ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

Public Hearing
(Day 29)

Level 17, Governor Macquarie Tower
Farrer Place, Sydney

On Monday, 16 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
THE CHAIR: Ms Furness, there is one formal matter that I don't think I have yet said anything about, which is the legislation we're sitting under in this case study, which is the Commonwealth Act and the New South Wales and Victorian Royal Commissions Act.

MS FURNESS: It is the legislation that governs royal commissions in Victoria.

THE CHAIR: Whatever it's called, yes.

MS FURNESS: Thank you.

Your Honour, I tendered three statements on Friday. It might be beneficial for those who are listening, rather than here with access to the documents, to give some indication as to the content or the relevant content of those statements.

THE CHAIR: Yes. Can I just say I'm conscious of the fact that people in this room can see on the screen the documents that we're looking at because we have a capacity to put them on to screens throughout the room, but those people who are watching in a remote location don't have that advantage, and I think we need to make sure that those people at least have an understanding which enables them to follow what's happening of the content of any document that otherwise people in the room can see.

MS FURNESS: The first was a statement of Ronald McKiernan. I don't at the moment have the exhibit number for that, but I'm sure it will be provided.

THE CHAIR: McKiernan was exhibit 4-34.

MS FURNESS: Thank you, your Honour.

Ronald McKiernan's statement was dated 6 December 2013. The most pertinent part is he refers to paragraph 11 of Mrs Ingham's statement where she said that in 2006 she spoke to Father Michael McKiernan, who was a parish priest in her area, and he told her to stop blaming the church and go away.

Ronald McKiernan says in his statement that the person to whom she referred could not be and was not him, and then gives an explanation for his movements at that time.
The second statement was a statement of Father Michael Joseph McKeaten.

THE CHAIR: That is exhibit 4-33.

MS FURNESS: Thank you.

Father McKeaten is relevant because in Mr McKiernan's statement he said, at the end of his statement, that it's possible that the person that Mrs Ingham was referring to was Father Michael McKeaten.

Now, Father Michael McKeaten's statement, which was tendered and is dated 5 December 2013, said that, among other things, he had no recollection of ever speaking or meeting with her or with any other person concerning a complaint of sexual abuse against Father Brown, and he gives evidence of his movements at the relevant time.

The final statement was the statement of Bishop Satterthwaite, which is dated 10 December 2013.

THE CHAIR: That is exhibit 4-35.

MS FURNESS: Thank you.

Again, among other things, the bishop said that he did not attend a meeting in 1990 or at any other time with Father Mulcahy or any other person in which Mrs Ingham made a complaint about abuse committed by Father Brown.

THE CHAIR: Yes, thank you.

MS FURNESS: Your Honour and Commissioners will recall that there were two witnesses who were not reached on Friday - Michael Salmon and Bishop Jarrett. Because Mr Salmon is a witness in respect to the fourth part of this case study this week, it was considered appropriate and, indeed, probably useful to have his evidence taken in respect of both cases.

Now, I understand he is here today, but that remains my view, that it is convenient, and perhaps better in terms of the evidence that he has to give, to have him give evidence about both cases. That will be, I'm able to say at this stage, on Thursday. So if those who need to make
arrangements can do so on the basis of Thursday. I am sure if Mr Salmon is not available on Thursday, that will be made known.

All that remains is for me to call Bishop Jarrett.

<GEOFFREY HYLTON JARRETT, sworn: [10.10am]

<EXAMINATION BY MS FURNESS:

MS FURNESS: Q. Would you tell the Royal Commission your full name and occupation?
A. My name is Geoffrey Hylton Jarrett. I am a bishop of the Catholic Church.

Q. And you are Bishop of Lismore; is that correct?
A. I am Bishop of Lismore.

Q. You have prepared a statement, bishop, dated 15 November 2013?
A. I did.

Q. Are the contents of that true and correct?
A. They are, except for one emendation, which I would like to draw your attention to at number 92.

Q. Paragraph 92?
A. Paragraph 92.

Q. Yes.
A. The third line refers to Father Brown living in retirement in Brisbane. In fact, he was living in retirement on the Gold Coast, not Brisbane.

Q. With that amendment, it's true and correct?
A. It is.

MS FURNESS: I tender the statement.

THE CHAIR: It will become exhibit 4-36.

EXHIBIT #4-36 STATEMENT OF GEOFFREY HYLTON JARRETT, DATED 15/11/2013, BARCODED STAT.0080.001.0001_M

MS FURNESS: Q. Bishop, in paragraph 16 of your statement - and perhaps your statement can be put on the screen. Do you have a copy with you?
A. I do.

Q. In paragraph 16, you refer there to, as the Bishop of Lismore, having certain responsibilities for priests who are incardinated to the diocese, and under canon law having "the authority to appoint and regulate the ministry of those priests". Can you help us with what "regulate" means in that context, bishop?

A. I can, as bishop, give them directions in regard to the conduct of their ministry and, for instance, in the way the liturgy is conducted, in the way churches are arranged, in the way in which, for instance, they could have recreation time, and so on.

Q. Is there any component of discipline as would be ordinarily understood in the notion of "regulate"?

A. Yes. The bishop is responsible for the discipline of the clergy of his diocese.

Q. What powers, as bishop, do you have to discipline that you can exercise without regard to anyone else, that is, it's entirely within your discretion?

A. I have the power to freely allocate ministries. For instance, if I judge it for the good of the diocese that a priest cease serving in one place, I can arrange for his transfer to another place - not in an arbitrary way, but through consultation and explaining my reasons. Ultimately, I have the authority to make those changes.

Q. You also have the authority to remove a priest's faculties; is that right?

A. I do.

Q. What does that mean?

A. To remove a priest's faculties means that you suspend him from active ministry, public ministry. He can no longer act as a priest in the name of the church. He remains a priest, and the bishop retains the obligation to support him and look after his material needs, but he can stand him down. Removing faculties means standing down from public ministry.

Q. Is that standing down with or without pay?

A. With pay. The bishop is always obliged to see that his priests have enough to live on and are supported. In other words, they're not reduced to destitution.
Q. So if the faculties of a priest are removed, then that priest receives the same level of payment as he would, were he to continue in active ministry?
A. Initially he would. As time went on and the case was tried, different arrangements might come into play.

Q. When you say "the case was tried", what does that mean?
A. Well, a bishop has to act justly, in accordance with canon law. If a priest believes that he has not been treated in accordance with canon law, he can appeal. That appeal ultimately might go to Rome.

Q. In your time as Bishop of Lismore, have you had occasion to remove the faculties of any priest?
A. I have had occasion to stand a priest down from public ministry.

Q. And when you say "stand a priest down", you mean remove their faculties or --
A. Yes, yes. Removing faculties is a technical term really for removing a priest from public ministry.

Q. What were the circumstances of that?
A. That the priest's conduct was not serving well the interests of the church.

Q. In what way? What was the conduct?
A. Well, the conduct was a tendency to regard his ministry in a selfish way, to treat others, other people, in an aggressive and emotional way which hurt people's feelings. That was not in the best interests of the church.

Q. You refer to Father Brown in your statement, and if I can draw your attention, firstly, to paragraph 90. You refer there to being aware from reviewing his file that he was removed from active ministry in 1986 due to his behaviour.
A. Mmm-hmm.

Q. Would you expect that removal to be reflected in the official record of, in this case, Father Brown's time as a priest?
A. Not necessarily. It depends on what record is being referred to.
Q. Perhaps if we can have tab 13 on the screen. It is in volume 1, which is in exhibit 4-17. This is a register that was kept in the Diocese of Lismore; is that correct, bishop?
A. That is correct, yes.

Q. And that is of the clerics who were part of that diocese?
A. Yes. Every cleric who is incardinated has an entry in that book.

Q. And this is the entry for Father Brown?
A. That is.

Q. If we can scroll down that first page --
A. Excuse me, can I just ask - I don't have the image on this screen here.

Q. I beg your pardon. We will have that remedied. We will also hand you a handwritten copy.

THE CHAIR: I think we should fix the screen.

MS FURNESS: Yes, it's happening.

Q. You also have a hard copy and the screen now is working?
A. Yes.

Q. If you see about halfway down that first page under the heading "Appointments", there is a reference to his time, firstly, as an assistant priest in Lismore, and then bishop's secretary, then parish priest for two days at Kyogle, and then parish priest at Tweed Heads, having finished at Tweed Heads on 25 June 1986. Do you see that?
A. Yes.

Q. There is nothing there about why he didn't continue in any further appointment, is there?
A. No, there isn't.

Q. Would you expect there to be, in circumstances where he was removed from active ministry then?
A. Generally if a priest is removed, and in this case it was by canonical process, it wouldn't necessarily be entered in this book. It could have been noted elsewhere. But removals due to a penal process - I can't recall if
there are any others there. There may be. I'd have to go through the book to see if others - if there were others in earlier times, then perhaps this was an oversight. But, generally, things that are against the reputation of a priest, so far as I'm aware from this book, are not entered in it.

Q. They're not?
A. No.

Q. So that if one was looking back on Father Brown's time in the Lismore diocese, one wouldn't know that he was removed for behaviour reasons?
A. Not from this book, but certainly from his personal file where all the documents are kept.

Q. In terms of access to this document, that presumably was held in the diocese, in the administrative offices?
A. It is.

Q. Would anyone else ordinarily have access on request to this, and by "anyone else", I mean somebody not necessarily part of the church structure?
A. No. This is not a public document. It's the bishop's document, really. It's the bishop's records of who he has ordained and of the priests who have come to the diocese and their appointments.

Q. So if we turn over to the next page, after "Appointments", do you see there is "Offices and Dignities" and that continues over to the following page. It is a bit cut off at the top, but you can see the heading from the previous page "Offices and Dignities"?
A. Yes.

Q. Then under that heading on the second page is "Notanda"?
A. Yes.

Q. That refers to leave arrangements?
A. Yes. That's long service leave and so on, yes.

Q. And that's ordinarily what's under the heading "Notanda", is it?
A. I think it's pretty variable according to what the chancellor of the time chooses to note.
Q. And "Notanda" means, really, notes?
A. Annotations.

Q. It could have been put under here that he had been removed from active ministry?
A. It could have, yes, it could have been noted there.

Q. The next heading is "Death", and there is reference to his having died?
A. Yes.

Q. That document can be returned. Coming back to your statement, if I can, bishop, in relation to Father Brown, paragraph 91, you became Bishop of Lismore in December 2001?
A. On 1 December, that's right.

Q. 2001?

Q. In paragraph 91 you say at the time you became bishop, the then bishop didn't make you aware of any difficulties in relation to individual priests?
A. That's true, he didn't.

Q. Were there any special issues files that were drawn to your attention for you to look at at your own time?
A. No.

Q. You didn't seek information from him as to anyone of concern to him that you might need to form your own opinion of?
A. I didn't. When I went to the diocese, I came in as a complete stranger to the Diocese of Lismore, from Tasmania, and I wanted to - I thought it would be good to form my own impressions of the clergy as I met them, and only if I considered to have reason to do so, then start looking into the files. And that is what happened.

Q. When you say "reason to do so", that's because somebody decided to tell you something?
A. Yes, that's right. Somebody would have said something about what had happened in the past, or whatever, and I would have then been interested to have a look.

Q. So in paragraph 92, you say that within the first couple of years you became aware anecdotally of
Father Brown and his history. Do you see that?
A. Yes.

Q. That was about 2003, or by the end of 2003?
A. I'd actually met Father Brown, I think, in 2002. I'm a bit hazy about that. But I did know that he had been removed from office in Tweed Heads at that time when I first met him.

Q. Well, what did you hear about him?
A. Well, that he'd been removed from office and that he had a longstanding alcoholic addiction.

Q. Did you hear of any complaints in relation to sexual misconduct of any kind?
A. No, I didn't hear people saying things about that. But when I went to the files, I discovered it.

Q. When did you go to the files?
A. I can't say precisely when I went to the files, but --

Q. Within those first couple of years?
A. Oh, yes, yes.

Q. Why did you go to the files?
A. Because I wanted to find out more about what this priest had done.

Q. So you went to the files after you found out that he'd been removed from active ministry?
A. Oh, yes, yes.

Q. That was the reason --
A. I'd never heard his name before.

Q. That was the reason for going to the file - because you had that information?
A. Yes.

Q. If we can come back to paragraph 41, now you're referring to at the time you were aware of the complaint made by Mrs Ingham - and this is late 2012?
A. Yes.

Q. You were aware of earlier complaints, and that was because you had gone through the files, as it were?
A. Yes.
Q. And you found the complaint believable. Can you tell us about that?
A. I found the complaint believable because there had been two earlier matters raised against Father Brown, which I had dealt with.

Q. And those matters were of similar conduct?
A. They were.

Q. Now, you refer back - and I don't need to take you to it on the screen - in paragraph 35 to two other complaints that had arisen during your time, one in 2002 and another in 2007. Do you see that?
A. Yes.

Q. Were you present or have you subsequently been made aware of the evidence given by Deacon Wallace?
A. In both of those two cases, I was involved.

Q. No, perhaps if I can ask --
A. Deacon Wallace wasn't the chancellor in the first case.

Q. But have you become aware of the evidence that he gave in respect of those two matters?
A. Last Friday?

Q. I can't tell you the date he gave evidence, bishop, but I'm sure it was last week.
A. Yes. Yes, I was here when he gave evidence.

Q. And you heard what he had to say, from what he knew from reading the records of 2002 and 2007. Is there anything you want to add to that?
A. Not really, because Deacon Wallace and I worked closely together on the second case, and I had no reason to - well, I had every reason to believe that what Mrs Ingham had brought forth was totally credible.

Q. Just in relation to the 2002 matter, you had a meeting with the complainant in that case?
A. I did.

Q. And that was as part of a Towards Healing process?
A. It was.
Q. You accepted the complaint that was made against him that resulted in that meeting in 2002?
A. Yes, overall I did. I'm trying to recall what the outcome of it was. I'm not sure that it was, in the end, substantiated. I'm not sure whether it was. Nonetheless, it was clear that something had happened, whatever it was, and I was wanting to do my best for the complainant in terms of Towards Healing.

Q. Back to paragraph 41, you state in that last sentence that you:

... recall thinking at the time that the information we had ... was revealing a broader extent of criminal behaviour ...

Do you see that?
A. Yes.

Q. By that time, you were aware of the conviction for possession of child pornography?
A. Yes.

Q. And you were aware of the 2002 complaint, which was about sexual misconduct?
A. Yes.

Q. And the 2007 complaint, which was similarly about some form of sexual misconduct?
A. Yes, it was.

Q. What was it about Mrs Ingham's complaint that was a broader extent of criminal behaviour?
A. Broader extent - it was more of the same, I suppose, rather than "broader extent". I - yes, more of the same.

Q. So what did you mean when you drafted that paragraph? You wrote that paragraph, I take it, bishop?
A. Sorry, which one is this?

Q. Paragraph 41, last sentence.
A. The broader extent was, in fact, Mrs Ingham's complaint and that Father Brown's activities were not just as they had earlier been alleged to have been in the diocese in Lismore and at Tweed Heads, but, in fact, had extended, in Mrs Ingham's case, to criminal behaviour outside the diocese, I think in Sydney.
Q. Leaving aside the "outside the diocese" for the moment, the "criminal behaviour", as you've described it, revealed by Mrs Ingham's complaint was similar to the criminal behaviour in the 2002 and 2007 complaints; isn't that right?
A. Yes.

Q. Father Brown had his faculties removed, or was removed from active ministry, in 1986. Was there anything further that you could have done by way of regulating the priests in the diocese or by other means in respect of his conduct that subsequently came to light?
A. I don't think I would have considered further regulation of the priests necessary. The priests would have known about Father Brown's - or many of them would. I don't think all of them would, but many of them would. By this time, every priest was aware of the cases of sexual abuse of minors that were being brought forward throughout Australia and, indeed, the world. I didn't consider that any action was needed from me in regard to this.
Father Brown, I suppose, was a back number, too.

Q. I beg your pardon?
A. He was a back number, in the sense that his case had already been dealt with; he was out of ministry; he was living in retirement; and I don't think he was in contact with many of the priests.

Q. But he was entitled to call himself a priest, wasn't he?
A. Well, no, he was not entitled to use the term "father". When a man is removed from ministry, he may not present himself as "father". He's returned to private life - not the lay state; he's still a priest.

Q. He is still a priest, isn't he?
A. He is still a priest, but he cannot present himself as a priest.

THE CHAIR: Q. Bishop, I wonder if you could give us some picture of the interaction of priests in a diocese such as your own. Your diocese, as I understand it, has a fairly large geographical spread?
A. It has, your Honour.

Q. And in each parish, there is one or two priests,
perhaps? What's the sort of picture we should have?
A. Most parishes have one priest. Several larger
parishes - Port Macquarie, Coffs Harbour, Lismore,
Grafton - have more than one priest.

Q. And may have two or three or --
A. May have two or three.

Q. Do you have a regular meeting of all of the priests?
A. We have a clergy conference every year. That's for
all of the clergy of the diocese.

Q. They all come together in one group?
A. They all come together in one place for a week. In
addition to that, there are three deaneries in the diocese,
and the priests of those deaneries meet together with the
regional vicar, who is a parish priest appointed to be the
contact person in that deanery.

Q. Is the culture such that priests from one parish will
be talking to priests in other parishes on a regular basis?
A. I think priests - many, many priests in the diocese
would be in constant contact with other priests. I think
it's part of the culture that priests do talk a lot to each
other, which would be on pastoral matters and also priests
would meet with each other for personal and spiritual
encouragement and support.

Q. I don't know; I assume they behave like normal human
beings. Do they talk about each other?
A. Your Honour, they do. I was a priest for 30 years
before I became a bishop, and, yes, we talk about each
other, as in most professions, I would guess.

Q. Yes. Indeed, I think of the Bar, but I won't go
there. No doubt like any other community in society,
priests establish reputations amongst their colleagues?
A. They certainly do.

