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 DK

Table of Contents

INTRODUCTION TO CASE STUDY 4 ............................................................................................................................. 3
Submissions made in relation to Case Study 4........................................................................................................... 4
Response to general issues raised by the Church parties .......................................................................................... 4
OVERVIEW .................................................................................................................................................................. 7
Child Sexual Abuse of DK........................................................................................................................................ 7
Other allegations in relation to Brother Murrin ......................................................................................................... 8
Towards Healing ....................................................................................................................................................... 10
   DK’s engagement with the Towards Healing process .......................................................................................... 10
   Investigation in relation to Brother Hunt ................................................................................................................ 14
   DK’s facilitation ................................................................................................................................................. 15
OPERATION OF THE TOWARDS HEALING PROCESS IN DK’S CASE ............................................................... 18
   Approach to the Towards Healing protocol ........................................................................................................ 18
   Investigation of complaint relating to Brother Hunt ............................................................................................ 20
   Provision of information to DK during the facilitation .......................................................................................... 21
      DK wanted information from Brothers Burns and Moraghan about their knowledge of abuse at St Augustine’s........................................................................................................................................ 22
      Discussion during the pastoral session of DK’s facilitation .............................................................................. 23
   Appointment of Michael Salmon as facilitator ...................................................................................................... 31
      The Towards Healing (2010) protocol ................................................................................................................ 31
Should the Director of Professional Standards act as the facilitator in a Towards Healing facilitation?........ 32

Communication of Mr Salmon’s position as Director of NSW/ACT Professional Standards Office .......... 34

Brother Ross Murrin’s position in the Marist Brothers ................................................................. 37

AVAILABLE FINDINGS .................................................................................................................. 39

Available findings in relation to the Marist Brothers’ knowledge of Brother Ross Murrin .................. 39

Available findings in relation to the Director of Professional Standards acting as a facilitator .......... 39

Available findings in relation to the appointment of Michael Salmon as facilitator ....................... 40
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 DK 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 DK

27. DK gave evidence that he was sexually abused while he was a boarder at St Augustine’s College, Cairns, between 1976 and 1981.\(^1\) In 1976, when DK was eleven his dormitory master, Brother Leonidas, would watch DK and other male students while they showered.\(^2\) Also in 1976, DK was sexually abused by a Brother in the infirmary at St Augustine’s College after he had cut his foot.\(^3\) This Brother made him take his pants off, fondled his genitals and tried to masturbate him.\(^4\)

28. In late 1980 or early 1981 DK was sexually abused by Brother Ross Murrin in Brother Murrin’s dormitory.\(^5\) DK gave the following evidence:

> My grade 10 dorm master, Br Andrew Moraghan, often found me in Br Murrin’s dormitory. I remember him getting very angry on these occasions. He would order me to leave Br Murrin’s dormitory, but Ross Murrin would always invite me back. I believe now that Br Moraghan was put in charge of Ross Murrin to keep an eye on him. I also believe that Br Gerald (Gerry) Burns, the Principal of St Augustine’s College, knew about Br Murrin.\(^6\)

29. DK gave evidence that his academic performance suffered following this incident,\(^7\) and said:

> The abuse I experienced at St Augustine’s College has affected me profoundly. I have lived my whole life scared. I have difficulties trusting people and I am a very anxious person. I have terrible insomnia and have felt depressed and suicidal...I have difficulty concentrating and have struggled to work effectively over the years. Basically, I have never been able to string the consistency of life together. I have also felt a lot of anger towards my abusers and the Brothers who I feel have failed to act to ensure my safety.\(^8\)

30. Brother Murrin was convicted in 2008 and 2010 after pleading guilty to charges relating to child sexual abuse at a Marist Brothers Primary School in Daceyville and St Gregory’s College Campbelltown.\(^9\) These convictions were unrelated to DK.

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\(^1\) Ex 4-43 DK [4].  
\(^2\) Ex 4-43 DK [5].  
\(^3\) Ex 4-43 DK [6].  
\(^4\) Ex 4-43 DK [6].  
\(^5\) Ex 4-43 DK [7]; Ex 4-42 DK Tab 24.  
\(^6\) Ex 4-43 DK [8].  
\(^7\) Ex 4-43 DK [10].  
\(^8\) Ex 4-43 DK [12].  
\(^9\) Ex 4-43 DK [11].
31. At the time of DK’s abuse, Brother Burns was the principal of St Augustine’s, and Brother Moraghan was a teacher at the College. During the hearing, Brother Burns said “I was not aware of Br Murrin’s behaviour towards Mr DK and did not condone it.”

32. Brother Moraghan said, “I can honestly say that I do not remember at any time going into Ross’s dormitory and finding Ross and [DK] in that dormitory.” He also said:

I was not put in charge of Br Murrin, either to “keep an eye on him” or for any other reason. At no time while I was at St Augustine’s College was it suggested to me by anyone that Br Murrin was or may have been acting inappropriately towards the students, and I did not suspect that this might have been occurring.

Other allegations in relation to Brother Murrin

33. Brother Burns was the Principal of St Augustine’s College from August 1976 to 1981. In June or July 1981, while he was the Principal of St Augustine’s College, he received a telephone call from a man given the pseudonym Mr Smith, the father of a child given the pseudonym Y Smith who was a student at the time.

34. Brother Burns gave the following evidence:

I recall that Mr Smith told me that his son did not want to come back to the College. I do not recall whether or not Mr Smith told me the reason why Y Smith did not want to return.

I remember calling Y Smith into my office to discuss what his father had told me. I asked Y Smith to tell me in his own words what had happened. Y Smith told me that Br Ross had been touching and rubbing his chest and stomach, and the chest and stomach of another boy. He did not tell me that Br Ross had attempted to put his hands down his pants. I asked Y Smith if he could give me the name of the other boy who had been touched by Br Ross. He responded with the name of another student, DQ.

35. Brother Burns spoke to DQ shortly after his discussion with Y Smith. He said that during that conversation DQ told him that Brother Murrin had touched him on the chest and stomach. Brother Burns said that the boy who complained was “distressed, probably – angry” by what happened.

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10 Ex 4-61 Burns [25].
11 Moraghan T3694: 14 – 19; Ex 4-62 Moraghan [23].
12 Ex 4-62 Moraghan [23].
13 Ex 4-61 Burns [15].
14 Ex 4-61 Burns [27].
15 Ex 4-61 Burns [27 – 28].
16 Ex 4-61 Burns [29].
36. Brother Burns gave evidence that he characterised Brother Murrin’s actions as “quite inappropriate” because “it was something – it wasn’t normal sort of behaviour. It was inappropriate for a teacher to touch a boy, touch a student, like that.”

37. Brother Burns said that after these conversations his understanding was that the incidents were limited to these two boys, and that neither Y Smith nor DQ said anything which suggested that Brother Ross was behaving in such ways with anyone else.

38. After speaking with the boys, Brother Burns called Brother Murrin into his office to discuss the complaints. He said:

   I recall that Br Ross appeared shocked when I first told him of the complaints. Notwithstanding that the boys had denied it, I asked Br Ross whether he had touched the genitals of either boy and he claimed very definitely that he had not. Br Ross gave an account of what had happened that was consistent with what the boys had told me, that is, that he had rubbed them on their chests and stomachs.

39. Y Smith’s father subsequently came to the school and saw Brother Burns and Brother Murrin. Brother Burns said, “By the time he left, he was happy that the boy stayed on.”

40. Brother Murrin subsequently met with the Marist Brothers’ Provincial at the time, Brother Geaney. Brother Burns said that he kept more in contact with Brother Murrin after this incident, but that no protective measures were taken “beyond getting an assurance from him that it wasn’t going to happen again, and speaking to him fairly regularly to see how things were going for him, but again taking his word for it.” The two boys concerned were not removed from Brother Murrin’s dormitory. Brother Burns agreed that different protective steps should have been taken in relation to Brother Murrin.

41. Brother Burns said that at the time of this incident a decision had already been made that Brother Murrin would leave St Augustine’s College at the end of the year. He said that he did not know whether the principal of the school where Brother Murrin moved was informed of the incident involving Y Smith and DQ. Brother Burns said that he would not have seen it as his place to inform the principal “because I had fully informed the provincial and he had been involved in the whole decision.”

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19 Ex 4-61 Burns [30].
20 Ex 4-61 Burns [30].
21 Ex 4-61 Burns [31].
23 Burns T3650: 1 – 27.
24 Burns T3650: 1 – 27.
27 Burns T3650: 46 – T3651: 11.
28 Burns T3651: 6 – 11.
42. Brother Burns said that it was not until 2008, when Brother Murrin was convicted, that he “became aware of any allegations of improper conduct by Br Ross beyond those made by Y Smith and DQ.” He said, “I was not aware of and did not suspect the abuse described by Mr DK.”

Towards Healing

DK’s engagement with the Towards Healing process

43. In November 2009, DK rang the Marist Brothers and spoke to Brother Turton about the abuse he suffered at St Augustine’s College. He informed Brother Turton of the sexual abuse by Brothers Leonidas and Murrin, but did not disclose the identity of the Brother who abused him in 1976 in the infirmary.

