findings that the Marist Brothers acquiesced in DG’s several successive different expressed choices as to how to proceed, namely:

(a) First, (prior to September 2001) not to adopt Towards Healing at all;

(b) Second, (as at about September–October 2001) to adopt a process “along the lines of” one part only of Towards Healing, namely “a form of mediation process”;

(c) Third, finally, (between December 2001 and April 2002) to proceed by way of settlement conference rather than by way of adopting any part of Towards Healing.

4.7 Settlement Conference [Revised Submissions 82 - 99]

66 The Church parties generally accept the summary of evidence set out in paragraphs [82] to [83] and [85] to [99] of the Revised Submissions, subject to the following further matters.

67 As to paragraph [84], although he gave evidence that he was not aware that the Marist Brothers considered the settlement conference to be outside the Towards Healing process, DG conceded that “perhaps I didn’t read all of the documents as closely”. It is respectfully submitted that in fact the correspondence between the solicitors makes quite clear that that was so. DG did not recall his solicitors explaining to him the difference between a settlement conference and a mediation. It is respectfully submitted that they should have done so, and that the Marist Brothers were entitled to assume that they would do so.

110 T3178:17–22.
111 T3178:25–27; see also T3177.40 - 3178.7.
112 Ex 4-38 at Tabs 57B and 58B-1.
113 T3120:46–47.
114 T3113:27–3114.22.
In relation to Brother Turton’s role at the settlement conference, the Church parties also note the following additional features of the evidence:

(a) On DG’s own evidence, he (DG) was only in the presence of Brother Turton for 10 minutes;\textsuperscript{115}

(b) DG’s recollection, that Brother Turton said he had interviewed Brother Foster about the abuse (see paragraph [87] of the Revised Submissions), is most unlikely to be correct, and should not be accepted: see paragraphs [88] and [90] of the Revised Submissions;

(c) There is no evidence as to what, if any, questions DG actually asked of Brother Turton during the 10 minutes they were together;

(d) Both DG and Brother Turton gave evidence that each of them was effectively removed very early on from the meeting, which thereafter proceeded as a discussion among lawyers and insurers about money and about the giving of an apology or apologies.

In relation to the apology, the Church parties also note the following additional features of the evidence.

At the settlement conference, DG’s barrister, Mr Byrne, requested a “public apology in general terms.”\textsuperscript{116} Mr Monahan, the solicitor for CCI and the Marist Brothers, gave evidence that the solicitors for DG presented a draft general apology and a draft family apology to Brother Turton at the settlement conference.\textsuperscript{117} Brother Turton could not recall whether the draft general apology was provided at the meeting.\textsuperscript{118} However, he stated there was nothing in that apology that was inaccurate or that he disagreed with.\textsuperscript{119}

Mr Monahan indicated at the time that the general (also known as public) apology could not be done for various reasons.\textsuperscript{120} Mr Monahan also gave evidence that he would have taken instructions from Ms Mole of CCI and Brother Turton.\textsuperscript{121} Brother Turton could not recall “this ongoing discussion about the public and private statement”\textsuperscript{122} and was unable to comment “on the earlier statement of Mr Monahan that there were problems with the public statement.”\textsuperscript{123} He said that he did not “quite know what that was about.”\textsuperscript{124}

Brother Turton indicated that he agreed with “the spirit” of the draft public apology.\textsuperscript{125} He also agreed, “it was not in accordance with justice and compassion to refuse a public apology” and gave evidence that it “should be reconsidered.”\textsuperscript{126}

However, the “family apology” was provided to DG, substantially in the terms proposed by the lawyers for DG. The evidence shows that:

(a) the initial draft wording of that apology came from DG’s lawyers;\textsuperscript{127}

\textsuperscript{115} Ex 4-37 at paragraph [39].
\textsuperscript{116} Ex 4-38 at Tab 59C.
\textsuperscript{117} T3711:46-3712:3.
\textsuperscript{118} T3223:34-36.
\textsuperscript{119} T3223:22-26.
\textsuperscript{120} Ex 4-38 at Tab 59C.
\textsuperscript{121} T3713:30-32. See also T3712:34-35.
\textsuperscript{122} T3225:27-29.
\textsuperscript{123} T3225:29-31.
\textsuperscript{124} T3225:31.
\textsuperscript{125} T3226:37-45. See also 3227:47-3228:5.
(b) after receiving comments from Brother Turton, 128 Mr Monahan provided a revised proposed letter of apology to DG’s solicitor, Sara Loughnan of Bill Cooper & Associates, on 25 June 2002; 129

(c) DG subsequently approved the wording of the letter of apology;

(d) on 2 July 2002, Mr Monahan forwarded the letter to the assistant to the Provincial of the Marist Brothers for his signature, noting that they “had a response from DG’s solicitors confirming that they are satisfied with the draft letter of apology in its present form”; 130

(e) accordingly, the terms of the apology were agreed to by DG, through his solicitors, prior to its being signed and given.

OPERATION OF THE TOWARDS HEALING PROCESS IN DG’S CASE

4.8 Provision of information about Towards Healing [Revised Submissions 100 - 103]

74 The Church parties accept what is said in paragraphs [100] and [101] of the Revised Submissions.

75 However, as to paragraph [102], the Church parties note that, as set out in section 4.5 above, in the Initial Meeting Brother Hill did raise the option of the Towards Healing process with DG, but DG expressed an unwillingness to engage in that process. DG made it clear to Brother Hill that he was not interested in church procedures or what appeared to be church-sponsored procedures. 131

It was in that context that Brother Hill did not provide further information to DG about Towards Healing. It is respectfully submitted that that was a reasonable and appropriate approach.

76 Brother Hill gave evidence in his statement that if he were given the opportunity to revisit this complaint he would have sent DG a letter summarising the outcomes of the Initial Meeting. 132 However, he rejected the proposition that he should have given DG information about Towards Healing at that stage; Brother Hill stated “I still believe that it was too soon to do that”. 133

77 As to paragraph [103], the Church parties agree that victims should be provided with sufficient information on the options available to them in order to make an informed choice about how to proceed. However:

(a) For some time now such information has been widely and publicly available to victims and to the world at large: see the TJHC September 2013 Submission; 134

(b) In circumstances where a victim has indicated an unwillingness to proceed with the Towards Healing process, or even with any ‘church-sponsored process’, there should not

127 Ex 4-38 at Tab 61A.
128 Ex 4-38 at Tab 61.
129 Ex 4-38 at Tab 61A.
130 Ex 4-38 Tab 62.
131 T3159:24–33; see also T3160:26–27.
132 Ex 4-39 at paragraph [85].
133 T3179:29–32.
134 TJHC September 2013 Submission, paragraphs [9] and [10], page 44; paragraphs [67] and [68], pages 80-81.
be any requirement that the Church Authority insist upon that victim receiving further information about a process which they have rejected.

4.9 Evidence of Brother Hill in relation to Marist Brothers’ use of lawyers [Revised Submissions 104 - 107]

78 The Church parties generally accept the summary of evidence set out in paragraphs [104] to [107] of the Revised Submissions.

79 The Church parties respectfully submit, however, that the evidence points to nothing more than that the Marist Brothers communicated with their solicitors for the purpose of understanding their liability and responsibility to the victim, and notifying their insurers. Unless and until the Marist Brothers notified CCI of a claim, and CCI had conducted the appropriate investigations, the relevant insurance policy would not respond.135

4.10 Application of Towards Healing (1996) procedures to DG’s matter [Revised Submissions 108 - 110]

80 The Church parties accept the factual propositions stated in paragraphs [108] and [110] of the Revised Submissions.

81 However, the Church parties do not accept the submission advanced in paragraph [109], for the following reasons.

82 First, Brother Hill considered, reasonably it is submitted, that DG’s initial complaint did not need to be referred to a contact person because “there was no debate as to the facts of the matter. The contact person makes the initial contact in order to prepare for an assessment in the Towards Healing process”.136

83 Second, Brother Hill’s view, repeatedly and consistently expressed, was that his response to the initial complaint should have been within the principles of Towards Healing (1996), but not in accordance with the procedures set out therein; the initial complaint should only have been dealt with under the procedures set out in Towards Healing (1996) “if the victim chose that course of action”.137

84 In paragraph [109] of the Revised Submissions it is contended that the application of the procedures in Towards Healing (1996) does not depend on an initial choice by the complainant because clause 4.1 of that document stated that a “complaint of child sexual abuse shall be referred to a contact person”, whereas Towards Healing (2000) only requires Church personnel to refer a complaint of abuse to a contact person if the complaint wishes to invoke the Towards Healing procedures.

85 The Church parties submit that this submission is fundamentally flawed, for two main reasons:

135 Submissions of the Council at 126 [40] – 127 [43].
136 T3139:15–18.
(a) As outlined in Chapter 1 of the April Reply Submissions and in the introduction to this chapter, *Towards Healing* (1996) provides and assumes that the response by the Church authority to a complaint is to be shaped by the needs of the victim. Here, as Brother Hill reasonably understood it, DG was not inclined to proceed down the *Towards Healing* path.

(b) While *Towards Healing* (1996) did not contain the explicit provision in clause 36.1 found in *Towards Healing* (2000), a fair reading of the 1996 version involves the notion that before the requirements of *Towards Healing* are engaged, the victim needs to indicate a wish for that to happen. Here, DG at this stage had not done so.

86 Third, Brother Hill gave evidence that he did not give DG information about *Towards Healing* at this stage because “that’s better done face to face, in person, rather than pen off a whole lot of words”. He also gave evidence that he intended to give DG detailed information about *Towards Healing* when he met with him. Both of those intended courses of actions are reasonable. Brother Hill was respecting the right of DG (which DG was quite clearly insisting upon) to choose how he wished to proceed.

4.11 Referral of DG’s complaint to the Director of Professional Standards
[Revised Submissions 111 - 114]

4.11.1 Facts

87 The Church parties generally accept the summary of evidence set out in paragraphs [111] to [114] of the Revised Submissions. However, the Church parties respectfully draw attention to the following additional features of the evidence.

88 By the time Mr Byrne wrote his letter dated 20 September 2001, there was no practical need for any of the initial stages of a *Towards Healing* process. Brother Hill did not accept that DG’s complaint should have been referred to the Director of Professional Standards. His view was that “[DG] is saying at the moment, “Yes, I am interested in following the mediation path of *Towards Healing*”, but all the preliminary steps have already been accomplished”. (Emphasis added)

89 That view on the part of Brother Hill is, with respect, sensible and reasonable. Whether or not Mr Byrne, acting for DG, could have communicated with the Director of Professional Standards is really beside the point. The issue is whether *Towards Healing* was engaged at the relevant time. The evidence is overwhelming that it was not.

90 It is submitted that the Revised Submissions in these paragraphs fail to take into account that:

(a) *Towards Healing* is intended to be flexible;

(b) The process is shaped by the needs of the victim.

139 T3154:38-40.
140 T3168:39–46.
141 T3175:16–19.
142 T3175:46–3176:1.
143 TJHC September 2013 Submission, paragraph [5], page 43.
144 TJHC September 2013 Submission, page 42.
(c) Clause 36.1 of *Towards Healing* (2000) provides for the referral to a contact person, "if the [victim] wishes to invoke the procedures outlined in this document". As explained above, here DG did not wish to do so.

### 4.11.2 Proposed Finding 4

91 The Revised Submissions propose one “available finding” which relates to this topic. That proposed finding, and the response of the Church parties to it, is as follows:

<table>
<thead>
<tr>
<th>Proposed Finding</th>
<th>Response</th>
</tr>
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<tbody>
<tr>
<td>4. The Marist Brothers did not ensure that DG’s complaint was referred to the Director of Professional Standards contrary to the procedures in <em>Towards Healing</em> (2000).</td>
<td>Not accepted</td>
</tr>
</tbody>
</table>

92 The Church parties accept that the Marist Brothers did not refer DG’s complaint to the Director of Professional Standards. However, for the reasons outlined, the Church parties submit that that approach was not contrary to the procedures in *Towards Healing*.

### 4.12 Application of *Towards Healing* (2000) to complaints where there is no dispute as to facts [Revised Submissions 115 - 127]

93 The Church parties generally accept the summary of evidence set out in paragraphs [115] to [126] of the Revised Submissions. However, the Church parties respectfully draw attention to the following additional features of the evidence.

94 As to paragraph [115], DG’s complaint was not initially referred to a contact person for the reasons outlined above at paragraphs [50] to [62], as summarised at paragraph [62].

95 At paragraph [126], a passage is extracted from Mr Byrne’s letter dated 20 September 2001, suggesting that there should be some resolution “within the conciliatory spirit of *Towards Healing*”. However, the subsequent correspondence, not referred to in this context in the Revised Submissions but summarised at paragraph [62] above, made it clear that DG, through his lawyers, in due course chose not to proceed by way of *Towards Healing* at all.

96 Paragraph [127] of the Revised Submissions needs to be understood in that context. As a result of that subsequent correspondence, and as chosen by DG through his lawyers, what DG had was indeed an informal settlement conference. There was no facilitator, and it was not a *Towards Healing* facilitation.

