ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

Public Hearing - Case Study 56
(Day 259)

Level 17, Governor Macquarie Tower
1 Farrer Place, Sydney

On Friday, 10 March 2017 at 2pm

Before:

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

Counsel Assisting: Mr Angus Stewart SC

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MR STEWART: Your Honour, Commissioners, this is the Royal Commission's 56th case study. This public hearing will inquire into the current policies and procedures of the Uniting Church in Australia - which I shall refer to as "the Church" - in relation to child protection and child safe standards, including responding to allegations of child sexual abuse.

The Royal Commission has carefully chosen the matters that have formed the subject matter of public hearings. Unlike "review" hearings being conducted by the Royal Commission in respect of other institutions, there hasn't been any previous case study that has directly examined the policies and procedures of the Church in response to allegations of child sexual abuse.

Previous case studies have, however, examined certain institutions of the Church or considered submissions of the Church on critical issues being examined by the Royal Commission. These case studies include: Case Study 23 into the response of Knox Grammar School and the Church to allegations of child sexual abuse at Knox Grammar School; Case Study 24 into preventing and responding to child sexual abuse in out-of-home care, which examined the policies and procedures of Wesley Mission; Case Study 25 on redress and civil litigation, which considered the submissions of the Church and Uniting Care Queensland, a provider of community services, on the Royal Commission's consultation paper; and Case Study 45 into the response of Shalom Christian College in Queensland to allegations of problematic or harmful sexual behaviour by students at that school.

These previous case studies will not be revisited in this public hearing. In this public hearing, the Royal Commission will hear evidence from three senior representatives of the Church in relation to the following topics: the development of a National Child Safe Policy Framework by the Church to provide an overarching and nationally consistent framework for child safety for the Church and its institutions; the steps taken or proposed to be taken by the Church to incorporate or implement the framework across the various synods of the Church; the steps taken or proposed to be taken by the Church to monitor compliance with the framework by the various synods of the Church; the Church's response to the Commonwealth Redress Scheme for survivors of institutional child abuse.
which was announced on 4 November 2016 in response to recommendations made by the Royal Commission in its August 2015 report on Redress and Civil Litigation; and the Church's response to recommendations concerning civil litigation made in the Royal Commission's August 2015 report on Redress and Civil Litigation.

The evidence in this hearing will be by panel. The members of the panel will be Stuart McMillan, the President of the National Assembly of the Church, Colleen Geyer, the General Secretary of the National Assembly of the Church, and Reverend Heather den Houting, the General Secretary of the Queensland Synod of the Church.

I will now briefly explain the structure and governance of the Church.

The Uniting Church in Australia was inaugurated on 22 June 1977 by the union of three churches, the Congregational Union of Australia, the Methodist Church of Australia and the Presbyterian Church of Australia. The Church is the third-largest Christian denomination in Australia, after the Catholic Church and the Anglican Church. It has approximately 1,065,000 members and adherents.

Prior to inauguration, the three separate churches approved a foundational document known as the Basis of Union, which sets out how the union would occur, as well as the structure and governance of the Church.

The Basis of Union states that the Church is to be governed by a number of inter-related councils. These inter-related councils are non-hierarchical and each has responsibility for various functions or roles within the Church.

The inter-related councils are: the Assembly, being the national council; the Synods, being regional councils that loosely correlate to state and territory boundaries; the Presbytery, being district councils; and the Congregations.

I will address the nature and role of each of the councils in further detail shortly.

The Church has two orders of ordained ministry,
Ministers of the Word, and Deacons. The Church also recognise, lay members who are able to be appointed as elders and lay pastors of the Church.

I now turn to the inter-related councils of the Church.

The Assembly is the national council of the Church and is chaired by the President, with the General Secretary being the Executive Officer. The Assembly has responsibility for matters of doctrine, worship, governance and discipline, and makes the guiding decisions on the tasks and authority to be exercised by the other councils.

The Assembly meets once every three years. A standing committee elected by members of the Assembly meets three times a year and has the authority of the Assembly between meetings of the Assembly.

Each ordinary meeting of the Assembly elects a President-elect, who takes up office as the President at the following General Assembly meeting. Stuart McMillan is the current President. He will give evidence at this hearing.

The duties of the President are "to give spiritual leadership and encouragement to the Church generally, to represent the Church as appropriate, to give counsel as occasion requires, and to do such other things as may be requested or advised by the Assembly."

The Assembly also elects a General Secretary as the Executive Officer of the Assembly. Colleen Geyer is the current General Secretary, and she will give evidence at this hearing.

The duties of the General Secretary are to give general leadership to the Church, ensure execution of Assembly policy, coordinate Assembly activities, oversee Assembly staff and do such other things as the Assembly may require.

The Synods are the regional or state councils of the Church. There are six synods across Australia, being the Queensland Synod, the New South Wales and Australian Capital Territory Synod, the Victoria and Tasmania Synod, the South Australian Synod, the Northern Synod and the West
Australia Synod. Each Synod is responsible for the general governance of the Church’s mission within its geographic boundaries.

Subject to the direction of the Assembly, synods have the power to establish and maintain boards, institutions, committees and agencies, such as schools and out-of-home care providers. Entities established by the Synod are classified as institutions of the Church, and each Synod is responsible for overseeing affiliated institutions it has established to enable it to carry out those responsibilities.

There are 278 entities and institutions affiliated with Church Synods across Australia. Of those, 64 are schools, and 179 are agencies that provide services to children, youth and the wider community. Uniting Church agencies have 40,000 employees, 30,000 volunteers, and operate from 1,600 service locations.

The Synods meet every 12 to 18 months. In between Synod meetings, a Synod Standing Committee is empowered to act on behalf of the Synod. The Royal Commission will hear from Reverend Heather den Houting, who is the current General Secretary of the Queensland Synod.

There are 34 Presbyteries across Australia. The Presbyteries consist of ministers and Church members, and are responsible for overseeing the Church's mission through the ministers, congregations and local agencies within their geographic boundaries. Presbytery services to children can include camps and youth and children's ministry and related activities.

Uniting Church members and adherents worship together in congregations. There are approximately 2,078 congregations throughout Australia. Each congregation or group of congregations has a Church Council. The Church Council is responsible for oversight of all activities with children within the congregation, which include youth groups, children's clubs, creches, young adults activities and Sunday School.

According to the Church, the non-hierarchical structure of these inter-related councils means that each council has overlapping tasks and responsibilities, including responsibilities for activities involving...
children.

As at 31 December 2016, 91 attendees of private
sessions of the Royal Commission reported sexual abuse as
children at an institution of the Church. This is
1.5 per cent of all reports given at private institutions.
A majority of these reports relate to experiences of child
sexual abuse that has occurred at schools and out-of-home
care facilities. Only 12 private session attendees
reported sexual abuse as children at a place of worship
within the Church. This represents 0.2 per cent of all
private sessions.

At the request of the Royal Commission, the Church has
provided data in relation to allegations, incidents and
claims arising from child sexual abuse since the formation
of the Church in 1977.

Analysis of the data by the Royal Commission reveals
that in the 40 years since the Church's inauguration, there
have been 2,504 incidents or allegations of child sexual
abuse that have been reported as having occurred at an
institution or place of worship of the Church. Of the
2,504 incidents or allegations, 133 appear to be in
relation to abuse said to have occurred at a place of
worship. There have been 255 claims made to or commenced
against the Church that relate to child sexual abuse, and
approximately $17.5 million has been paid by the Church in
settlement of claims that relate to child sexual abuse.

In the time available, the Church has not been able to
confirm the above analysis of the data.

The Royal Commission will hear evidence that the
Church has a number of policies, procedures and guidelines
for dealing with allegations of sexual misconduct within
the Church. As noted earlier, the Assembly has
responsibility for matters of doctrine, worship, governance
and discipline. It also has responsibility to set national
policy and promote the Church's mission.

The current key policies of the Assembly Standing
Committee for dealing with allegations of child sexual
abuse are the following: the National Child Safe Policy
Framework; an Updated Sexual Abuse and Sexual Misconduct
Policy; a Code of Conduct for Lay Leaders; and Guidelines
for Councils of the Church when implementing the Code of
Conduct for Lay Leaders.