Q. And their good points and their bad points are no
doubt talked about?
A. They are.

Q. Someone like Father Brown, I assume, would have been
talked about amongst his colleagues; correct?
A. He was, yes.
Q. And long before the problems emerged publicly, they would have been known by his colleagues - at least the alcohol issue?
A. I'm sure that was, yes.

Q. What about the other aspects of his conduct - are they the sorts of things that priests would talk about?
A. They would, but, your Honour, I think they emerged much later.

Q. I'm not seeking to pin down the history here. I'm just seeking to understand the culture, the way it would all work.
A. Oh, yes. Yes, the priests know each other very well, by and large.

Q. And like, as I say, normal society, would pick up on the behaviour of others?
A. They would if it was in fact known. But with child abuse, it is most typically not known about.

Q. I understand that issue, but the culture would be generally, if things were known, they would be talked about?
A. I think in regard to more serious things about a priest, priests would tend, out of a certain discretion, not to talk amongst themselves about certain aspects of a priest's behaviour.

Q. Can you help me to understand why that would be?
A. Well, I believe that most priests would not indulge in gossip about things which were very much - were damaging to a priest's good name or reputation.

Q. That strikes me as a little different to ordinary society.

MS FURNESS: Certainly unlike the Bar, your Honour.

THE CHAIR: Q. Do you think priests are different to ordinary society?
A. No, I don't think priests are different from any other grouping of professional people.

Q. Yes. Now, you speak of the knowledge of priests and sexual abuse emerging. Can you remember when it started to be a subject of discussion amongst priests? I don't want
a precise year, but I'd just like to know if you can give me a sense of when the priests started to realise there might be a problem?
A. The mid to late 1980s.

Q. And can you give us some picture of the nature of the problem as it started to emerge, what priests started to understand of the nature of the problem?
A. If I could speak personally, I myself was not aware of this problem really until - the extent of it, until I became a bishop. It was not something that was talked about amongst the clergy of my original diocese where I was a priest for 30 years. I can't recall talking about it. I don't think anybody - it just was not a subject that came up amongst us. It did happen much later that it became commonly talked about - it was known about, I think, in the late, later 1980s, but we didn't start talking about it until some of the worst cases started to emerge into common knowledge.

Q. You became a bishop in --
A. In the year 2001.

THE CHAIR: Yes, thank you.

MS FURNESS: Q. Bishop, in relation to Father Brown, you referred to him not being able to effectively hold himself out as a priest; that's right?
A. Yes.

Q. Was he able to carry out private functions, like private mass or private funerals other than as holding himself out as a father?
A. He was still bound to the obligations of celibacy and the prayer of what we call the divine office.

Q. The divine?
A. The divine office. That's the daily prayer of the priest, which he is obliged to carry on in the name of the church. I'm not sure whether he was suspended absolutely and entirely from any sacred functions, such as the celebration of mass. I didn't ascertain this. If he continued to say mass, it would have been entirely alone, in his own house, without anybody present. But I don't know whether he did it. I never inquired.

Q. And there was no one or single record in the church
that would enable somebody like you, looking back - as to precisely what had happened to him without going through his file; isn't that right?
A. That's right, only myself and the chancellor would have that information.

Q. But there wasn't a single document that you could go to, much like the document I showed you behind tab 13, that would tell you about his history and how he ended up, as it were?
A. Well, there was documentation in regard to his being deprived of the office of a parish priest. That's very well documented, all of that, and his appeals against that, two of them - one civil and one ecclesiastical.

Q. But there was no one document that told the reader the progress or work of this priest from the time he was incardinated until his faculties were removed?
A. No, no one document.

Q. But there was one document that told you everything else about him up to but excluding the fact that his faculties had been removed, and that's the document I've shown you?
A. Yes.

Q. You referred to the 2002 meeting that you held that was part of Towards Healing. Was there anyone else from the church present with you at that meeting, do you now recall?
A. I can't say precisely who it was, but I would not have been simply by myself when I received the person making the complaint. I can't recall who would have been with me.

Q. Father Mulcahy gave evidence last week as to his role and that, had there been meetings when he was in an administrative role of the nature you've referred to, he would be present. Now, I understand he wasn't in that role at the time when you met in 2002, but he wasn't present at that meeting, was he?
A. Oh, no, Father Mulcahy never had any role in regard to receiving Towards Healing complaints as Towards Healing complaints.

Q. I understand that, yes, but in relation to that meeting in particular, do you now recall whether Father Mulcahy was there in any capacity?
A. No, I - yes, he was not there in any capacity.

Q. Would it have been likely that a person who was in some role of a parish priest to the complainant might have been present at that meeting?
A. Again, I'm not sure. I'd have to work back and try and see who was with me at that first meeting when the complainant came forward.

Q. Would there be a record of who was present at that meeting?
A. I'm not sure that it wasn't already a meeting under Towards Healing.

Q. If that was the case, then there would be a record, wouldn't there?
A. Yes, that's right.

Q. There would be a facilitation report?
A. Exactly.

Q. Thank you. Just turning to Father Mulcahy more generally, bishop, in paragraph 49 of your statement you refer to a discussion you had with Father Mulcahy?
A. Yes.

Q. You set out there that you asked him about his recollections of the meeting with Mrs Ingham in 1990?
A. I asked him, yes.

Q. Do you remember now what you asked him?
A. Whether I asked him, "Do you remember a meeting? Was there a meeting?" - I can't say exactly which of those questions I asked precisely. But that was the point of my telephone call to him, to say that, "Mrs Ingham had mentioned that she was present at a meeting in 1990 at which she says you were present. Do you recall that meeting? Were you present?"

Q. When you prepared your statement, which is dated November, did you have the benefit of any notes in recalling the conversation you've set out in your statement?
A. No, I didn't, because I didn't keep a file note of that conversation.

Q. So it was based on your recollection?
A. Recollection, yes.

Q. Having heard the evidence that has been given over the past week in relation to this matter in particular, has that caused any new memories to emerge as to that meeting?

A. That telephone conversation?

Q. Yes.

A. No.

Q. You understood at the time that you telephoned Father Mulcahy that that was an important matter that Mrs Ingham wanted to achieve from Towards Healing; that's right?

A. Yes.

Q. She wanted to meet with Father Mulcahy and, in her mind, confront him?

A. Yes.

Q. That was in your mind, I take it, when you phoned Father Mulcahy to find out what he knew of that meeting?

A. I don't think that was precisely in my mind, that Mrs Ingham wanted to meet with him. I remember I certainly wanted to do anything I could to discover if such a meeting had taken place and if Father Mulcahy was there.

Q. But by this time you had received her complaint, hadn't you?

A. Yes.

Q. And you knew that that was an outcome she sought?

A. Yes.

Q. You say in your paragraph 51 that you recall being puzzled at the time as to why Father Mulcahy could remember Mrs Ingham's parents but not her or the meeting. What puzzled you?

A. Well, I knew that Father Mulcahy had been to school with Mrs Ingham's father, and while it wouldn't have been - it could not have been likely that they had kept up knowledge of each other across all the years, there was a later connection in that both of Mrs Ingham's parents were resident in Father Mulcahy's parish, and it puzzled me that if there had been the connections earlier and later, that they didn't come together in a knowledge of the relationship.
Q. Do you now recall whether you referred to Mrs Ingham by her married name, Ingham, or her name at the time, which was Williams?
A. I think it is most likely that I mentioned her married name of Ingham rather than her maiden name.

Q. Did you know at the time that her maiden name was Williams?
A. I don't think I did, or if it was in the documentation, it hadn't registered.

Q. In Father Mulcahy's statement, which was tendered last week, his recollection in paragraph 12 is that you told him that a woman who he thinks you identified as Jennifer Ingham, previously Jennifer Williams, had made a complaint. Does that assist you?
A. Yes. I might have known her maiden name at the time, but I can't be sure.

Q. Why did not you ask Father Mulcahy to attend the meeting with Mrs Ingham?
A. At this stage, when we were already moving to facilitation, I was wondering whether arranging such a meeting, when Father Mulcahy denied that it took place, would serve a good purpose in terms of the outcome for Mrs Ingham at that point of time.

Q. You would be aware that Deacon Wallace has given evidence as to his reasoning for not pursuing the issue of Father Mulcahy attending the meeting; you're aware of that?
A. I can't recall it at the moment.

Q. In your statement, the reason you give is that you didn't think you did it because Father Mulcahy didn't recall the meeting; was that the principal reason?
A. Well, that was one aspect of the reason.

Q. It may well have been that Father Mulcahy was jogged in his memory by seeing Mrs Ingham. Did you consider that?
A. No, I didn't.

Q. So at no stage did you tell Father Mulcahy that a meeting was requested by Mrs Ingham of him?
A. No, I don't believe I did.

Q. And you didn't ask him to attend?
A. No.

Q. In paragraph 56 you say that you were willing to accept that it happened, that is, that Father Mulcahy attended a meeting with Mrs Ingham in 1990, on Mrs Ingham's testimony.
A. That's correct.

Q. Why were you willing to accept it?
A. Well, in my mind, I didn't believe that Mrs Ingham had confected a story. I was willing to accept that some meeting had taken place, wherever it was, whoever was present, and she was recalling that. But the precise details of it I just couldn't work out, other than that Father Mulcahy was present.

Q. You couldn't attend the facilitation on 24 May; that's right?
A. That's correct.

Q. But you received a telephone call at some stage during the day?
A. I did.

Q. Seeking a contribution from the diocese to the amount that would be paid to Mrs Ingham?
A. Yes.

Q. Had that occurred previously, that is, that you had been asked for a contribution in relation to a settlement, be it in or out of Towards Healing?
A. I don't recall that it had.

Q. So this was the first occasion as bishop?
A. It was.

Q. What factors did you take into account in deciding whether or not you would make available funds from the diocese for the purpose of settling the Towards Healing process?
A. I thought this would be in the best interests of Mrs Ingham.

Q. Was that the only factor you took into account?
A. Yes.

Q. What precisely was in the best interests of
Mrs Ingham?
A. That what was regarded and presented to me as a reasonable and fair thing should be done.

Q. Were you provided with the details of the sums to be provided to her or to be offered to her?
A. I remember that the sum of money mentioned in this conversation was $15,000.

Q. Did you know the sum that that was being added to, that is, what the insurer was going to provide?
A. Yes, I knew that that was being added to the sum that the insurer had undertaken to provide.

Q. And in your experience did you have any basis for thinking whether that was reasonable or unreasonable in all the circumstances?
A. I thought it was reasonable.

Q. Had you been involved in any negotiations prior to that or settlement of claims?
A. No.

Q. That was the first one?
A. Yes.

Q. But you knew the insurer was there on behalf of, effectively, the diocese?
A. Yes.

Q. The $15,000 that was paid - was your understanding on the day of that telephone call that that would be at some stage returned to the diocese from the insurer?
A. No. I had no understanding of that at all. In my mind, it was being paid by the diocese, absolutely.

Q. And you wouldn't get it back?
A. Yes.

Q. Where did the $15,000 come from?
A. It came from the - I can't say precisely which account, or what account, it would have come from, but it would have come from the account that generally runs the diocese.

Q. The general business account?
A. The general business account of the diocese, yes.
Q. It was your understanding that that account was available for this purpose?
A. Yes.

Q. Were there other accounts available to you for this purpose other than the general business account?
A. No.

Q. That was the only account?
A. Yes. That immediately it would have come from.

Q. I beg your pardon?
A. That that sum would have been drawn from; that would have been the account I immediately would have thought that the sum would have been drawn from.

Q. But that didn't mean that there weren't other sources of funds that might have been available to you, immediately or otherwise, to settle a claim of this sort?
A. No.

Q. Are you agreeing with me or disagreeing with me, bishop?
A. I didn't think of any other account, and I don't think that there would have been any other account than that general operating account of the diocese.

Q. That was available for this purpose?
A. Yes.

Q. And is that still your view?
A. Yes.

Q. Have you done any work, between then and now, to acquaint yourself with what funds might be available from the diocese for these purposes?
A. No, I haven't. The moneys, I think, paid out of - paid by the diocese have come from that account. It's like a general revenue account.

Q. And when you say "the moneys paid out", you're not referring to similar settlements, are you; you're referring to general business moneys?
A. Yes. You mean similar settlements under Towards Healing or?
Q. Yes. Well, I asked you whether you had done any work, between then and now, to acquaint yourself with what funds might be available for these purposes, and you said you hadn't. "The moneys, I think, paid out by the diocese have come from that account."
A. Yes.

Q. I'm asking whether the moneys you're referring to in that answer are moneys in respect of settlements of a similar sort, whether in Towards Healing or not?
A. Well, I think, yes, any settlements would be drawn from that account.

Q. But no others have, other than Mrs Ingham; is that right?
A. Well, in the past, the diocese has made payments to victims under Towards Healing, and that money I would understand had come from that same operating account.

Q. Is that while you have been bishop since 2001?
A. Yes.

Q. On how many occasions have you paid moneys out of your accounts for those purposes?
A. I can't remember exactly. I can't quote you the number. But the amount overall, I believe, is much greater than the amount that has been paid out from insurance.

Q. Well, you must have some idea of that amount to have said that, bishop. What is your understanding of that amount?
A. Again, I'm not very precise with figures, but I can get them. I certainly can obtain them. So if I quoted a figure, it would be --

Q. In approximate terms, that's understood.
A. It would be more or less.

Q. Absolutely, bishop.
A. I understand that the diocese has paid out $450,000.

Q. Over what period of time?
A. Since I've been bishop.

Q. So since 2001?
A. Mmm-hmm.
Q. And that has been in relation to allegations of sexual abuse?
A. Yes, it has.

Q. That is in addition to any amounts that you have been aware have been paid by the insurer under a policy?
A. I'm sorry, that $450,000 is in addition?

Q. Yes.
A. Yes, and the insurance payouts have been a lesser sum.

Q. Do you have a ballpark figure, bishop?
A. I think about $350,000 from insurance.

Q. Do you now know whether the amounts paid by the diocese were paid because there was not an effective policy in place or were paid to, in effect, top up the insurance payment?
A. I think those payments that were part of the more or less $450,000 - they were payments from the diocese, not from the insurance company.

Q. I understand that.
A. I don't believe there was an insurance component in any of those at all.

Q. I see, so separate from --
A. Separate from.

Q. In terms of the amount of the $450,000 that was used to top up an insurance payment, as was the case with Mrs Ingham, were there any others that fell into that category?
A. I can't say with any certainty.

Q. But your sense is not, I gather from the previous evidence you've given?
A. Yes.

Q. In relation to the complaint made by Mrs Ingham and the process that she experienced, you say in that part of the statement headed "Reflections" that it would have been preferable were you to have been there on the first date?
A. Yes, it would have.

Q. And you were unavailable on that date?
A. I was.
Q. Are there any other matters that you would like to inform the Royal Commission of learnings that you've had from your knowledge from the evidence that has been given and your knowledge from the actual process?
A. When I look at the sequence of events in the facilitation of Mrs Ingham's case, I have the feeling that it worked out much better the way things happened. And I say that from a pastoral point of view.

I've always understood Towards Healing to be primarily a pastoral process, and my experience of it is that it was certainly primarily that in my earlier time as a bishop, but as time went on, and certainly to very recent times, the facilitation has often been very much to do with the amount of compensation that should be paid.

Now, I was not available to attend on 24 May, but before that facilitation took place, because I was determined to meet with Mrs Ingham and she, as I've learnt since, was certainly wanting me to be present, I saw to it that a meeting was arranged at a later date in the following month. And I believe that for Mrs Ingham, and certainly for myself, it was a much happier outcome and meeting than - the lawyers and the insurance assessors had done their work, and our facilitation, our meeting, was not to do with that. It was to do with what Towards Healing was primarily set up to do, which was to assist a person who had been abused by a church person to move beyond and get some sense of their life settling in a new way and the past having been dealt with properly.

And in particular, what has affected me personally so much in all of this is to see how the people who have been victimised, from being young people who grew up in the church happily and even proudly, their life in the church and their trust for the church and the clergy was in many cases - not all, but in many cases - shattered by what was done to them. My concern as a pastor has been to do whatever I can, to the extent that the victim wants it and is looking forward to it, to enable them to return to a relationship with Christ and the church. And my door is open to any of those who have been victims, for that sort of continuation of the journey.

So from Mrs Ingham's - the relationship that has developed there, I think it - the sequence of events,
rather, I think it happened in a much better way in terms of what Towards Healing was established for, to help somebody move to a happier space and see their future in a much better light.

Q. If I can say in short, bishop, separating the money from the pastoral element?
A. Yes, exactly.

Q. You also note in your statement that it's your view that the canonical process for dealing with a priest could be improved with a view to hastening the process. As I understand it - and no doubt this is an imperfect understanding - the process in relation to Father Brown was one that was entirely within the power of the then bishop?
A. Yes, it was.

Q. And that decision was made and put into effect reasonably quickly?
A. It was.

Q. What then followed was using various appeal mechanisms, secular and otherwise, and that's what extended the process; is that right?
A. Yes.

Q. Nevertheless, those appeals didn't operate to stay the decision that was made; that is, the faculties were removed on that date in 1986?
A. Yes.

Q. What, in your view, should be changed to improve it?
A. I don't have any difficulty with the canonical process and the appeal in regard to Father Brown's removal. I think that was done with quite some despatch.

What I had in mind is something different from that, and that is that since 2001, the time of Pope John Paul II, he required that substantiated allegations in regard to clerical abuse of minors should be referred to Rome, to the Congregation for the Doctrine of the Faith, and that's another process. Of course, a bishop is obliged to do that. This is a matter - I think this is what I had in mind, because there have been so many of these matters referred to the congregation from all over the world that the congregation can't move very quickly with all of these matters, and it takes a long time to hear what is happening
and for a decision to be given.

Q. Is that still the case, that there is a requirement in
place from the Vatican that substantiated allegations be
referred to Rome?
A. Yes.

Q. The purpose of the referral is what?
A. Only the Holy See can make a decree to return a priest
to the lay state, and this can be done by decree when these
cases are submitted. If it's deemed to have been serious
and prolonged cases of abuse against minors, then the
decree can be given by the Holy See.

THE CHAIR: Q. Bishop, you are a member of the bishops
conference?
A. I am, your Honour.