### 4.13 Conclusion

97 The Church parties accept that the handling of DG’s complaint was deficient in some respects.

98 DG is understandably unhappy and disappointed with the way his claim was handled. The Marist Brothers regret that the conduct of his complaint has caused him pain and distress, in addition to the suffering he has endured as a result of his abuse.

99 The Church parties thank DG for his courage and for allowing them to learn from his experience.
5 DK

5.1 Introduction

1 The submissions for the DK case study are made on behalf of the Council, the Marist Brothers, the Professional Standards Office for New South Wales and the ACT, and Catholic Church Insurance Limited (CCI) (together, the Church parties).

2 The case of DK arose from a complaint made by him in November 2009 about abuse he suffered between 1976 and 1981. DK engaged with Towards Healing with five main objectives:

(a) To meet with Brother Rodney, Brother Burns and Brother Moraghan;

(b) To discuss and review the policies and procedures in place (by that time, 2009) regarding child sexual abuse;

(c) To have any future psychological treatment covered;

(d) To obtain suitable compensation;

(e) To know how the Marist Brothers and the Church were now dealing with the issue of child sexual abuse.145

3 In February 2010, DK notified the Marist Brothers that he wished to have the process completed by March 2010.146

4 With one exception, each of DK’s five objectives was met during the process. Unfortunately, Brother Rodney was unable to meet with DK. However, DK accepted in his oral evidence that that was explained to him and accepted by him prior to the facilitation.147

5 The Towards Healing facilitation took place in March 2010, in the form that the Brothers understood DK to wish for. Brothers Burns and Moraghan were present, and they engaged in a frank and constructive discussion with DK, both about the abuse which DK had suffered and about other matters, such as the culture of the school and the steps the Brothers in the school had taken since the 1970s.148

6 The outcome of the facilitation included that DK received an apology, compensation (including a sum for his counselling and legal fees), and a copy of the relevant child protection policy and protocol.149

7 At the time, 2010, DK felt that the facilitation had resulted in him being “just not so angry”, and able to “let it all go”.150 The Brothers similarly had the impression that the process appeared to have worked relatively well. But DK subsequently had concerns about aspects of the facilitation, and as a result his confidence in the integrity of the process has been undermined.

145 Ex 4-42 at Tabs 19 and 23
146 Ex 4-42 at Tab 23
148 T3304:6–26
149 Ex 4-42 at Tabs 61 and 66
150 Ex 4-42 at Tab 70
8 This case study illustrates some of the ways in which *Towards Healing* can meet the real and underlying objectives of victims. In addition to the provision of an apology and compensation, DK was able to meet with the Brothers and discuss with them those points that he particularly chose to raise. Shortly after the facilitation, DK wrote to Brother Turton to say that he had found the presence of Brothers Burns and Moraghan “extremely helpful”.  

OVERVIEW

5.2 Summary of the overall sequence of relevant events [Revised Submissions 27 - 89]

9 The Church parties generally accept the summary of evidence set out in paragraphs [27] to [89] of the Revised CA Submissions in relation to DK (the *Revised Submissions*). However, the Church parties respectfully draw attention to the following additional features of the evidence.

10 In relation to paragraphs [63] to [70] of the Revised Submissions, the Church parties respectfully observe that the heading “Investigation into Brother Hunt” is not accurate. The evidence discloses no such “investigation”. Rather, what the evidence shows is four things:

(a) Brother Turton surmised, or speculated,\(^{152}\) whether rightly or wrongly,\(^{153}\) that it was Brother Hunt who was the Brother referred to by DK in connection with the infirmary, and he communicated that view to CCI while noting (as was the fact) that DK did not want this matter “to be part of the mediation process”;\(^{154}\)

(b) That surmise or speculation on the part of Brother Turton arose in part from his awareness of the contents of Brother Hunt’s handwritten document dated 10 October 2009;\(^{155}\)

(c) That document was created by Brother Hunt while he was engaged in the “Origins” programme, before DK first contacted Brother Turton with his complaint (in November 2009), and was not prompted by or related to DK’s complaint;\(^{156}\)

(d) That document was among those provided by Brother Turton to CCI in response to CCI’s request for information relating to Brother Hunt.\(^{157}\)

11 In relation to the reference to Brother Burns’ evidence in paragraph [73] of the Revised Submissions, the Church parties note that both DK\(^{158}\) and DL\(^{159}\) also agreed in their oral evidence that DK’s experience of the meeting was positive and helpful.

12 Paragraph [89] contains an inaccuracy. Mr Monahan did not “accept the proposition that a just and compassionate response to DK would have been to respond quickly to DK’s question”. On

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\(^{151}\) Ex 4-42 at Tab 70.

\(^{152}\) T3488:32–42.

\(^{153}\) See paragraph [25] below.

\(^{154}\) Ex 4-42 at Tab 26.

\(^{155}\) T3460:32–34.

\(^{156}\) T3365:2–10; T3458:30–3460:37.

\(^{157}\) T3460:32–34.

\(^{158}\) T3300:28–38; T3309:2–22.

\(^{159}\) T3323:38–3324:28.
the contrary, what Mr Monahan said was “I can accept that being put to me as a proposition. I took a different view”.160

13 In relation to the evidence of DK generally, DK provided a statement to the Royal Commission, which became Ex 4-43. However, in the course of his oral evidence, DK conceded that, in a large number of significant respects, the account in his statement of numerous events relating to the handling of this complaint in 2010, was or could be either wholly or partly incorrect. In addition, his barrister DL gave evidence quite contrary to that of DK in several respects.

14 The Church parties dealt with this aspect of the evidence in some detail in paragraphs 41 - 84 of the April Reply Submissions. The radically recast and significantly fairer nature of the Revised CA Submissions, as outlined in chapter 1 of these Revised Reply Submissions, means that it is now unnecessary for the Church parties to do more than refer to those previous submissions.

15 The Church parties again make it clear that they make no criticism of DK in this regard. DK has suffered and endured a great deal, and it is by no means surprising that his recollection of events should have been in some respects patchy or uncertain or unreliable.

16 Further, the Church parties again stress that they have always accepted, and continue to accept, without reservation, that the abuse suffered by DK did indeed occur.

OPERATION OF THE TOWARDS HEALING PROCESS IN DK’S CASE

5.3 Approach to the Towards Healing Protocol [Revised Submissions 90 - 99]

17 The Church parties generally accept the summary of evidence set out in paragraphs [90] to [99] of the Revised Submissions.

5.4 Brother Hunt [Revised Submissions 100 - 109]

5.4.1 Facts

18 For the reasons noted at paragraph 10 above, the Church parties respectfully observe that the heading “Investigation of complaint relating to Brother Hunt” is not accurate. There was no such “investigation”, and indeed no such “complaint” which DK wanted dealt with.

19 Further, the Church parties respectfully note that the Revised Submissions do not go on to propose any "available findings" in relation to this topic.

20 For that reason among others, it is both unfortunate and, with respect, unnecessary, that the material in paragraphs [63] to [70] and paragraphs [100] to [109] has been included in the Revised Submissions. The inclusion of that material is unfairly and unnecessarily prejudicial to Brother Hunt, whose denial of any wrongdoing in relation to DK was not challenged at the hearing. In addition, the subject matter is unrelated to the Towards Healing process in which DK and the Marist Brothers actually engaged, DK having expressly and repeatedly chosen not to make it part of that process.

In these circumstances, the Church parties respectfully submit that this material regarding Brother Hunt should be removed from the Revised Submissions, and that this topic should not be the subject of any consideration by the Royal Commission in its report on this case study.

In the event that the Commission does intend to address this topic, the Church parties otherwise generally accept the summary of evidence set out in paragraphs [100] to [107] of the Revised Submissions, and also do not dispute the submissions made in paragraphs [108] and [109] of the Revised Submissions. However, the Church parties respectfully draw attention to the following additional features of the evidence.

On 2 March 2010, Brother Turton sent an email to DK, which stated:

> If I can email you some photos of some of the Brothers who were there at the time would you be happy to see if you can identify the man whom you encountered in the infirmary in 1976? We don’t have photos of everyone but I can copy some out of the 1981 magazine.

> The Staff Brothers in 1976 were: [14 named persons, including “Anthony”].

On 3 March 2010, DK responded to Brother Turton and relevantly stated “I know exactly who is [sic] was from the names, so no need for the photos. I will discuss with you on the 30th”.

Brother Turton surmised or speculated that the Brother in question was Brother Hunt. However, on the evidence it is at least probable if not certain that this surmise or speculation by Brother Turton was wrong. First, Brother Hunt flatly denied it, and was not challenged on that denial. Second, DK himself (who had insisted that he “knew exactly who it was from the names”) quite clearly had believed, prior to becoming aware of Brother Turton’s speculation, that the Brother in question was not Brother Hunt.

The Church parties accept that while Brother Turton did ask DK to identify the Brother who abused him in the infirmary on multiple occasions, there is no evidence to establish that he specifically asked DK whether that Brother was Brother Hunt.

However, it is submitted that for Brother Turton not to press his own mere speculation on DK was entirely appropriate, in the context of DK having previously declined on multiple occasions to identify that Brother and having stated expressly to Brother Turton that he did not want that topic to be part of the whole mediation process, as outlined above.

**5.4.2 Available Findings Proposed by the Church Parties**

The Church parties submit that the following findings are available on the evidence:

(a) DK expressly declined to name the infirmary Brother even though he said he knew the name of that Brother;

(b) DK expressly stated that he did not want the infirmary matter to be part of the process which he was initiating.

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161 Ex 4-42 at Tab 44.
162 Ex 4-42 at Tab 44.
163 Ex 4-67 at paragraph [7].
164 T3261:11–17.
5.5 Complaints about Brother Murrin in mid-1981 [Revised Submissions 110 - 112]

29 The Church parties generally accept the summary of evidence set out in paragraphs [110] and [111] of the Revised Submissions.

30 However, the Church parties also note, and rely upon, the following further matters which are also established on the evidence, namely that:

(a) DK said that Brother Murrin abused him “at the end of Year 11, in 1980, or at the beginning of Year 12 in 1981”.165

(b) but it was not until some six months later, in about July 1981, that Brother Burns became aware of the inappropriate behaviour by Brother Murrin towards two other boys;166

(c) hence at the time of the abuse of DK by Brother Murrin (late 1980 / early 1981), there can be no suggestion that Brother Burns was aware of any inappropriate behaviour by Brother Murrin at all, towards any boy.

31 Thus, on the question whether, as at the time of DK’s abuse, Brother Burns was aware of any inappropriate behaviour at all on the part of Brother Murrin, the unequivocal answer on the evidence is “No”.

5.6 DK’s concern as to whether Brothers Burns and Moraghan had any knowledge of abuse by Brother Murrin of others at St Augustine’s [Revised Submissions 113 - 114]

32 The Church parties generally accept the summary of evidence set out in paragraphs [113] and [114] of the Revised Submissions.

33 Thus there is no doubt that prior to the facilitation DK foreshadowed to Brother Turton a wish to explore with the other Brothers (Burns, Moraghan and Rodney) whether they knew anything about Brother Murrin’s abuse of other boys besides himself.

34 There is also no doubt that DK also raised this topic, in a letter to Brother Rodney, some time after the facilitation.167

35 However, whether DK actually raised this issue at the facilitation itself is another matter altogether. The Church parties submit that the overwhelming weight of the evidence is that DK did not do so. That submission is developed further in section 5.7 below.

36 Further, while that pre-facilitation wish on the part of DK was foreshadowed to Brother Turton, it was not foreshadowed to Brother Burns or Brother Moraghan.

37 Brother Burns gave evidence that he did not attend the facilitation in order to answer complaints by DK about alleged prior knowledge on his part of abuse by Brother Murrin.168 He said:

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165 Ex 4-42 at Tab 24, paragraph [9].
166 Ex 4-42 at Tab 49A, paragraph [6.4]. See also T3641:25–29; T3684:3–8 and 17–23.
167 Ex 4-42 at Tab 77.
…my understanding was that I was there to be involved in discussion on [DK]'s allegations. I didn’t know then that he was linking that with Murrin’s behaviour, and it certainly wasn’t the main topic for the mediation session…

38 When then asked again whether he was aware that “the purpose” in his attending the facilitation included being able to answer DK’s allegations or concerns with regard to his (supposed) prior knowledge, Brother Burns responded that:169

I didn’t see anything in writing about the invitation for me to attend. I was told verbally that [DK] wanted me to attend. I had the impression that my being there was to add what I could, because I’d been there and been principal at the time - anything I could contribute, but with the emphasis on what had happened to [DK]. I don’t – quite honestly, I don’t remember at that time thinking that it had anything to do with Murrin.

39 Brother Moraghan gave evidence that he was not aware, before the facilitation, that DK may have wanted to discuss the topic of whether he had any prior knowledge of abuse by Brother Murrin of other boys.170

5.7 Discussion during the pastoral session of DK’s facilitation [Revised Submissions 115 - 139]

40 The Church parties generally accept the summary of evidence set out in paragraphs [115] to [130] and [134] to [139] of the Revised Submissions.