We will hear evidence that as a result of the inter-related structure of the Church, while the Assembly develops, promotes and implements national uniform policy, it is the responsibility of the various councils and institutions of the Church to implement the policies and procedures of the Assembly.

A policy that has recently been adopted by the Assembly and is expected to be implemented by the various councils of the Church is the National Child Safe Policy Framework, which I will now discuss.

In August 2015, the Church developed a National Child Safe Policy Framework, which I will call "the framework", to provide an overarching and nationally consistent framework for child safety for the Church and its institutions.

The framework is designed to complement and align synod and institutional policies and applies to all entities and individuals associated with the Church who engage in child-related services or activities. The framework identifies required principles which the councils and institutions of the Church subsequently develop into policies and procedures that are implemented.

In July 2016, the Royal Commission published 10 elements, which should be present in a child safe institution. Those elements are: that child safety is embedded in institutional leadership, governance and culture; children participate in decisions affecting them and are taken seriously; families and communities are informed and involved; equity is promoted and diversity respected; people working with children are suitable and supported; processes to respond to complaints of child sexual abuse are child-focused; staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training; physical and online environments minimise the opportunity for abuse to occur; implementation of child safe standards is continuously reviewed and improved; and policies and procedures document how the institution is child safe.

The Royal Commission will hear that following the publication of those 10 elements to a child safe
organisation, the Assembly commissioned a review of the framework to assess whether the framework aligns with the elements.

We will hear that a revised framework was developed to address all the elements, and was approved by the Assembly Standing Committee last weekend - that is, 4 and 5 March 2017.

It is expected that the senior representatives of the Church will give evidence on how the framework aligns with the Royal Commission's elements, how the framework will be implemented by the various Synods of the Church, and how the Church will monitor compliance.

It is also expected that the Royal Commission will hear evidence of other steps taken or to be taken by the Church in its ongoing response to the work of the Royal Commission to ensure that the Church creates and maintains a child safe environment.

It is expected that during the hearing, we will hear evidence that the Church has supported the recommendations of the Royal Commission and in its report on Redress and Civil Litigation, that the Commonwealth adopt a single National Redress Scheme.

On 4 November 2016, the Commonwealth Government announced the Commonwealth Redress Scheme for survivors of child sexual abuse in institutional contexts. The 6 cap government has invited states, territories and other non-governmental institutions to join in the Commonwealth scheme. The Church's approach to the scheme will be explored during the public hearing.

One of the recommendations made by the Commissioners in relation to civil litigation focused on model litigant principles for managing litigation concerning civil claims for institutional child sexual abuse.

The Commissioners recommended that government and non-government institutions that receive or expect to receive claims for institutional child sexual abuse should adopt guidelines for responding to claims for compensation concerning allegations of child sexual abuse. These guidelines should be designed to minimise potential re-traumatisation of claimants and to avoid unnecessarily
adversarial responses to claims.

It is expected that representatives of the Church will give evidence that the Church believes that non-government organisations should adopt a set of values-based principles for the resolution of claims of child sexual abuse.

Thank you, your Honour.

THE CHAIR: Yes. We will adjourn for a brief time so that the camera can be removed.

SHORT ADJOURNMENT

MR STEWART: There is an appearance on behalf of the Church.

MS EASTMAN: Your Honour, Commissioners, I appear for the Church.

THE CHAIR: Very well.


<STUART McMILLAN, sworn: [2.20pm]

<COLLEEN GAIL GEYER, sworn: [2.20pm]

<HEATHER RUTH DEN HOUTING, sworn: [2.20pm]

<EXAMINATION BY MR STEWART:

MR STEWART: Mr McMillan, would you state your full names and your position in the Church and your address.

MR McMILLAN: I'm Stuart McMillan. I'm the President of the Assembly of the Uniting Church in Australia and the address is 222 Pitt Street, Sydney.

MR STEWART: Ms Geyer, can I ask the same of you?

MS GEYER: Colleen Gail Geyer, I am the Assembly General Secretary and the same address in Pitt Street, Sydney.

MR STEWART: And Reverend den Houting I ask the same of you.
REVEREND DEN HOUTING: Heather Ruth den Houting. I'm the General Secretary of the Queensland Synod, and the address is 60 Bayliss Street, Auchenflower, in Brisbane.

MR STEWART: At tab 1 of the bundle, which I will shortly tender, there is a joint statement of Mr McMillan and Ms Geyer, dated 16 January 2017. Two amendments to that statement have been brought to my attention. On page 19, in the table in paragraph 82, the figure of 324 under "Synod of Queensland", and adjacent to "Agency", should be 30, as I understand it; is that correct?

MS GEYER: That's correct.

MR STEWART: Thank you. And there is a further amendment which is at page 21, paragraph 96. The regulation that is there referred to - there has been a transposition of numbers - it should be 3.7.4.7.

MR McMILLAN: That's correct.

MR STEWART: With those amendments, Mr McMillan and Ms Geyer, do you confirm that statement to be true and correct?

MR McMILLAN: I do.

MS GEYER: I do.

MR STEWART: We have also a joint statement at tab 4, dated 9 February 2017. Do you confirm that statement to be true and correct?

MR McMILLAN: Yes.

MS GEYER: Yes.

MR STEWART: Reverend den Houting, we have a statement of yours at tab 2, dated 7 February 2017. Do you confirm that to be true and correct?

REVEREND DEN HOUTING: I do.

MR STEWART: Finally, there is a statement at tab 3 of Anne Cross, whom we haven't asked to come and give evidence orally, but insofar as each of you is aware, is there anything incorrect in that statement?
MR McMillan: Yes.

Ms Geyer: No.

Mr Stewart: As far as you know, it is correct?

Ms Geyer: It is correct, yes.

Mr McMillan: It is correct. Sorry.

Mr Stewart: Your Honour, I tender the bundle.

EXHIBIT #56-001 TENDER BUNDLE

Mr Stewart: I would like to start with the National and Synod Task Groups that were established, as I understand it, in response to the work of the Royal Commission. I'm not sure who is best to answer this question. Perhaps let's start with you, Ms Geyer. Can you just explain briefly what these --

The Chair: Mr Stewart, your microphone is not picking you up as clearly as it was earlier this morning.

Mr Stewart: I will try again and try better.

Ms Geyer, could you just briefly explain the nature of those National and Synod Task Groups and what it is that they do?

Ms Geyer: The National Task Group was set up shortly after the beginning of the Royal Commission's work so that we could coordinate nationally the work that we would do as the Uniting Church to respond to the work of the Royal Commission.

It was also set up so that we could have a national understanding of what was happening in the Uniting Church; to also develop a national framework, that you have alluded to, which is about how we provide consistency across our Church with respect to child safety policies, procedures, et cetera.

It was also to consider any work that might be seen to be relevant coming out of the work of the Royal Commission for the whole Church as well. It was staffed, and it is
staffed, to do that work for us as a Church, and has representatives from across our Church as well as experts in various fields that sit on that.

The Synod Task Groups were set up because at the Synods where the operational work happens, it was important that, at that level, we also had task groups that were thinking about the work of the Royal Commission, so that when you read their terms of reference, that is a lot more operational into the life of the Church.

We set them up together so that there would be a connection between the operational work and then the more strategic national work that was done at the level of the National Task Group, and that there would be continued conversation and interaction between both of those - the National Task Group and the Synod Task Groups as well - over the time of their life.

MR STEWART: And as I understand it, both the National Task Group and the Synod Task Groups continue with their work and operation currently?

MS GEYER: They do continue currently and we've already decided that they will continue for at least a year after the end of the Royal Commission.

MR STEWART: Now, at tab 14 you have given us a schedule of, as I understand it, essentially, the current, or at least at December 2016, work and projects being undertaken by the National Task Group.

MS GEYER: Yes.

MR STEWART: There are a lot of different things going on there, and we can obviously follow that, but what do you identify as the most important items of current to ongoing work?