Q. And I assume this whole issue - well, it's reflected
in the Towards Healing process, but it has been the subject
of considerable discussion at the bishops conference?
A. Yes, it has.

Q. Over some years, I assume?
A. Yes.

Q. What about the involvement of Rome? Has the bishops
conference consulted with the Holy See in relation to these
issues?
A. I think the matters have been raised with the
Holy See, and individual bishops who have these cases would
have, but when appeals come in in great volumes, when cases
come in in great volumes, there can often be problems in
just dealing with the volume.

Q. Well, that's true of any process, but can I just come
back a step. The Towards Healing response or the Melbourne
Response - were they the subject of discussion with people
in Rome?
A. That I don't know. I'm sure that the congregation for
the clergy or other relevant offices in Rome would be well
aware of the Australian protocol, Towards Healing.

Q. You, of course, only became a member of the bishops
conference in 2001. Towards Healing pre-dates you, so to
speak.
A. It does.
Q. But it was obviously a very significant initiative by the Catholic Church in Australia.
A. It was, your Honour.

Q. Would you expect such an initiative to be the subject of consultation with Rome?
A. Rome doesn't exert influence on the way in which the bishops manage these affairs. It takes an interest in it, I'm sure, and I would even think that what has been done in Australia is looked on very positively in Rome as being a very good and productive attempt to deal with this awful phenomenon of child abuse in the church, but they would not direct such a process or take that sort of interest in it.

Q. When you say "direct", you mean they wouldn't command what the approach should be?
A. No, not by way of intervention, your Honour.

Q. But would it be expected that, in its formulation, there would be consultation with people in Rome?
A. Not necessarily, your Honour.

Q. As you confirm, you as the bishop have the power, if that's the right word, to appoint a priest within your diocese; is that right?
A. Yes.

Q. That means you have the power to accept a priest from another diocese and appoint them to a parish within your diocese?
A. I can do that, yes.

Q. If there is a priest in another diocese to your own who wants to move, does that priest approach you if he wants to move to your diocese?
A. Before he approaches me, he would have to approach his own bishop and it would have been to be worked out whether this is a temporary transfer or whether the priest indeed wants to move in the long term, and so he would discuss that with his - he'd approach his own bishop first. Typically, if his own bishop was of the view that this would be for the good of the priest or the good of the church, he would approach, then, another bishop and ask if that bishop would receive the priest to work in his diocese. That would be done only when all the other checks were done in regard --
Q. That's what I'm coming to, but I think you knew I was coming there. Is Rome involved in the process of moving a priest from one diocese to another?
A. No, it isn't, your Honour.

Q. Never?
A. I just can't think of circumstances where they --

Q. Not in your experience?
A. No, not in my experience.

Q. Well, then, what are the checks that are made if you're approached by a bishop from another diocese indicating that a priest wishes to move, what are the checks that are undertaken?
A. Well, they are the checks that are required by civil legislation.

Q. Just so I make sure I know what you're talking about, what do you understand those to be?
A. I just can't put them precisely into words.

MS FURNESS: Q. A Working With Children Check, bishop?
A. Working With Children Checks, yes.

THE CHAIR: Q. What about the reputation of the priest in the other diocese - do you make any checks on that?
A. No.

Q. It will emerge in due course that priests have moved from one diocese to another, or one place to another, and may have offended in more than one place, and I think you know of the controversy surrounding that sort of issue.
A. Yes.

Q. It's plainly a serious problem if someone has moved from one diocese to another and offends in more than one place, both in terms of the offending in each place but also the fact that the person is able to move from place to place, is it not? This is a problem?
A. Yes.

Q. And it's a problem no doubt which has been discussed amongst the bishops at least; would that be right?
A. Oh, yes. Bishops do speak about these things in regard to priests. And if I could say, your Honour,
a bishop is not going to allow a priest whom he knows to have offended in this way to go to another diocese.

Q. What about one about whom he might have suspicions or there is talk - what would happen there?
A. I can only speak for myself. If I had any suspicions or a bishop revealed these suspicions to me, I would not have such a priest in my diocese.

Q. I'm sure you know in conventional employment situations, one of the first checks that should be made - we've talked about that in another case study - is to ask the previous employer about the person and what their reputation is.
A. Yes.

Q. Is that done in the church?
A. It is, your Honour. The national committee for professional standards has a protocol in that regard, and unless that documentation is attended to, and it is very clear that there is nothing against the good name of the priest, then the transfer can't take place.

Q. This is in writing?
A. This is in writing, yes.

Q. But it's often more productive to just have a chat on the telephone?
A. That's not enough.

Q. I know it's not enough, but it often tells you things that people may not put on paper. Do the bishops do that?
A. Well, it would be both. A bishop can explain to another bishop why he has not approved of the transfer of a priest.

MS FURNESS: Q. Perhaps if exhibit 4-1, tab B, which is the current Towards Healing protocol, can be put on the screen, and I'm after page 0038, which is page 29 of the hard copy. You would be familiar with this document, bishop?
A. I am.

Q. The section I want to take you to is headed "Preventive Strategies", and that's on page 0038, paragraph 45. You're familiar with this section of the document?
A. Yes.

Q. If one can scroll down, 45.3, which is on the screen, requires church bodies to:

... have in place procedures, consistent with good child protection and industrial relations practice, for verifying the suitability of persons for employment or participation as volunteers.

Do you see that?
A. Mmm-hmm.

Q. I take it that your diocese has those procedures in place?
A. Yes.

Q. What was the source of knowledge that underpinned those procedures in your diocese? How do you know that they're consistent with good child protection and industrial relations practice?
A. Can I ask which - what sort of persons are in mind?
"The suitability of persons for employment or for participation as volunteers" - is this clergy or laypeople or both?

Q. Well, it's a document that applies to you, as the Bishop of Lismore, isn't it?
A. Yes.

Q. What do you read paragraph 45.3 as requiring of you in your diocese?
A. There would be required Working With Children Checks for anybody who is going to work in the diocese in any child-related employment.

Q. Is it the case, then, that your interpretation of 45.3 in your diocese is that consistent with good child protection - and leaving aside industrial relations for the moment - is to have a Working With Children Check?
A. Yes, it is.

Q. It doesn't go beyond that?
A. That would be the basic check.

Q. It would indeed be the basic check, bishop. The
question is whether it goes beyond that in your diocese?
A. Well, I haven't worked with a lot of people coming
into the diocese. It would be at the level of the part of
the entity in the diocese they were going to be working
with for checks to be taken, and I suppose it would be in
regard to the particular person - who they were and where
they came from - over and above what was known from
a Working With Children Check being cleared.

Q. But you understand that 45.3 is directed to procedures
being in place; do you see that?
A. Yes.

Q. And the final sentence refers to obeying all
applicable laws.
A. Yes.

Q. You understand that a Working With Children Check is
indeed an applicable law?
A. Yes.

Q. Procedures can extend beyond the applicable law?
A. I don't understand what the procedures over and above
that might be.

Q. Paragraph 45.4 provides that a church authority bring
to the attention of a person inappropriate behaviour. Do
you see that?
A. Yes.

Q. And then 45.5 deals with church personnel who feel
that they might be in danger of committing sexual abuse.
Do you see that?
A. Yes.

Q. Has anyone come to your attention who fell within that
category?
A. No. No, no, it hasn't. In other words, people coming
forward to me and saying they're worried about this?

Q. Yes.
A. No, that hasn't happened. 45.4, if a church authority
is concerned about the behaviour of any person that is
inappropriate and might lead to an allegation of abuse,
I certainly would understand that as requiring me to
intervene and see that that person has appropriate
counselling, maybe treatment, and if the result of that is
not positive, then I would consider myself obliged to limit
the ministry of that person in regard to working with
children.

MS FURNESS: I notice the time, your Honour.

THE CHAIR: Yes, we'll take the short adjournment.

SHORT ADJOURNMENT

MS FURNESS: Q. Bishop, we had on the screen the current
Towards Healing and we were coming to 45.6, and if that can
be put on the screen again. Could you read that to
yourself? Is that a requirement that you consider is
imposed on you if those circumstances apply, that is, there
is a transfer?
A. Absolutely.

Q. Have you done that?
A. Yes.

Q. What do you consider to be a substantiated complaint
for the purposes of that paragraph?
A. That if the person who is the subject of a possible
transfer --

Q. Sorry, a possible?
A. A possible transfer, if, for instance, the bishop to
whom he belongs raises any question about this priest, or
whoever, there being a substantiated complaint of abuse
against that person, then the transfer does not take place.

Q. But what do you understand to be "substantiated", what
level of satisfaction would you have to have to describe
a complaint as "substantiated"?
A. That a bishop says, "This person has been the subject
of investigation and the allegation has been upheld and the
person has committed this abuse."

Q. So in terms of you, being the person providing the
statement rather than seeking it under this paragraph, to
be of the view that a complaint was substantiated, it would
need to have been investigated by somebody within your
diocese?
A. Yes.

Q. And you having formed the view that it happened?
A. Yes.

Q. In terms of forming a view that it had happened, is there any guidance to you within your diocese as to what level of satisfaction you need to have before calling it "substantiated"?
A. If it is substantiated under Towards Healing.

Q. That means either an assessment, which came back to you with a recommendation that it should be accepted - is that right?
A. Yes, that's right.

Q. Or, as in the case of Mrs Ingham, if it didn't go to an assessment but straight to a facilitation, that would be equivalent to a substantiated complaint; is that right?
A. Correct.

THE CHAIR: Q. Bishop, the consequence would be that you would have formed the conclusion, to the standard that you accept, that a criminal offence had occurred?
A. That's correct.

Q. What would you do with that knowledge?
A. Well, that knowledge would prohibit me from permitting a transfer of anybody out of my diocese, or, indeed, receiving somebody from somewhere else.

Q. Would you feel any obligation to tell the authorities about your conclusion?
A. Of course. If a crime has been committed.

Q. Well, that's inherent in your conclusion you would have reached, is that a crime has been committed?
A. Yes, yes.

Q. So that, really, Towards Healing works at the level of satisfaction that a crime has been committed but not at a level beneath that?
A. I think that is so.

MS FURNESS: Q. In the case of Jennifer Ingham, by the time the complaint came to you, Father Brown was dead?
A. That's correct.

Q. So there was no prospect of there being any criminal proceedings?
A. No.

Q. Nevertheless, is it the case that you considered, on the basis of her complaint, that a crime had been committed?
A. Yes.

Q. Can I turn, bishop, to evidence you gave earlier in relation to Rome. You said that at the time of Pope John Paul II, he required that substantiated allegations in regard to clerical abuse of minors be referred to Rome. Now, again, the word "substantiated" appears. Can you tell me what you understand that you are required to refer to Rome, based on that evidence?
A. Yes, cases - on the balance of probabilities that such abuse occurred.

Q. So you don't need a criminal conviction?
A. No. You don't need a criminal conviction, although that's frequently, in fact, what has happened in these cases.

Q. Except for more historical matters when the accused is no longer alive?
A. Yes.

Q. So you understood from 2001 that substantiated allegations - that is, allegations that have been made to your diocese that you believe, on the balance of probabilities to be true, you have referred those to Rome?
A. Yes.

Q. And when you have referred them, what is it actually that you sent to Rome?
A. A bishop would send to Rome the documentation on which he has formed the view that the allegation is substantiated on the balance of probabilities. He would send all of that documentation. He'd assemble it and he would write what is called his votum or his own account of the whole matter and put it before the Holy See.

Q. Would you only do that if the accused was alive?
A. Yes.

Q. You understood the requirement then to be limited to accused being alive?
A. Alive, that's right.
Q. Have you done that in the time that you have been the Bishop of Lismore?
A. I have in one case.

Q. When was that?
A. In - I'm not sure if it was 2011 or 2012.

Q. You did that with a view to satisfying the requirement that you understood was imposed on you?
A. Yes. Yes, under Pope John Paul's documentation.

Q. Did you also do it with the expectation of an outcome?
A. I certainly expected a reply from the Holy See.

Q. Did you do it with the expectation that the Holy See would take some action against that priest?
A. Yes, or advise me of the action that I should take.

Q. So in your mind, you were, in addition to complying with the requirement, going to be advised as to what should be done about the priest, either at your end or their end?
A. Yes.

Q. Has that happened?
A. It has not happened yet.

Q. It hasn't happened yet?
A. I am still waiting.

Q. Do you have any expectation as to the time period that you would receive such advice?
A. I have no expectation.

Q. In relation to this priest, is he in active ministry?
A. No.

Q. So you removed his faculties, did you?
A. Yes.

Q. At the time you sent it off to Rome?
A. It wasn't as clear-cut as that. He was stood down from his appointment.

Q. Is that different from removed his faculties?
A. Well, virtually removed his faculties, yes.
Q. When you say "virtually", what's the difference?
A. Well, this particular case was quite unusual, in that there was no complaint from a victim involved.

Q. What was the basis upon which you formed the view there was a substantiated allegation in regard to clerical abuse of minors?
A. Because information had been given to me about a conversation which this priest had had with other persons and I considered that it needed investigation.

Q. Investigation took place?
A. It did.

MS NEEDHAM: Your Honour, if I could interrupt for a moment? Perhaps I could have a quick word with counsel assisting about one issue?

THE CHAIR: Yes.

MS FURNESS: Q. Yes, continue. Had you finished your answer? Yes, the investigation took place?
A. Yes.

Q. And based on the outcome of the investigation, you sent it to Rome; is that right?
A. That's right, I took advice.

Q. You also said earlier, when I asked you what the purpose of referral was, that only the Holy See can make a decree to return a priest to the lay state. So is it the case that your understanding of the purpose of sending this person, but generally a person that fits within the requirement, is so that the Holy See makes a decision as to whether the person should be returned to the lay state?
A. Or not, yes.

Q. Or not?
A. And may not make that decision.

Q. But it is the case, isn't it, that one needs to make application for that to happen, not just merely refer a substantiated allegation?
A. No, that is left to the judgment of the Holy See.

Q. So your understanding is that each substantiated allegation that is sent in respect of clerical abuse, as
you've described it, of minors is sent to the Holy See for it to determine what it wishes to do in respect of that?

A. Yes.

Q. Without the bishop referring it saying, "I think this person should be returned to the lay state" or not?

A. Well, it depends on the circumstances. Take the example of a priest who has been convicted of child abuse. There is certainly the question of whether that priest should be returned to the lay state, and that would probably happen. Maybe there has been a custodial sentence. The priest has entirely lost his good name and reputation and is likely to be judged unsuitable to continue in the priesthood and therefore returned to the lay state.

Q. But I'm interested in the role of the bishop in this, bishop. Do you, as it were, make a recommendation or indicate a view when you send off a substantiated allegation to the Holy See?

A. Yes, I do. And if - it depends on actually what is involved and what is the nature of the allegation and who is the victim and the nature of the complaint the victim has brought forward, or has been brought forward through a legal process.

Q. We're talking about clerical abuse of minors and substantiated allegations, aren't we - that's the category?

A. Yes.

Q. Have there been occasions where you have referred to Rome the substantiated allegation and not been of the view that the person should return to the lay state?

A. Yes, this is the case because the substantiated - the matter that was substantiated was that this priest had, in fact, had this conversation with the other people, with two other persons, but it was not upheld or substantiated that the priest had actually committed child abuse.

Q. But you were of the view it fell within the requirement to send to Rome; is that right?

A. Yes. Yes.

Q. Were you also of the view that this person should be returned to the lay state?

A. No, not on the evidence that had come forward.
THE CHAIR: Q. Bishop, you will have to let us in on the mystery a little. What was the evidence? Did he confess to child sexual abuse?
A. No, he did not. He would deny it.

Q. So what was the information that caused you to take the significant step of sending it to Rome?
A. The information was that the priest himself had disclosed to other people that he had, in a country outside Australia - that he had knowledge of a place where, in fact, underage people were available for foreign visitors.

Q. Meaning that he had been there?
A. From what he said, it seemed that, yes, he had been there, because he had knowledge which he described where he'd been.

Q. And you formed the view that that which some might call a confession, at least of those circumstances, was sufficient for the matter to be referred to Rome?
A. It raised suspicions.

Q. But of a sufficient order that it should go to Rome?
A. Yes.

Q. Where was this place?
A. It was an overseas country.

Q. Yes, which one?
A. Thailand.

Q. How long ago did the conversation that you speak of come to your attention?
A. It came to my attention - it was certainly earlier, earlier in my time as bishop, and at the time I was puzzled in what to do with it because there was no victim alleging anything about this person. It was some time later when I was reviewing files under the Ombudsman Act that I decided that this matter should be further looked at, and it was submitted to the office of the New South Wales Ombudsman.

MS FURNESS: Q. You also gave evidence earlier this morning in relation to the fact that only the Holy See can make a decree to return a priest to the lay state, that if it is deemed to have been serious and prolonged cases of abuse against minors, then the decree can be given. Now,
do you remember saying that?
A. Yes.

Q. Is that, as you understand it, the test for the Holy See returning a priest to the lay state - that there has been serious and prolonged cases of abuse against minors?
A. Well, certainly, that would be the case, but the Holy See makes its own judgments on whether to do that. I mean, I can't judge what the Holy See would do.

Q. That's the evidence you gave. I'm seeking to understand, bishop, the basis of your understanding that in those cases then the decree would be issued?
A. Most likely, yes.

Q. I beg your pardon?
A. Most likely it would.

Q. In terms of referring substantiated allegations to the Holy See, I take it that those cases in Towards Healing that have proceeded to a facilitation would fall within the category of substantiated complaints?
A. Yes, they would.

Q. Have you referred each Towards Healing complaint in respect of a priest who is alive to the Holy See?
A. In respect of a priest who is alive - I'm just trying to think, because virtually all of the cases that have come forward under Towards Healing involve priests who are dead.

Q. Thus my question is have you referred each priest who is alive who has been the subject of a Towards Healing complaint that has proceeded to facilitation?
A. I believe so. I'm just trying to think of all of the cases over the time I've been Bishop of Lismore, and, yes, the priests concerned are dead. These things happened a long time ago, and they have since died.

