ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE AT SYDNEY

COMMONWEALTH OF AUSTRALIA

Royal Commissions Act 1902

PUBLIC INQUIRY INTO

THE RESPONSE OF TOWARDS HEALING

REVISED SUBMISSIONS OF COUNSEL ASSISTING THE ROYAL COMMISSION IN RELATION TO DG

Table of Contents

INTRODUCTION TO CASE STUDY 4 ............................................................................................................................. 2

Submissions made in relation to Case Study 4 ....................................................................................................... 3

Response to general issues raised by the Church parties ...................................................................................... 3

OVERVIEW .................................................................................................................................................................. 6

Child Sexual Abuse of DG ....................................................................................................................................... 6

Response to complaints against Brother Foster by the Marist Brothers .............................................................. 6

DG’s police complaint ........................................................................................................................................... 9

DG’s Towards Healing process ............................................................................................................................. 13

Initial meeting between Brother Hill and DG ....................................................................................................... 15

2001 Contact with the Marist Brothers .............................................................................................................. 17

Settlement conference ......................................................................................................................................... 22

OPERATION OF THE TOWARDS HEALING PROCESS IN DG’S CASE .................................................................. 26

Provision of information about Towards Healing ................................................................................................. 26

Evidence of Brother Hill in relation to Marist Brothers’ use of lawyers .............................................................. 26

Application of Towards Healing (1996) procedures to DG’s matter .................................................................... 27

Referral of DG’s complaint to the Director of Professional Standards ................................................................ 27

Application of Towards Healing (2000) to complaints where there is no dispute as to facts ............................. 28

AVAILABLE FINDINGS ............................................................................................................................................... 31
INTRODUCTION TO CASE STUDY 4

1. The fourth public hearing by the Royal Commission examined *Towards Healing* which is a set of principles and procedures established by the Catholic Church for a person who has been, relevantly for this Royal Commission, sexually abused by a priest, religious or other Catholic Church personnel.

2. The issue of redress for child sexual abuse victims will be considered during a number of case studies, in issues papers and public forums. This public hearing on *Towards Healing* is a component of this.

3. The public hearing was held from 9 December to 19 December 2013 and 22 to 24 January 2014. The Royal Commission heard evidence from four victims who had participated in the *Towards Healing* process, two legal representatives who had acted during the process, personnel who worked for the Professional Standards Offices and Catholic Church Insurances, and members of the relevant Church authorities who had engaged with the victims during their *Towards Healing* processes.

4. The following systemic issues arise from this case study and will be the subject of further consideration by the Royal Commission:
   a. The separation of the pastoral response by the responsible Church Authority from the payment of reparation and the payment of or for services (ie counselling)
   b. The separation of the responsible Church Authority from investigation/assessment of a complaint
   c. Criteria for determining amount of reparation
   d. The involvement of the responsible Church Authority in decisions as to amount of reparation paid
   e. The role of legal and insurance advisers in negotiations and decisions as to amount of reparation paid
   f. The role of apologies from the responsible Church Authority in healing for survivors
   g. Consultation about facilitators/mediators in a redress scheme
   h. The independence of decision makers in a redress scheme (ie their independence from the institution where the abuse is alleged to have occurred)
   i. The independence of facilitators/mediators makers in a redress scheme (ie their independence from the institution where the abuse is alleged to have occurred)
   j. Legal representation of complainants in a redress scheme
   k. Funding for legal representation of complainants in a redress scheme
   l. Disciplinary action against accused.
Submissions made in relation to Case Study 4

5. Following the public hearing, Counsel Assisting made written submissions which were provided to parties with leave to appear. Many of these parties made written submissions in reply.

6. Counsel Assisting have considered all written submissions in reply, and have revised their submissions having carried out that task. These revised submissions in relation to DG are below.

7. In the event that any party with leave wishes to make revised written submissions, they should do so by 22 August. They should clearly indicate which, if any, aspects of their initial submissions should be considered by the Royal Commissioners and which, if any, new submissions they wish the Royal Commissioners to consider.

8. Parties should also advise whether they wish to make oral submissions. A date will be advised if oral submissions are to be made. Any oral submissions should respond to counsel assisting’s revised submissions.

9. Aside from some general issues raised in the submissions of the Church parties, which are responded to in the section immediately below, these submissions do not refer specifically to the submissions made by other parties.

Response to general issues raised by the Church parties

10. The submissions on behalf of the Church parties begin by making some general comments/submissions. In that regard, the Church parties (at [16]) say that the Towards Healing protocol is a statement of the Church’s “position” and (at [18]) that it puts forward a series of “possible steps” in a process “which is, and is intended to be, inherently flexible”. That approach to the interpretation and implementation of Towards Healing serves in the Church parties’ submissions to excuse and justify departures from, or actions inconsistent with, the Towards Healing protocol.

11. While it is accepted that the Towards Healing protocol is not “a legislative instrument or a commercial contract” (cf. Church parties [16]), it is a “document [which] … states public criteria according to which the community may judge the resolve of Church leaders to address issues of abuse within the Church”. Moreover, the document acknowledges the following:

   If we do not follow the principles and procedures of this document, we will have failed according to our own criteria.

12. Having publically committed itself to the principles and procedures set out in Towards Healing, and having invited public judgement on whether it has followed those principles and procedures, it is surprising that the Catholic Church in Australia now says that those principles and procedures are in effect optional, and that it is only compliance with “a substantive or essential principle of the protocol” (Church parties [19]) which is required.

13. Further, the Church parties (at [48]) say that no accepted or objective meaning of either “justice” or “compassion” was proposed or established and (at [51]) it was necessary to
establish, “by evidence”, what is meant by and required by “justice” and “compassion” before any adverse finding could be made that there was a failure to meet those standards. That approach is contested. Even in a court of law applying the rules of evidence, evidence of the meaning of a word is neither necessary nor admissible save in respect of specialised technical meanings — an exception that does not apply in this case. Moreover, none of the witnesses expressed any difficulty with regard to the meaning of “justice” or “compassion” and no objection was made with regard to the use of those words in questioning the witnesses.

14. It is the ordinary meanings of those words in the context in which they appear in the Towards Healing protocol that is relied on. Towards Healing commits the Catholic Church in Australia, and its various formations, to a “just and compassionate” response to victims of child sexual abuse. It is the ordinary way in which readers of that public commitment will understand it that matters. That is the standard to which the formations of the Catholic Church in Australia and its personnel are accountable.

15. It is accepted that minor departures from the Towards Healing protocol should not be visited with specific critical findings of the Royal Commission. The available findings are intended to identify sufficiently significant failures to warrant critical findings of the Royal Commission.

16. It is accepted that the simple syllogism set out by Church parties (at [50]) is not, on its own, an acceptable basis of reasoning. Failures to follow Towards Healing might arise from a failure to act in accordance with the principles of Towards Healing, including justice and compassion for victims, or a failure to follow the procedures of Towards Healing. It may be that a failure to follow the procedures is also a failure to act in accordance with the principles, but that is not necessarily so. It is not accepted that the submissions of Senior Counsel Assisting adopt the identified syllogism without more.

17. It is not accepted that the actions of a Church Authority in respect to disciplining an offender do not properly fall within the parameters of a study on Towards Healing [15]. Clause 42 of Towards Healing (2010) clearly requires the future ministry of the person accused to be considered, and that such decisions are consistent with Church law.

18. The Church parties submit that an adverse finding in relation to an individual should only be proposed or made if the relevant assertion has been put to the individual directly and fully [1.4].

19. This submission is not accepted.

20. First, the rule of evidence in Browne v Dunn does not apply to proceedings before the Royal Commission which are inquisitorial in nature and not adversarial. Secondly, the Royal Commission’s Practice Guideline 1 (2013) provides that “If the Royal Commission is to be invited to disbelieve a witness, the material grounds upon which it is said that the evidence should be disbelieved should be put to the witness so that the witness may have an opportunity to offer an explanation” [67].
21. Finally, there is no doubt that the Royal Commission cannot report adversely without first giving a person an opportunity to answer the matters put against them and to put submissions as to findings or recommendations that might be made (Ainsworth v Criminal Justice Commission (1991-1992) 175 CLR 564 at 581, see also Annetts v McCann (1990) 170 CLR 596 at 601).