MS GEYER: Currently, of course, is the work that we will do after the decision made at the Assembly Standing Committee last week to implement the revised national framework and to see how that is promulgated in a consistent way throughout the Church's work in all its synods and councils and agencies and institutions, so that that consistency can be brought to the level that we will now understand in this new way that we've looked at in the
revised framework. That is very important.

Also, the ongoing work that the National Task Group does in the area of redress and the Redress Implementation Task Group, which is part of that National Task Group, also is very important as we think about how our interim redress schemes align together and also are informed by the work of the Commission and as we think about what will the redress needs be into the future and as we look to working with the Commonwealth Government in the one national scheme.

MR STEWART: Thank you. Looking, then, at the national framework specifically, as I understand it, there was an original national framework adopted by the Assembly itself.

MS GEYER: Yes, in 2015.

MR STEWART: And there has now been this revised national framework, which was adopted last weekend, as I understand it, by the Standing Committee of the Assembly; is that right?

MS GEYER: Yes, that is right.

MR McMILLAN: We brought forward that review of that particular framework because of the work of the Commission. So we were to review that framework this year, but we brought forward that work after the key elements report came out from the Royal Commission.

MR STEWART: And that, if I caught it correctly, in the text or the terms of the original national framework it had a provision for a review within a particular time frame; is that what you are referring to?

MR McMILLAN: That is exactly what I'm referring to, and most of our documents have a review time frame in them.

MR STEWART: Yes, I've noticed that. If we can turn to look at the revised national framework, then, it is at tab 6. There are a whole lot of introductory provisions and explanations and so on, but if one starts looking at the terms of it itself, which start at page 7, as I read those, those essentially mirror the key elements identified by the Royal Commission, but adapted slightly in different ways to fit the Church; is that correct?
MS GEYER: That is correct.

MR STEWART: Are there any significant departures from the child safe organisation elements that the Royal Commission identified?

MS GEYER: There is no significant departures from those elements. As you say, when we revised the framework, we used those as a guide for us to do that, and so if you map our 12 elements to the Commission's 10 elements, then you will see overlaps in all of those elements from the Commission's report.

MR STEWART: And so were there no elements or sub-elements that you found to be inapplicable to the Uniting Church?

MS GEYER: No.

MR STEWART: I'm not sure again - and I will leave it to you, Mr McMillan or Ms Geyer, as to who might answer this: in a couple of sentences, could you identify the key differences between the original framework and the revised framework?

MR McMILLAN: Certainly initially, leadership and governance was a major factor that we concentrated on, but the other two significant areas that come to my mind are the areas of children and family and their involvement in processes and policies and practices of the Church, and the equity and diversity element that came out of the Commission's report is something that we picked up far more strongly in this framework.

MR STEWART: You said that it was adopted by the Assembly Standing Committee, which, as I understand, has the authority of the Assembly between meetings of the Assembly; is that right?

MR McMILLAN: That's correct, and particularly with respect to Royal Commission matters, after the last Assembly, the Assembly Standing Committee was given authority, where necessary, to change regulations with respect to matters as they relate to Royal Commission and policies and so forth.

MR STEWART: So is the upshot of that that this national framework is policy and it is not subject still to adoption
or confirmation by the Assembly itself?

MR McMILLAN: No; that's correct, and it was put up on our website on Monday or Tuesday, I think, of this last week.

MR STEWART: Moving on to the perhaps more difficult question of implementation of the national framework - I'm using the word "implementation", I think Ms Geyer used a different verb.

MS GEYER: I think I said "promulgated". "Implementation" is fine.

MR STEWART: Yes, the implementation of the national framework. You would accept, of course, that the success of the framework depends on its implementation and the extent to which it is adhered to?

MS GEYER: Absolutely, and we had begun, as part of the National Task Group's work, before this revised framework went to Assembly Standing Committee last weekend, to begin to develop an implementation plan that will be rolled out throughout the Church, so that we can be sure that our policies and practices throughout our Church will now be revised in the light of this new framework.

MR STEWART: Can you tell us about that implementation plan, that roll-out plan?

MS GEYER: No, I don't have it with me and I'm not sure where it is up to, but I can tell you that the work has begun.

MR STEWART: Because, of course, ultimately practice must follow policy, otherwise the policy is wasted.

MR McMILLAN: One of the advantages of having the people from the Synod task groups on the National Task Group is that we already begin that work - in fact, as we're working on the framework, Synods are thinking about, "Well, what are our policies and practices and how are they going to fit in?" So that discussion is happening in that process at the National Task Group.

MS GEYER: I'm wondering if it is worth talking about how the first initial framework was implemented in the Queensland Synod, as an example.
MR STEWART: That would be useful if it's likely to tell us something about how this new national framework will be implemented.

MS GEYER: I think it would.

REVEREND DEN HOUTING: Yes. I think that there is absolute likelihood that the new framework will be implemented based on our previous experience. So the way that the different councils of the Church talk to each other is to ensure that everyone understands the basic rationale and reason behind the framework. They will adopt the framework, so a Synod will adopt the framework as it has been promulgated by the National Assembly, and will then adapt the tools, policies, processes, practices and procedures and expectations across the Synod. They do that not just as a - they do that in practice and based on the disciplinary and organisational procedures that the Synod has. So there will be a high expectation and there will be no doubt that the exercise of the new framework will be just as vigorously pursued as the previous framework.

MR STEWART: Now, I notice in relation to some other policies that the different Synods have adopted that there is a lot of uniformity - for example, on redress and civil claims - but also some differences where a particular Synod may have decided to do something a little differently. I suppose one might expect that also with the suites of policies and so on that will follow the national framework?

REVEREND DEN HOUTING: I expect so. I think sometimes there are just some differences around the actual operations of them, depending on the different state contexts and different regulatory environments that the activities of the Church operate in, but it is my understanding, and certainly from the Queensland perspective, that all our schemes align absolutely with the national framework.

MR STEWART: And on the screen one of the pages of the national framework has been put up - page 538 - which deals with implementation, where it says:

Each Synod is required to develop suites of policies, practices, auditing programs and training modules regarding children and
vulnerable adults in line with this framework. In addition, some agencies and schools have mandated or legislated provisions under their accreditation and registration requirements. It is expected that clear linkages will be made ...

Now, is there any sort of time frame on this what I imagine to be quite difficult process through the Synods and the institutions?

REVEREND DEN HOUTING: The time frame would be - there is not a mandated time frame, as far as I know, unless the implementation framework says that there should be. However, all Synod policies and practices and manuals and training materials and tools are all subject to annual review - so a regular review cycle. Again, if the framework highlights, or the revised framework highlights, gaps in our current practice and policy, then there would be no reason that the Synod wouldn't bring that review process earlier in order to adapt to the new sets of principles.

MR McMILLAN: And it's not an entirely new piece of work, given that the earlier version of the framework was in place from 2015. So it's those additional elements that we have picked up from the key elements that Synods will have to concentrate on in developing their suite of policies and practices.

MR STEWART: Given the relatively flat structure of the Church, one of the key issues I imagine that will arise will be how to ensure that particular institutions of the Church, rather than the Synods themselves, bring themselves into line - all their policies into line - with the framework, and then also their practices then in line with the policies. What is the thinking about that?

REVEREND DEN HOUTING: I would not think that that would be a problem at all. I think that the institutions of the Church are particularly sensitive to the changes in their external environment. They tend to be significantly regulated because they are offering and delivering funded services. So they are actually positioned to pivot relatively quickly when a new framework is introduced, and my understanding is that the elements of the Royal Commission framework are well publicised, well known.
The elements are best practice, and so it would be my understanding that most of our institutions would already have that on their horizon, if they haven't implemented it already.

MR STEWART: And that would be, as I understand from what you are saying, because you expect that that is what they would want to be committed to doing rather than because the Church in any central capacity could force them to do it?

REVEREND DEN HOUTING: They would not - it's not the practice of the Church to exercise a disciplinary function in that manner. What would happen - what does happen, is that the institutions of the Church do report back to the Synod Standing Committee, which is the governing council at each state, and those report-backs would reflect the adoption of the amended framework.

