ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

Public Hearing - Case Study 17
(Day C51)

Supreme Court Building, State Square, Darwin

On Tuesday, 30 September 2014 at 9.30am

Before
The Chair: Justice Peter McClellan AM
Commissioners: Mr Robert Fitzgerald AM
Professor Helen Milroy

Counsel Assisting: Ms Sophie David SC
MS DAVID: If your Honour pleases, I call Dr Howard Bath.

 HOWARD BATH, sworn: [9.30am]

EXAMINATION BY MS DAVID:

MS DAVID: Q. Dr Bath, did you provide a statement to the Royal Commission on 17 September 2014?
A. Yes, I did.

Q. Do you have a copy of that statement with you?
A. Yes, I have.

Q. Is it an accurate statement in respect of the questions that you were asked?
A. Yes.

MS DAVID: I tender that statement, your Honour.

THE CHAIR: Yes. That statement will become exhibit 17-32.

EXHIBIT #17-32 STATEMENT OF HOWARD BATH DATED 17/09/2014

MS DAVID: Q. Dr Bath, you are the current Northern Territory Children's Commissioner?
A. That's right.

Q. For how long have you held that position?
A. Since mid 2008, just over six years.

Q. Was that position created as a result of the recommendations which flowed from the Little Children are Sacred report of 2007?
A. No, it wasn't. The discussion around the Children's Commissioner's position started as the new Act was being considered, which was some years before that, but it was modified and influenced, in terms of the focus of the position, because of the Little Children are Sacred report.

Q. It was one of the recommendations of that report?
A. Yes.

Q. Have you been the only Northern Territory Children's Commissioner?
A. Thus far.
Q. Is your office based in Darwin?
A. Yes.

Q. How many persons work within your office?
A. All together, eight.

Q. Can you just explain to the Royal Commission the general roles within that office?
A. The overall role of the Children's Commissioner is to ensure the wellbeing of vulnerable children, so all the services are geared to that end. Primarily, we do complaint investigation around vulnerable children - services to vulnerable children. So three of the people in the office spend their time investigating complaints about services to children - they could be child protection services, they could be mental health services, youth justice, disability services, and any child who is classified as a vulnerable child under the Act, we can look into their situation.

Q. So there are three members who focus on that role, namely, to receive complaints about different agencies or service providers?
A. That's right.

Q. In respect of vulnerable children?
A. That's right. We also monitor the administration of the child protection Act inasmuch as it relates to vulnerable children. That is mainly the child protection provisions of the Act. And we also provide or convene the child death review and prevention process.

Q. In terms of the other members of staff, is there a member of your staff who is involved in policy?
A. There is one person who is full-time involved in policy and another person that assists in policy.

Q. Is it correct that in respect to allegations of child sexual abuse, about which this hearing is primarily focused, your core function is to deal with complaints received by persons about service providers, such as the child protection or the Out of Home Care Division of child protection services, and, secondly, to instigate reviews of your own volition?
A. That's right.

Q. Is there also a mechanism whereby the Department of
Children and Families is required to report to you any allegation of child sexual abuse?

A. Yes. There is a process by which the department sends us the completed investigations where it has been found that a child has been abused whilst in the care of the department, and we have broad provisions there around monitoring how the department deals with suspicions of harm, potential harm and actual harm. And so we're in the process - that only came into force earlier this year and we're in the process of working out with the department exactly how that will play out.

Q. Dr Bath, when are you informed of those allegations - at the end of the investigation in respect of them, or at the beginning?
A. At the end of the process.

Q. So you're reviewing what has already been done by the department?
A. That's right.

Q. And the processes which have been put into place by the department in respect of that allegation?
A. Yes. They do provide that on a monthly or quarterly basis at the moment, and from time to time we have become aware of a matter through other means - if someone makes a complaint, for example - and so we might be able to deal with it earlier, but normally it's after the fact.

Q. So your focus, in your job as the Children's Commissioner, is on the systemic issues, or the procedures that are undertaken by the department in respect of their investigation; is that correct?
A. That is a focus, but we also look at the particular matters, in terms of our investigation functions and our own-motion functions as well. We also look systemically at it and we also look at broad education functions in terms of the community around issues affecting the well-being of children.

Q. Can I ask you this: you don't have the power actually to investigate the allegation itself, do you?
A. No.

Q. You're aware, aren't you, that other States have an office - be it an ombudsman or powers associated with an ombudsman - to actually investigate the allegation?
A. Yes.

Q. In particular, the New South Wales Ombudsman has those investigatory powers. Can I ask your opinion as to whether you think that if your office or the Northern Territory Ombudsman had those powers, that would strengthen the protection of children and the child protection system generally, or not?

A. I think it is important that there is an independent review of what actually occurs in terms of abuse in care, because there is at least a perceived conflict of interest if the department is investigating its own workers or people who are working for the department. Now, at the moment, my office receives completed investigations where abuse has been found. If we were able to also look at those matters where abuse was not found, or was found to be unsubstantiated, then we could weigh up and evaluate whether an appropriate investigation had been completed. So I think there are different ways of addressing that particular problem of independent scrutiny of what is actually done in terms of abuse in care.

THE CHAIR: Q. What's the philosophical reason for that distinction between what you can look at and what you can't?

A. Because I think most functions of the Ombudsman and the Children's Commissioner are review functions: we're reviewing whether the appropriate processes occurred, whether the appropriate standards were brought to bear --

Q. I understand that, but why do you only review where abuse is found and not where it's not found?

A. There is a complication in terms of the way the child protection Act is framed, where it states that the department's obligation is to forward the reports of matters where abuse occurred. It's to do with the framing of the Act.

Q. What's the philosophical reason for the Act being framed in that way?

A. I'm not sure.

Q. At first glance it sounds a little odd, but is that the way anyone here reacts to it?

A. I'm not sure why it's framed that way, but I can add that we do have the powers to call on those files, if we have reason to. If someone makes a complaint or, you know,
we become aware of a matter, we have the power to call on
those files, but at the moment we're discussing with the
department access to those reports where abuse is found not
to have called.

Q. So you can investigate by calling for the files if the
abuse --
A. If we knew about the matters.

MS DAVID: Q. Can I extrapolate from that, that putting
aside the question of whether there should be a power to
investigate, it's your view that it would be helpful
actually to have a further power where matters that aren't
substantiated are referred to you for review?
A. Yes.

Q. Can I ask your opinion on whether you think it would
be of assistance if your office had the power to
independently investigate allegations, such as the New
South Wales Ombudsman has - do you think that would be a
positive improvement?
A. I think it would be a positive improvement, but it
needs to be weighed up, obviously, around the costs - being
an extremely small jurisdiction, we can't have every
mechanism that's available in the other jurisdictions, too.

My feeling is, as long as the issue is addressed - the
issue of independent verification of investigations or
allegations of abuse - I think that would be adequate.

Q. Would that involve receiving knowledge or a report of
the allegations at the outset, rather than at the end, so
you could review it as it goes along? Would that be of
assistance?
A. I think that would be useful. I think that would be a
very useful mechanism.

Q. Wouldn't it be more efficient if you could have a say
on processes as they were going along, rather than at the
end when it was all said and done?
A. Yes, it would. We could at least follow what is
occurring.

Q. Is it your evidence that it's really a matter of
resources - it's really a question of resources and the
efficient use of resources as to whether it would be a good
thing for there to be an independent investigative role
accorded to yourself or the Ombudsman?
A. Yes.

Q. Can I now turn to a slightly different topic. Part of your role as the Northern Territory Children's Commissioner involves meeting children in care?
A. Yes.

Q. And you do that through various engagement activities?
A. Yes.

Q. And, as I understand your statement, a big part of that is to give vulnerable children an opportunity, and really the best opportunity, to disclose anything that might be of concern to them within their care arrangements?
A. Yes.

Q. Including any allegations of child sexual abuse?
A. Yes.

Q. You do that through your office actually engaging in one to one meetings with various children in various facilities and care arrangements?
A. It's not always one to one. Sometimes it's with a group of young people and we invite them to come and talk with us or to call us if they have any particular issues themselves.

Q. Is it also one on one?
A. It can be one on one, but that's usually in the context of a complaint or a matter that we're looking at.

Q. In your statement you make it clear that you think that this process would be enhanced by a community visitor program?
A. Yes, very much so. If you look at Children's Commissioners and similar functions around the country, it's very rare for children to take the initiative themselves, to call, or to come up to the office, and to lay a complaint. Usually, it's done with the assistance of someone else, and usually that person is an adult - it could be a foster carer, it could be a teacher, a family member; someone who is mentoring or supporting that child. The experience of the community visitors program in Queensland is that many more complaints and issues - they didn't have to reach the level of complaint, but issues that needed to be dealt with were facilitated through the
Q. Is that a program that you have agitated for with the government?
A. I wouldn't quite use the word "agitation". We've certainly promoted that and, as part of the Board of Inquiry recommendations, we suggested there should be a mechanism, at least an effective sampling mechanism, for sampling the views of young people in care, because we recognise that it would be quite difficult to implement that process, and very expensive, if it was to cover every single young person in care across the Territory, given the difficulties in reaching those young people.

Q. How would you discriminate, if you like, between what children you would focus on, in terms of awareness program, and what children you would perhaps not focus on? Would there be a system?
A. Certainly a system would need to be developed. I think there are various ways you can look at this. You could look at perhaps the older children who have more capacity to advocate for themselves or to speak for themselves. You could look at children in residential care, or start there, because many of those young people have been in the care system for quite a long time and, you know, are perhaps more willing to advocate on behalf of themselves.

But I'd also look at a sampling of other kids, say in kinship care as well, because that's a group that's not often accessed and quite often don't have an independent voice for what the issues are that they are facing.

Q. Have you been provided with any reason or understanding as to why this proposed program has not been implemented?
A. You would be aware the Board of Inquiry came up with 147 recommendations. They were all accepted by the previous government. When there was a change of government, there was, of course - the new government had to consider what could be done, what could be afforded.

I think about nine key recommendations the incoming government felt that there wasn't allocated funding for, and funding was not available for those - I believe it was nine. And I think - I think I'm sure on this - that the community visiting program was one of those nine that was
unfunded in that process.

Q. We've heard evidence from Ms Jackson that case workers try to meet a threshold of meeting with carers and children once per month?
A. Yes.

Q. Do you review, as the Northern Territory Children's Commissioner, whether that actually takes place?
A. Yes, I do, and each year for the last few years we've been doing a file audit to track how many visits have occurred in the last month and in the last two months.

Q. I think you say in your statement that it's at about 40 to 60 per cent?
A. Yes. I've got the exact figures here, if you would like them.

Q. Yes. What are the figures for the last financial year?
A. We're in the process of getting new figures together now, but for last year, for face-to-face contact by case workers with children in care, within one month 52 per cent of those children had been visited within one month; and if we look at two months, that rises to 69 per cent. So the one-month one, about half of the children were visited within that one-month period.

Now, I do need to add that I believe that percentage - there's been a big focus in the department on that, and there has been some rise in that percentage. I can't say exactly what it is, but there has been an improvement over the last year.

Q. In your position, do you feel that that is an important aspect of providing children with an opportunity to disclose sexual allegations, or allegations of child sexual abuse, and also to disclose any problems or behavioural problems which might indicate that there has been some sort of sexual abuse?
A. I think it's critically important, and especially in the absence of a community visitor program. I don't think it's the only mechanism that should be in place, but I think it is critically important. The Coroner here in the Northern Territory has drawn attention to that, in terms of tragedies in the past, where there's been long periods of time where kids in all forms of care have not
been visited for a long period of time.

It gives the case workers an opportunity to pick up an indication that something is wrong - if something is wrong. If they are not visiting, they are not picking up those indications.

Q. In that context, do you think the figures that you've just referred us to are satisfactory?
A. Not at all, but I do need to add that I'm aware that the department has been working assiduously on this program and I believe the figures have improved just recently.

Q. So in your understanding, it is a focus of the Department of Children and Families?
A. Yes.

Q. And do you think that is an appropriate focus?
A. I think it absolutely is an appropriate focus.

Q. And this is a critical aspect of protection of children in care?
A. Yes.

Q. I now want to ask you about another aspect of the protection of children in the Northern Territory, and that's in relation to the Aboriginal Child Placement Principle. You refer to that in your statement. You say at page 4 of your statement that Northern Territory has the lowest placement rate of Aboriginal children with Aboriginal carers in Australia.
A. Yes.

Q. I think we had the Australia-wide figures tendered yesterday in respect of the years ending 2011, 2012 and 2013. Can you first explain to us, from your point of view in your overview of the system, why you consider that an important principle?
A. Well, I think it's an important principle because it recognises the historic mistakes in child welfare over the last number of decades and the forced removal of Aboriginal children from their families.

Not only that, it's also consistent with best practice generally. Regardless of what culture or background a child comes from, when a child needs to go into care, you want to find the closest family member to be able to look
after that child, and if you aren't able to find a family member, you want to try and find someone from the same cultural background so as to reduce the trauma and the dislocation experienced from the child and, also, to preserve a sense of identity for that child. So I think it's a very, very important principle.

Q. In your view, does it also protect a child from abuse, be it child sexual abuse or physical abuse? Is culture a protective factor?
A. I think - I don't know that there's strong evidence on that particular point. I think there are many reasons why you preserve culture. I think identity is probably the most important one. But I don't think there is clear evidence that it's necessarily going to protect children from abuse.

Q. Are there any statistics on that? Is there any sort of evidence that suggests that children placed with kinship carers or within their community are shown to be less likely to suffer abuse at the hands of their carers, or in that care arrangement, or is that simply not known?
A. I do have to say there is quite a body of evidence - not regarding Aboriginal kids in care, but from around the world - that kids in kinship care, on average, are better off in terms of their family links. But if we put that aside, in some ways they are not better off, because we know, for instance, that the child protection services - and I'm talking broadly, in terms of the literature from around the world - tend not to be quite as assiduous in monitoring those placements. Those kids to tend to stay in care for a longer period of time than kids that are placed outside of the kinship network; and sometimes the standard of care - I say "sometimes" - hasn't been quite the same as in non-kinship placements, but this is not to do with indigenous care research I'm talking about. I'm talking about research from around the world.

Q. Indeed, we heard yesterday from Ms Jackson that there is a real focus on ensuring that the same standards are applied to kinship carers as they are to other carers in the Northern Territory; is that your experience?
A. I think there is an attempt to apply the same standards, but the reality is the same standards don't apply. We made quite a focus on this particular issue in the Board of Inquiry report in 2010. Now, I don't say that to be particularly critical of the department, because
I believe this is exactly the same all around the country. It is very, very difficult to apply exactly the same standards. I'm talking about accommodation standards and, for obvious reasons, that's very, very difficult in communities that have experienced many years of disadvantage. The reality is that some of those standards tend to be relaxed.

Some of the data that we provided, say, five years ago showed very clearly that more of the kinship carers weren't registered as carers and more of them had difficulty - well, in terms of receiving training, for example, were less likely to receive training than non-kinship carers.

That there is an attempt to raise the standard I think is laudable, but I think there is some way to go before you could actually say that the standard of care offered to those kids - and I'm talking generally - is the same for all other kids that need protection.

Q. But do you still agree that it is best that the Aboriginal Child Placement Principle is applied, in that it's best for children to be with kin or placed within their community if they are removed from their home notwithstanding that?

A. I think that's generally the principle. I would also say it's not in every case in the best interests of the child, and we made a recommendation, in terms of the Board of Inquiry, that there should be a slight amendment or, how can I say, a slight caveat in the application, that it must be shown to be in the best interests of the child.

Q. Just returning to those statistics whereby the Northern Territory has the lowest number of Aboriginal or indigenous children with Aboriginal or indigenous carers, can you provide any explanation or reasons for that from your experience as the Northern Territory Children's Commissioner? Why is that so, do you think?

A. I think there are quite a number of reasons for it. Some of it could be put down to sort of poorer practice in the past, but I don't think that's the main cause. I think the main cause is that it's very, very difficult to find placements. If you look demographically at the indigenous child population and the non-indigenous child population in the Northern Territory, you'll find that for every non-indigenous child there is one adult in the caring age range that is technically available for that child. If we
look at the Aboriginal population, because of the very high birth rate amongst young children - sorry, I've got that wrong. If you look at the non-indigenous population, there are three adults available for each child. If you look at the indigenous population, there is one potential adult for each child. That's just purely in terms of demographics.

If we look at, then, the disadvantaged circumstances, particularly in some of those very remote communities, it is just practically much harder to find a suitable placement, particularly in terms of space, when there are many adults and children sharing a house. So it's mainly those really practical issues, and of course, you know, after the years of disadvantage in many of these communities, it's harder to find adults who are ready and able to look after those children.

Q. And, in your view, if anything, what can be done to improve the number of persons who are able to be kinship carers or indigenous carers?
A. I think there's a lot that can be done. Some of the recommendations from the Board of Inquiry focused on the fact that there is this difference in standard between kids in kinship care, particularly in remote areas, and in urban regions. And we recommended that the department takes an enabling approach to finding foster care placements, particularly kinship care placements, that if there isn't physical space in a house, to look at what it would cost to support a grandmother or an auntie to create extra space in the house, perhaps with the addition of temporary living quarters - a caravan, for instance. There are many ways in which practical assistance could be given. Traditionally, departments are happy to pay many thousands of dollars, sometimes per week, for forms of out-of-home care, but typically are reluctant to invest those resources in supporting families who just might be able to look after a child, a relative's child, if they had the resources and were enabled to do it.

I don't make that as a specific criticism here in the Northern Territory, because I think it's a problem all over the country.

Q. This is an associated question, but what could be done to improve the standard of care which can be given by those kinship carers?
A. I think there are many things that could be done, and
I think you've identified what I would say is the critical issue facing child protection here in the Northern Territory. We proportionally identify the same number of children as being at risk of harm as the Australian average - in other words, we are taking a lot of children into the care system and identifying them as being harmed - but we have by far the lowest level of out-of-home care provision, including kinship care, in the country.

For example, we proportionally have a quarter of the Aboriginal kids in care, in protective care, in the Northern Territory, compared with New South Wales, where on every wellbeing indicator, those indigenous kids in New South Wales are better off than the ones here in the Northern Territory.

So we're identifying many, many kids at risk, but our protective services are lagging way behind. That's why the Board of Inquiry identified that the critical issue is building up family support and family preservation services for those struggling families, most of whom we know about and have identified in the child protection system.

Q. So you are referring to services which should be made available before a child is removed, to prevent removal of the child?
A. It's ironic, isn't it, that these services kick into gear when the harm has actually occurred - in fact, often when it is occurred on multiple occasions - rather than when we know that a family is at risk, to be really focusing on preventing that harm from developing with those kids.

Q. Once a child is removed and placed in kinship care, or foster care, from your position and your overview of the system what changes or improvements could be made to enhance protection of those children?
A. Once they are already in kinship care?

Q. Yes.
A. Well --

Q. To raise the standard of that care so it's comparable to other standards?
A. Well, certainly, to ensure that those carers are getting the training, the support, the supervision, the regular visiting that all other carers are getting in the
Territory. That would be a very good start.

Q. Just one final topic. Yesterday, Ms Jackson informed the hearing that children are still dealt with within the system after they turn 18 - so services are still available to them from when they are 18 until they are 25. In your view, how efficient or how effective is that group of services, if you like? Do you think that is an important aspect of the child protection system?

A. I think it's critically important, but I do have to note that it's a very limited range of services. It is usually done through a contracting-out arrangement with a program called "Moving On", which is operated by Anglicare in the Northern Territory. It's a very welcome development. I mean, in previous years, once a child turned 18, that was the end of the support that they were getting. So I think it's very, very welcome. But it's limited to the forms of support, you know, around seeking education, perhaps seeking some accommodation - limited but welcome.

Q. The reason I ask is that we've heard during the course of this hearing that many of the survivors say that they felt very stranded after they turned 18 or left Retta Dixon Home and they didn't have much support. Do you see support for children leaving care arrangements as an important further aspect of the protection of those children?

A. I think it's absolutely critically important. Children in the mainstream that aren't in the child protection system, for the most part, have families that will support them all the way through, and these kids, historically, haven't had that. So I think it's very, very important.

It's often the NGOs that are contracted to provide these services, or the ones that provide that ongoing support for the kids, and I particularly mention the CREATE organisation, which here in the Northern Territory and across the country provides a lot of that liaison support for those children.

MS DAVID: I have nothing further.

THE CHAIR: Does anyone else have any questions?

MS McLEOD: No questions, thank you, your Honour.
<EXAMINATION BY MR GEORGIOU:

MR GEORGIOU: Q. My name is Georgiou. I appear on behalf of Kenneth and Kevin Stagg and Veronica Johns, residents or former residents of Retta Dixon Home.

Doctor, in the six years that you've been in your role, how many complaints have you received regarding DCF's investigation of sexual abuse matters?

A. I would have to go right back through the numbers and specifically look at that. I would say, just off the top of my head, maybe perhaps around 10 per cent of them are primarily involved around an issue of child sexual assault, but child sexual assault probably features far more frequently than that in the history of those children.

Q. So that is about 10 per cent of those complaints which the department has found to be substantiated, you've been asked to investigate. Have I got that right?

A. Yes, but I'm just suggesting that number of 10 per cent off the top of my head. I don't have the data with me.

Q. It perhaps doesn't matter greatly as to the precise numbers, but are you able to tell the Commission what has been the general nature of the complaints that you've received?

A. I can just try and recall some of the themes. They are themes, for instance, where people have been concerned about the adequacy of the investigation that was undertaken. There have been complications with the coordination between the police and the child protection services in responding to complaints. There have been complaints where because a matter, from a police perspective, hasn't had enough evidence to sustain a charge, there have been complaints that once that decision has been made, support hasn't automatically flown, been provided, to that child; in other words, the case has been closed because there wasn't enough forensic evidence, for example, but the case workers involved with the child still believed that sexual abuse had occurred.

Q. When you say "not enough support being provided", by whom?

A. By the department.

Q. As a result of these complaints, have you made any
formal recommendations as to how to better deal with the
matters that are the subject of the complaint?
A. Yes, we have, and we've detailed some of those in
previous annual reports.

Q. Doctor, you've stated that, in your opinion, it is
critical that there be face-to-face meetings between case
workers and children; correct?
A. Yes.

Q. And the current target is monthly, as you understand
it?
A. Yes, that's the guidelines of the department - that's
the department's guidelines.

Q. You say it's critical especially in the absence of the
community visitor program?
A. Yes.

Q. The statistics with which we have been provided show
that the achievement of that best practice has been
something significantly less than what is desirable;
correct?
A. Yes.

Q. Do you know why that is so?
A. I suspect it is a resourcing issue, that when you have
large case loads, the case workers have to balance, when
they get there each morning, are they going to be focusing
on a new child protection concern or a longer-standing case
or a child who is already in protective care. And
I suspect that where there are resourcing difficulties,
those longer-term cases tend not to get the attention that
the more immediate child protection concerns tend to get.

Q. And yet to know about concerns, know about incidents
of sexual abuse, does require the complaint of a child,
generally speaking.
A. Most often, to somebody, or that someone that's close
to the child can pick up the indicators.

Q. And part of the regular contact between case worker
and child is to foster a trusting relationship and to
develop a rapport; would you agree with that?
A. Yes.

Q. You've said that the department is making great
efforts to increase the level of face-to-face contact, but if it's a resource issue, without further resources do you consider that the desirable policy of once-a-month meetings could not be achieved?

A. I have made suggestions in the past to address this dilemma, because what we've seen over the years is that when an issue has been identified, the department has responded to that, but, unfortunately, sometimes, because of resourcing, it leads to difficulties in other areas of practice. However, there are other ways of dealing with this issue. There are some foster care placements that are very stable, that have never been the subject of a complaint, and that perhaps could be classified in a different manner to foster care placements or kinship placements where there have been numerous notifications and investigations in the past; in other words, that don't seem to be as stable or as safe for children. So even with a rudimentary classification system, there is some way that you could perhaps say children in these placements need to be visited every month, whereas children in the more stable placements, it might be a regime of visiting every two months. There are ways to address the issue of resource constraints.

Q. Do you know if that particular recommendation has been adopted?
A. I'm not aware that it has.

Q. Is that a "no"?
A. I'm not aware.

Q. You're not aware?
A. I'm not aware if it has.

Q. Would you expect to have been told if it has been adopted?
A. I think I would have been told if it had been adopted. What I do know, as I said before, is that the latest data is suggesting that the visitation rates of kids in care has been improving in the last year.

Q. Doctor, one of the excuses given for a number of things, but including the less-than-once-per-month visits, has been the remoteness of some of the communities. Do you accept that as an excuse?
A. I don't accept it as an excuse. I think it's reasonable to accept that that provides a greater challenge
than in many other parts of the country. But I do note that in quite a number of the remote communities DCF now does have stationed personnel - remote - I think they are classified as remote Aboriginal child and family workers. That may not be the exact title. But in some communities there are child protection staff, formally qualified child protection staff, and in others there are this new classification of staff member, and perhaps - I'm not sure of this, but perhaps one of their roles could also be on helping the department fulfil this function of visitation of kids in kinship care.

Q. Have you made any recommendations to overcome the difficulties of remoteness?
A. No, not in particular, but that issue has been discussed, about the role of staff that are stationed in remote areas. Can I also add that there are also the remote child protection teams; there are other resources that came along with the intervention or with the Stronger Futures funding that support work in the remote communities with the department.

Q. Have they been utilised to fulfil the role of case worker meeting with child in care on a regular basis?
A. From the data that we had last year that are published in the annual report, that does not appear - you know, there appear to be very serious problems in meeting the one-month requirement - indeed, even the two-month requirement; about a third of those children weren't visited within two months. I'm not sure exactly what the data will show this year but, as I have said a couple of times, there has been improvement in that.

Q. There are other parts of Australia, such as Western Australia, parts of Queensland, parts of New South Wales, that also have remote communities; correct?
A. Yes.

Q. Do you know if they deal with the problem in any different way?
A. I don't think it's formally reported on, in terms of the national statistics, so I could not say how they are doing in visiting kids in remote areas.

MR GEORGIOU: I have no further questions.
EXAMINATION BY MR McINTYRE:

MR McINTYRE: Q. Doctor, I appear for several of the survivors of Retta Dixon Home - Lorna Cubillo, Sandra Kitching, [AJW], [AJA], [AKU] and [AKV]. They are the pseudonyms. Doctor, do you have your report in front of you still - your statement?
A. The statement, yes.

Q. Can I just ask you to go to the last page of it. You've got a series of small paragraphs following dot points, and I'll take you to the third dot point. It's about a third of the way down the page. You said there:

In 2008-09, 10 per cent of all substantiations pertained to sexual exploitation; in 2012-13 this figure had dropped to 1 per cent. The relevant national percentage is around 12 per cent. It is unclear why the number of substantiations for sexual exploitation in the NT has dropped so sharply.

I appreciate you made that statement only a few days ago - 17 September - but, nevertheless, are you able to shed any light on what the causes of that might be?
A. Since this data came to light last year, I've been working with the department to try and understand what has been going on. In fact, even prior to that we'd been having discussions that we needed to try and understand why this was the case, why we have the lowest percentage of substantiations pertaining to sexual assault, and given that this is the jurisdiction where there has been such a focus on that from the time of the intervention, it just didn't make any sense at all. Nor does it make any sense in the context of what we know anecdotally and, you know, the files that all of us get to read.

Since I put in this statement, I have received a notice from the department to the effect that they have discovered that there were some classification errors or anomalies in the way that the data has been recorded, and they believe that the numbers for next year will show an increase in the number of children, both notified and substantiated for sexual assault and exploitation.

Q. When you say you received notice to that effect, was
that in writing?
A. Yes.

Q. Do you have a copy of that?
A. I do. I don't know if I have it on me, but --

MR McIntyre: I call for that, your Honour. It has been presented to the witness presumably by the NT Government since his statement.

THE CHAIR: I think the transcript should record "produced"; is that right?

MR Grant: Yes, I produce that, your Honour. It is a letter from the executive director of professional practice of the Department of Children and Families to Dr Bath dated 17 September 2014.

MR McIntyre: I wonder if the witness might be shown that.

Q. Doctor, take a look at that document that I've just handed to you. Is that the notice you were referring to just a moment ago?
A. Yes, it is.

Q. I don't have a copy in front of me, doctor, but I think you'll see on page 2 of that document a table of figures?
A. Yes.

Q. Could you explain that table to the Commission?
A. I'm afraid I can't read it. The writing is too small on it.

Q. Does it at least show the source of the calculations?
A. Yes. These are child protection reports with sexual exploitation - okay, these are reports, notifications - these are the notifications that have been classified as child sexual exploitation notifications.

Q. Yes.
A. And they are showing a rise from May this year.

Q. Do those figures tell you anything about whether those incidents have been substantiated or not?
A. That particular chart doesn't, but in the text following it, it said that there has been a rise in the
average number per month of substantiations. I'm reading here from the letter:

This is a near doubling of notifications and substantiations due to clarification of a policy interpretation.

Q. Is there any indication on that page or anywhere in the notice you're talking about about the source of those statistics?
A. No. I would need to look in much more depth at the data and how it's been interpreted to know that.

Q. Who is the author of that document?
A. It's from the department's acting executive director, professional practice, Mr Luke Twyford.

Q. You've just said that you would have to look at the statistics to verify what's in there, or words to that effect. Where would you look to verify those statistics?
A. I've just got this notice recently from the department. I would need to ask just what was the change in interpretation that led to this reclassification, or that is leading to this reclassification, to really understand it more fully.

Q. Could you read that sentence out - I think it's on page 2 of the document - that refers to that change - could you read that sentence out, please?
A. The one that I just read?

Q. Yes.
A. Yes:

Prior to May 2014, there have been 22 substantiated matters --

Which is averaging 7.3 per month:

This is a near doubling of notifications and substantiations due to clarification of a policy interpretation.

Q. How do you make sense of those words "clarification of a policy" - how do you make sense of that phrase?
A. I haven't yet had a chance to talk in detail with the department. My understanding is that there was a
classification error from reading that - that families
where it wasn't certain that a family member had assaulted
the child, yet harm had occurred - those matters were
classified as neglect rather than sexual assault. That's
my understanding. You might need to get clarification from
the department on that one.