22. It is accepted that the factual foundation for the submission as to an adverse finding should be put to the witness. It is not accepted that the adverse finding itself must be so put. It is through the process of submissions that individuals are provided with the opportunity to respond to any adverse findings submitted to be available on the evidence by counsel assisting (see Bond v Australian Broadcasting Tribunal (1988) 19 FCR 494 at 512). It is always open to any person or institution with leave to seek a further opportunity to put evidence before the Royal Commission, prior to the conclusion of the submission process.

23. Matters of policy are not the subject of submissions by Counsel Assisting. As is stated below, systemic issues will be identified and addressed further in the Royal Commission’s work [cf section 1.6]

24. The Church parties also said that they offered to adduce evidence from witnesses on the Towards Healing process generally, but that that proposal was not accepted by the Commission (Church parties at [77]). This is not accepted. The solicitors for the Church parties offered to provide a presentation to the Commissioners in its boardroom as to the operation of Towards Healing. For obvious reasons, that was declined.

25. At no time did the Church parties propose additional witnesses which were declined to be called by Counsel Assisting in relation to the general operation of Towards Healing.

26. As to section 1.8 of the Church parties’ submissions, it is not accepted that analysis of the four sub-studies within the present case study is not possible or appropriate in the absence of “evidence from witnesses on the Towards Healing process generally” (Church parties at [77]). The development of the Towards Healing process over the years is apparent from the different revised versions from 1996 to 2010 as well as the reviews which preceded each version. It is the protocols themselves that were held out by the Catholic Church in Australia as applying at the different times and therefore to the different sub-studies.
OVERVIEW

Child Sexual Abuse of DG

1. DG was sexually abused by Brother Raymond Foster, also known as Brother Celestine, while he was a student at a Marist Brother’s college in the early 1970s. Brother Foster was a teacher at the college at the time. Brother Foster first sexually abused DG at DG’s family home in 1970, and subsequently on the school grounds. DG gave evidence that “[t]here were a lot of other incidents”, and that the sexual abuse continued until he left the college at the end of 1973.

2. DG gave evidence that the sexual abuse has had a “profound impact” on his life and family. He said that the abuse has:

   made me feel alienated and isolated and these feelings have, in turn, had a negative impact on my personal and professional relationships. Particularly, I have to an extent experienced alienation from my parents and siblings since raising the abuse. The abuse has also been a significant factor in my abuse of illegal and legal substances, the destruction of my religious beliefs and trust in religious institutions, and the sense of underachievement I feel in both my personal and professional life.

Response to complaints against Brother Foster by the Marist Brothers

3. Brother Turton was Provincial of the Sydney Province of the Marist Brothers between 1989 and 1995, and had overall responsibility for responding to cases involving allegations of sexual abuse. Brother Michael Hill was the Vice Provincial of the Sydney Province between 1993 and July 1995. As Vice Provincial, Brother Hill shared responsibility with the Provincial for responding to complaints of child sexual abuse. In July 1995, Brother Hill became the Sydney Provincial.

4. In April 1992, the Australian Catholic Bishops Conference Special Issues Sub-Committee adopted a Protocol for Dealing with Allegations of Criminal Behaviour (“the protocol”). The protocol includes the following provisions:

   a. “Criminal behaviour” is defined to include “sexual assault relating to children”.

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1 Ex 4-37 DG [4]; T3092: 15-18.
2 Ex 4-37 DG [4]; T3092: 15-18.
3 Ex 4-37 DG [5]; T3092: 20-21.
4 Ex 4-37 DG [6]-[7]; T3092: 23-32.
5 Ex 4-37 DG [8]; T3092: 34-36.
6 Ex 4-37 DG [9]; T3092: 38-39.
7 Ex 4-37 DG [9]; T3092: 38-47 and T2093: 1-5.
8 Ex 4-40 Turton [26].
9 Ex 4-39 Hill [20-21].
10 Ex 4-39 Hill [28].
11 Ex 4-1 Tab P.
12 Ex 4-1 Tab P [2].
b. clause 5.2 provides that the Provincial Council should establish a Special Issues Resource Group consisting of personnel who are skilled in dealing with allegations of criminal behavior

c. clause 6.1 provides “Whenever the competent ecclesial authority receives information of alleged criminal behaviour the matter shall immediately be referred, except in circumstances of a most serious and extraordinary nature, to the relevant Special Issues Resource Group”.

5. The protocol applied to the Marist Brothers between April 1992 and the commencement of the first Towards Healing protocol in 1996.  

6. Between 23 November 1991 and 31 August 1994, Brother Foster was working as a teacher at St Joseph’s College Hunters Hill. During this time, the Marist Brothers received a number of complaints in relation to Brother Foster as detailed below.

7. The first record of a complaint against Brother Foster (also known as Brother Celestine) is a file note dated 30 August 1993, which records a complaint by a man – given the pseudonym DR by the Royal Commission – that he was sexually abused while he was a student at St Augustine’s College Cairns during the 1950s. Although the complaint related primarily to a Brother Sebastian, the file note also records: 

   Less frequently a Brother Celestine subsequently R.F., ran the tuckshop and said he enjoyed watching people abuse themselves and masturbate. Not as serious as Sebastian.  

8. The file note states that the complainant “[w]ants no publicity, wants no action, just wanted to tell someone so as to free his own mind of the situation. I spoke to him for quite some time and he seemed very genuine.” This file note records the name and contact number of the complainant, but does not record who received the complaint or who wrote the file note.

9. At the time this complaint was made, Brother Turton was travelling to Rome for a conference. He did not return to Sydney until November 1993. Brother Turton agreed that whoever had made the note would have taken it as a serious matter and that it was likely that it would have been brought to his attention, as Provincial, either whilst he was in Rome, or when he returned to Australia.

10. However, there is no evidence that anyone in the Marist Brothers took any action in relation to this complaint, and it appears that Br Foster continued to teach in an unrestricted capacity at St Joseph’s.

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14 Ex 4-38 Tab 71.
15 Ex 4-38 Tab 1.
16 Ex 4-38 Tab 1.
17 Ex 4-38 Tab 1.
18 Ex 4-40 Turton [38]; Turton T3199: 40 – 44.
11. The second complaint is outlined in a letter from Father John O’Connor, a semi-retired priest in Tully Heads, which was forwarded to the Marist Brothers on 25 May 1994.\textsuperscript{20} It describes a visit to a man with a name similar to that of the complainant named in the file note of 30 August 1993,\textsuperscript{21} and reads:

\textit{In the course of conversation he said that he had been sexually molested by two Marist Brothers whilst a boarder at St Augustine’s Cairns. It happened over a period of two years. He was 12 and 13 years old at the time. He is now 53 so this would have happened 40 years ago about the year 1954 and 1953. I don’t think he is going to lay any legal charges.}\textsuperscript{22}

12. Finally the letter states: \textit{“The usual Special Issues Incident Report, with this information, is being sent to CCI on behalf of the Cairns Diocese.”}\textsuperscript{23} Neither of the Brothers is named in the letter.

13. Brother Turton said that he has no actual recollection of receiving this letter, but that he has no doubt that he received it shortly after 25 May 1994.\textsuperscript{24} He said that he took no further action as a result of the letter.\textsuperscript{25}

14. Given that the complainant named in this letter and the complainant named in the file note of 30 August 1993 (a) have similar names;\textsuperscript{26} (b) both reside in Tully Heads; and (c) both complained of sexual abuse by two Marist Brothers at St Augustine’s College in Cairns over a period of two years in the early 1950s, it is at least possible, and indeed likely, that these two complaints were made by the same person and that the second complaint is therefore also about Brother Foster.\textsuperscript{27}

15. Thirdly, a document entitled \textit{‘Allegations Regarding AB24’} records two complaints against Brother Foster, AB24 being a code that was used by the Marist Brothers to refer to Brother Foster.\textsuperscript{28} Brother Turton said that this document is a summary of the allegations that had been received by the Marist Brothers in relation to Brother Foster, and that he created it sometime between November 1993 and 29 June 1994.\textsuperscript{29} The document records the following:

\begin{itemize}
  \item a. a phone call from a man, with a name similar to those given the pseudonym DR, alleging that when he was a student in the 1950s, Brother Foster had exposed
\end{itemize}
himself and encouraged the then student to stimulate himself, and that this had happened on a few occasions.\(^{30}\)

b. that, “About 1991 an anonymous caller rang the Brothers’ house – not very coherent – alleging certain things against AB24 of a sexual nature. No further information was available ... The anonymous caller could not be followed up.”\(^{31}\)

c. that “Discussions by Provincial with AB24 gained an acknowledgement that there had been two incidents in the Fifties which were inappropriate. No further action taken.”\(^{32}\)

