ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

Public Hearing
(Day 25)

Level 17, Governor Macquarie Tower
Farrer Place, Sydney

On Tuesday, 10 December 2013 at 10am

Before the Chair: Justice Peter McClellan AM
Before Commissioners: Ms Helen Milroy
Mr Andrew Murray

Counsel Assisting: Ms Gail Furness SC
Mr Angus Stewart

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THE CHAIR: Yes, Ms Furness.

MS FURNESS: Thank you, your Honour. Mr Stewart will read the statement of Mr Rolls, who has been excused from attending on the grounds of health.

MR STEWART: Thank you, your Honour and Commissioners, this is the witness statement of Laurie Rolls. It is dated 29 November 2013. I won't read those parts of it that just refer to the annexures, but I do intend reading part of one of the annexures.

"My name is Laurie Rolls.

I am currently manager, special projects at Catholic Church Insurance Limited, CCI.

Unless I state otherwise, I have set out in this statement my independent recollection of the events the subject of the statement.

I have been asked to provide this statement in connection with my involvement in the handling of a complaint to the Archdiocese of Brisbane by Joan Isaacs.

The statement has been prepared in response to and in compliance with a summons to appear and notice to produce dated 19 November 2013 and 29 November 2013 respectively. It is produced to the Royal Commission on the basis that it will be tendered and received in evidence by the Royal Commission pursuant to those documents and on the basis that the statement will be treated as evidence pursuant to section 6DD of the Royal Commissions Act 1902 of the Commonwealth.

I was born on 28 November 1928 and I am now 85 years old. Principally for health reasons, I work almost exclusively from home.

In 1947 to 1948 I spent two years studying a Bachelor of Arts/Law degree at the University of Melbourne. In 1949, prior to completing that degree, I joined the Melbourne office of the New Zealand Insurance Company Limited, who transferred me to their Hong Kong office in January 1951.

I spent 36 years working overseas in the general
insurance industry, accepting appointments firstly in
Hong Kong and later in Fiji, New Zealand and Papua New
Guinea. From 1981 to 1983 I moved to Dunedin and served as
assistant general manager, National Insurance Company of
New Zealand Limited.

In 1983 I moved to Papua New Guinea as general manager
of the company's PNG and Western Pacific operations.

In 1986 I was appointed as state manager, Victoria, of
National Insurance Company of New Zealand Limited, later to
become, through mergers, CIC Insurance.

In 1987 I resigned from CIC Insurance to join CCI,
Catholic Church Insurance Limited. CCI had been asked to
establish and manage the National Catholic Superannuation
Fund. I was engaged to assist with the promotion of that
fund.

CCI is an unlisted public company that has been
established for charitable purposes. CCI provides
insurance and related services to the Catholic Church
organisations in Australia.

Upon completion of my role in the National Catholic
Superannuation Fund in 1992, I became involved in the
general insurance operations of CCI with particular
responsibility for the administration of 'special issues'
liability insurance. The term 'special issues' related to
policies designed to provide indemnity in respect of events
involving criminal sexual abuse.

From about 1992, I was a member of CCI's Special
Issues Committee that was chaired by the general manager of
CCI. Other members of the Special Issues Committee
included the underwriting manager, the claims manager and
a representative of CCI's insurance brokers. The committee
overviewed the operation of the 'special issues' liability
policies.

From 1969 to date CCI has issued event-occurring
Public Liability insurance policies. Some church bodies
held Public Liability insurance policies with other
insurers.

For three years from 1991 to 1994, CCI also issued
'Special Issues' policies on a claims made basis,
specifically directed to the subject matter of sexual abuse.

For one year, 1994 to 1995, CCI issued an 'Ethical Standards Liability' policy, also on a claims made basis, and also in relation to that subject matter.

In about 1995, CCI established a continuing service to religious leaders and bishops known as the Professional Standards Risk Management Service (PSRMS), to assist them in relation to matters arising under the special issues policies. I was appointed to carry out this task and was the sole person engaged in providing the service.

My title within the company was manager, special projects. The clients were advised that I had withdrawn from the executive team and would not participate in decisions regarding the granting of indemnity and other claims management matters. I was therefore free to offer them independent advice and assist them in the presentation of claims to CCI.

The advisory service offered through PSRMS included advice on: the operation of applicable insurance policies; the requirements of the 1992 protocol, established by the Australian Catholic Bishops Conference, the ACBC, and the Australian Conference of Leaders of Religious Institutes, the ACLRI, later known as Towards Healing; how to notify and present claims to CCI or other insurers; reserve levels that a client might need where the applicable insurance policy was unlikely to provide any or sufficient insurance cover; and engaging with the national committee for professional standards and CCI in measures to promote protection and prevention.

In my role with PSRMS, I reported directly within CCI to the general manager and then later to Mr Peter Rush, the chief executive officer of CCI. I also had dealings with other officers of CCI such as claims managers and claims officers on a regular basis. I did not make decisions regarding indemnity, nor the quantum of settlements, although I sometimes discussed such matters with claims officers. And my involvement was generally limited to the presentation of claims to CCI and other insurers.

In recent years the service has been rarely used. Dioceses and religious institutes have gained experience in
these matters and have developed appropriate structures to
deal with complaints. In earlier years some church bodies
made no call on the service while others regularly sought
advice.

I remain manager, special projects at CCI. The work
which I currently undertake for CCI includes the provision
of an advisory service to claims staff and occasionally as
required to clients. I also undertake tasks allocated by
the CEO of CCI relating both to special issues and general
insurance matters.

In 1992, as I was aware, the ACBC and the ACLRI
adopted the first national Protocol for Dealing With
Allegations of Criminal Behaviour, referred to as the
'Initial Protocol'.

Then in late 1996 after several years of deliberating,
the ACBC and the ACLRI adopted the Towards Healing
protocol, which came into operation in 1997.

There have been a number of reviews and revisions of
Towards Healing. I am aware that the terms of the current,
2010, edition are different in a number of respects from
those of the original 1996 edition.

CCI is not always involved in Towards Healing claims.
Not all church authorities have a CCI policy, and some
claims relate to events that occurred before public
liability insurance was first issued by CCI in 1969, or
otherwise when the name of an offender had not been
notified under one of the claims made policies issued

Towards Healing and CCI's participation in it have
evolved considerably between 1997 and today. There has
been a number of revisions to the protocol itself, and the
approaches of the church as a whole and CCI have undergone
changes and development as knowledge and experience have
increased, such as those referred to in the following six
paragraphs.

During the early years of Towards Healing, so far as
I was generally aware, CCI typically continued to treat
claims relating to child sexual abuse in much the same way
as it dealt with other insurance claims. For example, it
usually required an insured to make no admission of
liability; it was wary of allowing apologies to be made; and it required or encouraged insureds to take advantage of limitation and other technical defences when they were available.

Also during the early years, it was my understanding that the subject of 'compensation' in terms of a lump sum payment, if it was raised at all, was usually dealt with separately from the purely pastoral elements of the Towards Healing process. Those pastoral elements were directed to the individual needs of the victim at the time, and might include, for example, an apology and assistance with the payment of counselling fees.

Where a victim made a formal legal claim for compensation, in my experience at that time the church authority would usually deal with such a claim separately, generally through legal advisers. This would usually take place subsequent to the pastoral aspect of the facilitation. Direct contact with the victim would then be regarded as inappropriate once a formal legal claim had been made.

As I understood it at the time, such an approach was in accordance with the terms of the original 1996 Towards Healing protocol. That first edition of Towards Healing made no mention of the possibility of payment of a lump sum by way of 'reparation' or otherwise. I refer to clause 7.2 of that document.

By contrast, today CCI's usual approach is to encourage early settlements of cases of this kind, including by way of acknowledgments and unqualified apologies to victims. In more recent times, CCI has encouraged the giving of apologies as part of the Towards Healing process and does not treat the apology as prejudicing the insured's right to be indemnified on the ground that it is an admission of liability.

So far as reparation is concerned in particular, the position today is different from that of the late 1990s. Firstly, the current, 2010, edition of Towards Healing provides expressly for the payment of 'reparation' as one possible outcome for the victim; see clause 41.1.1. Secondly, and consistent with that, I understand that nowadays the issue of reparation is often dealt with as one part of the overall Towards Healing facilitation, albeit
separately from the pastoral part of the facilitation.

Other than as indicated in this statement, I no longer have any independent recollection of the specific events concerning the Towards Healing process undertaken for Mrs Isaacs or of the handling of her claim for compensation. To the extent that I am now able to recall anything of these events, my recollection is now derived almost entirely from my having been shown various documents relating to this matter in the course of preparing this statement.

I have read a statement of Mrs Isaacs dated 23 October 2013 and its annexures.

From the documents I have recently seen, I am reminded that in this instance the Archdiocese of Brisbane held two insurance policies with possible application to Mrs Isaacs' claim - one with CCI, (a 1994 Special Issues Policy), and one with Queensland Insurance Company (the forerunner of QBE).

Exhibit C to Mrs Isaacs' statement is her letter to Ken Robertson dated 12 February 1999. A copy of that letter is on CCI's file.

Exhibits D and E to Mrs Isaacs' statement are her letter to Ken Robertson dated 8 March 1999 and a three-page statement dated 9 March 1999. Copies of those documents are also on CCI's file.

Exhibit F to Mrs Isaacs' statement is a letter from Bishop Gerry to Mrs Isaacs dated 19 March 1999. A copy of that letter is also on CCI's file.

On 13 April 1999 I sent a facsimile to Paul Reynolds, claims manager of CCI, attaching Mrs Isaacs' letter dated 12 February 1999. In that message, I recorded Mr Reynolds' instructions to write to Bishop Gerry about the position with regard to the QIC liability policy and the CCI special issues cover.

On 19 April 1999, as instructed, I sent a letter to Bishop Gerry in relation to those matters. A copy of that letter is at tab 18."

If that letter could be brought up on the screen,
I will read just over a page from that letter. That is a letter dated 19 April 1999 from Laurie Rolls on the letterhead of Professional Standards Risk Management Service, and it's addressed to the Most Reverend J Gerry, Archdiocese of Brisbane.

Dear Bishop

Joan Isaacs and Francis Derriman

Thank you for sending the papers regarding the allegations made against Francis Derriman by Joan Isaacs.

The events of which she speaks are said to have occurred during the years 1967 through to 1969. This being so the claimant will, quite apart from the difficulty of proving negligence on the part of the Archdiocese, have some difficulty obtaining the right to proceed with an action at law. Previous decisions in Queensland indicate the courts in your state are disinclined to accept applications for relief from the provisions of the Statute of Limitations. Ms Isaacs may be able to advance argument as to why she learned of her rights to claim in respect of these events more recently than six years from the time they occurred or from when she reached age 18 years. However, the practice of making legal claims in respect of just events, involving clergy and religious, became very public knowledge somewhat more than six years ago.

You will, of course, be considering the claims from a pastoral viewpoint. It has been the custom of the Archdiocese in such cases to give sympathetic hearing to applications for assistance with counselling and other like expenses in recognition of the suffering experienced by the applicant, although it is clearly understood the responsibility lies with the alleged offender rather than the Archdiocese.
Further, there may be commercial reasons for offering to pay some compensation on an ex gratia basis. Notwithstanding the claimant's difficulty in commencing legal process, she may nevertheless attempt to do so and legal expenses will be incurred in responding.

I understand Father Adrian Farrelly is meeting with Ms Isaacs and her support person, Mr Peter Speed, on Tuesday, 20th April. I am concerned that Mr Speed happens also to be a lawyer. I have suggested to Father, he should bring the meeting to close, if Mr Speed engages in legal argument and agree to continue only with a lawyer representing the Archdiocese present. It should also be remembered, if Ms Isaacs resorts to legal representation, she forfeits the right to your continuing to offer pastoral communication.

Father Farrelly agrees he will engage in a form of apology which expresses sorrow that such events could take place, that a priest of the Archdiocese could act in such a manner but will avoid any suggestion the Archdiocese is itself responsible for the actions of the priest.

He will agree to consider the cost of counselling, preferably with our own service, Centacare. It may not be possible to insist on this. If not, no open ended arrangement is to be considered. Rather, a set number of sessions over a specific period will be agreed. Depending on how much counselling has already taken place, it is not uncommon to agree to ten sessions over a six month period, followed by review.

On the question of compensation, Father will suggest he is not in a position to negotiate but will need to refer to the financial advisers of the Archdiocese on the question of whether a payment is
required to be made, as well the
appropriateness of any amount proposed. It
is difficult sometimes for laypersons to
understand why a Bishop or an Episcopal
Vicar suggests he cannot decide such
matters. It is useful then to refer to the
principle that the moneys held by the
Archdiocese are the property of the
Catholic community held in trust and formal
procedures are in place governing the
process of making disbursements for
particular purposes.

Whatever the outcome of the meeting of 20th
April, it would seem likely the Archdiocese
will be seeking recovery under any policy
of insurance, which might offer indemnity
in respect of claims for payments arising
from these events, for which the
Archdiocese can be said to be legally
liable. At the times recorded here, the
Church Insurer, CCI, had not yet issued
liability insurance cover. We have been
able, however, to identify a policy in
force with the Queensland Insurance Company
Limited, the forerunner of the QBE.

And then the letter sets out details of the policies. Then
at the end of the letter, it finishes off:

If I can be of any further help to you or
Father Farrelly, to whom copy of this
letter is also being sent, please do not
hesitate to call me.

Yours sincerely
Laurie Rolls

Returning, then, to the statement at paragraph 44:

"The first paragraph of that letter refers to 'papers'
having been sent to me regarding Mrs Isaacs' allegations
against Francis Derriman. I do not have a present
recollection of what those papers were, but they may have
been exhibits C to F to Mrs Isaacs' statement.

My letter of 19 April also refers to a meeting which
was to take place the following day, 20 April 1999, in relation to Mrs Isaacs' complaint, and sets out my views as to some of the factors relevant to that meeting. One of those factors was what Father Farrelly would say at the meeting, both in relation to the question of the form of apology to be given, and in relation to the question of 'compensation'. It appears from the contents of the letter that I had had a conversation with Father Farrelly about these matters, but I do not presently have a recollection of that conversation.

Largely from the contents of the letter dated 19 April 1999, I recall that one factor of particular concern at the time was that the Archdiocese in this instance also had a policy of insurance with QIC. Mr Reynolds, the CCI claims manager, was concerned to ensure that no step be taken which might jeopardise any claim by the archdiocese against that policy. CCI would not become liable under its own 'special issues' claims made policy if a claim against QIC succeeded. This topic is addressed directly in the second half of my letter, but my recollection is that it was also relevant to what I say in the first half.

I make the following comments in relation to some aspects of my 19 April letter:

In the second paragraph on the first page, I referred to the legal difficulty which would be faced by Mrs Isaacs in bringing a case, particularly because of the impact of the statute of limitations at that time in Queensland. Reliance on such matters was consistent with the approach that I understood to be typically taken by CCI at that time, as I have described above.

In the fourth paragraph on the first page, I referred to the possibility that the archdiocese might nevertheless in due course 'offer to pay some compensation on an ex gratia basis'. I then went on, in the third paragraph on the second page of the letter, to refer to the approach which I had evidently discussed with Father Farrelly, namely that he would say at the facilitation meeting that the question of compensation would need to be dealt with subsequently.

In the meantime, in the third paragraph on the first page, I had noted that Bishop Gerry, for his part, would be considering Mrs Isaacs' claim from a pastoral viewpoint.
The approach referred to above was consistent with my understanding at that time, as outlined in other paragraphs above, that a Towards Healing facilitation meeting would usually address pastoral matters, including such things as counselling needs, but that any questions in relation to 'compensation' would be addressed separately, outside the Towards Healing process.

On the last paragraph on the first page, I referred to the possibility that Mrs Isaacs would 'forfeit the right to further pastoral communication if she resorted to legal representation'. My understanding at the time was that where a victim chose to communicate through a lawyer, it would no longer be appropriate for the church authority to continue to deal with her directly.

On the first paragraph on the second page, I referred to Father Farrelly providing 'a form of apology which expresses sorrow' but avoiding any suggestion that the archdiocese was itself responsible for the actions of the priest concerned. That was consistent with my understanding of CCI's approach at the time. It also reflected CCI's concern in this particular matter to preserve the position of the archdiocese in relation to QIC.

On 21 April 1999, Father Farrelly sent me a facsimile about the outcome of the facilitation and attached a draft letter of apology to Mrs Isaacs for my consideration.

According to a memorandum from me to Mr Reynolds dated 10 June 1999, I 'instructed' Bishop Gerry to remove one sentence of the draft letter of apology. I have no present recollection of 'instructing' Bishop Gerry to do so, nor of any conversation with Bishop Gerry about the draft apology. However, on the CCI file is a copy of Father Farrelly's draft with that sentence enclosed in parentheses. It may be that I suggested to Bishop Gerry that it should be removed, but if so, I do not now know why I might have made that suggestion.

The letter of apology, as actually sent to Mrs Isaacs, is exhibit K to Mrs Isaacs' statement. I did not see that letter until November 2013 in the course of preparing this statement. The sentence in question has been altered in the final letter. I note that the final letter also
contains numerous other alterations and amendments to the
draft which Father Farrelly had sent to me on 21 April. So
far as I am aware, I had no involvement in making those
amendments.

From May 1999 onwards, as shown by the letters
attached to Mrs Isaacs' statement, communications between
Mrs Isaacs and the archdiocese appear to have been largely
between her solicitor, Mr Deed, and the solicitor for the
archdiocese, Mr John Moore.

The content of those letters confirms to me that the
process was thereafter conducted on the basis that the case
was a commercial negotiation concerning a civil claim for
compensation outside of Towards Healing. That seems to
have been particularly so after a Supreme Court claim was
filed and then served on or around 11 November 1999.

Mr Moore was the solicitor for the archdiocese in this
matter. The main person at the archdiocese who was
involved in the matter after April 1999, so far as I recall
and as the correspondence appears to indicate, was
Father Jim Spence.

From August 1999 onwards there was a good deal of
correspondence between Mr Moore, Father Spence and myself
(and also the relevant claims officers at CCI) about this
matter, including copies of letters between Mr Moore and
Mr Deed, Mrs Isaacs' solicitor.

The legal advice from Mr Moore was that Mrs Isaacs was
unlikely to succeed in her civil claim, for various
reasons, including the availability of a limitations
defence.

On or around 31 August 1999, Mr Deed served
a seven-page documents with various attaches setting out
Mrs Isaacs' claim for compensation.

