ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

Public Hearing
(Day 30)

Level 17, Governor Macquarie Tower
Farrer Place, Sydney

On Tuesday, 17 December 2013 at 10.00am

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

Counsel Assisting: Ms Gail Furness SC
                   Mr Angus Stewart

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THE CHAIR: Yes, Mr Stewart.

MR STEWART: Thank you, your Honour. I believe Brother Hill will continue as a witness.

THE CHAIR: Come forward, please.

<MICHAEL ANTHONY HILL, on former oath: [10.02am]

<EXAMINATION BY MR STEWART CONTINUING:

MR STEWART: Q. Yesterday afternoon, Brother Hill, we were addressing the first letter of complaint that you had received from the complainant, [DG]. That's at tab 17 of the tender bundle, 4-38. You will remember that's the January or February 2000 letter that you received?
A. Yes, I do.

Q. If I recall correctly, you accepted, of course, that this was a complaint in relation to child sexual abuse?
A. Yes.

Q. And you accepted, if I recall correctly, that it should have been dealt with under the 1996 Towards Healing protocol?
A. No. Only if the victim chose that course of action.

Q. I have taken us back to that deliberately, because that is perhaps something which needs some clarification. That protocol - we would need to call it up, then - is at tab E in the general tender bundle, 4-1. Perhaps that can be called up. In particular, at page 6 of that document, which is 0114, paragraph 1.3, you will read that, Brother Hill:

These procedures are intended to apply to all complaints ...

And you agreed that the Marist Brothers was a church body?
A. Yes, yes.

Q. And no question of these being applicable only in the event that the complainant chose them appears in this document?
A. Again, I make the distinction between principles and procedures. The principles apply to all complaints; the procedures apply if the complainant chooses that course of
action. There are other avenues open to him.

Q. Yes, well, you will see that this is the procedures, if we just scroll up to show the heading, "Procedures". This is part two of the document. This is the document you participated in drafting, as I understand?
A. That's correct.

Q. Part one is the principles?
A. That's right.

Q. Part two is the procedures?
A. Yes.

Q. This says on its face, at 1.3, it applies to all complaints of sexual abuse?
A. My understanding is that only applies when the complainant chooses to go ahead with the Towards Healing protocol.

Q. Brother Hill, that may be your understanding, may have been your understanding, but I am suggesting that on the terms of this document, this is what should have governed your response to this complaint?
A. My understanding is no, for the reasons I have already given.

Q. The only reason you have given is that it is your understanding, but you haven't pointed to anything else to indicate the basis for that understanding?
A. The basis is that, as you noted, I was involved in the drafting of this protocol, and that was our understanding - I am quite confident in saying this, that it was our understanding at the time that while the principles apply to all complaints, the actual procedures of the Towards Healing protocol only come into effect if that's the avenue of action that the complainant chooses. Now, if I am misunderstanding that, then obviously I'll have to accept that, but that is my honest recollection of the formulation of the document originally.

Q. Could we go to 4.1 in that document, on page 0117 in the Ringtail reference:

If a complaint of sexual abuse against Church personnel comes to the notice of any member of the Church, he or she shall take
Then the process is set thereafter. You obviously agree there is nothing in there which indicates some choice?
A. I can only repeat what I have already said, that my understanding - and I am quite confident it was the understanding of the committee at the time - is that here we are into the actual details of the procedures, and, in this particular case, they don't apply.

Q. If I can take you, Brother Hill, to tab D in that same bundle, which is the 2000 Towards Healing document, so, in other words, the next iteration or version of it, at Ringtail 0088, page 11 of the document, at 36.1, you will see this is the equivalent clause, but it does have a difference, and perhaps this is what you are thinking of now:

If a complaint of abuse comes to the notice of any Church personnel and the person who has made this complaint wishes to invoke the procedures outlined in this document, the Church personnel shall refer the matter to a Contact Person as soon as possible.