16. In relation to the final point, Brother Turton said he recalled that Brother Foster had admitted to two incidents of “inappropriate conduct”, but that he could not recall any other details about the conversation.\(^{33}\)

17. Brother Turton said that he has no recollection of what factors he took into account in deciding to take no further action.\(^{34}\) He said:

\[
\text{I can’t remember my thought process at that time, but I didn’t consider that it was necessary, what the meaning, the severity of “inappropriate” – I don’t know. Given the learnings that we have made, the severe learnings over the years, I am quite sure that I would have taken action today.}\]\(^{35}\)

18. Brother Turton said that he assumes he would have obtained an assurance from Brother Foster “that what was referred to 40 years ago was not an issue now.” He also said, “but I cannot state that for sure, since I don’t recall that.”\(^{36}\)

19. Brother Turton said that he did not refer the complaints against Brother Foster to the relevant Special Issues Resource Group as required by the Protocol for Dealing with Allegations of Criminal Behaviour. He agreed that this protocol applied to the Marist Brothers at the time.\(^{37}\)

**DG’s police complaint**

20. DG first revealed his abuse by Brother Foster in 1990 whilst attending marriage counselling. In early 1994, DG reported the abuse to the Queensland police, and made a police statement.

21. DG said:

\[
\text{i know it took me a long time to make the complaint but, until that time, I don’t think I was stable or strong enough and in a strong enough relationship}\]
to be able to put myself forward to do it. My parents didn’t even know that Br Foster had sexually abused me until I made a statement to the Police. I think the hardest thing I had to do was walk through the door of a police station and stand at a desk with people around and say why I was there.\textsuperscript{38}

22. The Queensland police interviewed Brother Foster on 24 August 1994.\textsuperscript{39} On 25 August 1994, Brother Turton spoke to Brother Foster. He recalled:

\textit{Br Foster came to speak to me and said that he had been accused of offences when he was in [redacted]. Although I do not remember his exact words, or whether he specifically mentioned the police, he gave me the strong impression that it was serious and that he needed legal advice. I referred him immediately to our legal advisers so that they could put him in touch with a criminal lawyer if necessary.}

\textit{I also told him that I was standing him down until further notice. I transferred him from his current teaching position [at St Joseph’s College] to the Marist Community residence in Eastwood.}\textsuperscript{40}

\textit{My recollection is it was a fairly brief interview. He did not want to give me any detail except to say that there was police; he declined to make comment. And I think I asked him was it a serious matter, and he said it could be, and he particularly came to see me to request legal advice and he didn’t want to say any more about it. So the only thing I knew about it was that it was [...] a police investigation, could be a serious matter, and the location where it was, and on that basis I withdrew him from ministry.}\textsuperscript{41}

23. Brother Turton gave evidence that after transferring Brother Foster to Eastwood, he directed him not to be associated with minors. Brother Turton said that he may have also told the person in charge of Eastwood, but that he could not be sure.\textsuperscript{42} He said that “there was no other plan made out at that stage.”\textsuperscript{43}

24. Internal memoranda of the Criminal Investigation Branch of the Queensland police record a belief by the police that Brother Foster was continuing to work as a teacher at St Joseph’s College in Hunters Hill in February and March 1995.\textsuperscript{44} However, it is submitted that Brother Turton’s evidence that he removed Brother Foster from St Josephs on or shortly after 25 August 1994 is supported by:

\textsuperscript{38} Ex 4-37 DG [11].
\textsuperscript{39} Ex 4-38 Tab 7.
\textsuperscript{40} Ex 4-40 Turton [41]. See also Turton T3212: 36 – 38.
\textsuperscript{41} Turton T3213: 1 – 20.
\textsuperscript{42} Turton T3215: 1 – 7.
\textsuperscript{43} Turton T3214: 38 – 46.
\textsuperscript{44} Ex 4-38 Tabs 7 and 8.
a. a letter dated 30 September 1994 from Brother Foster at the Eastwood Marist Community centre to Brother Turton in relation to the projects he was working on there,\textsuperscript{45} and

b. Brother Foster’s ministry record.

25. The Queensland Police did not proceed with DG’s case until 1999 when arrangements were made to extradite Brother Foster from New South Wales to face the charges in Queensland. The morning he was to be extradited, 23 March 1999, Brother Foster committed suicide.\textsuperscript{46}

26. Brother Foster left a letter for Brother Hill (the ‘suicide letter’),\textsuperscript{47} which states:

\begin{quote}
I bear no ill will against the person who had me charged as he had every right to do so and I ask his forgiveness if he would be so kind. May God forgive me for my actions then and now.\textsuperscript{48}
\end{quote}

27. Brother Hill gave evidence that he found this letter after viewing the body of Brother Foster, and did not provide a copy to the police.\textsuperscript{49}

28. DG said he was “really angry with Br Foster for choosing suicide over facing me or the Queensland Courts about the abuse he inflicted on me. I felt like he had chosen a path designed to free him from prosecution and inflict guilt upon me”.\textsuperscript{50}

29. On 24 March 1999, following Brother Foster’s suicide, Brother Hill wrote a letter to the Marist Brothers, which said that he had spoken with Brother Foster “several times” over the weekend following his arrest before his extradition.\textsuperscript{51} He also wrote that someone who was a student in the early 1970s had brought charges against Brother Foster, and that Brother Foster had “indicated that he intended to plead guilty to the charges”.\textsuperscript{52} The letter stated:

\begin{quote}
At a time like this I can only resonate with what many of you would be feeling … devastation, anguish, deep sadness and puzzlement. Our faith is sorely tested by such an action. Our sense of hope can be exposed as something quite fragile. Yet it is in faith, hope and love that we must support each other more than ever. We ask the Lord to receive Ray into his presence so that he may experience the peace which clearly eluded him in the final days of his life. We pray particularly for the Brothers of the Marist Centre community. Their
\end{quote}

\textsuperscript{45} Ex 4-38 Tab 6A.
\textsuperscript{46} See Ex 4-39 Hill [43]; Hill T3129: 31-36.
\textsuperscript{47} Ex 4-38 Tab 13.
\textsuperscript{48} Ex 4-38 Tab 13.
\textsuperscript{49} Ex 4-39 Hill [45, 47].
\textsuperscript{50} Ex 4-37 DG [19].
\textsuperscript{51} Ex 4-38 Tab 14.
\textsuperscript{52} Ex 4-38 Tab 14.
loss is deep and painful. Knowing that they have our unconditional fraternal support will be of great consolation to them.  

30. Brother Hill agreed that the fact he did not mention the need to assist or pray for the complainant in this letter was a serious omission.  

31. Brother Hill said that following Brother Foster’s suicide, “I was certainly quite concerned for the, at that stage, unknown, person, [DG] but I did not see any way of being able to determine his identity.”  

32. Following Brother Foster’s suicide, some Marist Brothers were quoted in local newspapers as saying that “Br Foster hadn’t committed suicide, but had died of natural causes and was a wonderful man.”  

33. DG said “this really upset me at the time”, and “these things really stuck with me; they made me feel like I was harassing a sick old man, rather than seeking justice for the actions of a devious, slothful and drunkenly indulgent child molester.”  

34. Brother Hill said:

   I became aware on or about 24 March 1999 that one of the Brothers from the Marist Centre in Mittagong had been contacted by a journalist, and had made comments to that journalist ... I did see statements in one or more newspapers, and heard one or more broadcasts, to the effect referred to by DG. The Brother who made the comments to that journalist had no experience in the type of allegations made against Br Foster. I did not authorise the statements made by that Brother, I was not aware of them until they were published, and was appalled by them when I did see them.

   After becoming aware of these reports, I telephoned the Brother who had made the comments and said “The Provincial and the Vice Provincial alone are to be the spokesmen for the Marist Brothers. If any journalist contacts Mittagong, refer the journalist to Drummoyne.”

   At around that time, I also contacted those media outlets which had published or broadcast reports that Br Foster had not committed suicide, in order to correct those reports.  