Q. I take it, then, that is something you specifically turn your mind to when you receive a Towards Healing complaint and go through the process - the requirement to tell Rome?
A. Oh, yes. If the priest is alive and if the abuse is substantiated on the balance of probabilities, then it goes to Rome.
Q. You're awaiting from the Holy See a response in respect of the priest in relation to the comment about the overseas country; is that right?
A. Yes, yes.

Q. Are there any other matters that you're awaiting word from the Holy See about?
A. No, not from my diocese, no.

Q. So is it the case, then, that you have sent to the Holy See other substantiated allegations and received word back?
A. No.

Q. So you've only sent the one?
A. Only the one.

Q. So we take it from that that each Towards Healing matter that you have been involved in which has been substantiated has involved a priest who is dead?
A. I think so. I just can't think of a priest who was alive at the time of the allegation.

MS FURNESS: Thank you, your Honour. No further questions.

<EXAMINATION BY MR ROYLE:

MR ROYLE: Q. Bishop, my name is Richard Royle and I act in the interests of Jennifer Ingham. Bishop, a couple of questions. Firstly, at paragraph 51 of your statement, if that could be brought up, you have already indicated, but you will see that you say halfway through the paragraph:

My impression from the discussion was that
Father Mulcahy did not remember
Mrs Ingham ...

Do you see that?
A. Yes.

Q. That was as a result of a conversation that you had with Father Mulcahy in relation to Mrs Ingham and her complaint, and as far as you were concerned from your conversations with Father Mulcahy, it was that there was no recollection of this event, rather than that the event didn't happen; is that correct?
A. I'd have to say both.

Q. Rather than what you've heard later, but at the time of your conversation with Father Mulcahy, the only thing you've written is he had no recollection?
A. That is true, he had no recollection.

Q. You were aware that Mrs Ingham wished to confront Father Mulcahy in relation to this issue?
A. Well, yes, I'd read that, but it wasn't uppermost in my mind, in the sense that I wanted to find out, first, whether Father Mulcahy could remember the meeting.

Q. Did you at any time ask Mrs Ingham, after your conversation with Father Mulcahy, if she still wished to speak to Father Mulcahy?
A. No, I didn't.

Q. Effectively, you made the decision about whether or not Mrs Ingham could speak with Father Mulcahy - you made that decision yourself; is that correct?
A. I did.

Q. So you didn't give her the opportunity to make a decision about that?
A. No, as I said in my earlier evidence, I believed that it would be better not to tax Mrs Ingham further on that question, in view of the fact that the process was moving so quickly towards facilitation.

Q. But wouldn't it have been better to at least allow Mrs Ingham to decide whether or not that was appropriate?
A. Well, yes, it would have, but I thought even asking her that might make things more difficult and more prolonged.

Q. But as far as you were aware, it was important for her to speak to Father Mulcahy; isn't that right?
A. It was important for her, yes.

Q. And it was part of the pastoral process; is that not correct?
A. Well, I was thinking of Mrs Ingham's interests. Even though she had said that she wanted to meet Father Mulcahy --

Q. But at this stage you had very limited knowledge of
Mrs Ingham; you hadn't met her, is that correct?
A. That's correct, yes.

Q. Wouldn't it have been better to allow Mrs Ingham to
decide whether it was in her interests to meet
Father Mulcahy?
A. Well, it may well have been.

Q. In hindsight, would you not agree that that would have
been a better approach, that Mrs Ingham should at least
have the opportunity of meeting Father Mulcahy?
A. Well, in hindsight, I think the way things worked out
turned to be for Mrs Ingham's better outcome.

Q. You've read her statement, haven't you?
A. Yes.

Q. You understand that she expresses some dissatisfaction
that she hasn't met with Father Mulcahy and confronted him
in relation to that time?
A. Yes.

Q. So in hindsight it would have been perhaps better if
she did meet him?
A. Yes.

Q. The point I make is would it not be appropriate for
a bishop in these circumstances to consult with the victim
directly to ensure that their needs and their requests are
met to the extent that they could be?
A. Well, I'm not sure - I'd have to check this out. I'm
not sure that Deacon Wallace didn't raise that question
with Mrs Ingham. I'm not sure. You may know more than
I do, or recall more than I do.

Q. The question I asked, though, and I'll repeat it, is:
wouldn't it be appropriate for a bishop to ensure that
somebody like Mrs Ingham - that the victim's needs are met,
if they could be?
A. Yes.

Q. Thank you. Can I just ask you a question about the
contribution that the archdiocese made of $15,000. You
recall the evidence about that?
A. I do.

Q. Was it to your understanding as you were providing
instructions, as you were driving, on the day of the
facilitation, that it would be the diocese who would be
making the contribution?
A. I believed that.

Q. Did you understand that it was important for
Mrs Ingham that the diocese made an acknowledgment, to some
extent, of what had happened by providing some monetary
compensation rather than it coming from an insurance
company?
A. Well, yes, I was prepared to do whatever I could that
was proposed to me for Mrs Ingham's good.

Q. And that was that the diocese show something as part
of its contrition, a financial contribution, albeit
a relatively small one, but nonetheless it did?
A. Yes.

Q. Who was it that then sought the refund of that amount
of money from Catholic Church Insurances?
A. I do not know.

Q. Well, you are the archbishop. You understand that in
fact Catholic Church Insurances refunded that money; isn't
that right?

MS FURNESS: Your Honour, I rise because I don't believe
there is evidence that a refund was sought in the terms
that my friend puts it. An amount was paid, is the
evidence. I'm not sure it extends to a refund was sought.

MR ROYLE: One would assume that if an insurance company
is going to pay money, it would be --

THE CHAIR: I wouldn't have, given what we were told about
the particular relationship between the diocese and the
insurance company. That evidence was clear. I don't think
we're living in a conventional commercial relationship.

MR ROYLE: I understand that, your Honour. I won't press
it further. I won't use the word "refund".

Q. You were aware that the $15,000 came from - eventually
it was paid to you or paid back to your diocese from the
Catholic Church Insurance office?
A. I only heard of that later.
Q. One final issue, bishop, if you wouldn't mind. Mrs Ingham, in her statement, refers to her conversation or parts of her conversation she had with you at, if I can put it this way, the pastoral meeting that you had with her I think in June. Do you recall that?
A. Yes.

Q. One of the issues discussed was in relation to reprimanding errant priests, and in this case Father Brown, and she refers to you speaking about the difficulty that bishops had in how to reprimand their sons without feeling like they did not love them; do you recall some dilemma that you expressed to her then?
A. I don't recall Mrs Ingham said that. She may well have done so.

Q. It's suggested that you said that.
A. That I said those words?

Q. That there was a difficulty that bishops had in how to reprimand their sons without feeling like they did not love them - is that a view you hold?
A. No, I don't know where that came from, in those terms, I don't know where it came from.

MR ROYLE: Thank you.

THE CHAIR: Does anyone else want to ask any questions?

MR ATTIWILL: No, your Honour.

<EXAMINATION BY MR FAHL:

MR FAHL: Q. Bishop, my name is David Fahl. I'm a barrister representing Father Mulcahy. I also have an interest in paragraph 51 of your statement before the court, which is exhibit 4-36, if that may be displayed. Bishop, I'm conscious of what you said to learned counsel assisting the Commission, that none of the events of last week before the Commission really refreshed your memory to any greater extent relating to this particular conversation; is that so?
A. Could you repeat that?

Q. I'm sorry. I recall you saying to counsel assisting the Commission, about an hour ago, that the discussions, or evidence before the court last week didn't assist in giving
you any greater memory of the content of this conversation
you had with Father Mulcahy; is that right?
A. No, it didn't.

Q. Just conscious of that, though, this conversation you
had with Father Mulcahy - I infer from your statement that
you had read the contact report relating to Mrs Ingham
before having the conversation with Father Mulcahy; is that
correct?
A. Yes.

Q. And I infer also from your statement that you
discussed its contents with Deacon Wallace?
A. Yes.

Q. Among other things, the contact report states to the
effect that Mrs Ingham's father was a former school friend
or colleague of Father Mulcahy; is that correct?
A. Yes.

Q. Do you recall that as being something you read in that
contact report, as best as you can recall, bishop? I'm not
trying to test your memory.
A. I'm not sure that it registered at the time or whether
it registered much later on.

Q. You accept the proposition that it's in that report,
anyway?
A. Oh, it is in the report, yes.

Q. You also, I recall from your evidence earlier today,
stated that you believe that you might have remembered - or
might have known Mrs Ingham's maiden name at the time of
your conversation with Father Mulcahy, which is referred to
in paragraph 51; is that correct?
A. I may have, yes.

Q. With that in mind, in relation to the sentence that
says, "Father Mulcahy could remember Mrs Ingham's father
and mother", that obviously is something that couldn't have
arisen in a vacuum, bishop. Can I suggest this to you: it
is likely, isn't it, that you would have said something to
Father Mulcahy along the lines of, "Look, apparently you
knew her father. Their name is Williams. Can you recall
this lady?" Is it likely that that would have issued from
you, that type of question?
A. Father Mulcahy could remember Mrs Ingham's father and
mother. He could.

Q. And do you recall, bishop, whether that was in response to a prompt from you; in other words, "She tells me", or "I understand that you went to school with her father", something like that?
A. I must say, it's difficult to remember these details.

Q. Certainly. I appreciate that, but do those two further details I've given you - that is, the reference to it in the contact report and the prospect that you knew the maiden name - help you remember anything further?
A. No.

Q. Or is your memory exhausted about that?
A. No, it doesn't help me to remember anything further.

MR FAHL: I have no further questions. Thank you, bishop.

<EXAMINATION BY MS NEEDHAM:>

MS NEEDHAM: Q. Bishop, you were asked some questions by learned senior counsel assisting, Ms Furness, about the standard required by the Holy See for return of a priest to the lay state. Do you recall those questions?
A. Yes.

Q. I think you replied to Ms Furness about cases being sent to the Holy See of serious and prolonged cases of abuse. Do you recall that?
A. Yes.

Q. You've also given evidence that you referred to the Holy See a case in relation to one of your priests which did not, from your description of it, involve serious and prolonged cases of abuse; that's the overseas case, if I can call it that?
A. That's correct.

Q. Is it your experience that the Holy See may return a priest to the lay state for something less than a serious and prolonged case of abuse?
A. They may well not, if the level of evidence of abuse is not such as to lead to that quite extreme judgment.

Q. But that's not the standard that you apply when determining whether to remove faculties or to remove
a priest from active ministry, is it?
A. No.

Q. Can you tell his Honour and the Commissioners what, in a practical sense, is the difference between the ability of a person to hold himself out as a priest with their faculties removed, as opposed to the same ability for a person who has been returned to the lay state by the Holy See?
A. Well, absolutely if the person is returned to the lay state, they may not wear clerical dress, may not have the title of "father", have no external or honorific entitlements. They are, as it were, laypersons, while still sacramentally remaining priests, but to all intents and purposes are laypeople again.

Q. If they've had their faculties removed, are you saying?
A. No, if they've been reduced to the lay state. Removal of faculties is a lesser penalty.

Q. And how would a person whose faculties have been removed be able to portray himself to the outside world?
A. That would depend on whether the bishop explicitly said, "You may not wear clerical dress. You may not use the title 'father'."

Q. And what can a priest with no faculties do or not do in the exercise of his vocation, as it were?
A. Without faculties?

Q. Without faculties.
A. Without faculties, he can do virtually nothing. He can't conduct mass. He can't hear confessions. He can't preach or perform any public duties that come with an appointment, because he has lost the appointment.

Q. Removal from active ministry, in the case of a parish priest, is akin, is it not, to the termination of their role as parish priest?
A. It is.

Q. They're sacked, as it were?
A. Yes.

Q. And they wouldn't be able to then be seen by the community as the parish priest and in that position of
power?
A. A priest can be removed from the office of parish priest but still be permitted, in certain circumstances where his good name is still intact, and so on, to be available for celebration of mass and other probably much lesser duties.

Q. When you say "his good name is still intact", that wouldn't apply to somebody who had had a substantiated case of child sexual assault, would it?
A. Of course not, no.

Q. Bishop, you were shown paragraph 45.6 of Towards Healing, and perhaps that could be brought up. I'm sorry, I don't have the reference for that.

MS FURNESS: Tab B of 4-1.

MS NEEDHAM: Q. 45.6, please. Bishop, you were shown paragraph 45.6, which is at page 29 of Towards Healing, and that refers to:

... the Church Authority to which the person is to be transferred.

That is the duty on the incoming bishop, as it were; is that correct?
A. Yes, yes.

Q. If you go to 45.7, which is the next paragraph down, I'll just give you a moment to read that.
A. Yes.

Q. Is this the other side of that requirement of 45.6, that is, the requirement of the outgoing bishop to provide information to the incoming bishop, if I can call him that?
A. Yes.

Q. You will see there that it is not limited merely to complaints of abuse which have been substantiated?
A. Yes.

Q. And do you see there that it includes being aware of circumstances that could lead to a complaint of abuse?
A. Yes.

Q. Those are the things that are required if a priest is
to be transferred out of one diocese into another to be
told to the bishop of the other diocese?
A. That's correct.

Q. Are you aware, as the Bishop of the Diocese of
Lismore, whether these preventive strategies in these
paragraphs of Towards Healing are observed?
A. They are observed.

Q. Who is responsible for their observation?
A. I am.

Q. You were also asked some questions about requirements
relating to employees of the diocese. Can you please tell
the Commission what are the arrangements for the general
employees of the diocese in relation to whether you have
somebody looking after the human resources aspect of the
diocese or not?
A. Yes, there is an officer employed in charge of human
resources, and that person would have to ensure that
persons employed in any employment that brings them into
contact with children - that that would all be observed.

Q. Is it the case that you have, including the hospital
and various schools, and 3,600 employees?
A. That is correct.

Q. And that their circumstances are dealt with by, as
you've said, the human resources officer?
A. Yes.

Q. Does that human resources officer or department report
to the business manager of the diocese, are you aware?
A. Yes. The business manager is in charge there.

Q. Do you receive regular reports from the business
manager in relation to the employment aspects of the
diocese?
A. Not necessarily. There is no formal or regular
process there. If there was anything unusual or any
changes to be made, yes, I would be informed.

Q. Did you hear Mrs Ingham give evidence?
A. I did, yes.

Q. Did you hear a question addressed to her by her
barrister, Mr Royle, about her disappointment about your
apology having been drawn from drafts provided to you. You
heard those questions?
A. I heard those questions.

Q. I would like to ask a few questions about that. Are
you aware that Deacon Wallace accepted, at the first part
of the facilitation, an obligation to provide to Mrs Ingham
a written apology at the meeting with you?
A. Yes.

Q. Did you then receive some drafts?
A. I received a draft at that time, before that first
facilitation took place; I received a draft from
Deacon Wallace.

Q. Can you tell the Commission how you dealt with that
draft and the writing of an apology to Mrs Ingham?
A. I set that draft aside in view of the fact that
I would be meeting with Mrs Ingham at a later date and that
I would, in the meantime, write an apology for her.

Q. What did you do when you met Mrs Ingham? Did you say
something to her about the provision of the apology that
Deacon Wallace had agreed she would be given?
A. Yes, I did, but the apology which I eventually wrote
was quite different from the draft that Deacon Wallace had
given to me. If you put the two documents side by side,
you will see how different they are. I did not draft that
letter before I met Mrs Ingham, because I wanted to, on the
basis of that meeting with her, write an apology which was
more personal because I had actually listened to her story.

Q. When you came to write the apology, what did you draw
upon?
A. Well, of course the knowledge that I had received in
the course of my meeting with Mrs Ingham. But it was an
apology that I wrote very personally from my own mind and
heart.

Q. Did it draw upon that draft?
A. No.

Q. Were you in the hearing room when Deacon Wallace gave
his evidence?
A. Yes.

Q. Did you hear Deacon Wallace's evidence about offering
Mrs Ingham a meeting with Father Mulcahy, which meeting she declined?
A. Yes, I believe that, yes, Deacon Wallace did, and he mentioned that in his evidence.

Q. Does that refresh your memory as to whether that happened at the meeting with you and Mrs Ingham?
A. I just can't recall whether that came up in my own meeting with Mrs Ingham.

Q. How many Towards Healing facilitations have you been involved with?
A. I think it is eight.

Q. Have they each involved a pastoral element as well as a financial negotiation?
A. They all have.

Q. What is your view of the value of the pastoral element of Towards Healing in delivering what might be termed constructive outcomes for the victims?
A. I believe the pastoral element is paramount in the Towards Healing process.

MS NEEDHAM: Thank you. No further questions.

<EXAMINATION BY MS FURNESS:

MS FURNESS: Q. Bishop, it wasn't clear to me from the evidence you gave earlier and the evidence you just gave as to the effect of the removal of faculties on the dress that a priest is permitted to wear. Is it the case that when faculties have been removed, the priest is no longer entitled to wear priestly garb?
A. Yes, these days generally that would be the case.

Q. When you say "these days", has it changed?
A. Well, I can only recall anecdotal stories from the past, where faculties have been removed and clergy have continued to wear clerical dress.

Q. In relation to 1986 and Father Brown, are you aware from having read his file or from any other source as to whether he was permitted to retain priestly garb?
A. I can't recall having seen any prohibition expressed in writing.
Q. And in the absence of such a prohibition, he would be entitled to think he could wear it?
A. Probably, yes.

MS FURNESS: Thank you. Your Honour, nothing further.

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

<THE WITNESS WITHDREW>

THE CHAIR: Yes, Ms Furness.

MS FURNESS: Your Honour, there are two additional witnesses in relation to this second part of the case study. The first I referred to earlier, Mr Salmon. The second is Peter Kelso, who was Mrs Ingham's solicitor. At the request of those assisting the Royal Commission, he has provided a statement in relation to his fees and he will be asked to give evidence on Thursday at the same time as Mr Salmon. So this aspect of the case study will not be finalised until then. The statements will be tendered at that time.

THE CHAIR: Very well. Thank you.

MS FURNESS: Given the time, your Honour --

THE CHAIR: Ms Needham is on her feet. I don't know what she wants to say.