A. Yes.

Q. So you will see a change came about between the 1996 and 2000 versions, where this provision of the process from 36 onwards being applied, applied if the complainant expressed that wish?
A. That's correct, and the reason for the change is that, by then, we had become aware of the - an ambiguity in the 1996 draft.

Q. There is no ambiguity, though, is there? We looked at the wording a moment ago. It just says that this is the process that shall be followed. At 4.1:

If a complaint of sexual abuse ... he or she shall take contact details and immediately ... refer the matter ...

What I suggest, Brother Hill, is that when you sit here now and you say that was your understanding back then, you are
perhaps thinking of the later document and, at the time, it was quite clear, on the wording of the protocol, that it applied and you should have followed that procedure?

A. In this case, that's simply not true. The complainant had already taken his course of action. He had done what we prefer victims to do - he had gone to the police and that process had already been started.

Q. Yes, he had gone to the police.
A. That's correct.

Q. Charges had been brought. There was going to be extradition. The abuser had committed suicide. Now, many months later, he is writing to set out his claim?
A. Yes.

Q. And that should have been dealt with in accordance with the Towards Healing protocol?
A. Again, no.

Q. What you did in fact appears at the tender bundle 4-38 at tab 18. You wrote almost immediately - you will recall you had received the complaint on 6 March. On 7 March you sent it on to Mr Howard Harrison, a solicitor at Carroll & O'Dea; is that right?
A. That's correct, yes.

Q. Carroll & O'Dea, and Mr Harrison in particular, were the Marist Brothers' regular solicitors?
A. That's correct.

Q. They dealt with many of these kinds of claims? You will have to speak, not merely nod, Brother Hill; otherwise, your assent or agreement won't be picked up for the transcript.
A. I'm sorry, that's correct. Yes.

Q. Was that your usual practice, to refer complaints immediately to the solicitors?
A. It was, yes.

Q. Then the next tab, 19, you weren't party to it, but the solicitors referred it immediately to your insurers, Catholic Church Insurances Limited. You will see that?
A. I can see that, yes.

THE CHAIR: Q. Brother Hill, the course that you
followed of referring it immediately to the solicitors
I think you say was your usual response; is that right?
A. That's correct, yes, yes.

Q. How many would you have referred to solicitors when
you had that job?
A. Over the course of six years, about 15. I'm sorry, no, less than that - 12.

Q. Were there any complainants who came to you who you
didn't refer to the solicitors?
A. To the solicitors? I'm sorry?

Q. Were there any complainants who wrote to you or came
to you who you did not refer to the solicitors?
A. No.

Q. Why was that course taken in every case?
A. It was part of the way that we dealt with it, your Honour.

Q. You accept, I assume, that that immediately throws you
into a lawyerly context?
A. That's correct, yes.

Q. Do you think that's the best way to help people who
come to you with a complaint of abuse?
A. It was part of our initial response, your Honour - I mean, to inform Carroll & O'Dea, the solicitors, and at
the same time try to arrange a meeting with the complainant.

Q. With the solicitors present?
A. No, they weren't.

Q. So you would tell the solicitors, expecting them to do
what?
A. To be aware - first of all, to be aware of the complaint.

Q. And after that?
A. After that, it depended on the response of the complainant and the course of action that he or she wished
to take.

Q. You had better explain that to me?
A. Okay. As I say, our preference all along was that the
preferred course of action would be for the complainant to take the complaint to the police. Right? If they, for whatever reason, chose not to do that, then we would offer them the Towards Healing protocol. If they accepted to undertake that protocol, then we would follow the procedures accordingly, according to the document, Towards Healing.

Q. Why were the solicitors involved?
A. As I recall it, it was just part and parcel of the procedure.

Q. I'm not sure that I understand what role they were supposed to play?
A. First of all, to be informed of the complaint.

Q. I understand that, but that doesn't tell me anything. What were they supposed to do?
A. At this stage, nothing.

Q. At what stage were they supposed to do something?
A. Well, as we moved towards some form of mediation, then I would take the advice of the solicitors as to how best to set that up.

Q. What sort of advice would you be looking for from the solicitors?
A. Place, a suitable mediator, matters such as those.