MR STEWART: So if one was to take a school, for example - I can name one as an example, we will just take an imaginary one - ABC School, that has an independent board but is, nevertheless, an institution of the Church under the auspices of a particular Synod, what control or influence does the Synod have over that school actually adopting proper policies and then pursuing those policies?

REVEREND DEN HOUTING: So if I can give an example of Queensland schools, because we have many, and they have different relationships with the Synod, but we have four what we call "property trust" schools, which are not independently incorporated or, you know, not created independently, but actually are aligned directly with the Synod, and they have a very close reporting expectation to the Synod. We have an executive officer, a Schools Commission executive officer whose job it would be to promulgate, to amend the guiding governance documents across those schools, and this new material would be integrated into that material and the relationship with the school would ensure that those were developed and promulgated.

MR STEWART: And what about those schools that are incorporated independently?

REVEREND DEN HOUTING: Schools that are incorporated independently to the Synod have their own governing structures and frameworks.
MR STEWART: So the question is then in relation to those schools, what hold does the Synod have on them to ensure that they adopt appropriate policies and then that their practice is within those policies?

REVEREND DEN HOUTING: Separately incorporated schools have their own governing practices and policies, so --

MR STEWART: It's up to them, really?

REVEREND DEN HOUTING: Yes.

COMMISSIONER FITZGERALD: Doesn't that raise a problem for the Church, which we have identified in at least one case study about other schools that we have had, that to the world at large they are Uniting Church schools - I think you have 48 of them - and yet your answer indicates that an independent school could operate perversely to what you have actually asked of your property trust schools? What thinking has taken place over the last couple of years about how to ensure that the Uniting Church actually is consistently governed across all of its 48 schools - if any?

REVEREND DEN HOUTING: So you are absolutely right that this is a live issue. This is not my area of expertise. I am aware that there are different approaches being taken.

COMMISSIONER FITZGERALD: Mr McMillan might want to --

MR McMILLAN: I think, Commissioner, one of the things that we have is appointments to the boards of those independently incorporated schools, so we have relational and moral influence within those boards. And there has been, as we've already said, significant conversation since the beginning of the Royal Commission between Uniting Church board members appointed to those schools that are separately incorporated around matters like frameworks and policies and practices of the school, outside of whatever the particular state legislation might be that schools are governed by.

COMMISSIONER FITZGERALD: And what is the state of those conversations? Has it moved forward so that you and the community could be more assured that there is, in fact, a unified approach across those 48 schools, or is this
still a work in progress or is it even further back from
being a work in progress, just a conversation?

MR McMillan: No, I think it is a work in progress.
I wouldn't say at this point that there is consistency
across all of those schools. That would be too far. But
it certainly is a work in progress, and I know those
conversations are seen as vital and very significant in
each of the Synods.

Commissioner Murray: Before we leave that topic, just to
clarify in my own mind, Mr McMillan, do you have a common
insurer across all Uniting Church entities, or even within
the Synods?

MR McMillan: We have common insurers within the Synods.
It wouldn't be common across the whole of Australia, but
yes, we do have --

Commissioner Murray: So in Queensland, for instance,
Reverend, would you have one insurer covering all your
entities?

Reverend Den Houting: Well, again, we have a common
insurer for any entity that is associated directly with the
Synod, so that comes under the control and responsibility
of the legal entity of the Queensland Synod. But
independent schools would make their own insurance
arrangements.

Commissioner Murray: From an insurance point of view,
child sexual abuse creates liabilities and I would expect
insurers would take a close interest in your governance
arrangements.

Reverend Den Houting: Yes, they certainly do.

Commissioner Murray: Are they already or have they?

Reverend Den Houting: Yes, absolutely.

Commissioner Murray: Have they been advised of your new
proposals?

Reverend Den Houting: Not of the most recent change to
the framework, no, but that will be part of our
promulgation. So it's not that we don't have any
association or relationship with schools that are associated with the Uniting Church, we actually have very close relationships, but they are - they tend to be via the board, via our executive officer, Schools Commission, and so on.

COMMISSIONER MURRAY: Would you anticipate that where you might be reluctant, to use my language, to use a stick to get compliance, that the insurers might themselves insist on compliance?

REVEREND DEN HOUTING: I will not answer for the insurers, but I understand the drivers of the insurance.

MR STEWART: Perhaps Ms Geyer, has any particular thought been given to or are there any plans afoot with regard to auditing of compliance?

MS GEYER: We have undertaken two national audits since the beginning of the Royal Commission. The first one definitely was around the implementation of the first national framework, to see if there was implementation in all of the parts of the Uniting Church and to look at the consistency of that implementation.

We then carried out a second audit. So since we've begun the audits - excuse me, they've been happening annually. We carried out the second audit last year. We revised our audit tool between the two audits to make it more specific to what we wanted to find out and to think about other areas we might want to look at. But really, at the moment, it is about how the national framework is implemented, what is happening across all of our institutions and councils of the Church, to being committed to the framework and to training and, as I said, to implementation. And we expect that that will continue and that we will revise those audits as time goes on to make them more specific to what we want to find out and considering, of course, the next one will take into account the revised framework.

MR STEWART: Thank you. I'm going to move on to another topic, and that is the question of mandatory reporting. You will be aware, I'm sure, that there is a lack of uniformity across the states and territories with regard to the legal position on mandatory reporting. Is it the Church's position to support uniformity where it can be
achieved?

MS Geyer: Yes.

Mr McMullan: Yes.

Mr Stewart: I suppose that you have found difficulties in the fact that there is a lack of uniformity across states and territories?

Reverend Den Houting: Our national framework says that reporting for any child sexual offence is mandatory, or reporting to the appropriate authorities is mandatory. So we do expect that at a Synod base, and certainly at the Queensland base, we have a relationship with the CPIU, the investigation unit, where when matters are reported to us and we become aware of matters, we communicate that with the investigation unit.

Mr Stewart: When you say "mandatory", you mean it's mandatory within --

Reverend Den Houting: Our framework. Yes. We're sensitive, of course, to the different legal frameworks that operate in the states, but if it is an activity or an incident that occurs within a Church-run activity, then our expectation is that it will be reported appropriately.

Mr Stewart: So if we have a look at the national framework at tab 6, at page Ringtail 537, the one before the one that is currently on the screen, paragraph 11(c), if that can be enlarged, it is provided there that:

Where a complaint of abuse of a child becomes known it will be immediately reported to the authorities, including police and other statutory authorities, and we will immediately take the appropriate steps to assess and minimise any further risk or harm.

That's a blanket policy that is regardless of whether, at the time the complaint becomes known, the victim or survivor is a child or not?

Reverend Den Houting: Sorry, I apologise. Of course, there are some exceptions to this. I was talking about any
complaint that occurs - that is a live issue.

MR STEWART: Current, yes.

REVEREND DEN HOUTING: Reporting of historical abuse is dealt with differently.

MR STEWART: Western Australia has a different position on that.

REVEREND DEN HOUTING: Yes, that's correct.

MR STEWART: I will come to the difference in a moment, but insofar as the national framework is concerned, are we to read this as applying across all complaints, in other words, current and historical?

REVEREND DEN HOUTING: No. I believe that this national framework is for any current complaint.

MR STEWART: I have to say it is not clear from the wording, at least the way I read it, but that's your understanding of the intention of it?

REVEREND DEN HOUTING: Yes. Certainly in Queensland our practice, our material, says that any complaint is reported to the police, so --

MR STEWART: Any current complaint?

REVEREND DEN HOUTING: Any current and historical is. Yes, we encourage - we do encourage, or we advise people who have complained that - we negotiate them when and how and, you know, if that's - we allow that to be a survivor-led process, but we do indicate that we encourage and will advise the police, even if we can't advise all the details.

MR STEWART: Just to understand that, perhaps we will just deal with Queensland and then we will come to the national situation. Just to understand that clearly, so in a case of historical abuse, by which I mean someone is now an adult --

REVEREND DEN HOUTING: Correct.

MR STEWART: -- they were abused when they were a child,
perhaps a long time ago, and they have come forward with a complaint. As I understand it, you would, in those circumstances, encourage them to report that to relevant authorities?