MR GRANT: Your Honour, I have working copies of that
document, if that's of any use to the Commission.

THE CHAIR: I think it would be helpful if we had it
tendered, wouldn't it. That will be exhibit 17-33.

EXHIBIT #17-33 LETTER FROM THE EXECUTIVE DIRECTOR,
PROFESSIONAL PRACTICE OF THE DEPARTMENT OF CHILDREN AND
FAMILIES TO DR BATH DATED 17/09/2014

COMMISSIONER FITZGERALD: Q. Dr Bath, if a child has
been both subject to neglect and to sexual exploitation,
how is that recorded?
A. My understanding is that - this is one of the
difficulties with all child protection data - it's recorded
on the primary abuse type, however that is defined in a
particular matter, so that, unfortunately, a very large
number of sexual assault cases occur in a context of
neglect where there is - not all of them, but in some of
them - a supervision difficulty. The reason I mentioned
neglect was that in one of the paragraphs in this letter it
suggests that that is the classification that's given.

Q. And the recording of the primary issue - neglect or
sexual abuse or other abuse - is that according to a
nationally agreed standard for the collection of
information by child protection agencies?
A. My understanding is that it is. The rules - the
counting rules are developed by the Australia Institute of
Health and Welfare and the Productivity Commission and,
yes, it's recorded according to those rules. The
difficulty is that in perhaps two-thirds of all matters to
do with child protection, there are multiple abuse types,
and those aren't recorded.

Q. So given your expertise in this area, would you
believe that child sexual exploitation, to use the language
in the Northern Territory, is under-recorded?
A. I have no doubt that it's under-recorded. It is in
most jurisdictions, but I have no doubt that it is
under-recorded here, for a variety of reasons. Many of the cases, many of the case matters - and this is consistent with the findings of the Little Children are Sacred report - many of the case matters mentioned the issue of sexual exploitation, but very, very few matters are actually substantiated, and far fewer actually result in court charges. My understanding is that last year, at least for the last recorded statistics we have, there were seven convictions for child sexual assault in the entire Territory.

MR McINTYRE: Q. Do you take the reference to that error - the policy correction, or whatever the phrase is; I'm sorry, doctor, I don't have a copy of it in front of me - do you think that is referring to a change at the NT level, or a change at the national level to which you've just referred, in terms of those criteria?

A. I understand that to be very much a change in the way NT is processing matters.

Q. Does that suggest, then, that the NT is, or has been, using a different criteria than the national criteria to which you referred?

A. I think what it is suggesting is that right at the beginning of the process there has been a problem in recording matters that have to do with sexual exploitation. There's been a misunderstanding, and some matters that should have been perhaps classified as sexual exploitation have ended up being classified as neglect.

Q. I wonder if the witness might be shown this document. Doctor, I've just handed you a document. Could you read out the heading on that document?

A. Yes, this is the Office of the Northern Territory Coordinator-General for Remote Services Report, for June 2011 to August 2012.

Q. Is that a document that you've seen before?

A. I have. Not for a long time, but I have seen it.

Q. Could I ask you to turn to I think page 119. Do you see a heading there, "5.2.14. Child Protection"?

A. Yes.

Q. Just before I go into the substance of my question, the document is entitled "Office of the Northern Territory Coordinator-General for Remote Services Report". Are you
familiar with that office?
A. It doesn't exist anymore.

Q. Are you familiar with the office when it did exist?
A. Yes.

Q. Can you tell the Commission what you understood that office was for?
A. My understanding is that it was reporting on the implementation of Federal Government and Northern Territory Government programs around closing the gap, following on from the intervention.

Q. The Commission has already heard some evidence about the difficulties involved with service delivery into remote communities of the Northern Territory?
A. Yes.

Q. And specifically about, for example, evidence that your Board of Inquiry was exposed to in terms of numbers of flights of service providers into communities on given days. You know what I'm talking about that when I say that?
A. Yes.

Q. Do you agree that that has been something of a problem in service delivery in remote communities?
A. Yes.

Q. So the actual coordination of that service delivery is a matter that bears upon, does it not, the matters that your report bears upon?
A. Yes.

Q. Are you able to tell the Commission when that office ceased to exist?
A. I think it was shortly after the new government was elected here.

Q. Can I ask you now to go to page 119. You'll see there under that heading, "Child protection", this sentence:

The implementation Plan for the Family Support Package is an NTER ...

That would be "Northern Territory Emergency Response"; do you agree that that is what that refers to?
A. Yes.

Q. ... measure now incorporated into the Partnership Agreement on Closing the Gap in the NT.

Do you see that phrase?
A. Yes.

Q. Do those words mean anything to you, "Partnership Agreement"?
A. Yes.

Q. Can you explain what that is to the Commission?
A. I don't have anything directly to do with this, but my understanding is that most of the funding - well, all the funding that was provided previously under other measures is now provided - or is provided under partnership agreements between the Federal Government and the Northern Territory Government. That was the mechanism for the funding agreement.

Q. Then there are three bullet points that follow?
A. Yes.

Q. The first of which says:

22 fully operational Safe Places in 15 remote communities, as well as Darwin and Alice Springs.

Do you see that?
A. Yes.

Q. Are you able to shed any light on that?
A. Look, I'm not fully across this, but I do know - I do understand that there are fewer than 22 fully operational safe places now. The last I heard it was 18, but I don't know the exact statistics. They are mainly refuges, safe places for women, as I understand. I couldn't say exactly how many remote communities they are operating in at the moment.

Q. But you could say this, could you not, doctor, that the number has not increased from 22?
A. No, the number has definitely not increased, as far as
I'm aware.

Q. The next bullet point says:

A fully operational Mobile Child Protection Team (MCPT) ...

Are you familiar with that phrase?
A. Yes, I am.

Q. Could you tell the Commission about that?
A. My understanding is that that was an initiative that came out of the intervention originally, and the mobile child protection team is able to be called in when it needs to go to remote areas and to respond to matters, you know, where there is an acute staffing shortage.

I understand that that is still operating, but I'm not certain about how it's operating or what funding it's getting at the moment.

Q. Was that operating when you undertook your Board of Inquiry?
A. Yes.

Q. Do you know where, in the executive arm of government, that team is housed?
A. I think it's child protection, or what is DCF now. I'm not sure at that stage of its life what it was called then - FaCS?

Q. Would it now be housed within DCF?
A. There have been so many changes that I can't be certain about this. Some of these programs have gone - you know, have gone around from agency to agency, but it's my understanding that it's still funded by the Federal Government but it's operated by DCF. That's my understanding.

Q. Are you able to shed any light on the type of personnel or the professional expertise of the team members?
A. No. I think you'd need to ask the department that.

Q. Perhaps if we go to the next bullet point:

Remote Aboriginal and Family Community
Workers ... in a minimum of 13 remote communities.

Perhaps that relates to your evidence earlier?
A. Yes.

Q. Can you explain what they are? What is a remote Aboriginal and family community worker?
A. Again, I think the department would be best placed to describe who these people are, but they are employed by child protection. They work in communities and they have a range of tasks short of statutory interventions. That's my understanding. A range of family support tasks short of, you know, formal statutory interventions, but, again, I may be wrong on the exact detail of that.

Q. Do you know if they are locally based persons or are they - for example, in an indigenous community, are they an employee or - are the RAFCWs local people in the remote communities?
A. My understanding is that that is the idea, that they are either local to a particular community or to a cluster of communities, but, again, the department would have the exact details on that.

Q. And here it says:
... in a minimum of 13 remote communities.

Are you able to shed any light on how many remote communities now have such personnel?
A. My understanding is that it's more than 13, but I think, again, the department would have to confirm what the latest figures are.

Q. Can I ask you to turn to page 122. About halfway down that page, there is this paragraph:

An Aboriginal peak body (Stronger Aboriginal Families, Together) has been established for the purpose of creating Aboriginal Child Care Agencies ... The establishment of ACCAs will provide a robust focus on the safety and wellbeing of Aboriginal and Torres Strait Islander children within the child protection system.
Do you see that?
A. Yes, I do.

Q. Is that an initiative arising from your report?
A. It is one of the recommendations of our report, yes.

Q. And, to your knowledge, does that body exist?
A. It did exist, and it doesn't currently exist.

Q. Are you able to shed any light on why it no longer exists?
A. I understand the government has withdrawn funding, for various reasons, for that particular body. There was also funding to be allocated to two ACCAs, Aboriginal childcare agencies, and there was some discussion previously in the Commission as to whether the agency in question was a peak body or a service provider. Regardless, it no longer exists as an organisation.

Q. Is that also true of the two Aboriginal childcare agencies that were established?
A. That's my understanding.

Q. Is it your understanding that the latter entities were intended as service delivery agencies?
A. The ACCAs were, yes.

Q. Are you able to say when either the ACCAs or the peak body ceased to operate?
A. I can't tell you exactly when, but it was some time last year, from my recollection - early last year.

Q. In the shaded section on the left-hand half of page 122 there is a list of matters under the heading "Types of maltreatment"; do you see that?
A. Yes.

Q. At the bottom of that list it says:

Source: Canadian Red Cross.

And there are a couple of other entries. Is that list consistent with Australian national criteria?
A. I think it is. There is not really a standard criteria that's used in all the jurisdictions. Each jurisdiction has its own definition of what constitutes the
various forms of abuse. I am aware that this particular program has been offered quite widely based on the Canadian model in terms of, you know, a training model.

Q. So not to confine you to the words there, but nevertheless, would you agree that there is nothing there that is inconsistent with the national model?
A. I would agree with that.

Q. Can I ask you to turn to page 123 of that report. You'll see a heading "Current situation"?
A. Yes.

Q. And this paragraph:

An independent Child Protection External Monitoring and Reporting Committee was established by Ministerial appointment and met for the first time in February 2011.

Do you see that sentence?
A. Yes.

Q. Do you know whether the Child Protection External Monitoring and Reporting Committee continues to exist?
A. No, it doesn't.

Q. And do you know about when it ceased to exist?
A. It ceased to exist shortly after the incoming government took power.

Q. Do you know why it ceased to exist?
A. There was a review of committees and similar functions, and I believe it was in that context that funding was withdrawn, or at least there was no commitment at that point for the external review body.

Q. In the very next sentence in that paragraph there are these words:

A strategic framework 2011-2015 "Safe Children, Bright Futures" reflecting the NT Government's response to the Board of Inquiry's Growing Them Strong report recommendations was launched in February 2011.
Do you see that?
A. Yes.

Q. Is that strategic framework a framework published before the recent change of government, or is this a framework of the current government?
A. My understanding is that that's the previous government's framework.

Q. This is where I'm heading with those questions, doctor, and you won't be surprised when I read out the following paragraph:

The Strategic Framework includes seven key areas of reform:

- Supporting and Strengthening Families (enhancing the family support system)
- Keeping Kids Safe (statutory intervention and out of home care)
- A strong and effective legal framework (legislative change and court reform)
- Working together (community collaboration)
- Our People (workforce)
- Healing, Growing, Walking Together - development of an Aboriginal service sector and community capacity building
- Building a Stronger, Better, More Accountable System (governance and regionalisation)

Is it fair to say that they are seven key areas of your recommendations?
A. Yes.

Q. I won't go through them all with you, doctor, you'll be pleased to hear. I want to take you to a couple of them, though, but before I do that, can you look at the seven in that list and are you able to say whether any of them have actually been implemented since 2011?
A. Well, yes, all of those areas are part of, you know, the current department's focus. I don't have a role in specifically evaluating those, but, for instance, they would be doing work in supporting and strengthening families.
I would have to say this: I have said now for a number of years, and it was a particular focus - in fact, it was the key recommendation of the Board of Inquiry; I've been quite consistent with this over a period of time - that we believed that the big outstanding problem in the Northern Territory was the lack of focused family support and family preservation services for those families most in need. So there are some programs that do exist; it's just the extent of those programs.

We also believed that instead of the old analogy, just being the ambulance at the bottom of the cliff, there had to be a focus on preventing people falling off that cliff, and you do that through the provision of families - well, one way you do that is through the provision of family support and intensive family-based services. So that has been an area where there has been a resourcing difficulty, because the incoming government at that stage, that was one of the key recommendations that the government felt that there wasn't funding for and it was too expensive for the Territory at the time.

So that first one there is certainly undertaken by the department, but I believe that they are hamstrung in actually providing that support, because they are not resourced to provide an adequate level of family support and family preservation.

Q. Would you say that lack of resources relates - what you've just said, rather than take you through them all, would you agree that that lack of resourcing applies to each of the seven?
A. I would need to go through and look at them, because, you know, for instance --

Q. Please do that. Let's go to the next one, "Keeping Kids Safe" - what can you say about that?
A. I can say a lot. Can I just say in the Northern Territory, it's not news to people, but our threshold for intervention is vastly different to the threshold that applies in every other jurisdiction. That's been the case for a long time. I do think that there are signs that it's slowly starting to change. What I mean by that is that in order to have a statutory intervention, the bar is higher. There has to be more evidence that severe harm is occurring, and more compelling evidence, before an intervention is authorised. And I give this example: why
is it that in New South Wales, where on every child safety and wellbeing indicator - I'm talking about things like rates of domestic violence, alcohol consumption, school attendance, those sorts of indicators - on every indicator, those kids are better off, on average, than our kids in the Northern Territory, and yet they have nearly four times as many kids brought under the statutory protection than we do in the Northern Territory.

Q. Let's go to the next one:

A strong and effective legal framework.

Are there things that you had in mind in your recommendations that have not been implemented under that rubric because of funding constraints?

A. There are - we had a whole raft of recommendations around legislative changes, and I do have to say I think the majority of those have been implemented by both the previous government and the incoming government. There are a number of smaller ones, but nothing stands out in my mind as being a major oversight there.

Q. I want to move to the next bullet point:

Working Together (community collaboration).

My specific question about that is this: you've told the Commission how important attending to the needs of family is - and I think you've put that clearly in terms of prevention rather than at the bottom of the cliff, as you were talking about before. Am I right in suggesting that?

A. Yes. Can I just make the distinction that there is primary prevention, secondary and tertiary levels. Primary prevention is generally the broader community preventive measures, like good education, good policing and that sort of stuff that's universally applied. In our Board of Inquiry we were focusing on what was called secondary and tertiary prevention. That is where vulnerable families have been identified. We know where the vulnerability lies. It's providing services at that level, to identified, vulnerable families, where there is a big lack in the Northern Territory.

Q. Just on that secondary level, the vulnerable families, you have said they have been identified. How do they get identified?
A. Through various means. Some are self identified by
turning up in family support services, at various
services - health centres, for instance - and many are
identified by social service workers, educationalists,
people, you know, in the remote community service
providers. They are identified as families in need,
families perhaps at risk, but who have not abused their
kids or who have not - you know, the kids are in not so
much harm that a statutory intervention is immediately
indicated.

Q. Do you know whether or not there is any coordination
of information between police, the Department of
Corrections and the Department of Children and Families for
the purpose of identifying families that might be
vulnerable?
A. I do know that we now have - that's one of the big
legislative changes that was made, about the sharing of
information where it pertains to the wellbeing and safety
of children, and that has been a major advance. So I know
in principle, yes. I don't have documentation to say how
often that does occur, but there is a legislative framework
now that allows for the transfer of that information where
it is specifically for the wellbeing and safety of
children.

Q. Aimed, in a sense, at overcoming what's often referred
to as the "silo problem"?
A. Yes.

Q. Let me go back to what I was attempting badly to ask
you before. You mentioned the benefit of service provision
to families in a preventive capacity?
A. Yes.

Q. Under this rubric "Working Together (community
collaboration)", would you say that the same applies, that
the provision of support services to the community - say a
remote community - would have the same sort of beneficial
effects?
A. Yes.

Q. How long have you been in the Northern Territory,
doctor?
A. I've been living here since 2008, visiting for some
years before that.
Q. During the 1990s, let me put this to you, the government of the day was developing what they called variously local justice working groups in various communities. They set one up, for example, at Ali Curung, one was set up on Groote Eylandt, one was set up at Wadeye, and the idea behind them was to get the local community and its own socio-legal infrastructure involved in issues to do with justice delivery in those communities. I don't think they even had the same name, despite the fact they were being set up in different places. Are you familiar with that work in the 1990s?
A. I'd have to say only vaguely.

Q. Similarly, in the years 2007 to 2009, there was an attempt in the community of Galiwinku by the local community and its elders to establish a local forum for the purpose of coordinating the service delivery into their communities by Commonwealth and Territory agencies to provide, essentially, a central focus for that engagement for that community. It was promoted at the time by several Northern Territory Government agencies, as well as the local community, and it was referred to as the "Makkar Dhuni Forum". Have you heard of that forum in Galiwinku?
A. Not specifically, no.

Q. If I were to tell you that the Makkar Dhuni Forum --
MR GRANT: I'm sorry, I don't like to interrupt my friend, and I've been loathe to do so, but we're moving here very, very far away from the focus of this inquiry. We're talking about --
THE CHAIR: I had wondered where we are going. Where are we going?
MR McINTYRE: My very next question, your Honour, was the sorts of structures that can be, and have, in fact, in the past been set up in remote communities precisely to advance engagement with service delivery.

THE CHAIR: All right. But let's go briefly.

MR McINTYRE: Thank you, your Honour.

Q. Doctor, would you agree that it's not a remote possibility that many of these communities, in many of them, you would find people with significant authority in
those communities ready, willing and able to come forward
and work with government service providers in a much more
coordinated fashion than currently exists; would you agree
with that?
A. I would absolutely agree with that, and I would just
add that the Board of Inquiry had some discussion on a very
related matter about community-based child protection and
wellbeing responses, and we particularly noted some of the
initiatives in some of the communities, in particular,
I recall Maningrida, where they had developed their own
child safety response mechanisms, and we made
recommendations about the development of something we
called child safety and wellbeing teams, committees, in the
remote communities.

Q. Yes.
A. And I understand that this particular model has been
implemented in a number of the remote communities.

Q. Those locally-based committees, forum, whatever the
phrase was that you used, do you agree that they are
readily able to operate in a way that garnishes to them
legitimacy and authority, according to the law and culture
within those communities?
A. I don't have enough experience with this to say
whether they are readily able to do that. I would say that
if the community gets together and makes a decision,
absolutely it would have much more authority in terms of -
especially in terms of the matters that we're talking about
in terms of statutory intervention and child protection and
child wellbeing issues. Absolutely that would be the case.
Can I just say whether - on a policy and strategic level,
how widespread a system like that could operate in terms of
the statutory child protection issues is another issue,
because of the obvious complexities around statutory
intervention.

Q. Yes, but as an initiative, clearly in terms of the
development of a new model - for example, development of a
new Northern Territory model --
A. Yes.

Q. -- rather than go the whole hog at once, there could
be small steps taken in various areas to see how much
benefit they were; would you agree?
A. Absolutely agree, and where local committees exist,
local elders that can contribute to these processes,
I think it's vitally important that they are a central part of the decision making, particularly around child wellbeing and safety.

Q. And they would provide a forum where the government's service delivery agents could attend to the needs of that community in this context in a way that might echo the way you're recommending they engage at the level of family, because it would give them a focus to be able to do that at a community level, would it not?
A. Yes, and particularly around preventive issues and where a non-statutory intervention - where intervention - you know, support can be provided to families short of the statutory role.

Q. Yes. And probably, with training, those forums would be able to assist in the identification of children at risk, would they not?
A. Yes, yes.

Q. And at the level of training, both for the community and for service providers, they could be of greatest assistance, could they not, in terms of cross-cultural training specific to the particular areas concerned?
A. Yes.

Q. Just while I'm briefly on the question of training, much is seemingly said in various reports about the training of people to work in various remote communities and training of persons in those communities about how the child protection system works according to Australian law - that sort of training. I have found a marked absence in the material about training going the other way; in other words, training for non-indigenous people in the appropriate socio-legal structures as they operate in the remote communities; would you agree with that?
A. I'd agree with that.

Q. Ought there more about that, in your opinion, in the training?
A. Yes, because of the specific, I guess, nuances - you know, belief systems, ways of doing things - that differ from community to community, I think it's vitally important in the Northern Territory.

Q. I think you'd agree that, for example, those structures amongst the Yolngu in north-east Arnhem Land are
going to be different than amongst the Arrernte community in Alice Springs?
A. Yes.

Q. Can I ask you to go to page 124 of the report. You see the table on that page?
A. Yes.

Q. The left-hand column in that table is "Type of abuse or neglect" and then there is a series of types, do you agree?
A. Yes.

Q. One of them, the bottom one, is "Neglect", do you see that?
A. Yes.

Q. And in the columns going to the right there is reference to the various Australian State and Territory jurisdictions. Do you see that?
A. Yes.

Q. I noticed in the column under "NT" that it says what I assume is 49.4 per cent of substantiated notifications received during 2010-11 were in respect of neglect. Do you see that?
A. Yes.

Q. It says that the source for these figures is Child Protection Australia 2010-11.
A. Yes.

Q. Do you know what that source is?
A. Yes, I do.

Q. What is that?
A. It's published by the Australian Institute of Health and Welfare each year.

Q. Yes. The data that is used by that entity for publication - do you know where they get their data from?
A. Yes, each jurisdiction sends that data in.

Q. It's reasonable to infer, then, that the material under the heading "NT" is based on data provided by the NT Government to that agency; is that right?
A. Yes, yes.
Q. I also noticed that 49.4 per cent identifying as neglect is easily the highest in all of the jurisdictions.
A. Yes.

Q. Do you accept that that might be so?
A. Yes. It's actually somewhat higher than that now.

Q. It's got higher in fact?
A. Mmm.

Q. Can you shed any light on why that might be?
A. Remember that we're talking here about the most prominent form of maltreatment.

Q. Yes.
A. And that doesn't mean that the other forms of maltreatment don't occur - in fact, we know that in the significant majority there are multiple forms. So what they have just picked out is the most significant or prominent form of abuse.

Q. So someone decides that a child is in need of care and there needs to be some form of intervention?
A. Yes.

Q. And that someone presumably makes a decision about the type of abuse or neglect; is that right?
A. The most prominent type.

Q. Yes, that's my point. So that person has come across some evidence of type of abuse or neglect, and that might be - I take it that the source of the information might be their own eyes, for example. They might walk into a home and decide that it's just not suitable for children?
A. Anyone can make a notification in a community - anyone. It could be a family member, it could be a professional. They notify the department - they don't have to specify what category it fits, as long as they believe a child has been harmed. It's up to the department then to sift through that notification and to adjudicate on it.

Q. Yes.
A. And they don't do that until they actually do a formal investigation into the matter, and that's where these numbers come from.
Q. Yes. So there is some professional forensic work done --
A. Yes.

Q. -- by an employee of the government in reaching a classification according to this information?
A. Yes.

THE CHAIR: I think we understand this. Where is this going?

MR McINTYRE: Well, this is where it was going, your Honour --

THE CHAIR: Let's go to the point. What's the point.

MR McINTYRE: The question was a question of review and evaluation of what’s happening in the department in terms of what they do. It bears upon --

THE CHAIR: Let's get to the point. We understand how these figures are comprised.

MR McINTYRE: Q. Do you know of any system within the department that reviews and evaluates that sort of decision making within the department; in other words, the decision as to which category of complaint applies to that particular child?
A. I couldn't say that I do know that. I guess that would be in terms of their internal quality control measures.

Q. Yes.
A. I believe they would have some of those quality control measures, you know, management reviews of decisions, training, those sort of procedures that look at what's been done in the past, but I think you'd have to ask the department directly what procedures they have in place to verify the quality of those sorts of investigations.

Q. Whatever those procedures have been, the department has now let you know that there was at least significant error involved in that, and that was disclosed by the notification that I put to you at the beginning of these questions.
A. Yes. Sorry, could I just add that that doesn't necessarily mean that the work that was done differed, but
the classification of those particular cases.

Q. Okay. Thank you, doctor, that's right. You're right to correct me there. It may have been an error of assessment --
A. Yes.

Q. -- or it may have been an error in instruction to the assessor.
A. Or how the data was recorded after, you know, the intervention occurred. The letter seems to indicate that it was a classification for data purposes that is the problem.

Q. So it could have been the typist, is that what you're suggesting?
A. The person who entered the data.

Q. Yes.
A. The counting rules, the procedures for assessing what sort of abuse it was, but what I'm trying to say is that when the social worker was evaluating the case, we don't know whether that affected whether they looked at whether sexual abuse occurred or whether they were just focusing on neglect.

Q. Thank you. The information in that table - you've told us where it is sourced. Do you know whether that information is available publicly over the years for comparative purposes?
A. Yes, it is, and the Institute of Health and Welfare publishes each year in that publication, Child Protection Australia, comparative data on all these matters. The data is also available through report to government services, you know, in terms of the Productivity Commission, similar data. The Children's Commission, my office, publishes each year key trends in that data in our annual report.

Q. Are you able to say what the trend is in terms of the identification of the incidence of sexual abuse in the Northern Territory?
A. Well, as I noted in this statement to the Commission, it had been of concern that the substantiation rates for child sexual assault, or sexual exploitation as it's called here, had been dropping markedly from, say, four or five years ago.
Q. Yes, except that this table is the 2010-11 table, and already it seems to indicate that the incidence of sexual abuse in the NT was far lower than any other jurisdiction.
A. Except the ACT, I see.

Q. Do you agree that at least since 2010, then, it's been low compared with the national average?
A. Yes.

Q. The Commission has heard some evidence about the population of the Northern Territory and the Aboriginal population and the number of children in the Northern Territory. I want to put this proposition to you - tell me if you don't know. Would you agree that, substantially, the indigenous population in the Northern Territory lives in remote and regional communities?
A. I think about 60 per cent at least of the children live very remotely of the Aboriginal population in the Northern Territory.

Q. Would you agree that the percentage of Aboriginal children living remotely has increased exponentially in the last two decades?
A. Percentage of what?

Q. Let me take you back. Would you say most of the indigenous population of the Northern Territory lives regionally and remotely - I think you've agreed with that?
A. Yes.

Q. Secondly, a large proportion of Aboriginal children live remotely or regionally, do you agree with that?
A. Yes.

Q. And that is a number that is increasing at a fast rate?
A. Yes.

Q. The percentage of children that have been taken into government care for abuse or neglect are dominated by children of Aboriginal heritage; would you agree?
A. Yes.

Q. Would you agree with this: according to current trends, the numbers of remote and regional Aboriginal children going into government care, on the trends, is highly likely to become unsustainable very quickly? Would
you agree with that?
A. Yes.

Q. Would you agree that not only is it critical but that it is actually urgent that in the Northern Territory resources - and significant resources - are applied to the task of attending to the needs of families and remote communities to prevent child abuse? Would you agree with that?
A. Absolutely.

Q. Are you familiar with any research on the social costs of child abuse?
A. Yes.

Q. Would you agree that society generally, and the Northern Territory itself, is facing major financial difficulties arising from child sexual abuse in coming years?
A. Sorry?

Q. Let me say this. Would you agree with this proposition, that if emphasis on spending for the prevention of child abuse in remote communities is not attended to urgently, it is likely to cost the Territory more money to deal with the problem later?
A. I think there's no doubt about that.

Q. Are you familiar with the establishment of women's centres in remote communities that ATSIC was responsible for in the mid 1990s? Are you familiar with that?
A. Yes, I am.

Q. It's the case, isn't it, that ATSIC was in the business, in the Northern Territory and in other places, of establishing centres that could provide women and children with refuge and support in remote communities?
A. I'm aware of that.

Q. Are you aware that that program was closed down in 1994?
A. I'm aware that it doesn't exist. I don't know the exact details of when and how.

Q. Would you support the establishment of women and children secure centres in remote communities in the style of what had been undertaken by ATSIC until the mid 1990s?
A. I would need to look at the detail, but --

Q. As a general proposition?
A. Absolutely as a general proposition.

Q. That would be a far better result than, for example, the provision of sea containers into remote communities for that purpose, wouldn't it?
A. I think those containers, from my understanding, were there as an emergency measure. I don't know if they are intended to be a long-term measure, and, like I said, I don't know the exact number of those programs that still exist. I'm aware that some of them exist, but I don't think the number stands in the 20s at the moment, but --

THE CHAIR: How much longer do you think --

MR McINTYRE: I have one last topic, your Honour.

Q. Doctor, could I ask you to go to page 127. Do you see there is a section shaded in the bottom right-hand corner. It talks about "False positive diagnosis". Do you see that?
A. Yes.

Q. Are you able to shed any light on that?
A. Again, it's not a specific area of expertise, but I will say that there's quite a bit of controversy as to whether there are those false positives around chlamydia. I'm not an expert in the science.

Q. Are you aware of the controversy around this?
A. I'm absolutely aware of the controversy.

Q. The controversy is that there was an understanding of modern medicine that was attributing the existence of a particular disease as evidence of child sexual abuse when, in fact, there is at least a significant body of medical science that suggests that the existence of the disease can be inconsistent with child sexual abuse. Do you agree that that is a reasonable frame for the controversy?
A. I understand the controversy having something to do with the Menzies programs that are looking at this. There is quite a strong body of opinion that doesn't agree with the false positive hypothesis. I am saying I'm not a scientist in that sense and I don't understand - I'm not an expert in that area.
Q. But you agree with me that there is a scientific controversy about the matter?
A. There has been. I can't tell you what the current status of that debate is.

Q. Is knowledge of that controversy widespread in the department and amongst the personnel who assess whether a child has suffered child sexual abuse?
A. I am certain that it has very widespread knowledge of that controversy.

Q. Finally, doctor, are you familiar with a very recent publication - might the witness be shown this document? Doctor, you'll see the document I've handed to you. Are you familiar with what that document is?
A. I would have looked through it, yes.

Q. And it's entitled "Department of Children and Families Annual Report 2012-13", and in its various guises and departmental names, do you agree that there has been an annual report of this nature by the government each year for many years?
A. Yes.

Q. Can I ask you to look at page 19 of that report. Would you agree with me that between pages 19 and 22 there are various tables and charts to do with the operations of the department?
A. Yes.

Q. The material in that publication, would you agree with me, includes no analysis of the sort that we saw in the report that I first gave to you, of the Coordinator-General; do you agree with that?
A. Yes. I think it has a different purpose.