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53 Ex 4-38 Tab 14.  
54 Hill T3189: 34 – T3190: 8.  
55 Hill T3131: 15 – 38.  
56 Hill T3130: 8 – T3131: 43.  
57 Ex 4-37 DG [20].  
58 Ex 4-37 DG [20].  
35. Brother Hill did not put out a public statement on behalf of the Marist Brothers publicly correcting and apologising for the false information.60

36. Brother Hill agreed that his actions following Brother Foster’s suicide give the impression that he was more concerned with protecting the reputation of the Marist Brothers than in ensuring that victims got support and that the truth was made public.61 Brother Hill said, however, that “[a]t the time I wouldn’t have seen myself as actually doing that.”62

**DG’s Towards Healing process**

37. In early 2000, DG wrote to the Marist Brothers in relation to the abuse perpetrated by Brother Foster.63 DG attached the statement he had made to the Queensland Police setting out his account of what happened to him, and wrote:64

> These events have engendered in me a cynical disrespect of authority and a sense of underachievement in my personal and professional life [...]

> Foster’s actions destroyed my trust and beliefs in religion be it Catholic or other. This is reflected in my utter distrust of clergy and many of the lay people associating themselves with religious schools and groups, particularly males.65

38. This letter was received by Brother Hill, who sent it to Howard Harrison of Carroll & O’Dea, the Marist Brothers’ solicitors.66 Mr Harrison then forwarded the letter to Catholic Church Insurances Ltd (CCI).67

39. On 15 March 2000, Mr Harrison wrote to a CCI employee regarding DG’s complaint, and said “Br Hill suspects that some form of legal dialogue would be the best way to handle the matter and that the Towards Healing system is unlikely to produce a resolution.”68 He attached a draft letter from Brother Hill to DG, and asked for CCI’s comments on whether it “presents any difficulty.”69

40. The following day Brother Hill replied to DG’s letter, amending the draft proposed by Mr Harrison, but adopting the following paragraphs:70

> The Towards Healing Resource Group in Brisbane do provide a mediation facility which we could look at. Alternatively, you may have a solicitor acting for you.

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60 Hill T3133: 25 – 34.
61 Hill T3135: 40 – 47.
62 Hill T3135: 40 – 47.
63 Ex 4-38 tab 17. The letter is dated 29 January 2000 (on the first page) and 29 February 2000 (on the second page).
64 Turton T3230: 35 – 40. See TJHC Submission paragraph [31].
65 Ex 4-38 tab 17.
66 Ex 4-38 tab 17.
67 Ex 4-38 tab 18.
68 Ex 4-38 tab 19.
69 Ex 4-38 Tab 20.
70 Ex 4-38 Tab 22.
Perhaps you could contact me to discuss how we might best go forward to look at some form of revolution [sic] of these painful issues from the past.\(^{71}\)

41. Brother Hill agreed that the letter reads as though DG had two choices: he could either follow *Towards Healing* or be represented a solicitor, but not both,\(^{72}\) and that his expectation was that DG would choose between these two options after receiving Brother Hill’s letter.\(^{73}\) Brother Hill also agreed with the proposition that the *Towards Healing* procedures do not preclude a complainant from being represented by a solicitor.\(^{74}\)

42. Brother Hill said that he did not provide DG with information about *Towards Healing* in this letter because “*I intended to do that when I met with him.*”\(^{75}\)

43. This letter was sent to Mr Harrison, who forwarded it on to CCI.\(^{76}\)

44. On 6 April 2000, DG replied to Brother Hill, writing:

> I have been open in my submission and now require the same from you …

> These issues are not new to you or your organisation. If you are the person empowered to liaise, on behalf of the Marist Brothers, then we must meet as soon as can be arranged.

> I will continue to consider the avenue of legal representation, but would prefer to deal with this as I see fit and with the help of my loved ones.\(^{77}\)

45. Brother Hill said that he interpreted this letter at that time as “*perhaps he [DG] does not want to go into a church-sponsored process*”,\(^{78}\) but agreed with the proposition that DG’s letter is entirely consistent with *Towards Healing*.\(^{79}\) He said that “*at that stage – I’m not saying it was against Towards Healing, but at that stage I hadn’t sat down with him to discuss the procedures of Towards Healing.*”\(^{80}\) Brother Hill then explained that his understanding that DG did not want to proceed with *Towards Healing* came later.\(^{81}\)

46. On 8 May 2000, Mr Harrison met with Lisa Clarke and Paul Gamble of CCI in relation to DG’s matter.\(^{82}\) The file note reads:

> It was a case where there was knowledge of a propensity on the part of the brother and that may knock us out from a special issues viewpoint.

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\(^{71}\) Ex 4-38 Tab 22.

\(^{72}\) Hill T3154: 30 – 36.


\(^{74}\) Hill T3154: 16 – 36.

\(^{75}\) Hill T3154: 38 – 40.

\(^{76}\) Ex 4-38 tab 23.

\(^{77}\) Ex 4-38 Tab 25.

\(^{78}\) Hill T3155: 10 – 42. See also Ex 4-39 Hill [60].

\(^{79}\) Hill T3155: 10 – T3156: 18.

\(^{80}\) Hill T3156: 14 – 18.


\(^{82}\) Ex 4-38 Tab 30.
I informed CCI as to where we are up to in terms of speaking with the Plaintiff.

It was agreed that this matter would go somewhere at some stage but it’s up to the Plaintiff to initiate matters in all probability.83

47. Brother Hill responded to DG on 12 April 2000, proposing they meet in DG’s home town.84 This letter was sent to Mr Harrison, who forwarded a copy on to CCI.85

48. On 28 April 2000, DG wrote to Brother Hill requesting that he “ask the N.S.W. police, or your solicitor, for the transcripts of the police interview/s with Brother Raymond [Foster], pertaining to my complaint”.86

Initial meeting between Brother Hill and DG

49. Brother Hill met DG and his wife in DG’s home town during a trip to Queensland on 11 May 2000.87

50. Brother Hill said that in the initial meeting DG had said, “I am suspicious of Church processes and reluctant to engage in Towards Healing because I do not trust anyone in a position of authority”.88 Brother Hill stated, “Given DG’s unwillingness to use Towards Healing, I did not describe the benefits of Towards Healing”.89 DG agreed that at this initial meeting he had said that he was not attracted by the Towards Healing approach.90

51. Brother Hill’s record of this initial meeting reads: “I repeated to him options which I had outlined in a previous letter. He [DG] is not attracted by the prospect of a towards healing line of action, but agreed with my strong suggestion that a settlement be negotiated through two sets of solicitors.”91 When asked why he made this strong suggestion, Brother Hill gave the following evidence:

Having chosen not to go down the line of Towards Healing, I wanted to find some form of moving towards a satisfactory resolution.92 […]

He had indicated to me that he was, first of all, not interested in church-sponsored procedures, so that left me with limited options as to what to suggest to him.93

52. Brother Hill said that he did not offer DG information about Towards Healing following the initial meeting because “he had rejected that line of action.”94 Brother Hill rejected the proposition that he should have provided DG with information about Towards Healing.
either before, during or after the initial meeting, and said “I still believe it was too soon to do that”.  

53. DG said that following the initial meeting, “I really didn’t understand where Towards Healing was coming from and whether I was in or out of that process”.  

54. DG also said that this initial meeting “was not great; it felt really empty because no further information was given about my case. Br Hill said he didn’t know Br Foster and was not really able to tell me anything about the case that I didn’t know already. There was still this void around the suicide of Br Foster”. DG said that he was “never given any information of his [Brother Foster’s] whereabouts or admissions of guilt or whether he was still working or whether anybody else had made complaints against him.”  

55. Brother Hill said, “I did not say that I ‘didn’t know Br Foster’. Such a statement would have been untrue, as I certainly had known Br Foster.” However he also said that he talked about Brother Foster only briefly, and that “the only detail about Foster that I mentioned to [DG] was to confirm the suicide and also to clear up the matter of the way it was reported in local media, and I apologised to him for that”.  

56. Brother Hill said that he did not attempt to obtain the information that DG requested in his letter of 28 April 2000. He accepted that he knew who Brother Foster’s solicitor was, and that he did not ask the police or Brother Foster’s solicitor for the information requested by DG. Brother Hill said that he “could not work out what that information might be that he [DG] wanted.”  