REVEREND DEN HOUTING: We work with them. Often the process is not we receive the complaint and immediately there is a report. Often, when there has been an indication of historical child abuse, we will work with the person who has approached us for some time to allow them to be in a place where they are comfortable or choose not to participate or what path they may want to take with us. One of the things that we do in that process is to report - we encourage them to understand that one of our practices is to report the fact that we have received another allegation in order to assist the police to understand if they can identify any trends in terms of alleged perpetrators.

MR STEWART: So just to try and understand where that lands us, in the circumstance where, ultimately, the survivor elects not to report, do you then report or not report?

REVEREND DEN HOUTING: We will notify the police that we have received - so we talk with the survivor about the fact that we will notify the police that we have received an allegation against a person.

MR STEWART: So you will identify the alleged perpetrator but without identifying the survivor; is that it?

REVEREND DEN HOUTING: If that is the agreement we've come to with the survivor.

MR STEWART: Now, insofar as - and perhaps if Ms Geyer or Mr McMillan can address this - the national framework is concerned, I see the ambiguity, but is this intended to cover only current or also historical abuse?

MS GEYER: It is my understanding that it is definitely to cover current abuse. Then, as Heather has indicated, that may be up for how the different Synods see it in their jurisdictions, but I'm not aware of how that happens in any of the other Synods.

MR STEWART: Then moving on from how the Church and
institutions of the Church deal with that question by their own procedures, and dealing with the question of the law and what the law requires, has the Church had a conversation or reached a position on what the law should provide with regard to mandatory reporting or concealment offences or oversight of how organisations handle allegations of abuse - any of those areas under reporting?

MR McMILLAN: I think generally the Church supports mandatory reporting. Because all of our practices and policies are survivor led and trauma informed, then we take very seriously the things that survivors say to us. So you are pointing to where there are differences at a Synod level in this matter, and that's correct. We have a general understanding that mandatory reporting is, by and large, the best approach, but up to this point, in each jurisdiction, we have listened carefully to survivors and been led by that.

MR STEWART: So dealing with a discrete question, then, in this field: have you arrived at a position or given thought particularly to what types of relationships should give rise to mandatory reporting, so the teacher/preacher - one can define it in a whole lot of ways. Is there something that the Church can say to the Commissioners as to how you would like to see that across the board, or is that something you haven't looked at?

MS GEYER: We definitely believe that if you are in a position of leadership within the Church, that mandatory reporting should actually happen.

MR STEWART: In other words, the law would require someone in that position to report information of current abuse?

MS GEYER: Yes.

MR STEWART: Or risk of harm, I take it?

REVEREND DEN HOUTING: I'm just wanting to clarify the question. Are you asking whether the Church has come to a position to inform a change in the law?

MR STEWART: Yes.

REVEREND DEN HOUTING: The answer to that is no.
COMMISSIONER FITZGERALD: Has it considered it?

REVEREND DEN HOUTING: Have we made a submission or have we come to a formal position to advise on a change to the laws?

COMMISSIONER FITZGERALD: To be clear, you would be aware that various jurisdictions are looking at whether or not their legislation should be changed to require, for example, clergy, ministers of religion, religious leaders, to in fact be mandatory reporters. That was a live consideration earlier in the week with the state and Commonwealth governments, and it has been a live issue previously in the work of the Commission. So the question is whether or not the Uniting Church has given active consideration as to whether they have a position that mandatory reporting requirements in all jurisdictions should include what you have talked about as religion leaders or Church leaders. That's the question.

MS GEYER: Well, I would say we haven't had that conversation at a national level, but I would say that our documents and our policies indicate that that's something we would agree with.

MR STEWART: What you have dealt with is your own internal processes and what is required internally, but you haven't looked at what the law should say with regard to everyone?

MS GEYER: That's correct.

MR McMILLAN: We would welcome an opportunity to respond to a discussion paper on that matter.

MR STEWART: A range of governments across Australia may be looking at legislative changes.

Moving on to the question of redress, at tab 17, there is a National Framework for Interim Redress Measures. Perhaps one of you - and it doesn't matter which one - can just explain the status of this document and how it came about, what its role is?

MS GEYER: When the Royal Commission did its work on redress and the Uniting Church made a submission to the Commission about that, we also looked to what were the processes across the Uniting Church. At this point, we
also believed that a national framework around interim redress measures would be extremely helpful for us at the Uniting Church, so that we could have consistency, particularly around the principles of interim redress measures across the Uniting Church, that that would be helpful to survivors.

We used the report that the Royal Commission made on redress as a guide, and considered that along with our own experiences, to come to draft this Framework for Interim Redress Measures, which was also approved at the Assembly Standing Committee, and then this framework has been used by the various Synods to either put in place interim redress schemes or interim redress processes.

MR STEWART: The use of the word "interim" to describe this, as I understand, from what I read in it - and I will just seek clarification on this - by "interim", what is meant is until such time as the Assembly or the Standing Committee of the Assembly changes it or repeals it, or the commencement of a government-run redress scheme, whichever is the earlier; is that right?

MS GEYER: That is correct.

MR STEWART: So in a sense, one of the foundational premises of this policy is that we will end up with a national, government-led redress scheme in due course?

MS GEYER: That has definitely been the position of the Uniting Church as a whole, and something that we have advocated for throughout the time of the Commission.

MR STEWART: So this is obviously at the national level, being the national framework. Have each of the Synods taken this up and adopted their own Synod level frameworks?

MS GEYER: Some of our Synods have set up interim redress schemes. At least one Synod has decided to bring any requests for redress under the scheme of another Synod, and the others are in the process of developing theirs.

MR STEWART: If one has regard to this document, for example, at paragraph 10 on Ringtail page 112, it is said that there would be a minimum payment of $10,000, and then, at the top of the next page, it says a maximum payment of $200,000. What is the thinking around the upper limit?
MR McMillan: The National Task Group accepted the Royal Commission's recommendations in its discussion around that. You will be aware from other information that we've supplied to you that different Synods have different views about that upper limit, and, of course, the scheme that the Commonwealth announced has $150,000 upper limit.

MR Stewart: And the New South Wales Synod says $150,000?

MR McMillan: That's right.

MR Stewart: It is envisaged then that with a redress payment under this interim scheme there would be a deed of release, so releasing the Church, or whatever entity of the Church, from any civil claim arising from the child sexual abuse; that's right, isn't it?

Reverend Den Houting: That's correct. So Queensland has an interim redress scheme. That has been running since September/October, at the end of last year, and we've made several settlements and it is normal practice that there is a deed of release at the end of that process.

MR Stewart: What is the position in relation to claims that arise from the pre-1977 period, in other words, prior to the formation of the Uniting Church of Australia?

Reverend Den Houting: Yes, so we accept any claim from any of the pre-1977 Churches or institutions.

MR Stewart: Is that answer specifically in respect of Queensland or is it --

Ms Geyer: No, across the Uniting Church.

Commissioner Fitzgerald: Could I ask a question on that? If I'm correct, each of the Synods, up until now, has the capacity to determine the finer detail of their own redress arrangements in terms of, for example, caps. What is the position in relation to, again, your independent schools? Are they able to determine their own redress arrangements? And that has been the subject of issues raised in private sessions with Commissioners, that many aspects of the Uniting Church seem to have taken a different approach and come to different decisions. Now, that's over a period of time. So what would be the current position? Would
REVEREND DEN HOUTING: Yes, that's correct.

COMMISSIONER FITZGERALD: And what is in place to change that?

REVEREND DEN HOUTING: Again, I will have to revert back to the previous discussion, which is that this is a work in progress.

COMMISSIONER FITZGERALD: So if we come to the issue of the National Redress Scheme, which Mr Stewart will undoubtedly get to, could the Uniting Church agree to opt in, but different aspects of the Uniting Church decide not to?

MR McMILLAN: An independently incorporated school, yes, could decide not to.

THE CHAIR: Do you think that would be likely? In other words, is there not moral persuasion --

MR McMILLAN: I think in the current environment, it may be unlikely. I think there's a lot changed in the period of time that the Royal Commission has been operating.