44. On 19 November 2009, Brother Turton informed the Marist Brothers’ Provincial, Brother Geoffrey Crowe, the NSW Professional Standards Office (“PSO”), and the solicitor used by the Marist Brothers, Mr Harrison, about DK’s complaint.

45. On 25 November 2009, Brother Turton sent an email to Brother Crowe and Mr Harrison in which he stated: “Regarding this man DK I have a feeling that we need to respond fairly quickly,” and noted that he suspected a Canberra lawyer, Jason Parkinson, had been in touch with DK. He also wrote that he thought there would be benefit in DK speaking to Brother Rodney and Brother Burns, and that “I think that both acted well in the circumstances of Murrin’s earlier offences at Cairns.”

46. On 15 February 2010, DK called Br Turton, who outlined the main steps in Towards Healing. DK indicated that he was happy to proceed with Towards Healing. Brother Turton also told DK that Brother Murrin would probably acknowledge that there had been inappropriate contact, and that it is therefore unlikely that there would need to be an assessment. Finally, Brother Turton “pointed out the need for a signed statement not only of his story but in regard to the usual matters with not being involved with the police. He was urged to take the matter to the police but that was not his desire.”

47. The following day Brother Turton sent an email to Joseph Bucci of CCI in which he wrote, “At this stage I have not taken up this matter with Towards Healing but my intention would be to do it through Michael Salmon given all the changes taking place in the QPSO office at the moment. I am sure Michael would be happy to run with it.” He also wrote,
“No assessment has been carried out although I have no doubt that the events did occur.”

48. On 17 February 2010, DK wrote to Brother Turton, setting out the outcomes he would like from the Towards Healing process:

I would like to meet with Brothers Gerald, Peter Rodney and Andrew. I would like to calmly and logically confront them and resolve issues that I have with them. I feel that they were aware of the abuse at the school and covered it up. I also feel that they punished me for Ross Murrin’s actions.

I would like to meet with Brother Michael Green and then be provided with evidence that the school has some policy/mechanism going forward to deal appropriately with child sexual abuse, both historical and contemporary.

I would like a cash compensation payment for the damage that I have suffered as a result of abuse at St Augustine’s. As you know, I have told my story to a solicitor with experience in this injury. His advice to me in relation to a compensation claim is in the vicinity up to $200,000.

I would also like any future psychiatric/psychological treatment in relation to dealing with this matter covered.

I would like to know how the Marist Brothers and indeed the Church in general is dealing with the issue of child sexual abuse. I hope that this issue is being dealt with correctly.

49. DK also told Brother Turton that he would like to complete his Towards Healing process during March of that year.

50. Brother Turton subsequently wrote to the principal of St Augustine’s College and enquired about the policies and procedures in place at that school. He wrote, “I’d appreciate any guidance or policy which you can give me that I can pass on to DK.”

51. On 18 February 2010, Brother Turton spoke at length with DK about a Towards Healing facilitation of his complaint. In a file note of the conversation, Brother Turton wrote that he strongly recommended a lawyer view the Deed of Release, and that the Marist Brothers would pay the moderate costs of a lawyer attending the facilitation. Brother Turton also wrote:

We discussed his meeting with Brothers Gerald, Peter Rodney and Andrew. He is aware that Peter Rodney is overseas and is happy to speak to him when he returns. In

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40 Ex 4-42 DK Tab 20.
41 Ex 4-42 DK Tab 23 at STAT.0075.001.0017_R.
42 Ex 4-42 DK Tab 23.
43 Ex 4-42 DK Tab 20.
44 Ex 4-42 DK Tab 25.
45 Ex 4-42 DK Tab 25.
the meantime he is very keen to meet with Gerald and Andrew in the same conversation with a mediator present as soon as possible.46

52. On the same day Brother Turton emailed DK, attaching a copy of the Student Protection Protocol for the Diocese of Cairns, and reiterating his recommendation that DK obtain legal advice in relation to the Deed of Release.47

53. DK subsequently told Brother Turton that he had asked a barrister, DL, to attend the facilitation, and asked the Marist Brothers to cover DL’s costs.48 Brother Turton responded that he did not see any problems with DL attending, and said “May mean we have a legal person there as well in case it gets into serious legal speak. We would cover his fare and fees for the day.”49

54. Brother Turton forwarded this correspondence to Mr Bucci from CCI. He noted that he was not sure that a psychiatric assessment of DK was needed, but that he had tentatively booked DK with Professor Harvey Whiteford, and asked for Mr Bucci’s thoughts.50 DK was subsequently assessed by Professor Whiteford at CCI’s request.51

55. On 23 February 2010, Brother Turton spoke to Mr Salmon, who said he would be happy to mediate DK’s Towards Healing facilitation.52 They also agreed that Mr Salmon would contact the police “in the conventional notification process that we have regarding this matter mentioning the complaint against Murrin but not mentioning the name of the complainant.”53 This was done on 24 February 2010.54 Brother Turton had encouraged DK to take his complaint to the police, but DK was unwilling to do so.55

56. On 25 February 2010, Brother Turton visited Brother Murrin in prison. Brother Murrin initially told Brother Turton that he did not remember his relationship with DK being in any way sexual,56 but subsequently acknowledged in writing that the incident that DK complained of had occurred.57

57. On 1 March 2010, Mr Bucci wrote to Brother Turton informing him that CCI’s public liability policy would cover the sexual assault components of his claim in relation to Brother Leonidis and Brother Murrin. He wrote:

We have referred the matter to Mr Patrick Monahan from Monahan + Rowell Lawyers who will protect the interests of CCI and the Trustees of the Marist Brothers

46 Ex 4-42 DK Tab 25.
47 Ex 4-42 DK Tab 27.
48 Ex 4-42 DK Tab 28.
49 Ex 4-42 DK Tab 28.
50 Ex 4-42 Tab 28.
51 Ex 4-42 DK Tabs 40, 47.
52 Ex 4-42 DK Tab 32.
53 Ex 4-42 DK Tab 32.
54 Ex 4-42 DK Tab 35.
56 Ex 4-42 DK Tab 36.
57 Ex 4-42 Tab 41 at STAT0075.001.0027_R.
Patrick will be in contact with you shortly to discuss management and progression of this matter and will keep us both informed of developments as they arise.  

The following day Mr Salmon called DK to introduce himself, and spoke to him about the facilitation.

Brother Turton and DK also corresponded in relation to whether DK could be provided with a copy of Professor Whiteford’s psychiatric report. Brother Turton informed DK that he would discuss this request with Professor Whiteford.

On 18 March 2010 Brother Turton wrote to Brother Rodney in relation to DK’s complaint. He noted that DK claimed that many of the students knew about Brother Murrin’s behaviour, and asked when Brother Rodney came to know or suspect Brother Murrin’s behaviour at St Augustine’s, and whether he had any comment on the drop in DK’s marks while he was in Brother Rodney’s class.

Brother Rodney responded to Brother Turton as follows:

As to his belief that Ross’ behaviour was ‘common knowledge’ among the Brothers and boys, I cannot speak for the boys. As I think I said to you, I have a recollection of a conversation with Ross in the staff room/ printing room one evening. But I cannot fix the year. At that time a boy in Ross’s dorm (Year 8 – I think) must have made a complaint to Gerry. Then and now I was not aware of the details of the complaint. For whatever reason, Ross felt the need to explain his side of the story. This was that the boy misunderstood/misinterpreted Ross’ actions. I must admit that at this distance I cannot remember clearly what those ‘actions’ were. My vague recollection is that Ross touched the boy and that the boy ‘misinterpreted’ Ross’ intention. [...]

In summary Alex, at no time in my years in Cairns did I know or suspect Ross of any misbehaviour. It was only after Ross’ actions in other places came to public knowledge did the ‘penny’ drop for me as to what the ‘misunderstanding’ might really have been.

On 25 March 2010, DK suggested that the Marist Brothers’ solicitor and the CCI case manager sit in on the pastoral session of the facilitation, to avoid him having to repeat his story. Brother Turton made arrangements accordingly.

58 Ex 4-42 DK Tab 38.
59 Ex 4-42 DK Tab 42.
60 Ex 4-42 DK Tab 40, 47.
61 Ex 4-42 DK Tab 46.
62 Ex 4-42 DK Tab 51.
63 Ex 4-42 DK Tab 56.
64 Ex 4-42 DK Tab 59.
Investigation in relation to Brother Hunt

63. In an email he sent to Michael Salmon and CCI on 18 February 2010, Brother Turton wrote:

[DK] mentions a totally separate case of specific sexual abuse in the College infirmary. I raised this issue with him after reading his statement and he indicated that this is not an issue for him and he does not want that to be part of the whole mediation process.65

64. An email from Brother Turton to Mr Bucci of CCI, dated 3 March 2010, states:

DK indicates that he knows from the names that I sent him who the person referred to in his first year of Cairns in the infirmary might be. I am quite sure that it is Br Anthony. Due to some totally internal matters with the Marist Brothers Br Anthony Hunt has acknowledged that there were some difficulties in his career and that did include Cairns. He did not mention the name DK but given that he was the afterhours infirmarian and that DK specifically mentions the infirmary I am sure that it is who it is. I am not inclined to push him at this stage to mention the name as he seems to wish to hold it till the 30th but if you wish to raise a file then that would be the name.66

65. A handwritten document entitled “Possible Sources of Complaints re Professional Standards” and signed by Anthony Hunt on 10 October 2009 lists:

a. three names under “Ashgrove (1964-67)”

b. five names under “Mittagong (1968 – 73)”

c. four names and the word “others?” under “Cairns (1976-83)”

d. one name under “Lismore (1984 – 88)”

e. five names under “Lololima (2006 – 2009)”, which have the words “Application with gauze pad of Whitfield’s Ointment to fungal infection in groin area” beside them.