41 In the long section of the Revised Submissions containing those paragraphs, the focus is on one particular aspect of the facilitation, namely whether DK raised with Brothers Burns and Moraghan, during the meeting, whether they knew anything about abuse by Brother Murrin of other boys besides himself.

42 On that issue, the Church parties reiterate their submission, which will be developed in the following paragraphs, that the overwhelming weight of the evidence is that DK did not do so.

43 However, that narrow focus in the Revised Submissions obscures, and deflects attention from, what it was that the facilitation actually did principally deal with, namely:

(a) the abuse by Brother Murrin of DK himself;

(b) the effects of that abuse on DK;

(c) the culture of the school and changes to it;

(d) what DK wanted from the facilitation, including among other things the apology, compensation, counselling and psychological treatment, information about relevant current school policies, and information about how the Marist Brothers were approaching the subject of child sexual abuse generally.

All the witnesses who gave evidence, including DK, agreed that such matters among others were the subject of long, frank and constructive discussion.

169  T3653:46–3654:12.
170  T3695:12–3696:11.
44 As to the particular topic which is, however, the focus of this part of the Revised Submissions, the Church parties note that this topic:

(a) was not mentioned in the opening address by SCA;\(^{171}\)
(b) was not raised by DK in his statement, Ex 4-43;
(c) was not mentioned by DK in his oral evidence;\(^{172}\)
(d) was not the subject of questions addressed to any of the next four witnesses who followed DK (DL, Brother Turton, Mr Bucci and Mr Salmon);
(e) was raised only briefly\(^{173}\) by counsel assisting (Mr Stewart) with Brother Burns, who was the sixth witness to be called;
(f) was addressed in a substantive way for the first time only during the questioning of Brother Burns by Mr Anderson (counsel for DK).\(^{174}\)

45 The submission ultimately made in the Revised Submissions is that at the facilitation, “although DK may not have asked the Brothers specifically about the 1981 incidents, the context of the conversation during the pastoral session plainly raised the question of what the Brothers knew or suspected about Brother Murrin’s behaviour at St Augustine’s College”.\(^{175}\)

46 That submission, with respect, blurs two different issues, namely:

(1) Whether the conversation at the facilitation raised the question of whether Brother Burns or Brother Moraghan knew or suspected that Brother Murrin had abused other boys besides DK;
(2) Whether the conversation at the facilitation raised the question of whether Brother Burns or Brother Moraghan was aware of other behaviour on the part of Brother Murrin, not being abuse of anyone but being behaviour which should have indicated that Brother Murrin himself was struggling in his personal life.

47 The weight of the evidence establishes that issue (1) was not raised during the discussion at the facilitation, but issue (2) was.

48 The relevant evidence may be summarised in the following four paragraphs.

49 First of all, of all the witnesses apart from DK, none gave any evidence in support of the proposition that DK asked the Brothers, at the facilitation, whether they had been aware, at some unspecified time in about 1981, of inappropriate behaviour by Brother Murrin not just towards DK but towards boys other than DK.

50 Second, it is submitted that DK himself did not do so. The closest his evidence comes to suggesting that he may have done so is the passage of five questions and answers\(^{176}\) extracted

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171 See T2485.40 - 2487.32.
172 Subject to paragraph [50] below.
173 T3654.19-41.
175 Paragraph [131] of the Revised Submissions.
176 T3297:34–3298:5; see paragraphs [54] to [58] below.
at paragraph [115] of the Revised Submissions, in answer to senior counsel for the Church parties.

51 **Third**, every other witness who had a recollection on the point and who was asked about it – namely Brother Burns,177 Brother Moraghan178 and Mr Salmon179 – said that his recollection was that DK did not ask such questions.

52 **Fourth**, the evidence of other witnesses which might possibly bear on the topic either was inconclusive or tended to confirm that such questions were not asked.

53 Each of these aspects of the evidence is discussed briefly below.

**The evidence of DK**

54 As noted above at paragraph [44], this topic was not raised by DK in his statement, Ex 4-43, and was not mentioned at all by DK in his oral evidence, other than in the passage in cross-examination extracted at paragraph [115] of the Revised Submissions.

55 As to that passage, the first question and answer are of relevance. They were (emphasis added):

Q. *Could this be the position: the abuse you suffered as a boy has obviously affected you[if] very deeply?*

A. *Absolutely.*180

56 Thus the “it” in the next question181 is plainly abuse of DK, not of anyone else. Hence also in the second of those questions,182 it is respectfully submitted that the phrase “your accusations in that regard” necessarily also referred to that abuse, that is, of DK himself.

57 DK did say, in answer to the third extracted question, that he thought the Brothers had known about “the abuse that was going on at St Augustine’s” – obviously enough, a reference by him to abuse generally, not just of him. However, it is respectfully submitted that the whole transcript makes clear that neither the question to which that answer was given, nor either of the following two extracted questions, was a question about abuse generally; rather, each was about “it” – the abuse of DK himself.

58 Even if that reading of the extracted passage were not to be accepted, the passage does not establish that DK asked questions of the Brothers about knowledge on their part of abuse by Murrin of other boys besides him. What DK said in this passage is only that the Brothers said they had not known of “the abuse”, or “any abuse”. DK did not say whether he had asked questions as to whether they knew about abuse by Murrin of boys other than him.

**The evidence of Brother Burns**

59 Brother Burns’ evidence was that his “memory of that session was all focusing on [DK]”,183 and that he did not recall DK raising the matter of knowledge on his (Brother Burns’) part of “Ross Murrin generally and what was being done about it”.184

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179 T3801:12–17.
180 T3297:30–32.
181 T3297:36.
182 T3297:42–44.
As noted in paragraph [117] of the Revised Submissions, Brother Burns said that his memory of the session was that it focused on DK and the abuse he suffered, and why he (Brother Burns) didn’t do something about DK’s decline in his school marks. In this context, Brother Burns said that “I think the context in which we were talking was such that I would have been surprised if [DK] had [asked about the 1981 incidents].”

During Mr Anderson’s questioning of Brother Burns on this topic, he drew Brother Burns’ attention to Mr Salmon’s file note of 30 March 2010 (the Facilitation File Note (FFN)).

The text of the FFN is relevantly as follows (emphasis added):

The first meeting was attended by all the persons noted above, and it was designed to allow DK the opportunity to air his issues directly with Brs Moraghan and Burns concerning his suspicion that they knew of Murrin’s inappropriate behaviour and did not act to protect DK.

The meeting also allowed the particular Brothers to respond which essentially was that at the time they had no knowledge of Murrin’s unacceptable behaviour and nor did they accept that they should have known.

The FFN does not state, or indicate, whether the terms “inappropriate behaviour” or “unacceptable behaviour” referred to:

(a) on the one hand, such behaviour with respect to DK; or

(b) on the other hand, such behaviour with respect to other boys other than DK.

However, numerous questions were put to Brother Burns, some by Mr Anderson and some by the presiding Commissioner, his Honour McClellan J, on the footing that the FFN, where it used those terms, was using them in the second sense, (b) – behaviour towards boys other than DK.

Brother Burns gave evidence to the effect that - on that assumed footing, namely that the words in the FFN were referring to behaviour towards boys other than DK - he considered the FFN to be inaccurate.

The evidence of Brother Moraghan

The next witness, Brother Moraghan, was also shown Mr Salmon’s FFN and was asked by counsel assisting, with the FFN in front of him, whether the suspicion raised by DK at the facilitation concerned knowledge on the part of the Brothers of “inappropriate behaviour [by Murrin] towards the boys generally or only towards [DK] himself”. Brother Moraghan’s unambiguous answer was “I believe it was only towards [DK] himself”.

Brother Moraghan confirmed that evidence in answer to questions from both counsel for DK and senior counsel for the Church parties.
68 In re-examination, counsel assisting put to Brother Moraghan that “what was raised with you and Brother Burns in the mediation was not only the incident of inappropriate behaviour in relation to [DK], but your and Brother Burns’s knowledge of inappropriate behaviour by Brother Murrin towards other boys”. Brother Moraghan’s answer was again unambiguous: “No, I don’t recall that at all.”

69 The various indeterminate references cited in paragraph [134] of the Revised Submissions do not detract from the clear, unequivocal and unchallenged evidence of Brother Moraghan described above, namely that at the facilitation, DK only raised the issue of the Brothers’ knowledge of Ross Murrin’s behaviour in relation to DK, not in relation to others.

The evidence of Mr Salmon

70 Mr Salmon’s original statement of 15 November 2013 touched upon related subject matter, although did not address the specific topic of whether DK had asked such questions. The relevant parts of that statement were (emphasis added):

45 I spent approximately 30-45 minutes speaking with Mr DK, his wife and Mr DL. In the course of that discussion: …

(b) Mr DK stressed that he wanted to confront the Brothers. He said that they had some responsibility for the abuse he had suffered. Mr DK said that he believed that the Brothers must have known that Brother Murrin had problems and specifically, in relation to himself, that they should have been alerted to his particular situation because of certain indicators such as Brother Murrin’s interest in him and his declining performance at school.

48 After my private sessions with the parties, I convened the first joint session to discuss the pastoral issues. During this session: …

(b) Mr DK told his story and explained his issues, using his notes. Mr DK spoke for an extended period of time, probably for at least an hour. In the course of doing so, he seemed to me to repeat some of his points. During this time, his primary concern appeared to be with the behaviour of the two Brothers who were present rather than Brother Murrin. Mr DK said “You must have known about the behaviour of Brother Murrin. You did not provide him with enough support. You did not help him and you did not help me.”

(c) Either Brother Burns or Brother Moraghan or both said “I had no idea about the abuse. I regret that it is your view that we knew about Brother Murrin’s behaviour. I had no idea that he was a risk. If I had known, I would have done something about it. I am shocked. I regret and am mortified that these things happened to you.”

Mr DK gradually accepted that the Brothers had not actually known about the abuse. However, he indicated that notwithstanding that knowledge of child sexual abuse in the late 1970s was less than it was now, he did not necessarily accept that they should not have been more perceptive about what was happening to him.

194 Ex 4-60.
As to Mr Salmon’s evidence concerning the sentence “I had no idea that he was a risk”:

(a) The Church parties note that Mr Salmon’s evidence was that either Brother Burns said that, or Brother Moraghan did, or both of them did;

(b) If it was Brother Moraghan who said it, that was completely true – he did indeed have no idea, in 1981 or for many years afterwards, that Brother Murrin was a risk;

(c) The Church parties submit that the probability, on the evidence, is that it was Brother Moraghan who said these words;

(d) Brother Burns denied saying such words. That denial should be accepted, for the reasons outlined at paragraphs [77] to [85] below;

(e) In any event, as at the time of DK’s abuse, Br Burns also did not have any awareness of any inappropriate behaviour by Brother Murrin at all: see paragraphs 30 and 31 above.

No questions had been put to Mr Salmon by anyone, during his oral evidence on 22 January, as to whether those parts of his statement referred to at paragraph [70] above reflected or referred to any such questions having been asked by DK about abuse by Brother Murrin of others besides him.

The solicitors for the Church parties accordingly arranged for Mr Salmon to provide to the Royal Commission a short supplementary statement dealing with that issue. Mr Salmon also made himself available for further oral evidence. In his supplementary statement, to which he adhered in his further oral evidence, he made it clear:

(a) That the terms “inappropriate behaviour” and “unacceptable behaviour” in his FFN referred to behaviour towards DK, not to behaviour towards others;

(b) That he did not recall DK asking the Brothers questions about whether they were aware of Brother Murrin having engaged in abusive behaviour towards others, or of the Brothers denying any such awareness.

The evidence of other witnesses

The evidence of other witnesses which might possibly bear on the topic was as follows:

(a) As to Mr Monahan:

(i) His recollection, when first asked questions related to this issue by counsel assisting, was that DK had challenged Brother Moraghan about whether he (Brother Moraghan) had known “what was going on”, in relation to which “the fact that he [DK] had” was the occasion when DK claimed that Brother Moraghan had seen him (DK) in Murrin’s room;

(ii) Counsel assisting then suggested that another fact that DK had at the time of the facilitation was his knowledge of “the rumours with regard to Brother Murrin’s

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195 Ex 4-69; see also paragraph [127] of the Revised Submissions.
conduct”, but it is clear from Mr Monahan’s response – “Did those rumours not come up later, if I may ask?”197 – that Mr Monahan did not have a recollection of that topic arising at the facilitation;

(iii) When asked directly by senior counsel for the Church parties whether DK had said anything to the effect of accusing either of the Brothers of being aware in 1981 of sexual abuse or misconduct by Murrin in relation to other boys as distinct from DK himself, Mr Monahan replied “I don’t remember him saying that.”198

(b) As to DL: DL was not asked whether DK had asked such questions. However, his answers on a related point at T3322:34–3323:5 (partially but not fully referred to at paragraph [140(b)] of the Revised Submissions) seem clearly to indicate a recollection of DK having asserted that the Brothers should have realised something about Murrin’s behaviour towards him, DK;

(c) Mr Bucci was not asked whether DK had asked such questions, or about this topic generally;

(d) Brother Turton agreed that DK was told at the facilitation that the Brothers did not have an awareness of any inappropriate behaviour by Brother Murrin.199 However, he was not asked whether that behaviour was towards DK or others. In his statement, Brother Turton said that Mr Salmon gave DK the opportunity to raise with the two Brothers “any issues about their knowledge or awareness of Brother Murrin’s conduct”,200 and in that context went on to say that Brother Moraghan and Brother Burns had both said: “We were not aware that Br Ross was abusing you”.201

75 Thus the eventual state of the evidence on this point was that:

(a) Three witnesses (Brother Burns, Brother Moraghan and Mr Salmon) said that their recollection was that DK had not asked such questions;

(b) No witness (other than DK) said that he had;

(c) As to those who were not asked about it in a direct way, their evidence either supports the conclusion that DK had not asked such questions (Mr Monahan and DL) or is inconclusive (Mr Bucci and Brother Turton).