Q. So you left the administration of the process in the hands of the solicitors?
A. No - well, I obviously had to take responsibility for the administration of it, but I wanted advice from the solicitors to make sure I was following correct procedures from a legal perspective.

Q. What was the legal perspective involved?
A. Well, not being a lawyer, your Honour, I honestly don't know, but I felt at the time - and by then, it had become our standard practice that the solicitors be advised of the course of action we were attempting.

Q. So that they could tell you what procedure you should follow?
A. Not necessarily, no; they could make suggestions and then it was up to me, as the provincial, whether or not to take their advice.
Q. Did you always take their advice?
A. No.

Q. In what circumstances would you reject it?
A. If I believed that the response being suggested was not going to be helpful in terms of healing, if I felt that the course of action being suggested was not going to lead to a demonstration of some sort of compassionate understanding of the complainant, then I would not take it.

Q. Can you tell me what sort of advice you might have rejected, to illustrate what you are saying?
A. Off the top of my head, your Honour, I can't. I can't think of a specific example, no.

MR STEWART: Q. Brother Hill, by way of example, did you take advice on whether you were following Towards Healing appropriately - the Towards Healing protocol?
A. In my mind, it was up to the complainant to choose to take that course of action or not.

Q. Did you seek advice on the proper interpretation of the Towards Healing protocol as to whether it bound you to follow a particular procedure or not?
A. I'm sorry, the question is?

Q. Did you seek advice on the proper interpretation of the Towards Healing protocol as to whether it bound you to follow a particular procedure or not?
A. Not from the solicitors, no.

Q. But the solicitors did more, didn't they - they actually drafted your response to complainants?
A. No.

Q. Well, in this case, they did. Tab 21 of volume 4-38. Here we have a facsimile addressed to you from Carroll & O'Dea, and you will see:

We enclose herewith draft letter to be sent to Mr [DG].

Then over the page is the draft letter. It should still be at tab 21. In the first paragraph, there is a reference to the letter received from the complainant, Mr [DG], and the draft is then saying for you to say:
I was saddened to read of your experiences ...

And so on:

The Towards Healing Resource Group in Brisbane do provide a mediation facility which we could look at.

Alternatively, you may have a solicitor acting for you.

Now, that was drafted by Mr Harrison for you?
A. That's correct. But the first sentence, the second sentence and the final sentence were not contained in the suggestion I received from Carroll & O'Dea. They're mine.

Q. This is from Carroll & O'Dea. This is Carroll & O'Dea's draft.
A. From memory, I think it's only the middle part of it, the "Towards Healing Resource Group" and "Alternatively, you may have a solicitor acting for you."

THE CHAIR: Can we get the hard copy?

MR STEWART: Perhaps we can show Brother Hill the hard copy.

Q. You will see, Brother Hill, in the bottom right-hand corner of that second page are Mr Harrison's initials, "HGH"; he was the drafter of that document. "RLF" is doubtless his PA or secretary.
A. When I looked at this some weeks ago, I saw the difference between the short letter that I received from Carroll & O'Dea and the letter that I forwarded to [DG].

Q. We will get to the letter you forwarded in a moment, but the point is here you have a draft at your request, from Mr Harrison to you, suggesting this is how you should respond to the complainant?

MR GRAY: I object to the words "at your request".

THE WITNESS: This is not the letter that I --

MR GRAY: I object to the words "at your request" in the
question.

THE WITNESS: This is not the one --

THE CHAIR: Why?

MR GRAY: Because that's not the fact.

THE CHAIR: Isn't this the advice from the solicitors that was sought?

MR GRAY: No.

THE CHAIR: That's how I had understood it. Why would solicitors write if it wasn't advice that was sought?

MR GRAY: All that has been put to Brother Hill --

THE CHAIR: No, no, let's be real about this: why are the solicitors writing unless they are responding to a request for advice? They don't just write out of the blue.

MR GRAY: No, Brother Hill wrote to them enclosing the material he had received. He didn't ask for anything.