66. The document ends with the words “This is as accurate as I can make it at this point.”67

The Marist Brothers produced more detailed documentation of two complaints of child sexual abuse made against Brother Hunt.68 DK is not named on this list.

67. Brother Turton said that Brother Hunt posted this list to him, and that he does not recall discussing it with Brother Hunt, but presumes that he did.69 He also said that he would have given this list to the Provincial at the time, but that he does not recall giving a copy to the police.70

68. On 18 March 2010, Mr Monahan wrote to Brother Turton, “In anticipation that the facilitation will also address the claim concerning the person who you have now identified

65 Ex 4-42 DK Tab 26.
66 Ex 4-42 DK Tab 44 at STAT.0084.001.0081_R.
67 Ex 4-42 DK Tab 7.
68 Ex 4-42 DK Tabs 1B, 2, 3, 4, 6, 6A, 9.
as Br Anthony Hunt, could you please send down to me (and also to Joe) all material which
you hold relating to Br Anthony Hunt.” On the same day, Mr Monahan also wrote to Mr
Bucci, “DK has also mentioned to Br Alexis Turton some other episode (details still not fully
clear) which occurred to him at the hands of the Brother working in the infirmary in 1976.
Br Alexis has now satisfied himself that this is a reference to Br Anthony Hunt.”

69. On 24 March 2010, Brother Turton wrote to Joseph Bucci, “Hunt is the man I am sure DK
is referring to in the infirmary incident even though at this stage HE HAS NOT NAMED HIM
[emphasis in original].”

70. On 26 March 2010, Mr Monahan wrote to Joseph Bucci “I recommend that we attempt to
settle this claim below $100,000 at the TH facilitation, with the settlement sum to be
allocated between the two separate claim files which you have opened, one for Br
Anthony Hunt and one for Br Ross Murrin.”

DK’s facilitation

71. DK’s facilitation took place on 30 March 2010. Present at the facilitation were DK, his wife
and DL, his barrister, Mr Salmon, Brother Turton, Brother Moraghan, Brother Burns, Mr
Monahan, solicitor, and Mr Bucci of CCI.

72. The facilitation comprised a pastoral session in the morning with the Brothers, and then
negotiations as to settlement in the afternoon. Mr Salmon acted as the facilitator.

73. In relation to the pastoral session, Brother Burns said, “My overall memory of the meeting
is that it was a frank and open discussion. Mr DK seemed to me to have prepared carefully
the things that he wanted to talk about and my sense at the end was that he felt satisfied
that he had raised his issues.” Brother Burns stated that he and Brother Moraghan
“responded at some length to questions and allegations made by Mr DK” and that “I
believed that it was a very honest and open exchange.” Particular aspects of the
facilitation are considered in more detail below.

74. The negotiations as to settlement were conducted with DK, his wife and DL in one room,
and CCI and the Church authority in another. Mr Salmon moved between the two rooms,
and communicated the offers to DK.

75. DK was ultimately offered $88,000 subject to his signing a Deed of Release, which he
accepted. Brother Turton apologised to DK, and undertook to put the apology in writing.

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71 Ex 4-42 DK Tab 49.
72 Ex 4-42 DK Tab 49A at CCI.0076.00009.0188_E_R.
73 Ex 4-42 DK Tab 54.
74 Ex 4-42 DK Tab 59 at CTJH.053.07010.0009_R.
75 Ex 4-61 Burns [40].
76 Ex 4-61 Burns [42].
77 Ex 4-44 DL [21], [23] – [24].
78 Ex 4-42 DK Tab 60.
and send it to DK, which he did.\textsuperscript{79} Brother Turton also read out an apology from Brother Murrin.\textsuperscript{80}

76. Prior to sending DK the written apology from the Marist Brothers, Brother Turton sent the draft apology to Mr Monahan who responded, “\textit{apology looks fine to me, br alexis, and does not contain any overt ‘admissions’ of particular allegations that could be used against us in future matters if he hands it over to Parkinson or other claimants.”}\textsuperscript{81}

77. On 3 May 2010, DK wrote to Brother Turton, thanking him for his letter of apology. He wrote, “\textit{For some reason now I am just not so angry, I feel that I am able to let it all go. To that extent, the fact that they [Brothers Burns and Moraghan] were able to be present on the day was extremely helpful.”}\textsuperscript{82}

78. On 15 September 2010, DK wrote to Brother Alexis, asking whether Michael Salmon, the Director of Professional Standards for NSW/ACT “\textit{is the same Michael Salmon that was the independent mediator at my mediation.”}\textsuperscript{83} Brother Turton responded to DK, confirming that Mr Salmon is employed by the Church to supervise the implementation in NSW of the \textit{Towards Healing} protocol, and stating that he is also involved from time to time as a mediator in such cases.\textsuperscript{84} This issue will be considered further below.

79. Several years later, DK wrote to Mr Monahan, “\textit{All that I would like to know from you is were you aware that Alexis Turton and Michael Salmon lied to me and did not disclose that the so called independent mediator was the Director Professional Standards.”}\textsuperscript{85}

80. Mr Monahan forwarded this email on to Emma Fenby of CCI, and wrote, “\textit{Emma: do you wish to instruct me to retrieve my old file and review it and respond to him?”}\textsuperscript{86} Ms Fenby responded, “\textit{I note that there is a signed deed of release and solicitors certificate. Therefore, please do not re-open your file.”}\textsuperscript{87}

81. On the same day, before he received a response from Ms Fenby, Mr Monahan wrote to DK and said “\textit{I certainly DO remember meeting you at this mediation and am saddened to read about your disappointment with the process – I will now have to recover my old file from archives and review it before I respond properly to your enquiries – I will get back to you shortly – all the best.”}\textsuperscript{88}

82. On 30 May 2013, DK responded to Mr Monahan, “\textit{Patrick I really only have one question for you at my mediation in 2010 were you aware that Michael Salmon was the Director of}
DK sent another email to Mr Monahan almost a month later, and said “Patrick, Please see your email below. Are you any closer in responding to my questions?”

On 3 July 2013, Mr Monahan sent an email to DK in which he wrote:

"Unfortunately, my secretary has now “given up” on finding this old file in our archives. It seems to have been misfiled.

Can I therefore suggest that you might direct this enquiry to the Marist Brothers directly. […]

You are also correct that Michael Salmon was the mediator.

I am sorry that I am not able to help you any further with these enquiries."

On 16 August 2013, DK wrote to Mr Monahan:

"I am going to ask you a question again […]

In February 2010 you were present at a Towards Healing Facilitation involving my case. At the time of the meeting were you aware that the so called Independent Mediator Michael Salmon was in fact the NSW Director of Professional Standards?

I would appreciate a straight answer Patrick."

On 23 August 2013, Mr Monahan responded to DK:

"Could I, though, refer you again to the email which I sent to you on 3 July 2013 confirming that we had ultimately been unable to find this old file in our archives. As I mentioned to you, it seems to have been misfiled. […]

I have since had further discussions with the legal representative of the Marist Brothers, who informed me that you had instructed lawyers (Maurice Blackburn Lawyers were mentioned) to act for you in the matter. He was waiting to make direct contact with them to open a process of discussion with you to address all aspects of your concerns.

In those circumstances, it would not be appropriate for me to respond directly to you in any event in regard to any substantive aspect of the matter, as I should rather be dealing directly with your lawyers. […]

The final point which I would like to make is that I am also reluctant to make any particular comment on this case, which was resolved about 3½ years ago, without full reference to my files."

Mr Monahan gave evidence that at the time of DK’s facilitation he was aware that Mr Salmon was the New South Wales Professional Standards Director.
87. When asked why he did not answer DK accordingly, he gave the following evidence:

   Much to my considerable embarrassment, my file had been misfiled and we couldn’t find it [...] It would not have been appropriate for me to respond without checking my file, because I couldn’t remember the facts.

   [...] I needed to be sure of my facts before I responded to him. And then, before the file was found, it turned out that he now had engaged Maurice Blackburn Cashman as his lawyers and I should deal with them, and they have never approached me to do any such thing.95

88. He also said, “I have since found my file, but only after a considerable search by a number of employees at my office. The file was only found on 15 November 2013.”96

89. Mr Monahan agreed that he did not need to retrieve his file in order to answer DK’s question.97 Mr Monahan gave evidence that he could have answered DK directly, but that “I chose not to, for the reasons I have given you.”98 Mr Monahan accepted the proposition that a just and compassionate response to DK would have been to respond quickly to DK’s question, and stated “I took a different view.”99

OPERATION OF THE TOWARDS HEALING PROCESS IN DK’S CASE

Approach to the Towards Healing protocol

90. Brother Turton was appointed as the first Director of Professional Standards for the Marist Brothers in around January 2002.100 He gave evidence that as Director he was directly answerable to the Provincial, and that he had the responsibility of managing professional standards claims on a day-to-day basis, which included communicating with the victims, PSOs, lawyers, and Catholic Church Insurances (CCI) in relation to the resolution of claims.101

91. This position is distinct from the State Director of Professional Standards.102 When asked why the Marist Brothers created their own position of Director of Professional Standards, Brother Turton said, “My understanding is that many orders have a person in the order who deals with professional standards matters.”103

92. Brother Turton said that where a victim had already provided a written account of his or her complaint, he would discuss with the PSO whether that could be used as the Towards Healing ‘contact report’.104 He also said that the “State PSO would usually determine
whether an assessor would need to be appointed, and would also consider possible facilitators for the claim. After this point, I would then take responsibility for the matter”.