76 It may be, as was suggested by the presiding Commissioner at one point,202 that on one view it would be surprising if DK had not asked such questions, since in the period leading up to the facilitation DK did seem to indicate such an intention: see paragraph [33] above. But on the other hand, the evidence of several of those who were present was to the effect that DK’s focus on that day was himself and what had happened to him.203 That too, in all the circumstances, is not at all surprising.

197 T3724:16–18.
198 T3737:9.
199 T3479:26-29.
200 Ex 4-45 at paragraph [86].
201 Ex 4-45 at paragraph [89].
202 T3698:24–47.
203 T3687:21–26; T3702:39–33; T3737:2–9; T3796:15–17; T3801:39–47.
Brother Burns’ evidence should be accepted

77 Brother Burns gave his evidence, throughout, with complete and obvious candour.

78 On this topic, he consistently said that what DK talked about was himself rather than others, and that he did not believe DK asked any questions about whether there was knowledge on the part of the Brothers of inappropriate behaviour by Murrin towards other boys.

79 That evidence is supported by the evidence of Brother Moraghan, whose evidence on this point is crystal-clear.

80 It is also supported by the equally clear and equally forthright evidence of Mr Salmon.

81 It is also in fact supported by Mr Salmon’s FFN, once it is accepted - as the Church parties submit it plainly should be - that the FFN was referring to “inappropriate behaviour” and “unacceptable behaviour” towards DK, not towards other boys.

82 The evidence of Mr Monahan, DL and Brother Turton is also consistent with the evidence of Brother Burns.

83 Consistently with all the above evidence, Brother Burns did not accept that he denied knowledge of any allegations against Brother Murrin at the facilitation.204 He gave evidence that “At no stage did I deny or claim that I wasn’t aware of what – in 1981 of what had happened then”.205

84 Brother Burns gave cogent evidence to the effect that if he had been asked, at the facilitation, whether he knew by July 1981 of the inappropriate behaviour by Murrin towards the other two boys (being the incident of which he did become aware in about July 1981), he would have said Yes. That was for two reasons: first, because he would have given a truthful answer; and second, because he understood that DK already knew, by the time of the facilitation, that Brother Burns knew of that incident involving the two other boys.206

85 In addition, as noted above, Brother Burns did not in fact have any knowledge of any inappropriate behaviour by Murrin, at all, at the time that DK was himself abused (late 1980 / early 1981). Brother Burns only learned of Murrin’s behaviour towards the two other boys in July of 1981. Hence, if he had been asked at the facilitation (which on the weight of the evidence he was not) whether he had such knowledge at the time DK was abused, the honest answer would have had to be “No”. There is no reason whatsoever to suppose that Brother Burns would not have given that honest answer.

Consistency of Mr Salmon’s evidence

86 The Church parties respectfully submit that there is no inconsistency between Mr Salmon’s first statement and his supplementary statement, or between either of those statements and his FFN.

87 Any suggestion to the contrary in the Revised Submissions207 is almost entirely underpinned by the proposition that the FFN was referring to “inappropriate behaviour” and “unacceptable behaviour” towards other boys generally, and not only towards DK.

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204 T3660:21-23; T3680:3-8; T3680:15-16.
205 T3660:17-18.
206 T3664:16-18; T3679:41-3680:1; T3680:16-18; T3680:46-3681:2; T3682:36-38.
207 See paragraph [132] of the Revised Submissions.
But Mr Salmon’s clear and consistent evidence is that that is simply not so, and that the reverse is true.

Unless there is some other reason for rejecting Mr Salmon’s evidence, then it should be accepted.

There is no other such reason. On the contrary:

(a) Mr Salmon was a strikingly candid and frank witness;

(b) His personal integrity, and his sympathetic approach to victims, are widely known and respected;

(c) His evidence on this particular point is supported by that of Brother Moraghan, Brother Burns and Mr Monahan, and is not disputed by any other witness.

In particular, the Church parties respectfully stress that what Mr Salmon sought several times to make clear was that there was indeed one sense in which the subject of Brother Murrin was covered in a context wider than just DK. That context was not one of abuse by Brother Murrin of others, but a context of concern expressed by DK about Murrin himself as a person.

Mr Salmon recalled that DK made the point strongly that he thought the Brothers had let down Murrin as well as himself. In that regard, too, Mr Salmon’s evidence was consistent throughout.

One example of that consistency is the passage extracted at paragraph [130] of the Revised Submissions. Mr Salmon readily agreed that an issue was raised as to “what did they know beyond [DK]”, but that agreement on his part is plainly referable to his evidence in answer to the preceding question – namely that he recalled a discussion “about the fact that they should have been on alert, in terms of looking after Brother Murrin”.

DK covered the issues he wished to raise at the facilitation

DK confirmed at the conclusion of the pastoral session that he had covered all of the issues which he felt he needed to.

Mr Salmon gave evidence that:

… in this instance Mr [DK] had his notes and a full body of notes, and it was my job to make sure that him going through the material that he had there, that he had every opportunity to put that to the brothers, and that’s what I attempted to do.

At the end of that first pastoral session, I specifically asked [DK] as to whether he had covered all the points that he felt that he needed to and all the issues that he felt that he needed to with the brothers, and he confirmed that that was the case.

Brother Moraghan said in his statement that:

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208  Ex 4-45 at paragraph [64]; T2950:31–32; T3628:14–15; T5740:16–24; T6392:10–14.
209  Ex 4-60 at paragraph [45(b)]; T3799:21–36; T3800:10–21; T3831:15–43.
211  Ex 4-62 at paragraph [30(d)].
the first part of the session consisted mainly of [DK] making a series of statements, rather than asking questions. He would then seek a response from either Br Gerald or myself to each statement. My recollection is that he did this from the notes that he had with him.

and that:212

My impression was that [DK] generally covered the things that he wanted to cover.

97 Brother Burns said in his statement that:213

[DK] seemed to me to have prepared carefully the things that he wanted to talk about and my sense at the end was that he felt satisfied that he had raised his issues.

Conclusion

98 For all the foregoing reasons, the Church parties reject the submission in paragraph [131] of the Revised Submissions. Rather, the totality of the evidence establishes that:

(a) The pastoral session of the facilitation was primarily driven by DK and his questions of the Brothers;

(b) The context of the discussion was that it focused on DK and what had happened to him;

(c) DK did not himself raise the question of the Brothers’ knowledge or suspicions of Ross Murrin’s behaviour at St Augustine’s College in relation to boys other than DK;

(d) Despite not having raised this question, DK was satisfied that he had covered all of the issues which he wanted to.

99 Even if the question of whether the Brothers had any knowledge or suspicions of Brother Murrin’s having abused other boys had been raised (which as submitted above, on the evidence it was not), one basic fact needs to be reiterated.

100 That basic fact is that, at the time of DK’s abuse by Brother Murrin (in late 1980 / early 1981), neither Brothers Burns nor Brother Moraghan had any knowledge of any inappropriate behaviour of any kind by Brother Murrin.

101 In the case of Brother Burns, he did not become aware of any inappropriate behaviour by Brother Murrin towards any boy until about July 1981, six months after the abuse of DK by Brother Murrin. In the case of brother Moraghan, he did not become aware of any such behaviour by Brother Murrin until 2008.214

212 Ex 4-62 at paragraph [31(b)].
213 Ex 4-61 at paragraph [40(f)].
214 Ex 4-62 at paragraph [26].
5.7.2 Proposed Findings 1 to 4

The Revised Submissions propose four “available findings” which relate to this topic. Those proposed findings, and the responses of the Church parties to them, based on paragraphs [29] to [101] above, are as follows.

<table>
<thead>
<tr>
<th>Proposed Finding</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Brother Burns received complaints from two male students of inappropriate touching by Brother Murrin at St Augustine’s College in June or July 1981; and a. Brother Murrin admitted that he had inappropriately touched the boys; b. Brother Burns did not remove the complainants from Brother Murrin’s dormitory; and c. Brother Burns did not remove Brother Murrin from the dormitory or otherwise restrict his access to the boys.</td>
<td>Accepted, subject to the further available findings at paragraphs [106(a)] and [106(b)] below.</td>
</tr>
<tr>
<td>2. Prior to DK’s facilitation, the Marist Brothers and the facilitator were aware that DK wanted the Brothers to respond to his concerns that many people at St Augustine’s were aware of Brother Murrin’s behaviour, and that there were other victims.</td>
<td>Not accepted: see paragraph [103] below.</td>
</tr>
<tr>
<td>3. The discussion during the pastoral session raised the question of whether the Marist Brothers present had reason to suspect Brother Murrin’s behaviour at the time and, in particular, whether there had been complaints about Brother Murrin’s behaviour while he was at St Augustine’s.</td>
<td>Not accepted.</td>
</tr>
<tr>
<td>4. During the pastoral session, the Marist Brothers: a. did not inform DK about the 1981 complaints against Brother Murrin, of which they had personal knowledge; and b. caused DK to understand that the Marist Brothers were not, and had no cause to be, aware of Brother Murrin’s behaviour at St Augustine’s, and did not know of any abuse.</td>
<td>Not accepted; and see the further available findings at paragraphs [106(a)] and [106(d)] below.</td>
</tr>
</tbody>
</table>

103 As to proposed finding 2: it is accepted that Brother Turton and Mr Salmon were so aware. However, Brothers Burns and Moraghan were not so aware. Any finding needs to reflect those facts.

104 The Church parties submit that proposed findings 3 and 4 should not be made, not only because they are not supported on the evidence, but also because such “findings” are not appropriate. They do not identify or relate to systemic issues with Towards Healing.

105 As to proposed finding 4(a), the Church parties accept that DK was not told at the facilitation of the July 1981 complaints. However, those complaints were made some six months after DK was abused. Br Burns only became aware of them at that later time; Br Moraghan never did so.

5.7.3 Available Findings Proposed by the Church Parties

106 The evidence supports findings that:

(a) Brother Burns was unaware of any inappropriate behaviour by Brother Murrin until about July 1981, some six months after the abuse suffered by DK;
(b) Brother Burns promptly reported the July 1981 complaints involving the two other boys to the then Provincial Brother Kieran Geaney and sought guidance as to what action should be taken with regard to Brother Murrin;

(c) Br Moraghan was unaware of any inappropriate behaviour by Brother Murrin until about 2008;

(d) At the facilitation, DK did not ask whether the Brothers had been aware in 1981 of inappropriate behaviour by Brother Murrin towards other boys, and nor did Brother Burns deny any such awareness.

5.8 Appointments of Michael Salmon as Facilitator [Revised Submissions 144 - 158]

5.8.1 Should a Director of Professional Standards Act as a Facilitator in Towards Healing Facilitations?

107 The Church parties generally accept the summary of evidence set out in paragraphs [145] to [147] and [149] to [153] of the Revised Submissions.

108 As to paragraphs [145] to [147], the Church parties respectfully draw attention to the evidence of Mr Salmon, noted in paragraph [146], that based on his experience, he was confident that in the circumstances which he understood to apply in the DK case, consent would have been given by the Executive Officer in accordance with clause 39.5 of Towards Healing (2010) if it had been requested.215

109 The subject matter of paragraphs [145] to [153] of the Revised Submissions arises in both the DK and the Ingham cases.

110 In the case of DK, the Director of Professional Standards acted as the facilitator in circumstances where both he and the Church Authority believed that the victim was aware that the Director was a Church employee.216 Mr Salmon gave evidence that in those circumstances, he considered that it was appropriate for him to act as a facilitator.217

111 The Ingham case study involved a Director of Professional Standards from one state acting as a facilitator in a complaint in another state. The Church parties submit that the practice of using interstate Directors as facilitators simply reflects the position that each PSO operates independently, and the Directors are engaged by separate Church entities.

Importance of Neutrality and Independence in a Towards Healing Facilitator

112 The Church parties acknowledge that Brother Turton accepted that "the director fulfilling the mediator or facilitator role raises inherently the potential for a conflict of interest in the mind of an outsider",218 and that Mr Salmon understood that there was a "real potential for conflict when the

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215 Ex 4-60 at paragraph [32].
216 See section 5.9 below.
217 T3579:20–26; see also T3573:14–16.
218 T3349:35–38.
person who is advancing the interests of the person who has suffered in fact is paid by the church”.