Q. Yes. Were you surprised to find that there were no substantive data in this annual report when you read it?
A. Well, I think there is substantive data but it's very limited, and I think it's limited to what the statutory functions are.

Q. My point, doctor, is that the annual report used to traditionally include that material. Would you agree with that?
A. I'm not certain of that.

Q. Do you agree that the publication of properly analysed statistics, readily available to the public, is beneficial to the response to child sexual abuse?

A. I think it's beneficial. Whether or not it should be in the annual report, I'm not sure.

MR McINTYRE: I'd ask that that annual report and the report of the Coordinator-General be tendered. I think the notice has already been tendered.

THE CHAIR: Do we have copies?

MS DAVID: We can get copies. We can download them.

THE CHAIR: We'll attend to that in due course. Does that complete your questions?

MR McINTYRE: It does, your Honour.

MR GRANT: I have no questions.

THE CHAIR: Does anyone else have any questions?

MS McLEOD: No.

COMMISSIONER FITZGERALD: Q. I want to go back to Retta Dixon for the moment and ask you for two opinions. One is in relation to the evidence that we have received in relation to Retta Dixon that children who were abused in that institution were reluctant to, or unable to, come forward and report their abuse at an early stage. Given all that has taken place in the Territory, what would be your expert opinion in relation to the ability of children to come forward if they have suffered sexual abuse within an institution, be that a school or, in fact, in out-of-home care or a residential service? Have we made significant progress in the ability of children to disclose abuse and, if so, are we seeing patterns that would indicate that?

A. It's hard to be specific there. I would say if an independent person, or at least even if the case worker is visiting the child every month, there is more opportunity for disclosure to occur. It's still much more difficult when a child is in a sort of residential or foster home to know what to do when that sort of abuse is occurring, but,
as you would know, it's similar in a person's natural home
as well to know what to do when that sort of abuse is
occurring.

Across the western world, the data indicate that fewer
kids, overall, are being sexually assaulted, and one of the
interpretations of that - and I refer to someone called
David Finkelhor, who has done quite a bit of analysis in
that area - one interpretation says that a lot of the
public education, a lot of the TV programs, you know,
around school, around who you talk to, that abuse is being
talked about more publicly, creates a climate where there
are more opportunities to talk about what's occurring.
People can talk to the school counsellor, for instance, or
talk to a friend who then talks to the school counsellor.

What I'm saying is that I would hope that because of
those sort of public education campaigns and because of the
way the media deals with these matters, there would be more
opportunity for kids today.

I think it would be better for kids in care to have an
independent person, like a community visitor, who was not
associated with a statutory organisation, and I would
suspect that they would be more likely to disclose in those
circumstances.

Q. Are you aware of any evidence in the Northern
Territory which would indicate whether or not children who
have suffered abuse in institutions or elsewhere are coming
forward at an earlier stage following the actual abuse? Do
we have any evidence to indicate what the trend actually
is?
A. The trend from the official data is that hardly anyone
is disclosing as a child.

Q. If I can just ask this: is that the same where the
abuse takes place within, for example, a school within the
Northern Territory, as distinct from an out-of-home care
placement, or do we have no data which would indicate
either way?
A. Well, I don't think we have sound data, but
I mentioned before that despite the fact that organisations
like SARC, Sexual Assault Response Centre, do have fairly
full caseloads of children who have been sexually
assaulted, at the end of the day we only had seven
convictions for child sexual assault last year. Somewhere
along the line we're not - you know, we're not, how can I say, picking up officially the kids that are being sexually assaulted.

MS DAVID: I have nothing arising, your Honour.

THE CHAIR: Thank you, Dr Bath. Thank you for your evidence. You are formally excused. We'll take the morning adjournment.

<THE WITNESS WITHDREW>

SHORT ADJOURNMENT

MS DAVID: If your Honour please, I call Reverend Trevor Leggott.

<TREVOR IAN LEGGOTT, sworn: [11.55am]

<EXAMINATION BY MS DAVID:

MS DAVID: Q. Reverend Leggott, you've provided two statements to the Royal Commission?
A. That's right.

Q. The first was dated 4 September 2014; is that correct?
A. Yes.

Q. And the second was dated 29 September 2014.
A. Yes.

Q. Can the witness be shown these two documents. Are they copies of the two statements that you've provided?
A. They are.

MS DAVID: I tender those statements, your Honour.

THE CHAIR: That's both of them, is it?

MS DAVID: Yes, your Honour.

THE CHAIR: The first one will be 17-34 and the second 17-35.

EXHIBIT #17-34 STATEMENT OF REVEREND TREVOR LEGGOTT DATED 04/09/2014
MS DAVID: Can I indicate to the Royal Commission that they should be read in conjunction with the letter which is found behind tab 125 which sets out what was asked of Reverend Leggott.

Q. I understand that you wish to read to the Royal Commission paragraphs 5 and 6 of your supplementary statement dated 29 September 2014?
A. I do. Perhaps before that, could I just make a comment?

Q. Yes, what would you like to say?
A. Personally, I've been hearing the witnesses at this Royal Commission, some of which I obtained copies of by email a week or so ago, and I must say, for me personally, it was a harrowing experience to sit through those testimonies that were given by what I would call brothers and sisters that I know of. It's a shame they are not here to hear, but, for me, it was hard to hear those things that those witnesses said were perpetrated whilst they were children in an organisation that was run by AIM, and I want to offer my humblest apology on my own behalf and on behalf of AIM for the hurt that was caused to those children when they were in that institution.

Q. Is that all you would like to say before you read out paragraphs 5 and 6?
A. I say it particularly because I've been in ministry in this organisation, in AIM, for some 18 years. I have close personal contact with a lot of Aboriginal folk. I've been welcomed into their communities and I've been acknowledged as a brother, been given a skin name of Jupurrula. I have close friendships with folk from the Warlpiri, the Waramungu and the Mudburra family groups in the Barkly and Central Australia, and to hear those stories related to people that I would call family has been extremely painful for me to hear, and that's why I offer the most sincere apology.

Q. Can I now ask you to read paragraphs 5 and 6 of your statement?
A. "I offer a most sincere apology to all of those people who were placed at Retta Dixon Home as children from 1946 to 1980 who suffered sexual and physical abuse whilst
there. I also apologise for the fact that many children were scared and unhappy during the time that they were at Retta Dixon Home. I regret greatly that many children who left Retta Dixon Home left without life skills, vocational training or financial resources. I deplore all sexual and physical abuse that occurred at Retta Dixon Home, which included, in particular, the chaining-up of children in some instances. I am personally horrified by this and many other instance of abuse that occurred there, which the many witnesses whose evidence that I have seen delivered in this inquest have spoken about.

AIM deplores the circumstances by which children were and can be placed in a vulnerable situation, which can lead to such abuses occurring, either in institutions such as the Retta Dixon Home or other places."

Q. Reverend Leggott, you are currently the general director of the Australian Indigenous Ministries; is that correct?
A. I am.

Q. How long have you held that position?
A. I think in November, it will be 18 years.

Q. So what year did you commence?
A. 1996.

Q. Can you say, generally speaking, what the work of AIM is currently?
A. There have been substantial changes in the ministry since my involvement, and others' of course. Today, we are more and more moving to the provision of services in a Christian paradigm, providing resources to Aboriginal Christian folk to develop their churches and to train up leadership for the future and to supply care and counselling services where we are able.

Q. Do you have a presence in the Northern Territory?
A. We have a considerable presence in the Northern Territory. In Alice Springs, Tennant Creek, Canteen Creek, Epenarra, Katherine, Borroloola, Barunga/Beswick and Darwin.

Q. Does that involve living in communities within those regions?
A. In many cases, yes. Many of the folk who are part of
AIM are actually indigenous Christian leaders of one kind or another, plus we have non-indigenous personnel who really are Bible-teaching support workers and service providers in that way.

Q. And persons within your organisation, AIM, do they come into contact with children in those roles?
A. Yes, they do, in terms of religious education in schools and Sunday school programs and suchlike.

Q. In what other capacity do members of AIM come into contact with children?
A. Only through the normal interaction in the community in which they live. We don't have any institutional arrangements anymore.

COMMISSIONER FITZGERALD: Q. Can I ask a question, Reverend Leggott: can you explain to me the legal entity, AIM? What is the legal entity?
A. We are an incorporated association.

Q. Are you a registered charity?
A. Yes.

Q. And are you registered as a religious institution for the advancement of religion?
A. Yes - a recognised denomination within Australia.

Q. Do you call yourself a church?
A. No.

Q. How would you describe yourself?
A. I should explain that. I guess the incorporated association provides a service to the Aboriginal Christian community. Those Christian communities have established churches in the name of AIM, but we draw a distinction between those churches and - we would say we're an agency providing a service to those churches.

Q. If I go into an indigenous community that you've established in the Northern Territory, would the community believe that AIM is a church within that community?
A. Locally, they would.

Q. So for all intents and purposes, a person dealing with the local church in the community would see AIM as a church in the same way that it would see a Catholic or Anglican or...
Uniting Church or Salvation Army Church; is that correct?
A. I would imagine so, yes.

Q. Just further to that, the local church - what are its obligations to the central body of AIM?
A. Very little, really. They are locally autonomous in terms of their election of leadership and in control of their day-to-day running. We have a constitution and a statement of faith and, broadly speaking, under that umbrella we would expect those churches to adhere to that and they would have that as part of their constitution as well - local constitution.

Q. What are the legal obligations that you see between AIM - the national body, the registered charity - and the local church. You say a provision of service, but is that all? Can you interfere at all in the leadership of the local church? Do you have any say in its management at all?
A. Only in terms of giving advice.

Q. If a leader in a local church in a community digresses from the principles of your church, of the AIM's principles, are you able to intervene and have that person removed or sanctioned?
A. We would expect that the local leadership would make those decisions.

Q. But if they failed to do so, are you able to take actions against a church leader in a local community?
A. I guess we can, yes.

Q. By what power can you?
A. By virtue of the fact of the constitution acknowledging a certain criteria that they would adhere to, and if they move outside of that, then --

Q. So not only in terms of the moral obligation, but is it fair to say that there could, in fact, be construed a legal obligation, or relationship, that exists between AIM, the national body, and AIM, the local church?
A. I'm not sure whether there's a legal obligation or not. I'm not sure.

COMMISSIONER FITZGERALD: I'll come back to that later, thanks.
MS DAVID: Q. Currently, AIM has a field practice and procedure guideline or handbook; is that correct?
A. Yes.

Q. And you've provided a copy of that to the Royal Commission, which is found under tab 122.
A. Yes.

Q. Do you have a copy of that with you?
A. I do.

Q. We can bring it up on the screen. If we turn to page 21 of that AIM field practice and procedure book, we can see the organisational structure of AIM?
A. Yes.

Q. The AIM council sits at the top of that organisational structure?
A. Yes.

Q. Who makes up that council?
A. The council consists of two CEOs - which is myself, the general director, plus the field director - and up to seven people who are elected or nominated and invited to join the council from the general Christian public, and we have four elected delegates from amongst the personnel from the mission field, plus the chairman of the AIM church council.

Q. Are all decisions about the day-to-day running of AIM made through the AIM council, or is that delegated through other bodies?
A. The AIM church council is - we've been seeking to encourage indigenous oversight of their own affairs, and that has developed in Queensland in particular, so they are responsible only - in terms of the day-to-day operation of the church's functions, meetings and all sorts of things like that. And they report to us. The other circumstance is where we're still primarily engaged in providing services in a broad range of things in New South Wales and the Northern Territory, things are reported back through the CEOs to the council.

Q. So what is the role or the governance of the AIM council?
A. Oversight, provision of services, recruiting personnel, and looking to the day-to-day operations,
maintenance of property, formulation of policy and structure as to what we do and where we go into the future.

Q. The AIM field practice and procedure book was produced in February 2014?
A. No, it wasn't. That's an update. It was produced probably four or five years before that - oh, no, quite some time before that - about 2001 when we restructured the mission.

Q. But the version that we have been given is the February 2014 version?
A. Yes, it's the updated version.

Q. Which is the most up-to-date version?
A. It is.

Q. Within this field practice and procedure book, we can see a reference to several guidelines. In particular, we can see at pages 22 and 23 a reference to the requirements before a person operates as a missionary within AIM?
A. Yes.

Q. At the bottom of page 23 we can see the requirement of security checks?
A. That's true.

Q. Including a police check?
A. Yes.

Q. And then at page 25 we can see a reference to the fact that a person must have a working with children clearance, if they come into contact with children?
A. Yes.

Q. And that any potential fostering or more permanent arrangements for the care of indigenous children must be done in close consultation and with the agreement of AIM leadership?
A. Yes.

Q. What's the rationale behind the last aspect of that?
A. We've had one occasion, in my experience, where folk have fostered an Aboriginal child and we didn't know until after that had happened, and we felt it was important for not only the personnel, the particular missionaries involved, but the communities in which they worked and the
broader witness of the mission, if you like, to know that
these things were done decently and in order.

Q. We can also see in the current field practice and
procedure book at pages 28 to 29 a reference to the
protocol in respect of handling matters of sexual
harassment and abuse.
A. Mmm-hmm.

Q. And that relates, as I understand it - even though it
refers to child protection protocols, it seems to relate
more to the sexual harassment of adults?
A. Yes, that was the primary purpose that that was put
there at the time, yes.

Q. If we turn to pages 31 and 32, there's a reference to
procedures for dealing with allegations of child abuse and
sexual misconduct?
A. Yes. That's the more recent edition to the first one.

Q. How long have those procedures been in place?
A. I think the first one, probably four years, and the
one relating to allegations against child abuse [sic], the
end of 2013.

Q. So it's relatively new?
A. Yes. I must say that I instigated the placement of
these in our field practice as a result of my involvement
with the Presbyterian denomination, of which I'm part, and
these matters were raised in our church circumstance, and
then I realised that these things need to be clearly stated
in the mission field practice as well.

   I'm the clerk of our church synod and when those
things were raised and brought to my attention, I thought,
then, we need to carry that into the operation of AIM as
well.

Q. How is this field practice and procedure book
disseminated, if you like? How is it provided to people
who work within your organisation?
A. Every person who is associated with AIM gets a copy.

Q. Is there instruction in respect of it?
A. There is. In fact, we've established a committee
within our organisational structure, which includes our
field director, our vice-chairman, our director of training
and an Aboriginal - a senior Aboriginal pastor's wife, actually. They are the committee that see that the implementation of these things takes place and that they are regularly checked and updated. There's actually a statement that has to be acknowledged every year, so that people are familiar with the requirements of the mission and, also, the relative State or Federal requirements that are placed on children - people working with children.

Q. Can you just look at paragraph 3. Is this the statement that you're referring to:

At least once year an affirmative answer to the following questions shall be given by all missionaries, Church leaders, pastors, elders and deacons at a duly constituted meeting, and recorded in the minutes. All AIM personnel are reminded of their obligation to keep watch over the flock of God and in particular to the care of the young and the vulnerable. Are you familiar with the Guidelines for AIM Workers? Are you faithfully keeping to them? Are you aware of your obligations under State and Church law concerning the reporting of suspected or actual cases of child abuse or child pornography?

Is that what you're referring to?

A. Yes.

Q. Are they the questions they have to answer?

A. Yes.

Q. Do you consider that that constitutes sufficient training or auditing of the training?

A. Not sufficient training, but it's just a monitoring mechanism, really.

Q. Do you think that when you have missionaries coming into contact with children, and sometimes vulnerable children, there should be some more extensive monitoring of their knowledge and understanding of child protection laws, mandatory reporting and other such information?

A. Yes, we have professionals within our organisation who are skilled in that regard and they are actually members - that little subcommittee that I mentioned, they are the
ones that we've appointed to make sure that those things
are attended to and carried out.

Q. Is there anywhere that sets out the requirements in
respect of each State as they relate to mandatory reporting
and as they relate to how to respond to allegations of
child sexual abuse, or is it all contained in pages 31 to
32?
A. We have those things separately provided by the
relative State and Territory, and that's what our people
work with. It's not included in our field practice per se,
but obviously we say that they have to comply with the
State and Territory regulations that are in force from
time - and might I say, it's a constantly changing
circumstance, so our people have to be up to it. The rules
in New South Wales have changed just in the last six
months, for example.

Q. In particular, what training is provided? How often
is that training given, what does it constitute?
A. Most of our faithful who are working with children are
engaged in that education process and go through a training
regime that is part of that process. So they have to get
qualification in that working with children area - special
religious education, for example. The same degree would
not apply with, for example, indigenous folk teaching
Sunday schools in churches. That has not been our
requirement. But certainly from any of our appointed
personnel, from the mission's perspective, that's part of
their training regime.

Q. Why wouldn't it apply to someone in a Sunday school
teaching children?
A. Well, it maybe should apply, but I know that it
doesn't apply. It's more - I suppose it's hard to
understand, but we are trying to hand responsibility to the
local church for looking after their own affairs, and we
can lay the guidelines out, but to follow up on those
things is really --

Q. I'm asking you about people who work within your
organisation --
A. Yes.

Q. -- as missionaries or members of AIM?
A. Yes.
Q. My question is: what training do you provide to them in respect of how to respond, either formally or informally, to allegations of child sexual abuse?
A. We expect them to be engaged within whatever the requirements are provided by each State and Territory and to know the procedures that need to be engaged in through that, and that's the level of training that we provide.

Q. So you don't provide any training above and beyond that?
A. Not separate training, no --

Q. Do you think --
A. -- other than part of our general orientation, which includes all those matters that are related to in our protocols and so on and the expectation that people would be familiar with the procedures that are necessary.

Q. Do you think that's good enough?
A. Well, I'm not quite sure what else is required, but we're seeking to do our best as we embrace these things.

Q. Given what you've heard during the course of this hearing, of the damaging effect of child sexual abuse, and about how important it is to remove a child or be aware of allegations of child sexual abuse, do you think it's incumbent upon your organisation, or you have a moral responsibility to provide people who work within your organisation with some training above and beyond the formal requirements?
A. I'm not quite sure what the difference between a formal requirement and training is. It seems to me that the two things go hand in hand.

Q. Sure. But do you think your organisation has some responsibility to ensure that you provide training to the people who work within your organisation about how to respond to allegations of child sexual abuse - how to recognise them and respond to them?
A. That's where we access the resources that are provided by State and Territory. They are the ones that do the training with those who are interacting with children and we use those resources as they're available.

Q. To pass a clearance check, is that what you're talking about?
A. Well, that's part of it, but obviously they are
gaining knowledge in how to act and respond in circumstances that they might be confronted with.

Q. But once they have that clearance check and work within your organisation, do you provide them with any training?
A. Not on an ongoing basis, no, other than this regular asking them to acknowledge that they are familiar with the present circumstances.

Q. Do you think that is enough?
A. I'm not sure. I don't know. Obviously, if there was more things that we could be doing - I've sought to do my best to put in place the things that were good and needful for the operation of the mission and the safety of those that we work with. If there's more that could be done, then it should be done, but I'm not aware of it.

Q. How many people work within your organisation?
A. Overall, we have about 120 personnel. That would include - probably 60 to 70 per cent of those would be Aboriginal folk across Australia.

Q. And how many of the people who work within your organisation have contact with children?
A. I'm not absolutely sure at the church level, because they are more autonomous, but if I said there were 50 non-indigenous workers, probably 35 or so would be working with children.

COMMISSIONER FITZGERALD: Q. Can I just ask for a clarification. The numbers you've just given to counsel of 120 personnel, are they personnel of AIM, the national body, or are they also personnel that operate within the local churches? I just want to understand: are they employees?
A. We don't have any employees in AIM.

Q. They are volunteers?
A. All of our workers are volunteers, including myself.

Q. These 120, are they in the national organisation, or is this the total personnel that are formally ministers or volunteers of AIM right throughout Australia?
A. It includes those who are elders or pastors or leaders of local churches and the non-indigenous workers.
Q. So that's the total number of personnel engaged as
volunteers, in your language, throughout Australia involved
in both the head office and local churches?
A. Yes.

MS DAVID: Q. Do you say in respect of all those
workers, or those who come into contact with children, you
simply rely on the legal requirements that are in place in
each State in respect of the training of them?
A. Yes, because I believe that the States provide that
training, or the umbrella organisations that oversee
religious education in schools, for example, provide that
training and insist on people being qualified to do the job
that they are seeking to do. We rely on that training.

Q. If I can now take you back, you've only been the
general director since 1996; is that correct?
A. "Only" sounds like a short time, but it's been a long
time, I can assure you.

Q. We've heard evidence that AIM operated Retta Dixon
Home from 1946 until 1980.
A. Yes.

Q. You were asked to provide all the records that the AIM
had in relation to Retta Dixon Home; correct?
A. Yes.

Q. And, from that, you provided a mission manual, which
is said to date from - up to 2004; is that correct?
A. Yes.

Q. Is it your understanding that the documentation in
respect of Retta Dixon Home was not currently with the AIM?
A. That's true. I have no - I have no record of it and
no reference to it.

Q. You say in your supplementary statement at
paragraph 15 that:

... I have placed in the State Archives of
NSW at the Mitchell Library in Sydney the
whole archival history of the AIM from 1905
to 2001 regarding its activities across
Australia.

A. Yes.
Q. Is that correct?
A. Yes. We had occasion to relocate our office and, at the time, I felt that it was important that the historical record that had been retained in filing cabinets within the office were secure and made available for future reference, and I placed the whole of the record that was there in the State library.

Q. The AIM mission manual that you've provided to the Royal Commission is found under tab 127. As I understand your first statement, this relates to what was in place until February 2004?
A. Mmm-hmm.

Q. Is that correct?
A. Yes.

Q. Perhaps if we can bring that up. Can you say when it was that this mission manual was first created?
A. I can't, because I think it's something that was existing when I joined the mission and I don't know how far back it goes.

Q. It was at least in existence from 1996?
A. Yes.

Q. But you can't say how long before then it first came into existence?
A. No, and I think, like other documents, it would have been changed historically over a period of time.

Q. So if we look at this document, at paragraph 2.7.1 - the pages aren't numbered, but at the top it's got a reference ending in 0024. If we can scroll down to that, there is a reference to the application process for workers.
A. I don't think I've got - oh. Yes.

Q. Would you agree that in that section and, indeed, in the mission manual, there is no reference to requirements for police checks, or Working With Children Checks, or the earlier version of that?
A. No, I agree.

Q. Were there any requirements for such police checks?
A. Not that I'm aware of.
Q. So is that a relatively new requirement?
A. Certainly it's been introduced since our new practice and procedures came into place, yes.

Q. Since 2014?
A. Yes - oh, no, not since 2014, since the new practice and procedure was introduced.

Q. So after 2004, is that the date you're referring to?
A. Yes, and it probably wasn't 2004. Those police checks were introduced somewhere in that period.

Q. What period are you referring to?
A. From 2004 to the present. It's some years ago, but I'm not sure how many.

Q. There is no reference in this earlier version which existed as of 2004?
A. Yes.

Q. Then if we go to paragraph 3.2.5, which is at the page ending 0039, there is a reference to "Records and Reporting" and there is a reference to the requirement:

Every Missionary in charge of a centre is responsible for seeing that the following are kept:
(a) A record of all meetings ...
(b) A record of conversions ...
(c) An account book of monies ...

And a file of incoming and outgoing correspondence?
A. Yes.

Q. When you commenced in 1996, was that practice in place?
A. Loosely. Some reporting was done well, some not so well.

Q. Then if we turn to 3.3.4.7, which is at the bottom of the page ending in 0051, again there is a reference to records and the records that are required to be kept at business meetings. Then under that there is a reference to "Reporting":

All AIM Churches are urged to report
regularly to the Area Superintendent and to Mission Headquarters. This is not to get permission to do certain things, but to keep the Mission up-to-date with what is going on.

A. Mmm-hmm.

Q. Similarly, was that done - was that requirement complied with?
A. Again, sometimes more, and sometimes less.

Q. You would agree that in this earlier mission manual, which ends in 2004, there is no reference to any procedures or guidelines about how to respond to allegations or suspicions of child sexual abuse?
A. No.

Q. There is no reference to what to look for in that regard?
A. No.

Q. And there's no reference to any proposed training in respect of monitoring or response to child sexual abuse?
A. No.

Q. This document was produced by you to the Royal Commission?
A. Yes.

Q. I now want to take you to an earlier guide that we can find at tab 49. This is an earlier version of the mission manual. If we just scroll down and look at the first page, do you recognise this document?
A. I'm not sure what the date is on it, but whether it's --

Q. It's not dated. Perhaps I can hand you a hard copy. Are you familiar with that document at all?
A. If it's earlier than the one I supplied, I'm not.

Q. Have you ever seen it?
A. I can't say that I have. It's probably in our records, but I can't say that I've sighted it personally.

Q. The records you are referring to, are they the ones you provided to the New South Wales State Archives?
A. Yes.

Q. When you did that, did you review the records, or did you just place them all as one with the archives for preservation?
A. They were placed as a bundle.

Q. If I suggested to you that this document contains no reference to requirements for training or employment or any prescreening checks, you can only say what is or is not in the document?
A. I would think if the latter one didn't, then the previous one wouldn't either.

Q. Sure. And, similarly, there is no guideline for how to respond to allegations of sexual abuse or any sort of indicators of child sexual abuse; you just rely on the document?
A. Yes.

Q. In this hearing, we've heard from the witness, Ms Wall, and we've also received a statement from another house parent where they make it clear that they had no police checks, if you like, before they were employed by AIM in the 1970s. Is that your understanding of how things operated back then, or you can't say one way or the other?
A. I can only concur with what they said and I believe what they said.

Q. That they had no training in respect of the role that they were to fulfil as missionaries or house parents?
A. That's a different question. You talked about police checks.

Q. I'm now asking you --
A. I don't know. I don't know.

Q. You can't comment on that?
A. No.

Q. And, similarly, can you comment on their evidence that they received very little guidelines as to how to do their job, and certainly not until they actually arrived at Retta Dixon Home?
A. I heard that said. I find that - organisationally, I find that hard to believe that would happen, but I have to acknowledge that that may have been the case.
Q. In your supplementary statement at paragraph 12, you say that you

... recognise that the practices involved
in recruiting staff for the purposes of
working as trainee missionary/house parents
at Retta Dixon Home were inadequate,
especially in relation to their failure to
adequately vet potential staff in terms of
background checks, and further, in terms of
training staff adequately in relation to,
in particular, child abuse detection and
reporting of abuse.

A. I guess that comment is - looking retrospectively, I
mean we would seek to do it much differently today, but
recognising that it was a very flawed process.

THE CHAIR: Q. Reverend, I don't know whether you have
seen them, but we have a number of documents that record
the observations of Commonwealth officers who visited the
Retta Dixon Home. Have you seen those?
A. I haven't seen them personally, no.

Q. We don't seem to have them for the 1970s. They stop
fairly early in the 1960s. But what they reveal is a
number of things. One is there were serious problems in
Retta Dixon with the use of force in disciplining children.
No doubt you've heard of that in the evidence that's been
given here.
A. Yes.

Q. And you probably know that it's the common experience
now of the Commission that where there is sexual abuse in
institutions such as Retta Dixon, it's very common to find
also gross levels of physical abuse, and the picture we
have of the evidence here is that. Do you understand that?
A. Yes.

Q. There are also observations by Commonwealth officers
that people from your church may have been equipped to care
for children of primary school age, but were not equipped
to care for children as they moved into adolescence and
high school and there are comments about the expectations
which missionaries had of the behaviour of children and
their values, which may have not been shared by the
children. Do you understand what I'm saying?
A. Yes, I do.

Q. Is it your experience today that the values that your
missionaries adhere to may not find general acceptance in
Aboriginal communities?
A. Today?

Q. Yes.
A. I'd say no, there's been quite a change in attitude
within the organisational structure and the personnel, such
that there is a very different perspective on life in
relationship now within our staff and personnel.

Q. Can you help me understand what's changed, then?
A. Society has changed.

Q. No, no, amongst your missionaries?
A. Well, that's reflected in the personnel we have
working with us, too, and our attitude to people we work
with and I guess that "with" is an important aspect of our
overall ministry. We - we don't seek to tell people what
to do; we seek to work with them to bring them to an
understanding of what God might want to do, as we said,
revealed in the scriptures. For example, we don't appoint
white fellas as pastors anymore. Our primary focus is
working with people in response to their invitation that
comes to us to provide resources to help them with their
ministries at a local level. So it's a very different
attitude in terms of moving away from the paternalistic
ways of the past to identifying with and working with the
people that we're associated with now.

Q. You've heard the evidence of the suffering of many of
those who were in the Retta Dixon Home.
A. Mmm.

Q. And you know, of course, of suffering of other people
in other facilities around Australia, not necessarily
Aboriginal people, but in the many institutions which have
provided for children. You know of the suffering that the
Royal Commission is hearing of which occurred in those
institutions?
A. I do, as it's been revealed in the media, yes.

Q. And you know, I assume, of the response of some of
those institutions by providing redress for those who have
suffered.
A. Yes - well, I don't really know details, but
I understand that's so.

Q. And I know you have said in your statement that your
organisation has no money.
A. Basically we live a hand to mouth existence in terms
of our ministry, yes.

Q. Given that there should be - I assume you would
accept - equity amongst those who have suffered, wherever
they have suffered, if there is to be redress, what's your
suggestion as to how redress might be provided for people
who have suffered in the Retta Dixon Home?
A. In terms of AIM's response?

Q. Well, anyone's response. What do you think - what do
you think should be the redress response?
A. As I've suggested in my supplementary statement and
the facts of the matter are we've had folk working in
Darwin for a long time - ladies in particular who are
working with folk who used to be children at the Retta
Dixon Home seeking to provide care and counsel and
providing them with that sort of care and counsel to help
them adjust to a more regular lifestyle, considering what
they have been through as young children. AIM continues to
provide that kind of service and we would be prepared to
continue to provide it to anyone who would accept it.
Whilst acknowledging that some have very bad experiences
with the mission, nonetheless, that is where we are today.
We would seek to provide that service where we can in terms
of personnel and resources. We simply don't have any great
financial capacity to be able to provide recompense in that
way.