THE CHAIR: So the solicitors, of their own volition, sent back a draft letter?

MR GRAY: That's the evidence.

THE CHAIR: I understand what you are saying.

Q. You asked Carroll & O'Dea to help you in the matter, did you not?
A. Yes, that's correct.

Q. They wrote back to you to help you and advise you what to do; correct?
A. That's correct.

THE CHAIR: Thank you.

MR STEWART: Q. You accepted, even on your understanding, Brother Hill, that the 1996 protocol principles applied immediately, whether or not the complainant had indicated any preference for Towards Healing?
A. In this particular case, having taken the course of action of going to the police, that automatically takes it out of the Towards Healing protocol.

Q. No, Brother Hill, that can't be the case because the protocol covers all complaints, whether there have been police complaints or not, and when police matters have come to an end, then the protocol applies?
A. If a police matter has come to an end, that's correct, yes. It applies if the complainant chooses to take that course of action.

Q. Brother Hill, we have been down that track already. Leaving the procedures to one side, your answer earlier was that your understanding was that the procedures didn't apply unless the complainant made an election?
A. That's correct, yes.

Q. I have sought to demonstrate why that understanding was wrong, but we will leave that to one side. You accept that, leaving the procedures aside, the principles applied, no matter?
A. That's correct, yes.

Q. And one of the principles is, at principle 15:

A compassionate response to the victim must be the first priority in all cases of abuse.

You accept that?
A. I do, yes.

Q. Indeed, even if it wasn't in a protocol, one would expect that of a body such as the Marist Brothers, which has a pastoral and caring attitude to people of the world?
A. That's correct.

Q. Would that be right?
A. Yes.

Q. And, in particular, to people who have been at Marist Brothers institutions; would that be right?
A. Absolutely, yes, correct.

Q. And people who have been in Marist Brothers schools, where they have received treatment of which they now
complain of serious child sexual abuse; is that right?
A. Yes, that's right.

Q. Whether or not the principles applied, one would expect the Marist Brothers to respond compassionately; is that right?
A. Correct, yes.

Q. This letter that Mr Harrison drafted - would you characterise that as a compassionate response?
A. It's the initial contact I had with [DG]. So the second sentence there, "I was saddened to read of your experiences" - and I was. I mean, that's - "and the problems that have resulted therefrom", and then the final one:

Perhaps you could contact me to discuss how we best go forward to look at some form of resolution of these painful issues ...

et cetera. My desire at the time was to meet with this person as soon as possible.

Q. Brother Hill, let's look at the letter you actually signed. That's at tab 22. I will give you a chance to read that.
A. Yes. I have read it.

Q. You agree, of course, that this gives no information to the complainant about Towards Healing other than that there is a resource group that can be contacted?
A. This, as I say, is my first contact with the complainant. In terms of a compassionate response, first of all, I did take it seriously.

I wish to assure you that ... and I will endeavour to assist in the process of bringing matters to a satisfactory resolution.

I meant every word of that.

Q. Then you gave essentially two options. You said:

The Towards Healing Resource Group in Brisbane do provide a mediation facility ...
Alternatively, you may have a solicitor ...

Your expectation was that the complainant was now to choose between these options; is that right?
A. That's correct, yes.

Q. On the basis of what information was it your expectation that the complainant would make that choice?
A. My experience at that point was - there were a number of things involved. First of all, I wished to, first of all, show that I was genuinely saddened, and that's best done in person, not in writing. Secondly, I wanted to respond to him as best I could and as soon as possible, without appearing to be pressuring him in any way.

Q. Can you help the Royal Commission understand why these two alternatives are mutually exclusive? In other words, why could a complainant not have a solicitor and pursue Towards Healing?
A. At that time, if the person chose Towards Healing, then there was the set of procedures to be followed.

Q. Those didn't exclude having a solicitor?
A. It doesn't exclude having a solicitor, no.

Q. Exactly. The Marist Brothers, we have already looked at - you had a solicitor from the outset?
A. Yes.

Q. And this conveys to the person who has written to you that he has a choice: either he follows the Towards Healing protocol, such as it is referred to, or he gets a solicitor, but not that he can do both?
A. I agree that's how it reads, alternatively, yes. But in reality, it didn't exclude both possibilities occurring simultaneously.