However, for the reasons outlined below, the Church parties submit that such evidence does not establish that a facilitator must always be neutral and independent of the Church.

Despite his appreciation of the potential for conflict, Mr Salmon gave evidence that his view was that as long as the victim was fully informed about his role, if he believed, having thought deeply about it, that it would be beneficial to the complainant, he would seek approval to act as facilitator.

There are many factors to be considered in determining who is the most appropriate person to act as a facilitator, including their skill and experience, and the relationship of trust that may exist between a victim and a particular Director of Professional Standards. The selection of the facilitator should be a matter of agreement between the victim and the Church Authority. The Church parties submit that the victim should be entitled to nominate or agree to a Director of Professional Standards to fill this role, if he or she so chooses, notwithstanding any perception of conflict “in the mind of an outsider”.

While there may be support from some Church Authorities for the view that facilitators should be independent of the Church, as expressed by Brother Turton in his evidence in the DK case study, others might place a higher value on the benefit of having facilitators with experience and understanding of the effects of child sexual abuse, who are known and respected by Church Authorities, and who have the capacity to promote and influence outcomes which are more victim-focused.

Some directors are seen as having those skills, and are asked to act as facilitators in difficult cases, as Mr Salmon was in both the DK and Ingham cases. He identified the capacity to be “challenging and robust” with the Church Authority as an advantage to victims.

Mr Salmon’s evidence was that a flexible approach was required.

Mr Salmon also gave evidence that “facilitation is an unusual process very specific to Towards Healing”. In his view (emphasis added):

… there is a blurring around the issues of neutrality and impartiality that one would expect to see in place in a more classic mediation, so that one is going in there on the understanding that the person is accepted as a victim, and whilst the church authority has a right to procedural fairness and an element of justice, obviously, it is about getting the best result that one can get for the victim …

The starting point is to try to assist the victim to get the best outcome that you can achieve, given the circumstances that you have to deal with.

219 T3584:14–18.
221 Towards Healing (2010), clause 41.4.
222 T3348:23–3349:19.
223 T 2935:23–45; T3346:6–9; Ex 4-45 at paragraph [64].
224 T3627:29.
225 T3571:45–46.
226 T3572:8–23. See also T3575:26–29; T3577:41–45; and T3578:10–11.
Ms Rogers also recognised the issue which could arise where a Church employee was the facilitator, but also noted the upside of having people skilled in facilitation and experienced in the philosophy behind the Towards Healing process.227

Specifically in relation to Mr Salmon having acted as facilitator in the Ingham case, Ms Rogers also gave evidence referring to Mr Salmon’s extensive experience with difficult Towards Healing cases, and the limited number of people available with that experience.228

Both the DK and Ingham cases provide evidence of the potential benefits to the victim of a Director acting as facilitator.

In the DK case, Mr Salmon gave examples of the steps he took to get the best result for DK: he impressed on the Church Authority that there could be no ambiguity about the abuse;229 he invited DL to make a submission directly to the Church Authority;230 and he suggested that DK seek an additional amount of compensation for counselling.231

In the Ingham case study, Mr Salmon referred, as an example of the difference between the role of a mediator and that of a facilitator, to his recollection that during the facilitation he recorded his own personal view as to Father Mulcahy’s response to the effect that he was appalled by this.232 Although the facilitator, he suggested Deacon Wallace should meet with Father Mulcahy before the meeting with the Bishop so that he could report back to Mrs Ingham what Father Mulcahy said.233 He also suggested a higher payment to Mrs Ingham, based on covering her legal fees.234 Such contributions are consistent with Ms Fenby’s notes of the facilitation.235

For these reasons, the Church parties consider and submit that a Director acting as a facilitator may, in some cases, be beneficial to victims. However, the Church parties also agree with the evidence of Mr Salmon as summarised in paragraph [151] of the Revised Submissions that a Director should not ordinarily act as a facilitator except in the circumstances there described.

Paragraphs [155(e)] (misnumbered as 155(a)) and [156] of the Revised Submissions contend that the fact that many victims have been required to sign a deed of release, thereby giving up any future rights to take legal action in respect of their claim, is one of the features which highlights the importance that a Towards Healing facilitator be neutral and independent of the Church.

The Church parties do not agree. In many cases, Church Authorities have accepted further claims from victims who had previously signed a deed of release. In other cases, Church Authorities have not required that victims give up any future rights to take legal action in respect of their claim, but only that the amount paid is set off against any future judgment.236

In the case of DK, Brother Crowe gave evidence that he intended to contact DK again after the Royal Commission hearing had concluded.237 The Marist Brothers and DK were at that stage

228 T2935:30.
229 T3625:16–22.
230 T3625:35–38.
231 T3625:40–43.
232 T3578:5–35.
233 Ex 4-17 at Tab 115A, page 45.
234 T3576:38–46.
235 Ex 4-17 at Tab 115A.
236 TJHC September 2013 Submission, sections 4.7 and 4.10.
already engaged in a review process, and a further settlement has been reached in respect of DK’s complaint.

129 In summary, the Church parties accept that the issue of facilitator independence raises an important policy question in relation to the Towards Healing process. It is the Church parties’ respectful view, however, that this issue should be considered more fully by the Commission in the context of a broader analysis or consideration of Towards Healing, rather than determined as a finding in this case study.

Towards Healing facilitations and more traditional mediations

130 The Church parties do not agree that the evidence supports the proposition advanced at paragraph [154] of the Revised Submissions, that financial negotiations in Towards Healing facilitations are not easily distinguished from a more traditional mediation.

131 The key features and characteristics of a Towards Healing facilitation are such that, even including the financial negotiations component, they may readily distinguished from a more traditional mediation. For example:

(a) In Towards Healing the starting point is that one party admittedly has been wronged, and the other party is there to take responsibility for that and to provide redress;

(b) At a fundamental level the issues are not commercial, but deeply personal;

(c) The relative strength of the two parties is not evenly balanced;

(d) There is an inbuilt deliberate emphasis on the needs of the victim, whereas in a traditional mediation both parties’ positions and interests are to be more equally considered, often including contestable and contested argument concerning fault and/or liability;

(e) In a Towards Healing facilitation, one party (the Church) pays the costs of the facilitator without contribution from the other, which is not normally the case with mediation;

(f) The pastoral session in a facilitation under Towards Healing also distinguishes the facilitation from a typical mediation. The occurrence of a pastoral session immediately prior to financial negotiations is typically a significant and memorable moment, which inevitably impacts on the conduct of the financial negotiations;

(g) Even though, as paragraph [154(b)] of the Revised Submissions suggests, the financial component of the facilitation (compared to the pastoral component) may be *more typical of a mediation of a legal claim*238 (emphasis added), that financial stage of the process is still implemented in the context of the principles set out above and therefore still differs from a more traditional mediation.

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238 Ex 4-59 at paragraph [28(f)].
132 Towards Healing has a number of overriding principles which underpin the process, and facilitations should be implemented in the context of those principles.\textsuperscript{239} They include that a “\textit{sensitive and compassionate response to the complainant must be the first priority in all cases of abuse}”\textsuperscript{240} and that victims are to be “\textit{given such assistance as is demanded by justice and compassion}”.\textsuperscript{241} Such priority being given to the needs of one party, with a sense of responsibility or obligation being deliberately and inherently imposed on the other party, are not features of a traditional mediation.

133 Mr Monahan, who is an experienced legal practitioner,\textsuperscript{242} confirmed that Towards Healing facilitations differ from other more traditional mediations. Mr Monahan identified two particular differences.\textsuperscript{243}

\begin{quote}
Well, the first one is that the primary focus is on the wellbeing of the victim and treating the victim respectfully and courteously and doing no harm to the victim.

The second thing is that even the way one debates the case and negotiates is very different, because in a classic adversarial mediation, one can be quite vigorous in the way in which one might present something. We certainly don't do that in Towards Healing mediations.
\end{quote}

These differences relate to both the pastoral discussions and the financial negotiations in Towards Healing facilitations.

134 Ms Rogers also gave evidence that “Towards Healing is a facilitation process that is not the commercial facilitation; it is different, because its emphasis is on pastoral care.”\textsuperscript{244}

135 Mr Salmon expressed similar views: see for example paragraph [119] above.

136 The mere appearance of the words “\textit{mediator}” (once) and “\textit{mediation}” (twice) in Towards Healing (2010) as well as “\textit{facilitator}” and “\textit{facilitation}” does not in any way prove, without evidence, that facilitations were intended to operate just like classical mediations in all respects.

5.8.2 Proposed Findings 5, 6 and 7

137 The Revised Submissions propose three “available findings” which relate to this topic. Those proposed findings, and the responses of the Church parties to them, are as follows:

<table>
<thead>
<tr>
<th>Proposed Finding</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. The Director of Professional Standards should not act as a facilitator in a Towards Healing facilitation unless:</td>
<td>Accepted, with the insertion of the word “normally” before “act” in the first line.</td>
</tr>
<tr>
<td>a. the victim has knowledge of the Director’s position and makes an informed decision;</td>
<td></td>
</tr>
<tr>
<td>b. the Director obtains written consent from the victim; and</td>
<td></td>
</tr>
<tr>
<td>c. the Director obtains the written approval of the Executive Officer of the National Professional Standards Committee.</td>
<td></td>
</tr>
<tr>
<td>6. Mr Salmon did not act consistently with Towards Healing</td>
<td>Not accepted: see below.</td>
</tr>
</tbody>
</table>

\textsuperscript{239} Towards Healing (2010), clause 34.1.
\textsuperscript{240} Towards Healing (2010), clause 17.
\textsuperscript{241} Towards Healing (2010), clause 19.
\textsuperscript{242} T3717:43–44.
\textsuperscript{243} T3736:27–45.
\textsuperscript{244} T2919:39–41.
<table>
<thead>
<tr>
<th>Proposed Finding</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>(2010) in that he acted as facilitator while holding the position of Director of Professional Standards without having obtained approval in terms of clause 39.5 of Towards Healing (2010).</td>
<td>Not accepted.</td>
</tr>
<tr>
<td>7. A Director of Professional Standards acting as facilitator in a Towards Healing facilitation inherently raises the potential for an actual or perceived conflict of interest.</td>
<td></td>
</tr>
</tbody>
</table>

138 As to proposed finding 6, in the circumstances which existed in the DK case, the Church parties submit that this omission is little more than an administrative oversight, and does not warrant the making of a negative finding by a Royal Commission against Mr Salmon personally. It is respectfully submitted that the focus of the Royal Commission is to identify, and make recommendations on, systemic issues, at the institutional level, and here is no evidence that this was a systemic problem. To the contrary, Mr Salmon has committed in his evidence to ensuring that this does not happen again.245

139 As to proposed finding 7, the Church parties accept that a Director of Professional Standards acting as facilitator in a Towards Healing facilitation raises the potential for a perceived conflict of interest. However, for the reasons set out in paragraphs [112] to [136] above, the Church parties do not accept that a Director of Professional Standards acting as facilitator in a Towards Healing facilitation “inherently” raises the potential for an “actual” conflict of interest.

5.9 Communication of Mr Salmon’s Position as Director of NSW / ACT Professional Standards Office [Revised Submissions 159 - 177]

140 The Church parties generally accept the summary of evidence set out in paragraphs [160] to [167], [169] to [171] and [173] to [176] of the Revised Submissions. However, the Church parties also rely on the following matters.

141 As acknowledged in paragraph [163] of the Revised Submissions, on 22 February 2010, Brother Turton prepared the text of an email to send to DK, which stated (emphasis added):246

\[
\text{The mediator that is available is Michael Salmon. Michael is employed by the Church to supervise the implementation in NSW of the Towards Healing protocol. When leaders of religious orders or Bishops become involved in the mediation process he oversees that to make sure that elements of Towards Healing are conformed with. He is also a very experienced and qualified mediator. We have used him frequently and never had any concerns. I mention this though because he is paid by the Catholic Church to run the Professional Standards Office and to oversee that it is properly implemented. I did have one case where a person was concerned that this was a conflict of interest and so we did not use Michael Salmon as the mediator. If you are concerned about this then we would try to obtain another mediator who is suitably qualified but I am not sure about availability at this time. It would be good to talk on the phone just in case you have any questions about any of this.}
\]

245 T3607:3–13.
246 Ex 4-42 at Tab 31.
142 In his oral evidence, Brother Turton confirmed that at this time he had specifically in his mind the possibility of a perception of conflict\textsuperscript{247} and that he therefore deliberately took steps to raise the matter with DK.\textsuperscript{248}

143 On that day, 22 February 2010, DK happened to telephone Brother Turton.\textsuperscript{249} Brother Turton took the opportunity to raise the points contained in his draft email with DK. He "conveyed to [DK] that Mr Salmon was employed by the church to overview the Towards Healing process".\textsuperscript{250} DK accepts that Brother Turton told him that Mr Salmon was being paid by the Catholic Church,\textsuperscript{251} but not that Mr Salmon was the PSO Director or was employed to oversee the implementation of the Towards Healing process.\textsuperscript{252}

144 Brother Turton then used his draft email as in effect a file note of the telephone conversation.

145 On the next day, 23 February 2010, Brother Turton had a telephone conversation with Mr Salmon. His file note of that telephone call recorded that he told Mr Salmon that he had "raised the question with [DK] pointing out clearly to him that Michael Salmon was employed by the Church to oversee the implementation of Towards Healing and was an experienced and qualified mediator. DK saw no trouble with this".\textsuperscript{253} That file note is referred to in paragraph [164] of the Revised Submissions.