93. In DK’s case, Brother Turton said that the statement written by DK, and his email of 17 February 2010 constituted the contact report for the purposes of Towards Healing (2010). He said that “there wasn’t a contact person, per se” because the contact report was “already done.” Brother Turton said that he “was not technically the contact person”, and that he “pointed out that a contact report was necessary and [DK] provided that.”

94. Brother Turton managed DK’s complaint, and said he did so “with the full acknowledgment and knowledge of Mr Salmon.” Mr Salmon agreed that the only time he performed the role of Director of Professional Standards in relation to DK’s complaint was when he referred it to the police.

95. Brother Turton did not formally refer DK’s matter to the State PSO for case management after DK expressed a desire to engage in Towards Healing in February 2010. He agreed that pursuant to the provisions of Towards Healing (2010) he should have done so.

96. Brother Turton gave evidence that in the first conversation he had with DK, DK had said to him “Oh, so you are going to deflect me to another office again?”, and that during that discussion Brother Turton “got the impression that he wanted to deal directly with the brothers in processing his claim, and that’s the way it followed through.” Brother Turton gave evidence that he conveyed this sense to Mr Salmon, who accepted it.

97. Mr Salmon said that the reason he did not insist that DK’s matter was referred to him in accordance with Towards Healing (2010) was because “I formed the view that Brother Turton was engaging pastorally with [DK] and that was an appropriate engagement at that stage.” He also said:

Mr DK had made his complaint directly to the Church Authority, namely Br Turton. The 2010 edition of Towards Healing envisaged that in such circumstances the complaint would be referred to the Director of Professional Standards, who would then appoint a contact person. In this case, although I was the NSW Director of Professional Standards, Br Turton asked me to act as facilitator. He had already had considerable interaction with Mr DK and was, in effect, functioning as the contact person.
person envisaged under Towards Healing. He was also in practical terms carrying out the tasks which Towards Healing envisaged for the Director of Professional Standards, in a more typical case [...] In all those circumstances, it was possible to move almost immediately to the facilitation phase of the process envisaged in the Towards Healing protocol.\footnote{Ex 4-60 Salmon [33].}

98. Brother Turton gave evidence that he attended DK’s facilitation and signed DK’s apology on behalf of the Marist Brothers as the Church authority.\footnote{Turton T3477: 1 – 8.}

99. Brother Turton accepted that he did not follow the Towards Healing procedure exactly, and gave evidence that “I acknowledge that I would not be as involved in each of those steps; certainly it’s not appropriate.”\footnote{Turton T3477: 10 – 28.}

**Investigation of complaint relating to Brother Hunt**

100. As set out above, DK made a complaint of child sexual abuse in relation to a Brother in the infirmary at St Augustine’s College. He declined to name this Brother.

101. Brother Turton gave evidence that he “accepted that Brother Anthony fitted the description of the brother in the infirmary”, and that he communicated this to CCI.\footnote{Turton T3462: 30 – T3463: 20; Turton T3362: 19 – 24.} Brother Turton said that he specifically asked Brother Hunt about DK’s complaint, and that Brother Hunt “never admitted to me that he was the person who was the abuser. He admitted that he was in the infirmary. He told me that he did not recall [DK].”\footnote{Turton T3463: 11 – 14.}

102. Following DK’s facilitation, Brother Turton sent an email to Brother Hunt in which he wrote:

> Just a short note to let you know that I met with an ex student of Cairns whom I had mentioned to you on the phone some time ago ... He also had a complaint regarding the infirmary at the College. It seemed to be consistent with other things that we have talked about and we accepted what he said. As a result he was able to sign a Deed of Release and the matter was settled.\footnote{Ex 4-42 DK Tab 69.}

103. Data held by the Marist Brothers and the National Committee for Professional Standards records that DK made a claim against Brother Murrin and Brother Hunt.\footnote{Ex 4-42 DK Tabs 97 - 100.} Similarly, data provided by CCI to the Royal Commission in relation to claims for child sexual abuse records two claims made in relation to DK.\footnote{Ex 4-42 DK Tab 101.} The data also records that the claim against Brother Hunt was accepted.

104. Brother Hunt made a statement to the Royal Commission in which he said:

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\footnote{Turton T3462: 30 – T3463: 20; Turton T3362: 19 – 24.}
I deny that I ever sexually abused DK. I have never fondled his genitals or tried to masturbate him. I did not take him to my dormitory, in 1976 I did not have charge of a dormitory. I do not ever recall treating DK for any injury. I do not ever recall asking DK to take off his pants on any occasion. I do not recall having any particular association with DK at all.\(^\text{124}\)

105. DK gave evidence that "I now understand that the Marist Brothers concluded that Brother Anthony Hunt abused me in the infirmary. In 2009, I did not name this person who abused me when I cut my foot."\(^\text{125}\) He also said:

\[I \text{ had thought that it was another one of the brothers, but I may now never know.} \]
\[\text{Nothing was discussed with me during Towards Healing. I should have been told.}\]^\text{126}

106. Brother Turton said he had a "strong sense" that he did ask DK whether Brother Hunt was the brother who had abused him in the infirmary, but that he "\text{couldn't swear to it}".\(^\text{127}\) This evidence was not contained in Brother Turton's statement.\(^\text{128}\)

107. Brother Turton did not mention Brother Hunt at DK's facilitation.\(^\text{129}\)

108. It is submitted that the evidence supports a finding that Brother Turton did not ask DK whether the Brother who abused him in the infirmary was Brother Hunt, for the following reasons:

\[a. \text{ there is no contemporaneous document recording that this question was put to DK}\]
\[b. \text{ Brother Turton gave evidence that he could not be certain whether he had asked DK, and}\]
\[c. \text{ the evidence of DK, DL and Brother Turton establishes that Brother Hunt's name was not mentioned during the facilitation.}\]

109. It is submitted that the Marist Brothers informed Catholic Church Insurances that they thought Brother Hunt had abused DK in circumstances where Brother Hunt said he did not know DK, and DK was not asked whether it was Brother Hunt who had abused him.

**Provision of information to DK during the facilitation**

110. As set out above, Brother Burns received complaints from two male students of inappropriate touching by Brother Murrin at St Augustine's College in June or July 1981 and:

\[a. \text{ Brother Burns spoke to Brother Murrin about these complaints}\]
\[b. \text{ Brother Murrin admitted that he had inappropriately touched the boys}\]
\[c. \text{ Brother Burns informed the Provincial of the Marist Brothers about the complaint}\]

\(^{124}\) Ex 4-67 Hunt [7].
\(^{125}\) DK T3261: 11 – 17.
\(^{126}\) DK T3261: 11 – 17.
\(^{128}\) Turton T3467: 3 – 14.
\(^{129}\) Turton T3481: 36 – 38; DL T3319: 17 – 34.
d. Brother Burns did not remove Brother Murrin from his position as dormitory master, and
e. Brother Burns did not remove the complainants from Brother Murrin’s dormitory.

111. Although Brother Burns was present at the pastoral session of DK’s facilitation, he did not tell DK about his knowledge and involvement in the 1981 incident involving Brother Murrin.\textsuperscript{130}

112. During the hearing into DK’s case study, the following issues arose:
   a. whether DK asked the Brothers questions about whether they had known or suspected that Brother Murrin was sexually abusing children at St Augustine’s
   b. whether the Brothers said that they had no idea that Brother Murrin was a risk, or words to that effect, and
   c. whether the discussion during the pastoral session plainly raised the issue of whether the Brothers had reason to suspect Brother Murrin’s inappropriate behaviour.