57. The evidence establishes that at the time of his meeting with DG, Brother Hill knew the following information about Brother Foster, but did not convey it to DG:  

- that Brother Foster had been withdrawn from ministry following DG’s complaint to the police  
- that Brother Foster intended to plead guilty to the charges relating to DG

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95 Hill T3179: 29 – 32. See TJHC Submission paragraph [55].  
96 Ex 4-37 DG [27].  
97 Ex 4-37 DG [25].  
99 Ex 4-39 Hill [70(a)].  
100 Hill T3165: 1 – 1; T3157: 22 – 25.  
101 Ex 4-39 Hill [70(b)]; Hill T3157: 36 – 43.  
102 Hill T3157: 45 – T3158: 8.  
104 Hill T3158: 28 – 32.  
105 Hill T3162: 21 – T3165: 17; Ex 4-38 Tab 14 at STAT.0079.001.0020_R.
c. that Brother Foster had left a suicide note in which he had asked for DG’s forgiveness
d. that there had been other allegations against Brother Foster prior to DG’s complaint, and
e. that Brother Foster had admitted to two incidents of inappropriate conduct in the 1950s.

58. Brother Hill did not agree with the suggestion that “a compassionate response, in accordance with Towards Healing protocols, would have been to engage in a discussion which would include imparting crucial information to Mr [DG].”\(^{106}\) He responded “Not in that first meeting. I don’t agree, no.”\(^ {107}\)

59. At the end of this initial meeting, Brother Hill expressed his willingness to meet again with DG, however he did not subsequently attempt to contact DG.\(^{108}\) Brother Hill said:

\[I \text{ had not initiated any further contact in that period [following the initial meeting] because DG had said that he wanted to deal with the matter in his own way and because I did not want to seem to be harassing him. However, if I were given the opportunity to revisit this complaint, I would send DG a letter summarising the outcomes of our meeting held on 11 May 2000. Such a letter would have confirmed that I was very willing to meet with DG again, if he wished to do so.}\(^ {109}\)

2001 Contact with the Marist Brothers

60. Over a year after the initial meeting, DG retained the assistance of Michael Byrne, a barrister and a member of the Queensland Professional Standards Resource Group. Mr Byrne provided DG with advice about Towards Healing and gave him a copy of the Towards Healing document.\(^ {110}\)

61. On 20 September 2001, Mr Byrne wrote to Brother Peter Rodney, a Marist Brother, on behalf of DG.\(^ {111}\) The letter set out some background to DG’s complaint, and continues:

\[Mr \text{ DG is of course seeking some financial compensation to reimburse him for the cost of counselling incurred over many years and necessitated by the abuse, which eventually lead to the failure of his first marriage. He would like some form of apology process that could embrace his parent’s [sic] and family, since his raising of these issues has resulted in some degree of alienation between him, his parents and his siblings. He would like some form of public recognition of the misdeeds of his abuser in the [redacted] area, as he}\]

\(^{106}\) Hill T3165: 12 – 16.
\(^{107}\) Hill T3165: 17.
\(^{108}\) Hill T3161-3162; T3167; Ex 4-39 Hill [72]; Ex 4-38 Tab 31 at page STAT.0079.001.0050_R.
\(^{109}\) Ex 4-37 Hill [85]. See also T3179: 4 – 27.
\(^{110}\) DG T3109: 23 – 26.
\(^{111}\) Ex 4-38 Tab 36.
perceives he was identified, or at least identifiable, as the person who made the allegations in various news reports at the time of Brother Foster’s death.

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

As I see it this is a pastoral matter. … it would be appropriate, within the conciliatory spirit of ‘Towards Healing’, for this matter to now proceed to some resolution which recognises the destructive outcome of the abuse he suffered, and sets in place some rehabilitative outcomes.112

62. Brother Hill stated that this letter “represented – or it didn’t ‘represent’; it was a change of [DG]’s position from a rejection of the Towards Healing process to an openness to engage in the final part of the Towards Healing protocol, the mediation.”113 Brother Hill agreed that everything in the letter was consistent with Towards Healing,114 and gave evidence that at the time he understood the letter to be a request for, or an election to proceed with, a Towards Healing process.115 Brother Hill also agreed that this letter made it clear that DG wanted to follow a Towards Healing process.116

63. On 24 October 2001, Brother Hill replied to this letter:117

As indicated in the notes I made I did express to him my willingness to meet further with him should he wish to do so. I have not heard from him since then, and have felt it best to leave it up to DG to initiate the next step. This he has clearly done. Interestingly he has rethought his position concerning the Towards Healing process. If this means meeting with DG again in [redacted] then I will certainly do so.118

64. On the same day, Brother Hill forwarded this correspondence to Mr Harrison, and wrote “Inevitably the question of financial compensation will arise and I will indicate that such an arrangement should be done through appropriate channels … generally involving two sets of solicitors.”119 Brother Hill gave evidence that:

By ‘appropriate channels’, I simply meant the best process by which a settlement could be achieved. DG had initially stipulated that he did not want to use Towards Healing, and Mr Byrne had referred to a mediation ‘along the lines’ identified in Towards Healing. In those circumstances some other appropriate approach, not being Towards Healing, was needed.120

112 Ex 4-38 Tab 36.
116 Hill T3172: 9 -12.
117 Ex 4-38 Tab 38.
118 Ex 4-38 Tab 38.
119 Ex 4-38 Tab 37.
120 Ex 4-39 Hill [77].
65. Mr Byrne responded to Brother Hill’s query about whether he was DG’s independent legal adviser, or whether he was acting “in concert with” the Queensland PSRG. Mr Byrne wrote, “A good example of my role is evidenced in the change you note in Mr DG in respect of the Towards Healing process. I was able to advise him of the process and provide a copy of the document and make pertinent comments on the appropriateness of the process in his case.”

66. In a letter dated 25 October 2001, Mr Harrison wrote to Mr Byrne “We act on behalf of the Marist Brothers and presently have instructions in relation to this matter.” The letter also stated:

   We write to confirm that Brother Michael Hill has issued instructions that some form of mediation process should now be put together to assist the parties to bring these issues to closure.

67. On 30 October 2001, Karen Mole of CCI wrote separately to Brother Hill and Mr Harrison confirming that CCI had instructed Patrick Monahan of Ebsworth & Ebsworth lawyers to take over conduct and control of DG’s matter.

68. On the same day, Brother Hill wrote to the principal of the school DG attended asking for data in relation to DG’s claim. The email stated:

   I hope that we can proceed with this matter discreetly and appropriately. However I cannot guarantee that because one of the plaintiff’s initial demands is for a “public apology” to be circulated in the [redacted] area. Such a demand is not unusual at the beginning of these proceedings. However I will instruct our solicitors to negotiate as best they can to keep it all out of the public eye.

69. Brother Hill agreed that his objective was to keep DG’s matter out of the public eye, and gave evidence that this was “for the sake of the personnel at the college.” He also said, “The dilemma I was in was to respond as best I could to [DG] and to somehow reduce whatever impact a public apology would have on the innocents, the innocent people currently at that college.”

70. Brother Hill also accepted that the reason he endeavoured to avoid a public apology was to protect the reputation of the Catholic body. He agreed that this was wrong.
71. On 6 November 2001, Bill Cooper & Associates responded to Mr Harrison’s letter of 25 October 2001, confirming that they act on behalf of DG. They wrote, “[DG] is willing to attend a mediation conference in order to resolve this matter at the earliest opportunity”.132 They enclosed a copy of the report of Louis Salzman, a psychologist who examined DG at the request of DG’s solicitors, and wrote, “Our client has indicated that he is willing to attend an independent assessment by a further psychologist if necessary.”133

72. Mr Monahan responded on 14 December 2001, and said “we need to arrange an independent psychiatric examination of your client, and obtain a report from our independent psychiatrist.”134 On 11 January 2002, Mr Monahan wrote to Ms Mole of CCI that DG’s lawyers have agreed to DG being examined by Dr Chalk, a psychiatrist nominated by CCI, but only on condition that they be provided with the referral letter and Dr Chalk’s report.135 Mr Monahan wrote, “I see no reason why we should agree with this, although they have provided us (actually Carroll & O’Dea) with the report of Louis Salzman.”136

73. Ms Mole responded on the same day:

I do not intend to proffer any reports to the plaintiff’s lawyer particularly without seeing them first or providing any referral letter. If they insist they can go and jump and try and get an extension and have no hope of a red cent coming their way. Should they get ‘shirty’ you might want to point out the virtually impossible task they will have of getting over this one. Besides the connection between cause and effect knowledge being earlier to 1994 when in marital therapy, the alleged offender is deceased.137