146 Brother Turton did not believe that he would have made a note in these terms if he had not in fact informed DK that Mr Salmon was employed by the Church.\textsuperscript{254}

147 Brother Turton was specifically concerned to raise the employment of Mr Salmon because of an earlier experience where a conflict problem had arisen. Given that experience, it is submitted that it is very probable that Brother Turton, being aware of the perception of a conflict, took deliberate steps to raise the issue with DK. The draft email to DK, and file note of the conversation between Brother Turton and Mr Salmon, are contemporaneous documents and should be afforded significant weight.

148 In his oral evidence, Brother Turton willingly made a number of concessions, including the following:\textsuperscript{255}

\begin{itemize}
  \item Q. Do you accept that you should have put it in writing to him?
  \item A. In hindsight, I definitely should have put it in writing and clarified steps more specifically.
  \item Q. Do you accept, too, that whatever it is exactly that you said, it wasn’t effective in [DK] understanding the true position of Mr Salmon; do you accept that?
  \item A. I accept that.
\end{itemize}

149 The Church parties accordingly accept that the evidence supports a finding that (notwithstanding his best efforts) Brother Turton did not effectively communicate Mr Salmon’s position to DK prior...
to the facilitation, in the sense that DK evidently did not actually understand what Mr Salmon’s position was. However, the Church parties also submit that the evidence supports a finding that Brother Turton did in fact say to DK words to the effect of the substance of his draft email.

150 The Church parties accept that the evidence supports the proposition that, at least for abundant caution and to avoid any possible misunderstanding, Brother Turton should have written to DK regarding Mr Salmon’s position as Director of Professional Standards and employee of the Church prior to the facilitation.256

151 As to Mr Salmon, the Church parties submit that the evidence supports a finding that Mr Salmon also informed DK of his position as a Church employee, although it may be that the evidence also supports a finding that he did not communicate it effectively.257

5.9.2 Proposed Finding 8

152 The Revised Submissions propose one finding which relates to this topic. That proposed finding, and the response of the Church parties to it, based on paragraphs [140] to [151] above, is as follows.

<table>
<thead>
<tr>
<th>Proposed Finding</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>8. Neither Michael Salmon nor the Marist Brothers effectively communicated Mr Salmon’s position as Director of Professional Standards to DK prior to his facilitation, or to DK and his barrister during the facilitation.</td>
<td>Accepted, subject to the further available findings at paragraph [153] below.</td>
</tr>
</tbody>
</table>

5.9.3 Available Findings Proposed by the Church Parties

153 The evidence supports findings that:

(a) Brother Turton informed DK that Mr Salmon was employed by the Church to supervise the implementation of *Towards Healing* in NSW;

(b) Both prior to and at the facilitation, Mr Salmon informed DK that he was employed by the Church.

5.10 Brother Murrin’s Position in the Marist Brothers [Revised Submissions 12 - 17]

154 As to paragraph [13] of the Revised Submissions, the Church parties note that if a Brother who has committed child sexual abuse has remained a Marist Brother, that Brother is placed under supervision and a variety of restrictions regarding their movements, activities and status, including the restrictions described by Brother Crowe referenced at paragraph [16] of the Revised Submissions.258 It would not mean that there are no repercussions for that Brother.

155 The Church parties otherwise generally accept that evidence was given as set out in paragraphs [12] to [17] of the Revised Submissions. However, they note that those paragraphs

256 Paragraph [232(c)] of the Revised Submissions.
258 See also T3777:18–37; T3783:12–32.
reflect only a relatively small part of the evidence on the topic of dealing with offenders such as Brother Murrin.

156 More generally, the matter of dismissal of an offending religious is a complex issue. It is of philosophical and practical importance for church bodies and society in general. It affects all congregations and orders, not just the Marist Brothers. Similar, but not identical considerations would be applicable in relation to a diocesan priest.

157 To date, the Marist Brothers have adopted the view that a Brother who has committed sexual abuse against children should not be dismissed, but should be prohibited from access to children and should be supervised by the Order, for the reasons given by Brother Crowe as extracted in paragraph [17] of the Revised Submissions.

158 Whether or not this is the best or most appropriate approach is likely to be a question on which views and opinions will reasonably differ. Some may consider, for example, that it is preferable for the religious institute to dismiss the offender so as to make a public statement disassociating itself from him.

159 The assessment and consideration of such competing views, and other views which might reasonably be held on this issue, would necessarily involve a wider approach than any one particular case study would permit.

160 As with chapter 5.4 above, the Church parties respectfully note that the Revised Submissions do not go on to propose any “available findings” in relation to this topic.

161 For the reasons referred to in paragraphs [155] to [160] above, it is respectfully submitted that this topic should not be the subject of any consideration by the Royal Commission in its report on this case study.

5.11 Conclusion

162 For the reasons set out in these Revised Submissions, the Church parties do not accept a number of the findings proposed to be made against them.

163 However, they are acutely aware that the Towards Healing process caused DK additional hurt and pain. The Church parties apologise to DK for the failings in that process.

164 The Church parties thank DK for bringing his experience forward and allowing them to learn from his experience.
6 Ingham

6.1 Introduction

1 For this case study, the Church parties to which leave to appear was granted were the Council, the Catholic Diocese of Lismore (the Diocese), the Office of Professional Standards, Queensland (Queensland PSO) and Catholic Church Insurance Limited (CCI) (together, the Church parties).

2 The Jennifer Ingham case study reflects some of the strengths of Towards Healing. From the outset of her complaint Mrs Ingham had made clear that she wanted three matters to be addressed in the response to her complaint. She requested:

(a) an audience with Father Mulcahy;

(b) a compensation package;

(c) a letter of apology from the Catholic Church.259

3 In addition, she stated that she had a need for closure in respect of the abuse she had suffered.260

4 Mrs Ingham had also made it clear that she wanted to “action” her complaint as soon as possible.261 The process was completed in less than 12 months (including a period of about 5 months while a report from her psychologist was being sought) and Mrs Ingham received compensation, a written apology and (as will be developed below) an offer to meet with Father Mulcahy, which she ultimately declined. She said in her statement of 23 October 2013 – when the events of the process were still fresh in her mind – that she was moving towards closure and said “Fr Brown no longer rents a space in my head”.262

5 It is submitted that the evidence demonstrates that each of her expressed needs was met by the Towards Healing process.

6 In her statement Mrs Ingham spoke positively of the compassion263 she experienced in her initial dealings with Pat Mullins, the Director of Professional Standards in Queensland, of the professionalism264 of Peter Scanlan, the Contact Person appointed under Towards Healing, and of the facilitator, Michael Salmon, who she said dealt with her with both compassion and professionalism.265

7 Mrs Ingham also spoke in approving terms of her dealings with the Church Authority – Bishop Jarrett, whom she found to be genuine266 and respectful,267 and Deacon Wallace, whom she felt was sincere in his apology for the conduct of Father Brown.268 The evidence further shows the Diocese took all appropriate steps to investigate Mrs Ingham’s complaint, including making

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259 Ex 4-17 at Tab 31.
260 Ex 4-17 at Tab 18.
261 Ex 4-17 at Tab 15.
262 Ex 4-18 Ingham, at paragraph [57].
263 Ex 4-18 at paragraph [14].
264 Ex 4-18 at paragraph [19].
265 Ex 4-18 at paragraph [39].
266 Ex 4-18 at paragraph [53].
267 Ex 4-18 at paragraph [52].
268 Ex 4-18 at paragraph [40].
inquiries of Father Mulcahy, and making inquiries of other people who may have attended the relevant meeting in 1990.

8 This case study demonstrates the value to be gained in the separation of the financial element of reparation from the pastoral element of *Towards Healing.* Mrs Ingham said that it was “important for her” to have the second meeting with Bishop Jarrett, at which she received a genuine and heartfelt apology, later followed up by an apology in writing, written personally by Bishop Jarrett.

9 Mrs Ingham’s case study is an example of how, in such difficult circumstances, the Church can work with victims towards closure, leading to the start of a healing process. Indeed, Mrs Ingham herself credited the Bishop’s “genuine words” as the commencement of her journey on the healing process.

10 Dealing with the issue of child sexual abuse is, of itself, challenging, stressful, and distressing. As Mrs Ingham said, “It is hard to expose yourself so intimately”. Some of the people involved in the *Towards Healing* process used words or did things that upset Mrs Ingham, and that is sincerely regretted by those involved. But these missteps were minor, in a process that overall was handled well, and was seen as a positive and beneficial experience by Mrs Ingham. This case study is an opportunity for the Royal Commission to identify the parts of *Towards Healing* which can provide valuable and constructive outcomes for its participants.

11 Some of the strengths of the *Towards Healing* process in Mrs Ingham’s case should be acknowledged. Mrs Ingham was provided the crucial opportunity to tell her story to, and be heard by, the Church Authority. Both the facilitation and the pastoral meeting were well-handled. Bishop Jarrett wrote a genuine and personal apology, based on his long discussion with Mrs Ingham. The reparation paid to Mrs Ingham was at a level which acknowledged the seriousness of the abuse. CCI played a constructive role in reaching that outcome. The Diocese also paid a contribution towards Mrs Ingham’s legal costs for the process. Mrs Ingham was not, in accepting the payment, required to sign a deed of confidentiality.

12 In summary, the case study is useful in identifying aspects of how the *Towards Healing* process can work and can be of value to victims in a supportive, victim-focused environment.

**OVERVIEW OF JENNIFER INGHAM’S *TOWARDS HEALING* PROCESS**

6.2 **Jennifer Ingham’s Evidence About the Abuse [Revised Submissions 27 - 33]**

13 The Church parties generally accept the summary of evidence set out in paragraphs [27] to [33] of the Revised CA Submissions in relation to Mrs Ingham (the *Revised Submissions*).

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269 See paragraph 4(a) of the Revised CA Submissions as to systemic issues to be further considered by Royal Commission.
270 Ex 4-16 at paragraph [53].
271 Ex 4-16 at paragraph [51].
272 Ex 4-16 at paragraph [57].
6.3 Father Brown [Revised Submissions 34 - 40]

6.3.1 Facts
14 The Church parties generally accept the summary of evidence set out in paragraphs [34] to [40] of the Revised Submissions.


6.3.2 Available Findings Proposed by the Church Parties
16 The Church parties submit that it is open to the Commission to make a finding that the Diocese of Lismore had, in 1986, taken appropriate steps to remove Father Brown’s faculties and in so doing had taken the steps necessary to effectively stop Father Brown from acting or holding himself out as a priest.

JENNIFER INGHAM’S TOWARDS HEALING PROCESS

6.4 Towards Healing process under the direction of Mr Mullins [Revised Submissions 41 - 53]

6.4.1 Facts
17 The Church parties generally accept the summary of evidence set out in paragraphs [41] to [53] of the Revised Submissions, subject to the additional facts set out below.

18 Mr Mullins gave evidence that he regarded the pastoral element of his role as Director of Professional Standards as concentrating on “getting victims’ claims through the process as quickly as possible.”274 The process of Mrs Ingham’s complaint was resolved in 11 months including a period of almost 5 months when Mrs Ingham’s psychologist was preparing a report.

19 Professor Dooley’s report was necessary for the facilitation to proceed. On 30 January 2013, Mr Mullins forwarded an authority to Mrs Ingham to obtain a report from Professor Dooley and Mrs Ingham responded that day.275 Mr Mullins received the authority on 31 January 2013 and sent it to Professor Dooley with a letter of instructions on 4 February 2013.276 Professor Dooley’s report was ultimately received between 3 and 6 May 2013.277

20 Professor Dooley’s report was not received prior to Mr Mullins ceasing his role as Director on 7 April 2013.278

21 In relation to paragraph [46], it should be noted that Mr Scanlan’s involvement in the process ceased with his provision of the Contact Report, and accordingly he had no further role. In particular he had no role in the process of Bishop Jarrett’s determination of whether an

273 Ex 4-36 at paragraph [96].
274 T2840:18–32.
275 Ex 4-17 at Tab 63.
276 Ex 4-17 at Tab 67.
277 Ex 4-26 at paragraphs [41]–[42].
278 Ex 4-21 at paragraph [60].
investigation was required. As it was, that determination took one month.\textsuperscript{279} It is submitted this was not a “significant time”.