MS FURNESS: I think she wants turnover time.

MS NEEDHAM: I do, your Honour.

MS FURNESS: It might be convenient to take the luncheon adjournment, your Honour. It is a quarter to 1.

THE CHAIR: Very well. We will take the luncheon adjournment and resume at a quarter to 2.

LUNCHEON ADJOURNMENT
UPON RESUMPTION

MR STEWART: Your Honour, Commissioners, the first part of this case study 4 concerns the case of a 55-year-old man referred to as [DG]. In light of the time that has passed and the amount of information that has flowed, it may be of some value to recap the essence or the bones of the case before getting on with the evidence.

Mr [DG] was schooled at a Marist Brothers school in northern Queensland. He was abused by Brother Raymond Foster in the early 1970s, starting when he was a 13-year-old boy. [DG] reported the abuse to the police in 1993 and made a statement to them in 1994.

In March 1999, Brother Foster was arrested in New South Wales and released on bail on charges relating to the abuse of [DG] following the statement that had been made in 1993.

A few days later, and on the morning of his extradition hearing to face charges in Queensland, Brother Foster committed suicide. He had indicated that he intended pleading guilty to the charges.

Brother Foster left a note to the provincial of the Marist Brothers at the time, Father Michael Hill, asking that his apologies be conveyed to [DG].

[DG] wrote to the Marist Brothers in January 2000 detailing the sexual abuse by Brother Foster and the impact on his life of that abuse. He asked for restitution.

[DG] received a response from Brother Hill suggesting a mediation facility run by Towards Healing or, in the alternative, [DG] could arrange a solicitor to act on his behalf. [DG] attended an initial meeting with the provincial, Brother Hill, in May 2000. [DG]'s evidence will be that the provincial volunteered no information regarding Brother Foster at the meeting.

The evidence is expected to reveal that the Marist Brothers from the outset treated the approach by [DG] as they would a civil claim and did not, in their own minds, pursue a Towards Healing path.

[DG] made contact again with the Marist Brothers in
2001, through a barrister, who sought a resolution process. Letters were exchanged between lawyers over the following months. Then [DG] was advised that the Catholic Church Insurance had taken the matter over and had appointed its own solicitors.

After medical assessments, a settlement conference took place in June 2002. Brother Alexis Turton was present as a representative of the Marist Brothers, as was a lawyer and a claims manager representing Catholic Church Insurance. There was no facilitator or mediator present. [DG] will give evidence of his experience at the settlement conference.

Following a process of negotiation, he accepted an offer of $36,500 and signed a release, which did not contain a clause requiring confidentiality. He received a written letter of apology from the new provincial, Brother John Thompson, a few weeks later.

In this part of the case, the first witness then will be Mr [DG].

<[DG], affirmed: [1.50pm]

<EXAMINATION BY MR STEWART:

MR STEWART: Q. Mr [DG], do you have a copy of your statement before you?
A. Yes.

Q. That's a statement dated 23 October 2013?
A. That's correct.

Q. Is there a correction you would like to make in relation to paragraph 40 of that statement?
A. Yes, there is.

Q. I would like to correct my statement at paragraph 40, where I said that the deed contained a clause that stopped me speaking about the details of the settlement.

When I received a copy of various records and correspondence from the Commission, it was the first time that I had seen that deed since the settlement meeting where I was shown it. I don't recall, even at that settlement meeting, initialling the various paragraphs, but...
when I left that meeting I was of the belief that it did contain a confidentiality clause.

In subsequent years, my solicitor forwarded me a copy of my entire case file, and that file included all of the police statements, both psychiatric assessments that I underwent and various correspondence between various solicitors and the Marist Brothers. There was no copy of the deed in my solicitor's files.

Q. So the effect, as I understand it, Mr [DG], is that you would delete the sentence which commences on the last line of page 8 of the statement; that's in paragraph 40?
A. That's correct.

Q. And it ends in the first line of page 9?
A. That is correct.

Q. You would delete that sentence?
A. Yes.

Q. So subject to that correction, do you confirm that your statement is true and correct?
A. I do.

MR STEWART: Your Honour, I tender the statement.

THE CHAIR: Yes. What was the true position of that clause? What does the document actually say?

MR STEWART: It does not have a confidentiality clause.

THE CHAIR: None whatsoever?

MR STEWART: No. We will get to that briefly.

THE CHAIR: We will make the statement exhibit 4-37.

EXHIBIT #4-37 STATEMENT OF [DG], DATED 23/10/2013, BARCODED STAT.0064.001.0002_R_M

MR STEWART: Could I tender also the tender bundle in this part of the case study.

EXHIBIT #4-38 TENDER BUNDLE IN RELATION TO [DG] CASE STUDY

MR STEWART: Q. Mr [DG], would you read your statement

.16/12/2013 (29) 3091 [DG] (Mr Stewart)

Transcript produced by Merrill Corporation
for the Commission?

A. "This statement made by me accurately sets out the evidence that I am prepared to give to the Royal Commission into Institutional Responses to Child Sexual Abuse. The statement is true and correct to the best of my knowledge and belief.

Where direct speech is referred to in this statement, it is provided in words or words to the effect of those which were used at the time, to the best of my recollection.

I was born in Queensland. I am 55 years of age.

I was abused by Brother Raymond Foster, also known as Brother Celestine, in the early 1970s. The abuse occurred while Brother Foster was a teacher at a college I attended, a school run by the Marist Brothers.

The first time Brother Foster sexually abused me was at my family home in 1970.

In 1971, there was an occasion on which I was sent to Brother Foster's residence on the school grounds to help him carry some books to a classroom. I remember he wrestled me onto his bed and sexually abused me again.

In an incident in 1972, Brother Foster wrestled me onto his lap and sexually abused me while I was helping him clean the science laboratory after school. There was another incident in 1972, this time in the storeroom of the school tuckshop.

There were a lot of other incidents and the sexual abuse continued up until the time I left that college at the end of 1973.

The abuse I experienced at the hands of Brother Foster has had a profound impact on my life and my family. It has placed a strain on my long-term sexual relations, contributed to the breakdown of my first marriage and contributed to me having some sexual dysfunction. It has made me feel alienated and isolated and these feelings have, in turn, had a negative impact on my personal and professional relationships. Particularly, I have to an extent experienced alienation from my parents and siblings since raising the abuse. The abuse has also been
a significant factor in my abuse of illegal and legal
substances, the destruction of my religious beliefs and
trust in religious institutions, and the sense of
underachievement I feel both in my personal and
professional life.

I first revealed my abuse in 1990 when I was attending
marriage counselling with my then wife.

In around 1993 or 1994, I reported to Queensland
Police that I had been abused by Brother Foster.
I subsequently made a police statement on 28 March 1994.
I know it took me a long time to make the complaint, but,
until that time, I don't think I was stable or strong
enough and in a strong enough relationship to be able to
put myself forward to do it. My parents didn't even know
that Brother Foster had sexually abused me until I made
a statement to the police. I think the hardest thing I had
to do was walk through the door of a police station and
stand at a desk with people around and say why I was there.

I think one of my main motivations for approaching the
police was to try to prevent Brother Foster from sexually
abusing other children, but, to this day, I don't know if
Brother Foster was stood aside from teaching, and I was
never given any assurance that steps were being taken to
prevent further abuse by Brother Foster.

After I made a statement, Brother Foster was
interviewed by the Queensland Police in 1995. From that
time until 1999, my complaint sat with the police.
I understand that they had to get past a whole range of
issues, including who was to pay for what and whether or
not there was enough evidence to proceed.

Then, in or around 1999 the police were proceeding
with my case. A long time had passed since I had made my
complaint and I remember that I was moving on with my life.
I think I was actually in charge of the department at the
time and I was studying a postgraduate course and I had
a young child at home, and then every week or five days
I was getting a phone call at work from the police because
they wanted to proceed with the case.

I didn't know if that was something that I needed at
that stage. But there was one particular detective who
kept phoning me. I was working shiftwork and weekends and
I was expected to drop everything and attend to him there and then. I told him that I wanted to speak to a counsellor and my wife before deciding whether or not I was up to proceeding with the complaint. Eventually I told him to go ahead with the case.

Arrangements were finally made to extradite Brother Foster from New South Wales to face charges in Queensland in 1999. The morning that he was to be extradited, he committed suicide.

I received a call around this time from the police telling me that he had committed suicide, which meant there was no further action they could take.

I didn't hear from the police after that.

I was really angry with Brother Foster for choosing suicide over facing me or the Queensland courts about the abuse he inflicted on me. I felt like he had chosen a path designed to free him from prosecution and inflict guilt upon me.

What really upset me at the time was that some Marist Brothers were quoted in newspapers from my home town as saying that Brother Foster hadn't committed suicide but had died of natural causes and was a wonderful man. So, those things really stuck with me; they made me feel like I was harassing a sick old man rather than seeking justice for the actions of a devious, slothful and drunkenly indulgent child molester.

Eventually I sat down and put pen to paper, as you do when you need to get something off your chest. So, on 29 January 2000, I sent a letter to the Marist Brothers that detailed my sexual abuse by Brother Foster and also attempted to explain the profound impact that it had on my life. I said that my hope was that there weren't many others who had suffered at the hands of Brother Foster. I also asked the Marist Brothers for restitution for the abuse I experienced and said that I had paid thousands of dollars in counselling fees.

I received a response from Brother Michael Hill on 16 March 2000. In his letter, Brother Hill, who was the provincial at the time, suggested the mediation facility provided by the Towards Healing resource group in Brisbane.
as a possible option for dealing with my complaint. I remember that he asked me to contact him to talk about how I wanted to proceed.

My gut feeling was that Towards Healing would be a waste of time. I didn't trust the Catholic Church after what had happened to me. I remember Towards Healing being criticised in the press at the time, and I didn't want to receive a pittance and an empty apology and get told not to tell anybody anything.

However, I made a decision to pursue Towards Healing because I had received legal advice that I couldn't pursue a civil claim against the church and that Towards Healing was the only process that was available to me. So, I wrote to Brother Hill to request a meeting with him to discuss my abuse.

On 11 May 2000, my wife and I attended an initial meeting with Brother Hill to talk about the sexual abuse I experienced. My recollection is that the meeting was not great; it felt really empty because no further information was given about my case. Brother Hill said he didn't know Brother Foster and was not really able to tell me anything about the case that I didn't know already. There was still this void around the suicide of Brother Foster.

On 5 June 2001, I was assessed by Louis K Salzman, a counsellor and clinical neuropsychologist. The assessment was arranged by my legal representatives.

I remember that, at that stage, I really didn't understand where Towards Healing was coming from and whether I was in or out of that process.

On 20 September 2001, Michael JW Byrne, my barrister, wrote to Brother Peter Rodney. Mr Byrne noted that nothing had really come out of my initial meeting with Brother Hill. He explained that I wanted financial compensation for the cost of counselling that I incurred as a result of the abuse experienced, an apology from the Marist Brothers and some kind of public recognition from the Marist Brothers. Mr Byrne also explained that I was open to engaging in Towards Healing.

On 25 October 2001, Howard Harrison from Carroll & O'Dea wrote to my barrister and told him that Brother Hill
had provided instructions 'That some form of mediation process should ... be put together to assist the parties to bring these issues to closure'.

On 6 November 2001, my solicitor, Bill Cooper of Bill Cooper & Associates wrote to Carroll & O'Dea. The letter confirmed that I wanted a written apology to my family that acknowledged what Brother Foster did to me and how it disrupted my life and my family. The letter confirmed that I wanted $120,000 compensation (plus standard costs and outlays) to meet my rehabilitation needs. The letter also confirmed that I was willing to attend a mediation conference.

My solicitor wrote to Carroll & O'Dea on 15 November 2001 and again on 28 November 2001 because they had not responded to the letter of 6 November 2001.

On 5 December 2001, Mr Harrison notified my solicitor that Catholic Church Insurance had taken over my matter from the Marist Brothers. I understand that Catholic Church Insurance instructed Patrick Monahan of Ebsworth & Ebsworth to act on its behalf.

On 14 December 2001, Mr Monahan sent a letter to Sara Loughnan, one of my solicitors at Bill Cooper & Associates. He told Ms Loughnan that Catholic Church Insurance required me to undergo another psychiatric assessment before it would participate in a mediation conference.

I was frustrated at having to undergo a second psychiatric assessment. However, I agreed and was examined by Dr John Chalk in early February 2002.

The thing that really galled me was that after the appointment, which lasted a couple of hours, Dr Chalk called me back because he had been advised to ask more questions of me. He told me that he had been advised to ask me further questions. The call was at a very inconvenient time for me - my family was visiting and we had a bit of a family reunion going on, and the call came during dinner time. That really stuck with me. I remember thinking: what right does a solicitor have to tell a psychiatrist to go back and ask more questions? You might be able to do that of a policeman or something like that, but I was with Dr Chalk long enough for him to get
all the information he needed. I remember he even said to me: 'It's a waste of time; I'm not going to change anything, but I have to ask you a few more things anyway.'

The mediation conference took place in Brisbane on 18 June 2002, approximately two and a half years after I first wrote to the Marist Brothers. I attended the mediation with my solicitor and barrister. Brother Alexis Turton, Patrick Monahan and a representative from the Catholic Church Insurance were also present at the mediation conference. I was initially happy that Brother Turton was involved, as he was a principal at a Marist Brothers school where I completed my high school and he was my physics teacher and football coach. He was recognised as an intelligent and good man.

It seemed to me that the lawyer Patrick Monahan took on the role as the mediator whilst I was in the meeting. I remember that I was not really given the opportunity to say much during the mediation - to talk about what happened to me or about how it made me feel. I recall that Brother Turton gave a stirring speech about the good work that Marist Brothers do and about how he was proud to be a Marist Brother. Any answers that I wanted were cut off with Brother Turton saying that he had no other recollection or records of Brother Foster's employment or when he stopped teaching.

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

I remember that I had only been in the mediation room for about ten minutes when it was decided that I should waited outside in another room. The reason for this, as I recall, was my lawyer expected some arguments to be presented that would be demeaning of myself. I remember that, at the time, I thought: 'Well, I've gone through enough already, what difference would it make to sit outside?' I also remember the appalling looks I received from the representative of Catholic Church Insurance; she made me feel like I was there to rob the Catholic Church.
So, I basically just sat outside the room for a couple of hours, twiddling my thumbs, while they negotiated. When they came out, I was told that Catholic Church Insurance had made a take-it-or-leave-it offer of $36,500. I was told that the money would be passed on to me shortly, if I signed a form. Of course, the form said that I wasn't allowed to speak to anybody, including media, about my abuse. It also said that I was unable to take any further action against the Marist Brothers in relation to Brother Foster.

I decided to sign the form. I remember that I asked for a copy of the form and was told that I couldn't have one. It was the lawyer Patrick Monahan who said that.

On 3 July 2002, Brother John Thompson sent me a written letter of apology. The letter acknowledged that the Brothers accepted the substantial truth of my allegations of abuse and apologised to my family and me for the pain and suffering caused by Brother Foster and the handling of my allegations. It noted that a more sensitive and pastorally caring approach could have been taken.

Overall, though, I thought the apology was pretty hollow and I was over it all by that stage. Basically, the letter made an apology for this and that, and I thought, 'I don't even know who you are, and it doesn't really mean that much to me.' To me, Brother Thompson was apologising for something he probably knew very little about. I thought it was rather worthless.

It was around this time that I received a compensation payment of $36,500 from the Marist Brothers. Following the payments to the Health Insurance Commission and my solicitor and barrister, I received $30,633.74.

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

Q. Thank you, [DG]. I would like to take you to the tender bundle, exhibit 4-38, tab 17, if that can be brought up on the screen. That's your first letter that you referred to, where you wrote to the Marist Brothers after Brother Foster's death. On the second page of that letter, if you wouldn't mind reading from approximately the middle of the page, where it begins with the paragraph "Sadly, Brother Raymond chose not to face me" - would you read that to the end?

A. "Sadly, Brother Raymond chose not to face me, or the courts of Queensland. Instead, he chose a path designed to free him from prosecution, and inflict guilt upon myself. It only reflects on the coward that he was.

Your attempts to beatify him and appeal to the public sentiment after his suicide, have served to fuel further anger in me, and my family, that is still not reconciled. It appears from your response, that I must have been harassing a sick old man, not seeking justice on a devious, slothful, and drunkenly indulgent child molester. Your spokesman didn't even have the decency to tell the truth when responding to media inquiries, and I quote from "the Observer", Thursday March 25, 1999 -

"A spokesman for the Marist retirement village denied Brother Foster had been found hanged, claiming he had died of a heart attack. He said Brother Foster had sugar diabetes but was 'a wonderful person' who was not concerned by the impending court appearance."

Consider the feelings of the rest of my family. They all still live in [that
area]. You have hurt them deeply as well.

Other media reports named the town the
prosecuting officer was from. Old friends
and acquaintances immediately identified me
as the plaintiff and so my painful secret
is now public knowledge.

In conclusion, I have paid many thousands
of dollars in counselling fees for my
marriages, my wives, my children and
myself. I will never know the extent to
which my families' and my own educational,
professional, and personal development have
been affected by the actions of this
deviate. Be assured, it has had a profound
influence and this stigma is ongoing. My
hope is that there were not many others who
suffered at his hands, but I know this was
not the case.

MR STEWART: Thank you, sir. Your Honour will notice that
there are significant parts of that letter that have been
recently redacted. They cover matters that are personal
and not germane to the inquiry. Might I ask for a DNP
order in relation to those particular parts of that letter,
because it has previously been distributed to parties
involved.

THE CHAIR: Yes, very well. I will make that direction.

MR STEWART: Q. If I now take you to tab 13 of that
bundle, if that can be brought up on the screen. You will
see that that is a letter addressed to "Dear Mick", who was
Brother Michael Hill, the provincial at the time. It is
from Brother Ray Foster, shortly before his death. It is,
in a sense, a suicide note. Would you scroll to the
bottom. Do you see at three lines from the end, Brother
Ray Foster said:

I bear no ill will against the person who
had me charged as he had every right to do
so and I ask his forgiveness if he would be
so kind.