**DK wanted information from Brothers Burns and Moraghan about their knowledge of abuse at St Augustine’s**

113. It is submitted that the following evidence establishes that prior to DK’s facilitation the Marist Brothers were aware that DK wanted information from the Brothers about their knowledge of the potential that Brother Murrin would abuse boys at the time of his offending at St Augustine’s College:
   a. Brother Turton’s file note of the original call of complaint from DK, which states:
      
      \textit{He also considered that many people at the school were aware of RM’s activity and that there were other victims. He believed that a number of the Brothers were aware of Murrin’s activity and protected him sometimes by bullying people who might have been prepared to make complaints.}\textsuperscript{131}

   b. Mr Harrison’s file note of a meeting with Brother Turton on 26 November 2009, which states:
      
      \textit{The plan is for [DK] to meet with Brother Gerald and Brother Peter Rodney who can explain what was known and what was not known at the time.}\textsuperscript{132}

   c. Brother Turton’s file note of a telephone conversation with DK on 15 February 2010, which states:
      
      \textit{After the discussion about Towards Healing [DK] indicated that he had 3 main objectives:}

\textsuperscript{130} Burns T2654: 38 – 41.
\textsuperscript{131} Ex 4-42 DK Tab 10.
\textsuperscript{132} Ex 4-42 DK Tab 16.
a) He would like to have a meeting with Peter Rodney, Gerry Burns and Andrew Moraghan as he wanted to clarify for himself how much they knew at the time and whether or not they were trying to protect RM from any allegations.133

d. An email dated 17 February 2010 from DK to Brother Turton, which states “I would like to meet with Brothers Gerald, Peter Rodney and Andrew. I would like to calmly and logically confront them and resolve issues that I have with them. I feel that they were aware of the abuse at the school and covered it up. I also feel that they punished me for Ross Murrin’s actions.”134

114. Mr Salmon said that before the facilitation he was aware that DK wanted to know about Brother Murrin’s involvement with other students.135

**Discussion during the pastoral session of DK’s facilitation**

115. DK gave the following evidence in response to questions from Senior Counsel representing the Marist Brothers:

Q. I want to ask you this, Mr [DK], for your comment more generally. Could this be the position: the abuse you suffered as a boy has obviously affected you very deeply?

A. Absolutely.

Q. For many years, you believed that some of the other brothers – not the abusers themselves, but some of the other brothers – either knew about it or should have suspected and investigated?

A. I think they knew of abuse. They may or may not have known about me, but I think they certainly knew about the abuse that was going on at St Augustine’s.

Q. Thirdly, at the facilitation meeting, two of those brothers – Brother Burns and Brother Moraghan – were there to face up to your accusations in that regard?

A. Absolutely, and I appreciated them being there.

Q. They both said that they had not known of the abuse, didn’t they?

A. About any abuse?

Q. Yes.

A. Yes, they both said that.136

116. DK agreed with Senior Counsel that he went into “considerable detail” in the discussions he had with Brothers Burns and Moraghan during the facilitation.137 DK gave evidence

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133 Ex 4-42 DK Tab 19.
134 Ex 4-42 DK Tab 23.
135 Salmon T3800: 31 – 36.
136 DK T3297: 34 – T3298: 5.
137 DK T3303: 8 - 9.
that “I always believed they knew what was going on at St Augustine’s” and agreed with the proposition put by Senior Counsel that he said this “in very plain terms at the meeting.” \(^{138}\)

117. Brother Burns said that his memory of the session was that it focused on DK and the abuse he had suffered, and that DK’s “main line of questioning to me was about why I didn’t take steps to do something about the fact that his marks in one subject declined enormously in the last semester.” \(^{139}\)

118. Brother Burns disputed that DK had asked the Brothers about whether they had known or suspected that Brother Murrin was abusing boys at St Augustine’s. When asked why he did not raise his knowledge of the 1981 incident during DK’s facilitation, Brother Burns gave evidence that “I don’t remember any question to me from [DK] that would have elicited that response” and “I wasn’t asked about it.” \(^{140}\) He also said, “I don’t remember him ever saying directly did I know about that, or even indirectly.” \(^{141}\)

119. Brother Burns also gave the following evidence:

   a. he does not believe that he evaded this issue at DK’s facilitation. \(^{142}\)
   b. if DK had asked a question “about whether I knew about the 1981 thing…I would have been open about it.” \(^{143}\)
   c. “I can’t accept that at that session on the mediation morning, that I denied any knowledge of the other case of Ross Murrin dealing with those other two people.” \(^{144}\)

120. Brother Burns said, “I presumed from the way he was talking that he knew what had happened, and I assumed he knew that I knew what had happened, but I don’t remember him questioning me in a way that would overtly have wanted me to say, “Yes, I do remember that at that time I was aware of it”, because I had to be aware of it. I talked to the boys.” \(^{145}\) He also said:

   I think I said yesterday that I was assuming at that session that he knew, and that he knew I knew about Murrin’s behaviour. He claims, you know, it was talked about among the boys at school. \(^{146}\)

121. When asked why he thought DK knew of the 1981 incident prior to the facilitation, Brother Burns said “One of the main things would be the fact that he says in his

\(^{138}\) DK T3303: 11 – 18.
\(^{139}\) Burns T3655: 13 – 30. See also Burns T3664: 21 – 32; T3672: 22 – 44; Ex 4-61 Burns [40].
\(^{141}\) Burns T3674: 5 – 22.
\(^{142}\) Burns T3680: 3 – 18.
\(^{143}\) Burns T3680: 34 – T3682: 11.
\(^{144}\) Burns T3663: 16 – 25; Burns T3660: 8 – 23.
\(^{145}\) Burns T3659: 26 – 45. See also Burns T3662: 42 – T3663: 8. See also Burns T3664: 11 – 19; T3676: 35 – T3677: 7.
\(^{146}\) Burns T3662: 42 – T3663: 8. See also Burns T3664: 11 – 19; T3676: 35 – T3677: 7.
statements that the kids all knew.” Brother Burns then gave evidence that he was “not sure” what his source of knowledge was. He said:

_It may have been from discussion with Turton. It may – had that been the case, I’m obviously a bit confused about the dates of his first statement that I saw, and this was after the interview with Monahan. I’m finding it a bit hard to put those things together. But I see your point, that when I said before I saw it in his written statement that that may not be accurate. But I was very aware of it, and he wasn’t asking what did happen. I suspect, now that I come to think of it, when he was talking about us not protecting him, and so on – no, look, I’d better not say that because it’s fuzzy._

122. It is noted that DK’s _Towards Healing_ statement that was prepared in or around February 2010 states:

_I remember hearing that Br Ross had sexually abused a Grade 8 boy from his dorm on a school camp, and that the boy’s parents had reported it to the Brothers I remember finding out in front of the refectory before breakfast one morning. The whole school was talking about it. From memory, Brother Ross was removed as the dorm master following this incident._

_At the end of 1981, Br Gerald and Br Murrin were transferred. It was generally known amongst the boarders that it was because of the Grade 8 boy’s parents complaining._

123. Shortly after DK’s facilitation, Mr Salmon wrote a file note, which states:

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

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

124. In his initial statement to the Royal Commission Mr Salmon wrote:

_During this time, his [DK’s] primary concern appeared to be with the behaviour of the two Brothers who were present rather than Br Murrin. Mr DK said “You must have known about the behaviour of Br Murrin. You did not provide him with enough support. You did not help him and you did not help me.”_

_Either Br Burns or Br Moraghan or both said “I had no idea about the abuse. I regret that it is your view that we knew about Br Murrin’s behaviour. I had no idea that he_

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150 Ex 4-42 DK Tab 24.
151 Ex 4-42 DK Tab 61; Salmon T3796: 29 – T3797: 24.
152 Salmon Ex 4-60 [48].
was a risk. If I had known, I would have done something about it. I am shocked. I regret and am mortified that these things happened to you.”

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

125. Around 6 p.m. on 23 January 2014, after Brothers Burns and Moraghan had given evidence before the Royal Commission, counsel for the Truth Justice and Healing Council requested that solicitors of Gilbert + Tobin speak to Mr Salmon about his file note of DK’s facilitation. She stated, “Depending on his comments, we may wish to prepare a short supplementary statement for him tomorrow morning.”

126. Gilbert + Tobin were the solicitors for the Marist Brothers and the NSW Professional Standard Office, amongst others. They did not represent Mr Salmon personally.

127. Mr Salmon ultimately signed a supplementary statement on DK’s facilitation on the morning of 24 January 2014. Mr Salmon gave the following evidence in this statement:

In referring to whether the two Brothers had knowledge of Murrin’s “inappropriate behaviour” and “unacceptable behaviour” in the Mediation File Note, I was referring to whether they had knowledge of inappropriate or unacceptable behaviour by Ross Murrin towards Mr DK. I was not referring to whether they had knowledge of inappropriate or unacceptable behaviour by Ross Murrin towards any other persons. […]

I do not recall Mr DK asking Brs Moraghan or Burns at the mediation about whether they had knowledge of Ross Murrin having engaged in sexually abusive behaviour towards other students. Nor do I recall either Br Burns or Br Moraghan denying that they had any knowledge of Ross Murrin having abused other students.

The references in paragraph 48(c) of my First Statement to “the abuse” are references to the abuse suffered by Mr DK.

128. Mr Salmon was questioned at length about his supplementary statement. During this questioning, the matter of whether DK had expressed concern at the facilitation about the abuse of others at St Augustine’s became a contested issue.

129. Mr Salmon gave the following evidence:

a. he wrote the file note dated 30 March 2010 on or about the day of DK’s facilitation
b. the file note was a summary of the main parts of the facilitation which he remembered and thought were important.\(^\text{160}\)

c. when he wrote his first statement, the only record he had of DK’s facilitation was his file note.

d. to the extent that his statement includes details that are not in this file note, those details were based on his recollection at the time of drafting his statement,\(^\text{161}\) and

e. paragraphs 48(b) and (c) of his first statement are a correct and accurate record of his recollection of what was said.\(^\text{162}\)

130. During questioning about his supplementary statement, the following exchange took place between the Chair of the Royal Commission and Mr Salmon:

Q. Questions were raised about general observations of Brother Murrin’s behaviour, what Brother Burns knew had to come to mind, didn’t it?