MS DAVID: Q. On that topic, does AIM own property?
A. We own substantial properties in New South Wales -
"substantial" - a substantial number of properties in
New South Wales, Queensland and the Northern Territory, but
that being said, I have to say that we exist in an
interesting circumstance where the mission has a property
holding company, which is a trustee for the property that
we hold, and we as an organisation say that the local
chamches actually own the property and they will determine
what they want to do with the property and they will advise
us whether they want to buy, sell, move, or whatever. So
mostly most of our property is held in trust for those
Sometimes they decide that they want to go it alone and leave the organisation. That's actually what happened with the Darwin Community Church that was an AIM church. It's now an independent church. So those resources were handed to the local church.

Q. Not all the property of AIM is held --
A. No.

Q. -- on trust for particular churches, though, is it?
A. Not all. We have some property - there is a ministry centre in Humpty Doo and our New South Wales office is in the Blue Mountains in New South Wales. It consists of a house.

Q. So AIM does have assets?
A. In that terms, yes.

Q. So, in that sense, there is a capacity to set up a financial compensable redress scheme, isn't there?
A. Only if we were to realise those assets and that meant that we couldn't do the work that we're doing presently.

Q. Well, not in the same way.
A. Yes.

Q. And that is an option that is open to you, should you wish to go down that path; do you agree with that?
A. Well, that would be a consideration. I'm not quite sure how we would continue with our ministry if we were to do that, but that's an option.

Q. You say it's a consideration. Has it been considered?
A. Not at this stage.

Q. Has there been any discussion of it whatsoever?
A. Only at counsel level. Since I've been at these meetings and been in communication with members, the general feeling is that we - we feel that we're not in a position to be able to offer financial recompense.

COMMISSIONER FITZGERALD: Q. Reverend Leggott, when did you first become aware of the allegations of abuse of children in Retta Dixon; in other words, how long has the organisation known of claims of abuse?
A. The first indication I had would have been when
I received witness statements as part of this Royal
Commission - by email.

Q. Is it your evidence that the AIM, prior to the Royal
Commission's hearing being announced - you were not aware
of any claim at all in relation to abuse that took place in
relation to Retta Dixon?
A. That's right.

Q. Not at all?
A. No.

MS DAVID: Q. Let me ask you this, Reverend Leggott. In
the earliest mission manual, which we've got at tab 49,
there is a reference at 3.2.4 to a requirement that records
are kept.
A. Mmm-hmm.

Q. And that there is reporting.
A. Mmm-hmm.

Q. And, in particular, that records are kept of all
meetings and attendances at those meetings?
A. Yes.

Q. And all incoming and outgoing correspondence?
A. Mmm-hmm.

Q. So, would you agree that, given that requirement, you
would expect to see in documentation any allegations of
child sexual abuse at Retta Dixon Home that was brought to
the attention of the superintendent, or other persons at
the home, during that period, wouldn't you? You'd expect
to see some record of it.
A. I would.

Q. And, in particular, in 1966, a house parent,
Mr Powell, pleaded guilty to three counts of indecent
assault on three males?
A. Mmm-hmm.

Q. You would expect to find that fact in the
documentation associated with Retta Dixon Home, wouldn't
you?
A. In some form or other, I would, yes.
Q. Again, in 1973 we've heard that Ms Wall, who gave evidence at the hearing, raised allegations that came to her attention with the superintendent of the day?
A. Yes.

Q. And that a Mr Collins from the central office in AIM actually travelled to the Retta Dixon Home; do you agree with that?
A. Yes.

Q. You heard that evidence?
A. Yes.

Q. Again, you would expect to see some sort of documentation or record of those events, wouldn't you?
A. I would expect that if he was asked to come and meet with Mr Pattemore as it was at the time and do some sort of investigation - I would have expected that that would have at least been recorded in the minutes of the council.

Q. At the very least.
A. Mmm.

Q. There would have been some correspondence about that as well, wouldn't you think?
A. I'm just speaking from my own perspective, but certainly, so --

Q. And particularly bearing in mind that in the mission manual, the earliest version we have, there is a reference to a requirement of records and reporting.
A. Well, certainly, that goes from the council down to all personnel, so it would certainly apply at the higher level as well.

Q. And, similarly, in 1976, where there were allegations made of five counts of indecent assault on four boys who lived at Retta Dixon Home, which actually went to committal proceedings, you would expect, again, to see some record of that in the records of Retta Dixon Home of the time; would you agree with that?
A. Certainly would - if AIM personnel were involved in that, which I assume they were, I would certainly expect to see something in the record.

Q. For example, if the superintendent of the day gave evidence at the committal proceedings?
A. Yes.

Q. Or, for example, if one of the house parents drove the boys and other witnesses to the hearing, you'd expect to see some correspondence or documentation or record of that fact.
A. I would expect to.

Q. And, again, in 2002, we've heard evidence in this hearing that there were criminal proceedings instituted against a former house parent, Mr Henderson?
A. Mmm.

Q. You've heard that evidence?
A. Mmm-hmm.

Q. You were general director at the time?
A. Mmm-hmm.

Q. And that, you've heard, had some publicity at the time in Darwin?
A. I imagine so.

Q. Just assume for a moment that it did, that there's evidence there was some publicity of that fact.
A. Mmm.

Q. Do you say you were never made aware of those allegations or the fact that a former house parent of AIM was charged before the courts in relation to sexual abuse on former residents of the home?
A. That's true of myself and the council generally. We have no record of any knowledge or correspondence relating to 2002. I made that point in my original statement. That shocked me, actually, when I saw the date, because I thought, fair enough, if something happened in 1975, we're not going to hear about it, maybe, but in 2002, why wasn't I aware of it?

Q. Well, AIM had a presence in Darwin in 2002, didn't it?
A. Yes.

Q. Do you say that you or the council were not made aware of those allegations at all?
A. No.

Q. Do you think there's a problem with that in terms of
the systems you have within your organisation, that someone
didn't pick up the phone and say, "Hello, there's a
problem"?
A. Well, I don't know how aware our personnel here at the
time were aware of it. I just don't know. That was a --

Q. Do you say that in your dealings with the documents
that you placed in the archives and in your role as the
general director it was not until this year that you became
aware of the allegations of sexual abuse at the Retta Dixon
Home?
A. All I had heard, which was reported third hand, that
there had been some reporting to police of sexual abuse,
that it was reported and dealt with, and I think that - I'm
not sure - that might have been referring to the Powell - I
don't know. But that was as nondescript as I knew.

Q. When did you hear about this third hand?
A. Oh, I don't - I don't know. It was referring back to
things that were done in the 1970s or earlier.

Q. But you've heard about that before this hearing came
to your attention; is that correct?
A. Yes, I would have.

Q. When you heard about that, did you make any inquiries
about what that related to?
A. No, I didn't.

Q. Were you interested?
A. I don't know whether it was something that we needed
to follow up on at the time. I understood that the matter
had been dealt with, and dealt with by the police. That
was my understanding.

Q. Weren't you concerned that a house parent or a member
of AIM had been responsible for that kind of harm towards
residents?
A. Of course I would have been concerned, but I'm not
sure what my - what I could have done in terms of response
to it at that time, because it was something that happened
many, many years ago.

Q. What I'm asking you is did you make any inquiries
about what counselling or compensation or some sort of
redress had or had not been provided to these former
residents?
A. No.

Q. Once you became aware of it?
A. No.

THE CHAIR: Q. Reverend, when we're looking at redress around the country, it's fairly clear now that there are three components that are generally followed. One is what's often referred to as pastoral care, which is, if you like, a public invitation by the relevant organisation for people who wish to re-engage, insofar as their spiritual life is concerned, with the institution. The institution makes plain that particularly its leaders are prepared to assist people to develop their spiritual life - pastoral care, you understand?

The second is the need for counselling. We've spoken about that. The third is the need for a financial lump sum payment in appropriate cases.

Now, did it occur to you that your organisation, on becoming aware of these problems, should have thought about how it might publicly respond by way of at least a pastoral response to those who suffered in the Retta Dixon Home?
A. Well, I sought to respond to that in my supplementary statement by saying that we do provide those kind of spiritual counselling and care services.

Q. I know, but some organisations, for example, have published in newspapers, accepting responsibility and inviting people to re-engage. Others have done it through the literature that's provided, for example, in the Catholic Churches. If you walk into many Catholic Churches, you'll find literature dealing with this issue. In other words, there's been an active attempt to engage in a comprehensive way. That hasn't occurred to you?
A. I would have thought that that would be the consequence of this Royal Commission for us to take up, having been made aware of the circumstances, yes, to make some sort of public statement in terms of our supplementary statement that would seek to engage those people who might want to be engaged with us in that counselling and care.
We have been engaged in that, but we could certainly publicise the fact that we're willing to help others where we can.
MS DAVID: Q. Apart from this third-hand information that you received at some time before the public hearing, do you say that you have never been made aware of any allegations or previous court cases involving house parents inflicting sexual or physical abuse --
A. No.

Q. -- on residents?
A. No, and that really is why I was so shocked to sit here and listen to these brothers and sisters share their stories.

Q. Were you aware of the Cubillo Federal Court action?
A. I was aware, yes.

Q. And that involved the Retta Dixon Home?
A. Yes.

Q. And you were general director at the time?
A. Yes.

Q. Did that cause you to perhaps pause and look back on files or documents, or make inquiries as to the extent of any abuse that might have existed or might have happened?
A. We provided information to that inquiry, but, honestly, no, it didn't. I have to say that we're a fairly small structure, and I could be criticised for it and I'll take the blame for it, if you like, but we are just so busy doing our day-to-day responsibilities that it's very difficult to be going back through archival material to find relative things that we might be able to respond to. But, no, I didn't.

Q. As general director, did you make a decision - be it deliberate or conscious, or just by way of how it turned out - not to really make any inquiries about what may or may not have happened at Retta Dixon Home to some of its residents before you became a director?
A. I haven't made a decision either way. I was interested to hear the Commissioner ask Lorna Cubillo about whether she had received I think it was an apology or compensation as a result of the Stolen Generation inquiry. Interesting to me that AIM wasn't even called as a party to that inquiry. We had no part in it whatsoever.

Q. Reverend Leggott, you were aware of it, weren't you? Whether or not you were a party to it, you were aware of
that inquiry?
A. I was aware of it.

Q. Do you still say that you made no inquiry as to whether or not there were any previous allegations --
A. I made no inquiry.

Q. And why is that? Why would you not?
A. I can't answer why. It just - it just didn't seem to be part of our responsibility or remit, to me.

Q. But do you say that you, as the current general director, owe no responsibility in respect of past happenings and past allegations which may have occurred, or which did occur, at the Retta Dixon Home before your time?
A. I'm not quite sure how to answer that.

Q. Let me ask it a different way. Do you consider that you have a moral responsibility to find out what happened, or what may have happened, at the Retta Dixon Home during the 1960s and 1970s?
A. I'm very pleased that what has come out of this Royal Commission has been exposed for what it was. What was --

Q. But that's not at your instigation, is it?
A. No, but what responsibility I had to be engaged in that, I'm not sure. It's a long time ago, and I'm not quite sure how far back I'm responsible to go and investigate such things, when I know nothing of them. I certainly knew nothing of them in advance of this.

Q. And once you received this third-hand information that there may have been allegations of sexual abuse, do you think you had a moral responsibility to find out what that might involve?
A. Well, I didn't have a problem of conscience about it, because I took no action in relation to it. I thought those things had been dealt with historically and the matters were finished with.

Q. Well, why did you think that?
A. Well, I assumed that to be the case.

Q. Why did you make that assumption?
A. Because the information I had was that it was dealt with, it was reported to the police, and the man was dismissed from the mission.
Q. And did you make any inquiries about who the residents were, or who the children were that had been affected by this --
A. No, I didn't.

Q. And once you became aware of this hearing and the full extent of the allegations and the conduct that we've heard at this hearing, do you think you have a moral responsibility to offer some redress on behalf of the organisation to those people who have had those harrowing experiences?
A. Insofar as we're able, yes. We've made that plain in our apology in our statement. As far as we're able to go, we're quite prepared to go.

Q. And you've excluded from that redress financial compensation, haven't you?
A. Only insofar as it seems extremely difficult for me that we can offer it, because we just don't seem - in my understanding, we don't have the resource to do it, unless we curtail some of the ministries that we're currently doing, which are really seeking to address the very needs we're looking to remedy.

Q. Have you or the council made any inquiries about what you would need to do to offer some sort of financial redress?
A. No.

Q. And why is that?
A. I guess we respond to the need as we see it, and we haven't seen that ability for us to respond.

Q. Well, you sat through the evidence of about eight witnesses who described the devastating impact on their life --
A. Mmm-hmm.

Q. -- of the sexual abuse they say they suffered at the hands of missionaries employed by AIM - the impact it's had on the loss of their employment opportunities and their life. Isn't that enough to give you cause to investigate what financial redress you might want to give to them, or offer to them? Isn't that enough?
A. I'm not sure how I should answer that. It's a leading question.
Q. Why don't you answer it honestly?
A. Well, I'm not sure what money does in terms of compensation, to be honest. I know there can be recompense in terms of money, but I know the hurt that's been caused to these people is not going to be fixed by money.

Q. It might help, though; would you agree?
A. Well, it might help.

Q. But, in any event, it's not something that you've considered?
A. We've considered --

Q. As an organisation; is that correct?
A. We have considered it, but we just don't see that we're in a position to be able to offer it.

THE CHAIR: Ms David, we might take lunch.

MS DAVID: Yes, your Honour, I won't be much longer.

THE CHAIR: What's to happen at 2 o'clock?

MS DAVID: I might contact Mr Carey and see if we can put that back.

THE CHAIR: I'll leave it in your hands.

MS DAVID: Thank you, your Honour.

THE CHAIR: Very well. We'll take the luncheon adjournment.

LUNCHEON ADJOURNMENT

MS DAVID: Q. Reverend Leggott, just two final matters. Firstly, as I understand your statement, since you have been the general director of AIM there have been no allegations of sexual abuse or child sexual abuse raised with AIM?
A. No.

Q. So you don't really know whether these procedures or guidelines in respect of responding to allegations of child sexual abuse have been effective or not - you just can't say?
A. Well, no, we can only do our best to put in place procedures that will work and seek to endeavour to make sure they do work, but until such times as - it is like an insurance policy, isn't it, we don't know until something happens.

Q. So over 18 years you haven't received one allegation of child sexual abuse?
A. No.

Q. Just finally, Reverend Leggott, can you produce for the Royal Commission a financial statement for AIM, including a list of the association's assets and liabilities?
A. I can, they are publicly available. They would be - the last financial year would be listed on the ASIC website, I think.

Q. And that would include all properties and trusts?
A. Yes. I would have access to a file with me, probably.

THE CHAIR: Q. So you have a document here, do you?
A. Your Honour, I have copies of all my files on my mobile phone, which makes it a bit difficult to read, but at least they are there.

Q. Can we copy from your mobile phone?
A. I think so.

Q. We will investigate that. If you have it here, there would be no need for me to give you a notice, but otherwise I was going to give you a notice.
A. That would be the last financial year concluded at December 2013, for us.

Q. December?
A. 2013.

Q. When you have finished your evidence, you can speak to one of our solicitors. If we can retrieve the relevant document now, that's fine. If not, we will give you a notice.
A. I think I could probably bluetooth it to a computer somewhere.

MR GEORGIOU: I think we might have a copy, your Honour. I'm not sure if this is what is being referred to, but you
can have a look.

MS DAVID:  Q. Perhaps if the witness is shown this document?
A. That looks like it.

Q. Is that the most recent financial statement?
A. Well, yes, that's up until December, yes.

THE CHAIR: You do you have copies of that, Mr Georgiou, or is that the only one?

MR GEORGIOU: That is my only copy, your Honour.

THE WITNESS: That's exactly what I would provide.

MS DAVID: Perhaps if it can be shown to the Commissioners. We might be able to make a copy and then provide it back to my friend.

THE CHAIR: Q. The property assets that are recorded in here, they are the assets in the trust, are they?
A. Yes.

Q. So this document captures everything?
A. Yes.

THE CHAIR: Can we have copies made straightaway?

MS DAVID: Yes. Perhaps we could tender it and we will make copies.

THE CHAIR: We will make the financial statements exhibit 17-36.

EXHIBIT #17-36 FINANCIAL STATEMENT AS AT DECEMBER 2013

MS DAVID: Q. Just before I finish, I asked you whether there had been any allegations raised with AIM in respect of sexual abuse. If there were such allegations raised, do you have any sort of public liability insurance?
A. We have public liability insurance currently, yes.

Q. And would that cover allegations being raised, or liability for that?
A. As I understand, only current allegations, not historical, as far as I know.
Q. So there is no exclusion in that insurance for molestation or anything like that?
A. Not that I'm aware of.

MS DAVID: Thank you. I have nothing further.

COMMISSIONER FITZGERALD: Q. Sorry, could I just clarify. Was insurance in place through the Aborigines Inland Mission at any stage?
A. You mean historically?
Q. Yes. Did the organisation carry insurance at the time that it ran Retta Dixon?
A. I don't know that. I only - I'm only aware of the insurances that were in place when I started, and it has obviously changed and been modified, and --
Q. Have any inquiries been made as to whether there were, because if there were, it is possible - although uncertain - that it may have covered some of the events at that time?
A. We've had no inquiry and made no inquiry, because until now we had no need to make any inquiry, as far as I was aware.

THE CHAIR: Q. Would you have a file back in your head office?
A. In relation to insurance policies?
Q. Yes.
A. I'm not sure, but - we have an insurance file, but I'm not sure how far it goes back. It probably wouldn't go that far back. I don't know.

MS DAVID: Q. If you were asked, can you make those inquiries --
A. I can. It is a simple folder in a file in our filing cabinet, and that's --

Q. And provide that information by way of a further statement?
A. Yes.

MS DAVID: Thank you. I have nothing further.

THE WITNESS: I can't say whether I can answer it either
way, but I can inquire. I don't know what the circumstance was. I don't even know whether they had insurance, but I assume they did.

MS DAVID: Q. But you should be able to find out that information?
A. Yes, if it is in the file, I can.

Q. Or by making inquiries of the relevant persons within your organisation?
A. Well, if they are still alive, yes. I just don't know.

Q. And can you endeavour to do that and produce it to the Royal Commission by way of a statement?
A. I can.

COMMISSIONER FITZGERALD: Q. Could I ask a couple of questions on that. I presume the answer is exactly the same, but are there any copies of the contract entered into between the Commonwealth Government and AIM in relation to the provision of what I understand to be a loan at that time?
A. Not that I'm - well, I don't know. Not that I'm aware of.

Q. Are there any documents at all in relation to the Commonwealth Government and yourself in relation to the obligations under which Retta Dixon was to be run, that you have in your files?
A. Not that I'm aware of, but it could be in the files that are in the State Library. If they have been searched and they are not there, then, no.

Q. I have assumed throughout the evidence that you accept that Retta Dixon was, in fact, run by, and you were legally responsible for the operation of that facility - that being the then Aborigines Inland Mission and now the Australian Indigenous Ministries. There is no question about the legal responsibility for the operation of Retta Dixon, is there?
A. Personally I'm not sure about legal responsibility. I know that personnel were part of AIM who ran the home, but what the responsibility is in relation to the Federal Government or the Northern Territory Government and their interaction with AIM, I'm not sure.
Q. Has there ever been, in your organisation, any doubt that AIM actually was the legal operator of Retta Dixon?
A. In terms of legal responsibility I'm not competent to be able to answer that. It was an AIM centre, as I understood it, operated under - well, initially at the instigation of the Federal Government, to care for children. I don't know what the legal responsibilities and relative responsibilities for --

Q. Retta Dixon was not a local church?
A. No.

Q. It wasn't an affiliated. So therefore it was a service directly conducted and operated by AIM; would that be correct?
A. As I understand it.

Q. And you would expect that any documentation that the Commonwealth can produce would be between AIM and the Commonwealth Government at that time?
A. I would assume so. I'm not quite sure what the accountabilities were in terms of local - so the superintendent and the Federal Government, because I'm not sure - I think I said in my statement, we had practices and procedures that I understood were in place for the operation of AIM, but until this court meeting I wasn't aware of even handbooks of practice and procedures that were extant for the operation of the Retta Dixon Home. So I'm not sure of the legal relationship.

Q. Is it fair to say that your understanding today is that the superintendent of Retta Dixon was engaged by, and responsible to, AIM?
A. I understand that, although I thought I heard at the start of proceedings, in the general introduction, that the superintendent was appointed by the government. I must have misheard.

THE CHAIR: Q. No, that's right.
A. Sorry, your Honour?

Q. That's correct. It was appointed by the Administrator. We have had evidence to that effect.
A. And that raised questions in my mind, in this hearing, as to who was actually responsible for what.

MS McLEOD: If the Commissioners please, I am instructed
that in the documents produced to the Commission in response to the notice to produce, we have not found any contractual documents between the Commonwealth and AIM. I should point out that following on your Honour's question to me on Friday, we looked at those notice to produce documents and have produced a list for counsel assisting's benefit and the Commission's benefit of documents which appear to date between 1 January 1970 and 31 December 1984, and the last document in that list in the bundle of documents produced by the Commonwealth is a document of 101 pages approximately, described as "Operational matters and general correspondence". It is about 101 pages.

There is nothing that relates to sexual abuse matters and there is nothing that relates to contractual matters, although there are various bits and pieces relating to the supervisor seeking power of attorney, authority to admit children, things of that nature. So it seems that post the 1964 Ordinance there was a change in the arrangements in terms of committing the children to care, and that is reflected in some of those documents at least.

THE CHAIR: Yes.

MS McLEOD: If your Honour pleases.

THE CHAIR: Who else has any questions of the reverend?

MR LAWRENCE: Yes, I have some questions to ask, if I may.

MR GEORGIOU: I will, too, your Honour, but Mr Lawrence wants to go first, if that's suitable to the Commission.

THE CHAIR: Is it suitable to you?

MR GEORGIOU: Yes, your Honour.

<EXAMINATION BY MR LAWRENCE:

MR LAWRENCE: Q. Reverend, I am legal counsel for Lorna Cubillo, Sandra Kitching, [AKV], [AKU], [AJW] and [AJA], all right? Just let me ask you a few questions in relation to your background. I gather you have worked, if I can use that term, for AIM for about 18 years.

A. That's correct.

Q. You have given evidence that you were working there in
1996.
A. Mmm-hmm.

Q. Can I ask you what you did before that?
A. I was in pastoral ministry of the Presbyterian Church of Eastern Australia.

Q. For how long?
A. Approximately eight years.

Q. Do you have a trade?
A. I'm an electrician by trade, going a long way back.

Q. Where are you from originally?
A. Sydney.

Q. Can I ask you what you were doing in 1972/1973?
A. That's testing me. I think I had moved with my family to the Mid North Coast of New South Wales to a tree-change experience, shall we say.

Q. Have you yourself worked as a missionary?
A. I am a missionary.

Q. And have you worked in Aboriginal communities as a missionary?
A. I haven't worked permanently in Aboriginal communities, but I am in Aboriginal communities almost half of my time.

Q. When did you start becoming a missionary? How old were you when you became a missionary?
A. 18 years ago. You work it out.

Q. 1996?
A. Yes.

Q. Did you receive any training as to becoming a missionary?
A. I was appointed as, at that time, the administrative secretary of the mission as a trained minister of the word and with administrative skills sufficient to do the job that the council obviously thought I had to do.

Q. Which was what?
A. Oversight of the mission.
Q. Which mission?
A. This one - AIM.

Q. AIM, the --
A. Aborigines Inland Mission.

Q. So it was an administrative position rather than an on the ground, at the coalface, dealing with --
A. Well, it was all of those things together.

Q. Was it?
A. Yes.

Q. Did you receive any training in relation to how you would respond to receipt of allegations of abuse, sexual abuse, physical abuse?
A. At the time of my appointment?

Q. Yes.
A. No.

Q. Have you ever received any training in that vein?
A. Insofar as I'm a pastor of the church that I'm a member of, yes, and that translates down through my instigation of the policies we have put in place for AIM.

Q. Have you yourself received direct training from someone in that area?
A. No.

Q. So, what, have you read material?
A. Yes.

Q. Have you yourself taught any of your colleagues how to respond to the receipt of allegations of sexual abuse?
A. No, we have trained personnel who are tasked with doing that work.

Q. When did AIM first start having trained personnel tasked to do that?
A. Approximately four years ago, I would say.

Q. How many do they have?
A. We have two primary trainers. One is our field director and the other one is the director of training that we have. And they work in consort with others in on-the-ground training and with State bodies as well.
Q. When you say "in consort with others", do you mean other AIM employees or other --
A. Yes.

Q. -- agencies or bodies?
A. We are associated with a group called the Evangelical Alliance Mission Arm, and they have regulations and specifications and resources available for training and member care and such like, and we avail ourselves of those things.

Q. Can I ask you about your first statement, and if the witness can be given that, I think it is --
A. I have that.

Q. Is it 17-34? That was a statement that was signed certainly on 4 September, so several weeks ago?
A. Mmm-hmm.

Q. Whereabouts did you do that statement?
A. In my office.

Q. Did you have any legal advice before you did that statement?
A. I didn't.

Q. And that was in response to a request from this Royal Commission?
A. Yes. I initially received an email requesting information, and I actually, in my naivety, sent it back on a letterhead of the mission in the form of a letter. I subsequently received further correspondence indicating that I needed to make it in the form of a statement, which I did.

Q. In relation to the archives which you speak about in that statement, you say that:

The whole of the extant historical archival record of AIM was placed by me in the NSW State Library for safe keeping, first in 2001, and this has been added to in subsequent years.

A. Yes.
Q. Did you have a look at any of that material before producing your statement for the Royal Commission?
A. No, I didn't.

Q. Have you had a look since you received the request?
A. No, I haven't.

Q. Is it possible that there is material in the New South Wales State Library archival material which could include correspondence between Retta Dixon and AIM headquarters during the period of the 1960s and 1970s?
A. It is possible.

Q. Did you give any thought to looking for the same?
A. To be honest, no, because of the time frame involved and the fact that it's actually located remotely from us, too, now, but no.

Q. If I can take you to the end of your statement, you say at paragraph 4(h):

I have no personal knowledge or had any correspondence relating to any allegations of child sexual abuse at the Retta Dixon Home, and to my knowledge there has been no correspondence from anyone relating to any such allegation, and nothing has been reported to the AIM Council in the past eighteen years.

A. Correct.

Q. However, that wouldn't include what is possibly in the archives?
A. No, that's true. What I am reporting on is what is in my knowledge.

Q. You go on to say that you have heard, and you have mentioned this in your evidence before lunch:

... related by third parties, that there were allegations acted on promptly by personnel at Retta Dixon Home, that these allegations were reported to NT Police for their investigation and action.

Correct?
Q. You knew that on 4 September when you did this statement?
A. Yes.

Q. Who were the third parties that had related that to you?
A. I honestly don't know. I think, from memory, that came up in a conference I attended somewhere about personnel in the Northern Territory, and it was - it was just mentioned. That's all the knowledge I had. And I think I relayed in my statement that I assumed then that what is referred to here in relation to Donald Henderson was what was told to me. But that may not even be the case. It may have been - I've since found out there was an earlier case that went to court as well.

Q. Mr Powell in 1966?
A. Yes. So I don't know what that reference was to.

Q. Forgive me, reverend, but I just want to ask you again. The statement is of 4 September, about three weeks ago, and you say that you have had that related by third parties. Have you any memory as to who those third parties were that related that to you?
A. No, I don't.

Q. Have you any memory as to when they related those things to you?
A. No. It is simply something that I have in my memory, and I thought it was something I should relate, and that's what I've done.

Q. So it is the case that you did know something about something going on in Retta Dixon?
A. Well, I obviously had some information, limited as it was.

Q. It's just that you gave your evidence earlier where you said you had none.
A. I had no indication of the sexual abuse of this scale that was given here, since I've been here witnessing what these folk have said.

Q. So when you said that before lunch, it was as to the scale, not to the actual knowledge of some sexual abuse
being committed within Retta Dixon?
A. Yes, you could say that.

Q. You knew about it on 4 September, didn't you? You knew that there had been sexual abuse committed within the confines of the Retta Dixon Home, didn't you?
A. Only insofar as it had been reported to me. I knew no factual matters whatsoever.

Q. Well, was it Donald Henderson's activities that were related to you?
A. I don't know.

Q. You don't know?
A. No. I've already indicated that it may have been the earlier case. I'm just not aware.

Q. You have read a lot of the statements involved in this Commission?
A. I have read them and I've heard them.

Q. You have heard a lot of the witnesses give their evidence?
A. Yes. I actually haven't read them all, because I was only given four. The first four copies that were sent to me were the only ones I had in my hand at the time of arrival.

Q. Have you managed to discover any records of the employment of Donald Henderson?
A. No.

Q. Have you looked?
A. No.

Q. Have you thought of looking, since you heard all and read all the evidence that has been heard before this Royal Commission?
A. I wouldn't know where to begin to look, because we have no records at our office. I know that for a fact. And I don't know where else I would look.

Q. How about the archives in the New South Wales State Library?
A. Well, it is possible that they were there, but I haven't looked.
Q. Have you had any consideration to looking there to discover how Donald Henderson got on the books, when, what tests were passed or were given to him, and what were the circumstances of his dismissal? Have you given any thought to obtaining such information?
A. I haven't at this point of time.

Q. Do you think it might be relevant?
A. Well, I have assumed that others have had access to that information that I've sought to make available, and I've thought if there was information to that extent, that it would have been discovered and brought forward at this Commission.

Q. Have you ever met Donald Henderson?
A. No.

Q. Have you ever spoken to him?
A. No.

Q. Have you ever met Merv Pattemore?
A. I know Merv Pattemore.

Q. You have met him?
A. Yes.

Q. Have you spoken to him?
A. I've spoken to him on a few occasions.

Q. Have you spoken to him recently?
A. I haven't spoken to Merv Pattemore for probably two years.

Q. Do you know that he lives in [REDACTED]?
A. I know that he lives at [REDACTED]. I assume he is still at [REDACTED].

Q. Have you spoken to him about this Royal Commission?
A. No.

Q. The evidence before us is that Donald Henderson was a house parent, a childcare worker. I take it from your evidence that he would have received no training or screening, as there was none given then?
A. I have no idea.

Q. As far as AIM would have been concerned, he would have
had no real qualifications for such a position?
A. I don't know that either.