I note that the amount claimed was some $279,000. The
nature and format of the calculations of the claim were
typical of such claims made by solicitors in common law
personal injuries cases outside the context of Towards
Healing.

Throughout the period from mid-1999 onwards, my
understanding was that the claim was now being treated as
an insurance claim against the archdiocese and was outside the Towards Healing process.

I was not aware at the time of what, if anything, the archdiocese had offered or was offering to Mrs Isaacs from a pastoral perspective other than the facilitation meeting on 20 April 1999 and the letter of apology of 30 April 1999."

And it is signed by Laurie Rolls.

Your Honour, if I can tender that statement by Laurie Rolls.

THE CHAIR: It will become exhibit 4-7.

EXHIBIT #4-7 STATEMENT OF LAURIE ROLLS DATED 29/11/2013, BARCODED STAT.0091.001.0002_E_M

THE CHAIR: Yes.

MS FURNESS: Thank you, your Honour. I call Bernadette Rogers.

<MARY BERNADETTE ROGERS, sworn: [10.30am]

<EXAMINATION BY MS FURNESS:

MS FURNESS: Q. Would you tell the Royal Commission your full name, address and occupation?
A. My name is Mary Bernadette Rogers. My address is [Address supplied to the Royal Commission], and my occupation is - I'm currently a part-time director of professional standards for the Catholic Church in Queensland. I'm also a member of the Queensland Civil and Administrative Tribunal.

Q. Would you mind telling your address more slowly so that it can be taken down?
A. [Address supplied to the Royal Commission].

Q. Thank you very much. Now, you have prepared a statement in relation to this section of the Royal Commission hearings dated 15 November 2013?
A. Yes.

Q. Do you have a copy of that with you, Ms Rogers?
A. No, I don't.

Q. Are the contents of that statement true and correct?
A. Yes.

MS FURNESS: I tender that statement.

THE CHAIR: It will be exhibit 4-8.

EXHIBIT #4-8 STATEMENT OF MARY BERNADETTE ROGERS, DATED 15/11/2013, BARCODED STAT.0082.001.0001_M

MS FURNESS: Q. There is a copy on the screen in front of you, Ms Rogers. If at any time you prefer a hard copy, we can accommodate that. Now, your current position is director of professional standards for the Queensland office of professional standards; is that right?
A. Yes.

Q. And prior to that, you have been a facilitator in relation to the Towards Healing process; is that right?
A. Yes.

Q. Now, at paragraph 14 you say that you were appointed as a facilitator for a number of Towards Healing complaints in the late 1990s and early 2000s; that's right?
A. Yes.

Q. How many had you participated in before you were involved in Joan Isaacs'?
A. I'm sorry, I really can't remember.

Q. Are we talking about several, dozens, hundreds?
A. Several.

Q. So less than ten?
A. Yes.

Q. When you were appointed as a facilitator, what training did you participate in?
A. There was a two-day training program that was held in Brisbane in 1997, and I attended that two-day training program.

Q. And was that conducted by Ken Robertson?
A. Yes.
Q. Was he the only person who conducted that training program?
A. My recollection is there were speakers, but it was convened by Ken Robertson.

Q. Were you here when Dr Robertson gave evidence yesterday, Ms Rogers?
A. I didn't hear that evidence, no.

Q. Were you here when he gave evidence?
A. I was sitting outside in a room, yes.

Q. You haven't had any opportunity to have a look at the transcript of his evidence?
A. No, I didn't.

Q. He gave evidence, and it's contained in his statement, that a weakness he identified in Towards Healing was the training given to directors. Now, were you aware of that from having read his statement, which I assume you have done?
A. No, I haven't read his statement. No, I wasn't aware of that evidence.

Q. He gave evidence that a weakness was the training for directors. Would you consider also that a weakness in the Towards Healing process when you began in 1997 was the training that you were given as a facilitator?
A. No.

Q. The training was adequate for the purposes as you then understood that a facilitator would play; is that right?
A. The training related to the Towards Healing protocol. The people who were engaged to conduct facilitations were engaged because they had experience in alternative dispute resolution, or ADR, techniques, so there wasn't an attempt by the director to train facilitators in the ADR process as such.

Q. The training was the Towards Healing documents and processes?
A. Yes.

Q. Did you receive any particular training in relation to dealing with those who may have been traumatised by abuse in the past?
A. No. Oh, the training in Towards Healing spoke about
the impact of abuse on victims, so that was part of that
two-day course.

Q. I take it that that part of the course was not
conducted by Dr Robertson?
A. My recollection is that there were other speakers who
addressed those issues.

Q. Did you yourself undertake any research before
beginning as facilitator specifically in the areas of
trauma that might be experienced by those who had been
abused in the past?
A. No.

Q. What were you told when you began about the records
that you should keep as a facilitator?
A. I don't think there was any specific direction in
relation to record-keeping. I was in the practice of
destroying my records - my own personal records - once I'd
provided a copy to the church authority, or to the
director.

Q. So is it the case that, generally speaking, when you
began in 1997, you would receive the papers that you
understood the complainant had given to the director?
A. Yes.

Q. And that those papers would guide you in preparing for
the facilitation?
A. Yes.

Q. And that after the facilitation had been completed,
you would prepare a report?
A. Yes.

Q. Based on those documents and what happened in the
facilitation?
A. Yes.

Q. And you provided a copy of that report to whom?
A. To the director.

Q. Anyone else?
A. If asked, yes, I would provide it to the complainant
or the complainant's support person. It depends what the
discussion was at the end of the facilitation; there would
be an appropriate person to provide the report to.
Q. And the church authority?
A. I didn't provide it to the church authority. I think I provided it to the director.

Q. You then destroyed whatever documents you had received and whatever notes you had made to assist in the facilitation?
A. Yes.

Q. You were in that position from 1997 till 2003, is that right, doing facilitations for the church?
A. I can't be sure that I did conduct facilitations in 2003. I know that I didn't conduct any after that date. The only facilitations I conducted were ones, in that early time, where Dr Robertson contacted me. And then at a later time I started again.

Q. So you have estimated between 10 and 20 facilitations between 1997 and 2003; that remains your recollection?
A. That's an estimation based on at least two a year, maybe more.

Q. And then you didn't do any more until you came back in 2009; is that right?
A. That's right.

Q. Was there a change of director just before you began in 2009 and when you started doing facilitations?
A. No. When I started doing facilitations, Mr Mullins was the director.

Q. Had he been the director for long before you began doing facilitations, do you know?
A. No.

Q. You don't know?
A. He had not been the director for very long.

Q. Thank you. Did you observe any changes in what was advised to you of your role in 2009 from what was advised in 1997?
A. That the process had changed quite substantially over that period of time. What I was actually provided with was a - it was a 2010 copy of Towards Healing when I took over, so while I'm saying 2009, that's because I know that's when Mr Mullins became the director. It's more probable that my
first facilitations were in 2010, because I was given a new
copy of Towards Healing and it was the 2010 copy.

Q. What training did you receive in 2010 as to how you
should undertake a facilitation?
A. Again none. There was an acknowledgment of my skills
as a facilitator, so the training related to the fact that
Towards Healing had changed.

Q. So what training did you participate in in 2009-2010?
A. I was given a copy of the Towards Healing protocol.

Q. And that was it?
A. Yes.

Q. And you were left to read it and draw your own
conclusions as to what it required of you?
A. Yes.

Q. Between leaving in 2003 and doing facilitations in
2009-2010, had you informed yourself, by whatever means, of
the effect of trauma on victims of prior sexual abuse?
A. My professional career, for the most part, has been
dealing with people who've experienced trauma in many
different forms, but certainly when I practised as a family
law practitioner, I practised as the separate
representative for children rather than representing either
father or mother, and sexual abuse was a large part of
that. So my professional background pretty much was
involved with trauma of children. I'd done some child
protection issues. It was my professional background.

Q. So when you say it's your professional background,
than the work that you did between those two periods - that
is, having ended in 2003 and beginning again in 2009-2010 -
was the work you would do in relation to your ordinary
daily work in ADR?
A. Yes.

Q. Was there any additional research work or literature
review or anything else that you were engaged in
specifically because of your work with the church - that
is, not familial abuse but institutional abuse?
A. No.

Q. In terms of record-keeping, you have given evidence as
to your practice in the early years, if I can describe them
as that - you understand what I mean by "the early years"?
A. Yes.

Q. When you came back in 2009 and 2010, were you instructed any differently as to what data or records to keep?
A. No.

Q. What was your practice in those later years?
A. Similarly, to destroy the material once I'd prepared the report.

Q. To whom did you provide reports in the later years?
A. I provided them to the director of professional standards at the time, Mr Mullins.

Q. And the complainant?
A. No, I didn't personally send the report to the complainant.

Q. But you did in the earlier years?
A. I did when I was asked at the end of the facilitation, yes.

Q. In any other way, had your practice changed in the later years from the earlier years?
A. The facilitations themselves were quite different. Is that the question you're asking?

Q. I'm asking how your practice changed. If the facilitations were different, you could tell the Royal Commission how the facilitations were different?
A. The facilitations were different at that point because there was - in the early days, there was very little discussion around reparation. It was a process of telling a story and receiving an apology. In the later days, the question of reparation became something that was regularly addressed.

Q. In the later days, were you aware, as a facilitator, of the need to somehow draw a line between what is known as the pastoral aspects and the reparation aspects?
A. You'd try to draw a line, but it's quite difficult to do that. What I tried to do was ensure that the negotiations were conducted in a supported way so as they didn't - so that they didn't impact on the pastoral component. It was my usual practice - I can't think of
a time that I deviated from it - that we would have an early discussion, and then there would be an apology, and then there would be a break, and parties would move around the room or to different rooms, and then there would be discussions in relation to making a genuine and material contribution to the apology which had occurred, and that was when the question of reparation was conducted - was discussed.

Q. In the later years, was it inevitably the case that a representative of the Catholic Church Insurance company was present?
A. No.

Q. When was it that a person who was a representative of the Catholic Church Insurance was present?
A. Those cases where there was an insurance component.

Q. That must have been determined in advance for the person to be there?
A. Yes.

Q. And you determined who was present at facilitations, generally speaking?
A. No.

Q. You were told who would be present?
A. I was told who would be present, yes.

Q. So on occasions somebody from the insurer would turn up and on other occasions they wouldn't?
A. Yes.

Q. Were you able to discern from your experience in that latter period, 2009 to 2013, what generally seemed to be the factors that were consistent when an insurer was there or wasn't there?
A. I'm sorry, I don't understand your question.

Q. On occasions an insurer representative was there?
A. Yes.

Q. And on occasions they weren't there?
A. Yes.

Q. Were you able to discern what were the factors that seemed to give rise to an insurer being there or not being
there?
A. I made the assumption that in some cases there was an
insurance coverage and in other cases there wasn't.
I don't know if that's right or not, but that was what
I assumed.

Q. Was it the case that when the insurer wasn't there,
there was no money spoken about?
A. No.

Q. So there could have been money spoken about in the
absence of an insurer?
A. There was, yes.

Q. In those cases you assumed that the diocese or the
archdiocese had access to funds other than the insurer?
A. The diocese or the religious order.

Q. In terms of those cases in the latter years where
money was involved, did you record the amount of money in
your facilitation report?
A. I would on occasions. On other occasions the amount
of money would be left open.

Q. When it was determined, did you record it?
A. I can't remember.

Q. If it was left open, clearly you couldn't record it?
A. No.

Q. You couldn't record an amount, but you could record
that there had been discussions and nothing was reached?
A. Yes, yes.

Q. Can you think now, looking back on that period 2009 to
2013, why you wouldn't record the amount, if there was an
amount agreed upon?
A. Counsel assisting, it's quite probable that I in fact
did record an amount each time. I cannot say that I did.
I can't remember that. I can't remember writing each of
those reports.

Q. But your general practice at the time was to record
the amount if an amount was arrived at?
A. I think it was, yes. My practice at the time was to
record the outcome, whatever that outcome might be.
Q. And if the outcome included an agreed amount, you'd probably record that?
A. Yes, I can't - I can't think of instances where I would not have, but there may easily be some, for reasons that I can't remember at this point.

THE CHAIR: Q. Ms Rogers, I'm not sure I fully understand, but your job as facilitator had effectively two components, did it?
A. Yes, your Honour.

Q. And were you instructed to facilitate an agreement in relation to an amount of money?
A. No, your Honour.

Q. Well, then, what was your role in relation to this second component?
A. My role was to facilitate the discussions.

Q. Well, I'm not quite sure, then, I really do understand what you were doing as the facilitator. Those discussions, presumably, had in mind reaching an agreement, if possible; is that right?
A. They did, but I wasn't instructed to arrive at an outcome. I wasn't instructed to do anything. I was appointed as a facilitator and I saw my role under the Towards Healing protocol as facilitating the discussions between the parties.

Q. You mean making sure they were in the same room and talked to each other; is that what your job was?
A. It was more complex than that, your Honour.

Q. Well, then, you had better tell me, what was it?
A. It was I think, first and foremost, looking at the safety of the complainant because it's an environment that I had concerns about in terms of the safety of the complainant.

Q. You mean the facilitation facility had to be safe for the complainant?
A. No, I mean the psychological impact of the facilitation itself had to be safe.

Q. Right.
A. So my job was to look at the safety of the complainant, to ensure that the complainant had an
opportunity to say whatever was important to them and to do what was necessary to make sure that that happened.

Q. This is in the second stage of the process, is it?
A. No, this is in the first stage.

Q. I want to know about the second stage.
A. Oh, in the second stage of the process. In the second stage of the process, I saw it as my role to - it was often a process of shuttle negotiation, so I was often in the role of moving backwards and forwards between the parties. They often weren't in the same room together while those discussions took place.

Q. So, as I understand, that's the classic mediation?
A. A shuttle mediation.

Q. Yes.
A. Yes.

Q. And what were your instructions in relation to what you were to seek to achieve as the facilitator in those discussions?
A. I wasn't instructed to achieve anything, your Honour.

Q. What did you understand you were trying to do?
A. What I was attempting to achieve was to ensure an outcome that was acceptable basically to the complainant but that the involvement of the church authority was such that the complainant could feel that they had had a satisfactory process.

Q. In the usual mediation, the mediator will set out the pluses and minuses in relation to the position of one party having regard to what has been put on the table by the other party. You understand that?
A. Yes.

Q. Did you do that?
A. Yes, I did do that.

Q. You did, and what typically would you tell a complainant were the pluses and minuses that they had to consider if the church had put an offer on the table?
A. The facilitation process was very much focused on future needs, so I would talk to the complainant about what it was they were hoping to achieve and what was being
offered to them by way of that offer.

Q. Well, as I understand it, the conventional offer
provided for ten counselling sessions, with a subsequent
review. Is that the sort of offer that you were dealing
with in these facilitations?
A. Your Honour, you're going back to Mrs Isaacs' matter
now?

Q. Well, yes, but I understand that to be beyond
Mrs Isaacs' matter --
A. I'm sorry, I'm becoming confused about whether or not
you're talking about the earlier mediations or the later,
2010 onwards, facilitations.

Q. No, I'm talking about the later ones.
A. The later ones?

Q. Yes.
A. In the later facilitations, there would be offers that
went around counselling. Some were for - there were
a variety of offers, you know, things like a motor car, or
what-have-you; they weren't all monetary offers.

Q. Well, can you expand for us so we have some
understanding of what was taking place in these
facilitations? What sorts of things were being talked
about?
A. Very much we were - well, I tried to focus on what
were the needs of that particular complainant, and
different complainants came with very different needs.
Some complainants came and they needed dental treatment or
they were homeless or, you know, some complainants had
needs that related to the necessities of living. Other
complainants came and their needs weren't so much in the
financial field; they were more in relation to being heard,
being satisfied that what happened to them was being
acknowledged and treated with the seriousness that it
deserved. So each facilitation was a different process.

Q. Well, then, let's just look at someone who was
homeless.
A. Yes.

Q. What did you see as an appropriate way for the church
to meet the needs of such a person?
A. Your Honour, I don't think that I formed a view about
what was appropriate. My role was to ensure that the needs of the person, or the complainant, were understood.

Q. So your role as facilitator was to make sure that the church knew of the position of the complainant; is that how you saw it?
A. Yes, your Honour.

Q. And then you left it up to the church entirely as to how they responded to those identified needs; is that what happened?
A. It's hard to generalise, because in some of these facilitations there would be legal representatives present and in others there wouldn't be, so to some extent they were different processes, depending on who was in the room.

Q. Why did it differ whether or not there was a lawyer in the room? Why did that make a difference to the person's needs or the appropriate response?
A. If there was a lawyer representing the complainant, I was more satisfied for that lawyer to ensure that the church authority was aware of their client's needs. If a complainant wasn't represented, then that was a role I took on myself.

Q. I'm trying to get a complete picture for us all as to what happens. I understand that you saw your task as to make sure the complainant revealed his or her complete circumstances, but am I right in thinking you saw yourself as playing no part in expressing or giving any advice as to the appropriateness of any response which the church made?
A. I would have the discussion with the church authority about how an offer that was being made would be received, so there were occasions where an offer was modified before it was made. But that was from the perspective of the impact that that would have on the complainant.

Q. What do you mean by that?
A. If an offer was going to be made that I thought would be harmful to the complainant because they would see it as an insult, I would say that to the church authority.

Q. Would your advice be taken?
A. Your Honour, I don't think that I was giving advice. I was in the role as facilitator. I was commenting on the impact that that particular strategy might have if they proceeded with it.
Q. Well, I won't trouble about whether or not that's advice, but did the church change its position to accord with what you had to say?
A. The church authority would certainly take on board comments I made about the expectations and the impact to the complainant.

Q. That doesn't quite help me to understand what happened. Did they take it on board and change their position?
A. It was common for the church authority to change their position, yes.

Q. Typically in these facilitated discussions, were lump sums of money talked about?
A. Yes, in the later stages - yes.

Q. What did you understand to be the limit of the church's capacity to make a lump sum payment?
A. I did not have an understanding of the limit of the church authority - as I say, in some cases there was an insurer present. I never saw the insurance, if they had a limit, as being the limit. There were always other resources that could be called on. So I didn't turn my mind to what constituted a limit. In those cases where there was no insurer, I think that the various church authorities had their own view about what they would pay, but again I didn't say, "What's your upper limit?"

MS FURNESS: Q. When you say you didn't say, "What's your upper limit?", is that the case with the complainant as well as the church authority?
A. With the complainant, I would try to - I wouldn't say to the complainant - I'd say, you know, "What is it that you need? What would you like?" But I wouldn't put them under any pressure to disclose to me what their line in the sand was, if you like, you know, what they'd walk away if they didn't get it.