A. Well, that’s correct. That’s ---

Q. So that a statement, “I had no idea that he was a risk”, in the context as you put it, of a general discussion about observations of Brother Murrin’s behaviour is at odds with what Brother Burns knew?

A. Yes, I understand what you are saying.

Q. What you are now telling us is that there was a discussion about the school’s failure to observe Brother Murrin and protect children as a consequence of the knowledge they had?

A. Well, I don’t recall there being a discussion at the time about the knowledge that they had, but I ---

Q. Perhaps not the knowledge, but the obligation to ---

A. Yes, but I do recall a discussion about the fact that they should have been on alert, in terms of looking after Brother Murrin – it was very much predicated on looking after Murrin as much as looking after the students.

Q. Yes. And indeed, once that is raised, the context of the conversation, as you report it, plainly raised the question of what did they know?

A. Yes, absolutely. I don’t disagree with that.

Q. And what did they know beyond [DK]?

A. Yes. Yes.\(^\text{163}\)

\(^{161}\) Salmon T3797: 47 – T3798: 44.
\(^{162}\) Salmon T3808: 11 – 16.
\(^{163}\) Salmon T3799: 38 – T800: 29. See also Salmon T3831: 15 – 43.
131. It is submitted that the effect of Mr Salmon’s oral evidence, cited above, is that although DK may not have asked the Brothers specifically about the 1981 incidents, the context of the conversation during the pastoral session plainly raised the question of what the Brothers knew or suspected about Brother Murrin’s behaviour at St Augustine’s College.

132. It is submitted that to the extent there is any inconsistency between this evidence and his Mr Salmon’s supplementary statement, this oral evidence of Mr Salmon should be preferred because:

a. it is in response to a question that is not directly addressed in Mr Salmon’s supplementary statement, namely whether the context of the conversation plainly raised the question of the Marist Brothers’ knowledge, and

b. it is consistent with Mr Salmon’s contemporaneous file note of the facilitation and his first statement to the Royal Commission.

133. It is submitted that the following evidence also supports the submission that the context of the conversation during the pastoral session of DK’s facilitation plainly raised the question of what the Brothers knew or suspected about Brother Murrin’s behaviour.

134. Brother Moraghan gave evidence that the focus of DK’s questioning was about why the Brothers did not know about Brother Murrin’s behaviour towards DK himself. However, he also gave the following evidence:

a. at DK’s facilitation he said, “at no time while I was at St Augustine’s did I know about Br Ross’s behaviour. I was not aware of his behaviour until 2008 when charges were laid against him” during DK’s facilitation.

b. at the time of DK’s facilitation he was not aware of the allegations that were made against Brother Murrin in 1981 at the time of DK’s facilitation.

c. at DK’s facilitation, both he and Brother Burns had said words to the effect of “I had no idea about the abuse”, and “I had no idea that he [Brother Murrin] was a risk.”

d. he agreed with the following sentence in Mr Salmon’s file note: “the meeting also allowed the particular Brothers to respond which essentially was that at the time they had no knowledge of Murrin’s unacceptable behaviour and nor did they accept they should have known.”

e. during the facilitation DK said words to the effect of “You must have known about the behaviour of Br Murrin. You did not provide him with enough support. You did not help him and you did not help me” to the Brothers.

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165 Ex 4-62 Moraghan [30].
166 Moraghan T3692: 21 – 37.
169 Moraghan T3701: 21 – 32.
135. Brother Turton was asked, “Would you say it’s fair to say that [DK] at the facilitation was told the brothers did not have an awareness of any inappropriate behaviour by Ross Murrin?”, to which he responded “That’s correct.”

136. In relation to the 1981 complaints about Brother Murrin, Brother Turton gave the following evidence in response to questions from counsel for DK:

Q. My question to you is: if Towards Healing is about getting to the truth and ensuring victims are told the truth, why was Mr [DK] not informed about these events at his facilitation, when these are the very questions he had sought to have resolved?

A. I don’t really have any other comment. The fact that it was – not being “genital”, I assume, was not a sexual matter, that had been accepted, that it was not at the level of the allegations that [DK] was referring to for the facilitation.

Q. It was noted to be not inappropriate conduct to that degree, but it’s not noted to be appropriate conduct?

A. Yes, and I can’t make any other comment on that, because “inappropriate” could refer to a number of areas.

Q. But you sought to take no action in correcting what [DK]’s understanding would be from what he was told on that day, that nobody – that’s Brother Moraghan, Brother Burns, and you didn’t say anything about Brother Rodney – had any knowledge of anything being alleged against Ross Murrin back at his time at St Augustine’s.

A. Well, I take your point. If that would have been helpful, then I wish I had noted that, yes.

137. Brother Turton was also asked whether he conveyed the contents of Brother Rodney’s letter to DK, namely that Brother Murrin had spoken to Brother Rodney about complaints that had been made about Brother Murrin’s behaviour. He replied, “I can’t say for sure one way or the other. I do remember reading this letter, and I noted that Brother Peter said, ‘I had no reason to suspect anything untoward’, and I suppose that stood out to me in terms of his knowledge.”

138. On 27 April 2010, Brother Turton sent an email to Brother Rodney in relation to DK’s facilitation. He wrote that DK’s “concerns about people being aware of abuse at the time and not protecting children, were well and truly reviewed.”

139. On 19 February 2013, DK wrote an email to Peter Rodney in relation to his facilitation in which he wrote, “The reason for my anger is based on a number of points. 1. I believe that the Brothers at St Augustine’s, including you, were aware of the abuse of young boys and did nothing to prevent it.”

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170 Turton T3478: 43 – T3479: 29. See also Ex 4-45 Turton [89].
171 Turton T3481: 2 – 34.
172 Turton T3478: 43 – T3479: 29; Ex 4-42 DK Tab S1.
173 Ex 4-42 DK Tab 68.
174 Ex 4-42 DK Tab 77 at STAT.0085.002.0202_R.
140. It is also submitted that the following evidence of DL and Mr Monahan is not inconsistent with the submission, set out above, that the discussion during the facilitation plainly raised the question of Brother Burn’s knowledge of Brother Murrin’s behaviour.

a. DL agreed with Senior Counsel for the Marist Brothers that during the pastoral session DK spoke in detail at some length, and “included assertions to the effect that Brother Burns and Brother Moraghan had either known about the abuse by Brother Murrin or should have known.” \(^{175}\)

b. DL gave evidence that DK may have asserted “that Brother Murrin had been protected [...] by the Marist Brothers more generally, perhaps”, but that he did not recall. \(^{176}\)

c. Patrick Monahan gave evidence that his recollection was that DK’s focus during the facilitation “was more on Brother Gerard and Brother Andrew and his criticisms of them, which he ventilated quite thoroughly.” \(^{177}\)

d. Patrick Monahan gave evidence that he did not remember DK saying anything in the facilitation “to the effect of accusing either Brother Burns or Brother Moraghan of having been aware in 1981 of sexual abuse or misconduct by Murrin in relation to other boys as distinct from in relation to [DK] himself.” \(^{178}\)

141. It is submitted that the evidence set out above supports the following findings:

a. prior to DK’s facilitation, the Marist Brothers and the facilitator were aware that DK wanted the Brothers to respond to his concerns that many people at St Augustine’s were aware of Brother Murrin’s behaviour, and that there were other victims.

b. the discussion during the pastoral session plainly raised the question of whether the Marist Brothers present had reason to suspect Brother Murrin’s behaviour at the time and, in particular, whether there had been complaints about Brother Murrin’s behaviour while he was at St Augustine’s.

c. during the pastoral session, Brother Burns:

i. did not inform DK about the 1981 complaints against Brother Murrin, of which he had personal knowledge, and

ii. caused DK to understand that the Marist Brothers were not, and had no cause to be, aware of Brother Murrin’s behaviour at St Augustine’s, and did not know of any abuse.

142. In relation to Brother Burns’ evidence that he knew that DK was aware of the 1981 incident involving Brother Murrin at the facilitation, the evidence is:

a. Brother Burns could not identify the source of this knowledge

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\(^{175}\) DL T3322: 24 – 37.
\(^{176}\) DL T3322: 24 – 43.
\(^{177}\) Monahan T3723: 11 – 45.
\(^{178}\) Monahan T3736: 47 – T3737: 9.
b. Brother Burns did not address this knowledge in his statement to the Royal Commission, and

c. while DK’s *Towards Healing* statement says he remembered hearing that Brother Murrin had abused a grade 8 boy, the details he provides there are significantly different from Brother Burns’ evidence of the 1981 incident, in particular:

i. the 1981 incident did not occur on camp, and

ii. Brother Murrin was not removed as dormitory master following this incident.

143. It is noted that *Towards Healing* (2010) includes the following principle:

> Concealing the truth is unjust to victims, a disservice to accused people and damaging to the whole Church community.  

**Appointment of Michael Salmon as facilitator**

144. Another issue that emerged in relation to DK’s facilitation was whether Mr Salmon should have acted as the facilitator at a time when he was also the Director of the State PSO for NSW/ACT.

**The *Towards Healing* (2010) protocol**

145. *Towards Healing* (2010) provides that “The Director of Professional Standards should not normally participate in the facilitation process.” A footnote to this clause states that the Director may participate in the facilitation if approval is given in accordance with clause 39.5. This clause provides, “With the written approval of the Executive Officer of the National Committee for Professional Standards, the Director may depart from these processes if to do so would better accord with the principles in the special circumstances of the case.”