Were those sentiments from Brother Foster ever conveyed to
you?
A. No, they certainly were not. When I got the documents from the Commission, that was the first time that I had any acknowledgment that he had acknowledged the abuse in any way, shape or form.

Q. When you met with Brother Michael Hill with your wife in a coffee shop and you had your first discussion with the Marist Brothers about this, did Brother Hill convey to you any information that was known to the Marist Brothers about Brother Foster?
A. No, I was never given any information of his whereabouts or admissions of guilt or whether he was still working or whether anybody else had made complaints against him.

Q. And, sir, when you met with Brother Alexis Turton at the settlement conference, was any information about Brother Foster conveyed to you then?
A. No, it wasn't.

Q. When you look back now at the process that you went through, culminating in the settlement conference and the payment and the apology from Brother Thompson, what comments do you have to make on it and how does it leave you feeling now?
A. In my mind, there is one sentence, which maybe a solicitor would read differently to myself. Brother Thompson's letter did acknowledge the substantive truth or that the brothers acknowledged the substantive truth of the allegations. It was not the absolute truth; it was not without question. To my mind, "substantive" means, "There is substance in the allegations, but we are not going to acknowledge that there was guilt, that he was guilty" and that my allegations had been completely accepted.

Q. That letter is at tab 64. Perhaps it can be brought up. Is it the first paragraph of that letter that you refer to:

I as Provincial of the Marist Brothers wish to acknowledge to Mr [DG], his parents and family that the Brothers accept the substantial truth of the allegations of abuse perpetrated upon Mr [DG] by Brother Raymond Foster also known as Brother Celestine.
Are you saying that that left you feeling partially disbelieved?
A. Yes, absolutely.

Q. What is it that has brought you now to take this courageous step to speak to the Royal Commission and in public?
A. I think right from the very beginning, I didn't want anybody else either to have to undergo abuse, as I did, from a person in a position of trust, who also made his way into a position of trust within my family, and I would have hoped that nobody else had to undergo that and that, if they have, then the process is much more open and a more satisfactory result can be achieved.

MR STEWART: Thank you, sir.

THE CHAIR: Q. Just before we leave that letter, you still have it on the screen there, I think, the letter of 3 July. The letter never refers to you except in the third person, "Mr [DG]". How did you react to that?
A. I think I said in my statement that the letter of apology left me somewhat empty, and perhaps one of the reasons for that was the impersonal nature of it, as you have just pointed out, but that's not something that I'd particularly picked up on.

Q. I don't think I have ever seen an apology to someone personally that was written in those terms. Can I move down the page. The letter reflects an issue relating to the way Brother Foster's death was reported in the papers. Do you see that?
A. Mmm.

Q. And the statements made by some brothers to the newspapers. I assume, from this letter, that you read those statements when they were made?
A. Yes, I did.

Q. It is plain that you didn't agree with them?
A. What, with the statements in the newspaper?

Q. Yes.
A. Obviously.

Q. That's because, I assume, they were wrong?
A. They were blatantly wrong.

Q. The letter acknowledges that the statements:

\[\ldots \text{would serve to deepen still further in} -\]

and instead of saying "you" -

Mr [DG] his sense of guilt relating to the suicide of the Brother.

Did you accept that apology?

A. I was ambivalent to the whole process by then and thought that - my thoughts were that the apology was rather empty and somewhat self-serving. I think in the process of the Commission, it has been explained to me that the person or persons that made those statements wasn't empowered to do that. It didn't lessen the effect particularly.

Q. The letter finishes by saying this:

I also apologise to his parents --

that's your parents --

for the abuse of trust by Brother Foster in his dealings with their son. I understand that some erroneous and misleading comments were made during the eulogy at the Mass for Brother Foster. I apologise for any hurt which these may have caused or intensified.

I assume from the letter that you were aware of what was said at his funeral, were you?

A. No, I wasn't.

Q. So this apology came without your knowledge of what had happened?

A. Yes, and, once again, possibly by the time I had got to the end of that letter - and I have probably read that letter three or four times in the lead-up to this process, and I guess by the time I got to the last paragraph, I was over it and I hadn't even recognised that sentence, I'm sorry.

THE CHAIR: That's not your fault. Mr Stewart no doubt
MR STEWART: Q. You can clarify some aspects. The terms of the apology were negotiated or at least discussed in the settlement conference, is that right, between the lawyers, or were you not in the conference at that time?
A. I don't recall the conference, the apology letter being discussed. I think somewhere in Michael Hill's correspondence that was forwarded to me as part of the Commission process, that he was discussing the contents of the letter with his solicitors.

MR STEWART: Others who were involved in that can explain that further.

THE CHAIR: I would like to know what was being referred to by the writer of the letter. That's what I would like to know.

THE WITNESS: I'm sorry --

THE CHAIR: I know you can't, sir.

THE WITNESS: It was in one of the letters that I received.

THE CHAIR: Someone must be able to tell us.

MR STEWART: We will follow that up, your Honour.

THE CHAIR: Yes. Only Mr Gray is left; is that right?

MR STEWART: I think that is right, your Honour.

THE CHAIR: Mr Gray, do you have any questions?

MR GRAY: Yes, I few, if I may, your Honour.

<EXAMINATION BY MR GRAY:

MR GRAY: Q. Mr [DG], I want to ask you just a few questions, firstly about the correspondence which led up to the --

MR STEWART: If my friend wouldn't mind introducing himself to the witness, so that he knows who he is.
MR GRAY: I am sorry.

Q. Mr [DG], my name is Gray and I am the barrister appearing for the Marist Brothers and the church, the relevant church bodies in this matter. I just want to ask you a few questions about the correspondence leading up to the meeting. The first letter I think you were taken to was your first letter, which is at tab 17 of the exhibit bundle, exhibit 4-38. I wonder if that could be brought up. On the first page of that letter, Mr [DG], if I could just direct your attention to the third paragraph?
A. Mmm-hmm.

Q. Do you see the one beginning "Foster's actions"? You were telling the Marist Brothers there that Foster's actions had destroyed your trust and beliefs in religion, be it Catholic or other, and you went on to say that that was reflected in your utter distrust of clergy and many of the lay people associating themselves with religious schools and groups, especially males. Do you see that?
A. Mmm-hmm.

Q. The letter goes on to talk about something of what had happened to you and your feelings in relation to the whole experience that you summarised in that letter; is that fair?
A. Mmm-hmm.

Q. Then you had a response to that from Brother Michael Hill - is that right - which I think is the one at tab 22 of the bundle, if that could be brought up, please. If we could just scroll down a little further, do you remember that Brother Hill's letter contained a reference to the Towards Healing Resource Group in Brisbane and the availability of a mediation facility there that you could look at; do you remember that?
A. (Witness nods).

Q. Or, alternatively, the letter went on, you might have a solicitor acting for you, and he suggested you might contact him to discuss how best to go forward.

In paragraph 24 of your statement, which you read out a little while ago, you said that you made a decision to pursue Towards Healing at about this point. In fact, I think later in March, on the 27th - if tab 24 of the
bundle could be brought up - you wrote a facsimile to
someone from Broken Rites, which seemed to indicate - is
this right - that at that stage you were not inclined to go
through the Towards Healing process?
A. Yes.

Q. Is that right?
A. That's what it says.

Q. It is what it says, and presumably that was your state
of mind or where your thoughts were at that stage?
A. At that moment in time, yes.

Q. Then you wrote back in reply to Brother Hill on
6 April, which we find at tab 25, if that could be put on
the screen. This was in response to his letter, which had
made reference to the Towards Healing facility in Brisbane.
What your letter actually said - is this right - was in the
last paragraph:

I will continue to consider the avenue of
legal representation, but would prefer to
deal with this as I see fit and with the
help of my loved ones.

Is that right?
A. Yes.

Q. So is it fair to say that, in that letter, you were
not taking up the suggestion of Towards Healing?
A. I would say that I was rather non-committal in those
comments.

Q. Fair enough. What you were saying was that you would
prefer to deal with the matter, "this", "as I see fit", in
your words; is that right?
A. That's correct.

Q. Was that an indication that you wanted, very
understandably, to have some control over the process
yourself rather than accept whatever was proposed to you?
A. I would consider that I was saying that I was
considering the options and was still receiving further
advice.

Q. Thank you. Brother Hill then replied to that letter,
if we go to tab 26, a few days later, on 12 April. He said
that he appreciated your willingness to meet with him and
said he would be only too willing to do that. Do you
remember that letter?
A. Yes.

Q. Then thereafter, without picking them all up, there
were a series of letters and other communications leading
up to the arrangement to meet in the town in Queensland
where Brother Hill travelled up to; is that right?
A. Yes.

Q. Then the meeting with Brother Hill in the coffee shop
took place on 11 May, as you say in your statement. Do you
agree that at that meeting you said that you were not
attracted by the Towards Healing approach?
A. Yes.

Q. Then, from 11 May 2000 until September the following
year, 2001, there was a gap where there seems to be no
communication, at least in writing, between you on the one
hand and Brother Hill or anyone else from the Marist
Brothers on the other; is that right?
A. I would assume so, yes. There is no paperwork there.

Q. That's right. Then the next thing that happened was
a letter from your barrister, Mr Byrne, on 20 September
2001, which is at tab 36, if we could have that, please.
Mr Byrne was a barrister, as is apparent, but also someone
you knew, a friend of yours; is that right?
A. No, someone I had been introduced to.

Q. Sorry, I didn't catch that?
A. No, he wasn't a friend of mine.

Q. Did you say someone you had been introduced to?
A. That's right.

Q. He was also, as his letter suggests, somebody who was,
as it happened, a member of one of the church's groups in
relation to handling child sexual abuse matters. I assume
you knew that?
A. I'm sorry, who?

Q. Mr Byrne was.
A. Was a?

Q. A member of one of the church groups - I think it was
the Queensland Professional Standards Resource Group?
A. I recall that he did indicate to me that he had some
involvement in other cases to do with that sort of thing.
I don't specifically recall the details of that.

Q. I am just asking you. If you don't know, fine. But
did you realise that he, apart from being a barrister, was
actually a member of one of the church's own committees in
relation to these matters?
A. The thing that I recall is I think that he had said he
may have been a priest or - at some stage. Other than
that, I don't specifically recall him being on a specific
board or panel, but had experience or contact with a board
or a panel.

Q. If we can just scroll down slightly further, that
paragraph that is currently at the bottom, which begins,
"Mr [DG] is of course seeking" sets out, essentially, three
things that you were seeking: namely, financial
compensation for the cost of counselling; on the second
line, some form of apology process; and in the last
sentence, "some form of public recognition of the misdeeds
of his abuser". Presumably, Mr Byrne wrote this letter in
accordance with your wishes; is that right?
A. Yes.

Q. What Mr Byrne then says is, in the next paragraph:

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

Do you remember that?
A. Yes.

Q. In your statement, paragraph 28, you refer to this
letter as Mr Byrne explaining that you were open to
engaging in Towards Healing. But do you accept that what
Mr Byrne actually said was "openness to engage in
a mediation process along the lines identified in Towards
Healing"?

MR STEWART: Your Honour, the letter speaks for itself and
this witness was not a party to it, so he is not in
a position to interpret the letter. He must accept what it
says. It is written there. The words are there. What
they mean to the reader of the letter is a different question.

MR GRAY: I will move on, your Honour, although I don't believe I was asking Mr [DG] to interpret the letter.

THE CHAIR: If you have offended as the objector suggests, then you would have to withdraw it. What do you want to make of the issue?

MR GRAY: I simply want to direct Mr [DG]'s attention to the words, because it flows into some questions that are coming.

THE CHAIR: You can take him to the words.

MR GRAY: Q. I think you have already agreed, Mr [DG], that what the letter actually says is that you expressed an openness to engage in a mediation process along the lines identified in Towards Healing?
A. Yes.

Q. Mr Byrne, meanwhile, had given you advice about Towards Healing and had given you the Towards Healing document; correct?
A. Yes.

Q. Is it right, therefore, given what that letter says in the sentence that I have just directed you to, that you had decided, in the light of Mr Byrne's advice about what Towards Healing was about, that you wanted to go for something different from, although along the lines of, Towards Healing?
A. I think my answer to that would be if Towards Healing was the only path open to me - that's the way that I understood it - then I would pursue the Towards Healing process.

Q. On the next month, 25 October, lawyers acting for the Marist Brothers replied to Mr Byrne. This is at tab 40. Do you see that? This is Carroll & O'Dea's letter of 25 October. Do you see what they say in the middle paragraph is:

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

closure.

A. Yes.

Q. Did you see this letter at the time or soon after?
A. No.

Q. It is an attachment to your statement, but you don't
think you saw it at the time?
A. It wasn't directed to me at the time.

Q. Can you see now, in the light of Mr Byrne's letter
that we just looked at, that the reference in Carroll &
O'Dea's letter to "some form of mediation process" was an
acceptance of what Mr Byrne had asked for, namely,
a mediation process?
A. So you are asking me to recognise that the solicitor
acting for me had accepted a mediation process that was
outside of Towards Healing; is that what you are
suggesting?

Q. We can go back, by all means, if you like. I just
directed your attention to Mr Byrne's words in the previous
letter.
A. Right.

Q. We can have that called up again, of course, if you
need it.
A. That's all right.

Q. He said:

My client has expressed an openness to
engage in a mediation process along the
lines identified in Towards Healing ...

A. Right.

Q. Here we have Carroll & O'Dea saying:

... Brother Michael Hill has issued
instructions that some form of mediation
process should now be put together ...

Did you understand that to be accepting your suggestion?
MR STEWART: Your Honour, I object. In fairness, it should also be pointed out to the witness that in the last substantive paragraph in tab 36, which is on the second page, Michael Byrne says:

As I see it this is a pastoral matter. My client has been walking and living through an interminable "dark night". It would be appropriate, within the conciliatory spirit of "Towards Healing", for this matter to now proceed...

The witness's attention should also be drawn to that before he answers the question, because it is part of the letter that he is being asked about.

MR GRAY: I certainly should do that. May I have that back again, please, tab 36. The words on the screen now, Mr [DG], are the last paragraph of Mr Byrne's letter that contained the reference to "mediation process" that I have been asking you about. This is the second page. As Mr Stewart very fairly points out, Mr Byrne went on in that last sizeable paragraph to make reference to Towards Healing and to the conciliatory spirit of it, and so on.

Q. Did you actually see this letter, Mr Byrne's letter, this very letter we are looking at, at the time?
A. I can't recall whether I saw that letter or not.

Q. Thank you. I will move on. After the letter of 25 October from Carroll & O'Dea that we just looked at, there was then a letter from your solicitors, tab 49, of 6 November. By all means, read the whole letter, but the only thing I want to ask you about is in the last paragraph. Do you see there that your solicitors say:

We confirm our client is willing to attend a mediation conference ...

A. Yes.

Q. So would it be fair to say that your lawyer was proposing something there, or agreeing to something there, that was not Towards Healing but was something different?
A. This was the lawyer [REDACTED], who, in all essence, would appear not to refer to Towards Healing. Given that, they had not been particularly participatory in the
correspondence between the barrister and Michael Hill.

Q. Although, if I may just politely direct your attention
to the first paragraph of the letter on the previous page,
your solicitors were responding to Carroll & O'Dea's letter
to Michael Byrne and they were confirming that they were
acting for you and that they had engaged Mr Byrne to
advise. All of that was no doubt perfectly true, I assume;
is that right?
A. Sorry, I was reading the letter. Your point was,
sorry?

Q. Just to ask you whether, in the first paragraph of
your solicitors' letter to Carroll & O'Dea - the one that
is on the screen, tab 49 - they were responding to Carroll
& O'Dea's letter of 25 October --
A. Yes.

Q. -- which had referred to a mediation process, and they
were confirming that they were acting for you and that they
had engaged Mr Byrne to advise in relation to the matter?
A. Yes.

Q. All of that was no doubt perfectly true, as far as you
understood it?
A. Yes, it's a letter between solicitors acknowledging
that one is acting on my behalf.

Q. Going forward to the next year, March 2002, at
tab 58A, do you see there is now a new firm of solicitors
in the picture, Ebsworth & Ebsworth, and at least now do
you realise that they were the solicitors who were acting
for CCI?
A. Yes.

Q. Did you know that at the time, or not until later?
A. I don't think I would have seen any of these letters
until well past the process was completed.

Q. Have you seen them at all until now, this afternoon?
A. Yes.

Q. Do you see in this one, 1 March, tab 58A, that
Ebsworths, acting for CCI, were asking your solicitors:

... do you envisage a structured mediation
or a settlement conference ...

Transcript produced by Merrill Corporation
A. Yes.

Q. ie, two alternatives, apparently; is that how you understand it?
A. That's what it reads, yes.

Q. And the answer came back on 28 March, tab 58B, from your solicitors, saying in the first paragraph:

We confirm that our client is willing to participate in either an informal without prejudice settlement conference or a mediation ...

Presumably, that was consistent with your instructions and your wishes?
A. That's what it says there, yes.

Q. Yes, but was that consistent with what you actually wanted or had told them you wanted?
A. The difference at the time was probably not apparent to me. The difference to this day is still not grossly evident to me, in that the process was for mediation along the lines of the things that I had requested be provided.

Q. Did your solicitors explain to you that there was a difference between a settlement conference and a mediation?
A. I don't recall.

Q. Did you understand that a mediation would involve a mediator being present, somebody in the middle of the two sides?
A. I probably was not cognisant of that.

Q. Getting to the end of this sequence, on 17 April, tab 58B-1, Ebsworth & Ebsworth, the solicitors for CCI, replied to your solicitors, and do you see in the third paragraph they said:

We consider it appropriate to meet you and your client in [a certain town] and to proceed by way of an informal settlement conference.

Do you see that?
A.  Mmm-hmm.

Q.  Presumably, your solicitors told you that that is what Ebsworths were proposing?
A.  I was to attend a meeting. The difference whether there was to be a mediator there or not wasn't - I don't remember was fully explained to me, or the difference between what we were going to have and - my understanding was that we were going along the lines of the Towards Healing process.