Q. You didn't seek to find that out? How could you do the role without having an idea as to what the complainant wanted?
A. I'd ask the complainant what they wanted, and they told me.

Q. So they'd give you an amount?
A. Yes, they would, yes.

Q. And then you would have an amount from the church authority when you went to the other room?
A. Yes.

Q. And you saw your job as taking an amount from each room to the other, effectively?
A. Yes, and trying to identify if there was a place where there could be some consensus.

Q. In the early days, the approach of the church in relation to Towards Healing was ten counselling sessions and then review; that's a fair comment?
A. I can't remember.

Q. Well, can I ask you to assume that's Mr Rolls' view of the role in that regard. Will you assume that?
A. Yes.

Q. Was that approach one that you saw in the later years?
A. No.

Q. What was the difference?
A. In the later years, the range of reparation was much more broad than counselling. So it included counselling, it included things that were necessary at the time and it included money. On some occasions it included things like offering to search records and to provide further information. So the concept of reparation in the later years was a very flexible concept.

Q. So was it more the case that an assessment was made based on the information available as to how long a complainant might need counselling, what that counselling might look like and how much it might cost over that period of time, and that then was factored into a lump sum?
A. Yes.

Q. In the earlier days in respect of counselling, it was more a, "We'll pay for ten and then we'll need a report and then we'll think about another ten"?
A. My recollection of the early days, the pre-2002 period, is that there was an attempt to meet the needs of the complainant, but there was no discussion around reparation. My recollection is that wasn't part of the process or the documentation at that time. So while it was
on occasions there were offers of counselling, offers of support, it was - I think the complainants - the expectations of complainants changed over that decade, and I think in the early days that was the very early days and people weren't sure what the process would involve.

Q. Given the experience you had as a facilitator in those two separate periods of time, did that affect, when you took on the role of director, how you dealt with facilitators that you engaged?
A. Yes.

Q. In what way?
A. I think I had an expectation of facilitators based on what I saw would be done, while acknowledging that each facilitator functions in a very, very different way and that they wouldn't conduct the process I would conduct. They would conduct a very different process.

Q. Did you change anything about the way that the office operates in respect of facilitations when you took on the role of director?
A. No.

Q. So whatever it was that you had learned or acquired over that period of time wasn't such that you thought required any change in the way that office operated?
A. With relation to facilitators?

Q. Mmm.
A. No, I had discussion - I have, since my appointment, only really made the arrangements involving two separate facilitators, and both of those facilitators were highly experienced and they had their own style and their own practices. So while I had discussions with them, I didn't try to influence how they performed, no.

Q. You'd understand that consistency is an issue for some who go through or even comment on the Towards Healing process - consistency in outcome as well as process? Do you understand that to be an issue?
A. When you say "for some", are you looking at the complainants or the church authority or external commentators?

Q. Does it matter?
A. In that case, then yes.
Q. And is that an issue that you shared, that there was an absence of consistency, when you took on the role of director, in terms of both process and outcomes?
A. Because Towards Healing has been focused on future needs, it was my expectation there would be an inconsistency in, for example, the monetary value of outcomes.

Q. Isn't that just a difference rather than an inconsistency? Doesn't inconsistency, Ms Rogers, indicate similar circumstances and different outcomes, as opposed to different circumstances and different outcomes?
A. I would say that each complainant's complaint is unique and looking for consistency would be difficult.

Q. So consistency is not a goal of yours, as a director of the office, in respect of complaints which can be quite properly and objectively considered to be similar?
A. I struggle with your concept of what constitutes "similar". Each person experiencing a similar trauma might have very different response to that trauma, so the concept that there would be similarities is difficult for me.

THE CHAIR: Q. Ms Rogers, I know there are people who fulfil your role in various parts of the church throughout Australia; is that right?
A. Yes, yes.

Q. Have you sat down with your colleagues to discuss with them how you can make sure that there is consistency of approach across Australia?
A. No, your Honour.

Q. Never?
A. No, your Honour.

Q. You've never had a meeting with them to talk about how each of you approach the big issue of being fair - by that I mean consistent - to victims across Australia?
A. I have spoken with my colleagues in relation to process and what other States do around process. In relation to payments made, I don't have any knowledge of the payments that are being made in other States.

Q. I take it you don't have any knowledge of the outcome, beyond payments, that's provided in the other States,
Q. Do you think you should?
A. The way Towards Healing is established, it's
independent in each individual State, so I answer to the
Queensland liaison committee. I think things have changed
rapidly over the last 12 months, but certainly when I took
up the position Towards Healing Australia-wide wasn't seen
as a concept.

Q. I know, but I'm asking you to talk about the present.
Do you think now might be the time, at least, that all of
you who have the responsibilities in this area should sit
down and talk to each other about the way you do it and the
outcomes you provide for people? Do you think that should
happen?
A. I think that should happen and will happen. It needs
to happen in a framework where there's an understanding of
what's expected.

Q. What do you mean by that?
A. At the moment the way I understand Towards Healing,
the focus is on future needs and reparation. If it becomes
clear that there is an expectation that the process
delivers a different product which is more in terms of
compensation, which is not my understanding at the moment,
but if that was going to happen, then there would need to
be a lot of research and assessment around appropriate
forms of - what would be appropriate in those
circumstances.

Q. Do you think that someone who complains that someone
in another diocese received a much larger sum than they did
for similar levels of abuse is entitled to be very upset
with the church?
A. Yes.

Q. Have you discussed that with your colleagues?
A. No.

Q. Have you discussed that with those in your diocese
responsible for the management of the processes in the
diocese?
A. No, your Honour.

Q. But you're aware of those sorts of complaints, are
you?
A. I am, your Honour, but I keep coming back to my
understanding of the process as it is, and when you're
looking at complainants and you're looking at their future
needs, those future needs are different for each
complainant.

MS FURNESS: Q. When you were involved with Joan Isaacs'
facilitation, that occurred under the 1996 version of
Towards Healing, did it not?
A. Yes.

Q. If we can have that up on the screen, it's tab E of
exhibit 4-1. If I could have page 0110, which is hard copy
page 2, on the screen, if we can scroll down to the heading
and the words underneath the heading of "The Victims",
you're familiar with this document, Ms Rogers?
A. Yes.

Q. And you're familiar that this page begins with the
principles for dealing with complaints?
A. Yes.

Q. And paragraph 5, which is on the screen, records that:

The intensity of the effects of sexual
abuse on victims will vary.

A. Yes.

Q. That's consistent with what you've been saying in
relation to different victims having different needs;
that's right?
A. Yes, yes.

Q. If we can just turn to page 0112, and again this is
still under the heading of "Principles", Ms Rogers, and
this section is on "Healing for the Victims". Do you see
that?
A. Yes.

Q. Paragraph 15 refers to a compassionate response being
the first priority?
A. Yes.

Q. I take it that was something to which you had regard
in the work you did under this protocol?
Q. Then further down, in paragraph 17, it refers to, whenever it is established that it occurred:

... the Church authority shall immediately enter into dialogue with victims concerning their needs and ensure they are given such assistance as is demanded by justice and compassion.

Do you see that?
A. Yes.

Q. Now, "justice and compassion" isn't defined in that document, as far as you're aware?
A. No.

Q. What did it mean to you when you were working under that protocol? What does "demanded by justice and compassion" mean?
A. "Justice" is justice according to the law, and "compassion" is a response that acknowledges and accommodates the specific needs of that complainant.

Q. But you weren't meting out justice in any legal sense, were you?
A. No.

Q. So it can't have had that meaning; it must have had another meaning, surely, Ms Rogers?
A. I'm sorry, your question?

Q. I'll ask the question again. I put to you that it can't have had the meaning that you gave it, which is "justice according to the law"; it must have had another meaning, surely, Ms Rogers?
A. To me, justice is a concept of justice according to the law.

Q. Well, if that's the case, then the word "justice" must have had no work to do when you were working as a facilitator under this document, because you were not working in any legal structure, were you?
A. No, I wasn't working in a legal structure.

Q. So you didn't have regard to the word "justice"; you
were concerned about compassion in your work as
a facilitator under this protocol - is that right?
A. In my work under this - the word "justice" is
difficult to fit into this protocol, yes. I have
difficulty in understanding what an objective criteria for
justice would be in this environment.
Q. Did anyone give you any assistance in seeking to
understand that when you were doing this work in the
early years?
A. No.
Q. Did you ask anyone?
A. No.
Q. You didn't talk to Dr Robertson about what he thought
"justice" meant?
A. No.
Q. If we can turn to 0121 of this protocol, this is
"Outcomes relating to the complainant and/or victim".
Paragraph 7.2 and the subparagraphs thereunder refer to
your role?
A. Yes.
Q. You would have been very aware of these subparagraphs
during that period of time; that's right?
A. Yes, yes.
Q. Do you see in paragraph 7.2.1 your job was to
... arrange and moderate a meeting between
the victim and Church authority (or
delegate with power to make binding
decisions).
Do you see that?
A. Yes.
Q. How did you determine that the person representing the
church authority had the power to make binding decisions?
A. I didn't specifically inquire of that. I expected
that the church authority would provide a person with the
power to make binding decisions.
Q. And in the event that they didn't, what did you do
about that?
A. I guess what you need to look at is make binding decisions in relation to what, and the power to make binding decisions at that time, in that context, was rarely a question that arose, because the church authority came and did have the power to make the offers that were made in that environment, for the most part.

Q. So is it your evidence that you didn't inquire; you assumed that the church authority sent the appropriate person, firstly?
A. Yes.

Q. And, secondly, it didn't arise in the facilitations you did because whoever was there had the power to make whatever decisions of a binding nature were necessary under the facilitation; is that right?
A. Apart from the matter of Mrs Isaacs.

Q. Oh, that was the only exception, was it?
A. I have no recollection of a different circumstance where that arose.

Q. We'll come to Joan Isaacs. In relation to 7.2.2, "seek to know the ongoing needs of the victim", I take it you did that by reading the material that you had been given in advance and having a discussion with the complainant at the time of the facilitation?
A. Yes.

Q. And in terms of the response of the church authority to those needs, how did you seek to know that?
A. Again, I would ask the church authority what their response was.

Q. That was at the facilitation?
A. Yes.

Q. You had material in advance from the complainant, generally speaking?
A. Yes.

Q. Did you have material in advance from the church authority?
A. No.

Q. So that was something that was discussed on the day?
A. Yes.
Q. Then 7.2.5, your job was to:

... draw up a record of any agreement reached and of any outstanding areas of [agreement].

A. Yes.

Q. Did you see that as the limit of the written document you were to produce?
A. Yes.

Q. So you understood this protocol didn't require anything more of you in a report other than to satisfy 7.2.5?
A. I can't recollect an instance where I felt I needed to go outside that, no.

Q. Can we turn to Joan Isaacs' facilitation. Perhaps we can have tab 17 of that tender bundle on the screen. I'm reminded that's exhibit 4-2. You saw a document like that?
A. Yes.

Q. And you knew that her needs were apology, counselling and compensation?
A. Yes.

Q. Was that the form you usually received a notice of meeting in those days?
A. I can't recollect.

Q. Does it look familiar - not in terms of Joan Isaacs but more generally?
A. No, I'm sorry.

Q. I beg your pardon?
A. No, I have no recollection of that period.

Q. None at all?
A. No.

Q. So you understood, going into the meeting, that that was the needs of the victim and that was the agenda of the meeting; that's right?
A. I have no recollection, but I would have got that document and I would have been aware that that was what the
complainant wanted to talk about.

Q. Could tab 18 be put on the screen. Were you in court earlier this morning, Ms Rogers?
A. No.

Q. This document is a document written by the Professional Standards Risk Management Service under the hand of Laurie Rolls to the Most Reverend Gerry, with a copy to Father Farrelly, dated 19 April 1999. Prior to preparing for these hearings, had you seen that letter?
A. No.

Q. That didn't come to your attention either before or during the facilitation?
A. No.

Q. Did you know Mr Laurie Rolls at this time?
A. No.

Q. In terms of the facilitation and how it was conducted, you now know the outcome of that facilitation --
A. Yes.

Q. -- based on the documents that you've read, and you understand that one of the outcomes was that compensation was not addressed; that's right?
A. I have no independent recollection, but on the basis of my report, compensation was discussed in the facilitation with an agreement that it would need to be negotiated further.

Q. When you say "an agreement", you understand, don't you, from the work you've done preparing to give evidence here, that Father Farrelly went into the meeting with express instructions not to deal with compensation?
A. I now understand that, yes.

Q. While you have no recollection of it, that would have become clear to you during the facilitation, I take it?
A. I have no recollection.

Q. No, but your general practice would be, if in fact the outcome was that there was to be no agreement as to compensation, you'd know that during the course of the facilitation, wouldn't you, Ms Rogers?
A. Yes, and I included that in my report, that there was
no agreement as to compensation.

Q. The fact that that was on the agenda and something that Joan Isaacs wanted, how did you deal with that during the course of the facilitation?
A. I have no recollection.

Q. Is it something that you would have, in your ordinary practice in those early years, have had to have dealt with?
A. If it was on the agenda, there was a discussion around it, definitely.

Q. You'd know, as well, that ten counselling sessions were offered; that's right?
A. As a result of preparation, yes, but I have no recollection of that.

Q. I understand that you have no recollection, and I understand that the answers you are giving are based on the material you've read to prepare for today.
A. Thank you.

Q. So you now know, don't you, that an outcome was that ten counselling sessions were to be offered, with a review after that?
A. Yes.

Q. And the needs of the victim at that time were that she had had counselling on an ongoing basis for decades; you understand that now to be the case?
A. Yes, yes.

Q. And it's unlikely that ten counselling sessions, with a review, were going to satisfy the needs of a person in that position; isn't that right?
A. Yes.

Q. I understand that you now do not recall how you dealt with that issue, but given your general practice, can you tell or help the Royal Commission to understand how the facilitation operated with Joan Isaacs, given that those first two matters resulted in the ending that we now know it did?
A. In those days, the issue of compensation was not something that was normally dealt with within the Towards Healing process. It was much more common for negotiations around compensation payments to be held outside of the
process.

Q. Are you including the counselling sessions as part of compensation there, are you?
A. No, I'm not seeing the counselling sessions as part of compensation. I'm seeing the counselling sessions as part of a pastoral response to the complaint.

Q. Is it your view that to offer ten counselling sessions in the circumstances in relation to Joan Isaacs was just or compassionate in the circumstances?
A. It was my understanding, on the basis of the report I wrote, that that wouldn't be the end of the matter, that there would be a compensation payment made, as was claimed; it was just a matter of that being negotiated.

Q. Can I take you to your report, which is at tab 28. That's the report you wrote, Ms Rogers?
A. Yes.

Q. Was the brevity of that report consistent with the reports that you generally wrote in those early years?
A. Yes.

Q. As you've given evidence, it was primarily to satisfy paragraph 7.2.5?
A. Yes.

Q. That is, a record of any agreement reached and any outstanding areas of agreement?
A. Yes.

Q. You've noted that the agenda was "apology, counselling and compensation"; is that right?
A. Yes.

Q. And you've noted that agreement wasn't reached in relation to compensation?
A. Yes.

Q. In terms of counselling, where do we find the outcome there?
A. I haven't included that.

Q. Why was that?
A. I just didn't see that as something separate from the apology.
Q. Well, there's nothing about the apology, is there? Where is reference to apology other than in terms of the agenda?
A. I haven't included the apology, either.

Q. And why was that?
A. Because I don't see an apology or counselling as an agreement. It's something that occurred in the course of the facilitation. You don't agree to an apology.

Q. So you didn't see it as part of your role in your report, as a facilitator, to tell the directorate whether or not the agenda was met?
A. In this particular report, I didn't include the statement that an apology was offered. I mean, I did - I don't do facilitations any more. I did it certainly later, but, no, I didn't in this particular case.

Q. Was that your general practice in the early days, just to limit it to those matters where there was agreement as opposed to having regard to the needs of the victims, as set out in the agenda?
A. I can't answer that question.

Q. Having read the documents which I'm sure you have to prepare for giving evidence, Ms Rogers, what's your view of the way the church - and I use that in its broadest sense - dealt with Ms Isaacs as part of Towards Healing?
A. My view is that the protracted negotiations that occurred after the facilitation would have had the effect of re-abusing Ms Isaacs, and it was certainly not a compassionate response.

Q. What about the fact that the church authority sent a person who didn't have the delegation to make any binding decisions in respect of anything, pretty well?
A. To the facilitation?

Q. Yes.
A. That's in the context of a process where because there was no structure for offers of reparation and it wasn't mentioned within the structure, notwithstanding that, in this particular case, that was something that Mrs Isaacs said she wanted to address in that meeting, it wasn't part of Towards Healing at that point to make binding agreements in relation to reparation.
Q. We're not just talking about reparation, are we, because she wanted an apology, didn't she?
A. Yes.

Q. Father Farrelly's instructions were to offer an expression of sorrow but not an apology in terms that would accept responsibility by the archdiocese; isn't that right?
A. I wasn't aware of that at the time of the facilitation.

Q. Well, you are now.
A. I am now, yes. I don't think that would happen today.

Q. It shouldn't happen today, should it?
A. I would be very - it should not happen today. There would be no reason for it to happen today, and it should not have happened in 1999.

Q. It shouldn't have happened to Joan Isaacs, should it?
A. No.

Q. Similarly, it shouldn't have happened that she was offered ten counselling sessions, with a review, in her personal circumstances?
A. In the context of that being part of ongoing discussions in relation to compensation and not being the totality of the offer, that was something that was more acceptable.

Q. It was on the agenda that she wanted counselling?
A. Yes, she did.

Q. She'd had counselling for decades, hadn't she?
A. Yes.

Q. And she was offered ten sessions, with a review?
A. She was.

Q. That wasn't meeting her needs?
A. I didn't have a psychologist's report available to me to say what her needs might be.

Q. Did you need that?
A. I don't understand the - I mean, as you say, Mrs Isaacs had a lot of counselling, and in fact I think she needed a lot of counselling even to get into the
Towards Healing process itself. I didn't know what her ongoing needs would be and how often that would need to be reviewed.

Q. But you had heard her history, you heard the story, you were there when she told her story, weren't you?
A. Yes, I was.