146. Mr Salmon agreed that the effect of these provisions is that the Director of Professional Standards should not normally participate in a facilitation, but if they do, they need to get the written approval of the National Committee. He said:

> I did not obtain the written approval of the Executive Officer to mediate this complaint. I did not consider it necessary to do so in circumstances where I believed Mr DK had been informed of my position by Br Turton as the Church authority and had consented to me acting as the mediator.

> In any event, given my experience mediating complaints and my discussions with the current and previous Executive Officers in relation to similar circumstances, I was confident that in circumstances such as these consent would be given by the Executive Officer.

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180 *Towards Healing* (2010), clause 41.4.2.
182 Salmon T3588: 3 – 27.
183 Ex 4-60 Salmon [32]. See Salmon T3588: 3 – 27; T3592: 36 – T3593: 29.
147. Brother Turton gave evidence that at the time he did not turn his mind to this clause of *Towards Healing* (2010) and that this was an “oversight.”¹⁸⁴

148. It is submitted that Mr Salmon did not act consistently with *Towards Healing* (2010) in that he acted as facilitator without having obtained approval in terms of clause 39.5 of *Towards Healing* (2010).

**Should the Director of Professional Standards act as the facilitator in a Towards Healing facilitation?**

149. Mr Salmon agreed that the provisions of *Towards Healing* (2010) that require the Director to obtain written approval before participating in a *Towards Healing* facilitation were included because the Director may have a conflict of interest, or there may be a perception that the Director has a conflict and is not independent of the Church.¹⁸⁵ Mr Salmon said that he understood that there may be a perception of a conflict of interest if the Director acts as the facilitator.¹⁸⁶

150. Brother Turton agreed that a facilitator must be impartial in order to be effective, and that the facilitator should be seen to be fair and impartial.¹⁸⁷ He agreed that a Director of Professional Standards acting as a facilitator inherently raises the potential for a perception that there is a conflict of interest.¹⁸⁸ Brother Turton said that, on reflection, he would have recommended a facilitator who was totally unconnected with the Church.¹⁸⁹

151. Mr Salmon, however, gave evidence that it is appropriate for a Director of Professional Standards to act as the facilitator in a *Towards Healing* facilitation provided:

   a. the victim has knowledge of the Director’s position and makes an informed decision¹⁹⁰
   
   b. the Director obtains written consent from the victim,¹⁹¹ and
   
   c. the Director obtains the written approval of the Executive Officer of the National Professional Standards Committee.¹⁹²

152. When asked whether he will continue to accept requests that he act as a facilitator in *Towards Healing* facilitations, Mr Salmon gave the following evidence:

   *I will certainly consider it deeply and I will look at all the issues, and if I feel that the request in all the interests – in all the circumstances may be beneficial or would be*
beneficial, prima facie beneficial, to the complainant, then I would take it to the executive officer.  

153. Mr Salmon said that a Towards Healing facilitation differs from a traditional mediation, and as a result:
   a. the principles of neutrality and impartiality do not necessarily apply to Towards Healing facilitators, and
   b. Towards Healing facilitations are aimed at getting the best result for the victim, and the facilitator can play a proactive role in this regard.

154. It is submitted that the financial negotiations in Towards Healing facilitations are not easily distinguished from a more traditional mediation. This is supported by:
   a. Towards Healing (2010), which uses the words “mediator” and “mediation” as well as “facilitator” and “facilitation”
   b. Mr Salmon’s evidence that the “financial reparation part of the facilitation process will often occur in a manner that is more typical of a mediation of a legal claim”
   c. the submission of the TJHC that a CCI officer will normally attend a Towards Healing mediation to “negotiate with the solicitors for the plaintiff as to quantum”, and
   d. DL’s evidence that in DK’s case the afternoon session involved the “separation of the parties, with the Mediator moving between the two ‘camps’”, and that “the focus of this part of the mediation was the possibility of a pecuniary settlement of DK’s complaints.”

155. In addition, it is noted that many Towards Healing facilitations will exhibit one or more of the following features:
   a. victims may find it difficult to trust those in positions of authority
   b. victims may be in a vulnerable position when they are going through the Towards Healing process

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193 Salmon T3607: 3 – T3608: 2.
194 Salmon T3571: 36 – 40; T3577: 41 – T3578: 15. See also Salmon T3601: 36 – T3602: 3.
195 Salmon T3572: 8 – 44. See also Salmon T3578: 5 – 15; T3583: 37 – 42; Salmon T3574: 12 – 46.
196 Ex 4-59 Salmon [28].
198 Ex 4-44 DL [21].
c. victims may not be legally represented at the facilitation, in which case the facilitator assists the victim and the Church authority to reach an agreement on financial reparation.

d. there are well-known difficulties in the path of a victim who wishes to bring civil proceedings, and victims may therefore have no realistic alternative to Towards Healing, and

a. many victims have been required to sign a Deed of Release upon settlement, thereby giving up any future rights to take legal action in respect of their claim.

156. It is submitted that these features highlight the importance that a Towards Healing facilitator is neutral and independent of the Church.

157. It is submitted that a Director of Professional Standards acting as a facilitator in a Towards Healing facilitation raises a real potential for an actual or perceived conflict of interest given that the Director is employed by the Catholic Church.

158. It is submitted that a Director should not act as a facilitator unless:

a. the victim has knowledge of the Director’s position and makes an informed decision

b. the Director obtains written consent from the victim, and

c. the Director obtains the written approval of the Executive Officer of the National Professional Standards Committee.

Communication of Mr Salmon’s position as Director of NSW/ACT Professional Standards Office

159. Another issue that arose in relation to the appointment of Mr Salmon as the facilitator, is whether DK was informed of his position as Director of the NSW/ACT Professional Standards Office.

160. DK gave evidence that Brother Turton asked him whether he would be happy for Mr Salmon to act as his facilitator, but that he was not told that Mr Salmon was employed by the Catholic Church. DK said he knew Mr Salmon would be paid by the Catholic Church for acting as the facilitator in DK’s facilitation.

161. DK also gave evidence that he spoke to Mr Salmon on two or three occasions before the facilitation, and that Mr Salmon did not tell him that he was employed by the Church and described himself as independent.

162. DK said he found out that Mr Salmon was the Director of the New South Wales Professional Standards Office while watching television, after his Towards Healing process.

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201 Submission from the Truth Justice and Healing Council in response to Issues Paper 2, part 4.11.
202 Submission from the Truth Justice and Healing Council in response to Issues Paper 2, page 57, paragraph [108].
203 Submission from the Truth Justice and Healing Council in response to Issues Paper 2, part 7, paragraph [7].
204 Ex 4-43 DK [22]; DK T3291: 45 – T3295: 41.
205 DK T3293: 36 – T3294: 15.
206 Ex 4-43 DK [22]; DK T3296: 4 – T3297: 27.
had been completed. DK gave evidence that “The failure to disclose Mr Salmon’s position as Director of the New South Wales Professional Standards Office made me really, really angry because I felt that I was lied to.”

**Brother Turton**

163. On 22 February 2010, Brother Turton spoke with DK. At the time of this call, Brother Turton had drafted an email to DK, in which he explained that Mr Salmon was the Director of Professional Standards and employed by the Church. This draft email was annotated with the words, “PS This was not sent as a long conversation was held with DK 22nd February 2010 and above was explained.”

164. The following day Brother Turton spoke to Mr Salmon and, according to his file note, Brother Turton told Mr Salmon that he had raised the possibility of Mr Salmon acting as facilitator with DK, “pointing out clearly to him that Mr Salmon was employed by the Church to oversee the implementation of Towards Healing and was an experienced and qualified mediator. DK saw no trouble with this.”

165. On 18 March 2010, Mr Monahan wrote to Mr Bucci, “Mr Salmon has been engaged directly by Br Alexis Turton as the facilitator. Because of the potential for perceived conflict, Br Alexis says that he has checked this clearly with DK, who is happy to proceed on this basis.”

166. When DK contacted Brother Turton about Mr Salmon’s position following the facilitation, Brother Turton responded “Mr Salmon is an experienced and qualified mediator as we did discuss at one juncture prior to the facilitation.”

167. Brother Turton subsequently wrote the following to Brother Rodney:

> I also attach a copy from my notes regarding the use of Mr Salmon as mediator. I recall I had a draft email ready and before sending DK rang and we had a very long discussion. Certainly my intention was to communicate what was in the draft but from this distance I may not have made it clear.

168. It is submitted that:

a. Brother Turton should have explained Mr Salmon’s position to DK in writing, and

b. Brother Turton did not effectively communicate Mr Salmon’s position to DK prior to the facilitation.