Q. Did you see the AIM employee, Ms Wall, give evidence in this Commission?
A. Yes.

Q. Lola?
A. Yes.

Q. Were you in court when she gave her evidence?
A. Yes.

Q. Have you read the statement of her colleague, [AKR], another house parent during that period?
A. Yes. That was the statement that was read out here?

Q. Yes.
A. Yes.

Q. They were young women employed as house parents in the early 1970s?
A. Yes.

Q. You understand that?
A. Yes.

Q. I want to ask you some questions about their evidence, and it is in relation to your second statement. But I want to just ask you these questions first, in fairness to you and the community. You heard them tell a story of being employed up here within Retta Dixon as house parents?
A. Yes.

Q. You heard them say that they basically received no training, prior to obtaining such positions?
A. Yes.

Q. You heard Ms Wall's evidence that within six weeks she had received allegations of sexual abuse committed by Donald Henderson against young boys from young girls that were in her cottage?
A. Yes.

Q. You heard her give that evidence, which included telling her husband, Norman, who reciprocated by telling her he had heard similar, from Aboriginal boys, that
Donald Henderson had been sexually interfering with them?
A. Yes.

Q. You heard her evidence that her and her husband fairly promptly thereafter reported the matter to Mr Pattemore?
A. Yes.

Q. His position was what at that time?
A. Superintendent, as I understand it, of the home.

Q. Did you hear Ms Wall give evidence that following her husband and her report, Mr Pattemore reported it to the Sydney office?
A. I don't know whether she said that. She assumed that, I think.

Q. Very well. Thank you for that correction. Her evidence was that a Mr Collins from Sydney was contacted; correct?
A. Yes.

Q. And he was a superior to Mr Pattemore?
A. Yes, I think his position was administrative secretary, or something similar, at the time.

Q. And her evidence was that Mr Collins travelled to Darwin thereafter - you heard that evidence?
A. Apparently soon after, yes.

Q. Soon after?
A. I'm not sure, but --

Q. And Ms Wall's evidence was that she was told by Mr Collins that there was not enough evidence against Mr Henderson?
A. I heard that.

Q. And did you hear me question Ms Wall as to whether she thought she should ring the police about that?
A. Yes.

Q. And her evidence, from memory, was that she felt that what she did was the correct procedure, namely report it to the superintendent?
A. Yes.

Q. Was that the correct thing to do then?
A. Well, in terms of her responsibilities, I would say yes, because that's what she was instructed to do, through - I imagine through her supervisors and, also, through what I gather was the handbook that was provided for her at the time.

Q. Would you think it's the right thing to do now?
A. Certainly, but not just that. Certainly, if - any accusation should be reported, in the first instance, to the police.

Q. The third-hand account that you say in your first statement, was that in relation to these allegations that Ms Wall heard and reported to Superintendent Pattemore?
A. I honestly don't know.

Q. Did you hear their evidence that after she was told by Mr Collins that there was not enough evidence, she continued to work as a house parent?
A. Yes.

Q. With her husband?
A. Yes.

Q. With Mr Henderson still working as a house parent?
A. Yes.

Q. Throughout 1973?
A. Yes.

Q. She gave evidence that there were weekly meetings between staff at the Retta Dixon Home?
A. Yes.

Q. Throughout 1974 as well?
A. Yes.

Q. Correct?
A. Yes.

Q. Did you hear her evidence that she had concerns about Mr Henderson?
A. Yes.

Q. Did you hear her evidence that she was suspicious of Mr Henderson being a child abuser?
A. Yes.
Q. Did you hear her evidence that she put an embargo of types on children from her cottage going to Mr Henderson's cottage, for that reason?
A. Yes.

Q. Did you hear her evidence that she found Mr Henderson an imposing man?
A. Yes. I don't know what the exact words were, but more or less that.

Q. So, within Retta Dixon, you had a house parent, having received direct allegations, corroborated by her husband who received similar, about Donald Henderson?
A. Mmm.

Q. She reported it to the superintendent. He brought in the supervisor from Sydney who told them there was not enough evidence, and she and her husband continued to work in Retta Dixon with a strong suspicion that Mr Henderson was a sexual offender against young children in their care?
A. Yes.

Q. Was that the correct thing for her to do?
A. I'm not in a position to be able to judge what was in their minds to continue where they were or --

Q. I'm asking you, reverend.
A. My opinion?

Q. I'm asking you, reverend: was that the correct thing to do?
A. In my opinion --

Q. Yes.
A. -- no. I would have sought to do something further, if I thought that was an allegation that needed to be pursued.

Q. Have you heard the evidence that later on, after the cyclone, Ms [AKR] reported to Norman Wall that she wanted to go back from Batchelor to the Retta Dixon Home because she was upset?
A. Was that the lady missionary?

Q. Yes.
A. Yes.
Q. And that was following a trip with Mr Henderson on a camping trip?
A. Yes.

Q. Do you remember that evidence?
A. Yes.

Q. Norman Wall advised her not to go there with Mr Henderson?
A. Yes.

Q. Clearly because he had concerns that Mr Henderson might do what they suspected he did?
A. Yes.

Q. [AKR] seemed to confirm that by saying that she wanted to go straight back to Retta Dixon, and she did, and she reported it to Superintendent Pattemore; you saw that evidence?
A. Yes.

Q. It was thereafter that the police were called in? You saw that evidence, you heard it?
A. Yes, yes.

Q. Mr Henderson was charged?
A. Yes.

Q. You saw the evidence that, according to Mrs Wall, her husband had told her that Mr Henderson had approached some young boys who were proximate to the witnesses and perhaps influenced them in not giving evidence; do you remember that?
A. Yes.

Q. Is that the third-hand material you received when you did your statement on 4 September?
A. No.

Q. Definitely not?
A. Absolutely not.

Q. Absolutely not? How are you so sure?
A. Because all I've heard was so superficial and I had none of that information before I came to this hearing.
Q. Well, let me just take you to your statement in that last paragraph, the 4 September statement. It says:

I have heard, related by third parties, that there were allegations acted on promptly by personnel at Retta Dixon Home ...

A. Mmm.

Q. Doesn't that suggest that that could fit the sequence of this report to the police by Superintendent Pattemore?

A. Well, it may, but it also may have referred to the earlier one in relation to Mr Powell.

Q. But you have no memory of what they were?

A. I don't have a memory because I wasn't told. I don't know. And I've made an assumption in my statement that what I had heard related to Mr Henderson. I am assuming that. I don't know that.

Q. You have heard [AKR]'s statement read out where she says that when it was reported to her by the kids down at Batchelor, she was devastated; you heard that? She also said in her statement that she spoke to a lady, Ms Margaret Clark. Do you remember that part of her statement?

A. Not really.

Q. Where she said Margaret Clark told her, "We knew about that, it was going on for years."

A. Was that another house parent?

Q. Margaret Clark was, yes.

A. Yes, okay, yes.

Q. So, again, suggesting that Don Henderson had been molesting kids within Retta Dixon for years.

A. Yes.

Q. Correct?

A. Yes.

Q. And consistent with Ms Wall's evidence that a year and a half before this she had had such reports and remained on the books - remained in Retta Dixon with her husband, looking after children?
A. Yes.

Q. So what we have here, reverend, is the Retta Dixon Home, with Don Henderson therein as an employee, known to several staff, who have reported it to the superintendent, as a man who is sexually abusing young children in the care of Retta Dixon; correct?
A. That's what the evidence points to.

Q. Where this is going is paragraph 5 of your statement. Can you be shown it, please. I think it is 17-35. You might have it in front of you. It is your second statement produced to this Commission. All right. Do you see that?
A. Yes.

Q. That's a statement you did for this Royal Commission?
A. Yes.

Q. And you signed it when?
A. Was it 14 September or something?

Q. Just look at the bottom?
A. 4 September, is it?

Q. No, the second statement.
A. 29/9?

Q. 29/9.
A. Sorry.

Q. Yesterday?
A. Yes.

Q. One day ago?
A. Mmm.

Q. You have signed a statement that says that you offer a sincere apology.

THE CHAIR: Mr Lawrence, you will have to keep talking into the microphone, or else those watching elsewhere won't be able to hear you.

MR LAWRENCE: Sorry.

Q. Correct?
A. Absolutely.
Q. Now, you did a statement three weeks before, on 4 September; correct?
A. Yes.

Q. Is there any apology in that statement?
A. There is not.

Q. Why not?
A. Because I was responding to questions asked of me, and to that extent I thought I had acted in the way I was asked to act.

Q. All right. Well, let's continue the narration, reverend. In 1998 the NT police opened up another investigation into Donald Henderson; correct?
A. I have found that out since being here.

Q. You have seen that evidence?
A. Yes.

Q. Have you read the evidence, some of it?
A. Some of it.

Q. They were tasked to investigate further claims of sexual abuse committed against children by Donald Henderson in the Retta Dixon Home; correct?
A. Yes.

Q. And they did that - they investigated it?
A. Yes.

Q. They took statements from adults who were children in the care of Retta Dixon?
A. Yes.

Q. And Donald Henderson was charged, in 2001, with about 70 sexual assaults or indecent dealings against four children at Retta Dixon.
A. Yes.

Q. Right?
A. Yes.

Q. And he was brought to court in relation to those charges. You are aware of that, aren't you?
A. I am now.
Q. You are now?
A. Mmm.

Q. And he was brought to court here in Darwin in February of 2002, where some of those ex children, adults then, who had been at Retta Dixon gave evidence before a magistrate, following which Donald Henderson was committed for trial on 15 charges of sexual assaults against children within Retta Dixon.
A. Mmm-hmm.

Q. He was indicted accordingly - you are aware of that?
A. I - yes.

Q. He was listed to stand a trial in December of 2002; you have seen that evidence?
A. Yes.

Q. It was published in the papers. There was publicity about this. You are aware of that?
A. I'm not, personally, no. I assume it would be the case, though.

Q. You worked for AIM then, didn't you?
A. 2002, I certainly did.

Q. You had been there since 1996?
A. Yes.

Q. You kept the minutes of council meetings?
A. Yes.

Q. Which discussed relevant matters for the body, AIM?
A. Yes.

Q. You are on your oath, reverend.
A. I am.

Q. Are you telling this Commission that you had no knowledge of those charges laid against Donald Henderson in 2002?
A. I had no knowledge of those - nor did any of the council - of those charges that were laid against Donald Henderson in 2002.

Q. Are you saying that there was no correspondence sent
from Retta Dixon to AIM in Sydney telling them that one of their employees has been charged with a series of sexual assaults against Retta Dixon kids back in the 1970s and he is now going to court for it?

THE CHAIR: When do you contemplate that Retta Dixon would have sent that correspondence, Mr Lawrence?

MR LAWRENCE: From about 2000 to 2002 when it was before the courts.

THE WITNESS: Retta Dixon didn't exist then.

MR LAWRENCE: Q. I accept that. But did you receive any information from anybody in AIM concerning it?
A. I've already told you under oath that we had no knowledge whatsoever of that court case in 2002.

Q. What about after 2002, did you hear anything from any third parties in relation to that event that happened here in Darwin?
A. Nothing, other than what I've recorded in my statement about that general understanding that something happened some time.

Q. You were aware of the case brought in this court in about 1999, I think it was, by Lorna Cubillo?
A. Was that the Stolen Generation case?

Q. Yes.
A. Yes.

Q. You were working for AIM then?
A. Yes.

Q. You assisted in giving evidence for that court case?
A. No.

Q. Did AIM people do that?
A. Not that I'm aware of. We had documentation subpoenaed and we provided that from the office to the inquiry.

Q. And you understood then - you were secretary then, or were you the director then?
A. One or the other. I'm not sure when it changed, but - yes.
Q. And you were aware of the allegation that Lorna Cubillo was taking against the Commonwealth in relation to what had occurred to her, including at Retta Dixon?
A. Yes.

Q. Which included being assaulted?
A. I don't remember that being part of the inquiry, but if it was - my knowledge is - I can't remember assault or sexual assault being referred to.

Q. Did you give any consideration to issuing an apology to Lorna Cubillo for the allegations that she made in that court case which concerned - some of it, at least - the treatment of Retta Dixon staff whilst she was there?
A. No, I never gave any consideration. An interesting question, I think, was asked of Mrs Cubillo by the Commissioner, and no, because I didn't think it was within our remit to do so. We weren't party to that case. We hadn't been called to give witness - or statements or anything, as far as I'm aware.

Q. You saw Lorna give her evidence?
A. I did.

Q. Her evidence was about being beaten by Mr Walters, a Retta Dixon employee, a house parent.
A. Yes.

Q. The same evidence she gave at the trial in this court in 1999.
A. Mmm.

Q. Did you give any consideration back then --
A. I didn't.

Q. Why didn't you apologise to Lorna then?
A. It didn't seem part of my responsibility to do so, because her concerns seemed to be with the Federal Government rather than the mission.

Q. The statement that you did sign yesterday was drafted with the assistance of legal counsel?
A. Well, yes, although, I must say, 95 per cent of it are my words.
Q. But it was done with - including the advice of legal
counsel in relation to the statement you produced, the
second one, wasn't it?
A. Yes.

Q. Which includes paragraph 5, where you have apologised.
A. Yes.

Q. This Commission started on the 22nd, I think it was,
of September. You saw the first day?
A. I was here.

Q. You had read statements before the first day?
A. Those that were provided to me I read. There were
four of them.

Q. Whose were they? That might be difficult with the
pseudonyms.
A. Yes.

Q. Can we say they were victims of abuse within
Retta Dixon?
A. Yes, they were four of the children, mmm.

Q. Is your apology really sincere, reverend?
A. I don't apologise lightly, and I can say I've been in
touch with the council that I answer to, and they have all
been, like me, shocked by what we have heard at this
hearing, and that apology comes from the heart. I said
earlier, I have given my life to work with Aboriginal
people, and I identify with them, and what I've heard has
disgusted me, not least because it has dragged the name of
the mission into the ground, and I know that there are good
and godly people out there, Aboriginal and non-Aboriginal
people, who are disgusted by what they have heard, and I am
likewise disgusted.

Q. Well, why haven't you arranged for your body to
provide to those victims appropriate redress?
A. Well, you ask me what's appropriate - you asked me for
appropriate redress. My attitude is that what we are doing
is what we can do appropriately. If someone wants to
suggest that money is appropriate, that's one thing, but we
haven't got the resource to be able to respond that way
appropriately. Unless we realise some asset, which means
that we can no longer engage in the ministry that we are
doing and seeking to work with these people - not just
Retta Dixon people, but I mean indigenous people throughout Australia - it will affect the way we do our work, because we live hand to mouth.

Q. Have you ever thought that [AKV], [AKU], [AJW], [AJA], Sandra Kitching and Lorna Cubillo might think it is a pretty good thing if your organisation ended by selling up your assets and compensating them for the harm that you committed against them and their friends and brothers and sisters?

A. Have you asked them that question?

Q. Yes.

A. What was their answer?

Q. Well, you are here to answer questions. I'm not here to give evidence. But I will tell you what they do want. They want compensation, and they want me to ask you why you won't give them it.

A. Well, we have sought to respond in the best way we know how, and I have to consider that we work with a lot of other Aboriginal people throughout this nation, and our ministry will be affected to the extent that we won't be able to do that any more. If it be that we need to do that, then so be it.

Q. I'm getting body language which is "So be it", reverend. "So be it." Why can't you, in all sincerity - if you'd have this Commission believe your apology is sincere, why can't you and your brethren do the right thing, sell your assets, put the money into a fund so that these people, who have been horrendously abused at the hands of your staff, be compensated like any other Australian citizen would expect? Why can't you do that?

A. Because I believe what we are doing now is more constructive than that would be, by continuing with what we do.

Q. Is this, perhaps, because they are Aboriginal and giving them money isn't a good idea? Is this coming out in your evidence, reverend?

A. I don't think it's appropriate to pull the race card with folk that I've been working with for nearly a third of my life, whom I identify with very closely. That's a very unfair statement.

Q. Well, why can't they have money? What is wrong about
compensating them financially?
A. If we had a pool of resource that we could allocate for compensation, we would be more than happy to do it, but we simply don't have that.

Q. Well, what do you have, reverend? Come on, tell us. What have you got? You have property in New South Wales; correct?
THE CHAIR: Mr Lawrence, I'm not sure where it is now, but we have a copy of the financial statement. We should use that, I think.

MS DAVID: We can provide copies for the Commission.

THE CHAIR: Do you have a copy, Mr Lawrence?

MR LAWRENCE: No.

THE CHAIR: I made the assumption that Mr Georgiou was going to take us to it.

MR GEORGIOU: I may not need to after this, your Honour.

THE CHAIR: No.

MR LAWRENCE: Q. This isn't really my bag, financial statements, reverend. Please bear with me, but I'm looking at page 10, which tells me --
A. Can I say nor mine.

Q. Sorry?
A. Nor mine.

Q. Well, we will have a crack. Page 10. "Australian Indigenous Ministries: Notes to and forming part of these accounts for the year ended 31 December 2013". "Land and Buildings at Fair Value". Do you see that?
A. I do.

Q. Now, I take it this is the assets that are owned by AIM; correct?
A. Yes.

Q. We will read out, "Land and Buildings at Fair Value". How much has AIM got?
A. It says $4,144,739. Is that what you are referring
to?

Q. It is.

THE CHAIR: Look, I think this discussion is a serious
discussion and we need to treat it in that way, if we can.
Yes, Mr Lawrence.

MR LAWRENCE: Q. Well, the question I ask of you is,
predictably, can't AIM give some of that property that it
has to recompense the harm that it has done to the victims
in this case?
A. I think I already explained to questions from
his Honour, I think, if I remember rightly, that most of
that property is held in trust on behalf of local church
groups. If I think of what we have available as
a realisable asset that is ours freely to dispose of, it
would consist of two properties. One is our Ministry
Resource Centre in Humpty Doo and the other is our
New South Wales operating centre in the Blue Mountains in
Sydney. They are the two properties that really aren't
encumbered by our responsibilities to the local churches.

Q. Is it your evidence that AIM is just not prepared to
give up those properties, or any of them, to provide for
financial compensation for Lorna Cubillo, Sandra Kitching
and my other clients and all the other witnesses who have
passed through this Royal Commission telling their
harrowing stories to whom you have given a sincere apology?
Is that what you are saying?
A. That's my position.

Q. The apology is sincere, is it?
A. It is.

THE CHAIR: Q. Reverend, the property values, are they
at cost, or are they net --
A. Actually, some of them are unrealisable, because in a
number of properties we have - they are really insurance
values, I guess you could say. They are properties that
are buildings owned by us on community land, so we have no
realisable way of disposing of them.

Q. But in terms of the value that is shown, is it the
cost or is it --
A. No, it is current insurance value.
Q. Current insurance?
A. Which is --

Q. But you own some land as well?
A. Yes.

Q. What is the value shown when there is land involved?
A. It is a guesstimate of market value.

Q. Present value?
A. Yes.

COMMISSIONER FITZGERALD: Q. Are you certain of that?
A. I've done it myself, so - yes, it might be two years old.

THE CHAIR: Q. You have done a guesstimate I think?
A. Well, we can only do that until you try and realise something.

THE CHAIR: I understand.

COMMISSIONER FITZGERALD: Q. The Commonwealth Government bears some responsibility in relation to the children that were in the facility. The issue of the Commonwealth's responsibility in relation to children is a matter for discussion not only in relation to this matter but more generally. Has it ever crossed your mind that the AIM should enter into some discussion with the Commonwealth Government in relation to the redress of children who were abused in a facility, given that there was in fact some level of joint responsibility, although I fully appreciate that hasn't been determined, but is that something you would contemplate?
A. In the light of what has been said at this Royal Commission, I would be more than happy to engage in that kind of discussion. It's not that I think financial compensation is necessarily unwarranted, it is just that I don't see that, as an organisation, we are in a position to be able to offer anything that would be substantive.

Q. Can I just clarify that: does the church itself, or the charity, acknowledge as a charity the responsibility for the abuse that was done to the residents of Retta Dixon?
A. It is very hard for me to say whether - we acknowledge what was done, and it was done when AIM oversaw the
property, but how we acknowledge that in terms of our current responsibility I'm not sure.

Q. If I just clarify. AIM did not oversee the property; AIM ran the facility. That's correct?
A. Well - yes.

Q. So the question is - and again, I'm not suggesting the answer, you can give whichever answer you want: does AIM, as a charity, acknowledge responsibility for the abuse that occurred to the children that were at Retta Dixon?
A. I'm not sure that I know how to answer that question. I understand that it was done at the time that AIM had oversight. I'm not sure what it means for me to acknowledge today that we have responsibility for that in terms of something that's done historically, a long time ago. I'm not sure how I should answer that.

THE CHAIR: Q. It is more than AIM having oversight. It was, on the evidence we have, inflicted by AIM's people.
A. Mmm.

Q. People who were members of your organisation.
A. Yes.

Q. That organisation is the same today as it was then, isn't it, as far as the organisation goes?
A. Yes.

Q. It is a bit hard to then not acknowledge, isn't it?
A. It is hard, but I'm not sure how I should answer. Honestly, I don't know. I don't know what the responsibility is for an organisation historically for something that happened many years ago. I don't know that.

Q. Well, let's just take the Catholic Church. The Catholic Church has acknowledged responsibility for the abuse inflicted by members of the church years ago, hasn't it?
A. Mmm, yes, it has.

Q. Is there any difference between the church and AIM?
A. I hope so. But - I don't know what you mean. I am just not sure how I should answer, your Honour, honestly.

MR LAWRENCE: Q. Reverend, my line of questioning is deliberate, and it is because I question the sincerity of
the apology that you bring to this Royal Commission.

THE CHAIR: Mr Lawrence, I think you should ask questions and not make speeches.

MR LAWRENCE: Your Honour, I am prefacing this question. I think it is fair to him to hear this --

THE CHAIR: I will say again: Ask questions. Submissions come to us later.

MR LAWRENCE: Q. You say to the Commission that you find it difficult to answer that question. Why?
A. Simply because what exists today is very different to what existed back then. I acknowledge the wrongs of the past, and we sincerely apologise for that, but I can't take responsibility for something that was done by someone else so long ago, and I don't know, organisationally, whether I have the right to ask that of the organisation as well.

Q. Reverend, forgive me for being religious, but doesn't your conscience tell you that you should accept that responsibility now, in 2014?
A. If my conscience told me that, I would have answered clearly, but I've answered truthfully the way I understand it.

Q. And you are a Christian?
A. I certainly am.

Q. You see, my clients have asked me to ask you these questions also, reverend: you may have recalled the evidence of some of them. One of them was Mr [AKV], a gentleman who gave evidence during this Commission, and he talked about how he witnessed his sister being tied to a clothesline and he talked about his sister having faeces rubbed in her face. This is in Retta Dixon, by Retta Dixon staff. And he talked about, then, her being deliberately burnt with hot water. And he talked about how, during all of this horror, these children were forced by AIM to go to church and learn the word of the Lord. Do you remember his evidence?
A. I remember.

Q. And he said they were taught God loves all the children of the world.
A. Mmm.
Q. My clients have asked me persistently, and he said it in his own evidence, about what was a massive contradiction.
A. Mmm.

Q. How could employees of AIM, house parents, missionaries - how could they possibly commit such crimes and, indeed, witness such crimes? How does that work, reverend?
A. It doesn't work. It's gross hypocrisy and I'm disgusted by it.

Q. "Suffer the children and forbid them not to come unto me for such is the kingdom of heaven"?
A. Exactly.

Q. Children are special in the Bible, aren't they?
A. They are.

Q. Jesus teaches us that. They go to heaven, children - that's what he teaches us. That's correct, isn't it? It is in the New Testament.
A. He says "for such is the kingdom of heaven".

Q. And those that offend one of these little ones which believe in me it were better for him that a millstone were hanged about his neck and he were drowned in the depth of the sea?
A. Mmm-hmm.

Q. The New Testament, Matthew, chapter 18?
A. I know scriptures well.

Q. Verse 6.
A. Yes.

Q. How can that happen in Retta Dixon?
A. I don't know. It absolutely must not have happened, but it did.

Q. Well, how can you not now, in 2014, knowing what we all know thanks to this Commission, accept responsibility on behalf of AIM as their director, to recompense these people that suffered like that?
A. How can I not?
Q. How can you not?
A. I've answered that question two or three times already. I just don't know how to answer that.

MR LAWRENCE: Thank you.

<EXAMINATION BY MR GEORGIOU:

MR GEORGIOU: Q. Reverend, you are the general director of Australian Indigenous Ministries; correct?
A. I am.

Q. Where does that position sit within the office of the Australian Indigenous Ministries?
A. I'm one of the two executive officers. Is that what you are referring to?

Q. Yes. So you are one of two who are at the top --
A. Yes.

Q. -- of the hierarchy?
A. Yes. We both report to the council.

Q. And you have been a member of AIM, in one or other of its forms, since 1996; is that so?
A. Yes.

Q. What roles within AIM have you had during that period of time?
A. Just those two roles. I was appointed as the administrative secretary, and then, with the restructure that took place, I moved into the position of general director, which, by the way - the responsibilities were almost identical; it was just a name change.

Q. I was going to ask you, what was the responsibility of the administrative secretary?
A. Well, basically the same as general director. General oversight, interaction with all of the church groups that are part of the support mechanism for AIM, dealing with various government departments, recruiting personnel, general vision and structure of the mission organisationally, and interaction with field personnel and so on.

Q. And that remains your role to this day?
A. Mmm-hmm.
Q. It was the same role performed by Mr Collins, if I understand you, back in the 1970s?
A. I'm not sure how widespread his responsibilities were, but I imagine so.

Q. Well, he was the administrative secretary back then; correct?
A. Yes, but in those days, there was also a president, and - yes. I'm just not sure who took what responsibilities for what.

Q. Well, it would seem he travelled from New South Wales --
A. Mmm-hmm.

Q. -- to Retta Dixon here?
A. Mmm-hmm.

Q. In order to deal with an issue?
A. Yes.

Q. An issue that would have been highly embarrassing to Aborigines Inland Mission; correct?
A. Yes.

Q. That is, that one of its staff members had been sexually assaulting and abusing young children.
A. Mmm-hmm.

Q. That's so?
A. (Witness nods).

Q. You agree with that?
A. Yes. I don't know whether "embarrassing" is the word, but certainly it would be an issue that needed to be dealt with.

Q. You are not sure that it would have been embarrassing to the organisation; is that what you are saying?
A. In terms of - well, I'm only thinking from my thinking. I would look to see that things were dealt with as soon as possible. I wouldn't be concerned about the embarrassment that it may have caused to the organisation. So I don't know what his motive was.

Q. You would have been concerned about the good name of
the organisation, wouldn't you?
A. As I am today.
Q. In that sense, it is embarrassing, isn't it?
A. I guess, yes.
Q. Embarrassing to the name of AIM?
A. Yes.
Q. Reverend, you have come to this Commission, and you speak on behalf of AIM; correct?
A. Yes.
Q. With the full approval of your council?
A. Up to what I've said thus far, yes.
Q. Including that which appears in both of your statements?
A. Yes.
Q. The council who has given you its approval to speak on its behalf, are they the persons that are named at page 3 of this financial report? And please turn to it if you need to.
A. I don't have a copy of it here. It may have changed since then, but - one or two personnel may have changed. I don't have a copy of that with me.
Q. Perhaps a copy of that may be provided.
A. Oh, it is here.
Q. Turn to page 3, please.
A. Yes, I have it. Two of those personnel have changed since, but yes - oh, they are noted there as resigned.
Q. The remainder are members of the council to this day?
A. Yes.
Q. Are they all missionaries at AIM?
A. No.
Q. Do they have roles or jobs, employment, outside of AIM?
A. Some do. I think I indicated the structure of the mission earlier on - that I think we have seven people who are nominated and elected as council members from the general Christian public, if you like, in Sydney; others
are - the two CEOs, who are myself and the field director; and there are four delegates who are elected by the mission body as their delegates to the council, and the other one is the chairman of the Queensland Church Council.

Q. Of those, do any earn a salary at AIM?
A. Nobody earns at salary at AIM.

Q. Who is the other person that you mentioned that's at the top of the hierarchy?
A. The one we called the field director, Stephen Bignall.

Q. Are you able to assist the Commission with the reasons for the change of name from Aborigines Inland Mission to its current name?
A. Yes, I am. That actually came up from Aboriginal folk themselves. They suggested that they would like a name change to be reflective of where the mission was today, in that "mission" had a bad connotation in many Aboriginal communities, and there was an indication that they acknowledged that the mission - I use the word "mission", some members are referring it to the church, the two things are interchangeable and it gets a bit confusing - but there was a desire to change the name, but not the initials, because many Aboriginal folk identify with belonging to AIM, and there were suggestions that came up from I think someone in Rockhampton, if I remember rightly, that we change the name to Australian Indigenous Ministries, because it indicated we were no longer the white man telling the black fella what to do, but an indication that we were working with the Aboriginal folk, and that change from "mission" to "ministries" indicated where we were in terms of our relationship with the folk we were working with, and that was their desire for it to express it that way.

Q. Were the reasons for seeking a change of name documented in minutes of AIM?
A. Possibly. I'm not sure. I can't remember.

Q. You were the minute taker, were you not?
A. Yes.

Q. From 1996?
A. Yes.

Q. To the present day?
A. Yes. They should be, but I can't remember.

Q. Well, if you were the minute taker --
A. Mmm.

Q. -- would you have recorded, as --
A. Yes.

Q. -- per your norm --
A. I am sure they are.

Q. -- the reasons --
A. I am sure it is recorded, but I can't remember where or when, really.

Q. The change of name occurred in about September/October of 1998; correct?
A. That's probably right, yes.

Q. At a time when you would have been the minute taker?
A. Oh, yes.

Q. Where are those minutes now?
A. In 1998? I'm not sure up till when I put them in the archives. They may be in the State archives, or I may still have them. I think I've - was it '98? I've probably still got copies of them myself in our office.

Q. You said you placed the first batch of documents into archives in 2001.
A. Mmm.

Q. Would the minutes not have been part of those archives?
A. They would have been --

Q. Archival material, I should say?
A. Previous minutes would have been, but you would understand we have a - what do you call it, like a paper record that is progressive, so it might have gone from 1996 to 2004, or something like that, when that book was completed. Now, whether that's in the archives or whether I still have it at the office - I'm pretty sure it is still at the office for the more recent ones. I have copies of that electronically, anyway.