Q. And why not give him some information about Towards Healing - what does this mean?
A. I intended to do that when I met with him.

Q. The letter doesn't talk about meeting; it just says:

I look forward to hearing from you.

The implication being, "I look forward to hearing from you as to your choice"?
A. That's right. That's correct, yes.

Q. I suggest that a compassionate response would be one that at least would provide proper information allowing the complainant to assess his options?

A. Again, I say that I believed at the time - and I think I still do - that that's better done face to face, in person, rather than pen off a whole lot of words.

Q. At tab 25 is [DG]'s response to you, where he thanks you for your letter. He says:

I have been open in my submission and now require the same from you. I expect consideration of the many negative events and their sequelae detailed in my submission.

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

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

There is nothing in there to indicate that Mr [DG] did not want Towards Healing; do you agree?

A. Insofar as:

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.

Q. Yes, that's what it reads, but in what way does that indicate a choice not to pursue Towards Healing?

A. The way I interpreted it at that time is that perhaps he does not want to go into a church-sponsored process.

Q. Well, he says he wants to meet?

A. Yes.

Q. As soon as can be arranged?
A. And that was my wish as well.

Q. And he wants to meet with the person who is empowered to liaise on behalf of the Marist Brothers?

A. That's true, yes.

Q. That's entirely consistent with Towards Healing, isn't it, to have a meeting?

A. It is. It is, yes.

Q. To face the church authority?

A. Yes, that's correct.

Q. So this is entirely consistent with Towards Healing, not against Towards Healing?

A. And at that stage - I'm not saying it was against Towards Healing, but at that stage I hadn't sat down with hit to discuss the procedures of Towards Healing.

Q. So if I understand you correctly, you are not saying that at that time you understood that Mr [DG] did not want Towards Healing?

A. At that stage, no.

Q. Your understanding came later?

A. That's correct.

Q. Then, indeed, you did have a meeting with [DG] thereafter; is that right?

A. That's correct.

Q. There is no need to go to it, but there are various bits of correspondence arranging the meeting, and you were travelling in northern Queensland and you arranged to go to the town where Mr [DG] was; is that right?

A. That's correct.

Q. And you met with him and his wife?

A. That's correct.

Q. And you met in a coffee shop?

A. We did.

Q. Your note or your account of that meeting in the first place in your statement is at paragraph 64 and the following paragraphs, and then over to paragraph 67. In that meeting, you did not share any information about
Raymond Foster and his history; that's right, isn't it?
A. I have read that. We did talk about Raymond Foster, but only briefly. Right?

Q. Yes, because you say - and perhaps we can go down to paragraph 70(b). You will see there that:

In paragraph 25 of the [DG] statement, [DG] states ...

And going to (b):

... that I "was not really able to tell [him] anything about the case that [he] didn't know already".

And then you say:

I agree that I did not tell [DG] anything about "the case".

In other words, no substantive details about Raymond Foster or the allegations against him or anything that Raymond Foster had told you?
A. No.

Q. Going on, you say that is because you:

... saw that first meeting as mainly as an opportunity for [DG] to speak rather than for me to do so ...

Do you see that in your statement?
A. Yes.

Q. But you accept, of course, that Mr [DG] was wanting information, wanting information about Raymond Foster and what his history was?
A. In my experience, at the first meeting, what the victim or the complainant wants more than anything else is to be listened to, be heard, and particularly to be believed. Right? And my aim in that first meeting was to do precisely that.

Q. If you go back to tab 28, this is prior to the meeting. [DG] had written to you, and he had requested in the last paragraph of that letter:
Could you ask the NSW Police, or your solicitor, for the transcripts of the police interviews with Brother Raymond, pertaining to my complaint.

Did you seek to get that information?
A. No.