Q. You're not suggesting that it was consistent with the Towards Healing protocol that then existed for that offer of ten sessions of counselling, with a review, to be made; isn't that right, with or without a psychiatrist's or psychologist's report, Ms Rogers?
A. I don't expect the Towards Healing facilitation to be the end of the involvement between the complainant and the church authority.

THE CHAIR: Q. Ms Rogers, you told me earlier that you saw your role as to ensure that the needs of the complainant were made plain to the church authorities?
A. Yes.

Q. I take it from your answer that you don't believe you did that in Mrs Isaacs' case?
A. Your Honour, I've got no recollection of how Mrs Isaacs articulated her needs during that time. If she said that she needed counselling into the future, then what you're saying would be right, but I don't remember what Mrs Isaacs said to me about her needs.

Q. A moment ago you told me, though, that you didn't know what her needs were?
A. I'm saying that now, when you're asking me to comment on whether or not that was appropriate, it's difficult for me to do that when I have no recollection of what she expressed her needs to be.

Q. Ms Furness might make sure you can see the transcript during the short break, but at the moment I'm troubled by the apparent inconsistency in what you've had to say about what you knew in relation to Mrs Isaacs' needs and what your obligations, as the facilitator, were.
A. I can make it clear I have got no recollection of the discussions that occurred, so I don't know what I knew about Mrs Isaacs' needs.

THE CHAIR: Very well. We might take the short
adjournment.

SHORT ADJOURNMENT

MS FURNESS: Your Honour, for technical reasons, I have been unable to print the pages of the transcript. However, I am told that they will be on the screen.

Q. Ms Rogers, you were asked a question by Justice McClellan in relation to the facilitations, and your answer there begins at line 8, "I tried to focus on what were the needs of that particular complainant", so that's the first piece of evidence. And the second was in response to a question I asked some time later. Ignore the highlighting. The reference is at line 21, "I didn't know what her ongoing needs would be and how often that would need to be reviewed." Do you see that?
A. Yes.

Q. Is there anything you want to say about those two answers?
A. I don't think that they're inconsistent, in the sense that in this particular case we were working in an environment where there was an understanding that there would be ongoing discussions in relation to compensation and presumably folded into that medical treatment would be a normal expectation. So when I'm saying "I don't know what her ongoing needs would be", I'm not talking about her ongoing needs in terms of counselling. I knew that she would need support in the future. I'm talking about, I didn't know how many sessions she would need, what her specific needs would be into the future.

MS FURNESS: Thank you. I have nothing further, your Honour.

THE CHAIR: Does anyone else have any questions before I get to Mr Gray?

MR PRATT: No.

<EXAMINATION BY MR GRAY:

MR GRAY: Q. Ms Rogers, you said this morning, I think, that before Mrs Isaacs' facilitation in April 1999 you estimated that you had probably done less than ten Towards Healing facilitations?

Transcript produced by Merrill Corporation
Q. But apart from Towards Healing, I think you've said in your statement that you had done hundreds of comparable conferences and meetings of a mediation kind; is that right?
A. Yes.

Q. On the question of training, you mentioned that you did have some training before you started in about 1997 as a facilitator?
A. Yes.

MR GRAY: Ms Rogers has located the sheet referrable to that training session, which we've only just provided to counsel assisting.

Q. Could I ask you, Ms Rogers, to say whether this is that document? It is not electronically available, I don't think.
A. Yes.

Q. The heading for that was "Members of PPSRG", for that document.

THE CHAIR: If you wait a moment, Mr Gray, we'll be able to put it on the screen.

MR GRAY: Thank you.

Q. Does "PPSRG" stand for Provincial Professional Standards Resource Group?
A. That sounds right, Mr Gray. I don't know what it stands for, but that sounds right.

Q. The document is a note of a program that took place over two days on 14 and 15 May 1997?
A. Yes.

Q. I think, is this right, that the note at the very bottom of the page, underneath all the type, is something that you've written on recently?
A. Yes, and also the "1997", I wrote that on by hand when I found the document.

THE CHAIR: Can we move the document so we can all see what we're talking about.
MS FURNESS: If I could provide three copies for the Bench.

THE CHAIR: Mr Gray, where are you referring to, so the operator can move it down?

MR GRAY: If you could scroll down to the very bottom, please. Yes.

Q. That line at the bottom, "Given TH", something?
A. Given the Towards Healing document at that same time. It was the reprint at March 1997. It wasn't actually the 1996 document.

Q. But that line at the bottom of the page is something you've written on the document recently?
A. Yes, I did.

Q. And similarly at the very top of the page, if we go back to there, the date "1997" you've written in recently?
A. Yes.

Q. But the other notes, handwritten notes, are notes that you made at the time of the session; is that right?
A. Yes.

Q. The session for Thursday speaks for itself, no doubt. On the session for Friday, the first bullet point is:

Review of past processes moving them into the future.

Do you have a recollection now of what that was talking about?
A. No, no.

MR GRAY: I tender that document, if the Commission pleases.

THE CHAIR: The document headed "Members of PPSRG" will be exhibit 4-9.

EXHIBIT #4-9 DOCUMENT HEADED "MEMBERS OF PPSRG"

MR GRAY: Q. Ms Rogers, you said that it was your practice to destroy your own copies of documents that you
were provided with for a facilitation and any notes that
you had made during the facilitation; is that right?
A. Yes.

Q. Documents that you had been provided copies of were
documents which, by necessity, were already kept by either
the director or the church authority themselves?
A. Yes.

Q. In relation to the post-2009 period, what was referred
to in earlier questions as "the later years" or "the
later days" --
A. Yes.

Q. -- usually in facilitations that you did in that three
or so year period, was a lawyer present usually for the
victim?
A. It was more usual for the victim to not be
represented.

Q. Where a lawyer was present for the victim, as you
understood it, was it that lawyer's role to advise the
victim as to the pros and cons of any offers or proposals
that were being considered?
A. Yes.

Q. And where a lawyer was present for the victim, did you
see it as any part of your role to advise the victim about
such matters?
A. No.

Q. When a lawyer was not present - and we're talking
about the 2009 and onward period - did you see it as part
of your role to advise the victim as to the pros and cons
of any proposals that were being discussed?
A. No.

Q. Turning to Mrs Isaacs' particular facilitation, your
report is at tab 28 of exhibit 4-2. I wonder if that could
come up, please. I appreciate that you have told the
Commission, including today, that you have no actual
recollection of the day on 20 April 1999. I see in the
third sentence, the third paragraph, of your report after
noting that the agenda had the three items of "apology,
counselling and compensation", your report says:

These matters were discussed in some depth
by those present.

Do you see that?
A. Yes.

Q. As you read your report now, does that cover all three of those items?
A. Yes.

Q. On the same point, namely, the events of the facilitation itself, and in particular in relation to counselling, could tab 20 of the exhibit be brought up, please. If it could perhaps be blown up a little bit, the paragraph that I want to ask about is the one further down the page, beginning, "Joan has for some time". If you go down a little bit beyond that, thank you. This document, Ms Rogers, is a note by Father Farrelly of what happened at the facilitation, and I think you didn't see that at the time?
A. No.

Q. But looking now at what he has recorded there in that paragraph beginning, "Joan has for some time", do you see what he has recorded is this in the second sentence:

Joan does not see the counsellor on a regular basis but, from time to time, will see a great need; at other times, a less need. This perception of need is what determines when she visits the counsellor. I offered to her that the Church would pay for ten sessions of counselling and then review the situation after that time. Mr Deed said that he would send me a note to that effect.

Does that jog your memory in any way?
A. No.

Q. Lastly on the same point again, I wonder if Mrs Isaacs' own statement could be brought up, exhibit 4-3, at paragraph 29. You have had the opportunity to read Mrs Isaacs' statement in the last month or so?
A. Yes, I have.

Q. Including paragraph 29. If you could just read that to yourself again now?
A. Yes.

Q. Do you see that Mrs Isaacs says in the middle of the paragraph there in the words in quotes that she said:

   My wish is that the church pays for my ongoing counselling from here.

She then records that:

   Dr Farrelly then said that he would look at authorising ten counselling sessions ... 

And so on. Do you see that her next sentence is:

   I was content with this offer as a starting point.

Does that jog your memory at all, either?

A. No.

MR GRAY: Those are the only matters, if your Honour pleases.

MS RANDAZZO: No questions, your Honour.

MS FURNESS: Nothing further, your Honour.

THE CHAIR: Thank you. You may step down. You're excused.

<THE WITNESS WITHDREW

MS FURNESS: Your Honour, I call Reverend Dr Adrian Farrelly.

<ADRIAN GERARD FARRELLY, sworn: [12.15pm]

<EXAMINATION BY MS FURNESS:

MS FURNESS: Q. Would you tell the Royal Commission your full name, address and occupation?

A. Adrian Gerard Farrelly. My residential address is [Address supplied to the Royal Commission].

Q. And your occupation?

A. Catholic priest.
Q. In your witness statement, you have as your occupation Chancellor of the Catholic Archdiocese of Brisbane and Judicial Vicar of the Regional Tribunal of Brisbane?
A. I didn't include parish priest of St Agatha's at Clayfield.

Q. So those three areas of work --
A. They're my main areas, yes.

Q. You have provided a statement dated 15 November 2013?
A. Yes.

Q. Are the contents of that statement true and correct?
A. Yes.

MS FURNESS: I tender the statement.

THE CHAIR: Exhibit 4-10.

EXHIBIT #4-10 STATEMENT OF FATHER ADRIAN FARRELLY, DATED 15/11/2013, BARCODED STAT.0086.001.0003_E_M

MS FURNESS: Q. Reverend, the facilitation meeting that you attended for Joan Isaacs was your first facilitation meeting?
A. Yes.

Q. What did you do to prepare for that first meeting?
A. Read the material that would have been given to me, talked to people who would have helped me to understand what was possibly going to eventuate in the meeting.

Q. What sort of people?
A. Ken Robertson would have been a key player. I spoke, as well, refreshing my mind from the various documents I've looked at this, talking to Laurie Rolls. I'm not sure if I would have spoken with Bishop Gerry, but I would imagine that Ken, Ken Robertson, would have been key and also Laurie. Whether others come to mind in the course of the proceedings here --

Q. You attended that meeting because Bishop Gerry was unavailable?
A. Recovering from surgery, I think it was.

Q. Was there any other person who worked with
Bishop Gerry who normally attended facilitations in his absence?

A. Not that I - there may have been, but in answer to your question, I wouldn't know.

Q. Did you attend any facilitations after this one in Bishop Gerry's stead?

A. I've got a vague recollection of being involved with one other situation, but it wasn't a facilitation. I can remember people talking about money going backwards and forwards from room to room, so whether I had been there as the face of the church at that, I've just got no memory at all of that, apart from this little vague wisp.

Q. Other than Joan Isaacs' facilitation and the memory you've just shared with us and being a member of the Professional Standards Resource Group, did you have any other involvement in Towards Healing?

A. No.

Q. In terms of the facilitation with Joan Isaacs, you had a discussion with Mr Rolls prior to that; is that right?

A. Yes. As I say, along with others, yes.

Q. You understood Mr Rolls to be representing the church's insurer?

A. Yes.

Q. Did any of those people that you spoke with draw your attention to Towards Healing principles and protocols before the facilitation?

A. I would have read, because it was not that old - I would have read the 1996 protocol, not in a way to be able to quote verse and - you know, chapter and verse of it, but --

Q. But your evidence is that prior to attending that facilitation, you had read the 1996 version of Towards Healing?

A. Yes.

Q. Was it in your mind before the facilitation that the facilitator was to have a meeting between the victim and a church authority or delegate with power to make binding decisions? Was that in your mind before the meeting?

A. My memory of the meeting, what I was coming for --
Q. No, prior to the meeting, I'm talking about. We'll come to the meeting, reverend, but prior to the meeting.
A. But it's - prior to the meeting, I would have had in mind that seeing as Bishop Gerry wasn't available, I was to be there to give Mrs Isaacs the opportunity to tell her story and for me to respond to that, and then there were, just looking over the notes, questions of apology and compensation.

Q. If we could have tab 14 of exhibit 4-2 on the screen. They're notes I think you took, reverend; is that right?
A. Yes.

Q. And they're notes of your discussion with Mr Rolls prior to the facilitation?
A. That's what we figured them out to be, yes.

Q. Do you understand that Mr Rolls was effectively giving you instructions as to what you could and couldn't say in the facilitation?
A. I didn't take it as instructions, like a trainer to the jockey of the horse. I was tapping into Laurie's extensive experience with these matters. He, as someone trained in insurance matters and all those things, was talking to me about what would come up, and so we've got - talking about the legal outcomes and the difficulties with that, the compensation talk and some of the ways in which he would have expressed the reality of church funds and what can be used, how they can be used.

Q. So you understood that the insurer was going to foot the bill for whatever compensation was thought to be appropriate in relation to Joan Isaacs?
A. No.

Q. You didn't understand that?
A. The church insurers would have met some part. I'm not an expert in insurance matters. But with a claim being made, to the extent that the church's policies were operative, if something was to be paid, well then - and if this was a source of funds we could access, then they'd be accessed.

Q. And did you understand that if there was a policy that was operative at the time, then the insurance company had the right to tell the church authority what it could and couldn't negotiate and/or accept during a negotiation?
A. Laurie spoke about the different things that could
come up, but even though we're going to look at the meeting
itself, when you look at the actual meeting, apologies were
given, compensation was discussed, so even though Laurie
and I had obviously had a discussion, as is obvious from
the "drinks night" note, at the actual meeting the matters
didn't follow what's written down there in note form.

Q. The second point is "avoid compensation talk". Do you
see that?
A. Yes. I obviously ignored that.

Q. Well, let's talk about the note, shall we. Is that
a note of what he told you to do - avoid compensation talk?
A. He was, I guess, sharing his knowledge of these sorts
of things, about where these sorts of matters were in 1996.
I don't profess to understand all the ins and outs of it,
but then there was all this, to avoid talk that could
possibly say that the church was liable for the, you know,
horrendous behaviour of Frank Derriman towards Mrs Isaacs
and compensation and all these things. Now, I just - as
I talked with Laurie on the telephone, obviously this is
what I've taken down.

Q. "I have no personal entitlement to settle with you".  
Do you see that? That's something he told you to say?
A. That was part of the discussion, obviously, about
compensation, yes.

Q. And "Peter Deed - unfair to act as a legal counsel",
is that something he told you?
A. In terms of, he had worries - once again, I'm just
refreshing memories from this - if Peter was going to act
as legal counsel, then he saw that was unfair. I knew
Peter from his days - he was a few years behind me in
seminary.

Q. Can we have tab 18 on the screen. This is a letter
that you received?
A. It was in my file, so, yes, I must - I have no
recolletion of receiving it, but it's obviously there,
yes.

Q. Your expectation would have been that you received it
prior to the facilitation?
A. What's the date of that letter?
Q. 19 April.
A. Not necessarily, no, no. I've got no recollection, because that's a letter from - is that the letter from - that's the letter from Laurie Rolls to Bishop Gerry. Yes.

Q. The final paragraph is that he has sent a copy to you. Do you want to scroll down to that final paragraph?
A. I've been given a hard copy, thanks.

Q. You've read that letter recently, I take it?
A. Yes.

Q. The extent to which Mr Rolls, in this letter, is expressing views as to what should happen at the facilitation, those are matters that he conveyed to you in the telephone call; is that right?
A. They're pretty much the same, aren't they?

Q. You understood at the time of the facilitation that the protocol that was then in place required that the needs of the victim or complainant, as they're variously described, be known; you understood that?
A. Coming to that meeting, I wouldn't have sat down with the 1996 booklet on Towards Healing. I would have come to that meeting knowing that Mrs Isaacs had asked for the chance to say what had happened to her with Frank Derriman and that I was to listen, to make a response, to express incredible - you know, to express sorrow at what a 30-year-old priest had done to a 15-year-old schoolgirl. That was - I was not, Ms Furness, working on memorising a book. Right? We can look now and I can see the principles, but what was uppermost in my mind was, as intelligently and sensitively as possible, listening to however old Mrs Isaacs was at the time, about 46, talking about her experiences of, what is it, 31 years earlier.

Q. You talk about memorising a book, reverend. Did somebody suggest to you that that's what you should do?
A. No.

Q. The protocol that you were to follow at the time required a compassionate response. You were not aware of that from the protocol itself, I take it from your previous answer?
A. When I'm dealing with people like Mrs Isaacs in those situations, I don't need a protocol to come to a compassionate sense.
Q. That's right, reverend, isn't it, that even though you hadn't read the protocol, certainly hadn't memorised it, you knew that the response that was expected of you was a compassionate one, didn't you?
A. Yes.

Q. And you also expected that you were to show compassion and that she should be given justice?
A. Yes.

Q. That's right?
A. Well, justice is giving someone what is their due, what they - that's Thomas Aquinas. That's the virtue of justice, that you do - that you respond to someone according to their - to what is owed them or what they deserve.

Q. You understood that her agenda was to receive an apology; that's right?
A. Oh, sorry, yes, yes. Yes, well, she wanted the chance to tell her story to the church.

Q. You knew what her precise agenda was, didn't you?
A. That she was going to tell her story, that I would respond on the part of the church, and then there was discussion - those three items that we've been talking about throughout the proceedings up till now.

Q. Could I have tab 19 on the screen, please. These were your notes that you made prior to the meeting; is that right?
A. Yes.

Q. The first point is "Apology, counselling" --
A. "Apology, counselling, compensation".

Q. Those are the three matters that you understood that Joan Isaacs wanted from the meeting; that's right?
A. Yes.

Q. Now, you knew going into that meeting that you were not able to offer her any compensation, didn't you?
A. I knew that compensation was going to be talked about.

Q. You knew that you could not offer her any compensation, didn't you?
A. I knew that we were going to talk compensation, and compensation was talked about at the meeting.

Q. I need to ask you to attend to my question, reverend. You knew that you could not offer her any compensation when you went into that facilitation, didn't you?
A. I was not entitled to move into the area of compensation.

Q. Well, when you say "move into the area", are you disagreeing with the word "offer", reverend?
A. Am I disagreeing with the word "offer"? I don't think so, because we did address the topic.

THE CHAIR: Q. Reverend, it's a very simple question. You're not being asked what happened. You are being asked what you understood to be your capacity to contribute to that discussion. Do you understand?
A. I knew, your Honour, that --

Q. No, no, do you understand? That's the question --
A. Oh, the question, yes.

Q. -- that counsel is asking you. It's a simple question.
A. Right.

Q. It almost carries a "yes" or "no" capacity.

THE CHAIR: Ms Furness, you might ask it again.