COMMISSIONER FITZGERALD: Can I just clarify, is it the case that in relation to the independent schools, by and large, the Synod or some other organisation within the Uniting Church appoints the directors, the boards? Would that largely be the case?

MS GEYER: Appoints some.

REVEREND DEN HOUTING: No, I don't think we could say that with any confidence.

MR McMILLAN: No.

REVEREND DEN HOUTING: Sorry, if they are a Uniting Church affiliated school, so if there is some affiliation, then there is normally an appointment process to a board, but we don't appoint the board.

COMMISSIONER FITZGERALD: But you have an involvement in those who will ultimately be appointed to the board?
REVEREND DEN HOUTING: Not necessarily.

COMMISSIONER FITZGERALD: I'm trying to find the point of leverage that the Church has in relation to quite a large number of institutions. Is it through the personnel that it can appoint, or is it just moral persuasion as his Honour has indicated?

REVEREND DEN HOUTING: I think there are a variety of governance arrangements for independent schools and I could not make a blanket statement about them.

MR McMillan: By and large their constitutions, which will vary, would specify what the Church, what the Synod, who the Synod could appoint, how many members.

MS GEYER: If that was the case.

COMMISSIONER MURRAY: It is complicated, isn't it, in some cases by some of the schools being under statute - in other words, they have been established by Parliament?

REVEREND DEN HOUTING: Correct, and some by letters of patent and some are ecumenical schools. So each constitution is significantly different.

COMMISSIONER MURRAY: So the structure is quite different?

REVEREND DEN HOUTING: Correct.

COMMISSIONER FITZGERALD: But would it be the case that, for example, Wesley Mission in Sydney would be obligated by the position of the New South Wales Synod?

MR McMillan: Yes.

COMMISSIONER FITZGERALD: By and large? So is it really, in the Uniting Church structure, only the independent schools that are a bit of an outlier in relation to what can and can't be required of them?

MS GEYER: That is mostly the case.

MR STEWART: Coming then to the government-proposed National Redress Scheme, as I have understood from you, the Uniting Church is supportive of such a scheme; is that
right?

MS GEYER: That's correct.

MR STEWART: And would look to be part of such a scheme?

MS GEYER: Yes.

MR STEWART: Of course, I appreciate that many of the
details are being worked out as we speak. Were you in a
position to follow the evidence that was given on behalf of
the different governments earlier this week in discussing
the scheme?

MS GEYER: No, not myself.

MR McMILLAN: No.

MR STEWART: There are some things in there to look at.
From the perspective of the Church, what do you identify as
the key points of difficulty or concern that you might have
with the scheme and how it might work?

MS GEYER: One of them is that where the acts of our
Church at the various state levels are in the state
jurisdiction, and what the responses of the various state
governments would mean for us being able to do that.

MR STEWART: So that is both a constitutional question as
to state capacity --

MS GEYER: Yes.

MR STEWART: -- but it is also, I suppose, a political
question, as to what individual states, state governments,
might choose to do in relation to this scheme; is that the
point?

MS GEYER: Yes.

MR STEWART: Other particular difficulties?

MR McMILLAN: In our particular case, because of the
inquiry in Victoria that predates the national
Royal Commission, then they have and are determining
particular legislative matters that may bind our Victoria
and Tasmanian Synod. That's still open for conversation.
THE CHAIR: I don't think they will get in the way of a National Redress Scheme, though. Tell me this: you obviously have a great many adherents and a capacity, no doubt, from time to time to influence government in what they do; is that right?

MS GEYER: That's true, I guess.

MR McMILLAN: I don't think the Church influences governments in any way like they did in the 1950s and 60s.

THE CHAIR: Of course, it would help for you to encourage governments to work with you to ensure that the redress system happens, wouldn't it?

MS GEYER: We have.

MR McMILLAN: And we're certainly doing that, your Honour. I have facilitated over the last year meetings of our ecumenical partners to have conversations about redress and about redress schemes, and we had a meeting with the Commonwealth only recently, in January, to talk about matters that needed to be explored if they were going to go forward with a national scheme.

THE CHAIR: I mean, there are obviously details to be worked out, and it is going to require goodwill from all those involved to work them out, but there is no insurmountable hurdle in this process.

MS GEYER: That would be good.

MR McMILLAN: There is certainly goodwill on the part of the Churches in relation to this matter.

THE CHAIR: Yes.

MR STEWART: Does the Church have a position or a view on how the scheme should be funded?

MS GEYER: Well, the discussions that we've had so far around the contributions that the different institutions who opt in would need to make, and on the institutions, including the Church, making any payments or covering expenses that related to claims that were made by survivors against that institution or the Church, would absolutely be
MR McMILLAN: We have endorsed the principle that the Royal Commission endorsed about the government being the funder of last resort, and that's often a sticking point in conversation.

MR STEWART: And I take it that you are involved in consultation processes that are currently taking place around the country on the scheme?

MS GEYER: We have had one meeting, yes.

REVEREND DEN HOUTING: I'm not - I can't speak for other states, but certainly institutions and Churches have met with the state government minister.

THE CHAIR: When you are having those discussions with each other and governments about the issue of funder of last resort, can you remind them that when you analyse it, it's not likely to be a very large body of people or a very large sum of money, because all of the evidence we now have tells us that the concentration of survivors is coming from the well-known and larger institutions.

MS GEYER: Happy to.

THE CHAIR: Perhaps you might just help to remind everyone of that.

MR McMILLAN: We can do that.

COMMISSIONER MURRAY: In support of that, about 20 per cent of all those institutions that have been alleged to us would be in the top - just 20 institutions. So there is a strong concentration.

MS GEYER: Thank you.

MR STEWART: I'm moving on to the question of civil litigation. We have - it has been made available to us, and I will take you to it in a moment - the New South Wales Synod Guiding Principles for Responding to Civil Claims for Institutional Child Sexual Abuse. Is there a national framework document for that, or a national equivalent?

MS GEYER: We do have principles around that that, at
a national level, we have agreed to and have been endorsed by the Synods.

MR STEWART: So then looking at the New South Wales one, which is at tab 19, you will see that this was last revised in November 2016 and adopted in December 2016. To your knowledge, does this at least reasonably follow the national framework document, by which I mean the national framework document on responding to civil claims?

REVEREND DEN HOUTING: Our model litigant principles.

MR STEWART: The model litigant principles do, okay. So just in relation to that then, if one goes to Ringtail page 243, and paragraph 3, the Statement of Principles, are those the principles you are referring to?

MS GEYER: These are more principles, extra principles than the ones that I've seen for the national one, but they do have the same intent, I think.

MR STEWART: And does this follow the report of the Royal Commission which recommended that institutions which don't fall under the statutory model litigant requirements, because they are independent, such as churches, should nevertheless themselves adopt a set of principles for how they respond to claims?

MS GEYER: Yes.

MR STEWART: Are these documents of each of the Synods given to solicitors and barristers representing the Church or Church institutions in each case?

MS GEYER: I don't know the answer to that question.

REVEREND DEN HOUTING: The model litigant principles have been adopted by each Synod. I do not know whether they are given to each - anybody who is instructed. At this stage, certainly in the Queensland Synod, we have not had any civil litigation instituted against the Church since the adoption of these principles.

MR STEWART: Ms Geyer and Mr McMillan, are you able to assist on this?

MS GEYER: No, because I don't know what the status is in
each of the Synods.

MR McMILLAN: Apart from each Synod agreeing to the model litigant principles, we're not familiar with the direct operation that may have happened in each Synod with regard to instruction.

MR STEWART: Are you able to tell us how, if at all, these are disseminated beyond just the members of the committees that have adopted them?

REVEREND DEN HOUTING: So, sorry, I should explain, that by the Synod Standing Committee adopting the model litigant principles, that indicates a significant stance or a posture towards any civil litigation that may be brought to the Church. We recognise that any action commenced against the Church will be dealt with on a case-by-case basis, and those principles will guide the Synod's response. So any civil action will always be dealt with at a Synod level, not at any other level of the Church, and so the Synod will guide that response and will hold the Synod Standing Committee's position or posture on that, absolutely.