Q. Do you have it here with you?
A. I have it on my phone.

MR GEORGIOU: I call for it, your Honour. Now, I'm not sure how we can get it from the phone.

THE CHAIR: Why do we want it?

MR GEORGIOU: It is relevant to something that may arise in my cross-examination.

THE WITNESS: Can you tell me when - do you know when that name change was, from memory? Did you mention that?

MR GEORGIOU: I'm told September/October of 1998. Perhaps I will come back to that, reverend.

THE CHAIR: Are you after the minute recording the resolution to change the name?

MR GEORGIOU: Yes, your Honour.

THE CHAIR: That's just going to be a minute saying, "The committee has agreed to change the name", isn't it?

MR GEORGIOU: And what reasons were advanced for the change of name.

THE CHAIR: That may not be in the resolution.

MR GEORGIOU: It may not.

THE WITNESS: I think it is.

THE CHAIR: Q. Is it?

A. I had better not say until I find it, but as far as my memory - the name change was done before we became an incorporated association. That happened some time later.

MR GEORGIOU: Q. I will come back to that. Reverend, you have told us you have been following these proceedings, and you have been present when witnesses have given evidence; correct?

A. Yes.

Q. I take it that members of the council have also been carefully monitoring the proceedings?

A. Well, some more than others. There are one or two
overseas at the moment, I know.

Q. It's clear, is it not, that you are aware of the terrible atrocities that were suffered by many of the children at Retta Dixon Home?
A. Yes, I'm aware. I'm aware of their statements.

Q. Atrocities suffered by young children who were in the care of the Aborigines Inland Mission?
A. Yes.

Q. You have acknowledged those atrocities, haven't you?
A. Yes.

Q. It is for that reason that you have offered the most sincere apology; correct?
A. Yes.

Q. And in offering that most sincere apology, you speak also on behalf of Australian Indigenous Ministries.
A. I do.

Q. It is based, isn't it, upon an acceptance by AIM of the sexual abuse that was perpetrated upon those children?
A. Yes.

Q. Acceptance of the responsibility for the sexual abuse; correct?
A. As far as AIM is responsible?

Q. Yes.
A. I think I've answered that before and I'm not quite sure about that.

Q. I'm asking you again.
A. I'm not sure. I'm not sure how our current organisation is responsible for what took place in the past.

Q. Does that uncertainty also extend to the physical abuse of children in the care of AIM?
A. I have no question about what occurred, but I'm unsure about our responsibility to react to it.

Q. Do you not accept that the AIM workers had a duty of care to those young children?
A. I accept that.
Q. To protect them from harm?
A. Yes.

Q. To protect them from physical and sexual abuse?
A. Well, by and large, that's why the children were placed there in the first place - to protect them.

Q. And AIM failed in that task, in that responsibility, didn't it?
A. Yes.

Q. Reverend, if I may take you to your first statement, and part of it has already been covered. I want you to think about and tell us, as best you can, what you were told by the third parties concerning certain allegations.
A. I think I've relayed that already. Somewhere at some time some years ago - I'm not sure exactly when - I think it was in the context of a conference that I heard information that somebody at Retta Dixon Home had been charged with sexual abuse of children, it had been reported by AIM, that person had been charged and been dismissed by the mission. That's the extent of my knowledge.

Q. What was your position at AIM when you received that information?
A. I would have been general director, I think.

Q. Right at the top of the totem pole?
A. Well, if you say that, mmm. General director.

Q. Well, don't take it from me - you were at the top of the hierarchy when you received that information; is that correct?
A. I don't regard it as being a hierarchy. I work - we work as a council and I'm the general director.

Q. As the general director, did it not spark your interest, spark your curiosity to find out more about the allegations of sexual abuse at Retta Dixon?
A. It didn't at the time.

Q. I'm sorry?
A. It didn't.

Q. Having discussed this particular topic several times now during the course of this Commission, are you able to
estimate when it was that information was given to you?
A. No, I don't --

Q. Was it in the last year, last two years?
A. Last couple of years, probably. I don't know.

Q. Is that a guess?
A. Yes, because I honestly don't remember.

Q. And you are not able to assist as to who it was that
gave you that information?
A. No.

Q. In what context it arose?
A. As I said, as far as I remember, it was in
conversation at a conference, and obviously at conferences
you are talking with many people from various backgrounds,
and for that reason I can't remember where the information
came from.

Q. At paragraph 4h of your first statement you say that
you have no person knowledge or had any correspondence
relating to any allegations of child sexual abuse at the
Retta Dixon Home.
A. Mmm-hmm.

Q. In 1998 an investigation began into the activity of
Donald Henderson. You are aware of that now, aren't you?
A. I am now.

Q. Mervyn Pattemore was spoken to in relation to that
particular investigation, at around that time. I think the
evidence has been about 2001. Have you heard that
evidence?
A. I've heard that.

Q. What was Mr Pattemore's position with AIM at that
time?
A. Mervyn Pattemore would have retired by then.

Q. Would have, or was?
A. Was.

Q. Did he continue as part of AIM as a worshipper or in
some capacity?
A. As far as I know, he was an attender at the Darwin
Community Church, which is actually run by his son-in-law.
That is not technically now a part of AIM, but he would have been connected in terms of receiving information from our mail-outs and things like that, but not a part of the mission.

THE CHAIR: Mr Georgiou, how much longer will you be?

MR GEORGIOU: At least half an hour, possibly longer, your Honour.

THE CHAIR: Well, we are going to sit on this afternoon, so we're going to take a 10-minute adjournment now. Can I just counsel you not to go over ground we've been over?

MR GEORGIOU: I'm trying not to, but it is sometimes unavoidable, your Honour, because it leads to other areas of cross-examination.

THE CHAIR: That may be so, but we do have a very clear understanding of the position of the reverend in relation to various of these matters.

MR GEORGIOU: Yes.

THE CHAIR: All right. 10 minutes.

SHORT ADJOURNMENT

MR GEORGIOU: Q. Reverend, I was asking you about Mr Pattemore. It is your understanding he lives at [REDACTED]; is that so?

A. Yes.

Q. Is it also your understanding, or can you tell us whether or not, please, he lives at property owned by AIM at [REDACTED]?

A. Definitely not.

Q. Definitely not. Reverend, you have been good enough to have a look at the minutes of meeting concerning the change of name, and what you have on your phone is the barest of information; correct?

A. What I have a record of is a document that indicates the name change, if we needed to communicate that with any agencies, or whatever, and it contains an extract minute of the decision to change the name, but what it doesn't do is give any narrative either side of that. So I haven't got
copies of the actual minutes.

Q. Do you accept that the change of name occurred in about 1998?
A. Yes.

Q. Late 1998?
A. Yes.

Q. Correct?
A. Yes.

Q. After proceedings in Cubillo v Gunner had commenced?
A. I'm not sure. I don't know the historical connection between that, but if that's so, then that's so.

Q. After the Bringing Them Home inquiry report was completed?
A. If you say that's so, that's so. I wouldn't have known there was a connection between the two.

THE CHAIR: Mr Georgiou, I infer that where you are going is that in some way this was a change to move a potential legal liability.

MR GEORGIOU: Yes.

THE CHAIR: The name change won't affect that. There was a change, as I understand, in the structure of the organisation. I don't know if you want to ask questions about that. A name change goes nowhere.

MR GEORGIOU: I accept that, your Honour. I won't press it, but I do want to ask about the structure.

THE CHAIR: And then, as far as the structure is concerned, we presently understand that, when that occurred, the liabilities of the prior were accepted by the subsequent. That's the question that needs to be asked. If the answer to that is, as we understand it to be, "yes", then this doesn't go anywhere.

MR GEORGIOU: Well, it seems to be a little more complicated than that, your Honour.

THE CHAIR: All I'm saying is that's our present understanding. I think if you are going to ask questions,
the profitable place to go is structure, not name.

MR GEORGIOU: There is another aspect to it, your Honour, and I just want to ask about the report that I've just referred to.

Q. Reverend, as I understand it, you say that you essentially had no understanding of the sexual abuse until very recently.
A. That's true.

Q. Does that also apply in relation to the physical abuse?
A. Yes.

Q. Back in 1996, Howard Miles was present at the Aborigines Inland Mission; correct?
A. Mmm-hmm.

Q. You were working with him at that time?
A. He was the one I - oh, no, he was there for a short time after I started, I think, yes.

Q. Are you aware that he prepared a report into the inquiry into the separation of Aboriginal and Torres Strait Islander children from their families?
A. I was not.

Q. Are you aware that Mr Pattemore provided a statement to the same inquiry?
A. I wasn't aware of it, but I could imagine it would be so.

Q. I will ask you to accept that they did make statements.
A. Yes.

Q. Did you not, when you took on your role, have any understanding at all about that inquiry at the time?
A. I had the understanding that we were asked to provide documentation in relation to it, but that was about the extent of my knowledge and involvement of it.

Q. Was that pursuant to a subpoena?
A. Yes.

Q. Did you collate the documentation?
A. Yes. If memory serves me correctly, yes.

Q. Did you read the terms of the subpoena?
A. I would have, I gather - I can't say yes or no to that, but I would have.

Q. Did you inquire as to why it was that AIM's documents were subpoenaed?
A. Well, I assumed to gain whatever they could from it in terms of what was being heard in the Federal Court. We had nothing to hide as far as I was concerned.

Q. I'm not asking you whether you had anything to hide. I'm asking you about your own curiosity and your own investigation into what was being asked of you?
A. Well, you can say I didn't have a great deal of curiosity. I simply provided what was asked for, and that was it. That was the extent of it. I would have assumed, if there was any follow-up, we would have had some sort of subsequent correspondence.

Q. Were you aware that Retta Dixon was being looked into during that inquiry?
A. I was aware of the circumstances - the general circumstances of the taking of children and placing them in the home, yes.

Q. Reverend, you have made a general apology on behalf of AIM. Have you made any specific apologies to those who were children and who suffered sexual abuse at Retta Dixon?
A. Do you mean myself personally?

Q. Yes.
A. I have, to one gentleman.

Q. Have you made an apology to Kenneth Stagg?
A. Yes.

Q. To Kevin Stagg?
A. No.

Q. To Veronica Johns?
A. No.

Q. Will you do so?
A. I - personally I will do so, because I endorse what is written in that supplementary statement as not only from
the council but from me personally.

Q. Reverend, you also make reference to the offer of
counselling services to the victims of Retta Dixon Home.
A. Mmm-hmm.

Q. Can you understand that some of those victims, if not
most, if not all, would be reluctant to obtain counselling
from the very organisation that was responsible for putting
them in that position?
A. I can understand that.

Q. Have you made any inquiries or endeavours to obtain or
to provide counselling from independent services to those
persons?
A. Not at this stage.

Q. Does that suggest that you would look into that?
A. Well, subsequent to this Commission and the
information we have, then it would seem that that would be
an appropriate response from us.

Q. Reverend, if I understand your evidence - and please
correct me if I am wrong - you say that AIM does not have
the resources to offer financial compensation; correct?
A. Mmm.

Q. Do I take it that if you did have those financial
resources, you would offer financial compensation to all
legitimate claimants?
A. Speaking for myself - I can only speak for myself and
not the whole council, but if we had the resources that we
could make some sort of reparation in a meaningful way,
I would say that would be appropriate.

Q. As spokesman for the organisation, what do you say?
A. Well, that's my position, but I can't speak without
running that past that council, but that's my position,
personally.

Q. Do you say that that had never arisen with your
council before today?
A. No, it has never.

Q. You knew that one of the very issues that is of
interest to this Commission is that of redress?
A. Yes. It's a question of what's appropriate and
possible, as far as we are concerned.

Q. In relation to the structure of AIM, the financial report that has been provided relates to the Australian Indigenous Ministries Incorporated; correct?
A. Yes.

Q. I'm a little like Mr Lawrence and out of my depth when it comes to corporate structures and company law, but who is Australian Indigenous Ministries Pty Limited?
A. That's simply a property holding company - the trustees of the property that is held in the name of AIM.

Q. Are separate financial returns filed for that --
A. They are all included in the one report.

Q. In the document that we have here?
A. Yes.

Q. May tab 19 be placed on the screen, your Honour, and the first page of that, please. Can you see that, reverend?
A. Yes, it's a little blurry. Probably better without my glasses.

Q. Can you assist us with the heading of that "The Companies Act, 1961. A Company limited by guarantee. Memorandum of Association of Aborigines Inland Mission of Australia". The question I have, really, is: Was Aborigines Inland Mission of Australia a company which was limited by guarantee?
A. There were two organisations in those days, as far as I'm aware, because they were the two organisations that have subsequently merged into the two existing ones. There was an unincorporated association known as Aborigines Inland Mission, and there was what was called Australian Indigenous Ministries Pty Limited Property Holding, or the other way around. I think the "property holding" was in brackets at one end or the other of that. That was simply the trust that was set up to hold property. It didn't operate in any way other than holding property.

Q. So as it says in 2(a):

To take over and carry on the activities of the unincorporated association ... to acquire and take over all the real and
personal property and other assets...

A. I assume that was when that property holding company was set up. I haven't seen that document that's in front of me now, but I assume that was the case.

Q. When the change of name occurred in relation to the unincorporated association, did the new association take on all of the assets and liabilities of the former association?
A. Yes.

COMMISSIONER FITZGERALD: Q. Could we just clarify? The company that we are looking at on the screen at the moment, "Aborigines Inland Mission of Australia", the memorandum of association - does that company still exist?
A. No.

Q. It isn't the current trustee of the property trust?
A. No. The current trustee is called Australian Indigenous Ministries Pty Limited.

Q. So the company we are looking at on the screen has been deregistered?
A. As far as I'm aware, yes.

THE CHAIR: Q. Or did it just change its name?
A. There was a name change. I'm not sure whether that - what's on the screen refers to the property holding company. It seems a bit ambiguous to me, because in every reference that I've seen, the words "property holding" appeared - "Property Holding Pty Limited" appeared after the name Aborigines Inland Mission.

THE CHAIR: I've got a suspicion that the first title on that document might have been a typo - maybe it shouldn't have been there, but anyway.

COMMISSIONER FITZGERALD: Q. Let me be clear, the operation of AIM is conducted through the incorporated association known as Australian Indigenous Ministries Incorporated?
A. Yes.

Q. And it took over, as Mr Georgiou has indicated, the assets and liabilities of the unincorporated association?
A. Say again, I'm sorry?
Q. When it incorporated as an association under the Associations Incorporation Act --
A. Yes.

Q. -- it assumed both the assets and liabilities of the previous unincorporated association.
A. Yes.

Q. And separate to that, there is a trustee company, which is a proprietary limited company --
A. Yes.

Q. -- which may or may not be the one we are looking at on the screen?
A. Yes, I'm not sure what that refers to.

COMMISSIONER FITZGERALD: Thank you.

THE CHAIR: The comment I made isn't correct. It is clear that this is the memorandum of association which is then followed by the articles, plainly, of a company, which looks like - well, I don't know. I don't know.

THE WITNESS: No. Is there - I am not even - this may have been something that was proposed and not carried through. I don't know.

MR GEORGIOU: The document that we have does not appear to be signed --

THE CHAIR: That's indeed quite possible.

MR GEORGIOU: Q. Are these the types of documents that would have found their way into the archives?
A. Absolutely.

THE CHAIR: By the way, understand that we have looked at the archives.

MR GEORGIOU: You have?

THE CHAIR: We have. We have found nothing of significance to this inquiry.

MR GEORGIOU: Q. Reverend, as part of the land portfolio of AIM, does it hold property as Coomalie Creek?
Q. At Howard Springs?
A. No.

Q. At Berry Springs?
A. No.

Q. Lee Point?
A. Sorry?

Q. Lee Point?
A. No.

Q. Tortilla Flat?
A. No.

Q. But it does at Humpty Doo?
A. Yes.

Q. Other places in the Territory?
A. Yes.

Q. And in New South Wales?
A. And Queensland. As far as I'm aware, the Coomalie Creek property is owned by the Darwin Community Church, which was a part of AIM years ago, now independent.

MR GEORGIOU: May it please the Commission, those are my questions.

THE CHAIR: Does anyone else have any questions?

MS McLEOD: No, thank you, Commissioner.

MR GRANT: No, Commissioner.

MR THOMAS: I do, your Honour. I appear as counsel for the reverend.

<EXAMINATION BY MR THOMAS:>

MR THOMAS: Q. Reverend, the apology that you have delivered in your second statement, the authenticity of it and the genuineness of it has been called into question today. Is that not correct?
A. It has been, and that I regard as a slight on my word.
Q. Do you acknowledge that one particular individual - and I will name him - Henderson caused, amongst many of the people here, utter grief for them, which is permanent, in their lives?
A. I absolutely acknowledge that.

Q. And, furthermore, he, in particular, the evidence would suggest overwhelmingly, has deprived many of the people here of the innocence of their childhood, amongst other things; correct?
A. Yes, that and ongoing hurt for the whole of their lives.

Q. And he has produced, would it not be the case, many people who became lost in their lives; is that right?
A. From the evidence they put forward, yes.

Q. So you acknowledge as well that there was at least one other person, in 1966, who pleaded guilty, it would appear, in relation to child sexual abuse charges; is that right?
A. Yes.

Q. Committed whilst he was working at AIM; correct?
A. Yes, yes.

Q. And you acknowledge as well the consequences of that for the victims of that; correct?
A. Yes.

Q. Is it also the case that in relation to this particular matter, giving evidence before this Royal Commission, that in terms of securing legal counsel, that that has come late in these proceedings?
A. Yes.

Q. And in terms of putting together that second statement, as opposed to the first statement, that that was done with legal counsel; correct?
A. Yes.

Q. And that that was done reflecting all of what you genuinely felt about this matter, and in particular the apology that you have specified in paragraph 5; is that right?
A. That's right, and I had done that in consultation with my council members.
Q. Can you look the various victims who gave evidence - some of whom are before this Commission right now - in the eye, right now, and say, or be prepared to say, to each of them, that you apologise for the harm that was done to them as a consequence of what occurred to them during their time at AIM?
A. I am very prepared to do that.

Q. You would be prepared to meet each of them individually; is that right?
A. Yes.

Q. With a proper counselling person, members of staff, here, ready to facilitate that; is that so?
A. That's true. In fact, I accidentally met one in the lift last night, and offered him my most sincere personal apology.

Q. In terms of your life, you have already alluded to this, but to get it specific, you have dedicated the last couple of decades of your life to working for and with Aboriginal people; is that right?
A. That's true.

Q. And will that remain the principal purpose of your life until the end of your life, reverend?
A. Probably until I retire, at least.

Q. Indeed. In terms of your involvement as effectively a senior person with AIM, do you expect that that would continue?
A. Absolutely, yes.

Q. And in terms of your involvement with Aboriginal people, is it the purpose ultimately of your involvement with this organisation, AIM, for the white man ultimately to fade away and to be replaced by Aboriginal people?
A. The whole emphasis of our ministry, since my involvement, has been to move to encourage and support indigenous people taking charge of their own affairs, and for the mission to move out of it. In fact, we would love the position to be that we were no longer needed, but such is not the case.

Q. And, reverend, you are involved on a constant basis in speaking with Aboriginal people in isolated areas, are you
A. I am.

Q. There are men, in particular, that are friends of yours in remote areas of the country, in particular the Northern Territory?
A. Dear friends.

Q. Dear friends?
A. Yes.

Q. You, yourself, in terms of your connection with Aboriginal people, have a particular relationship; is that right?
A. I have. I've been welcomed into their fellowship in terms of the closest of relationships.

Q. And in terms of a skin name, do you have one?
A. Yes.

Q. And where is that - what is it?
A. That's Jupurrula.

Q. And in particular, what area is that connected with?
A. It's connected with my friends who are part of the Barkly region, and particularly the Tennant Creek church. The leaders of that church gathered some years ago and told me that they embraced me as a brother and they gave me that skin name, and I identify with them, and they identify with me.

Q. And that relationship with those persons in particular and more broadly you intend to continue; is that right?
A. Yes.

Q. So these words in your second statement of an apology, can you say they are not mere words; they are backed up with genuine feeling which is not merely transient but ongoing; is that right?
A. Yes. I said - I refer to these people as brothers and sisters, and it grieves me to hear what was done, and that's the way I relate to Aboriginal people personally.

Q. In terms of the question of counselling that has been raised and specifically it has been raised the question of counselling by your organisation may, for understandable reasons, not be regarded as satisfactory for many of the
victims; is that right?
A. I understand that.

Q. And in that case, would you be in a position whereby AIM would be able to facilitate communication between victims and another independent organisation for the purposes of securing counselling?
A. We would be very happy to do that, if it was something that was desired.

Q. The question of money has been raised, has it not --
A. Mmm.

Q. -- at length here; correct?
A. Mmm-hmm.

Q. In relation to the AIM, is it the case - and I refer in particular to the financial document which is entitled "Australian Indigenous Ministries Incorporated, financial statements and reports for the year ending 31 December 2013" - you have that there I think before you, reverend; is that right?
A. I don't, no.

Q. On page 4, under the 2013 year in respect of a question of the income statement for the year ending 31 December 2013, in terms of the bottom line - quite literally --
A. Mmm.

Q. -- does it specify that as being a negative operating surplus for that year to the tune of $23,048?
A. That's true.

Q. And is it the case that the organisation AIM runs on a very modest budget, in terms of an operating budget, of approximately $120,000 to $150,000 per annum?
A. That's true, and if you went back through a number of annual reports, you would find that one year it might have been slightly in the positive, the next year will be in the negative, because basically, how we are sustained is through the giving of people who support the mission and an occasional bequest.

Q. In terms of the potential realisable assets, you have mentioned a property at Humpty Doo and you have also mentioned a property at Springwood in New South Wales; is
that right?
A. Mmm.

Q. In terms of the property at Springwood, what is it?
A. It is our New South Wales operating centre.

Q. And it is used specifically for that purpose, is it?
A. Yes.

Q. On an ongoing basis?
A. Yes.

Q. Do you know how much it is valued at in terms of realisable value?
A. It is a humble three-bedroom brick veneer home in the lower Blue Mountains. It is probably valued at $340,000, or something like that.

Q. The property at Humpty Doo, what is that?
A. It is our ministry centre. It was a training institute. It is now our operational centre for the whole of the Northern Territory, where we bring people in for short-term training and such like, as we need to do. Yes. It is a short-term accommodation facility. Yes.

Q. So if you were to sell either of those properties, would they have an obvious effect upon the operating of the organisation?
A. Yes, they would. I don't know how we would sustain what we currently do.

Q. Let's get it clear. If there was money available for the purposes of compensating the victims in this matter, would you do it?
A. If we had money --

Q. If you could?
A. If we had money available - I'm not quite sure what the scale is talked of, but if there was money available that we thought was available, then it would be reasonable.

Q. That would be your intent?
A. Yes.

Q. And would you seek to secure the approval of the council in relation to that?
A. Yes, I think I could speak on behalf of the council
fairly confidently that that would be their position as well.

Q. In terms of the question of the Commonwealth of Australia, you have heard in general terms the question of the Commonwealth potentially being in the position, in broad terms, of possibly being able to, if I can use the colloquial, supply some money - potentially. You have heard that; would that be right?
A. Mmm-hmm.

Q. Is it the case that, at least in principle, you would be seeking, if you could, to assist, at least in some fashion, in cooperating with the Commonwealth in terms of some sort of financial package if that were possible, as far as your organisation was concerned?
A. If it were possible, yes. The only thing I'm concerned of is that what we could do would be seen as tokenism, because it wouldn't be very substantial. But whatever we could do, we would do.

Q. In terms of the next matter, in terms of an apology in a newspaper, would you be prepared, with the approval of the council, to place an apology to all victims of the sexual abuse that occurred in Retta Dixon Home - would you be prepared to do that, place that in a newspaper?
A. Yes, I think --

Q. Australia-wide?
A. I would be quite prepared to place something like that second submission in the public realm.

Q. The next matter is the question of the archives. As is abundantly clear, you have placed a substantial amount of material in the archives; is that right?
A. Yes.

Q. Was that for the purpose, in essence, of preserving those archives for the future? Is that correct?
A. Absolutely. My desire is to make sure that those things weren't lost.

Q. In other words, not to hide, but to keep?
A. Yes.

Q. Correct?
A. Yes.
Q. In relation to the question of insurance - and I'm talking specifically about public liability insurance in the 1960s and 1970s, just to clarify your evidence there, is that you just don't know at this point?
A. No, I don't know.

Q. Reverend, the final matter that I want to raise is this: you are a Christian organisation, are you not?
A. Yes.

Q. You are a deeply Christian organisation; correct?
A. Yes.

Q. Retta Dixon herself, to the best of your knowledge, was in the business of advancing Christian values and, in particular, protecting children; correct?
A. Certainly.

Q. And you know a lot about her and what she was about; is that right?
A. Yes. She started as an 18-year-old single lady working with Aboriginal folk in La Perouse.

Q. And she dedicated her life, ultimately, did she not --
A. She did.

Q. -- to this cause?
A. Yes.

Q. How would she be affected by what's happened in her name - this organisation?
A. She would be horrified.

MR THOMAS: There is nothing further.

MS DAVID: I have no matter arising, your Honour.

THE CHAIR: Thank you, reverend. Thank you for your evidence. You are now formally excused.

THE WITNESS: Thank you, your Honour.

<THE WITNESS WITHDREW

MR GRANT: Commissioners, if I could just clarify the position in relation to Mr Carey, who I understand is going
to be called now, I don't have a brief to represent Mr Carey. My instructors have never acted for him.

I did provide him with statements by Mr Karczewski and Detective Newman, purely as a matter of courtesy and comity, not for the purpose of advising him to give evidence or preparing him to give evidence.

So what I say now, your Honour, I say really as amicus rather than anybody acting for Mr Carey. My understanding is that on the basis of information he was provided by the solicitor from the Northern Territory, he was of the view until Friday evening that any evidence that was to be given in relation to the 2002 prosecution would be dealt with by Mr Karczewski. He was, on Friday evening, interstate. He didn't return to Darwin until Sunday evening. He was in court yesterday, in court this morning.

Your Honour, I feel some discomfort in that there is a very clear potential for unfairness, depending on the nature of the questioning that might be made, if Mr Carey, in those circumstances, is asked to address these issues in any depth or at any length, or in a manner that assumes that there has been some analysis on his part of matters that took place in 2002.

THE CHAIR: Certainly we don't propose to be unfair to anyone.

MR GRANT: May it please the court.

THE CHAIR: If you think that might be happening, as amicus I would welcome your assistance.

MR GRANT: Thank you, your Honour.

THE CHAIR: Mr Carey is no doubt experienced in courtrooms. He is probably capable of looking after himself.

When you are called, Mr Carey, if you feel that you are compromised by not having had access to material sufficiently, then you had best tell the Commission and we will take whatever steps are appropriate

MR CAREY: Thank you.
MS DAVID: I call Michael Carey.

<MICHAEL CAREY, sworn: [4.15pm]>

THE WITNESS: If I can just correct one thing that Mr Grant said, I don't recall receiving a statement of Mr Karczewski, but I did of Sergeant Newman. I received a copy of the memo that I had written back at the time, and I think a copy of a letter and a memo from Mr Anthony Elliott, who was a level below, and the indictments and some other extraneous material, but not the file.

THE CHAIR: Q. You have had a chance to look at those documents?
A. Those documents only, yes.

<EXAMINATION BY MS DAVID:>

MS DAVID: Q. Mr Carey, you are now the Acting Chief Magistrate of the Northern Territory?

THE CHAIR: I think we need to identify him, first of all. Do we need his name?

THE WITNESS: I can confirm that's who I am.

MS DAVID: Q. Mr Carey, you're the Acting Chief Magistrate of the Northern Territory?
A. At the present time, yes.

Q. In 2002, you were a senior prosecutor at the Director of Public Prosecutions office of the Northern Territory?
A. That's so. I think I had the designation of general counsel to the director at that time.

Q. As I understand it, you had been a prosecutor at that office since 1992?
A. That's right.

Q. Is that correct?
A. In the Alice Springs and Darwin offices, yes.

Q. So, as of 2002, you had been with that office at different locations for about 10 years?
Q. Can I just clarify now with you precisely what materials you have been provided with?
A. I didn't bring the file with me. There was a copy of the indictment --

Q. Perhaps if I just show you each of the materials so that we are clear.
A. Yes, thank you.

Q. Most importantly, were you provided with JK11, if we can bring that up, which is a memorandum dated 7 December 2002?
A. Yes, that - from what I can see of it, that appears to be the memorandum that I wrote.

Q. And if we scroll down to the end of page 2, we can see your signature at the bottom, or a signature at the bottom under your name, dated 7 November 2002?
A. Yes, that's right.

Q. So you were provided with that and you have had an opportunity to read that?
A. I have.

Q. Then were you also provided with exhibit 17-19, an email to you from Mr Dooley dated 11 November 2002?
A. If that's an email that was addressed to not only myself but to others, yes, I think I've seen that document.

Q. We're just going to bring it up on the screen to confirm it for you.
A. Oh, righto. No, I don't recall that document.

Q. We will just pause there. If you could just read it. It is dated 11 November 2002. It is addressed to you, Mr Michael Carey; the director of the day, Mr Rex Wild QC is cc-ed in?
A. Yes.

Q. And it is from Mr Glen Dooley, a Crown prosecutor?
A. Yes.

Q. Do you say you hadn't received that?
A. That wasn't in the folder that I received, no.

Q. Did you receive that from the Royal Commission
solicitors recently?
A. Not that I - I received something from the solicitors, that I hadn't opened, because I was interstate, so - but I haven't seen this document before, to my knowledge.

Q. Can I also show you a document dated 27 November 2002, that being under tab 118. It is a case note. Have you seen this document before?
A. I don't believe so.

Q. Would you just take a moment to read that?
A. Yes.

Q. Do you say you haven't been provided with that?
A. No, I have not - well, if I have, I haven't opened it. I certainly haven't seen it in recent times.

Q. You have given evidence very briefly that you received a copy of Mr Newman's statement?
A. I think it was Newman's statement, the indictment, a memorandum written I think by Tony Elliott, Anthony Elliott, and I'm not - I can't remember now exactly what the others were. This wasn't one of them.