6.4.2 Available Findings Proposed by the Church Parties

On the basis of the evidence set out above, the Church parties submit it is open to the Commission to find that:

(a) by communicating with Mrs Ingham regularly and in detail and by responding to Mrs Ingham promptly, the Queensland Professional Standards Office and Mr Mullins dealt with Mrs Ingham in a supportive, informative and sensitive manner;

(b) by accepting Mrs Ingham's complaint without requiring an investigation, the Diocese acted in a supportive and sensitive manner and reduced the stress of the process to Mrs Ingham.

6.5 Transition of the Role of Director from Mr Mullins to Ms Rogers [Revised Submissions 54 - 60]

6.5.1 Facts

The Church parties generally accept the summary of evidence set out in paragraphs [54] to [60] and paragraphs [111] to [113] of the Revised Submissions.

6.5.2 Proposed Finding 1

The Revised Submissions propose one “available finding” which relates to this topic. That proposed finding, and the response of the Church parties to it, is as follows.

<table>
<thead>
<tr>
<th>Proposed Finding</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The Professional Standards Office (Qld), by failing to advise of the change of personnel, failed to keep Mrs Ingham as fully informed as possible as to the progress of her complaint in relation to the change of Director.</td>
<td>Not accepted</td>
</tr>
</tbody>
</table>

The Church parties do not believe that this issue warrants a finding being made by the Royal Commission. It is common practice that personnel in all types of organisations will change. Although Mrs Ingham was not notified in advance by the Queensland PSO of the change, Mr Mullins did have a handover meeting with Ms Rogers, which included discussion regarding Mrs Ingham’s complaint.\textsuperscript{280} As a result of the handover meeting, Ms Rogers was able to continue progressing Mrs Ingham’s complaint in a timely and effective matter. Ms Rogers then later made contact to inform Mrs Ingham that she had taken over the role of Mr Mullins.\textsuperscript{281}

It is submitted that this change in personnel was completely consistent with the practice in many organisations where the person taking over a job is the one to inform clients that they have assumed the role. In this case, Ms Rogers sent an email, appropriately worded to convey that information, in advance of a phone call with Mrs Ingham.

\textsuperscript{279} Ex 4-31 at paragraphs [33]–[34]; Ex 4-17 at Tab 47.
\textsuperscript{280} Ex 4-26 at paragraph [39].
\textsuperscript{281} Ex 4-17 at Tab 93.
27 The Revised Submissions rely upon a false link between notification of the change in personnel and Mrs Ingham being kept fully informed as to the progress of her complaint, which is a separate issue.

28 At this time, there had been no further progress on Mrs Ingham's complaint, as Professor Dooley's report was still outstanding.

29 There is also no evidence that Mrs Ingham expressed any dissatisfaction with the handover at the time.

30 In any event, it is submitted that this aspect of the case study is so minor that no formal finding is warranted. The work of the Royal Commission is to identify systemic issues, at the institutional level, and there is no evidence that this was a systemic problem. To the contrary, Ms Rogers has committed in her evidence to ensuring that this does not happen again. 282

6.6 Towards Healing process under the Direction of Ms Rogers [Revised Submissions 61 - 72]

6.6.1 Facts

31 The Church parties generally accept the summary of evidence set out in paragraphs [61] to [72] of the Revised Submissions, and rely further on the following matters.

32 As to paragraph [62] of the Revised Submissions, as noted above, the mere process of disclosing sexual abuse and seeking a response to that abuse from the relevant Church Authority is a stressful situation. The emails from Ms Rogers were objectively sympathetic, clear, and informative (for example, the extract in paragraph [62] of the Revised Submissions demonstrates that Mrs Ingham was given a choice of dates and an invitation to suggest others if those were not suitable).

33 As to paragraph [70] of the Revised Submissions, Ms Rogers offered Mrs Ingham a choice between a facilitation on 24 June 2013 with Bishop Jarrett attending, or alternatively a facilitation on 24 May 2013 without Bishop Jarrett and a separate pastoral meeting with the Bishop on 24 June 2013. 283 Mrs Ingham chose to keep the facilitation on 24 May 2013, and have the separate pastoral meeting with Bishop Jarrett a month later.

34 There is no evidence that Mrs Ingham expressed to Ms Rogers any dissatisfaction with the process at the time.

6.6.2 Available Findings Proposed by the Church Parties

35 It is open to the Royal Commission on the available evidence to find that the Queensland Professional Standards Office and Ms Rogers provided a sensitive and compassionate response to Mrs Ingham as a first priority by:

(a) Complying with Mrs Ingham's request to keep the process moving forward;

(b) Progressing Mrs Ingham's complaint to resolution as expeditiously as practicable

282 T2926:12–18.
283 Ex 4-26 at paragraph [69].
(c) Communicating appropriately and regularly with Mrs Ingham, always in a very pleasant manner, in relation to the progress of her complaint;

(d) Providing options to Mrs Ingham in relation to the facilitation, with Bishop Jarrett or at an earlier date;

(e) Paying for her lawyer to attend the facilitation, and offering to pay for Professor Dooley to attend if she wished him to do so.

### 6.7 Contact between the Church Authority and Father Mulcahy prior to the Facilitation [Revised Submissions 73 - 78]

36 The Church parties generally accept the summary of evidence set out in paragraphs [73] to [78] of the Revised Submissions.

37 However, the Church parties also note that, as described in paragraph [98] of the Revised Submissions, at the meeting with Bishop Jarrett on 24 June 2013 Mrs Ingham was offered the option of meeting with Father Mulcahy if she wanted to. She, understandably, declined to do so. Whilst Mrs Ingham gave evidence that she could not recall such information being provided to her by Deacon Wallace, Deacon Wallace was not challenged on his version of events.

### 6.8 Facilitation [Revised Submissions 79 - 90]

38 The Church parties generally accept the summary of evidence set out in paragraphs [79] to [90] of the Revised Submissions, and rely further on the following matters.

39 As to paragraph [85] of the Revised Submissions, it is unclear whether the Revised Submissions are suggesting that Deacon Wallace should have contacted Mrs Ingham personally about the formalities for the facilitation, including his attire. It is submitted that Deacon Wallace acted with thoughtfulness and care in turning his mind to what he should wear to the facilitation. He even took the initiative to seek the input of Mr Salmon, an experienced facilitator, about what would be appropriate. The Church parties suggest that having victims face calls before facilitation meetings about the mode of dress of the Church Authority would not be helpful or constructive for the victims.

40 In respect of the monies paid, as noted by SCA in her opening, and confirmed by the statement of Emma Fenby and her oral evidence, Jennifer Ingham received the $276,736.64 inclusive of costs composed of the following elements:

(a) $250,000 from CCI;

(b) An additional $15,000 from the Diocese;

(c) Costs and disbursements in the amount of $11,736.

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285 Fenby Ex 4-27 para.118.
286 T2973:36.
287 T2976:19-21.
41 It should be noted that the amount for costs paid by the Diocese through CCI dealt with in paragraph [87] was a figure, according to Ms Fenby\(^{288}\) proposed by Mr Kelso, the solicitor for Mrs Ingham. Mr Kelso was engaged by Mrs Ingham for less than two weeks.\(^{289}\) His costs came to a total of $34,320.\(^{290}\) At no time during the facilitation was the Diocese or CCI informed that Mrs Ingham would be required to pay the balance from the settlement paid to her. Mr Kelso’s evidence to the contrary should not be preferred, as he did not challenge Ms Fenby’s evidence.\(^{291}\)

6.9 After the Facilitation [Revised Submissions 91 - 93]

42 The Church parties generally accept the summary of evidence set out in paragraphs [91] to [93] of the Revised Submissions, and rely further on the matters described in paragraph 37 above.

6.10 Meeting with Bishop Jarrett [Revised Submissions 94 - 101]

43 The Church parties generally accept the summary of evidence set out in paragraphs [94] to [101] of the Revised Submissions, and rely further on the matters described in paragraph 37 above.

6.11 After the Meeting with Bishop Jarrett [Revised Submissions 102 - 104]

44 The Church parties generally accept the summary of evidence set out in paragraphs [102] to [104] of the Revised Submissions, and rely further on the following matters.

45 As stated by Mrs Ingham and extracted in paragraph [103] of the Revised Submissions, no amount of money could make up for what she experienced. However, the amount of the reparation paid to Mrs Ingham was significant and indeed, Mrs Ingham’s only complaint regarding the amount paid was that others may not have received as much as she did.

46 Variations between settlement amounts for different people is a necessary consequence of all settlements being individually negotiated. In this particular case, Mrs Ingham was, appropriately, paid a significant amount. The Church parties submit that matters regarding the consistency between payments to different, individual victims should be addressed in the Commission’s broader work with respect to redress schemes rather than with respect to this case study.

HANDLING OF COMPLAINT BY PROFESSIONAL STANDARDS OFFICE QLD

6.12 Mrs Ingham’s Request for a Meeting Prior to the Facilitation [Revised Submissions 105 - 110]

47 The Church parties generally accept the summary of evidence set out in paragraphs [105] to [110] of the Revised Submissions, subject to the following matters.

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\(^{288}\) Ex 4-27 para.18 & T2976.19-21.
\(^{290}\) Ex 4-18 at paragraph [44].
\(^{291}\) T3427:01-3428:21.
Although Ms Rogers did not meet with Mrs Ingham prior to the facilitation, Ms Rogers had at least two lengthy telephone conversations with Mrs Ingham between 9 and 24 May 2013 and exchanged emails with Mrs Ingham on 9, 10, 13, 15, 16 and 17 May 2013.

While it may have been preferable that Mr Mullins and Ms Rogers had met face to face with Mrs Ingham to talk her through the process of the facilitation, it was not required by *Towards Healing* (2010) nor the Current Guidelines, and both Mr Mullins and Ms Rogers had cogent reasons for not doing so.

Ms Rogers relied upon the advice given to her by Mr Mullins about a meeting with Mrs Ingham. As Ms Rogers was new to the role her reliance on the opinion of Mr Mullins was not unreasonable. Ms Rogers agreed that with hindsight she should have had such a meeting. Ms Rogers has since made changes to the role of the Director in the Queensland PSO, and has made such a meeting a part of office practice.

As to paragraph [110] of the Revised Submissions, while Ms Rogers understandably agreed with counsel assisting’s proposition that “[a] just and compassionate response to Mrs Ingham, I suggest to you, Mrs Rogers, would have been to meet with her, as she asked you to do,” it does not necessarily follow that not doing so displays an absence of justice and compassion. As discussed above, Ms Rogers had cogent reasons for not doing so.

Ms Rogers gave evidence about the changes she had instituted at the Queensland PSO since Mrs Ingham’s complaint. These changes were based on her early experience in the role of the Director and took the form of a series of recommendations made to the liaison committee of the Queensland PSO. As a result the following changes have been put in place:

(a) The role of the Director is now a full time position with a full time administrative assistant;

(b) The practice of meeting with complainants has been adopted;

(c) Ms Rogers arranged a formal handover to her successor over a week in January 2014 in which each complainant would be contacted by her and her successor;

(d) She established a process for imparting information to her successor, and assisting him in understanding the importance of the spiritual trauma of those coming to *Towards Healing*;

(e) She oversaw a re-drafting of the role description of the Director.

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292 Ex 4-18 at paragraphs [28] and [33].
293 Ex 4-17 at Tabs 93, 94, 99, 103, 106, 112 and 113.
294 Ex 4-21 at paragraphs [72] to [74].
295 Ex 4-26 at paragraphs [50] to [51].
296 T2929:34–44.
297 T2930:8–16.
298 Ex 4-26 at paragraph [77].
299 T2924:39–42.
300 T2928:29–47.
301 T2939:5–9 and Ex 4-17 at paragraph [159].
(f) Meetings occur with contact people to instruct them on proper modes of communication with complainants.\(^{306}\)

(g) A new office with a meeting room has been obtained, where meetings with complainants or facilitations can take place.\(^{307}\)

53 Those changes enhanced the effectiveness of the process for complainants with complaints being managed by the Queensland PSO.

54 If the Commission is minded to make findings amounting to an evaluation of Ms Rogers’ actions in her role, then the Church parties submit that a further finding is open to the Commission on the available evidence that Ms Rogers acted with sensitivity and compassion to all relevant complainants by instituting the changes set out above.

### 6.13 Discussion between Mrs Ingham and Ms Rogers on 9 May 2013 [Revised Submissions 115 - 130]

55 The Church parties generally accept the summary of evidence set out in paragraphs [115] to [130] of the Revised Submissions, and rely further on the following matters.

56 The Revised Submissions emphasise a number of criticisms which could be made of Ms Rogers’ conversation with Mrs Ingham on 9 May 2013. Certainly the content of the conversation involved conveying to Mrs Ingham further information about what the facilitation meeting might involve, in a way which best positioned her to prepare for that meeting. Accordingly, while some of the information provided to Mrs Ingham may have been new and confronting, that information prepared and advised Mrs Ingham as to the steps she should take. In fact, Ms Rogers gave Mrs Ingham in that call the very practical advice that she needed in the situation.