THE CHAIR: I'm not quite sure how that operates in practice, because it's one thing for the Synod or a Synod committee to understand how it will respond --

REVEREND DEN HOUTING: It's position, yes.

THE CHAIR: -- the people who really need to know are your lawyers.

REVEREND DEN HOUTING: Our internal counsel knows.

THE CHAIR: Queensland may have a very healthy culture amongst litigators, but I can assure you in some other places, litigators can become very aggressive, to the point of defeating model litigant principles, unless the client insists those principles be followed. Now, my question really is: is that understood and is the Church taking steps to ensure that those who actually represent it in the courts understand that the Church requires them to act in accordance with the principles?

REVEREND DEN HOUTING: As far as I'm able to answer that question - that is, I'm not speaking to every matter - I am
confident that the posture of the Church is very well understood in this regard.

THE CHAIR: And the second question, then - and this is Commissioner Fitzgerald's particular question, I suppose - what about the schools that are independent? Are steps taken to ensure that those schools follow and instruct their lawyers to follow the same principles?

MS Geyer: I couldn't say.

Mr McMillan: I would say that that's part of our earlier conversation - it's part of the conversation, that is a work in progress. Normally, if a Synod was instructing lawyers, a general secretary who has overseen this model litigant procedure would instruct lawyers in that way. It is a different situation with an independent school.

THE CHAIR: As the numbers show, of course, the schools are a particularly vulnerable point for any institution. Now, although it may be seen in your structure as independent, the general public aren't going to appreciate that, and your face as a Church will be represented through the litigation policy and its pursuit in the courts in the event that one of the Uniting Church independent schools is sued. I'm sure you understand that.

Rev Den Houting: We are acutely aware of that.

THE CHAIR: Have you taken any steps to try to ensure that those independent schools are prepared to embrace and follow the principles?

MS Geyer: That would be at a Synod level, so I can't speak about that.

Rev Den Houting: Again, on a state-by-state basis, I can't speak to every engagement with the schools. However, I am aware - I am absolutely aware - that every Synod is acutely aware of this issue and is working as part of our early stage conversation, to ensure that those matters are properly addressed.

THE CHAIR: Part of the problem, of course, in this space, is that, by the very nature of the damage that may have been done, the plaintiff, as they become in litigation, may have peculiar difficulties in pursuing their claim in the
conventional way, which requires the defendant, through its lawyers, to respond, perhaps, in a somewhat different way to what might normally happen in a contest in the courts. Now, that issue undoubtedly, if it hasn't surfaced, will surface in the schools area when litigation is pursued, and one can think already, of course, where there might be a bundle of claims that have been brought against a Uniting Church school. It will be very important for the Church to ensure that its lawyers or the school's lawyers in relation to independent schools do accept and abide by the principles, or damage will ultimately be done to the Church. You understand that?

REVEREND DEN HOUTING: Yes.

MS GEYER: Yes.

MR McMillan: Your point is well taken.

MR STEWART: The position of a barrister - I imagine it is the same for a solicitor - who is instructed on behalf of a government entity that is subject to model litigant policy will know that he or she, in representing that government entity, must act in accordance with that policy in at least two ways: one is, invariably, the brief from the Crown Solicitor, or the Australian Government Solicitor, whoever it is, will say, "and there is this model litigant policy that we are subject to. Make sure you abide by it", and also they will know because, through legal practice directives, there is a legal aspect to it. In the case of private institutions like churches adopting principles like this, which is fantastic, they should be adopted, the lawyers aren't going to know, unless it is specifically brought to their attention.

REVEREND DEN HOUTING: That would be the responsibility of the General Secretary, and because the Synod Standing Committees have endorsed the model litigant principles, the General Secretary would be absolutely answerable to the council of the Church if they failed to do that.

MR STEWART: And if there is an instance where a litigant, a plaintiff, child sexual abuse survivor plaintiff, take the view that litigation has been conducted on behalf of the Church contrary to these principles, to whom should such a complaint be made? Would that be to the General Secretary of the Synod?
REVEREND DEN HOUTING: It would be immediately to the General Secretary, and again, if that was not - the General Secretary failed to adhere to an adopted policy of the Church, then the General Secretary would be subject to the disciplinary processes of the Church.

We also have other avenues. Anybody could also approach the Moderator or could approach the President. There are very varying and multiple ways that a General Secretary could be called to account on this. It doesn’t stop, as in the buck does not stop, in terms of responsibility and accountability, to the broader framework and principles of the Church, at the General Secretary. We are responsible for administering and ensuring that people adhere to it, but the office is not closed, as in it is not an opaque office.

MR STEWART: That perhaps conveniently leads us into the topic of professional standards and discipline, which is I think largely covered in your statement, Reverend den Houting.

REVEREND DEN HOUTING: Yes.

MR STEWART: But of course any of you are welcome to answer my questions in this regard.

If one starts at tab 7, there is a particular policy, which will come up in a moment. It says "Member of adherent", but I take it that is supposed to be "Member or adherent"; is that right?

MS GEYER: Correct.

MR McMILLAN: Yes.

MR STEWART: Member or Adherent of Sexual Abuse and Sexual Misconduct Complaints Policy - can you just explain what the role is of this policy?

MS GEYER: We have within our regulations the complaints procedures against ministers, and since the work of the Royal Commission began, we identified that a gap was a policy relating to members or adherents, and so this policy was developed since the beginning of the work of the Commission to fill that gap and to have an understanding
about what the complaints policy might look like in this area.

MR STEWART: And members or adherents would be, if I can puts it this way, obviously meaning no disrespect, ordinary congregants?

MS GEYER: Correct.

MR STEWART: If one looks at page 12, that's Ringtail 0689, right at the top it is provided:

If the matter is one that requires notification to the police, no investigation will commence until the police investigation has been finalised.

Now, there is a similar provision in relation to ministers, but in relation to ministers, there is also, as I understand it, the ability to, as it is put, make them stand aside pending a police investigation; is that right?

MS GEYER: Yes.

MR STEWART: And in relation to members or adherents, is there that power or is there even the need for that power? You seem to be nodding, Reverend den Houting?

REVEREND DEN HOUTING: Yes, I can say that in - so this is a great example of an operational issue that has been captured in our Safe Ministry With Children framework and tools, and we are very clear that if an allegation has been made, then the safety of the environment is something that needs to be ensured, and so any layperson who was involved in any leadership or activity with young people would be stood aside from that activity. They would no longer be able to actively participate.

MR STEWART: And where is the power for that? Is that also in the same regulation that deals with the question of ministers?

REVEREND DEN HOUTING: No, that's not a power. The tools - so the Safe Ministry With Children tools are based on or utilise this policy as a practice that says if you are participating in a position of leadership within the Church and an allegation or a complaint is made against
you, then the first principle is: is the environment safe? And because they are volunteers, there doesn't need to be - well, this is the head of power, really, that allows those tools to be instigated.

MR STEWART: At tab 12 there is an extract of the regulations. It has the contents for the regulations and then it has just chapter 5. After that, of course, if you want to refer to any other chapter, we can access it. That's the one on Church discipline. If I can take you in particular to Ringtail page 248, that comes in the section dealing with the Synod Sexual Misconduct Complaints Committee. There is a definition of sexual misconduct. I take it that child sexual abuse would be dealt with under this, would it?

REVEREND DEN HOUTING: Yes, for ministry - for people who are in positions of ministry.

MR STEWART: Ministry, yes. Then at page 260, there is the position with regard to legal proceedings at the foot of the page, that:

If criminal legal proceedings relating to the alleged sexual misconduct are commenced against the respondent --

That would be the minister in this case; would that be right?

REVEREND DEN HOUTING: That's correct.

MR STEWART:

... no further action regarding the complaint will be taken by the Committee until such time as criminal proceedings are concluded.

Do we understand that correctly to be subject to what is provided at regulation 5.7.5 on page 268?

REVEREND DEN HOUTING: That's correct. So if the complaint was made and the Synod was aware that there was a criminal proceeding on foot, the minister would be stood aside immediately and Church processes would be suspended until the outcome of that criminal investigation, which
may - because sometimes it is an allegation of something that may not be criminal behaviour but still would be a breach our ethics, we would still continue our process after that. Clearly, anything that involves criminal behaviour would also then be commenced immediately upon conclusion of the criminal proceedings.