Q. The statement of Mr Newman, did that have the annexures attached to it?
A. I don't believe so, from memory.

Q. But you have had an opportunity to read Mr Newman's statement; is that correct?
A. I think - perhaps it might be better if it is shown to me so that I can confirm that for you.

Q. Perhaps we can just have the statement under tab 10 of the statements, that of Mr Newman dated 15 September 2014. We will slowly scroll down.
A. I'm absolutely not certain, quite frankly.

Q. Perhaps if we go to the bottom of that page. This is a statement of some 18 pages.
A. No. I certainly haven't got that, no.

Q. You have told us that you have seen a copy of the indictment?
A. I'm sorry, it wasn't Mr Newman's statement that I received, it was one of the alleged victims. A person's name starting with [REDACTED].

Transcript produced by Merrill Corporation
Q. Would that be Mr [AJD] - the pseudonym [AJD]?
A. I don't know.

Q. Perhaps if we could bring up --
A. He was a person from Western Australia, I think, from memory, from reading the documents that I was given, and his name started with [REDACTED].

Q. We are using pseudonyms for people's names.
A. Yes.

Q. So perhaps if we could bring up the statement RN5.
A. I don't recognise this. The statement to which I refer made a reference to events at Howard Springs and I think Berry Springs.

Q. So there is a second statement by [AJD] dated 3 February 2002, which we can find under tab RN8. Perhaps we can bring that up. Is this the statement that you are referring to? Perhaps if we scroll down --
A. I will just wait for the rest, but that appears to be the one to which I'm referring. That appears to be the statement, yes.

Q. You have referred to an indictment - is that a Supreme Court indictment?
A. A Supreme Court indictment, but in the old - under the old Ordinance.

Q. So if we can bring up JK4, is this the indictment you are referring to? It is an indictment charging 15 counts?
A. That appears to be the one, yes.

Q. In respect of three complainants?
A. That's right.

Q. Is that the material you have had regard to before coming to the hearing to give evidence?
A. Yes.

Q. I really want to focus on the memorandum written by you of 7 November 2002 found under tab JK11. Perhaps we can bring that up.

THE CHAIR: Do you have a hard copy? Mr Carey might prefer a hard copy.
THE WITNESS: Thank you, your Honour.

MS DAVID: We will.

THE WITNESS: Yes, that's the document.

MS DAVID: Q. Mr Carey, do I understand that you have no independent recollection of the prosecution and your involvement in the prosecution of Mr Henderson?
A. None whatsoever, yes.

Q. And do any of the documents that you have looked at or been referred to - have they refreshed your memory at all?
A. No.

Q. So you can only rely on the documents that are put before you?
A. That's - yes.

Q. Can you then assume for the moment, and for the purposes of my questions, that there were committal proceedings in respect of Mr Henderson --
A. Yes.

Q. -- in February 2002, that went over the course of three days?
A. Yes, and I in fact put an excerpt from part of that in here.

Q. Yes. Can you assume that we have heard evidence and seen documents which suggest that Mr Henderson was originally charged with 80 offences in respect of --
A. I think I saw a reference to that in the documentation with which I was provided.

Q. Yes. And that he was committed for trial in the Supreme Court on 15 counts, six of which were added by the sitting magistrate at the time of the committal?
A. Yes, I'm not certain about that, but he was indicted on the 15, I'm aware.

Q. And you have seen the indictment for the 15 charges --
A. Yes.

Q. -- for which he was committed?
A. Yes.
Q. Assume that Mr Dooley was the prosecutor, which we can see?
A. Yes.

Q. And that your first mention in respect of this matter occurs in September 2002, when Mr Dooley sends an email - it is not before you at the moment - requesting some sort of assistance, in that he wants to be led by someone in the upcoming trial?
A. Yes, I think I received a copy of that document as well.

Q. Perhaps we might provide you with a copy of that document, which is found in JK10. If you can assume this is the first mention of you as general counsel in respect of this matter.
A. Yes. Yes.

Q. I now want to take you to your memorandum written on 7 November 2002. The memorandum sets out the purported difficulties, as you saw them, in respect of the prosecution. Do you agree with that?
A. Yes.

Q. And in particular, it sets out the latent ambiguity in the charges?
A. The S problem, yes.

Q. And in the third paragraph on the first page you refer to what you have called the S problem, but also the fact that there is a large time frame over which the offending is said to have occurred in respect of each charge?
A. Yes.

Q. And then you quote an extract from the committal proceedings, which you say shows the problems with the latent ambiguity of the charges?
A. Yes.

Q. You go on on page 2 to say that that same problem occurs with all three Crown victims?
A. Yes.

Q. You also say that there is a problem, or you refer to the fact that the alleged offending occurred 30 to 40 years before the time of trial?
A. That's right.

Q. And you recommend that a nolle prosequi be entered sooner or later?
A. That's right. I also point out some difficulties with consistency, both between the witnesses and within the testimony of each one.

Q. And you say that you received the file "yesterday".
A. That's right.

Q. That being 6 November?
A. Presumably.

Q. You say in the last paragraph that you are told that the police understand the predicament?
A. Yes.

Q. Would you agree that seems to suggest that you haven't spoken directly with the police?
A. No, I'm presuming I was told that by either Glen Dooley or Anthony Elliott.

Q. And you also say that you are advised that the victims were simply pleased to have had the accused committed for trial?
A. Yes.

Q. Do you agree that that suggests you also have not spoken directly with the alleged victims?
A. Yes, I don't believe I spoke to them, yes.

Q. And so you write this minute on 7 November 2002?
A. Yes.

Q. And then - can I show you a further document, this being an endorsement from the court file where you are again named. Can I direct your attention to the bottom --
A. Is this the Supreme Court file?

Q. Yes. So assume that is the Supreme Court file, and if you look at the bottom right-hand endorsement, there is a reference to an appearance on 7 November 2002 where you appear for the Crown.
A. Yes.

Q. And Mr Tippett QC appears for the accused?
A. Yes.

Q. And it says that an application for a separate trial listing will not proceed?
A. Yes.

Q. The trial may not even proceed - will find out in a week or two, court will be informed.
A. Yes.

MS DAVID: If your Honour pleases, I tender that endorsement sheet and it is behind tab 116A and all counsel have copies.

THE CHAIR: It is in the bundle already, is it?

MS DAVID: It is, your Honour.

THE CHAIR: We don't need to tender it.

MS DAVID: Q. So the sequence is you write this minute or memorandum that you have been referred to, and then on the same day - we are not sure whether before or after - there is an appearance where you advise that a separate trials application will not proceed?
A. Yes, and --

Q. Or the court advises --
A. And on the same day I got a notation from the director as well, which is handwritten on my memorandum.

Q. And what does that say?
A. It says:

    MC --

which is me --

    I understand that there is some kind of mention today.

Which leads me to believe I had this before I went to the court:

    However I want some input from Glen before we file a nolle.
That would be Glen Dooley:

He is due back today, I think. Please arrange --

I think that is "a formal meeting", but it is not clear. So I think the order of things is that I wrote the memorandum, the then director responded to it and I then went and did the appearance. I don't know whether it was an arraignment, a pre-trial mention, or what it was.

Q. So you received the file presumably on 6 November 2002?
A. It appears like that from the way I've written it, yes.

Q. The memorandum is completed on 7 November 2002?
A. Yes.

Q. And it appears from the notation that you then attend at a mention or arraignment?
A. That's right.

Q. And from the text of the memorandum, it appears that you have not spoken to a police officer or the investigating officer or the alleged victims?
A. No, I have no recollection. I can't see how I could have. I had the file for 24 hours or less.

Q. And we know that a nolle prosequi was entered on 12 November 2002.
A. I don't know.

Q. Assume that is the case.
A. All right, yes.

Q. There is other evidence of that. And then on 27 November 2002, you have before you a case note of a meeting that you are involved with, which I have provided you a copy of.
A. No, I don't think I have that.

Q. I've shown it to you, but I will provide you with a hard copy. That was the document that came up --
A. Oh, yes.

Q. -- earlier.
A. What are you saying? There was a meeting at which I attended?

Q. Well, there is a meeting on 27 November 2002. We can see this is a case note by Mr Newman, the investigating officer --
A. I don't recognise the format, but I don't think it is a DPP document.

Q. No, it is a police document. And there is a reference to you, in the third paragraph, having viewed the file?
A. Yes, but I don't think this indicates I was present at any meeting. I think it indicates that he was conveying them to DPP to be briefed by Glen Dooley.

Q. So do you have any recollection of being present at that meeting?
A. No, and this document doesn't suggest that I was.

Q. So that is the sequence of events that I want to ask you some questions about. When you were asked, or if you provided an opinion or a memorandum in respect of the matter, as to whether it should proceed, was it customary for you to review the whole file?
A. I imagine so, but I can't remember now. I have clearly looked at the committal transcript.

Q. And when you considered whether a matter should proceed, would you be informed by the DPP guidelines in that regard?
A. Yes, clearly.

Q. And, in particular, in preparing the memorandum and the minute for the director of the day, would you also be informed by the DPP guidelines?
A. I imagine so, yes.

Q. If we can just bring up those guidelines --.

THE CHAIR: Again, a hard copy might be useful.

MS DAVID: Q. It is under JK13. In particular, I wish to take you to paragraph 7.11 at page 11 of the guidelines. Would you agree that the memorandum of 7 November is what is referred to in 7.11 as a discontinuance report?
A. Again, I presume so.
Q. And do you agree that your memorandum of 7 November does not refer to the charges laid by the informant or the charges on which the offender was committed for the trial?
A. Yes, I agree with that.

Q. And, indeed, there is nothing in the document to suggest that they were attached to it or the like?
A. I think the practice was that this memorandum would have been accompanied by the file to the director. But I don't recall today.

Q. There is no reference to those charges or the detail of those charges --
A. No.

Q. -- in your memorandum?
A. I think what I was doing was giving an overview or a critique of someone else's recommendation. This had gone through Mr Dooley, Mr Elliott, then it came to me. I've obviously discussed it with the deputy and I've then sent the memorandum on to the director.

Q. There is nothing attached to this memorandum to suggest that --
A. Neither way, no.

Q. There is nothing, "See advice of Glen Dooley", or "See advice of" anyone else?
A. No, no.

Q. If we move to paragraph 2 --
A. But you can see the director says, "I want some input from Glen before we file", so he is obviously aware of a lot more than just this document.

Q. But there is nothing in this document to suggest --
A. Nothing on the face of it, no.

Q. And there is nothing that we have received to suggest there was any other advice on evidence or summary or report, if you like?
A. I don't agree with that. I recall being given a copy of a memorandum from Tony Elliott.

THE CHAIR: Q. Mr Carey, the fact that the director says he wants input from Mr Dooley rather suggests to the contrary of what you have assumed, that is, at this
point --
A. I really don't know.

Q. At this point, what the director seems to be saying is, "Look, I don't know what Mr Dooley's view about this is, so I want to know what it is."
A. And it may be because of the contents of the last paragraph.

Q. It may be. I just rather think the document doesn't bear --
A. I'm only speculating now.

Q. Sorry?
A. I'm only speculating now. I don't know. But I recall seeing a document where Tony Elliott had canvassed evidentiary problems and I think had passed them on to Newman.

Q. That document related to pre-committal, didn't it?
A. I can't remember. It may well have done.

Q. We might come back to that?
A. Yes.

Q. If we just move to the second aspect of the guidelines, namely, a copy of the defence application request. Do you see that?
A. Whereabouts?

Q. Discontinuance reports --
A. Yes.

Q. -- must include a copy of the defence application or request?
A. Yes.

Q. By this stage, we know from the Supreme Court file that there was a reference to separate trials applications?
A. Yes, there is a reference to it somewhere, yes.

Q. There is no discussion in your memorandum as to any application for a separate trial; you agree with that?
A. Yes.

Q. Nor is there any reference to any such application being attached?
A. No.

Q. Or any discussion of the merits of any such application?
A. Other than I thought I saw something just a few minutes ago that indicated that I was of the view that such an application would have been successful. But I don't have an independent recollection of that, either.

Q. Is that in your memorandum?
A. No, I think it was in one of the documents you showed me just a while ago. It may have been from Glen Dooley. Just --

Q. If I could ask you to focus on what is in your memorandum.
A. It is in the document that looks like the police document, this one here.

Q. The case note?
A. Yes.

Q. Of 27 November?
A. It says that I had reviewed the file, it was my opinion that the matter would not proceed in the Supreme Court. Part of the decision was based on a separate trial application which I believed would be successful, thus diminishing the chances of a successful prosecution. That's where I'm going.

Q. That's a discussion on 27 November 2002, when the decision is being explained to the victims?
A. Yes, and I'm presuming that's what Dooley was conveying to Newman and the victims.

Q. That discussion, that analysis, which led to that view being attributed to you is nowhere to be found in your memorandum; would you agree?
A. Yes, I agree.

Q. And would you agree that there is no reference to the separate trial application at all in your memorandum?
A. That's right.

Q. And do you agree that one of the requirements set out in 7.11 is that discontinuance reports must include a copy of the defence application or request?
A. Presumably in cases where the defence has made such an application or request. But there were obviously cases where we, of our own volition, would assess files and suggest that things shouldn't continue, and those matters went to the director as well, and they were not covered by this, as far as I can see. This section seems to apply to applications by defendants or their representatives for discontinuance. But as you'd understand, there were many files within the office where we instigated that of our own volition.

Q. Sure. But in this particular case we know, don't we, from the cover sheet or the brief endorsement of the Supreme Court file that a separate trials application had been envisaged?
A. That's the one here?
Q. Yes.
A. Yes.
Q. And we know from the discussion on 27 November 2002 that what has been attributed to your recommendation that the matter discontinue, in part, is the prospect of success on a separate trials application?
A. That appears to be the case from this document, yes.
Q. And do you agree that in your memorandum of recommendation to discontinue there is no reference or analysis of the separate trials application?
A. I agree.
Q. Do you agree, according to the guidelines, there should be some analysis of that found in your recommendation?
A. Yes, or at least insofar as applications by defence are concerned, yes.
Q. If I can take you to paragraph 3 of the guidelines, which requires discontinuance reports to include:

A summary of the facts of the case sufficient to permit a proper consideration of the application or request.

A. Yes.
Q. Would you agree that your memorandum does not contain
a summary of evidence or any sort of particular discussion
of the evidence relevant to each count and the sufficiency
of that evidence?
A. No, it doesn't.

Q. And do you agree that the guidelines require
discontinuance reports to include such detail?
A. Yes.

Q. Fourthly, do you agree there is no reference in your
memorandum to the offender's criminal history?
A. Yes.

Q. And, for example, we have heard evidence in this case,
or received documents in this case, that Mr Henderson had
prior convictions for indecent assaults on two boys which
consisted of conduct which had some similarities with that
alleged in this case. Do you accept that, according to the
guidelines, a reference to that fact should have been made
in your discontinuance report?
A. If I was aware of it, yes.

Q. And is that something you should have obtained
information on or sought out in making your recommendation?
A. I think - look, I can't remember, but I suspect
generally that if there was a criminal history it would be
on the file, but I don't really know now, and --

Q. But you agree it should have been in your report, even
if it was just a line, to draw the director's attention to
that fact?
A. If I was aware of it, yes.

THE CHAIR: Q. Mr Carey, the position is that it was
a straightforward matter for the DPP to obtain access to
someone's criminal record?
A. Oh, there is no doubt about that, yes.

Q. And so there was absolutely no impediment to including
it in the report. Either you had it, or you could have
obtained it --
A. Yes.

Q. -- very readily?
A. I suppose so, but I don't have any recollection.
I just don't know.
Q. We don't need to suppose?
A. Yes.

Q. The DPP has access?
A. Of course, yes.

MS DAVID: Q. If we turn back to 7.11 we can see that under subparagraph 5 the discontinuance reports must include the views of the police officer in charge and the victim, and/or a note as to attempts made to obtain those views.
A. Yes.

Q. Do you agree that your final paragraph in your recommendation indicates that you have not spoken with the police or the victims in respect of the matter?
A. Yes, that's right.

Q. Do you think that paragraph, or the fact that you understand that the police are okay with the decision or the recommendation and the victims were okay with the recommendation, was sufficient in the circumstances?
A. Well, I can't recall now what I might have been told by Glen Dooley, but that's where that information must have come from.

Q. Why do you say it must have come from Mr Dooley?
A. Well, I can't - I just can't think where else it might have come from. It was his file, I think, wasn't it?

Q. Well, if we look at exhibit 17-19 --
A. I don't know where I got that information from, today.

Q. Do you think that the memorandum should have been clear as to where you got that information from, what it consisted of?
A. Well, perhaps.

Q. Because if we go back to 7.11, if we go down further to 7.12, it makes it clear, doesn't it, that it's the responsibility of the prosecutor to ensure that consultations with the police officer in charge and the victim have occurred?
A. Yes.

Q. And that was your responsibility, wasn't it?
A. No, that was Mr Dooley's responsibility.
Q. Well, you were the person making the --
A. I wasn't the prosecutor with carriage of the file.
I was doing an overview of it for a particular purpose.

Q. Well, who was going to prosecute the matter for trial?
A. I don't know. Either Mr Dooley, or if he achieved
someone to lead him, that person.

THE CHAIR: Q. Mr Carey, you may have had the overview,
but as the senior person below the director, you had
a heavy responsibility, didn't you?
A. Of course I did, yes. But I also put this out in
24 hours.

Q. Just a minute. Well, I was going to put that to you.
Yes, you had the file for a very short period of time --
A. Yes.

Q. -- yet you felt able to offer an opinion which was
fatal to the prosecution, didn't you?
A. Yes.

Q. Do you think, on reflection, you should have given
yourself a little more time?
A. Well, I don't know whether I had more time.

Q. Well, why didn't you? The trial was not going to
start the next day?
A. I don't know. I have no recollection of the matter.
Somebody may have given me a time line. I don't know.
I can't answer that question.

Q. Counsel has already taken you to the subsequent events
which happened --
A. Yes.

Q. -- and the filing of the nolle the next day.
A. Yes.

Q. But the prosecution wasn't going to take place the
next day.
A. No, it wasn't. I have no idea why I wrote it so
quickly.

Q. No. Well, you see, what has happened when you did
write it so quickly is you haven't looked at the individual
counts that were framed in the indictment, have you?
A. Well, I don't know. I'm presuming I would have, but I don't know.

Q. Well, you haven't talked about them, you haven't analysed them, you haven't spoken of the evidence in relation to them. There is nothing in this document to suggest that you took the time to consider each individual count, is there?
A. On its face, no.

Q. Sorry?
A. On its face, no.

Q. And it was your responsibility, as the senior person advising the director, to do that, wasn't it?
A. I dare say. I just don't recall what the circumstances were now.

Q. It is not a question of the circumstances. You were the senior person giving this advice to the director. It was your responsibility to give yourself the time to consider each count, wasn't it?
A. Yes.

Q. And it was your responsibility to have a look at the evidence that might be available in relation to each count, wasn't it?
A. It was.

Q. And you had an obligation to give the director the benefit of your views in relation to each count?
A. Yes.

Q. And you didn't do that, did you?
A. Not on an individual basis, no.

Q. And you should have, shouldn't you?
A. Perhaps, yes, in hindsight, yes.

MS DAVID: Q. Just on that, you are required, aren't you, to do that under guideline 7.11, where it makes clear at paragraph 6 that the prosecutor's recommendation must be supported by reasons?
A. Yes.

Q. Do you agree that it is not clear what your reasons
are in respect of each individual count for recommending
a nolle prosequi?
A. That's probably fair to say, yes.

Q. Have you had an opportunity to review the evidence in
respect of the charges which you recommended
a nolle prosequi be entered into?
A. No.

Q. Can I ask you this: do you agree that this memorandum
seems to suggest that the basis for the nolle prosequi is
the latent ambiguity of the charges?
A. Yes.

Q. Combined, at least in respect of some of the charges,
with some inconsistency between what was said at committal
and what was said in the statement?
A. Yes.

Q. And, thirdly, there is a reference to the delay
between the time of the alleged offending and the time of
the trial?
A. Yes, and also the ability or inability to nail the
things down to a set time or period, yes.

Q. But would you agree that it is quite often the case in
sexual offences that there might be a broad time frame
during which particulars of a charge are laid --
A. Yes.

Q. -- the real issue is whether the complainant can
isolate an individual occasion so that there isn't any
latent ambiguity in the charge?
A. Yes.

Q. So having broad particulars is not of itself a reason
not to proceed with a charge, is it?
A. Broad particulars - what, a time period, do you mean?

Q. Broad particulars in terms of the time frame?
A. Yes, no.

Q. But a latent ambiguity is, as you have set out in your
memorandum.
A. Yes.

Q. If I suggested to you that in respect of this matter
there were several counts which did not suffer from the problem of latent ambiguity - they were stand-alone incidents and isolated occasions that the complainant in each case could describe and had described, both in a statement and at committal proceedings.
A. I don't know.

Q. You haven't reviewed the transcript?
A. No, I haven't reviewed anything other than these documents that I have told you about.

Q. But if that was the case, in particular, if there were stand-alone charges in respect of each complainant --
A. Mmm-hmm.

Q. -- you would agree that your reasoning for recommending a nolle prosequi wouldn't actually flow on or be a basis to recommend a nolle prosequi in respect of those charges?
A. Not on that basis, that's right.

Q. The only other basis, as set out in your memorandum, was the delay or some particular inconsistency; is that correct?
A. That, and the problem of inconsistency in the evidence, yes.

Q. But the only inconsistency that you have isolated is in the third paragraph on the first page, where there is discussion of a witness saying in her statement that an incident occurred when she was 15 years old, but in cross-examination her saying she was 10 years old.
A. No, that's not the only one. Over on the middle paragraph of the second page I said:

None of the witnesses can say with any degree of accuracy when any particular offence occurred. They cannot really narrow it down to a particular year. In addition, while there is some degree of consistency between the nature of the accused's conduct, there is also a considerable amount of inconsistency between the witnesses, and within the testimony of each particular witness.

Q. But when you refer to inconsistencies within the
testimony of each particular witness, you don't isolate
what they are, do you?
A. No.

Q. So you don't say what they are?
A. Well, I didn't say what they were, other than that one
element.

Q. So when I asked you whether that was the only example
of any particular inconsistency, you agree with that, don't
you?
A. That I set out, yes.

Q. So in respect of the stand-alone, isolated acts that
a particular complainant can depose to, the issue of latent
ambiguity wasn't a problem or a basis to recommend
a nolle prosequi, was it?
A. It wouldn't have been, if that were the case, yes.

Q. But you can't now say --
A. I've got no way I can say now, yes.

Q. And the delay in itself wouldn't be a basis to
recommend a nolle prosequi, would it?
A. Not by itself.

Q. Because you don't isolate any actual prejudice that
the accused would suffer as a result of that delay, do you,
above and beyond the latent ambiguity?
A. And above and beyond those inconsistencies that
I pointed to.

Q. Well, the one inconsistency you have pointed to.
A. Well, the ones I've referred to generally about the
degree of consistency between the conduct, "There is also
a considerable amount of inconsistency between the
witnesses and within the testimony of each particular
witness." I haven't given examples, but I have obviously
observed that as a broad problem.

Q. But you don't provide any basis for that?
A. Well, I haven't given examples of it.

Q. No, you haven't pointed to the transcript where you
say that exists.
A. No, I haven't.
Q. So, on the face of this memorandum, the only real basis to recommend a nolle prosequi is the latent ambiguity in the charges; agree?
A. Well, those things that I referred to - the ambiguity and those other difficulties, yes.

Q. And if - if - you assume there were stand-alone charges or occasions that a complainant could isolate --
A. Yes.

Q. -- as a particular occasion when something occurred --
A. Yes.

Q. -- there would be no basis to nolle prosequi those --
A. On the basis of S, that's right.

Q. And you haven't isolated any other basis in that memorandum to recommend a nolle prosequi in respect of those stand-alone charges?
A. I haven't quoted chapter and verse of the transcript, yes.

Q. You haven't --

THE CHAIR: Q. Mr Carey, if we just go back for a moment to the guidelines --
A. Yes.

Q. -- they required a summary of the facts sufficient to permit a proper consideration of the application or request. Now, what counsel is putting to you is that - and you probably know there has been evidence from the current DPP - there was evidence here that would have founded trials in relation to a number of the counts?
A. Yes, I heard that. But I can't comment on that. I don't have a sufficient recollection, yes.

Q. I appreciate that. But the only way you would have been able to give proper advice in relation to those questions was in fact to be faithful to the guideline, and that is to provide a summary of the facts sufficient to permit a proper consideration of the matters; isn't that right?
A. I suppose, but --

Q. I mean, even for your own purposes, you would know this yourself from your work now but also your work as
a prosecutor, the way you reach a conclusion in relation to any factual matrix and determine whether or not it fits a particular charge is to work your way through the facts relevant to that charge, isn't it?
A. Yes, indeed.

Q. And that's, no doubt, the reason why the prosecutors' guidelines require that to be done, so that everyone can be sure that the prosecutor giving the advice and the director receiving the advice has a proper analysis of the facts that might be approved by the prosecution if the matter goes to court?
A. Clearly, yes.

Q. And we just don't have that here, do we?
A. Not within the memorandum, no.

MS DAVID: Q. And you would agree that this memorandum doesn't comply with the prosecutors' guidelines in respect of what should be in a discontinuance report?
A. Yes.

Q. You have been referred to the minute of 27 November 2002 where the complainants are informed of the decision some 15 days after the nolle prosequi is entered.
A. Yes.

Q. Did you initiate, after recommending that nolle prosequi and having it approved by the director, contact with the officer in charge or the victims?
A. No, I didn't, but it wasn't my file.

Q. Well, you have written a recommendation on it, haven't you?
A. Yes.

Q. And wasn't it incumbent upon you to ensure that you had the victims' views and the views of the officer in charge before a final decision was made on that?
A. Well, I believe from the last paragraph - and that's the only basis on which I can now believe it - is that I had that view.

Q. But you had it from a third person, didn't you?
A. I had it from the person with conduct of the file, yes.
Q. You don't know that, because it is not there, is it?
A. Well, the memo from Mr Dooley seems to indicate that he has conduct of the file, and he has asked to be led.

Q. No, on 7 November, when you write your memorandum, you don't set out who tells you that the police understand --
A. No, I didn't say who told me, but I set out that I understood that to be the situation.

Q. And you don't set out how you understood that to be the situation?
A. No, I don't.

Q. And you have no independent recollection of this matter?
A. No, I don't.

Q. So you don't know how you have come to write that sentence?
A. Other than the fact that I would not have made it up.

Q. No.
A. Then somebody told me. Presumably, Mr Dooley. It was his file.

Q. Wasn't it incumbent upon you to ensure that the victims, alleged victims, and the police officer in charge, knew of your recommendation?
A. No. It was incumbent on the person that had conduct of the file. I had taken this, the decision's come back. It has been transmitted presumably to him. I've put in here that we would of course contact them and give a full explanation, et cetera, et cetera - the corporate "we" - which presumably is the duty of the person having conduct of the file.

Q. Mr Carey, didn't you want to know what the views were before you made a recommendation?
A. Well, I believed I did know what the views were. That's what the last paragraph says.

Q. Didn't you want to have a discussion with the complainants --
A. No.

Q. -- and see if they could provide any further information?
A. No, that was the province of the prosecutor with the conduct of the matter.

Q. Didn't you want to have a direct discussion with the police officer and find out specifically what his views were and what he had to say about it?
A. I don't believe so. But, as I say, I don't recall what happened after this.

Q. And given that you were writing the recommendation, wasn't it incumbent upon you to make those inquiries?
A. I don't believe so.

Q. Can the witness be shown this document --

THE CHAIR: We have gone past 5 o'clock. We need to make some decisions about how we proceed from here. How long do you think you will be?

MS DAVID: I will only be 10 more minutes. I'm not going to be very much longer.

THE CHAIR: Counsel?

MR LAWRENCE: I could be a wee while, your Honour.

THE CHAIR: That doesn't help me. How long?

MR LAWRENCE: Fifteen minutes?

MR GEORGIOU: After Mr Lawrence, I may not have any questions. If I do, no more than minutes, your Honour.

MS McLEOD: No questions, thank you, your Honour.

MR GRANT: No questions on our part, your Honour.

MS DAVID: Q. Can the witness be shown exhibit 17-19. This is an email from Mr Dooley to you.
A. Yes.

Q. Do you have any recollection of receiving this email?
A. No.

Q. Do you agree, in paragraph 2, that Mr Dooley says:

I do think we must keep Roger Newman
abreast of developments and through him the victims.

A. Yes.

Q. I propose I meet the two local victims to explain the decision.

A. Yes.

Q. I could speak to him by phone.

How far have we gone --
A. That's the third victim. I presume that means he's going to meet the first two personally, and then explain to the one in Perth by phone.

Q. Yes. That's a proposal in this email, isn't it:

I propose that I meet the two local victims to explain the decision to them. The other victim is in Perth. I could speak to him by phone.

A. Yes, that's right.

Q. Doesn't that suggest that as of 11 November 2002 they had not yet been spoken to?
A. It does, yes.

Q. So does that not suggest that when you wrote your letter or your memorandum of 7 November 2002 the information that you put in the last paragraph, "I am told that the police understand", "I am also advised that the victims were simply pleased" did not come from Mr Dooley in any contemporary way?
A. No, it doesn't suggest that at all.

Q. Well, if there had been contact between Mr Dooley --
A. I'm presuming Mr Dooley knew by the date he wrote this that the nolle had been recommended and had been accepted subject to some input from him, but I don't recall when and - you know, what stage that was obtained, except that the director wouldn't have signed off on it until that had been complied with, and it then suggests to me that he's
then in the throes of making the very contact you suggest had to be made. That is, he had taken on what I said was the duty of the prosecutor with conduct.

Q. Well, isn't it Mr Dooley who suggests, "I do think we must keep Roger Newman abreast of developments"?
A. Yes.

Q. That's not saying, "I agree with your proposition that we keep Mr Newman abreast of developments", is it?
A. I don't know what he meant now, but --

Q. "I propose that I meet with two local victims to explain the decision. The other victim is in Perth. I could speak to him by phone. VSU would be involved"?
A. Yes.