Q.  Was that understanding based on something that your solicitor had said or on something else?
A.  That's just my understanding.

Q.  The second-last one in this sequence, tab 58C, was Ebsworth's letter to your solicitors of 29 April. Again, do you see there are various references, including in the second paragraph and also in the fourth and fifth paragraphs, to a "settlement conference"? Did you see this letter at the time?
A.  I doubt that I did.

Q.  Do you see in the last paragraph on the first page, Ebsworth is asking your solicitors whether their client, ie yourself, would like Brother Alexis Turton to attend the settlement conference? Was that suggestion or possibility raised with you?
A.  Somewhere in the process, I was made aware that Brother Alexis would be at the meeting. I can't recall whether I was given that verbally or whether I saw this letter.

Q.  My question really was simply whether it was communicated to you that that was something that could be done if you wanted it, in other words, that your agreement with that idea was being sought? Is that how it was conveyed to you?
A.  I don't recall it as an option. If it was, then I was happy for Dr Turton, Brother Turton, to be there.

Q.  Finally, the last in this sequence, tab 59B, your solicitors write to Ebsworths on 13 June confirming that the settlement conference was to take place at a certain place, at a certain time. Again, by this time, which was only a matter of days before the conference, had your solicitors or anyone else explained to you that the
conference was a conference and not a mediation?
A. I don't recall there being a distinction.

Q. Thank you for your patience with that progress through the correspondence. I just want to ask you a couple of questions only about the conference itself and the deed of release. I think on your side of the conference, there was yourself; your solicitor, Ms Loughnan; and the barrister, Mr Byrne?
A. Correct.

Q. And on the other side, the Marist Brothers side, there was Brother Alexis Turton; a woman from CCI called Karen Mole; and Mr Monahan, the solicitor for CCI, is that right?
A. Correct.

Q. As far as how the conference proceeded, you have read the statements, I assume, from Brother Alexis Turton and Mr Monahan in these Commission proceedings?
A. Yes.

Q. You know that their recollections are different from yours in some respects?
A. Yes.

Q. I just want to ask you briefly about the deed of release, and I appreciate that you have made a correction today. You yourself signed the deed on the day at the conference?
A. I did.

Q. You appreciate now, as you have said, that there is no confidentiality provision in it?
A. That's correct.

Q. Presumably, your solicitor and your barrister gave you some advice about the deed and whether it was, in their opinion, suitable for you to sign, and so on?
A. Yes, they must have.

Q. Obviously your barrister, Mr Byrne, as we can see from the document, actually witnessed your signature?
A. Yes.

Q. Then is this your understanding: the deed had to be taken away so that it could be signed by the person who was
going to sign for the Marist Brothers?
A. I don't believe - well, I don't recall that being the
case. As I said, I saw that deed for a few minutes, and
I never saw it again until the documents were released from
the Commission.

Q. Are you aware that the deed signed by Brother Thompson
as provincial for the Marist Brothers and also signed on
behalf of the other Marist Brothers party was, shortly
afterwards, sent to your solicitors?
A. Well, I wasn't aware of that because it - it wasn't
forwarded to me with the rest of the case file.

Q. When was the rest of the case file forwarded to you -
at the time or some time later?
A. I can't recall exactly. I'm assuming it was towards
the time when - because I did contact them, before
commencing the Commission process, to ask if they had
a copy of it, and they informed me then that the file had
been destroyed as it was beyond seven years, and I'm
assuming that the rest of that file was forwarded to me at
that time, giving me the option of receiving those
documents or having them destroyed.

Q. Could I ask for tab 63A to be brought up, please.
I want to show you this, Mr [DG]. You may never have seen
this, but it is a letter from Ebsworths to your solicitors
on 8 July, so about three weeks or so after the meeting.
You will see that they are attaching in their letter to
your solicitors the deed of release duly executed by
Brother Thompson and the trustees?
A. Mmm-hmm.

Q. Finally, I want to ask you a couple of questions about
the apology. Do you remember that at the meeting on
18 June, you and your lawyers said that an apology was
something that was important to you?
A. I would have said that, yes.

Q. One aspect of what you were hoping for - is this
right - was that you wanted an apology in a form that could
be made for public consumption because you were concerned
that your identity had become publicly known?
A. Yes, I believe we did mention something about an
acknowledgment, in the public realm, of what had happened.

Q. Would that be why, do you think, the apology in its
terms - and I will come to how it came to be composed -
used your name, "Mr [DG]", in the text of the letter, so
that it was suitable for --

THE CHAIR: I'm not sure how he is going to know how the
author of the letter thought about things.

MR GRAY: With great respect, that wasn't the question.
I will try to put the question more --

THE CHAIR: That's the implication. Are you asking him
whether there was a discussion of a letter in these terms?
If so, put it to him.

MR GRAY: I will be.

THE CHAIR: Then put it to him.

MR GRAY: I will put it to him, your Honour, thank you.

Q. Was there a discussion at the meeting in relation to
your wish that the apology document be able to be used
publicly --
A. I don't recall.

Q. -- that it be phrased in a way that would enable that
to be done?
A. I don't recall, and I don't believe it was ever my
intention to release that apology letter for public
consumption.

Q. Have you seen - and I am not suggesting you have; I'm
just asking - the notes of the CCI representative that are
in the Commission's tender bundle?
A. Most likely I have read most of them.

Q. Do you recall any reference to that topic in those
notes?
A. Not off the top of my head.

Q. Let me ask you this: was a draft of the apology
submitted to your solicitors for their approval?
A. I remember - I recall a note about a draft being
submitted to a solicitor for approval.

Q. If you have a look at tab 61A in the exhibit bundle,
do you see in the second paragraph, beginning "I attach",

Transcript produced by Merrill Corporation
the solicitor, Mr Monahan, is saying to your solicitor:

I attach the revised proposed letter of
apology to [you] ...

He goes on:

As you will note, it has one "typo" in the
last paragraph, but otherwise contains very
little change to your initial proposed
wording.

Do you see that?
A. I do.

Q. Do you agree that the wording of the apology was
initially proposed by your solicitors?
A. That's what it reads there.

Q. Is that your own understanding?
A. It's not my recollection.

Q. Do you see in the next paragraph, Mr Monahan asks your
solicitor:

Could you please let me know as soon as
possible whether this wording is acceptable
to you and your client.

A. I do. I do see that.

Q. Did your solicitor, in fact, run this past you and ask
you if an apology in those terms was acceptable to you?
A. I don't recall.

Q. One way or the other, do you mean?
A. Yes. I don't recall seeing or approving the apology.
I saw the apology that was posted to me.

Q. In the end?
A. I don't recall vetting it with my solicitor, no.

Q. Do you mean by that that you think you may not have
done, or you just don't know either way?
A. I don't know either way. I don't recall - I don't
recall doing it.
Q. At any rate, if we go to tab 62, this is not a letter to or from your solicitors, Mr [DG]; it is an email from Mr Monahan of Ebsworth to the Marist Brothers. Do you see that it says:

... we -

could now had a response from Mr [DG]'s solici tors confirming that they are satisfied with the draft letter of apology in its present form.

A. Yes.

Q. Do you accept that that's what your solicitors did?
A. Yes.

Q. It was after that date, 2 July, that the eventual letter of apology was dated 3 July, which we see in tab 64, if we could just have that. Do you see that that is the sequence of the dates?
A. Yes.

Q. Would you agree, then, in the light of that sequence of letters, that the final apology that we have on the screen of 3 July, tab 64, was in a form of words which your solicitors had told the Marist Brothers was acceptable to you?
A. Yes, I can see that.

THE CHAIR: Do we have the original draft?

MR GRAY: Yes. Well, "original" may not be quite the accurate phrase.

THE CHAIR: Well, that's what I'm looking for. I'm looking for what it was that was the subject of the original, which was said to have been revised.

MR GRAY: No, I don't believe we do. We have the document at tab 61A.

THE CHAIR: I understand that. We have in the handwritten notes the essential elements, but that doesn't tell me at the moment who was responsible for the draft.
MR GRAY: Well, no, true, your Honour, with respect. All we have in that regard, I believe - unless I am corrected - is the reference in tab 61A, in the covering email, to the draft attached to that email containing very little change to Mr [DG]'s solicitor's initial proposed wording.

THE CHAIR: Well, that's what I don't know.

MR GRAY: That's, I believe, the state of the evidence, your Honour.

THE CHAIR: I am sorry, what document are you referring to there?

MR GRAY: Tab 61A is an email, which has a draft attached to it.

THE CHAIR: Yes.

MR GRAY: The facsimile says that the attachment is in a form which contains very little change to Bill Cooper & Associates' initial proposed wording.

THE CHAIR: All I can see is a connection between the essence in the handwritten notes, but not the original draft of the letter.

MR GRAY: No, that's so. There is not, in the tender bundle, the precursor to the attachment to this fax --

THE CHAIR: No. The essential elements of the draft are apparently agreed at the conference. But where the draft came from is not apparent. Anyway, we will see.

MR GRAY: Those are my questions, thank you, your Honour.

MR STEWART: Thank you, your Honour.

<EXAMINATION BY MR STEWART:

MR STEWART: Q. Sir, were you aware at the time of the settlement conference that the Marist Brothers regarded that to be outside of any Towards Healing process?

A. No, I was not. As I said in my statement, I considered that - and perhaps I didn't read all of the documents as closely as I did, but it was my consideration
that we were going down the Towards Healing process because there was no other process available to us.

Q. And that was because of what? In other words, why did you have the understanding that there was no other option available to you?
A. Because of the fact that the legal avenues would be constricted by the fact that there was no conviction of Brother Foster and time duration probably would have played a part and - yes, so those things prohibited a civil claim, as it were.

Q. By "time duration", are you referring to statute of limitations?
A. Yes.

Q. Was that the advice you received?
A. As I recall, that was the advice I received.

Q. So you were not aware that the brothers regarded this as an ordinary civil claim outside of Towards Healing?
A. No, I certainly wasn't, no.

Q. I take it that you still, at that time, had needs for compassion, for caring, for assistance, whether Towards Healing or otherwise?
A. I wanted some closure. I wanted acknowledgment of the truth of the claim and I wanted reassurance that my actions had had a positive effect in removing the person who was a threat to other people - removing the person who had abused me, removing that threat from other people and other children. I didn't receive those assurances, and, as I said earlier, the "substantial truth of the allegations", to me, was not an acknowledgment of the whole truth.

MR STEWART: Thank you, sir. Thank you for your evidence.

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

THE WITNESS WITHDREW

THE CHAIR: Mr Stewart, can we just look at tab 59C. That's the handwritten note. Do we know who the talkers are?

MR STEWART: Yes, your Honour, I believe so.
THE CHAIR: Can you tell me who they are?

MR STEWART: Three lines down, it records who is there. So for what is referred to as "Def", defendant, that's Brother Alexis; "PJM", Patrick Monahan; and Karen Mole of CCI --

THE CHAIR: Who was Brother Alexis?

MR STEWART: He had previously been a provincial some two or three terms prior, but from the beginning of that year, I believe, or possibly the year before, he had been the director of professional standards for the Marist Brothers, not the State director of professional standards, as referred to in Towards Healing, presumably representing the Marist Brothers.

Then for the plaintiff, obviously, Mr [DG]; Sara Loughnan; Mr Michael Byrne, the barrister. One can see his name crossed out and corrected, and the relevance of that will become apparent in a moment.

Then in the margin, the next entry would look to me to be Brother Alexis, "BrA", Brother Alexis. "MD" I take to be Michael Byrne. Presumably the note-taker, who I take to be Karen Mole, had his surname incorrect, which was why there was a "D" and not a "B", but it is corrected later on.

At the bottom of the page is "PJM" - that's Mr Monahan. Over the next page, presumably Brother Alexis. The next one down, "MB", now corrected, will be Michael Byrne.

THE CHAIR: We have him corrected, so that's okay. I think I understand now what is going on.

MR STEWART: That pretty much matches them all.

THE CHAIR: Then in this note, there seems to be a debate about knowledge; is that right? The need for a public apology is made apparent. There was initially a rejection of that suggestion that there could be a public apology. Is that right?

MR STEWART: Yes, that's right.
THE CHAIR: That's PJM saying, "Can't be done". And then there is a reference to, "Wanted to redress his hurt following the glowing eulogy". Do we know what that's all about?

MR STEWART: Yes.

THE CHAIR: We do.

MR STEWART: Yes.

THE CHAIR: Then reference to public injury, but again a rejection, "Can't see the benefit of a general statement" and "will do more harm than good, but we will" - what are the words there? "We will not --

MR STEWART: -- "close our minds", I believe.

THE CHAIR: Again the question of apologising for the eulogy. Then the suggestion of an alternative. What are the words after that? Is that, "Limitation difficulties"?

MR STEWART: "Limitations difficulties/liability for Marists."

THE CHAIR: Then "Reports there were 'clues' re post school activities of his 'prowling' as reported by [redacted] and no-one else" - is that right?

MR STEWART: Yes.

THE CHAIR: And "allegedly 'prowled' late at night and that his 'Superior' was at loggerheads with Brother Foster over this" - is that the way that reads?

MR STEWART: Yes. That came from Michael Byrne, apparently.

THE CHAIR: It was said there was no knowledge. That's "BJA" talking, is it? Is that Brother Alexis?

MR STEWART: BrA, I believe.

THE CHAIR: Then reference to screening processes. Then there is some discussion about settlement and counselling. Is that right?
MR STEWART: Yes, your Honour.

THE CHAIR: Yes. Very well.

MR STEWART: Your Honour, the next witness is Brother Michael Hill.

MICHAEL ANTHONY HILL, sworn: [3.15pm]

EXAMINATION BY MR STEWART:

MR STEWART: Q. Brother Hill, a statement has been produced to the Commission in your name, dated 15 November 2013. Do you have a copy of that statement?
A. Yes.

Q. Is that your statement?
A. True, it is.

Q. Is there any correction that you would like to make to the statement?
A. No.

Q. Is it true and correct?
A. Yes.

Q. Will you state your occupation?
A. I am a Marist Brother, and I am a psychologist currently working at Marist College North Shore in North Sydney.

Q. As I understand it from your statement, from July 1995 to December 2001 you were the provincial of the Sydney Province of the Marist Brothers; is that right?
A. That's correct.

Q. At that time, although not any more, the Sydney Province included Queensland, New South Wales apart from certain far-western areas, the ACT, Papua New Guinea, the Solomon Islands and Cambodia; is that right?
A. That's correct.

Q. The provincial, as I understand it, is the head of the Marist Brothers for the province?
A. That's correct, yes.
MR STEWART: Your Honour, I omitted to tender the statement. I tender that.

EXHIBIT #4-39 STATEMENT OF MICHAEL ANTHONY HILL, DATED 15/11/2013, BARCODED STAT.0079.001.0001_R_M

MR STEWART: Q. Brother Hill, Brother Foster was arrested in March 1999. You knew about that at that time?
A. Yes, I did.

Q. Indeed, the same day, as I understand it, you phoned him and you spoke to him?
A. He phoned me, yes.

Q. He phoned you?
A. And I spoke to him.

Q. He phoned you following his arrest; is that right?
A. That's correct.

Q. As I understand it from your statement, you did not ask him what the basis for the charges was, on which he had been arrested?
A. I didn't, no.

Q. But you assumed, as I understand it, that the charges related to child sexual abuse; is that right?
A. Yes.

Q. What was the basis for that assumption?
A. I knew that there had been an allegation made against Brother Foster, from memory I think it was 1991, and also another anonymous one in 1994, at which stage he was stood down.

Q. He was stood down by the then provincial, Brother Alexis Turton, at that time; is that right?
A. That's right.

Q. Do I understand it correctly, then, you arranged legal representation for Brother Raymond Foster?
A. I suggested to him that he contact a particular solicitor to represent him.

Q. You referred him to someone?
A. Yes.
Q. Also that same day, you then drove to Mittagong, where he was, in order to meet with him, Brother Raymond Foster?
A. Either that same day, or it might have been the following day; I don't recall.

Q. At that time, did you ask him about the charges?
A. No.

Q. You were the provincial at that time, as I understand it?
A. Yes.

Q. You were responsible for the Sydney Province and all its brothers?
A. Yes.

Q. And obviously including Brother Foster?
A. That's correct.

Q. Did you not need to know the nature of the charges in order to be able to --
A. Being a police matter, I really couldn't appear to be interfering with a police matter, and, in any case, I expected to know the details once they came out in court, which was three days later. That's what I was anticipating.

Q. At that time, or indeed at any time, it wasn't only a police matter; Brother Foster remained a Marist Brother and doing Marist Brothers duties at that time; is that right?
A. Yes.

Q. In order for you, as provincial, to decide whether he should continue with those duties or whether he posed any risk in his position, surely you would have needed to know what the charges were and what the basis for them was?
A. At the time, he was not a risk to children because he was - he had been stood down five years beforehand from working with children.

Q. He had been removed from his teaching position?
A. That's correct.

Q. And he was in some form of administrative role; is that right?
A. That's right, yes.
Q. But not a role where he was isolated from children entirely, or from young people?
A. No, he had no contact with children.

Q. He would be able to have no contact with children in that position?
A. No.

Q. Did you apply your mind at that time, when he faced those charges on 18 or 19 March 1999, as to whether you should do anything about the position that he was in?
A. I don't understand the question.

Q. At the time you became aware that he was facing charges and you assumed their nature to be concerning child sexual abuse, did you apply your mind, in other words, think about, whether you should do anything with regard to his current position and his current duties?
A. Well, not being in contact with young people, no, the question didn't occur to me. There was no need.

Q. Having been stood down from his teaching position, which had happened some five years previously, in August 1994, was Brother Foster still able or allowed to wear clerical dress?
A. He was. Well, we don't wear clerical dress, but, yes, there is a type of dress, and he was, yes.

Q. What is the type of dress?
A. It is called a soutane, with a cord around the waist.

Q. A cord?
A. Yes.

Q. So only a cord; there would be no other form of dress, which would identify a Marist Brother as a brother?
A. No.

Q. But he could continue to wear that?
A. Yes.

Q. Tell us about this place where he was at Mittagong - what form of institution or centre was it?
A. It had many functions at that time, two major ones. One, it was a retreat centre for school groups, and there was an administration wing, which had nothing to do with
the retreat centre. He was in the administration wing.