MS FURNESS: Q. You knew, going into that meeting, that you were not able to offer her any compensation, didn't you?
A. Yes.

Q. You also knew that you were to express sorrow but not to offer an apology; isn't that right?
A. That was what was said, yes.

Q. And in fact you did not offer an apology, in your terms, did you?
A. In my terms, I did, when we look at what came out of that meeting.

Q. Could I have tab 20 on screen, please. That's a report of the meeting that you made?
A. Yes.

Q. If we could scroll down to the third paragraph, in that report, you said, did you not:

I did not offer an apology on behalf of the Church but did express my sorrow at what had happened to her...

Do you see that?
A. Yes.

Q. So you didn't express an apology on behalf of the church, did you?
A. Not on behalf of the church.

Q. You expressed your sorrow?
A. I told Joan that what she had suffered - I was sorry that she had suffered that and that she shouldn't have suffered it; that she wasn't responsible.

Q. Now, in relation to counselling, you went into that meeting knowing that you were entitled to offer ten sessions of counselling and then review; isn't that right?
A. Yes.

Q. And that that entitlement came from the discussion you had with Mr Rolls?
A. That seems to be the source, yes.

Q. Knowing, going into that meeting, the matters I've just put to you, what did you do to advise Joan Isaacs that you did not have the power to give her what she sought?
A. At the meeting?

Q. Prior to the meeting, to enable her expectations to be properly set? What did you do prior to the meeting?
A. My contact with Mrs Isaacs was at the meeting.

Q. So you did nothing prior to the meeting to indicate to her your role so as to enable her expectations to be set at what you could and couldn't do?
A. Dr Robertson would have been the one who was arranging the meeting and who was going to be there.

Q. I'm asking about your conduct, not Dr Robertson's, reverend. Did you do anything prior to the meeting to
acquaint Mrs Isaacs --
A. Mrs Isaacs - no.

Q. Going back to the letter from Mr Rolls, which was
copied to you, which is tab 18, you would have had the
opportunity of reading this letter more recently, I take
it?
A. Yes.

Q. Do you see in the third paragraph he says to
Bishop Gerry:

>You will, of course, be considering the
claims from a pastoral viewpoint.

A. Mmm.

Q. Was that your understanding of your role?
A. The whole meeting, yes.

Q. What did "pastoral" mean to you?
A. Giving someone who had been abused the chance to tell
their story to the church, something she hadn't been able
to do, to receive it and to respond.

Q. That is the limit of the pastoral viewpoint that you
held at the time - to have someone tell their story and
listen to it?
A. And respond, I said.

Q. Respond in what way?
A. In whatever way was clear from the way the meeting
panned out.

Q. Subject to whatever instructions you had going into
the meeting as to what you could and couldn't do?
A. You used the word "instructions". Within the context
of the meeting, I was still a reasonably free agent, as is
obvious from the outcome - it seems to me, from the outcome
of the meeting, which Mrs Isaacs, in the letter that she
wrote to me, seemed reasonably pleased with the outcome of
the meeting.

Q. Just continuing down on Mr Rolls' letter, there is
a reference in the next paragraph to commercial reasons for
offering to pay some compensation on an ex gratia basis.
Do you see that?
A. Yes.

Q. Did you see there to be any compassionate or just reasons for offering to pay compensation other than the commercial reasons set out there in relation to Mrs Isaacs' case?
A. At the time, was that in my mind to make an offer of compensation; is that your question?

Q. No, it isn't my question. My question is whether you saw there to be any compassionate or just reasons for offering to pay some compensation other than on a commercial basis? This is not about what you had the power to do or not do, reverend; it's whether in your mind you saw there might have been some compassionate or just reasons for offering to pay compensation, rather than the commercial reasons set out in this letter?
A. Yes.

Q. What did you do with your view that there may have been compassionate and just reasons to make a payment?
A. In the meeting, we did discuss compensation, and in the space of the hour and a quarter I think we were together, we addressed the compensation and said, "Today we can't handle that. That's going to be handled by other processes", and that's where, I guess, the meeting came to an end.

Q. When you say "we addressed it", do you mean the topic came up?
A. Well, when you look at - yes, yes, the topic came up, and looking at what I said in my report and what's there, it was a matter that was to be looked - was to be handled away from this meeting.

Q. Just looking further down Mr Rolls' report, if we can scroll down a bit further, do you see at the end of that last paragraph on the screen Mr Rolls says that he suggested to you that you should "bring the meeting to a close if Mr Speed engages in legal argument". Do you see that?
A. Yes.

Q. Did that happen?
A. No.

Q. It then continues that:
It should also be remembered, if Ms Isaacs resorts to legal representation, she forfeits the right to your continuing to offer pastoral communication.

Do you see that?
A. Yes.

Q. Was that a view you shared?
A. I'm only pausing because I was thinking back to what I would have thought of that at the time. I can appreciate that if Peter Deed had moved into very much a legal-type approach to the meeting, I would have said something. But as the meeting panned out, that didn't happen. He took some notes, made some comments from time to time - at least that's what I read in my report.

Q. Was it your view that if Joan Isaacs was to resort to legal representation, she would forfeit the right to the church's continuing to offer pastoral communication?
A. I can't recall if that was in my mind. That's not the sort of statement, though, that sits comfortably with me.

Q. Why not?
A. I don't like it.

Q. I understand that. I'm asking you why?
A. Why I don't like it?

Q. Mmm.
A. It just seems hard, unfeeling, insensitive, and when one's listening - as I keep saying, when one's listening to someone talking about what happened to them when they were 15, such that she dreads turning 16, as I read in her statement, that seems unnecessarily harsh. Now, why do I feel that? It's just, you know, compassion is being able to have some sense of what somebody else is feeling. That's the meaning of the word. So - mmm.

Q. If we can just continue over the page, do you see at the top of the page there Mr Rolls refers to your agreement that you would engage in a form of apology which expresses sorrow that such events could take place; do you see that?
A. Yes.

Q. And that's what happened, isn't it?
A. Yes.

Q. You also avoided any suggestion that the archdiocese was in itself responsible for the actions of the priest?
A. I can't see - I couldn't see anything in my report of that, no.

Q. When you say you couldn't see anything in your report, there is nothing in your report that suggests that you did say that the archdiocese was responsible?
A. My view on these things is that the actions that Frank Derriman took, even though they bring the church, as with anyone who sins in a way like this - it does bring the church into disrepute, and so the church is always involved when any of us throw aside our moral codes and act without the integrity that we're supposed to have. So there's a corporate sense in that way. But is the church - whatever we mean by "the church", is the church responsible for the criminal, sinful, immoral actions of Frank Derriman with regards Mrs Isaacs? Frank himself has to answer for what he chose to do.

THE CHAIR: Q. Reverend Farrelly, this is a discussion which we will have to have with others, but I might as well give you the opportunity of responding to it in light of that answer. The church, in its various forms, offers spiritual care and nourishment to many people of all ages, doesn't it?
A. Yes.

Q. In particular, it is structured to provide facilities to encourage young people to engage with its various manifestations; correct?
A. With its?

Q. Various manifestations. The various activities which the church engages in, many of those are set up, designed, to encourage young people to come into and participate in the church's activities; correct?
A. Yes.

Q. And you appreciate from your work, I'm sure, that young people, particularly those who are less than 16 years of age, are particularly vulnerable if the trust which they place in people within the institution, such as the church, is breached; do you understand that?
A. Yes.
Q. And you understand, of course, that there are people within the church, quite a number, who have in very serious ways breached that trust to the young people that have come into the church's various manifestations? Do you understand that?
A. Yes, well we have had eight of our men tried, convicted, imprisoned, yes.

Q. It goes way beyond that throughout Australia and in other parts of the world, doesn't it?
A. Yes, I was just saying the ones we've got in the Diocese of Brisbane, yes.

Q. And all of those breaches are in the context of a structure which provides, as we discussed a moment ago, activities for young people and encourages them to come in and participate in those activities?
A. It comes into the context of a relationship between the priest and the young people. I'm just --

Q. But that's a relationship that the church creates by its very structure, isn't it?
A. Yes.

Q. And the church not only creates it; it then encourages it and facilitates it on an ongoing basis, doesn't it?
A. Yes.

Q. Do you think in those circumstances there may be some substance in the argument which some people put that the church can't step aside from responsibility to people who might be abused by priests who transgress that trust?
A. Yes.

Q. And do you think in that circumstance that, as a minimum, it was correct not to offer an apology on behalf of the church?
A. That it was correct not to offer an apology?

Q. Yes. Was that the right thing to do - not to offer an apology on behalf of the church?
A. My response would be, looking at what I've done, even though I said I made no apology, the words of expressing sorrow and all the rest of it - I take it, in the position that I was in, that I was the face of the church for Mrs Isaacs and I was saying sorry.
Q. But do you think that Mrs Isaacs and the many others who have been abused by priests or other church people deserve an apology at least from the church?
A. Yes.

Q. So do you accept that you should have given her an apology from the church?
A. I can accept that, yes.

Q. That leaves open, of course, a discussion about legal responsibility in the church for the activities of the members of the church; you understand that?
A. I can understand that; you're moving into an area that I'm not expert in, sorry.

Q. I'm not going to take you there, but you understand that it's an issue that's of great concern to many people, don't you?
A. Yes.

MS FURNESS: Q. Can I have tab 22 on the screen. Reverend, this is a letter that you wrote to Mr Rolls following the facilitation; that's right?
A. Yes.

Q. You express the view that:

Simply listening to someone tell their story ... is draining.

A. It was.

Q. In the second paragraph, you refer to Joan Isaacs having asked if she could receive an apology in writing, and your response was that you had no instructions about that. Do you see that?
A. Yes.

Q. Who did you seek those instructions from, that is, to be able to offer an apology in writing?
A. I couldn't recall now, Ms Furness, no.

Q. Was that from Bishop John, as you refer to him, or from Laurie Rolls?
A. Or both.
Q. I'm sorry?
A. Or both, maybe. Like, as I say, I've just got no recollection --

Q. But it's likely to have been --
A. I didn't have anything about an apology in writing. I'd gone into the meeting with what we've talked about in terms of apology, expressing sorrow, taking into account the precisions was I apologising on behalf of the church or was I expressing my personal apology to Mrs Isaacs at what she'd suffered. I can appreciate the distinctions, but I think in that context what Mrs Isaacs needed to hear was that the church, officially - if that's how she saw it, in me - was sorry, apologising for what had happened to her.

Q. But you didn't have instructions from either Mr Rolls or the bishop to provide a written apology, so that's why you couldn't do it on the occasion of the facilitation; that's right?
A. Well, I wouldn't have been writing an apology, within that context of that one and a half hour meeting. As I obviously said to Mrs Isaacs, "I don't know about that; I'll take it up with Bishop Gerry and see", and then in light of subsequent events, a letter of apology was written and sent.

Q. This letter reflects accurately what you thought on 21 April 1999, does it not, that you were asked for a written apology; you said you had no instruction about it and you would need to take advice and then recontact her; you spoke with Bishop John and said you would draft a letter and run it by "you", being Laurie Rolls, to see what "your" thoughts were about the request. Is that right?
A. Yes.

Q. Why did you run a draft letter of apology to Joan Isaacs past the representative of the insurer?
A. As I said earlier, I came into this meeting with a willingness to be advised by the people who had experience in these matters. This was something that I was new to, and so talking things over with someone like Laurie Rolls or Bishop John about how these - what is done and then writing a letter of apology, I could put in the letter what I thought needed to be there, but given all these other issues - insurance, compensation, liability and all those things - that were in people's minds back in
1999, that seemed to be a prudent thing to do, to consult
the ones with the experience to see what they thought.

Q. In the draft apology that you prepared, which is the
next tab, 21, do you see in that second paragraph, about
halfway through, there is a sentence beginning:

I am sorry that you were not believed when
you told other priests what had happened to
you.

Do you see that?
A. Yes.

Q. That was something that you wrote based on what was
said during the facilitation?
A. I can't recall, but I presume so.

Q. And you understand that subsequently Mr Rolls had
a different view from you as to whether that sentence
should be in an apology?
A. I've picked that up in preparation for this, yes.

Q. Do you now recall what advice you were given as to why
that sentence wasn't appropriate?
A. In my position, I draft letters for the bishops and
various other people from time to time. Because I was
involved in this one, hence the reason I'm drafting this,
as I was probably reflecting on what I had heard from
Mrs Isaacs at the meeting, one of the things was that
I really was sorry that she hadn't been believed when she
had told other priests about what had happened to her.

Q. Were you further involved in the drafting of the
apology after you received the response of Mr Rolls?
A. Probably not. It's when you're asked by your
superiors to draft a letter - you do it and then you
entrust it to them to make of it what they will. It would
not have been for me to say to Bishop John, "Now, would you
mind sending me back the finished copy of your letter so
that I can vet it?" That's --

Q. My question was simply whether you were involved,
reverend?
A. No, no. I was explaining why I wasn't involved.

Q. In your report after the facilitation, you note that
you responded to Joan's raising the issue of compensation
by saying you weren't entitled to discuss the allocation of
moneys entrusted to the church but would refer the matter
to the appropriate processes and advisers who needed to be
involved in such decisions?
A. Yes.

Q. Who were the advisers and processes you were referring
to?
A. What, the particular people and their names?

Q. No, what was it that you were referring to in that
report?
A. It would have been the people involved with the
administration of archdiocesan finances.

Q. The archdiocesan finances, did you say?
A. Yes, the archdiocesan finance people.

Q. Including the insurance people, I take it?
A. Well, whoever the finance people would talk to, and in
these matters I presume they - given the involvement of the
insurance up to this point, my thought would have been that
they would involve them as well, yes.

Q. So what did you do after the facilitation to acquaint
yourself with what was happening in relation to Joan Isaacs
and her compensation?
A. I saw my role - within that meeting, that my role,
apart from writing some letters to Mrs Isaacs in response,
that my role was finished at that meeting.

Q. You received a letter from Joan Isaacs in 2000, March
2000. Do you recall that?
A. Can we see that one?

Q. Certainly. It's tab 71. But do you recall receiving
that letter?
A. Can I see the letter first?

Q. Yes, you can. It's not something that you've read in
preparing to give evidence today?
A. I have, but I - I can't - no, that's Bishop John.

Q. Yes, if we can scroll down to the bottom of the
letter, you see it's cc'd to you. Now, do you recall
receiving this letter?
A. No.

Q. Having now read it for the purposes of giving evidence today, does it come to your recollection that you received the letter?

A. Clearly it's been there, and if it was in my file, well, then, it's there, but I don't recall - I don't recall receiving it.

MS FURNESS: I note the time, your Honour.

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

LUNCHEON ADJOURNMENT
UPON RESUMPTION

THE CHAIR: Yes, Ms Furness.

MS FURNESS: Thank you, your Honour.

Q. Reverend, would you tell the Royal Commission your view as to whether or not Joan Isaacs' experience with the church in 1999 through to 2001 was consistent with the principles of Towards Healing?

A. From what I have read of what Mrs Isaacs went through after the meeting, the compassionate side of those principles and giving her - responding to give her what she deserved, and, like I said earlier, about the sense of justice, not as consistent as now it is trying to become. But at that time, looking at it, no, I wouldn't say that it was consistent completely with the principles.

Q. But it was consistent in part with the principles; is that what you mean by using the word "completely"?

A. Yes, yes, because --

Q. What principles was it in part consistent with?

A. With both justice and compassion.

Q. I'm sorry, I may have misunderstood you.

A. Sorry.

Q. Is your evidence that part of the experience of Joan Isaacs after the facilitation was consistent with the principles of Towards Healing and part was not; is that your evidence?

A. My evidence, given what Mrs Isaacs has said about her disappointment with what followed after the meeting that I had been at - clearly it was a very disappointing experience for her, so that's what prompts me to say there is some failure in the application of the compassion and justice, given the negative response that she has registered that she experienced over that time period.

Q. So what part was consistent with the principles?

A. That the discussion, the negotiations themselves, went on; that some payments were made. So in terms of - responding in some just way was achieved. The ongoing consideration of the church with her is understanding to some extent the suffering that she's - she's there, so the ongoing working with her I see as a sign of compassion.
Q. When you say "the ongoing working with her", it took just over two years for the negotiations to be concluded; that's right, isn't it?
A. Well, that's an area that I wasn't involved in, but looking at what we have in evidence, yes.

Q. During that period of time, are you referring to her dealings with the church as part of that ongoing two and a bit years of negotiations?
A. Yes.

Q. So am I correct in understanding your evidence that part of that was indeed consistent with the principles of Towards Healing?
A. That's how I see it, yes.

Q. That two and a bit years was almost exclusively between lawyers dealing with what amounts may or may not be paid; isn't that right?
A. Yes, yes.

Q. And the involvement with the church was limited to trying to have the church, through whatever means, pay for the counselling sessions which had been agreed to?
A. Yes.

Q. I don't understand what part of that, reverend, you say was consistent with the principles of a just and compassionate response to Joan Isaacs. Perhaps you could explain that?
A. The fact that, even after a protracted time, she did receive some money - obviously not as much as she would have hoped; that the counselling was paid for, admittedly with promptings from her, as I read what is in the evidence there from her psychologist, that the church hadn't paid this and hadn't paid that and then had to be prompted. But it still was a response, that I saw at least the church was giving her something, and so, in that sense, it was compassionate, yes.

Q. Have you learned any lessons from what you now understand to have been Joan Isaacs' experience in terms of going forward with the church and Towards Healing?
A. Yes.

Q. What are they?
A. I would hope that no-one would go through what Mrs Isaacs did go through in that aftermath of the meeting. There's always going to be negotiations when there are moneys being discussed, and those things, and respecting where she herself is, but that's one thing that I would hope that the church itself - well, you are asking me what I have learned. That's the clearest learning that I have got, that I wouldn't want to see someone go through there, and also that we - whether it's someone like myself, as the priest who was the face of the church at that particular meeting, if she wished for some ongoing continued contact with me, that would be another thing that I would have learned.

Q. Is that the extent of your learnings, Reverend?
A. You would need to give me more time to reflect more deeply on it, but they are two that come to mind immediately in response to your question.

Q. In your statement, you had a section called "Reflections". Do you recall that now, in your statement?
A. Yes.

Q. So you are reflecting more than just the period of time you have been giving evidence today; isn't that right?
A. Yes.

Q. In fact, your statement is dated 15 November, so you have had a period of time to reflect, reverend, haven't you?
A. Another month, yes.

MS FURNESS: Nothing further, your Honour.