Q. That does, would you agree, suggest that those contacts had not yet been made?
A. After the recommendation, that's right.

Q. So when you say in your recommendation on 7 November 2002 --
A. Yes.

Q. -- that, "I am told the police understand the predicament", "I am advised the victims were simply pleased to have had the matter committed for trial" --
A. Yes.

Q. -- doesn't that suggest that Mr Dooley has not yet advised them of a possible recommendation to that effect, so you wrote your memorandum without that advice from Mr Dooley?
A. No, it doesn't suggest that to me at all. My memorandum suggests to me that I was informed of those things. After the recommendation was made, Dooley's putting into action, and explaining to them the fact that the nolle has been recommended and may well be accepted, and I don't know whether he had any input into the - as a result of the memo by the director, as to whether we then knew the nolle had been agreed to.

Q. Mr Carey, you told us earlier that you thought Mr Dooley had told you that the police understand.
A. Yes, that's right.
Q. And that the victims were simply pleased that the matter was committed for trial.
A. Well, that's because I can't imagine anybody else who could have told me that.

Q. But my question to you is doesn't that email of 11 November suggest otherwise?
A. No.

Q. Well, why would he be suggesting that you keep Mr Newman abreast - that he or "we" keep Mr Newman abreast - and explain the decision to the victims if he had already done that?
A. My understanding from this is that I was informed that this was the situation at the time I put up the nolle recommendation with the proposal that these people be informed. They probably hadn't been informed at that stage that the nolle had been accepted. It was obviously - its acceptance was to be determined by some input from Glen Dooley after I put up the recommendation. I don't have any idea when it was finally decided to file it, whether it was before or after the 11th, the date of his memorandum. But he clearly understood that this had to be explained - that the nolle process was in train and he had to explain it to them and to the police officer, notwithstanding that he may have done so before, because my memorandum suggests to me that someone told me that they had been informed that this was a possibility and didn't have a problem with the process, with the idea that that would happen. That's all I can glean from this. I've only got the document.

Q. If Mr Dooley had been informed by the investigating officer and the victims or the victims that they didn't have a problem with the matter not proceeding --
A. Mmm-hmm.

Q. -- sufficient to tell you that --
A. Yes.

Q. -- sufficient for you to put it in the memorandum --
A. Yes.

Q. -- how do you reconcile that with the fact that he is writing in an email that he needs to meet with both of the victims, or at least two of the victims, and explain the decision to them?
THE CHAIR: Q. Before you answer that, Mr Carey, can you add to the dilemma the director's note on your memorandum. That reads - I think I have it correctly:

I understand that there is some kind of mention today.

A. Yes.

Q. However, I want some input from Glen before we file a nolle.

A. Yes.

Q. He is due back today --

A. Yes.

Q. I think he had gone on leave.

-- I think, please arrange a [joint] meeting.

A. Yes.

Q. Now, that's written after your memorandum has been written?

A. Yes, it's in response to the memorandum.

Q. Indeed. Which rather suggests that you don't have the input from Mr Dooley that you think you might have had, because the director is asking you to find him out.

A. I don't know what he wanted from Glen Dooley, from going by this, but my memorandum clearly indicates that somebody told me that the possibility of a nolle had been discussed and it wasn't objected to. That's as high as I can put it.

Q. You have written that.

A. I have written it.

Q. But we can now see that Mr Dooley's been on holidays. He has been away. The director is saying to you, "Look, before this goes any further, I want input from Mr Dooley." It rather suggests that the director thinks you didn't have
A. Well, I had something from somebody, because I've written it there.

MS DAVID: Q. We have heard evidence from Mr Newman that when he went to this meeting on 27 November 2002 at the DPP, he thought he was going to meet with the prosecutor to prepare the matter for trial.
A. I don't know anything about that.

Q. And he had never been informed, as of 27 November 2002, that a nolle prosequi was recommended or, indeed, that a nolle prosequi had been entered. We have also heard evidence from the --
A. I don't know when the nolle was actually filed from this document that I have.

Q. Assume the nolle prosequi was filed on 12 November 2002. There is other evidence of that.
A. All right, yes.

Q. We have also heard evidence that when one of the complainants mentioned in that case file note went to that meeting on 27 November 2002, they, too, had not been informed that the matter had already been the subject of a nolle prosequi; they thought they were going to prepare for trial.
A. Yes, I don't know.

Q. Can you provide any explanation for that?
A. No. As far as I can see, this is the only part I played in this whole file, so I don't know what else occurred around it.

Q. Was it acceptable practice within the DPP, in November 2002, for a nolle prosequi to be entered in respect of a serious matter without informing, and getting the opinion of, the officer in charge or the complainants?
A. I wouldn't have thought so.

Q. Well, you were there, Mr Carey.
A. Yes, but I - look, that was 12 years ago.

Q. Yes.
A. I don't remember now. I mean --

Q. You were a prosecutor --
A. The normal practice is to inform the people before the
nolle was filed and, before it was recommended, to inform
them of the possibility that this is what we were looking
at.

Q. And, indeed, that was enshrined in your guidelines,
wasn't it?
A. Yes.

Q. And putting aside the guidelines, was it the practice,
in 2002, for senior people within the DPP to comply with
that guideline?
A. I imagine so, yes, but obviously on this occasion we
didn't, and I don't know the reason for the haste. I've
got no recollection whatsoever. But I received the file
the day before, I put it out within that time period, there
must have been a reason. What it was, I have no idea.

Q. This is a file that involved, at the time of the
indictment in the Supreme Court, three complainants?
A. Yes, so it appears.

Q. Fifteen counts?
A. Yes.

Q. Numerous uncharged acts. It occurred some 30 to
40 years ago?
A. Yes.

Q. The accused person had a prior conviction for like
offending on two boys.
A. Well, I will accept you say that, yes.

Q. Assume the accused person also had been brought to
trial on a previous occasion in 1975.
A. Yes.

Q. So there was a history.
A. Yes.

Q. The complainants were in the accused person's care.
A. Yes.

Q. At the Retta Dixon Home. You would agree that is
a very serious matter.
A. Of course it is.
Q. And do you think that to pick up a file of such complexity on 6 July [sic] and provide a recommendation as provided in that memorandum was sufficient care for such a matter of complexity?

MR GRANT: 6 November.

THE WITNESS: Normally one wouldn't have thought we would put it out that quickly and I can't - I have no reason why - no understanding of why or recollection of why we did, but it clearly must - I did.

MS DAVID: Q. Do you think that was sufficient attention to a matter of that complexity?
A. Perhaps not in hindsight, but I don't know whether I was given a time line, a deadline, or what it was.

Q. No. I mean, you have got no independent recollection of the matter, have you?
A. Of course. And it wasn't my usual practice to turn out these things in 24 hours, so all I can surmise is that there was some reason for it, but I don't know what it would have been.

THE CHAIR: Q. Mr Carey, it is not apparent, is it, from anything you have seen or been told that there was any urgency in providing this advice?
A. Well, I haven't seen anything to indicate it one way or the other and I have no recollection as to it.

Q. But it's plain, isn't it, crystal clear, that unless there was a reason for urgency, a matter of this complexity and this seriousness should have been allowed more time?
A. I agree, yes.

Q. So that when we are looking at the effective functioning of a DPP's office, we would be looking, wouldn't we, for processes which ensured that sufficient time and attention is given to matters before decisions are made --
A. Of course.

Q. -- not to prosecute?
A. Yes.

MS DAVID: Q. And in preparing this memorandum, you didn't speak to a complainant, did you? You did it on the
papers.
A. Not that I recall. I can't imagine how I would have, given the time frame involved.

Q. You didn't speak to the investigating officer?
A. I don't believe so.

Q. You didn't provide any follow-ups or requests or other material - you didn't require a minute suggesting that there were other matters that could be attended to to strengthen the case?
A. No.

Q. There is no analysis of what could improve or strengthen the case?
A. No, but it appeared from the documentation I was given that that part had been addressed by Mr Elliott.

Q. But you didn't add anything to that?
A. Not on this document I didn't, yes.

Q. And you recommended a nolle prosequi within 24 hours.
A. That's right.

Q. And, in hindsight, do you think that that was a sufficient analysis and care taken with what you have agreed as a fairly complex and serious matter?
A. Normally not, but I - as I say, I don't know why it was done so quickly.

Q. We know from the brief endorsement that there was an application for a separate trial listing.
A. I'm just assuming, here, that that note on the court file followed some sort of discussion between myself and Mr Tippett, or somebody and Mr Tippett, to indicate that there may be a nolle process in train.

Q. And we know from other material that the trial date was not listed until 9 December 2002?
A. I accept that, yes.

Q. So another four weeks?
A. Yes.

Q. And so do you agree there is nothing on the papers or in the material that you have seen that could provide any reason for --
A. For the haste, yes. I agree, I haven't seen anything, but that doesn't explain to me that there wasn't, yes.

Q. But you can't provide any explanation for the haste?
A. No.

Q. And do you agree that the way that it appears this matter was dealt with was not in accordance with the prosecutors' guidelines?
A. Yes, and I suspect because of the time period within which it was done.

Q. And do you agree it was not in accordance with good practice within an Office of the DPP?
A. Not unless there was some reason for it, yes.

Q. And you can provide no reason?
A. I've got no idea.

MS DAVID: Thank you, I have nothing further, your Honour.

THE CHAIR: Yes, Mr Lawrence?

<EXAMINATION BY MR LAWRENCE:

MR LAWRENCE: Q. Firstly, Mr Carey, I have to inform you as to who I represent. Lawrence, representing Lorna Cubillo, Sandra Kitching, [AKV], [AKU], [AJW], [AJA]. Just a few questions following Ms David's very thorough questioning of you, Mr Carey, if I may. It would appear that your thrust in explaining the shortfalls that have become apparent here is a shortness of time; would that be fair? Am I summarising your evidence fairly?
A. A shortness of time?

Q. Yes, there was some kind of temporal requirement which led to an overnight --
A. You are talking about the time period within which I produced the document?

Q. Yes, yes.
A. Well, I can only - I'm only speculating about that. I have no idea. It is just that it wasn't normal practice to put one of these out within that time period. That would be exceptional.

Q. Ms David has taken you through the gravity of the
matter, involving not only the charges themselves and who they were committed against, alleged being children in the care of the man; that had a prior; he had been taken to court before unsuccessfully; there were complexities in relation to the charges, and so forth, so it was clearly a matter that would have required an experienced prosecutor to give it careful consideration; you would agree with that?
A. Ideally, yes.

Q. And it would appear, on what we have discovered in this Commission, that that didn't happen here?
A. It was certainly done with some haste, but I don't know why, mmm.

Q. You have said a couple of times that it was Mr Dooley's file. I noticed from the endorsement on the Supreme Court file of 7 November - if you have that before you --
A. Yes.

Q. -- that the lawyers appearing before the deceased Justice Bailey were the defence counsel, Mr Tippett QC, and yourself?
A. Yes.

Q. I take it you don't remember appearing for the Crown --
A. No.

Q. -- before former Justice Bailey then?
A. No.

Q. Is there a possibility that this was your file - as in Mr Dooley sought help in September, for reasons that no-one would want to argue against, and you had been given the file, which explains why you appeared before Justice Bailey and indicated --
A. No. For a couple of reasons, no, that's not - I don't have a clear recollection, but from the documentation I have seen, Mr Elliott seemed to play a much larger role than I did, and I see, from the very document to which you refer, that although I appeared on 7 November, Mr Karczewski appeared on one occasion before that; Mr Wild, the director himself, on another occasion; and somebody else on another occasion. So I don't think that's a fair indication that it was my file. My recollection is
Q. It wasn't your file?
A. Yes.

Q. But you don't have a recollection?
A. I don't, but there's nothing to indicate it was my file. As I say, Mr Elliott and Mr Dooley had a lot more to do with it than I did.

Q. You were the last Crown Prosecutor to appear on behalf of the Crown in a court in relation to it?
A. Yes, and 7 November sounds like an arraignment day, but I don't know.

Q. And you were the Crown Prosecutor who was briefed to examine the entire file --
A. Yes.

Q. -- and give an advice in relation to its prospects?
A. Yes.

Q. So, again, I will put it to you: is it a possibility that you had actually carriage of the file?
A. That's not my recollection, but I don't know. But - I don't think there is any document here that can suggest that.

Q. You would agree - well, I don't know if you can agree because of your memory, but it is quite clear to all who have seen the evidence here and read it that it was a difficult case for the Crown to prosecute?
A. Indeed.

Q. There were difficulties with the age of it, per se?
A. Yes.

Q. That's always a problem. There were difficulties with internal inconsistencies with the individual witnesses, as you point out?
A. Yes, yes.

Q. There were difficulties in law, as pointed out by the High Court in R v S?
A. Yes.

Q. And there was a prospect, or there was in the wind,
talk of the defence bringing on an application for separate trials?
A. Yes. I see there is some notation to that effect, yes.

Q. So all of those things combined make this a tough gig, a hard case to prosecute; you would agree with that?
A. On the face of it, extremely, yes.

Q. And I think I've said this earlier - I would be interested if you agree - it was, if anything, commendable of Mr Dooley in September, having had carriage of the matter up until that point, to seek assistance from learned and more senior prosecutors to lead him in this case?
A. So it appears.

Q. You would agree with that action by Mr Dooley, because of the problems with this case?
A. Yes.

Q. And yet, when you are briefed to advise the Director of Public Prosecutions in relation to it, you do the advice overnight? That seems to be the case here.
A. Well, within 24 hours at least, yes.

THE CHAIR: Q. Mr Carey, when we look at the date of your advice, it is the 7th, of course, and then you are in court on the same day, aren't you?
A. Yes, indeed. And --

Q. And at that point you have the carriage, before the judge, of the prosecutor's brief, don't you?
A. Of the appearance I do, yes.

Q. Well, more than that. You are recorded as telling the court, on behalf of the director, what you think might happen to this case?
A. I don't know, your Honour.

Q. Well, that's what the judge's note says?
A. But I don't know whether I said that or Mr Tippett said it.

Q. In any event, even if Mr Tippett said it, he said it with you there?
A. Yes, of course. That's what suggests to me that the order of events was that the memo was written, was seen by
the director, he has made a comment on it, and then I went
to court.

Q. Yes. And what seems now very likely is that you have
written the memo because you have got the file the night
before, had a look at it, knowing you have to front the
court the next day, and you have formed a view about it;
correct?
A. I don't know. As far as I can see, that was only
a mention date.

Q. I know, and that's the point. You see, when we see
the sequence now - you agree your advice was given far more
quickly than you would normally do?
A. Yes.

Q. We know that you are going to court to appear on
behalf of the prosecutor the next day?
A. Yes.

Q. And that you are, therefore, advising, it is
reasonable to assume, the director with the knowledge that
you will have to confront the defence counsel, or yourself
to put forward the position of the director, the next day
in court?
A. I don't know.

Q. Well, can I suggest to you that that looks to be
fairly clear?
A. It's clear that there was a mention listed the
following day, but I don't know for what purpose.
I mean --

Q. Well, we know it wasn't listed for a trial, don't we?
A. Exactly.

Q. And we know it wasn't listed, on that date, for the
application for a separate trial, don't we?
A. It doesn't appear to have been listed for that
application either at that time.

Q. Which means we know, clearly --
A. It sounds like an arraignment date, looking at the
dates.

Q. Maybe. But we know clearly, now, that there could
have been no urgency, no obligation to have signed off on
the advice before that mention on that day?
A. No, I don't know that, with respect, no.

Q. What other possible reason could there be?
A. Well, it may be that on this particular day, if one pulls out more of the court records, that I may have appeared for the Crown on all files in the arraignments that day, for example. I have no idea.

Q. That may be. You may have done that --
A. But that wouldn't have given particular urgency to this file.

Q. You may have done that, but you advised on this file?
A. I know, indeed. And I don't know why it was done in such haste. But I don't see from these documents that it is because of a mention the following morning.

Q. No, but, now that we look at the documents, given the sequence of events, we cannot offer any other possible explanation for the urgency, can we?
A. I don't know. I can't offer any explanation full stop.

MR LAWRENCE: Q. The notation on the judge's file clearly tells us that both parties would have agreed that the trial may not even proceed - whether Tippett said it or you said it?
A. Of course. There has obviously been some discussion that indicated that there was a nolle process that may have been a possibility. But I would have thought that if the file had been allocated to me for the purpose of conducting a trial, the DPP file itself would have disclosed that, but I don't have any recollection of it.

Q. The trial was listed for 9 December. Are you aware of that?
A. I will take your word for that. I don't know.

Q. I think it was. It was a month away.
A. Yes.

Q. And there just seems to be a void as to any explanation whatsoever as to the urgency of this overnight advice?
A. Yes.
Q. You learnt, Mr Carey, that you were required to give
evidence before this Commission last week; would that be
correct?
A. No.

Q. When did you learn?
A. There was - I've got an email trail, but there was
the suggestion of a possibility last week, and it was not
finalised, I think, until Sunday. In fact, I sent an email
to somebody within the Commission by whom it was suggested
that I might, who said, "Are you available 2 o'clock
Tuesday?", and I said, "I thought there would be some form
of conference to determine whether or not I was to give
evidence; has that decision already been taken?" The email
came back, it didn't say, "Yes, it has", it said, "Can you
make yourself available on Tuesday?", so that's what I've
done. So as late as last Sunday, I didn't know for a fact
that I would be giving evidence here today.

Q. I understand that. But were you given an idea, when
you were informed, as to what your evidence was going to be
about?
A. I don't believe so. I never provided a statement,
because of time constraints. I presumed that it would be
based on the memorandum that I wrote. That would have been
a fair deduction.

Q. Well, were you informed by anyone, either from the
Royal Commission, the Solicitor General, the Director of
Public Prosecutions or any other source?
A. The Director of Public Prosecutions hasn't been in
contact with me whatsoever about this.

Q. I am just asking if anyone has been in contact with
you to say that you were being required to give evidence in
this Commission concerning your role in the decision to
nolle prosequi the 15 charges against Henderson?
A. I don't believe so, but I would have to - before
I could give you that assurance, I would need to look at
the emails.

Q. When did you - what is your evidence today --
A. Counsel assisting should have the email trail as
well - the ones I sent to her.

Q. All right well, when --
A. I don't think it specifically set out, "This is the
ambit of your evidence."

Q. I think you said earlier that you were aware of some of Mr Karczewski's evidence before the Commission?
A. Look, I was interstate from Friday until Sunday. I think I saw something in a newspaper and I may have seen something on the TV news. That's the extent of what I knew about what he had said.

Q. I just want to hear what you say as to - did you know that this Commission wanted to hear evidence from you in relation to the role that you have played in this indictment, namely, the nolle that you recommended?
A. Well, I presumed that, because that's the only role I played.

Q. I know, but did you know that before you turned up here today to give evidence?
A. I assumed that, but I don't - no-one specifically said to me, "This is the ambit of what we want to talk to you about."

Q. Well, that being the case, did you avail yourself of any written material which could assist you assist this Commission in relation to your role in that decision?
A. I had been sent some documentation by the Solicitor General and that's all I had.

Q. And is that documents that you have already told us about - the emails?
A. Yes - no, not the emails. I had a copy of my memorandum; I had a copy of the memorandum from Tony Elliott to I think Roger Newman; I had the copy of the indictment; I had - I think I had the email from Glen Dooley to all of us at the top level asking to be led; and the statement of the witness whose name has now changed or who is referred to with a pseudonym; and I'm not sure what else, but that was about it.

Q. When did you get that material?
A. I'm not certain. Early last week, perhaps.

Q. Last week.
A. Yes.

Q. So you knew that the evidence that you had been requested to give was all about this memo that you wrote to
Rex Wild, the director then, recommending --
A. Yes - well, I presumed that to be the case.

Q. And you appreciated that it was a serious matter - not you giving evidence but the actual decision that was made in relation to this indictment, including 15 charges against Don Henderson - that decision was an important decision?
A. Of course, yes, indeed.

Q. Since you have known about the request of the Commission to assist them in giving evidence, have you requested further materials that would have been relevant to your role and, indeed, your advice in this matter?
A. No.

Q. Could you have done that?
A. I could have.

Q. Did you think you should do that --
A. No.

Q. -- so that you would be as fully informed as possible?
A. No.

Q. -- to answer all of the questions that were going to be asked of you as to why you made that recommendation?
A. No, I did not. And the reason for that is that I had a discussion with the Solicitor General who told me that he would speak to the members of the Commission and that with all - it was hoped that Mr Karczewski would cover all of these matters without the necessity for my being called, and that situation, in my mind, didn't change until Sunday afternoon some time.

Q. All right. So Mr Karczewski has done all of that.
A. Yes.

Q. You are still required, Sunday afternoon?
A. Well, so it now turns out.

Q. It is now Tuesday afternoon?
A. Yes. So I wasn't required Sunday afternoon. There was a possibility. My understanding was that they would have some sort of conference with me and advise me whether I was required. So either - Sunday afternoon, I think, is when I became firmly - I don't know, Monday. I sent an
email asking for confirmation.

Q. So Sunday/Monday, you knew you had to front this Royal Commission --
A. Yes.

Q. -- into Institutional Responses to Child Sexual Abuse --
A. Yes.

Q. -- to give evidence about your what we have described as pivotal role in recommending the nolle against Donald Henderson; right?
A. Yes.

Q. And you haven't sought to obtain all the relevant material that would undoubtedly be available, certainly to the Office of the DPP, to refresh your memory and fully inform you so that you could give evidence as best as possible to this Royal Commission?

THE CHAIR: Mr Lawrence, I think, in fairness, he has explained the sequence of events, and he has had other responsibilities.

Q. What I was going to say to you ultimately, Mr Carey, but I will say it now, is that it will be no surprise to you that the Commission will receive submissions from the parties at the Bar table --
A. Yes.

Q. -- and you can anticipate, from what has occurred, that some of those submissions will be critical --
A. Of course.

Q. -- of you?
A. That much is obvious, yes.

Q. That's right. I wouldn't want it to pass so that you didn't have an adequate opportunity to respond to any of those criticisms?
A. Yes.

Q. Now, therefore - it is your choice - it may be best if we wait until the submissions are in and then, if you want to reply or, indeed, want to give further evidence --
A. Yes.
Q. -- or want access to further documents, then I would appreciate it if you would let the Commission know. I don't want the matter to pass from our consideration without you having every opportunity --
A. Yes.

Q. -- that you may wish to respond to any criticisms.
A. With the documents I have already seen, nothing refreshed my memory. I have no recollection. I didn't think that getting the file would assist me in any way.

Q. I can understand --
A. And I didn't want to second-guess myself by re-analysing it all, all over again, 12 years down the track.

Q. I can understand when you say that the documents you have seen haven't helped to refresh your memory.
A. Yes.

THE CHAIR: As far as I know, I don't think there are other documents, Mr Lawrence, that would have assisted in that respect, from what we have discovered.

MR LAWRENCE: I think that is right, your Honour.

THE CHAIR: Q. I stress again, Mr Carey, I don't want the matter to pass from our consideration --
A. Thank you.

Q. -- without, at some stage, you having the chance to respond to anything that might be perceived as a criticism?
A. Thank you.

MR LAWRENCE: I have nothing further.

<EXAMINATION BY MR GEORGIOU:

MR GEORGIOU: Q. Mr Carey, my name is Georgiou. I appear on behalf of --
A. I do have some recollection of you, Mr Georgiou.

Q. And I of you, Mr Carey. I appear on behalf of Kevin Stagg, Kenneth Stagg and Veronica Johns, survivor victims of Retta Dixon Homes.
A. I don't know who they are, yes.
Q. Mr Carey, I'm just trying to understand one of your answers as to who was going to prosecute this trial?
A. Yes.

Q. You have responded that you didn't know. Might it assist us to determine that if we look at the chronology? First of all, we know that there is a letter or an email from Glen Dooley in September of 2002 --
A. Yes.

Q. -- requesting the assistance of a senior leader?
A. To be led, yes.

Q. Then from tab 116A, which is the endorsement sheet, we see that on 4 November 2002 there was a mention of some sort before Justice Thomas?
A. Yes.

Q. Where the case was adjourned to 9 December 2002 and a trial of 10 days duration was listed?
A. Yes.

Q. I should add, that's not the first time that that hearing date was mooted. You receive the file on 6 November of 2002, so a fraction over one month away from the trial date?
A. Yes.

Q. Do you know why you received the file on 6 November 2002?
A. I'm presuming to make the application for the nolle to the director, but I don't know.

Q. Why would there have been a consideration of a nolle on 6 November 2002?
A. I don't know.

Q. Might it in fact be the case that the file was transferred to you to prepare for trial on 9 December?
A. I cannot say.

Q. The way things operated at the DPP - and please tell me if I'm wrong - is that the trial would be prepared some time out from the expected trial date; correct?
A. Presumably. If appears there was a meeting of some sort arranged for 27 November, about 10 days or so before
the trial date.

Q. It would be a waste of resources, would it not, if you were asked to consider a nolle or look at the file and not be the trial counsel, coming into December of 2002?
A. No, I don't - from recollection, it wasn't an uncommon practice for junior prosecutors - when nolles were recommended, for it to come through me or through one of the senior Crowns.

Q. But in this case, we know Mr Dooley is seeking the assistance back in September of 2002?
A. Yes, yes.

Q. You wouldn't discount the fact that you were going to prosecute the trial?
A. I can't rule it out. I've got no idea, yes.

Q. And you can't rule it out that you were going to prosecute on - sorry, that it was handed to you on 6 December for that purpose?
A. I don't know.

Q. We see on the 7 November 2002 endorsement sheet that his Honour Justice Bailey was told that an application for a separate trial listing "will not proceed"?
A. That's right.

Q. You have no memory of the matter, so you are not able to assist as to who it was who made that determination - that is, whether it be prosecution or defence?
A. Who made the comment? No. Yes.

Q. That was in advance of a nolle being entered; correct - that is, the application?
A. Well, as I understand the information being given to me now it was, yes.

Q. We know from other evidence that it was entered on 12 November?
A. Yes, yes.

Q. We have heard evidence from Sergeant Newman that he, in fact, met with you on 27 November of 2002?
A. Met with me?

Q. Yes.
A. I don't recall that, yes.

Q. You have no recall at all?
A. Yes.

Q. That meeting formed the basis of the case note of 27 November 2002.
A. Well, I don't know that. That doesn't indicate to me that I was necessarily present at the meeting.

Q. Granted that the case note is ambiguous?
A. Yes, yes.

Q. I'm talking about the evidence of Sergeant Newman?
A. Yes. I don't know.

Q. If you look at the middle of that paragraph, after a reference to yourself as having viewed the file --
A. Yes.

Q. -- what is said here is that part of your decision was "based on a separate trial application by Henderson, which Carey believed would be successful, thus diminishing the chances of a successful prosecution"?
A. Yes.

Q. Are you able to assist in any way as to that particular comment, given that on 7 November 2002 it was made clear to his Honour Justice Bailey that an application for a separate trial listing would not proceed?
A. I'm presuming that his Honour - I'm reading this as something that happened previously: that I had formed the opinion; that I'd done the memorandum to the director; that the application for a separate trial was then put aside because of the fact that the nolle had been recommended. Not that there had been an application set down and it was no longer going to proceed because the defence chose not to make the application. My reading of that is that the application didn't proceed because of the nolle process.

Q. It is speaking of a separate trial application in the future, isn't it?

MR GRANT: I object to that, your Honour. The tenses that are used there and the language of that file note on 27 November don't lead necessarily to the proposition that is being put at all. It could quite easily be a reference
to a determination that was made when the separate trial
application was flagged, that it may well be successful, so
it may be speaking retrospectively about matters that were
considered and determined previously.

MR GEORGIOU: I won't press it.

Q. You have not seen any other record or note or
documents suggesting you met with Sergeant Newman on any
other day before 27 November 2002?

A. No, I've seen nothing to indicate I met with him, yes.

MR GEORGIOU: May it please the Commission.

THE CHAIR: Anyone else?

MR GRANT: No questions here, your Honour.

MS McLEOD: No.

MS DAVID: Nothing arising, your Honour.

THE CHAIR: Thank you, Mr Carey, for coming and staying
late. I just repeat to you what I said earlier --

THE WITNESS: Yes, thank you very much for that
opportunity.

THE CHAIR: We will make sure that you get the submissions
and, if you want it, an opportunity. Otherwise, you are
excused.

THE WITNESS: Thank you.

THE WITNESS WITHDRAW

THE CHAIR: Ms David, there is one more witness; is that
right?

MS DAVID: There is one more witness. It should not be
long, and there is a statement to tender.

THE CHAIR: 9.30 tomorrow morning?

MS DAVID: Yes, that would be convenient.

MR GRANT: That's convenient.
THE CHAIR: That's not a problem to anyone?

MR GEORGIOU: No.

THE CHAIR: Can I thank those who have laboured so hard and long all day for their efforts. We will adjourn until 9.30 in the morning.

AT 5.50PM THE COMMISSION WAS ADJOURNED TO WEDNESDAY, 1 OCTOBER 2014 AT 9.30AM
FE


FacC [1] - 5534:30


factor [1] - 5518:10


falling [1] - 5539:13


false [2] - 5551:29, 5551:45

False [1] - 5551:22


expectation [1] - 5565:16

expectations [1] - 5572:45

expected [2] - 5577:18, 5587:45


explain [15] - 5510:7,
merrill
sisters
sister
simple
similarities
significance
significant
gross
significance
signs
silo
similar
signatories
simply
simple
significantly
signs
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soon
sign
single
signers
sources
sought
sit
situation
sits
sitting
sit
sign-on
soon
sign
single
signers
wife [1] - 5563:1
wild [2] - 5644:37, 5677:45
Wild [1] - 5684:1
willingness [1] - 5553:36
witnessed [1] - 5615:35
witnessing [1] - 5595:43
women’s [1] - 5550:29
wondered [1] - 5542:33
Workers [1] - 5535:1
workforce [1] - 5538:25
works [1] - 5544:31
worshipper [1] - 5625:44
wrongs [1] - 5615:15
Y
year [38] - 5511:9,
yesterday” [1] - 5649:9
Yolngu [1] - 5544:47
yourself [16] - 5514:1, 5558:29, 5558:32