Q. Did you satisfy yourself as to procedures being in place to ensure that someone working in the administration wing was isolated from the school or children's groups that came there?
A. It was not perceived to be a risk.

Q. Did you apply your mind to it at that time?
A. Yes, yes.

Q. Why was it not perceived to be a risk? What were the facts on which you arrived at that conclusion?
A. Because the two different types of activities at the centre were totally separate.

Q. Was there someone at the centre who was, as it were, in charge?
A. Yes.

Q. Who was that?
A. At that stage it was a man called Brother Coman.

Q. Would you mind spelling that surname?
A. C-O-M-A-N.

Q. I take it that is the surname?
A. No, Sykes was his surname. S-Y-K-E-S.

Q. Brother Coman Sykes?
A. That's right.

Q. Whilst Brother Foster worked at that centre, did Brother Sykes know of the history of allegations against him in order to --
A. He did, yes.

Q. He did know?
A. Mmm.

Q. When Brother Foster was arrested in March 1999, was Brother Sykes made aware of the fact of him having been arrested?
A. I recall speaking to him when I went down to Mittagong, and we did discuss that, yes.

Q. And did you discuss your assumption as to the nature
of the charges?
A. Yes.

Q. In paragraph 30 of your statement - perhaps that can be brought up - in the first sentence, you say:

At around the time he received the 93/94 Complaints, Brother Turton -
who was the then provincial -

mentioned to me that he had received them ...

You were the vice-provincial at that time; am I right?
A. That's correct.

Q.

... and also told me that Brother Foster had made some sort of admission to him about one or more of the 93/94 Complaints.

Do you recall what that admission was?
A. No, I don't.

Q. It was only some days later that Brother Foster committed suicide. As I understand it, you, on hearing the news, immediately returned to Mittagong; is that right?
A. That's correct, yes.

Q. And you are quite satisfied that he did commit suicide?
A. Oh, yes.

Q. He left you a note explaining his actions?
A. Yes.

Q. That's at tab 13. Perhaps that can be brought up. I will give you a chance to read it.
A. I am familiar with it.

Q. You are then familiar, of course, at the foot of the note, where Brother Foster recorded:

I bear no ill will against the person who
had me charged as he had every right to do
so and I ask his forgiveness if he would be

Transcript produced by Merrill Corporation
so kind.

I will refer to that as the apology and reassurance. Did you at that time seek to contact the complainant in the case, who we now know as [DG]?

A. I had no idea of [DG]'s identity at that time.

Q. Did you make any effort to ascertain his identity?

A. At that time, no, because it had been in the hands of the police, and I presumed - as I said, I had assumed that had he not committed suicide, I would have discovered the identity of [DG] after the court proceedings.

Q. So you received this note from a dead man, recording that he bore no ill will to the person who had laid a complaint against him and apologising, but you didn't seek to identify who that person was in order to pass on that reassurance and apology?

A. At the time, I could not see how I could do that.

Q. You could have asked the police, presumably?

A. Would they - well, I assumed, but perhaps incorrectly, that there would be no point in asking the police, because it had been their investigation.

Q. They would obviously know the identity of the complainant.

A. Yes.

Q. Did you seek to ascertain whether the complainant was one of the complainants from the prior complaints that had been made directly to the Marist Brothers in the period 1991 to 1994?

A. Well, it certainly wasn't the one - the first one, with the 1991, and we didn't know the identity of the second one, anyway; it was an anonymous phone call.

Q. My question was, did you seek to ascertain whether or not the complainant in relation to the criminal charges was one of the people who had complained directly to the Marist Brothers previously?

A. No, I did not make that connection.

Q. We are talking about 1999. That was, of course, three years or so after the first Towards Healing process had been introduced?

A. Yes.
Q. You were in fact very involved in the development of the first Towards Healing, weren't you?
A. Yes.

Q. Perhaps you can explain which committee were you on?
A. It was called - still is - the National Committee for Professional Standards. It was a committee set up jointly by the bishops of Australia and the leaders of religious institutes.

Q. That's the committee you were on?
A. Yes.

Q. You will have been aware, then, of course, that in that 1996 Towards Healing document, as in the subsequent editions, there is a recognition of the severe consequences of sexual abuse of minors?
A. True.

Q. And that they can feel guilty - perhaps we should just call this up. This is in the general tender bundle, which is exhibit 4-1, tab E, on page 2, which is Ringtail reference 0110. Paragraph 4. You will read there:

Victims of sexual abuse can experience fear, shame, confusion and the violation of their person. They can feel guilty, blame themselves and take responsibility for what has happened.

In the context of your knowledge of that, should you not have followed that up, in order to give comfort to the person who had complained and the consequence of that complaint had been the suicide of the accused?
A. I was certainly quite concerned for the, at that stage unknown, person, but I did not see any way of being able to determine his identity.

Q. But you didn't make any effort - you didn't ask the police, for example, whether they would be prepared to give you his identity or pass on --
A. No, I didn't.

Q. Subsequently, when you came to learn of the identity and that it was, indeed, Mr [DG] and you corresponded with him and met him and his wife --
A. Yes.

Q. -- in Queensland, you didn't at that time pass on the apology and reassurance, either?
A. I don't know.

Q. Can we look at Mr [DG]'s statement, if it can be brought up, at paragraph 20. You will see that one of the issues raised by [DG] is that he says:

What really upset me at the time was that some Marist Brothers were quoted in newspapers from my home town as saying that Brother Foster hadn't committed suicide, but had died of natural causes and was a wonderful man.

Now, you deal with that in paragraph 50 of your statement. Perhaps we can have a look at that. You will see you say there that you:

... became aware on or about 24 March 1999 that one of the Brothers from the Marist Centre in Mittagong had been contacted by a journalist, and had made comments to that journalist along the lines of those stated by Mr [DG] in paragraph 20 of the [DG] statement.

In other words, that "Brother Foster had not committed suicide" and also that "he was a wonderful man". Obviously, that statement that Brother Foster had not committed suicide and had died of natural causes was false?
A. That was false, yes.

Q. Of course, it was made by one of the brothers under your responsibility as provincial of the Marist Brothers?
A. Correct.

Q. It was made by a priest, who one, I suppose at least as much as anyone else, would expect not to be untruthful to the press?
A. Yes, it was made by one of the brothers at Mittagong.

Q. You would accept that victims of abuse, and in particular the particular victim in this case, would likely feel distress at reading such an untruth?
Q. What steps did you take to publicly correct that untruth?
A. Firstly, I contacted the brother at Mittagong and told him he wasn't to have any further communication with any journalists. I then phoned media outlets that I was aware of who had published the statements to correct the record, several of them.

Q. Those contacts to the press, I take it, were not in writing?
A. No, immediately, over the phone.

Q. What did you say to them? What was the substance of what you said to them?
A. I'm sorry, I missed that?

Q. What was the substance of what you said to the journalists whom you contacted or the media outlets whom you contacted?
A. I told them that the statement that they had published was false, that he had committed suicide.

Q. Did you put out a public statement on behalf of the Marist Brothers as to what the true position was?
A. No, I contacted the media outlets directly by phone to stem it immediately.

Q. So that would have the anticipated effect of correcting the facts but not recording the Marist Brothers' position in relation to that or an apology in relation to the false information?
A. That's correct.

Q. If one goes to tab 16 of the tender bundle, 4-38, if I'm not mistaken, this is the second of a few circulars that you put out, addressed to the brothers. I take it that the circulation for that was to Marist Brothers and not intended to be beyond that?
A. That's correct, yes.

Q. You addressed various things in relation to the events that were then occurring, but in particular I would like to take you to the second page. At the top of that page, if you read the first two sentences, and then you see it says:
After putting the pieces together I can tell you that it is almost certain that the Queensland police contacted Broken Rites, a self-proclaimed victims support group with headquarters in Melbourne.

Broken Rites, to your knowledge, is a victim support group, is it not?
A. Yes.

Q. Did you intend some facetiousness in describing them as "self-proclaimed"?
A. That's the way I saw them.

Q. You would accept, Brother Hill, that it is important for victims to have support?
A. Yes.

Q. And that victims may very well, and possibly best, be able to support each other, understanding each other's experiences?
A. I understand that.

Q. If you go to the previous tab, tab 15, it is the press release from Broken Rites that you refer to. Is there anything inaccurate in that?
A. No - certainly not in the part that I have got in front of me.

Q. Perhaps it can be scrolled down.
A. Keep going. There was one that did take my eye when I went through it recently. Okay. As I'm looking at it, the second-last - second from the bottom asterisk:

Brother [redacted], 73, of the Marist Brothers, died "suddenly" in Victoria ...

et cetera - you mentioned the word "facetious". I would see that as a facetious remark.

THE CHAIR: Q. Was it correct?
A. No, it wasn't - oh, sorry, yes, it was correct.

Q. It was correct?
A. Yes, he died suddenly of a heart attack.

MR STEWART: Q. Brother Hill, these matters covered in
the statement, are they not matters of public importance
and public interest?
A. The question again, please?

Q. These matters covered in this statement, this press
statement, do you not see them as matters of public
importance?
A. They are of public importance, certainly.

Q. And public interest?
A. Yes.

Q. I discern you having at that time been critical of
Broken Rites for publishing that. Are they not legitimate
in bringing these matters to the public attention?
A. By all means, but to suggest that he didn't - that the
veracity of the statement there is under question was
simply not true.

Q. Well, I understood you to have said that the statement
is true. Your complaint is with what you perceive to be
facetiousness in the use of the word "suddenly" in inverted
commas?
A. Yes, by "suddenly" in inverted commas.

Q. But not that it is factually inaccurate?
A. That's right.

Q. There seems to be an unexpressed complaint by you, in
your circular that we were looking at, at tab 16, about the
press statement about Broken Rites. This is now your
opportunity: what is that complaint?
A. Could I see the statement, please?

Q. Tab 16. It is your circular to the brothers on
29 March 1999. It is really on page 2.
A. Yes. As I look at it now, I can only say that it was
done very quickly, yes.

Q. Because, you see, some may be left with the impression
that your concern at that time was more with protecting the
reputation of the Marist Brothers than in ensuring that)victims got support and that the truth was out?
A. I can understand it being interpreted that way. At
the time I wouldn't have seen myself as actually doing
that.
Q. If we look at the general tender bundle, that is exhibit 4-1, tab E again, you will recall that [DG]'s first letter to you, claim letter, was in January or February 2000, and there was a Towards Healing document, being this one we are looking at, tab E, from December 1996, and then the next one was from December 2000. So in early 2000, you would accept, I take it, that it was the 1996 document that was the applicable document; is that right?
A. Was that --

Q. Am I right in understanding that the Towards Healing principles and procedures in this document were intended to apply to all church bodies in responding to complaints of child sexual abuse?
A. True.

Q. I take that from the introduction, and perhaps we can go to that, on page 1, Ringtail 0109. You will see in the second paragraph, in the second sentence:

The first part names the principles that must form the basis of the Church's response to complaints of sexual abuse.

The second part details the procedures to be followed in particular cases.

If we could now go to page 6, clause 1.3, Ringtail 0114, paragraph 1.3:

These procedures are intended to apply to all complaints of sexual abuse by Church personnel, whether they be clerics, religious personnel, lay employees or volunteers.

Then on page 7 there is a definition of "Church body". Do you see that?
A. Yes.

Q. "Church body" includes a diocese, religious institute and any other juridical person, body corporate, organisation or association ... I take it that the Marist Brothers would fall within that definition?
A. True.

Q. I take it, then, as provincial at that time, and particularly given your experience in formulating this very document, your understanding would have been that any complaint in 2000 was to have been handled under these procedures - the Towards Healing procedures?
A. No. No, at this stage, it wasn't - it was not a Towards Healing matter.

Q. Well, are we talking about the first letter that you received?
A. (Witness nods).

Q. Perhaps we had better look at that. It is at tab 17 in the tender bundle 4-38. Just to give you some context, you will see that the letter - if we just scroll down a little bit - is dated on that page 29 January 2000. It is recorded as having been received on 6 March 2000. I take it that is at Drummoyne?
A. That's true. Yes.

Q. I'm not sure how you describe it - Provincial House; is that right?
A. Provincial House, yes.

Q. The gap between those dates might be explained not by the postal service, but if we turn over the page, going to the top of the next page, you will see there is a date February 29, 2000. Perhaps that's the date of the letter, rather than the one on the previous page. But in any event, this letter is now, you accept, Mr [DG] writing to you outlining his complaint?
A. Yes.

Q. That's then a complaint of child sexual abuse?
A. True, yes, with a big difference.

Q. Well, I will come to the difference in a minute - by a Marist Brother?
A. Yes.

Q. Why would that not be a complaint which should, from your perspective, be dealt with under Towards Healing 1996 edition?
A. It doesn't become a Towards Healing matter until the victim chooses that course.
Q. Well, we have just been to - Brother Hill, doesn't this document say in 1.3:

These procedures are intended to apply to all complaints of sexual abuse by Church personnel ...

et cetera. In other words, the principles and the response, initial at least, apply to all complaints?
A. True, yes.

Q. So your response to the complaint should have been within this framework?
A. In terms of principles, yes. The procedure, not yet.

Q. I appreciate that may depend on some choices ultimately made by a complainant, but if we start at the beginning, when one receives a complaint, this is the framework in which church bodies, including the Marist Brothers, should deal with it?
A. True.

Q. And these are the principles that should be applied to it?
A. Yes.

Q. If we go back to that document, so we are looking at tab E in the general bundle, exhibit 4-1, clause 4.6, which is on page 9, Ringtail 0117. I'm sorry, we will just go back up to 4.1:

If a complaint of sexual abuse against Church personnel comes to the notice of any member of the Church, he or she shall take contact details and immediately ... refer the matter to a Contact Person.

Was there at that time a designated contact person within the Marist Brothers?
A. There was, yes.

Q. Who was that at that time?
A. There were several. There were several.

Q. At the foot of the page, 4.6, it says:
The Contact Person shall provide written notes of the details of the complaint in the form of a report to the appropriate Church authority and these notes are to be confirmed by the signature of the complainant.

As the provincial, I understand you were the church authority; is that right?

A. That's correct, yes.

Q. So in following these procedures, on receipt of the complaint on 6 March 2000, it should have been referred to a contact person?

A. No, in this case, no, because there was no debate as to the facts of the matter. The contact person makes the initial contact in order to prepare for an assessment in the Towards Healing process.

Q. Isn't the contact person to ascertain what the facts of the matter are and what the needs of the victim are; isn't that the role of the contact person?

A. (Witness nods).

Q. That's what it said in 4.6:

The Contact Person shall provide written notes of the details of the complaint in the form of a report to the appropriate Church authority ...

And if we scroll down:

The Contact Person shall forward the report promptly to the appropriate Church authority. If necessary, a recommendation may be made ...

And then "Assessment" follows after that?

A. Yes.

MR STEWART: Your Honour, it is my intention to move on to dealing with something which will take a little bit of time.

THE CHAIR: All right. Just before we adjourn, then, can we go to tab 10.
Q. It is your interview with Mr Foster in 1996. These questions may not be relevant to what we are looking at, but I would like to understand. Do you see at the beginning of the second paragraph, you say:

I asked him directly about how the dysfunctional elements of the community affect him.

Do you see that?

A. Yes.

Q. What did you mean by "the dysfunctional elements of the community"?

A. Your Honour, there were two other members of that community who I believed were dysfunctional personalities.

Q. In the sense that they weren't coping with life or --

A. One of them was a difficult person to live with, and most others in the community would have found that, including Brother Foster.

Q. What is the reference to the "superiors conference"; what's that all about?

A. At the time, one of the challenges I, as provincial, faced was dealing with what was coming across as disbelief, a sense of, you know, this is a media beat-up - this is among the brothers.

Q. About what?

A. About the sexual abuse and our role in childhood sexual abuse.

Q. So you were dealing with what amongst the brothers?

A. Denial.

Q. Denial?

A. Yes.

Q. In what sense?

A. That many brothers - well, "many"? Certainly a number of brothers felt that what they were reading in the media was exaggerated or just simply not true, and I saw it as my role to dispel that, and I started with the community leaders, the superiors.
Q. Was Brother Foster one of the superiors?
A. He had been.

Q. So he was at this conference of the superiors?
A. Yes.

Q. Why were you concerned about how he may have reacted?
A. Robert Grant was an expert in trauma, actually, and he was pretty hard-hitting, and knowing that Foster had been an abuser, I was interested from the pastoral point of view as to how he was coping with that.

Q. Then down the bottom of the note:
My overall impression is that Ray is coping reasonably well in what can be a very difficult situation in the community.

What were you meaning there?
A. Just the same as the previous mention of dysfunctional elements - the very difficult situation in the community.

Q. Were there other abusers in this community?
A. No.

Q. He was the only one?
A. Yes.

THE CHAIR: Very well. We will adjourn until 10 o'clock in the morning.

AT 4 PM THE COMMISSION WAS ADJOURNED TO TUESDAY, 17 DECEMBER 2013 AT 10AM
inherent [t] - 3069:33
initial [t] - 3089:37, 3095:19, 3095:38, 3118:10, 3120:6, 3120:23, 3138:10, 3139:17
initialising [t] - 3090:47
initiative [p] - 3063:3, 3063:6
injury [t] - 3123:13
inquired [t] - 3050:45
inquiries [t] - 3099:24
instance [t] - 3100:25
instance [t] - 3039:10, 3039:12, 3039:24, 3068:28
instead [p] - 3099:19, 3103:8
institute [t] - 3136:42
institutes [t] - 3131:10
institution [t] - 3127:44
Institutional [t] - 3092:4
INSTITUTIONAL [t] - 3035:12
institutions [t] - 3093:3
instructed [t] - 3096:22
instructions [t] - 3091:1, 3096:1, 3096:46, 3110:43, 3113:16
Insurances [p] - 3079:20, 3079:24

.16/12/2013 (29)