THE CHAIR: Before Mr Gray, does anyone else want to ask any questions?

MS RANDAZZO: No.

MR PRATT: Nothing, your Honour.

THE CHAIR: Mr Gray?

<EXAMINATION BY MR GRAY:

MR GRAY: Q. Dr Farrelly, you were asked a bit about what Mr Rolls discussed with you shortly before the
facilitation meeting?
A. Yes.

Q. Including what is recorded in your handwritten notes on that sheet of paper. That sheet of paper is at tab 14 of exhibit 4-2, if that could be brought up, please. I want to ask you about one aspect of that. Do you see against item 2, which starts off "Avoid compensation talk", there are a number of notes, and the last one is:

_Tell me what you are looking for._

Do you see that?
A. Yes.

Q. Does that refer to something that you could say to Mrs Isaacs, that is, that she should tell you what she was looking for?
A. It seems to be. It seems to be the sense of the words.

Q. At the facilitation meeting itself, did you say to Mrs Isaacs anything along the lines of, "Tell me what you are looking for"?
A. I don't recall putting that question directly to her, given my understanding of the meeting was for her to have the chance to tell her story, be listened to, then she asked what was my response and then moved on from there.

Q. Did either she or Mr Deed at the meeting put anything forward in terms of what she actually did want in dollar terms in relation to compensation?
A. I'm not quite sure where it is now in the evidence, but while Mrs Isaacs was looking for compensation, there's something in all these papers where she said something like the compensation wasn't the key thing, the primary thing that she was looking for, although it was important because she wanted the church, by paying money, to hurt in some way that she had hurt. Now, that was something - an expression of where she was that I could wholeheartedly understand, that she had been hurt and she wanted the church to hurt, and by paying money, that's what would happen.

Q. Thank you. But if you can recall - and if you can't, then you can't - did she or her lawyer actually put forward at the meeting any amount or indication of amount that she might want by way of compensation?
A. I don't recall either Mrs Isaacs or Mr Deed stating an amount, no.

Q. I wonder if tab 29 could be brought up. That's a letter, Dr Farrelly, from Mr Deed - that is, Mrs Isaacs' lawyer - to Dr Ken Robertson. The third and fourth paragraphs are the ones I want to draw to your attention. Mr Deed asks Dr Robertson:

Could you also inform Father Farrelly that we are in the process of putting a submission together concerning a claim for compensation.

Once we have it to hand, we will forward it to you and also Father Farrelly for the Church's consideration.

Do you recall, did Dr Robertson inform you that Mr Deed had said that?

A. I have no recollection of that.

Q. The Royal Commission knows that, in fact, a submission did come in a few months later. Were you aware of that when it did happen?

A. No.

Q. Moving to a different topic, that of the apology that was raised and was part of the agenda, your own note of the meeting is at tab 20, if that could be found. In the third paragraph, if we could just scroll down slightly, your note says - and you were taken to this this morning:

I did not offer an apology on behalf of the Church but did express my sorrow ...

Et cetera. So that was your note made very soon after the meeting; is that right?

A. Yes.

Q. The same paragraph goes on:

The conversation ranged over what the Church ... has learned ...

and so on, that Joan found the time together fruitful, and your sense was that the session had gone well. Is that
still your recollection?
A. Yes.

Q. Keep in your mind that that's what your note says, "I did not offer an apology on behalf of the Church but did express my sorrow". Then Mrs Isaacs' statement is the other thing I want to remind you of, in paragraph 28. In fact, if we go back one to paragraph 27 - you have read Mrs Isaacs' statement, obviously, for these purposes?
A. Yes.

Q. She sets out in paragraph 27 some comments of yours about how you felt listening to her. Do you see that?
A. Yes.

Q. Then in paragraph 28 she says that she felt that you really got in your heart and your stomach what had happened to her and that she felt that your comment was a genuine one. She says in her statement that she then said she was willing to move on and that you then said:

   I'm offering you an apology. I'm very sorry you've had to go through all of what you've been through.

Do you see that?
A. Yes.

Q. In your own statement, paragraph 32, you accept that you may very well have said that.
A. Yes.

Q. On the assumption that you did say that, as Mrs Isaacs says you did, did you understand yourself as complying with Laurie Rolls' suggestions or as going beyond them?
A. At the time I would have apologised to Mrs Isaacs, Laurie Rolls would have been the furthest thing from my mind.

Q. Mrs Isaacs then goes on a sentence or two later to say that she said, after thanking you, "but it's not good enough for me. I would like it in writing", "it" being the apology?
A. Yes.

Q. She wanted it signed by the bishop. Now, I will fast-forward to the last couple of questions you were asked
in those from counsel assisting. You were being asked just
this afternoon, ten minutes ago, about whether there was
any compliance, in your view, with Towards Healing after
20 April, after the date of the meeting. You pointed to
the fact that at least eventually some money, however small
the amount was, was paid and that at least the counselling
was paid for, albeit that it required a fair bit of
prompting. Do you remember mentioning that?
A. Yes.

MS FURNES: Your Honour, I just rise to my feet because
that wasn't the question. I didn't ask about compliance
with Towards Healing. I talked about consistency with the
Towards Healing principles.

MR GRAY: I think that is quite right. My note would be
incorrect to that extent. I accept that correction.

Q. Accepting that correction, which you have just
heard --
A. Yes.

Q. -- in terms of steps taken that were consistent with
the principles of Towards Healing after the 20th, did you
regard the providing of the written apology signed by
Bishop Gerry as something after the meeting which was
consistent with the principles of Towards Healing?
A. Yes.

Q. If we could go to that apology, please, which is
tab 32, you have now seen this document, at least in the
last month or so?
A. Yes.

Q. Although I think your evidence is that you didn't see
it, as sent, back in 1999?
A. No.

Q. Looking at it now, do you see that Bishop Gerry tells
Mrs Isaacs in the letter that he had been appointed by the
archbishop as the church authority to act in the name of
the archdiocese in the Towards Healing process?
A. Yes.

Q. And that he was writing now "in this capacity" to say
how sorry he was?
A. Yes.
Q. Did you understand that to convey that he was writing in his capacity as the church authority acting in the name of the archdiocese in writing this letter?
A. Yes.

THE CHAIR: I'm not sure that his interpretation of a letter that he never saw is going to help us very much, Mr Gray.

MR GRAY: If your Honour pleases.

Q. I move on to the last matter I want to ask you, which is about the topic of compensation and the extent to which it was or wasn't discussed at the meeting. Your note, once again, is at tab 20. It is the bottom paragraph on the first page.
A. Yes.

Q. According to your note:

> Joan did raise the question of compensation.

She reiterated that it was not her primary motive. That's still your recollection?
A. Yes.

Q. She mentions that the first thing was for the church to hear and listen and respond; the next or second item was counselling; and the third item was compensation. Is this the reference that you had in mind when you gave an answer a few minutes ago --
A. Yes.

Q. -- to her expressing that she wanted the church to feel some of her own hurt?
A. Yes.

Q. Lastly, could you look, please, at tab 23 on this same topic, which is Mrs Isaacs' note of the same event, appreciating of course that you had not seen this until the last month or so; is that right?
A. No, that's right.

Q. What I want to direct your mind to is Mrs Isaacs' account of the meeting. At the bottom of the first page,
When the story was complete, we find Mrs Isaacs' note of the comments that she again records in her statement now to the Royal Commission that you had made; do you see that?
A. Yes.

Q. Over the page, after the first paragraph where Mrs Isaacs recounts some of the things that she talked about at the meeting, she then says in the second paragraph:

> When we finished the meeting we left the building quite different people than when we had arrived. I felt a sense of relief and achievement that I had at last dealt with something so important in my life.

At the time, was that your impression as to how the meeting had finished?
A. Yes, it was.

Q. A few lines down from that, Mrs Isaacs records you saying that you:

> ... would never be able to talk or read about the subject of abuse without seeing my face before him.

Do you agree that you said something to that effect?
A. I did, and while I couldn't remember Mrs Isaacs' face now, interestingly, the picture in my mind - and I don't know where it was in our meeting, but clearly in my mind is a photograph of Mrs Isaacs as a 15-year-old schoolgirl, in school uniform. Now, where that came from I don't know, but that's a lingering image clearly in my mind and has been with me, mmm, since 1999.

Q. At the bottom of that page, the last paragraph, Mrs Isaacs concludes:

> For me, I have now done what I set out to do. There are formalities to be seen to, but that is not my personal concern. It is now a job for the lawyers and they are welcome to that job. Whatever the outcome I will be content that I have challenged the system - both the legal system and the
Church and that I have finally been heard.
My life will still be difficult at times.
The pain will go on. But I have done what
I had to do. It has just taken 31 years to
get there.

Again, was your sense at the conclusion of the meeting, in
terms of your observation of how, to your mind, it appeared
to have gone for her, to the effect that she recounts in
that last paragraph?
A. Yes.

MR GRAY: Nothing further, your Honour.

THE CHAIR: Yes, Ms Furness?

MS FURNESS: Thank you, your Honour. I have nothing
further for the witness.

THE CHAIR: Thank you. You may step down. You are
excused.

<THE WITNESS WITHDREW

MS FURNESS: Your Honour, I call the Very Reverend
Dr James Spence.

<JAMES ROSS SPENCE, sworn: [2.30pm]

<EXAMINATION BY MS FURNESS:

MS FURNESS: Q. Would you tell the Royal Commission your
full name, address and occupation?
A. My full name is James Ross Spence. I live at [Address
supplied to the Royal Commission]. I am a retired priest.

Q. Would you tell me what I should call you?
A. I really haven't got any preference, but people call
my Father or Dr or Mr, whatever you feel comfortable with.

Q. Thank you. You have provided a statement dated
29 November 2013?
A. Yes, I did.

Q. There is an amendment you wish to make to that
statement?
A. Yes. I believe my solicitors wrote this morning to
the Commission saying that there was an incorrect
attachment, that the date of the letter was incorrect.

Q. I beg your pardon?
A. I think it is to do with the date of the letter,
15 September and 21 September.

Q. So in paragraph 63 of your statement, it refers to
a tab 6, and that should be tab 45, should it?
A. I believe so.

Q. And the date should be 21 rather than 15 September?
A. Yes.

Q. With that amendment, are the contents of the statement
true and correct?
A. They are.

MS FURNESS: I tender the statement.

THE CHAIR: We will make the statement exhibit 4-11.

EXHIBIT #4-11 STATEMENT OF REVEREND JAMES ROSS SPENCE,
DATED 29/11/2013, BARCODED CTJH.0500.01001.0002_E_R_M

MS FURNESS: Q. Dr Spence, you say in paragraph 50 of
your statement that from some time in mid-1999 it appears
that you became the main person within the archdiocese with
whom the lawyer for the archdiocese and the CCI
representatives communicated about Mrs Isaacs' claim. Do
you say it "appears" that is the case because of the
documents you have read in preparation for preparing your
statement?
A. Indeed, yes, I do.

Q. Do you now have any recollection of how it was that
you came to be that person?
A. Can I say that on a number of these situations,
I received no brief from the archbishop, but a situation
arose and the archbishop just merely said to me, "Would you
look after this." And I am assuming that that was the case
here.

Q. Did you understand your role to be that of the client
instructing the lawyers and the insurers, or some other
role?
A. I was the liaison person between the archdiocese and
the lawyers, and that meant that some decisions would be
made by the archbishop and other decisions would be made by
him in consultation with other people but that I dealt with
the lawyers in the light of whatever my instructions were.

Q. So the client was the archdiocese?
A. Yes.

Q. And you were there as the person effectively
representing the archbishop; is that right?
A. In the sense that I don't think that meant I had any
particular power or appointment; it was just that I was
there to pass on instructions, yes.

Q. So you were a conduit, as it were, between the
lawyers --
A. Absolutely, yes.

Q. -- the CCI and the archbishop?
A. Yes.

Q. You passed messages from one way to the other?
A. That's right.

Q. And you had no decision-making role?
A. No decisive role, no.

Q. Is that a role you played in respect of other claims?
A. It is.

Q. It is?
A. Yes.

Q. Those claims were dealt with in the same period of
time that Mrs Isaacs' claim was being dealt with?
A. It was over quite a considerable period of time.
I dropped off the scene occasionally. When Dr Robertson
came on the scene, I didn't have that role. Later, the
role was taken over briefly by another priest, Father Frank
Lourigan. But occasionally I had that role.

Q. In paragraph 53 of your statement, you say that it was
your understanding at that time that claims for
compensation were outside the Towards Healing process. How
did you come to have that understanding, doctor?
A. Well, in the original Towards Healing document,
I think it was made fairly clear that that was a separate
heading or avenue of relief. I find the word "compensation" a little difficult to explain. I believe in
compensation, but so many things come under that heading of "Compensation". If we're talking about damages, that's one thing. If we're talking about restoring a person to where they were before they suffered some injury, that's another situation.

Q. Notwithstanding whether or not Towards Healing principles applied, I take it nevertheless, doctor, you would have been concerned, in any dealings between the church and a victim of abuse of the church, that that person be dealt with fairly, justly and compassionately?
A. Absolutely.

Q. In paragraph 54 you say that in your role in respect of Mrs Isaacs' claim, you relied on the advice which was received from Mr Moore. That's the solicitor, Mr Moore --
A. Yes.

Q. -- who was acting on behalf of the archdiocese. And you also relied on the views and experience of Mr Rolls at CCI.
A. Yes.

Q. Have you had the opportunity of reading Bishop Gerry's statement to this Royal Commission?
A. No, I haven't, no.

Q. Can I ask that his statement be put up on the screen, paragraph 39, on page 0007. If you could read the last sentence of that paragraph for me?
A. On reflection, the Archdiocese could have and should have not relied so heavily on such advisers and should have formed an independent view of the appropriate approach to take.

Q. If you need to read the rest of the paragraph to understand that sentence, please do so, doctor.
A. Yes, I do understand that, and I would be in full agreement with Bishop Gerry.

Q. You say you would be in full agreement with him. When did you form that view that the archdiocese could have and should have not relied so heavily on such advisers?
A. It is something that has niggled me over the years, I think, because I felt that we were talking in terms of legal justice instead of natural justice and that we were too much constrained by the limits of the law, and I felt that over and beyond what could be done through lawyers and insurers, the church might have responsibility there to help a person repair their lives.

Q. If we can come back to your statement on the screen, at paragraph 55, you note there that you were aware that CCI was concerned about an apology, because it could impact on the applicability of insurance cover. You state there:

From a pastoral point of view this caused me concern.

What did you do with that concern, doctor?

A. I remember on occasion, and not only in this particular matter, speaking about my concern for the distress of the victim and wondering whether our response, our legal response, was sufficient. But I took no action. My instructions were to be this conduit between the archbishop and the insurers and lawyers.

THE CHAIR: Q. Did you ever say to the archbishop, "This isn't right"?

A. I certainly inferred it. One doesn't generally speak so directly to the archbishop. Perhaps one should. But I certainly inferred that I was uncomfortable with it.

MS FURNESS: Q. What about the bishop?

A. Bishop Gerry, do you mean?

Q. Yes.

A. No, I don't think I had any conversations with Bishop Gerry.

Q. Can I have tab 38 on the screen. You will see, doctor, that this is a letter from you to the archdiocese's lawyers, dated 10 August 1999?

A. Yes.

Q. You are familiar with that letter now?

A. I am, yes.

Q. You refer in the first paragraph to having spoken with Mr Rolls?
A. Yes.

Q. And the view of CCI, in the second paragraph?
A. Yes.

Q. Then, looking at the third paragraph, if we could scroll up, there is reference there to Mr Rolls being under the mistaken belief that Derriman had pleaded guilty; do you see that?
A. I do.

Q. And that you had been informed by his brother-in-law that that wasn't the case; that he pleaded not guilty?
A. Yes.

Q. Do you see that?
A. Yes, I do.

Q. You understand, of course, that he was convicted, don't you?
A. I do.

Q. And you understood that in August 1999 when you wrote this letter?
A. I did.

Q. On what basis, then, doctor, did you say that:

It does affirm Derriman's guilt, of which I don't believe there was evidence to warrant such an apology or admission.

A. I think that's bad drafting. I certainly didn't mean that there wasn't evidence of his guilt. I think that I would be talking there more about responsibility for his action.

Q. One way of reading that paragraph, which I take it you drafted, doctor --
A. Yes.

Q. -- was that the fact that he pleaded not guilty meant that the church could take a different view of his guilt than if he had pleaded guilty?
A. I think I was speaking about the responsibility of the church for his actions.
Q. Perhaps you can explain that, doctor?
A. I'm sorry?

Q. Perhaps you can explain that? I'm not sure what you mean.
A. Well, whether there was a vicarious responsibility, whether or not the church was vicariously responsible for his actions. I think that's what I meant there. It is badly drafted, I'm sorry.

Q. How did that affect the apology?
A. I have listened to the proceedings here and I can see that an apology on behalf of the church by this man, who was a representative of the church, is certainly warranted. But my advice from the lawyers at the time was that to offer an apology would admit responsibility for - in damages.

Q. And you accepted that advice?
A. I did at the time, yes.

Q. Looking back now, should you have accepted that advice and acted on it in the way that you did?
A. I don't think so. As I said before, I think that we should be also looking at things outside the whole question of legal responsibility.

THE CHAIR: Q. Doctor, I asked the previous witness, and I'm going to ask many witnesses to help me understand the issue of the church's responsibility. You appreciate that the church, with its structure, invites people to come and participate in its activities?
A. Yes, I do.

Q. And, in particular, you invite young people to come and both their parents and the young person to place their trust in what the church has to offer?
A. Yes.

Q. The church trains the people who provide the, as it were, front line for the church in its work?
A. Yes.

Q. And you would understand that the community would expect the church to be a safe place?
A. Yes.
Q. For everyone, but particularly young people, to come?
A. Indeed.

Q. Do you think that conventional rules about vicarious liability really have a place to play in that environment?
A. Thank you. I think that there is also the whole understanding of human nature and its frailty to be taken into consideration and that in training a man for priesthood, one can set certain standards, but, within those standards or outside those standards, the priest may fall short; the individual may fall short.

There may be now ways of training priests that we didn't have available at the time that would expose these frailties. We didn't have them at the time, and so the fact that he fell short of the standards that were expected of him - I find it difficult to say that that makes the church responsible for the actions that he did, which the church forbade him to do.