74. DG gave evidence that he was examined by Dr Chalk in early February 2002.138 He said:

The thing that really galled me was that after the appointment, which lasted a couple of hours, Dr Chalk called me back because he had been advised to ask more questions of me. He told me that he had been advised to ask me further questions. The call was at a very inconvenient time for me – my family was visiting and we had a bit of a family reunion going on and the call came during dinner time. That really stuck with me. I remember thinking: what right does a solicitor have to tell a psychiatrist to go back and ask more questions? You might be able to do that of a policeman, or something like that, but I was with Dr Chalk long enough for him to get all the information he needed. I

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132 Ex 4-38 Tab 49 at STAT.0064.001.0026_R.
133 Ex 4-38 Tab 49.
134 Ex 4-38 Tab 57 at STAT.0064.001.0034_R.
135 Ex 4-38 Tab 57B at CCI.0015.00004.0134_R – CCI.0015.00004.0135_R.
136 Ex 4-38 Tab 57B at CCI.0015.00004.0134_R – CCI.0015.00004.0135_R.
137 Ex 4-38 Tab 57B at CCI.0015.00004.0134_R.
138 Ex 4-37 DG [34].
remember he even said to me: ‘It’s a waste of time; I’m not going to change anything, but I have to ask you a few more things anyway’.”

75. Patrick Monahan made a statement in which he gave the following evidence:

On reviewing the report of Dr Chalk with my instructor from Catholic Church Insurance Ltd, we noted that there were a number of matters which we had asked Dr Chalk to address, which he had not addressed in his report. I therefore wrote to Dr Chalk asking him to give further consideration to those particular matters and to let us have a further letter providing his comments on those issues, and other particular matters. I did not instruct or request Dr Chalk to require Mr DG to attend at his rooms again for a further consultation. It would appear, though, that Dr Chalk made that decision. I am sorry that Mr DG was inconvenienced in this way.

76. On 28 March 2002, DG’s lawyers wrote a letter to Ebsworth and Ebsworth which stated, “With respect to Dr Chalk’s report, we would consider it necessary that we be provided with a copy of the report prior to any such conference so that all the relevant information is available to both parties to facilitate the exploration of settlement options.” It also noted that under the Queensland Uniform Civil Procedure Rules, disclosure of all expert reports is required of both parties to the proceedings.

77. On 17 April 2002 Patrick Monahan wrote to Bill Cooper & Associates advising that his instructions were not to release a copy of Dr Chalk’s report to DG’s solicitors. He also wrote that the Queensland Uniform Civil Procedure Rules “are not directly relevant to this (unlitigated) matter”.

78. It is submitted that this approach to the provision of Dr Chalk’s report to DG, which is reflected in the quote from Ms Mole’s email set out in paragraph 73 above, was not a compassionate or justified response to DG. The pastoral, supportive and compassionate environment of complaint handling that the Church committed itself to in Towards Healing should have been more rather than less responsive to the needs of victims than what is provided for in the rules of court.

79. On 29 April 2002, Mr Monahan wrote to Bill Cooper & Associates noting that Brother Hill had retired from his position as provincial, and asking “whether your client would like his successor to this role, Br Alexis Turton, to attend the settlement conference”. Mr Monahan said that Brother Turton had come to the mediation “specifically to provide Mr DG with a face-to-face apology.”

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139 Ex 4-37 DG [35].
140 Ex 4-63 Monahan [23].
141 Ex 4-38 Tab 58B.
142 Ex 4-38 Tab 58B.
143 Ex 4-38 Tab 58B.
144 Ex 4-38 Tab 58C at CTJH.500.02001.0017_E_R.
145 Ex 4–63 Monahan [29].
80. Brother Turton was asked by no later than 10 May 2002 to attend DG’s ‘mediation’.\textsuperscript{146} He was asked to represent the Marist Brothers, to respond to DG, and to convey an apology on behalf of the Marist Brothers.\textsuperscript{147}

81. DG said, “I was initially happy that Br Turton was involved as he was a principal at a Marist Brothers school where I completed my high school and he was my physics teacher and football coach. He was recognised as an intelligent and good man”.\textsuperscript{148}

**Settlement conference**

82. The settlement conference took place on 18 June 2002.\textsuperscript{149} Present at the conference were DG, his solicitor Sara Loughlin and barrister Michael Byrne, Brother Turton, Ms Mole from CCI, and Mr Monahan.\textsuperscript{150} Mr Monahan was representing CCI and the Marist Brothers.\textsuperscript{151}

83. DG explained that he wanted the following from the settlement conference:

\begin{quote}
I wanted some closure. I wanted acknowledgment of the truth of the claim and I wanted reassurance that my actions had had a positive effect in removing the person who was a threat to other people – removing the person who had abused me, removing that threat from other people and other children. I didn’t receive those assurances.\textsuperscript{152}
\end{quote}

84. DG explained that his understanding at the time was that “we were going along the lines of the Towards Healing process.”\textsuperscript{153} He understood that he was to attend a meeting, but was not aware that there was a distinction between a mediation and a settlement conference.\textsuperscript{154} DG was not aware that the Marist Brothers regarded the settlement conference as outside the Towards Healing process.\textsuperscript{155}

85. When asked whether he had instructed his solicitors that he was willing to participate in an informal settlement conference or a mediation, DG gave evidence that:

\begin{quote}
The difference at the time was probably not apparent to me. The difference to this day is still not grossly evident to me, in that the process was for mediation along the lines of the things that I had requested be provided.\textsuperscript{156}
\end{quote}

86. The meeting commenced with a discussion between Brother Turton and DG.\textsuperscript{157} After about 10 minutes, it was decided that DG be excused from the room and that the

\textsuperscript{146} Ex 4-40 Turton [47]; Ex 4-38 tab 59.
\textsuperscript{147} Ex 4-40 Turton [47].
\textsuperscript{148} Ex 4-37 DG [36].
\textsuperscript{149} Ex 4-37 DG [36].
\textsuperscript{150} Monahan T3712: 41 – 45.
\textsuperscript{151} DG T3121: 24 – 34.
\textsuperscript{152} DG T3114: 3 – 14.
\textsuperscript{153} DG T3113: 20 – 35; T3114: 42 – T3115: 2.
\textsuperscript{154} DG T3120: 42 – T3121: 22.
\textsuperscript{155} DG T3113: 20 – 35.
\textsuperscript{156} Ex 4-40 Turton [51] – [52].
financial aspect of his claim be negotiated between lawyers.\textsuperscript{158} During this time, Brother Turton remained in a separate room by himself.\textsuperscript{159}

87. In relation to the first part of the meeting, DG said:

During the meeting Br Turton said he had interviewed Br Foster about the abuse, but had no notes on or recollection of that conversation. That just stopped me in my tracks. I was disgusted. I thought: 'you are the one person that I put my faith in. You came across to me as a good man. That's a blatant lie, that you could go and interview a brother of yours over a sexual abuse case and then say you can't remember a word that was spoken'.\textsuperscript{160}

88. Brother Turton gave the following evidence in his statement:

\begin{quote}
I did not cut off Mr DG, and I did my best to answer any questions that he had. I did not say that I had no recollection or records of Br Foster’s employment or of when he stopped teaching. Such records would have been available, and if I was not able to recall such information at the time, I would have offered to find out the information.\textsuperscript{161} [...]