Q. Well, he has asked you to get it?
A. That's correct. I mean, why would the police give me the transcripts of their interview? That's what I was questioning myself at the time.

Q. But you didn't ask them?
A. No.

Q. And you had suggested a solicitor to Raymond Foster, Greg Walsh; is that correct?
A. That's correct.

Q. So you knew who his solicitor was?
A. Yes.

Q. Did you ask the solicitor?
A. No.

Q. You accept, though, that it was made clear to you in this letter that [DG] was wanting information about his case?
A. And I could not work out what that information might be that he wanted.

Q. But when you met with him, you took the view that the better approach was to listen to him and not give him information?
A. At that point, yes.

Q. Well, you say it was to be the first meeting, but you understood him to make a choice, then, that this matter would be dealt with between solicitors thereafter?
A. I offered to speak with him again.

Q. In your notes of the meeting, which we will come to in a moment, you expressed a willingness to meet with him again?
A. Yes.
Q. But coming out of the meeting, as I understand your evidence in your statement, you understood that the matter would now go down a path of solicitors?
A. I was beginning to form that view by the end of the first meeting, yes.

Q. If we look at your note at tab 31, if we go three-quarters of the way down, the paragraph starting "I repeated to him options", your note afterwards records:

   I repeated to him options which I had outlined in a previous letter. He is not attracted by the prospect of a Towards Healing line of action, but agreed with my strong suggestion that a settlement be negotiated through two sets of solicitors.

Why was that your strong suggestion?
A. Having chosen not to go down the line of Towards Healing, I wanted to find some form of moving towards a satisfactory resolution.

Q. But in the absence of proper information about Towards Healing, how was the complainant supposed to make a proper choice?
A. He had indicated to me that he was, first of all, not interested in church procedures or what appeared to be church-sponsored procedures, so that left me with limited options as to what to suggest to him. Part of what I intended to do with victims when I met with them was to have them - give them the space to set their own pace, I guess.

Q. If that's so, then it is not apparent why you should make a strong suggestion that he not go down Towards Healing?
A. I'm not suggesting - I didn't suggest to him that he don't - that he doesn't follow Towards Healing.

Q. Well, a strong suggestion that a settlement be negotiated through two sets of solicitors is not a Towards Healing process, you would agree?
A. That's correct.

Q. So you made a strong suggestion, in effect, that he not pursue Towards Healing?
A. No, well, he was indicating to me that he was not interested.

Q. Yes, you have said that. I'm trying to understand on what basis or for what reason you made the strong suggestion that he not pursue Towards Healing?
A. Because if he's choosing not to go down the direction of Towards Healing, we have to find another way of dealing with it, to try and bring it to some form of satisfactory resolution.

Q. What reason is there, or was there, for the Marist Brothers to prefer a non-Towards Healing approach?
A. We didn't. We preferred Towards Healing.

Q. That's what I'm struggling with, and perhaps you can help me on it. This suggests the contrary; this suggests that your preference was not Towards Healing?
A. That's not correct, no.

Q. You see, if he was not attracted by the prospect of a Towards Healing line of action, as it is recorded there, one might have expected a response from you to be an explanation as to what Towards Healing was, to see whether he might understand its benefits?
A. At that point, no, he has indicated very clearly to me that he's not interested in any church-sponsored procedure.

Q. Well, if he has made a clear choice, then what's the point of you making a strong suggestion that a settlement be negotiated through two sets of solicitors?
A. It's the initial response from myself, looking for an alternative course of action that would be acceptable to him.

Q. In the last line on that page:

I have no reason at all to doubt the veracity of his statements.

Obviously that's correct. You accepted what he had to say about what happened at the time?
A. Absolutely, yes.

Q. And going over the page, the last line, so you left it on the basis, then, that he would contact you further if he wished to do so; is that correct?
A. That is correct.

Q. So even following up that meeting, you didn't offer further information about Towards Healing?
A. No, because he had rejected that line of action.

Q. So at that stage your understanding was if the matter was to proceed, it was going to proceed between solicitors?
A. Yes.