Q. Doctor, what I'm putting to you is a discussion which I have now had with a number of people.
A. Yes.

Q. It is not concerned with the church's training or the failure of the individual as such, but without the church and its whole structure and the invitation which is made to people to come and participate in its activities, the opportunity for a priest to abuse would just not be available, would it?
A. I'm not - I don't want to take the semantic position, but the word "apology", for me, means that if I apologise for something, it's something that I have done that is wrong and that I take responsibility for my wrong action. So I have always had difficulty in saying that we apologise for something we didn't know about and that we had no means of foreseeing.

Q. Again, I don't want to be involved in a semantic discussion, but can I suggest, doctor, you are not actually confronting the issue. The issue is whether the church should, even though it is but one person in the church who may have been the abuser - whether because the church in its whole being, its whole structure, says, "Please come to us. We will care for you. We will provide for you in a variety of ways", and without that invitation, which is...
not made by the individual priest; it is made by the whole church, without that invitation, that person would not be in a position to be abused by the priest. Do you understand that?

A. I understand, yes.

Q. You understand, as I said to you, that people are saying to us, "Well, in those circumstances, how can it be that the church can say, 'We don't, as a church, have a responsibility', firstly to acknowledge and apologise for the wrongdoing, but also to make redress, which includes financial redress, for what has happened"?

A. I heard your remarks this morning, and when I heard those I thought, yes, there is a position the church can take and offer an apology on behalf of the structure that has failed, yes.

Q. The next question is the extent of liability.

A. Yes.

Q. Do you have a view about that as a lawyer?

A. I believe that - I believe in compensation, and I believe that compensation means reparation where there has been an unjust activity which has resulted in harm to somebody. But my understanding in relation to damages is that it is a matter of relating the damages to the event, and I would still be in that position, that certainly we should attempt to repair somebody's life if it has been unjustly affected. I have no expertise in the area of quantum of damage and how you arrive at those things. That was my dilemma. I had to rely, then, on advising the archbishop what the insurers and the lawyers said.

THE CHAIR: Thank you. Yes, Ms Furness?

MS FURNESS: Q. Could I have tab 45 on the screen, please. This is a letter, doctor, that was sent to you by the archdiocese lawyers. If we can just scroll down to the bottom of the first page, do you see at the last paragraph that we can see on that page, the recommendation that was given to you was that if Joan Isaacs contacted you or other church representatives directly over the issue of compensation, she should be referred back to her solicitors?

A. Yes, I see that.

Q. The reason given was that it wouldn't be ethical for
the church to talk directly with her when she has retained
a solicitor to act in her interests?
A. Yes.

Q. Did you have a view on the advice you were given or
the recommendation that was made?
A. Oh, certainly. I think that's ridiculous.

Q. Did that happen; did she seek to speak with you?
A. No, no, and one of my sadnesses is that there was no
continuity of pastoral concern and contact. I never met
Mrs Isaacs, as far as I recall. I did write, when I sent
her the Towards Healing document, and offered to be of any
assistance I could. I didn't ever hear again, but
Bishop Gerry took up a more direct contact with her. But
I didn't - I completely disregarded that.

Q. If I can turn to tab 47, this is a letter, doctor,
that you wrote to Mr Laurie Rolls in October 1999?
A. Yes.

Q. You have received some information from your
solicitors?
A. Yes.

Q. From that letter, it appears that it may well have
been a report from her treating doctor?
A. Yes.

Q. You express some views in respect of that. In the
fourth paragraph, about halfway down, you say:

I am reluctant to so formally admit the
fact of the abuse, even though he has been
found guilty.

What was it that caused you to be reluctant to so formally
admit the fact, even though the conviction?
A. Again, I think I wouldn't draft it in that way.
I think that my mind at the time was that our advice from
the lawyers had been not to admit liability and that
admitting the fact of the abuse could be an admission of
liability, and that was the advice of our lawyers.

Q. Then in the next paragraph, you state that:

... we should now offer once again the
Do you see that?
A. Yes.

Q. By this stage, she had gone through a facilitation?
A. Yes.

Q. And she probably had received the written apology from the bishop?
A. Yes.

Q. And all that was outstanding was compensation and perhaps ongoing counselling payments. Do you see that?
A. I do see that.

Q. What then was it that Towards Healing could offer, given your view, as you have expressed in your statement, that the compensation process was outside of Towards Healing?
A. Well, there were other material assistances that we gave in other cases. Where people had accommodation difficulties, we sought to do what we could to help them. Where they had pharmaceutical expenses, we sought those. There were other areas of concern that we could have offered, even the area of personal contact. Those would be the other areas, I think.

Q. It seems from this letter that your interest in Towards Healing was more resolving the counselling issue; do you see that?
A. I see that, yes.

Q. There was an estimate of two years' counselling?
A. Yes.

Q. Presumably based on the treating doctor's report that you had received; is that right?
A. Yes.

Q. You note the amount that that would come to and you then suggest that the church pay the bills rather than give her a lump sum, "which might be used to pay legal fees"?
A. Yes.

Q. Tell us about that thought?
A. Well, I think my lawyer friends are a bit embarrassed
by that statement. I think at the time there were "no win, no pay" cases, "no win, no pay" situations, and they weren't handled, I felt, very honestly because they weren't no win, no pay, because if the person lost the case and had damages awarded against them, they would have to pay that.

Q. Costs awarded against them?
A. So people were led into it under a misapprehension, and that was the sort of situation that - I'm not accusing Mr Deed of that, but it's a situation that I would want to avoid.

Q. Is it the case, then, in October 1999, you thought that payment could have been made under Towards Healing to cover the counselling fees?
A. That was under the new document of Towards Healing, I understand, and that includes the payment of damages as well as the other areas of concern, and so, yes, I would have thought there could be a payment then, under the new document.

Q. The new document, if you will accept it from me, doctor, came into effect in December 2000. This letter was written in October 1999.
A. Yes, but it was already out as a draft document.

Q. So you were basing your view as to that payment that could be made under Towards Healing because the time that had elapsed since Joan Isaacs' first approach to the church meant that a new version was out --
A. Yes.

Q. -- which included reparation?
A. I think so.

Q. Assuming you are correct and the version including reparation was available, why limit it just to a calculation of counselling fees, if reparation was permitted?
A. I don't - I guess I at that stage would have needed some indication of how you arrive at a quantum of any further damages, that that was a figure that could be quantified.

Q. But you would accept, wouldn't you, that the term "reparation", as it appeared in the later edition, was not limited, either expressly or implicitly, to counselling
costs?
A. No, no, not at all.

Q. That was a suggestion you made to the insurer; that's right?
A. Yes.

Q. You told the insurer that the solicitor felt that Ms Isaacs' solicitors would be outraged at the low figure?
A. Yes.

Q. Do you see that?
A. Yes.

Q. Did you pursue that view that settlement could be achieved with that amount of money being paid at that time?
A. No.

Q. I beg your pardon?
A. No.

Q. Was it the case that ultimately you had no real say in determining what amount would be paid?
A. Certainly. I had no - no authority to commit the church.

Q. Can I now have tab 51 - - -

THE COMMISSIONER: Can we stay there for a moment.

Q. On the screen I think is still the paragraph commencing "I still have trouble seeing"; do you see that?
A. Yes.

Q. I know Ms Furness took you to part of this. Has your knowledge of how impacts of child abuse may affect people significantly after the events matured since you wrote this letter?
A. I think I had an indication - there were already indications that that's the case. What I'm asking in the letter for is some positive sign of or relation of the disturbance to the event.

Q. You are a lawyer and a priest?
A. Yes.

Q. This woman was at that stage receiving counselling?
A. Yes.

Q. From experts in the field?
A. That's right.

Q. Did you believe your knowledge should be put in place of those who were --
A. Certainly not. Certainly not. But the people who were treating her had come to treat her 30-odd years, or some large number of years, after the events. I really needed a report from those people saying quite definitely, "This relates to that."

Q. I am going to have to put this to you, because you go on in the letter to say:

John suggests we write to the solicitors strongly condemning Derriman. I am reluctant to so formally admit the fact of the abuse even though he has been found guilty.

A. Yes.

Q. Now, many people might think that to be an entirely unworthy proposition having regard to the fact that he had been convicted?
A. Oh, I would agree, it's badly worded.

Q. It doesn't do justice, does it, to your obligation under Towards Healing?
A. Oh, no, I would not write that letter that way - I would be more specific about what I mean.

Q. You go on:

I believe we should express our concern at the distress she so obviously feels, concentrating on what might be done by way of therapy ... rather than get into the area of apology once again.

Now, it might be thought by some that that also is a statement falling far short of your obligation under Towards Healing. What do you say?
A. I say that, as I mentioned before, I have taken your words this morning and considered those, and I don't think
I would write that letter again in that way. The whole idea of apology you have expressed differently, and I accept that. Apology at that stage, at that time, indicated responsibility, liability, and that's what our insurers and our lawyers told us not to involve ourselves in. But I certainly wouldn't write that letter in those terms now.

MS FURNESS: Q. But, doctor, the question was put in terms of your obligations under Towards Healing, not in terms of what legal advice or other you received. It was put to you that that falls short of your obligations under Towards Healing. Would you respond to that question?
A. I am sorry, you would have to clarify the question?
Q. The question was that that aspect of that letter that has been put to you in that paragraph --
A. Yes.
Q. -- falls short of your obligations under Towards Healing?
A. But that's --
Q. It's not a question of legal advice, if I can put it to you, doctor.
A. I think where we're coming from there - and I've spoken about the change in the documents, but previously those two areas were completely treated separately, the question of Towards Healing assistance, the question of damages. Here, I think there is no conflict between that paragraph and the next, when I said we should again offer the services of Towards Healing; having dealt with the question up here of damages, I think that now we should also go back to Towards Healing.

Q. The principles of justice and compassion are not, I suggest to you, evident in that paragraph?
A. No. You are quite right.
Q. Turning to tab 51, this is a letter written by you to the archdiocese solicitors. It indicates that you had received a letter from Mr Rolls concerning the ownership of Towards Healing and documents obtained through the activities of the group. Then you set out the letter and seek, effectively, legal advice about what lawfully could be done with Towards Healing documents. Do you see that?
A. Yes.
Q. Do you remember now how it came about that Mr Rolls asked you to obtain that advice?
A. Am I asking on behalf of Laurie Rolls there? I don't read it that way. I say, "I have received a letter from him and now I would like you to inform me about these points." I am sorry, I don't know if there was a connection, if Laurie Rolls asked me to ask these points or to raise them with the lawyer.

Q. Well, you raised the points with the lawyer, seeking advice; that's right?
A. Yes.

Q. Why did you do that? What was your interest in that area?
A. The comments of Father Brian Lucas there led me to think that we should clarify what our own legal liability is.

Q. In order to determine whether or not the documents kept as part of Towards Healing could be compellable in another place?
A. Yes.

Q. If we can turn to tab 52, this is a further letter dated the same date from you to the lawyers, specifically in relation to Mrs Isaacs. In that second paragraph, you refer to claims by "others than Mrs Isaacs", and you ask whether, notwithstanding there didn't appear to be any involvement of Towards Healing, it was too late or unethical to involve Towards Healing now and put your file under its umbrella. Do you see that?
A. Yes, I do.

Q. Do you now remember writing that letter?
A. No, but I'm sure I did. I don't remember it.

Q. Is it fair to read that that you were seeking to ensure that the documents held by the archdiocese in relation to claims by [DA] and [DE] were not otherwise compellable and thus put them under the Towards Healing umbrella?
A. Yes, I think you are right, even though I was quite wrong at law.

Q. When you say, "I was quite wrong", what do you mean?
A. I mean at law, that they would have been compellable.

Q. But you were seeking, it appears from that letter, to protect those documents by putting them under an umbrella which they didn't otherwise belong?

A. Yes.

Q. What do you say about --

A. Sorry?

Q. What do you say about having sought to achieve that in 1999?

A. Well, now I'd say that it wasn't a good interpretation of the law, and so it really accomplished nothing and I certainly wouldn't be doing that today.

THE CHAIR: Q. Doctor, it might be suggested that it wasn't an honest approach to the issue?

A. I detected that.

Q. Well, you need to answer it because the Commission will need to look at all of your actions. What do you say to that suggestion?

A. I don't think there is anything dishonest in it. I think that it is a question of interpretation of the law, of knowing - since our lawyers were intent on protecting us from liability, I wanted to know if this was one means of protection.

MS FURNESS: Q. But it would be protection that would be obtained wrongly, wouldn't it?

A. I'm sorry, wrong?

Q. Wrongly or deceitfully, because you were seeking to put something where it didn't belong, that is, under Towards Healing, when indeed there was no Towards Healing in respect of [DA] and [DE]?

A. I'm a long way out of practice of law, but I understand that there were situations where files could be quarantined at law, and I expect that's what I thought about those.

Q. You reject the suggestion that that would have been a deceitful exercise?

A. Yes - I would really have to think about that pretty deeply, because I don't know of all the other practical points involved or even what the practice of law was then,
whether or not this was a matter - certainly today I would say, by all means, let us get involved in Towards Healing and see what we can have to offer them. But that's just a bad interpretation of law. I don't think I can make a judgment about it being dishonest.

Q. Can I turn now to tab 94. This is a letter to you from the archdiocese solicitors in April 2001. It is the case that by April 2001 the Towards Healing protocol had indeed changed and reparation was mentioned. You are aware of that, doctor?
A. Yes.

Q. It is clear from here that the settlement negotiations are still continuing in respect of Mrs Isaacs' claim?
A. Yes.

Q. This letter, on page 2, deals in the first paragraph with various aspects of the claims and strategies, but in the second paragraph it suggests that there is a need to bring together a greater focus and consistency with these types of complaints and perhaps develop an internal range of damages protocol so that some consistency can be achieved. It notes that Laurie Rolls would be aware of settlement activities throughout Australia and recommends that some guidelines be established.
A. Yes.

Q. They seek your views, as well as your instructions, in relation to the claim by Mrs Isaacs. Before we deal with Mrs Isaacs' claim, did you consider that matter set out in the second paragraph?
A. No, I have a lot of difficulty in coming to terms with a range of damages, because the offences vary so much and the effect of the offences varies so much. It's a bit like workers compensation, where you would get so much for a loss of an eye, so much for the loss of a limb. How you could apply that sort of standard to these claims I had difficulty in understanding. So it's not something I would want to pursue.

Q. Did you respond to the lawyers to that end?
A. I don't remember.

Q. You don't remember?
A. No.
Q. From 2001 you don't remember this issue being taken 
any further?
A. No, I don't, no.

Q. In the next paragraph, your views were sought in 
relation to the settlement in respect of Joan Isaacs?
A. Yes.

Q. Do you see that?
A. Yes.

Q. The range was then standing at $30,000 to $75,000 
under the "Pastoral care/resolve the dispute" category, as 
opposed to a settlement having the backing of 
a recommendation on legal grounds, and a legally 
supportable commercial settlement of $30,000 to $35,000 was 
suggested. Do you see that?
A. Yes, I do.

Q. We now know that an offer of $30,000 was ultimately 
made and accepted?
A. Yes.

Q. Did you respond to this with your instructions as to 
an amount?
A. I don't remember if I wrote, but I certainly told 
John Moore that I thought it was mean.

Q. Did you?
A. Yes, and I do now think it's mean.

Q. Did you suggest an alternate figure?
A. No, because I'm not really in a position to quantify 
them. It just seemed - my impression was that it wasn't 
enough.

Q. Well, not being in a position to quantify it but 
nevertheless having a view that it was too low --
A. Yes.

Q. -- surely would have put you in a position of 
suggesting something higher, no matter how high that went?
A. Well, here I'm dealing with the lawyers and the 
insurers. The insurers are prepared to pay that amount of 
money. I hadn't taken into consideration, as I perhaps 
should have, that outside of whatever the insurers would
pay, the church could pay more that it felt justified in paying.

Q. There was a fund available to the church, wasn't there, to pay amounts for these sorts of purposes?
A. I don't know of that.

Q. You don't know?
A. No, no. I knew of no fund set aside for that, no.

Q. Do you know one way or another whether, in 2001, the archdiocese had funds that were available to it to contribute to a settlement in these circumstances?
A. You raise there, again, a moral question. It would depend on the source of those funds. If it was funds that had been raised through dealings that the church had made - sale of property, something like that - yes. But if we are dealing with the moneys contributed by people, they are given to us on trust and so there is a whole different question of responsibility there.

Q. But given your role as conduit --
A. Yes.

Q. -- I suggest it would have been important for you to know whether there was a sum of money available to the archdiocese to contribute in these circumstances if the insurers fell short?
A. Look, I'm afraid it didn't occur to me in those days, because that wasn't what procedure had taken place. I followed the procedures. I thought it was mean at the time. I think it's probably, now, that we should go outside the figures that are offered by insurers.

Q. I am sorry, I missed that. You think --
A. I think, now, that we should go outside the figures, where justified, offered by insurers, but that didn't come up at the time.

Q. Where do you get the money to go outside the insurers?
A. If, in fact, we had sold a property, those funds would be appropriate.

Q. There is an archdiocesan development fund?
A. Yes.

Q. On what basis do people choose or otherwise to
contribute to that?
A. I think they use it as a bank.

Q. As a bank?
A. Yes.

Q. So money in that fund would be available?
A. Income from the fund, yes. Not the funds. Not the funds themselves, but income from the funds.

Q. Your understanding in 2001 would be that income from that fund would have been available for these sorts of purposes?
A. Yes, yes.

THE CHAIR: Q. Can you give us any idea how large that fund was?
A. Look, I can't give - I know I - I was the curate to parish priest who was the figure in setting it up, and he told me once that it was worth $154 million. But they were the investments, investments by religious orders, by parishes and so on. That wasn't a figure of income. I really can't give you that figure.

Q. But do we understand, in general terms, that there were assets in the fund of $150 million generating an appropriate income?
A. Yes, yes.

Q. We could apply a percentage, couldn't we, to that?
A. The moneys were invested in the fund by parishes and by religious organisations so that the church, by using those funds, could finance other parish activities, religious activities. It wasn't really set up to make money and store it away.

Q. No, it was to be used for the purposes of the church; is that right?
A. Yes.

MS FURNESS: Q. Could I turn to tab 99. This is a letter you wrote, doctor, to the archdiocese solicitors in May 2001. Do you see in that third paragraph, you note that the bishop agreed with you that it would be commercially inopportune to seek any contribution from Derriman?
A. Yes.
Q. How did you form that view?
A. I knew his sister and brother-in-law, and they indicated to me that he was in pretty indigent circumstances.