I did not say that I had ‘interviewed’ Br Foster about the abuse of Mr DG. Nor had I done so. When I had spoken briefly to Br Foster in 1994 about the accusation against him relating to conduct at [redacted], I had no idea that it was Mr DG who had made that accusation. I never had a conversation with Br Foster about any abuse where Mr DG was named. Mr DG may have asked whether I had spoken to Br Foster, and I may have said that I had spoken to him about an accusation relating to [redacted], as I had.\textsuperscript{162}
\end{quote}

89. Brother Turton agreed that at the time he attended DG’s settlement conference he knew the basic details regarding Brother Foster, including that he had suspended him from teaching after Brother Foster was contacted by the Police.\textsuperscript{163} Brother Turton also agreed that he had access to the Provincial’s records at the time, which included the records of complaints made in relation to Brother Foster.\textsuperscript{164} Brother Turton did not recall seeing the suicide note until some years after the settlement conference.\textsuperscript{165}

90. The handwritten record of the settlement conference reads: “Br Alexis Provincial 1989-95; vaguely recalls a ‘murmur’ of Br Foster having problems.”\textsuperscript{166} Brother Turton agreed that in the settlement conference he “acknowledged that Brother Foster had had problems”.\textsuperscript{167}
and that he did not give any substantive information about Brother Foster to DG at the conference.\(^{168}\)

91. The Marist Brothers offered DG $36,500 in exchange for a deed of release, a written apology, and a copy of Dr Chalk’s report. The written apology was based on the draft provided by DG’s lawyers at the settlement conference, and was approved by DG’s lawyers before it was provided to DG.\(^{169}\)

92. In his initial letter to the Marist Brothers, Mr Byrne had written that DG “would like some form of public recognition of the misdeeds of his abuser in the [redacted] area, as he perceives he was identified, or at least identifiable, as the person who made the allegations in various news reports at the time of Brother Foster’s death.”\(^{170}\) During the settlement conference, Mr Byrne again raised DG’s request for a public apology, and DG’s lawyers provided a possible draft to the settlement conference.

93. According to a handwritten note of DG’s settlement conference by Ms Mole, Mr Monahan (“PJM”) raised some concerns at this prospect of a public apology.\(^{171}\) Brother Turton (“Br A”) is recorded as saying, “Would prefer to address the family rather than write a letter. Reported his experience of newspaper/media articles from other past victims and Brothers.”\(^{172}\) The following exchange is then recorded:

\[
\begin{align*}
\text{PJM} & \quad \text{“Family apology” can be done with some tweaking} \\
& \quad \text{“Public Apology” can’t be done for various reasons.} \\
\text{MB} & \quad \text{Wants it to readdress his hurt following the glowing Eulogy} \\
\text{PJM} & \quad \text{[illegible]} \\
\text{MB} & \quad \text{Still wants the public injury re addressed via the draft statement.} \\
\text{PJM} & \quad \text{We can’t see the benefit of such a general statement and will do more harm than good, but we will not close our minds.} \\
\text{KM} & \quad \text{Apologise for Eulogy in family apology??} \\
\text{PJM/MB} & \quad \text{Possible alternative}\(^{173}\)
\end{align*}
\]

94. Mr Monahan said that he could not recall specifically why he had raised concerns in relation to the provision of a public apology during DG’s settlement conference, but that it would have been done on the basis of instructions from Ms Mole and Brother Turton.\(^{174}\) He said that his concerns at the time might have been:

\[
\begin{align*}
& \text{Concerns about broad publicity; concerns about whether this would ultimately really be helpful to the healing of the victim and his family; possibly concerns}
\end{align*}
\]

\(^{168}\) Ex 4-10 [52], [62]-[63]; Turton T 3220:15-44.

\(^{169}\) Ex 4-38 Tabs 61, 61A and 62.

\(^{170}\) Ex 4-38 Tab 36.

\(^{171}\) Ex 4-38 Tab 59C at CCI.0015.00004.0005_R; Monahan T3712:37 – 39.

\(^{172}\) Ex 4-38 Tab 59C at CCI.0015.00004.0006_R; Turton T3223: 38 – 46.

\(^{173}\) Ex 4-38 Tab 59C at CCI.0015.00004.0006_R - CCI.0015.00004.0007_R.

\(^{174}\) Monahan T3713: 9 – 37.
that other claims would arise. All of these sorts of matters, I would imagine, would have cropped up in discussion.175

95. In relation to his evidence that one of the concerns may have been the possibility of other claims arising as a result of the public apology, Mr Monahan was asked whether, if claims can rightly be brought, they should be brought.176 Mr Monahan gave the following evidence in reply: “Well, that’s a matter of opinion, I suppose, but representing the party that I was representing at that settlement conference, I don’t think one would regard it as desirable”, or in the interest of the Marist Brothers.177

96. Mr Monahan also agreed that one of his concerns would have been the potential for damage to the Marist Brothers’ reputation. He stated, however, “That was never a major focus of what motivated us, but it would certainly be one factor.”178 Mr Monahan explained, “we wouldn’t put the reputation of the church authority in question ahead of other interests [...] So you wouldn’t deny that it was a factor, because it would have to be in people’s minds, but it could not be the primary factor.”179 Mr Monahan also said:

I suspect – and I’m really not certain about this because I can’t remember the facts, so I am speculating a bit, but I suspect that we would have had a much broader discussion than what is written down on these three lines on this document about whether it really was a good idea and whether it was to his benefit, and it was obviously our impression or our view at the time that it wasn’t to the benefit of our clients.180

97. In relation to Ms Mole’s handwritten notes of what Brother Turton said during DG’s settlement conference, Brother Turton gave evidence that:

My reading of that – and I don’t have a detailed memory now of that – is that if an apology was to be effective for the family, it was better done personally and face to face. As to how the media would handle it, I couldn’t really make any other comment.181

98. Brother Turton said that it was not his understanding that the Marist Brothers refused to provide DG with a public apology, but that it may have been opposed because it would draw adverse publicity to the Marist Brothers.182 He said that he was not opposed to a public apology, but that he “was simply expressing a preference.”183 He also said, “If at the end of that discussion the victim, Mr [DG], still wanted a public apology, I think that should be considered.”184

175 Monahan T3713: 36 – 44. See also Monahan T3714: 7 – 27.
176 Monahan T3715: 35 – 41.
177 Monahan T3715: 35 – 44.
180 Monahan T3715: 14 – 25.
182 Turton T3227: 16 – 45.
99. Similarly, Brother Hill gave evidence that a person who has been abused “certainly should” have the benefit of a public apology if that is what they wanted.185

OPERATION OF THE TOWARDS HEALING PROCESS IN DG’S CASE

Provision of information about Towards Healing

100. Although the introduction of Towards Healing (1996) states that it is “a public document that establishes public criteria according to which the community may judge the resolve of Church leaders to address sexual abuse within the Church”, it did not mandate the provision of the Towards Healing protocol to victims who come forward to the Church about their abuse.

101. Towards Healing (2010) includes the following procedure, “The contact person shall explain the procedures for addressing the complaint and ensure that the complainant gives his or her consent to proceeding on the basis laid down in this document”. However, it similarly does not mandate the provision of the Towards Healing protocol to victims who come forward to the Church about their abuse.

102. Brother Hill did not provide information on, or explanation of, Towards Healing to DG by correspondence or when he met with him. Instead, it was only when DG spoke to Mr Byrne, a barrister with knowledge of Towards Healing by virtue of his membership of a Professional Standards Resource Group, that he was provided with a copy of the protocol and an explanation of how it worked.

103. It is submitted that victims of child sexual abuse should be provided with sufficient information on the options available to them by the Church authority in order to make an informed choice about how to proceed, and that this should include the provision of the Towards Healing protocol.

Evidence of Brother Hill in relation to Marist Brothers’ use of lawyers

104. Brother Hill gave evidence that he referred every complaint he received to the Marist Brothers’ solicitors, and that this was his usual practice.186 He said that the reason for this practice was that “it had become our standard practice”,187 and that “I wanted advice from the solicitors to make sure I was following correct procedures from a legal perspective.”188

105. Brother Hill said he sought advice from his solicitors in relation to how to set up mediations, including advice on “[p]lace, a suitable mediator, matters such as those”,189 but he did not seek advice from his solicitors in relation to the proper interpretation of Towards Healing.190

185 Hill T3178: 9 – 12.
186 Hill T3146: 38 – 40; T3147: 1 – 16.
188 Hill T3148: 30 – 35.
189 Hill T3148: 21 – 28; 43 – 47.
106. The evidence in DG’s case is that:
   a. Brother Hill sent the Marist Brothers’ solicitors a copy of DG’s initial letter as soon as he received it
   b. Brother Hill thereafter sent the solicitors copies of all correspondence with DG
   c. the Marist Brothers’ solicitors drafted the initial letter for Brother Hill to send to DG, and Brother Hill made some changes to this draft before sending it to DG
   d. Brother Hill instructed the Marist Brothers’ solicitors in relation to DG’s matter before DG had indicated that he intended to obtain legal representation
   e. while he was Provincial of the Marist Brothers, Brother Hill sent every complaint of child sexual abuse he received to the Marist Brothers’ solicitors.