Q. So it was then unlikely there would be a further meeting between you and him?
A. Oh, no, I wanted more meetings, yes, definitely.

Q. You wanted more meetings?
A. Yes. I saw this as the first of several.

Q. But how can that be, if you say that he had made a clear choice and it is left on the basis that there will be communication between solicitors, your door open if he wants to contact you?
A. Yes.

Q. But you understood he had made a clear choice he didn't want to deal with church authorities?
A. He certainly didn't want to deal with the Towards Healing protocol.

Q. That's not what you said earlier. "He said he was distrustful of church authorities and didn't want to deal with them" - I'm paraphrasing. I don't have it in front of me. Perhaps that's something we will need to come back to. Do you accept, Brother Hill, that depending on the next step taken by Mr [DG], that might have been your last meeting with him?
A. No, that did not occur - well, no, it didn't. As I say, I was anticipating several more meetings with him.

Q. On what basis do you anticipate several more meetings, where what you have now said is he didn't want to go through Towards Healing, he distrusted church authorities and he was choosing to go on a track where solicitors would deal with his claim?
A. But I'm still there as the church authority.

Q. If he wants a meeting with you?
A. Yes.
Q. So that would be up to him?
A. Yes.

Q. So there might not have been a further meeting?
A. That's a possibility, yes.

Q. It would depend on him?
A. Yes.

Q. It wasn't in your control?
A. That's correct, yes.

Q. So even in recognition of that, you did not engage with him on the details of Raymond Foster's case and the information that you had about it?
A. All the details I had about Raymond Foster's case came in the statement of [DG] to the police, a copy of which he sent me with his initial communication.

Q. Well, is that quite true, because you were the vice-provincial back in the period 1991 to 1994?

Q. I'm sorry, when were you the vice-provincial?

Q. So you were vice-provincial when the allegations arose in 1993 and 1994 about Brother Foster?
A. Yes.

Q. And you would have known about those at that time?
A. I didn't know any of the details, apart from what was contained in a letter; that was the initial one, 1991. That's the only detail I knew, and it wasn't [DG].

Q. So you knew there were other complaints?
A. I knew that there was one other, yes.

Q. And in 1994, when he was withdrawn from his teaching post, you were the vice-provincial then?
A. I was, yes.

Q. And you knew then that there were complaints about him?
A. That's correct.
Q. And, indeed, that was this very complaint; it was [DG]'s complaint to the police?
A. But I wasn't aware of that in 1994, no.

Q. The police say that, at that time, they informed Brother Foster's superiors. Brother Foster's superiors would include you and the provincial - the provincial and the vice-provincial?
A. I cannot recall knowing the details of the complaints against Foster, apart from that letter, the initial letter.

Q. Perhaps we can look at tab 8, on page 2, at the bottom:

The general situation is that the complainant continues to reside in [redacted]. He has no contact with the suspect and has had no contact with him since the date of complaint. It is the belief of investigators that the suspect continues as a teacher at Hunters Hill in Sydney. At the time of the investigation by New South Wales Detectives the suspect's superiors were made aware of the nature of investigation conducted.

Does that help you recall, Brother Hill, what knowledge you had at that time?
A. That's certainly - the first time I became aware of that was when I received this correspondence from [DG].

THE CHAIR: Q. That reference to a teacher at Hunters Hill - is that St Joseph's College?
A. That's Foster.

Q. Sorry?
A. That's Brother Foster, yes.

Q. At St Joseph's College?
A. That's correct.

MR STEWART: Q. That's a prestigious Marist Brothers secondary school in Sydney; is that right?
A. That's correct, but he had been withdrawn, I think, by then.

Q. He was withdrawn at the end of August 1994.
Okay, right, yes.

That's an important thing, isn't it - withdrawing a teacher from his teaching service?

And it was pretty well immediately after we were informed.

And you were the vice-provincial?

I was.

And you would have known about that?

After the fact, yes.

After the fact of the withdrawal?

That Foster was withdrawn from ministry.

The withdrawal was the decision of the provincial?

That's correct.