MR STEWART: Except that the Church importantly - I forget the exact wording - says in the case of civil disobedience - so there is an exception for some criminal conduct, obviously entirely unrelated to child sexual abuse.

REVEREND DEN HOUTING: Absolutely. But it would depend on the level and the nature of the civil disobedience, too.

MR STEWART: As interesting a topic as that no doubt is, we won't go there.

Your Honour, those were the topics I intended covering.

THE CHAIR: Yes. Ms Eastman?

MS EASTMAN: Your Honour, there are three matters. First, can I deal with the issue of the New South Wales policy in relation to civil claims and what was the subject of a model litigant discussion.

THE CHAIR: You mean the Synod's policy?

MS EASTMAN: Yes.

THE CHAIR: Can you help us, how many independent schools are there in the Uniting Church umbrella in New South Wales?

MS EASTMAN: I think there are 12 - 10 or 12.

THE CHAIR: Sorry?

MS EASTMAN: Ten or 12 independent schools.

THE CHAIR: Someone behind you has one finger up.

MS EASTMAN: I am sorry. Let me clarify it this way: in terms of incorporated schools - so independent of the Synod
and acting outside - there is one.

THE CHAIR: Which is?

MS EASTMAN: It is Margaret Jurd. It is a college rather than a high school. It is a training school.

THE CHAIR: But all of the other schools which we New South Wales people understand to be Uniting Church schools are directly related to the Synod?

MS EASTMAN: All of the others directly related to the Synod, except for the Newington school, which is related to the Synod but it also is established by its own legislation. So the Newington College is slightly different to the other schools. But all of the other schools are affiliated with the Synod and they have school councils. Each of those school councils has members who are approved by the Synod Standing Committee, and depending on the school, the school council may have one or two members of the school council, which is the school board, which are directly appointed as the Synod representative on that school.

THE CHAIR: Can the Synod hire and fire any member of the board, or the council?

MS EASTMAN: I'm not sure that the Synod would describe the process as "hiring and firing", but I think if an issue of concern was raised with the Synod about the conduct of any member of a school board or school council, then appropriate steps would be taken, probably in consultation with the --

THE CHAIR: If the Synod doesn't agree with the way the council is progressing a matter or an issue, what capacity does the Synod have to say to the council, "You have got this wrong. Do it correctly"?

MS EASTMAN: Without, your Honour, me stepping in to the role of giving evidence, but, your Honour --

THE CHAIR: As long as we get the correct position, I don't care where it comes from.

MS EASTMAN: Your Honours may recall that this was an issue which was the subject of some evidence in Case
Study 23.

THE CHAIR: You were there. I wasn't for that, so your recall would be better. Can you help us now.

MS EASTMAN: Yes, in terms of, for example, the Synod saying that the whole of the school board or council would be terminated, the Synod wouldn't have that power or that authority. These issues are more likely to be dealt with in communication and dialogue between the relevant Synod and, usually, probably the Moderator and the General Secretary with the chair of the school board and, in some cases, the headmaster or the principal of the school. But I don't think that occasion has arisen, your Honour, so that anything I say might be in the realm of the speculative or hypothetical.

THE CHAIR: Then the ultimate question is can the Synod enforce or force a school to ensure that it follows the model litigant policy?

MS EASTMAN: In that respect, the General Secretary of the Synod for New South Wales and ACT is present this afternoon and she has given me some instructions in relation to the operation of the New South Wales policy. In terms of the model litigant approach and the matters that are set out in that policy, and matters that have involved one of the Synod schools in civil litigation in the New South Wales Supreme Court, that policy has been provided to the solicitors and to counsel and counsel has advised the court in proceedings that the model litigant approach will be followed by the school.

Your Honour may appreciate that there will be different interpretations of "model litigant", and sometimes even in matters involving government departments, that the other side might not feel that matters have been dealt with in accordance with the model litigant policy, so there will always be differing views in any adversarial proceedings. But the Church has given very strict instructions to those appearing that they are to appear and act in accordance with the model litigant policy.

THE CHAIR: Ms Eastman, you, like many others, are familiar with the culture of the Bar in New South Wales. It is important, in giving the instructions to follow the model litigant policy, that everyone involved understands
that someone who has been damaged in the way that may give rise to a claim of sexual abuse may have real difficulty in confronting the issue again in the course of litigation process.

MS EASTMAN: And yet, your Honour, that has been raised in matters involving the Church in New South Wales litigation. In a number of recent cases, the approach taken by the Church is not to put in issue a survivor's allegations that they have been the subject of abuse. So great care has been taken, if a survivor had to give evidence in the context of civil litigation, that the survivor would be treated appropriately.

That, to my knowledge, has not occurred yet. There is yet to be a full hearing or a trial involving such matters, but in directions hearings, those matters have certainly --

THE CHAIR: The issue can arise well before the trial.

MS EASTMAN: But indirectly --

THE CHAIR: Because of the process that the Common Law Division requires in relation to the recitation of the facts you can run into this difficulty at quite an early stage of the process.

MS EASTMAN: Your Honour, I think the parties who have appeared in the Supreme Court involving these issues have been very mindful of these matters and have, at least on four occasions, referred the judge to the fact that the Church wishes to take an approach that is consistent with the guidelines of the Royal Commission and a model litigant approach.

THE CHAIR: I am pleased to hear that.

MS EASTMAN: That's the first issue.

The second issue is that learned Counsel Assisting referred in his opening address to a number of statistics or data concerning claims. The Church has collected that material over the past week from all of the different Synods. It is yet to have an opportunity to look and to analyse that material so that the Church can give the Royal Commission I think some helpful information around the data in terms of the total numbers, but also what the
incidents mean, whether it is referable simply to an
allegation or an inquiry or a complaint or that there has
been a finding or report. The Church has indicated that it
is happy to work with the Royal Commission staff and be
guided by the Royal Commission as to how it might best
present that data.

THE CHAIR: Thank you for that. We will incorporate, of
course, the ultimate data into the final report.

MS EASTMAN: The third matter is that I think, as learned
Counsel Assisting indicated, other than the case studies
referred to, this is the first opportunity for the Church
to appear to raise and discuss with the Royal Commission
its policies, and Mr McMillan wanted to make a short
statement, if it's convenient to the Commission.

THE CHAIR: Yes.

MR McMILLAN: Thank you, your Honour.

On behalf of the Uniting Church in Australia,
I sincerely apologise to all children in our care who
suffered sexual abuse of any kind in our Church, whether it
happened since the union of 1977 or before that in our
predecessor churches.

We are, and I am, deeply sorry that we didn't protect
and care in accordance with our Christian values for those
children, and I want to acknowledge the impact that it has
had in the lives of those young people and to say I am
truly sorry.

Our commitment to you is we will seek to make amends
and to ensure that others don't suffer in the same way that
you have.

As Church leaders, we pledge ourselves to continue to
understand and to implement the lessons that we have learnt
through this Royal Commission and remain open to the
insights of survivors and professionals.

We pledge to continuously seek improvement, to
regularly renew our policies and practices in all parts of
our Church, and to ensure that they reflect the best
practice for care, service and support of children.
We pledge to ensure that these priorities are integrated into our organisational culture and practices.

This is our commitment to you. Thank you.

THE CHAIR: Nothing further, Ms Eastman?

MS EASTMAN: No, thank you, your Honour.

THE CHAIR: Very well. That brings this hearing to an end. Can I also, as we do with everyone, thank you for the contribution that the three of you have made. In giving you our thanks, we should also recognise the work that you have done during the course of the Commission in relation to the various matters discussed today.

That brings the hearing to an end and you are all excused.

<THE WITNESSES WITHDREW

THE CHAIR: We will adjourn until I think Friday of next week.

MR STEWART: I've no idea.

THE CHAIR: Friday at 10 o'clock next week.

AT 3.45 THE COMMISSION WAS ADJOURNED TO FRIDAY, 17 MARCH 2017 AT 10AM
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