Q. And you accepted that view, did you?
A. Yes. Oh, they were very decent and honest people.

Q. He had gone through two committals and a trial, had he not?
A. Yes.

Q. Do you know who funded that?
A. No, I don't.

Q. You took them at their word?
A. Yes, yes.

Q. And undertook no further inquiries as to Derriman's circumstances?
A. That's right.

Q. Was it the case that the bishop had a discretion as to whether or not to seek a contribution from Derriman?
A. I would say in conference with the archbishop, yes.

Q. Because if, of course, one had sought a contribution from Derriman and one had been forthcoming, that could have been added to the pot, couldn't it, to go to Joan Isaacs?
A. I'm just not too sure who would have the carriage of that. Wouldn't it be Mrs Isaacs who would have the carriage of any action against Derriman?

Q. Leaving aside any action that Mrs Isaacs might take, if indeed, as the second paragraph reveals, the CCI had reached its limit that it was prepared to offer, had you received money from Derriman, that money could have been put in to the amount that went to Joan Isaacs, couldn't it?
A. Yes, yes.

Q. So that decision deprived her of any additional funds over the $30,000 that could have come from him?
A. If they could have come, yes.

Q. Yes, if, if --
A. And there were indications that they wouldn't be
there.

Q. When you say "indications", you spoke to his
relatives, who said that he didn't have any money; that's
right?
A. Yes.

Q. There were no other inquiries made?
A. Yes.

Q. Again, with paragraph 2, there is no suggestion there
that the archdiocese put its hand in its pocket to add to
that $30,000, is there?
A. No.

Q. Was that a matter you and Bishop Gerry discussed?
A. No.

Q. No?
A. No.

Q. In the Towards Healing documents that applied at this
time - that is, following the December 2000 amendments -
there was reference under "Outcomes relating to the
accused", and perhaps if the document can be brought up
which is behind tab D of exhibit 4-1, the general tender
bundle, and it is page 0098, or page 21 of the hard copy.
Do you see 42.6, towards the top of the page, doctor?
A. Yes.

Q. As far as it is within its power to do so,
the Church authority shall require the
offender to address the issue of
restitution to the victim and to the Church
community.

A. Yes.

Q. What did you do, as the church authority, to achieve
that?
A. Well, I certainly did nothing and I had never taken
that action. I don't know that it has been taken since,
either.

Q. So to your knowledge, that particular clause, 42.6,
has not been put into effect in any of the Towards Healing
matters that you are aware of?
A. Well, I've been out of the area for a while, but that's certainly the case. I'm not aware of any case where that was done.

Q. Were you aware of that clause being in the document at any time?
A. Well, I read the document, so I would have been aware of it, but I didn't recall it now.

Q. When you say you would have been aware of it because you read the document, is it the case that it wasn't in your mind in any of your Towards Healing dealings that that was something that you should think about?
A. Occasionally I thought about it, but the experience I had with the offenders was that they were broke. And, in fact, we were often called, or St Vincent De Paul were called on, to help them from day-to-day living, so I don't think the question ever arose of a man who was of substantial means being an offender.

Q. Or, indeed, any means; they didn't need to be substantial to seek a contribution?
A. Well, yes.

Q. Doctor, you will know from your preparation to give evidence today that there were two draft deeds of release provided to Joan Isaacs?
A. I do, yes.

Q. Did you give instructions, advice or information to the lawyers in respect of the drafting of either of those deeds?
A. I accepted their advice. They drafted them. They sent them to us. They included - and I presume this is where you are heading - on the confidentiality and they said that that was the usual situation, so we accepted it.

Q. Did you read them before you approved them?
A. I don't know that it was a question of my approving, but I certainly read them, yes.

Q. Did you express any different view to the lawyers as to whether either of those deeds should be provided to Joan Isaacs?
A. I'm sorry, whether the drafts should be?
Q. Yes.
A. No, I don't recall that. I don't recall that I did.

Q. Let's have the first draft on the screen. That's at tab 21, and particularly at page 0077. If we can turn to clause 7, you would have read that as part of the deed, would you not?
A. Yes.

Q. Did you have a view, when you read that, as to the appropriateness of a complainant who had been the victim of child sexual abuse and had not spoken about it for many years receiving a document with such a clause?
A. It didn't occur to me then, but having read Mrs Isaacs' statement, I can see now that it's quite inappropriate.

Q. "Quite inappropriate"?
A. Yes.

Q. What's quite inappropriate about it?
A. That we should not bind a person not to speak about something that has had such a grave effect on her life.

Q. Is that a view you have only formed since reading Joan Isaacs' statement?
A. No, no, because I know this has been an issue for some time. At the time of these drafts, my own experience in working with insurers before I became a priest was that they always required that clause of confidentiality on settlements, and so I just thought that this was part of the procedure.

Q. You were aware that there had been a new version of Towards Healing in place by now, weren't you?
A. Yes.

Q. And you were aware, weren't you, that part of that new version had a paragraph that said:

No complainant shall be required to give an undertaking which imposes upon them an obligation of silence concerning the circumstances which led them to make a complaint, as a condition of an agreement with the Church authority.
A. I would have read the document. When you ask me if
I'm aware of it, I can't say that that leapt out at me.

Q. Were you aware in 2001 that there was a provision in
the Towards Healing document to the effect I have just
read?
A. I can't remember being aware of it. All I can say is
I would have read the document, I would have seen that.
I can't remember, though, remarking on it.

Q. You were aware that the new version - that is, new
since the original version --
A. Yes.

Q. -- now provided for reparation, weren't you?
A. Yes.

Q. But you weren't equally aware that it also had that
clause in respect of confidentiality?
A. I'm not saying that. I'm saying that now I don't know
what my awareness was then. I may very well have been
aware of it.

Q. There could have been more than one bases on which you
challenged the insurers including this clause in the deed,
I suggest to you?
A. Yes.

Q. One being that it was not compassionate, fair or just
to require Joan Isaacs to sign a deed with that clause in
it. What do you say to that?
A. I agree, yes.

Q. Why didn't you think of that then?
A. I didn't think of it.

Q. I know. Why, I'm asking you?
A. I don't know. I didn't think of it.

Q. Another reason, I suggest to you, is that it infringed
the very protocol that your job was to adhere to. What do
you say to that?
A. I don't see that.

MR GRAY: I do object to that question, with respect.

THE CHAIR: I think maybe you should clarify the question,
Ms Furness.

MS FURNESS: Q. I suggest to you that it infringed the Towards Healing procedures that you were required to adhere to?
A. That's your --

Q. I beg your pardon?
A. I accept that's your interpretation.

Q. I beg your pardon?
A. I accept that's your interpretation.

Q. That's not your interpretation?
A. I don't know. I can't remember what my interpretation was then.

Q. Perhaps we can have that clause up on the screen. This is December 2000, tab D, at page 0097. Can you read that to yourself?
A. Yes. Yes.

Q. What's your interpretation of that clause, doctor?
A. That no complainant shall be required to give that undertaking. Yes.

Q. If we can then go back to clause 8 of the first deed, that is:

\[ Agrees not to make (or cause to be made) disparaging remarks or comments \ldots \]

Do you see that?
A. Yes, I do.

Q. Did you have a view, when you read this release when it was given to you by those who acted on behalf of the church, as to its appropriateness?
A. I can't recall if I had a view on it at the time.

Q. What's your view now?
A. My opinion now is that we shouldn't put that requirement in.

Q. Why shouldn't you have put the requirement in?
A. Because I don't think it's fair to the victim.
Q. And there is nothing that has changed between 2001 and 2013 in terms of what is fair, is there?
A. I am sorry, can you clarify that?

Q. You say that it is not fair to have put that requirement in then?
A. Yes, yes.

Q. I am suggesting to you that there is nothing that has changed about the notion of fairness between now and then, and it should have been known that it wasn't fair then?
A. Again, all I can say is that we have an evolution in understanding of the damage to victims.

THE CHAIR: Q. Doctor, what did you think was the church's purpose in imposing that obligation?
A. I don't think the church had any purpose in it. I think the lawyers put that in as a protection that they felt was necessary.

Q. Why was that necessary?
A. Because they would want to protect the church from any further damage.

Q. You mean adverse comment?
A. Yes.

Q. Clause 8 is not directed to protecting the church from any liability or, indeed, any knowledge of settlement regimes; it could only be concerned with reputation, couldn't it?
A. Yes.

Q. Do you think it was right for the church to seek to impose an obligation which had as its sole purpose to protect its reputation?
A. I think it was wrong to make it a binding condition. I think it would have been appropriate to make a recommendation, but not a binding condition.

MS FURNESS: Q. A recommendation to whom?
A. To the person signing the - accepting the release, the complainant.

Q. A recommendation that, in this case, she not make disparaging remarks; is that what you are saying?
A. Yes, yes.
Q. What would be gained by that? What would be the benefit of making that recommendation to, in this case, Joan Isaacs?
A. I don't know who Joan Isaacs would be speaking to, but I do know that there is a certain degree of, shall we say, exaggeration in the press.

Q. A recommendation to the complainant wouldn't affect that, would it?
A. I think it would just make them aware of the damage that can be done.

Q. To the church?
A. And to themselves.

Q. The circumstances in which a second draft was provided to Ms Isaacs - were you involved in that in any way?
A. I don't recall, but I think I was - I would have been informed.

Q. Do you now recall why a second draft was provided?
A. No, I don't.

Q. Is there anything you have read during the course of preparing to give evidence that assists you in that regard?
A. It hasn't come to mind, no.

Q. Perhaps if we can have a look at the second draft, which can be found behind tab 105, and if we could turn to page 0049. If we can go down to clause 9, this seemed to be an addition in respect of the matters we are discussing, doctor; you understand that?
A. Yes.

Q. That clause says that notwithstanding the two previous clauses which we have discussed, the releasor, in this case, Joan Isaacs:

... shall be at liberty to make confidential disclosure of any sexual abuse issues and/or any consequential matters arising therefrom which are the subject of confidentiality under this release ... for genuine therapeutic treatment purposes; and/or if otherwise compelled by law to do so.
You can't help us as to why that clause was inserted?
A. I think there was agitation on behalf of Mrs Isaacs that she be enabled to discuss with her family and friends the circumstances of her complaint.

Q. So you would read that as permitting her to have such discussions, would you?
A. I would see that as genuinely therapeutic.

Q. So "therapeutic treatment purposes" you would interpret as talking to your friends?
A. I think so, if that was therapeutic, yes.

Q. You wouldn't, in your mind, see that as limited to talking to your counsellor or your doctor or someone similar?
A. No, no, I wouldn't limit it to that.

Q. Did you receive advice as to the meaning of "genuine therapeutic treatment purposes" to enable you to form that view you have just expressed?
A. I don't think so. I don't recall it.

Q. Looking at it now, is it still your view that that's a reasonable interpretation of 9(a)?
A. I think so, both mine and yours.

Q. I beg your pardon?
A. I think both mine and yours are valid interpretations.

Q. Your view that your interpretation is valid remains your view now, does it --
A. Yes.

Q. -- that that is a valid interpretation?
A. Yes.

Q. Finally, can I show you tab 122, doctor. This is a letter from the diocese solicitors to you, telling you that the settlement had been completed and providing you with a copy of the deed, telling you the effect of it, that is, "brings to an end any further assistance, including payment of counselling or other medical expenses under any present or future special issues program administered by the church". Now, is that how you saw it, that there was no further assistance that could be given or should be
given to Joan Isaacs after that deed was entered into?
A. Certainly not.

Q. Did you convey that view to the solicitors?
A. I don't recall that I did, but I would certainly have wanted the Towards Healing programs to be open to Mrs Isaacs, to be continually open to her.

Q. Except in respect of money?
A. That's in respect of the aims - the healing process, certainly, that I was speaking about. Questions of damages would seem to be resolved by the acceptance and the release.

Q. So the assistance that you would see would be still available to her after the deed of release was assistance that fell short of the payment of funds for whatever purpose?
A. I would see it as a continuation of counselling; I would see it as being open to what other areas of need Mrs Isaacs had.

Q. By "counselling", do you mean the payment of --
A. Not only counselling; any other --

Q. I understand that, but in respect of counselling, do you mean the payment of counselling fees?
A. Yes.

Q. Do you see in the final paragraph there is reference to a letter addressed to the archbishop, and your solicitors indicated that they hadn't sent the letter to the archbishop. Did you do anything with that letter?
A. I don't recall doing anything with it, no.

Q. For example, giving it to the archbishop?
A. No.

Q. Responding to it on the archbishop's behalf?
A. No.

MS FURNESS: Thank you. I have nothing further.

THE CHAIR: Q. Doctor, I'm not sure I understand what your duties as chancellor for the archdiocese were. Could you help me there?
A. At canon law, the duty of the chancellor is to protect
the great seal of the archdiocese and whatever duties the
archbishop delegates to him. I was delegated to a number
of duties as chancellor, but I just happened to be the
person there. They are not prescribed in canon law.

Q. I assume, from your proximity to the archbishop and
your role as chancellor, you had some idea of the financial
circumstances of the archdiocese; is that right?
A. At that stage, no. I became a member of the finance
council in Archbishop Bathersby's time, but before that,
no, no idea.

Q. So when you were on the finance council, I assume you
did know what the financial position was?
A. Yes.

Q. What years were you on the finance council?
A. Oh, gosh, it would have been - until 2008, when
I retired, it would have been perhaps six or seven years
before that.

Q. You have told us of your knowledge of the quantum in
the development fund.
A. Yes. I wouldn't like to be bound to that,
your Honour, because --

Q. No, we will take our own steps in relation to this.
But what other funds were there, do you remember?
A. I was never really privy to that.

Q. You mean you were on the finance council and you
didn't know what funds there were?
A. The development fund - that's a separate board. It
reports to the finance board.

Q. I understand that. What were the other funds that
you, as a member of the finance council, knew about?
A. I really can't recall. You see, I think most of the
activities --

Q. Doctor, just stop and pause. You tell us you were
a member of the finance council?
A. Yes.

Q. And you cannot remember the name of a single other
fund, apart from the development fund; is that right?
A. I would like to qualify that by saying that the
activities of the archdiocese were very often conducted
through the archdiocesan development fund as their bank,
and so I was aware of those dealings. But of other funds
and accounts, charitable accounts, whatever they might be,
I don't believe that there was a report from those to the
finance council.

Q. Did you have an understanding of the asset base of the
archdiocese, as a member of the finance council?
A. No.

Q. Where would we go to find an understanding of that?
A. There is a financial administrator of the archdiocese,
who presumably would have those figures available.

Q. Is there an annual financial report of the
archdiocese?
A. No.

Q. Are annual accounts in any form prepared for the
archdiocese?
A. The archdiocesan development fund prepares an account
annually.

Q. What about all the other assets and revenue streams of
the diocese - are they gathered together in a single
report?
A. I don't recall that they are.

Q. In any event, there is a person with financial
responsibility who we can talk to, is there?
A. Oh, yes, yes. I am sorry I can't be more specific,
but, you see, I'm not a financier and my role on the
finance board was as a canon lawyer. So when questions of
canon law were raised, I had something to say. But for the
rest of it, I'm afraid it was pretty well over my head.

Q. You didn't listen to what the others were talking
about?
A. I certainly did, yes.

Q. Did you read the reports that came to the council?
A. Yes, I did. Yes.

THE CHAIR: Very well. Yes, now, any questions from
anyone else, apart from Mr Gray?
MR PRATT: If I may, your Honour.

<EXAMINATION BY MR PRATT:

MR PRATT: Q. Doctor, my name is Mr Pratt. I appear for Mrs Isaacs.
A. Oh, yes, good.

Q. You were taken to tab 94, which was a letter from the church's lawyers on 27 April 2001. If we can show that document, on the second page of that letter, towards the bottom, there is a matter regarding engaging counsel.
That's the issue.
A. Yes.

Q. It is further covered in document 99, when you respond that no contribution will be sought from Father Derriman.
A. Yes.

Q. You told us that it was because you had been informed that he was pretty indigent.
A. I am sorry, I can't hear that?

Q. You told us that his brother and sister-in-law had told you that he had no funds; is that correct?
A. That's right, yes.

Q. It wasn't, was it, because of the fact that the church was concerned that this was still a possible litigation and you wished to retain counsel that you had previously sought to retain?
A. I'm sorry, I don't understand the question. Would you --

Q. The paragraphs relate to retaining one particular counsel.
A. Yes.

Q. And if the church were to seek a contribution from Mr Derriman, the services of counsel would be lost; correct?
A. The church was not considering - no, was not claiming contribution.

Q. I am putting to you that it wasn't because it was simply that he was without funds but, rather, the church was keen not to lose the services of the counsel that they
A. Oh, no, no. We have an excellent Bar in Brisbane.

Q. I'm fully aware of the excellent Bar in Brisbane.
A. Yes, we do. That wouldn't have been a consideration, the particular merits of Mr Keane, which we acknowledged. But there was no ulterior motive at all.

Q. Was it with the church's consent that Mr Keane advised Mr Derriman relating to the strike-out application?
A. We had nothing to do with that.

Q. Nothing to do with that at all?
A. No, nothing at all. We wouldn't be supporting Derriman. We have never done that with any offender.

MR PRATT: I will take that no further. Thank you, your Honour.

MS RANDAZZO: If I may, one question. Thank you.

<EXAMINATION BY MS RANDAZZO:

MS RANDAZZO: Q. Reverend, I appear on behalf of Mr Derriman.
A. Yes.

Q. In your conversations with his sister and brother-in-law, were you advised at any time as to how his committals and trial were funded?
A. No.

Q. Did you ask?
A. No, no, I didn't. I presumed, because I think they were pretty well placed, that they may have funded him, but I didn't know.

Q. But you don't know that?
A. No, I don't know that.

Q. That was a presumption you made only?
A. Yes, yes.

MS RANDAZZO: Thank you, nothing further.

THE CHAIR: Mr Gray?
MR GRAY: I have no questions, your Honour.

THE CHAIR: Thank you. Ms Furness?

MS FURNESS: Nothing, your Honour.

THE CHAIR: Thank you, doctor, you may step down. You are excused,

<THE WITNESS WITHDREW

THE CHAIR: Any more today, or is that --

MS FURNESS: Bishop Gerry I asked to be here at lunchtime, thinking that we would be quicker than we were. However, given the time, I would propose to start with Bishop Gerry in the morning, if that suits the Royal Commission's convenience.

THE CHAIR: Very well. We will adjourn until 10 o'clock.

AT 3.48PM THE COMMISSION WAS ADJOURNED TO WEDNESDAY, 11 DECEMBER 2013 AT 10AM