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207 Ex 4-43 DK [43].
208 Ex 4-43 DK [44].
209 Ex 4-42 DK Tab 31; Turton T3350: 26 – 9. See also T3351: 26 – 34.
210 Ex 4-42 DK Tab 32.
211 Ex 4-42 DK Tab 49A at CCI.0076.00009.0188_E_R.
212 Ex 4-42 DK Tab 74.
213 Ex 4-42 DK Tab 81.
Mr Salmon gave evidence that he telephoned DK on or about 2 March 2010 and that “I had understood from my discussions with Br Turton that Mr DK was suspicious of the Church. For that reason, I wanted to reassure Mr DK that the mediation process would be independent.” Mr Salmon stated that during this call he said, “Even though I am employed by the Church in another capacity, my role is to be an honest broker and to get the best outcome. It is not my role to protect the backside of the Marist Brothers.” He said, “Mr DK indicated that he did not have a problem with me mediating the complaint.”

However, neither Mr Salmon’s file note of his telephone conversation with DK on 2 March 2010, nor his file note of his conversation with DK on 28 May 2010, records that he informed DK of his position as Director of Professional Standards.

On 28 May 2013, several years after his facilitation, DK called Mr Salmon. A file note made by Mr Salmon states, “Informed DK that I had assumed at the time that Br Alexis had informed him of my role at the PSO.” The note also states, “Telephone Br Alexis Turton briefed him on DK telephone contact. He confirmed that prior to the conference he had informed DK of MS’ standing and this is reflected on the file.”

It is submitted that this response is consistent with the submission that Mr Salmon did not personally inform Mr DK of his position as Director of Professional Standards prior to his facilitation, because he relied upon Brother Turton having done so.

Mr Salmon also gave evidence that when he first met with DK and DL on the day of the facilitation he explicitly informed DK that he was responsible for managing Towards Healing in NSW. He gave evidence that he said:

*The Church has endeavoured to respond to these issues. One example is the Towards Healing process, which in my experience of managing complaints in NSW, has often delivered good outcomes to victims. The Marist Brothers are committed to that process.*

DK gave evidence that Mr Salmon might have said this during the facilitation, but that if he did, “that did not convey to me at all any role that he had in the Church. And I don’t think, if he was intending to do that, that that would be a truthful way of telling me about it.”

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216 Ex 4-60 Salmon [35].
217 Ex 4-60 Salmon [36]. See also Salmon T3580: 17 – 34; T3585: 20 – 34.
218 Ex 4-60 Salmon [36].
219 Salmon T3610: 3 – 35; Salmon T3611: 13 – 36.
220 Ex 4-42 DK Tab 85.
221 Ex 4-42 DK Tab 85.
222 Salmon T3580: 17 – 34; T3585: 20 – 34.
223 Ex 4-60 Salmon [46].
175. This is supported by the evidence of DL, who said that at the commencement of the facilitation he was not aware of Mr Salmon’s employment, and that this was not revealed or explained during the mediation.\textsuperscript{225} DL said:

\textit{The Mediator said nothing during the course of the mediation that suggested his independence was compromised in any respect. Had he made such a disclosure, I am confident I would now recall it, because it would be another extraordinary feature of an otherwise exceptional proceeding.}\textsuperscript{226}

176. DL also said:

\textit{had the mediator said something that suggested to me that he was less than independent, that would have stood out to me. One assumes when one attends a mediation, almost because it goes without saying, that the mediator is independent...As I have said, the mediator said nothing to suggest to me that he was partial or lacking in independence in any respect.}\textsuperscript{227}

177. It is submitted that the evidence of DK and DL, and the documentary evidence tendered during the hearing, support a finding that Mr Salmon did not effectively communicate his position to DK or his barrister either before or during DK’s facilitation.

**Brother Ross Murrin’s position in the Marist Brothers**

12. Brother Ross Murrin is still a Brother in the Marist Brothers, although he is currently incarcerated.\textsuperscript{228} Brother Crowe, the Marist Brothers Provincial, said that there has been no internal process in relation to Brother Murrin, but that “\textit{We have had discussions with Brother Murrin as to his future.}”\textsuperscript{229} He said, “\textit{we have put to Brother Murrin that we think that this is the time for a serious conversation on his future, and we want to know what he is anticipating, and we have our own reflections on that, too.”}\textsuperscript{230}

13. Brother Crowe gave evidence that there are three options when a Brother has committed child sexual abuse: the Brother remains a Marist Brother, the Brother seeks to leave or resigns from the Order, or the Brother is dismissed.\textsuperscript{231}

14. Brother Crowe gave evidence that if a Marist Brother decides they no longer wish to be a Brother, they could move for dispensation from vows.\textsuperscript{232} He said:

\textit{That process begins locally, but it does go to the superior general and then on to the Vatican in some cases. That person, in a sense, simply needs to say that he no longer wishes to live as a brother, and he can give reasons for that. And then that comes – well, he has to write that letter to the superior general.}

\textsuperscript{225} DK T3317: 3 – 9.
\textsuperscript{226} Ex 4-44 DL [33].
\textsuperscript{227} DL T3329: 36 – T3330: 6.
\textsuperscript{228} Crowe T3773: 17 – 21.
\textsuperscript{229} Crowe T2772: 23 – 35.
\textsuperscript{230} Crowe T3774: 8 – 13.
\textsuperscript{231} Crowe T3774: 15 – 25.
\textsuperscript{232} Crowe T3753: 11 – 44.
From my side, I have an obligation to write a bit of a report as to how I’ve helped the person to discern – that is the word that is used – to discern whether this is an appropriate action to be taking at this particular moment and the assistance that I have given that person to come to this decision, to come to this point.  

15. In relation to the involuntary removal of a Brother, Brother Crowe said that this is technically called “dismissal” and that it is at the initiative of the Provincial and his local council who would decide whether, according to canon law, that person should no longer be a Brother. The documentation is then sent to Rome for consideration. Brother Crowe said, “For a brother to be dismissed is a process, which would involve quite a bit of paperwork.”

16. Brother Crowe also said:

> It’s within my authority to say to somebody, “You are no longer to be known in public as a brother. You are no longer able to wear the religious garb or the religious indication of a brother. You are no longer to attend functions of the province”, things like that.

> And then also in terms of the movement of people, there’s whole things around what we call safety plans.

17. Brother Crowe said that a decision as to Brother Murrin’s future would not be made until he has been released from gaol. He said:

> It’s a question of the responsibility for the future in terms of the risk to children and in terms of the risk of that person also of re-offending.

> So in the case of Ross Murrin, or it could be the same for others, that is the question which is there. If you dismiss, the person is on his own. If you find a way of having the person in a supervised situation, then you are reducing the risk, because you can control the person’s access to children, and so on – you are reducing the risk to children; so that’s the prime concern.

> I understand what you’re saying in terms of that dismissal seems natural in such a case, but I’m asking you also to think there in terms of what is best for children. Our read of it at the moment [...] is to have the person in a supervised situation and that framework then, in terms of accountabilities, in terms of restrictions of movements, in terms of ongoing supervision, of therapy, and so on, that we have a way of doing our bit for society by controlling the situations of these people.

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233 Crowe T3753: 11 – 44.
234 Crowe T3754: 1 – 38.
235 Crowe T3754: 1 – 38; T3757: 5 – 19.
236 Crowe T3774: 15 – 25.
238 Crowe T3775: 8 – T3779: 21.
239 Crowe T3775: 8 – T3779: 21.
AVAILABLE FINDINGS

Available findings in relation to the Marist Brothers’ knowledge of Brother Ross Murrin

1. Brother Burns received complaints from two male students of inappropriate touching by Brother Murrin at St Augustine’s College in June or July 1981; and
   a. Br Murrin admitted that he had inappropriately touched the boys
   b. Brother Burns did not remove the complainants from Brother Murrin’s dormitory, and
   c. Brother Burns did not remove Brother Murrin from the dormitory or otherwise restrict his access to the boys.

2. Prior to DK’s facilitation, the Marist Brothers and the facilitator were aware that DK wanted the Brothers to respond to his concerns that many people at St Augustine’s were aware of Brother Murrin’s behaviour, and that there were other victims.

3. The discussion during the pastoral session raised the question of whether the Marist Brothers present had reason to suspect Brother Murrin’s behaviour at the time and, in particular, whether there had been complaints about Brother Murrin’s behaviour while he was at St Augustine’s.

4. During the pastoral session, the Marist Brothers:
   a. did not inform DK about the 1981 complaints against Brother Murrin, of which they had personal knowledge, and
   b. caused DK to understand that the Marist Brothers were not, and had no cause to be, aware of Brother Murrin’s behaviour at St Augustine’s, and did not know of any abuse.

Available findings in relation to the Director of Professional Standards acting as a facilitator

5. The Director of Professional Standards should not act as a facilitator in a Towards Healing facilitation unless:
   a. the victim has knowledge of the Director’s position and makes an informed decision
   b. the Director obtains written consent from the victim, and
   c. the Director obtains the written approval of the Executive Officer of the National Professional Standards Committee.

6. Mr Salmon did not act consistently with Towards Healing (2010) in that he acted as facilitator while holding the position of Director of Professional Standards without having obtained approval in terms of clause 39.5 of Towards Healing (2010).
7. A Director of Professional Standards acting as facilitator in a *Towards Healing* facilitation inherently raises the potential for an actual or perceived conflict of interest.

Available findings in relation to the appointment of Michael Salmon as facilitator

8. Neither Mr Salmon nor the Marist Brothers effectively communicated Mr Salmon’s position as Director of Professional Standards to DK prior to his facilitation, or to DK and his barrister during the facilitation.

Gail B Furness SC

Angus Stewart

12 August 2014