57 This discussion also needs to be appreciated in the context of Mrs Ingham’s desire for the process to move as quickly as possible.\(^{308}\)

### 6.14 Appointment of Michael Salmon as Facilitator [Revised Submissions 131 - 136]

#### 6.14.1 Facts

58 The Church parties generally accept the summary of evidence set out in paragraphs [131] to [134] and paragraph [136] of the Revised Submissions, subject to the following matters.

59 The reference in paragraph [135] of the Revised Submissions and in proposed finding 2 should be to clause 41.4 of *Towards Healing* (2010) rather than clause 41.1.

60 Ms Rogers’ evidence should properly be assessed against the background that she was new to the role and that her unchallenged evidence was that she had been told by Mr Mullins “that there was a need to move quickly to facilitation as Mrs Ingham was seeking a speedy resolution of her

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\(^{306}\) T2934:38–47.

\(^{307}\) T2939:20–24.

\(^{308}\) Ex 4-17 at Tab 15.
complaint”. Indeed, Mrs Ingham stated in her email reply of 9 May 2013 to Ms Rogers that, “I am keen to move forward as this has been a difficult process, however I have appreciated all the support during the process”.

Although Ms Rogers’ email of 9 May 2013 did not explicitly state that Mrs Ingham could choose another facilitator if she wished, it did not in any way exclude that possibility. Ms Rogers’ email proposed the appointment of Mr Salmon, it did not impose it.

Further to paragraph [136] of the Revised Submissions, the evidence demonstrates not only that Mrs Ingham did not raise a concern about Mr Salmon being the facilitator, but that she had nothing but praise for him. In her email of 28 May 2013 to Mr Salmon, Mrs Ingham said to Mr Salmon that she needed to “thank you with my heart for the respect you showed me last Friday”, that “[y]ou managed the facilitation very well” and that “I just wanted to ensure you knew I genuinely appreciated you on Friday”. Mrs Ingham also noted in that email that she was grateful that Mr Salmon had agreed that he would also attend the pastoral meeting with Bishop Jarrett on 24 June 2013.

On 24 June 2013, the pastoral meeting was held with Bishop Jarrett and Deacon Wallace, with Mr Salmon as the facilitator. Following that meeting, on 2 July 2013 Mrs Ingham again wrote to Mr Salmon to express her thanks to him. In that email, Mrs Ingham said that “again your facilitation was the key” and “Michael, I have so much trust in you and what you say and I sense your conviction to support people like myself. Thank you.”

Ms Fenby also supported the appointment of Mr Salmon as the facilitator, given his experience and pastoral approach, which she said she would not have done if she thought it would “in any way disadvantage Jennifer”.

6.14.2 Proposed Finding 2

The Revised Submissions propose one “available finding” which relates to this topic. That proposed finding, and the response of the Church parties to it, is as follows.

<table>
<thead>
<tr>
<th>Proposed Finding</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Ms Rogers’ email on 9 May 2013 was not framed in such a way that invited Mrs Ingham’s consultation on the appointment of Mr Salmon. Ms Rogers did not ask Mrs Ingham whether she agreed or disagreed with his appointment or of her option to suggest an alternative facilitator from the approved panel or an otherwise qualified mediator, as envisaged by clause 41.4 of <em>Towards Healing</em> (2010).</td>
<td>Not accepted</td>
</tr>
</tbody>
</table>

Proposed finding 2 suggests inconsistency with clause [41.4] of *Towards Healing* by reason of a lack of consultation with Mrs Ingham, and the failure to inform Mrs Ingham directly of her option to suggest an alternative facilitator. Clause 41.4 provides that:

309 Ex 4-26 at paragraphs [40] and [62].
310 Ex 4-26 at Tab 17.
311 Ex 4-17 at Tab 126.
312 Ex 4-17 at Tab 149.
313 T2982:15–19.
The Church Authority and the victim shall endeavour to agree on a facilitator, either from the approved panel or otherwise a qualified mediator approved by the Director for Professional Standards, who is suited by reason of training and experience to understand the needs of victims of abuse. In the absence of agreement, the Executive Officer of the National Committee for Professional Standards shall appoint a facilitator.

Clause 41.4 does not require that either of these occur, and for that reason and the reasons below, the proposed finding ought to be rejected by the Commission.

67 The requirement imposed by the clause is that the Church Authority and the victim “agree on a facilitator”. The clause does not impose any particular approach or process by which such agreement is to be sought or obtained. Nothing in clause 41.4 requires a Director to identify to the complainant a list of people who could be the facilitator.314 The fact that Ms Rogers accepted, in response to questioning, that she should have consulted with Mrs Ingham demonstrates her view in hindsight, but does not affect whether her action at the time was inconsistent with the provisions of Towards Healing.

68 While acknowledging that further consultation with victims about the appointment of the facilitator is undoubtedly preferable, it is submitted that Ms Rogers’ engagement with Mrs Ingham about the appointment was not inconsistent with clause 41.4 of Towards Healing. Had Mrs Ingham disagreed with the suggestion, it would not have proceeded.

69 There is no evidence to suggest that Mrs Ingham queried the proposed appointment, expressed unhappiness, or asked about appointing someone else, even though she was in communication with Ms Rogers at that time about possible dates for the facilitation.315

70 It is submitted, with respect, that while the PSO or the Church Authority will know of a number of people who would be suitable to act as a facilitator, many victims would have no independent knowledge of or recommendations for who would be a suitable facilitator.

71 Further, the proposition put at paragraph [135] of the Revised Submissions, that the email of 9 May 2013 was not framed in a way that would have invited Mrs Ingham to disagree, was never put to Ms Rogers.316

72 It is therefore submitted that proposed finding 2 should not be accepted, as the suggested inconsistency with Towards Healing is based on an implied requirement which goes beyond the actual requirements of clause 41.4, and in any event did not lead to any dissatisfaction by Mrs Ingham.

73 Alternatively, the Church parties respectfully submit that if the Commission does seek to make a finding on this issue, it should be phrased as follows:

More could have been done by the Queensland PSO to make clearer to Mrs Ingham the fact that she could suggest an alternative facilitator.

314 T2936:39–46; In particular, there is no requirement in clause 41.4 to advise a victim that they could “have their own choice of mediator”, as implied in questions to Ms Rogers at T2936:6–9. Indeed such advice would be incorrect, as the agreement of the Church Authority to the facilitator is also required.


316 See section 2.4 of these submissions.
6.15 Should the Director of Professional Standards act as a facilitator in a Towards Healing facilitation? [Revised Submissions 137 - 141]

74 The submissions of the Church parties on this topic, and on proposed findings 3 and 4, are to be found in the submissions on the DK case study, at paragraphs [106] to [138] thereof.

6.15.1 Proposed Findings 3 and 4

75 The Revised Submissions propose two “available findings” which relate to this topic. Those proposed findings, and the response of the Church parties to them, are as follows.

<table>
<thead>
<tr>
<th>Proposed Finding</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. A Director of Professional Standards acting as facilitator in a Towards Healing facilitation raises a real potential for an actual or perceived conflict of interest given that the Director is employed by the Catholic Church.</td>
<td>Not accepted</td>
</tr>
<tr>
<td>4. A Director should not act as a facilitator unless:</td>
<td></td>
</tr>
<tr>
<td>a. the victim has knowledge of the Director’s position and makes an informed decision</td>
<td></td>
</tr>
<tr>
<td>b. the Director obtains written consent from the victim, and</td>
<td></td>
</tr>
<tr>
<td>c. the Director obtains the written approval of the Executive Officer of the National Professional Standards Committee.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Accepted, with the insertion of the word “normally” before “act” in the first line.</td>
</tr>
</tbody>
</table>

6.16 Role of Emma Fenby, CCI Representative [Revised Submissions 142 - 152]

6.16.1 Facts

76 The Church parties generally accept the summary of evidence set out in paragraphs [142] to [151] and the submission set out in paragraph [152] of the Revised Submissions.

6.16.2 Available Findings Proposed by the Church Parties

77 The Church parties submit that it is open to the Commission, and indeed appropriate and fair should the Commission make a finding in Ms Fenby’s favour, to find that CCI, in the Towards Healing process of Mrs Ingham acted consistently with the principles and procedures of Towards Healing (2010).
HANDLING OF COMPLAINT BY THE CHURCH AUTHORITY

6.17 Attendance of Church Authority at the Facilitation [Revised Submissions 153 - 160]

6.17.1 Facts
78 The Church parties generally accept the summary of evidence set out in paragraphs [153] to [158] and the submissions set out in paragraphs [159] to [160] of the Revised Submissions, and rely further on the matters set out in paragraphs 37 above.

6.17.2 Available Findings Proposed by the Church Parties
79 There are no "available findings" which relate to this section of the Revised Submissions. The Church parties consider that the response of both Deacon Wallace and Bishop Jarrett to Mrs Ingham’s complaint, and to Mrs Ingham, warrant positive findings being made in respect of those two individuals.

80 In paragraphs [159] and [160] of the Revised Submissions, Counsel assisting submits that the Church Authority acted in an appropriate (and, in relation to Bishop Jarrett), a compassionate way. Both Bishop Jarrett and Deacon Wallace acted with great concern and care for Mrs Ingham throughout the process. The submissions in paragraph [159] could form the basis for a positive finding as to Bishop Jarrett’s response and to Deacon Wallace who was instrumental in organising the two sessions, one for a financial negotiation and one for a pastoral meeting.

6.18 The Meeting in 1990 [Revised Submissions 161 - 228]

6.18.1 Circumstances in which the 1990 meeting was arranged
81 The Church parties generally accept the summary of evidence set out in paragraphs [164] to [167], [169] to [171] and [173] of the Revised Submissions.

6.18.2 What was said at the 1990 meeting?
82 The Church parties generally accept the summary of evidence set out in paragraphs [174] to [178] of the Revised Submissions.

6.18.3 Mrs Ingham’s recollection of the 1990 meeting
83 The Church parties generally accept the summary of evidence set out in paragraphs [181] to [184] of the Revised Submissions.

6.18.4 Relationship between Mrs Ingham and Father Mulcahy
84 The Church parties generally accept the summary of evidence set out in paragraphs [186] to [187] and [189] to [197] of the Revised Submissions.
6.18.5 Bishop Jarrett’s telephone call with Father Mulcahy prior to the facilitation

85 The Church parties generally accept the summary of evidence set out in paragraphs [201] to [208] of the Revised Submissions.

6.18.6 Deacon Wallace’s inquiries and meeting with Father Mulcahy

86 The Church parties generally accept the summary of evidence set out in paragraphs [216] to [225] of the Revised Submissions.

6.18.7 Evidence of Colin Riches

87 The Church parties generally accept the summary of evidence set out in paragraph [227] of the Revised Submissions.

6.18.8 Proposed Findings 5 to 7

<table>
<thead>
<tr>
<th>Proposed Finding</th>
<th>Response</th>
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</thead>
<tbody>
<tr>
<td>5. A meeting in early 1990 did occur between Mrs Ingham and senior clerics from</td>
<td>The Church parties make no</td>
</tr>
<tr>
<td>the Diocese of Lismore where she disclosed that she had been sexually abused</td>
<td>response</td>
</tr>
<tr>
<td>as a child by Father Brown.</td>
<td></td>
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<tr>
<td>6. Father Mulcahy likely attended the meeting.</td>
<td>The Church parties make no</td>
</tr>
<tr>
<td></td>
<td>response</td>
</tr>
<tr>
<td>7. Father Mulcahy learned that Mrs Ingham alleged that Father Brown sexually</td>
<td>The Church parties make no</td>
</tr>
<tr>
<td>abused her as a child at the meeting in early 1990.</td>
<td>response</td>
</tr>
</tbody>
</table>

6.19 Conclusion

88 The Ingham case study highlights some of the strengths of the Towards Healing process, but also identified some areas where procedures could be clarified in the interests of providing a more sensitive handling of individual complaints. Steps to address those have already been taken up and implemented. Overall, the Ingham case study demonstrated that Towards Healing can provide a positive opportunity for the Church Authority to engage with the victim, identify steps which could be taken to support or assist them, and extend a genuine and sincere apology on behalf of the Church Authority for the abuse which occurred. All of these outcomes were features of the process in Mrs Ingham’s complaint.

89 There were also some aspects of the process where Towards Healing did not meet Mrs Ingham’s needs. They have been taken on board and appropriate changes have already been instigated in the Queensland PSO.

90 The Ingham case study also illustrates the development in the approach taken by CCI. CCI was engaged, constructive and supportive of Mrs Ingham receiving a significant outcome by way of reparation.

91 The Diocese, through Bishop Jarrett and Deacon Wallace, responded appropriately and compassionately to Mrs Ingham’s complaint, at all stages of the process, particularly in the two
meetings which were held with her. Bishop Jarrett and Deacon Wallace did everything which they could have done to ensure that Mrs Ingham’s complaint was responded to as appropriately and compassionately as it was.

Finally, the Diocese takes this opportunity to reiterate its apology to Mrs Ingham for the abuse which she suffered from Father Brown. The Diocese also apologises to Mrs Ingham for any stress and anxiety caused to her by any aspect of the process which was not appropriately handled.