107. DG did not engage lawyers until after his meeting with Brother Hill on 11 May 2000. That appears from the following:
   a. DG’s letter to Brother Hill of 6 April 2000 that states “I will continue to consider the avenue of legal representation, but would prefer to deal with this as I see fit and with the help of my loved ones”, and
   b. Brother Hill’s file note of his initial meeting with DG records that DG “said that he is suspicious of anyone in authority, including solicitors, but that he would attempt to find a suitable person”.

Application of Towards Healing (1996) procedures to DG’s matter

108. Brother Hill said that the principles of Towards Healing (1996) applied to DG’s matter, but that the procedures did not apply until a complainant chose to proceed with Towards Healing.191

109. It is submitted that the provisions of Towards Healing (1996) do not support this interpretation. Clause 4.1 states that if a complaint of sexual abuse against Church personnel comes to the notice of any member of the Church, he or she shall refer the matter to a contact person. Similarly, clause 4.6 provides that the contact person shall provide a report of the complaint to the appropriate Church authority.

110. However, it is noted that this was amended in subsequent versions of Towards Healing (2000), which specify that a complaint shall be referred to a contact person if “the person who has made this complaint wishes to invoke the procedures outlined in this document”.

Referral of DG’s complaint to the Director of Professional Standards

111. Brother Hill did not refer DG’s complaint to the Director of the relevant Professional Standards Office in accordance with the provisions of Towards Healing (2000).192 Brother

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Hill agreed that under normal circumstances, the Director would manage a matter and facilitate arrangements for the mediation. 193

112. When asked whether the Director should have managed DG’s complaint, Brother Hill replied:

    I can only assume that Mr Byrne, who was on the Professional Standards Resource Group in Queensland, would have informed the then Queensland Director of Professional Standards. I can’t confirm one way or the other whether that actually happened. I assumed it at the time. 194

113. It is submitted that Brother Hill should have ensured DG’s complaint was referred to the relevant Director of Professional Standards because:

    a. Towards Healing (2000) provides that Church personnel who receive a complaint of abuse shall forward it on to a contact person, and that the contact person shall in turn promptly forward it to the Director of Professional Standards 195

    b. Mr Byrne informed Brother Hill on 26 October 2001 that he was a barrister acting on instructions from DG’s solicitors

    c. Mr Byrne was under no obligation to refer DG’s complaint to the Director, and

    d. there is therefore no basis for Brother Hill’s assumption that Mr Byrne would have referred DG’s complaint to the Director.

114. It is noted that the role of the Director was introduced following Professor Parkinson’s review of Towards Healing in 2000. Some of the reasons given for the recommendation that the Director be given an explicit case management role include:

    a. one of the major problems which has been experienced in the last three years is that no-one has had overall responsibility for the process of dealing with the complaints, and

    b. there have been many instances where Church authorities have not followed the procedures laid down in Towards Healing as fully as is desirable. 196

Application of Towards Healing (2000) to complaints where there is no dispute as to facts

115. Towards Healing (2000) provides that if a complainant wishes to proceed with Towards Healing, then their matter shall be referred to a contact person as soon as possible. 197

DG’s complaint was not referred to a contact person.

193 Hill T3175: 27 – 41.
194 Hill T3175: 21 – 41.
116. Brother Hill considered that Mr Byrne, DG’s barrister, had achieved what the role of the contact person is supposed to achieve, and that his letter combined with the police process substituted the contact report.198

117. Brother Hill also said that there was no need to refer DG’s complaint to a contact person because “there was no debate as to the facts of the matter. The contact person makes the initial contact in order to prepare for an assessment in the Towards Healing process.”199

118. This approach was supported to some extent by the evidence of Brother Turton, who said:

\[ I \text{ think the term “contact report” is used in different senses by different people. Some people refer to the contact report as “the story of what happened to me”, and that’s what the contact person goes to get, or they receive its equivalent. Others will see the contact report as “the story of what happened to me, plus a statement of what I expect, plus a statement that I am not currently involved with the police and do not want to go to the police”. But given that, I would think [the Initial Complaint] would be sufficient for a contact report, given that somewhere there is some expectation of what’s looked for.}\]200

119. Brother Hill said that DG had only accepted the final part of the Towards Healing process, namely the mediation.201 He said:

\[ all \text{ the initial stages, in a sense, were irrelevant in this particular case – the contact person, the assessment. I mean, there was no doubt as to the facts of the complaint. There was no – it would have been illogical to go through a contact person, followed by an assessment stage. That, in effect, had been done by the police.}\]202

120. Brother Hill gave evidence that DG’s matter “is not a normal Towards Healing case”. He said, “There are so many differences. First of all, it started off as a police matter. And the suicide. There’s very little resemblance between this particular case and what is envisaged in the Towards Healing protocol.”203

121. In his 2009 review of Towards Healing, Professor Parkinson observed that many cases that ostensibly come under Towards Healing are essentially a process of negotiations between lawyers or a mediation to attempt to settle the victim’s claim, and are indistinguishable from the settlement process for other civil claims.204

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199 Hill T3139: 12 – 18.
200 Turton T3231: 5 – 21.
202 Hill T3168: 32 – 46. See also T3170: 2 – 14; T3174: 1 – 14.
203 Hill T3169: 8 – 16.
122. Similarly, the Truth Justice and Healing Council has submitted the facilitation process, where it involves lawyers “can amount to little more than negotiations between the lawyer for the victim and the lawyer for the Church Authority (or the insurer if the claim is insured) or both.”

123. Professor Parkinson noted that if the case is run by lawyers, and the complainant is only seeking compensation, then **Towards Healing** really only provides procedures for the investigation and assessment of a complaint.

124. **Towards Healing** was amended in 2010 to clarify that if a complainant chooses to be represented by a lawyer and is only seeking compensation, the complaint should proceed outside of **Towards Healing**.

125. It is noted that in addition to financial compensation, DG was seeking some form of apology process that could embrace his parents and family, and some form of public recognition of the misdeeds of the abuser.

126. In addition, Mr Byrne told the Marist Brothers that, “As I see it this is a pastoral matter. My client has been walking and living through an interminable “dark night” it would be appropriate, within the conciliatory spirit of “Towards Healing”, for this matter to now proceed to some resolution which recognises the destructive outcome of the abuse he suffered, and sets in place some rehabilitative outcomes.”

127. It is submitted, however, that DG’s facilitation was little more than negotiations between his lawyers and CCI. DG said:

> When I look back now at the Towards Healing process, I can say ‘Oh, so that’s what Towards Healing was’ and basically that I was given some money to pay for counselling and that was it. But I really did not understand at the time where Towards Healing was coming from or what I could achieve through the process – or even if I was formally part of that process. The process felt to me like it consisted of two psychological assessments, a short meeting with my barrister, and a brief meeting with all the parties before I was asked to leave the room. I was told to sign a bit of paper and to go home and not come back. I was not offered or provided with any support or counselling during the process. I found the whole thing pretty disgusting and I could never quite work out where the healing part came into it, because I certainly didn’t feel healed by that process.

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205 Submissions of the Truth Justice and Healing Council in response to Issues Paper 2, page 67, paragraph [164].
207 **Towards Healing** (2010), clause 36.5.
208 Ex 4-38 Tab 36.
209 Ex 4-38 Tab 36.
210 Ex 4-37 DG [45].
AVAILABLE FINDINGS

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

2. Brother Turton withdrew Brother Foster from ministry on or about 25 August 1994 after Brother Foster was interviewed by the police about DG’s complaint.

3. Although the Towards Healing principles commit the Church to truth, humility, and giving first priority to the needs of the victim, the Marist Brothers did not:
   a. attempt to obtain the information DG requested in his letter of 28 April 2000, namely transcripts of the police interview(s) with Brother Foster relating to his complaint
   b. attempt to ascertain the identity of the complainant in the criminal case against Brother Foster in order to convey to that person, who was DG, the contents of Brother Foster’s suicide letter
   c. inform DG about matters relevant to his complaint, including:
      i. the contents of Brother Foster’s suicide letter
      ii. that Brother Foster was removed from his teaching position following DG’s police complaint, and
      iii. that Brother Foster had been the subject of other complaints

4. The Marist Brothers did not ensure that DG’s complaint was referred to the Director of Professional Standards contrary to the procedures in Towards Healing (2000).

Gail B Furness SC
Angus Stewart

12 August 2014