And that was Brother Turton?

That's right.

Did Brother Turton not discuss that with you at that time?

Only in passing, briefly.

Did that passing include the details of the complaint?

No.

Is that not something you would want to know?

I don't think he was aware of the details, either.

Well, sufficient detail to warrant the withdrawal from a teaching post?

Well, the fact that there had been a complaint, yes.

You would have known it was a sexual abuse allegation?

We presumed that, yes.

Well, you wouldn't withdraw someone on the basis of a presumption. The police must have indicated what the complaint was, at least in its broad terms; it's a sexual abuse allegation, which you would have an interest in because he's teaching at a school?

He was withdrawn immediately, once we received that information.
Q. When you met with [DG], you didn't tell him that; you didn't tell [DG] that Foster had been withdrawn from teaching as soon as the complaint had come to the Marist Brothers' attention?
A. That's correct. My primary intention at that meeting, as I have already said, was not only for him to be heard and believed, but the only detail about Foster that I mentioned to [DG] was to confirm the suicide and also to clear up the matter of the way it was reported in local media, and I apologised to him for that.

Q. My suggestion to you, Brother Hill, is that a compassionate response, in accordance with Towards Healing protocols, would have been to engage in a discussion which would include imparting crucial information to Mr [DG]?
A. Not in that first meeting. I don't agree, no.

Q. Following the meeting, you then of course reported back to Howard Harrison; is that correct?
A. That's correct.

Q. Just so we can see it, that's at tab 32. It is Mr Harrison's letter enclosing a copy of a letter received from, he says "our client together with copy enclosures". The "letter dated 15 May 2000 received from our client" is not available here. I take it that would have been a letter from you to Mr Harrison that he's now passing on to the insurers?
A. No, no. 15 May - the letter that I'm looking at on the screen at the moment is not from me.

Q. Yes, exactly. That's the point I am making. Mr Harrison, the solicitor, is writing to the insurers, Catholic Church Insurances, and he says:

We enclose herewith copy letter dated 15 May 2000 received from our client ...

The client was the Marist Brothers; right?
A. Yes.

Q. You were the provincial at that time?
A. That's correct.

Q. And you were dealing with this matter?
A. Yes.
Q. So the letter of 15 May 2000 --
A. That's correct.

Q. -- is a letter from you?
A. Yes. Yes.

Q. Your file note of your meeting on 11 May with Mr [DG] is dated 15 May, the same date as that apparent letter. You will see at tab 33, this is a letter from Catholic Church Insurances to Mr Harrison, discussing various aspects of [DG]'s claim and referring to, towards the bottom of the screen:

I also note from Mr [DG]'s letter to the Marist Brothers ...

There is reference to information there that the complaint had been lodged, and so on. You accept that Catholic Church Insurance was now using the information that you had given to Mr Harrison, that he had given to them, to address the questions of legal liability and indemnity?
A. That's correct.

Q. In that same paragraph I was reading, they raise questions of possible statute bar. You understand that to be because of the passage of time, a claim might not be able to be brought against the Marist Brothers?
A. Yes.

Q. Do you understand that?
A. Yes.

Q. At that time, the situation is that after the meeting, it has been left on the basis that Mr [DG] will come back to you when he is ready; is that right?
A. Yes, that's correct.

Q. But your predominant impression and understanding was that that would likely be a negotiation between solicitors?
A. That's correct.

Q. But at that time, in your understanding, Mr [DG] didn't yet have a solicitor?
A. I can't recall, but I think that's right, yes.

Q. And the Marist Brothers' solicitor and insurance are
using the information that you have given them to understand the Marist Brothers' potential liability?

A. Correct.

Q. Then matters, in a sense, went quiet insofar as receipt of information or further contact from [DG] is concerned, until, am I right, the letter from Michael Byrne, the barrister, in September 2001; is that right?

A. That's correct.

Q. So in that intervening period between your meeting in May 2000 and barrister Byrne's letter in September 2001, there was no further contact between you and [DG]?

A. That's correct, yes.

Q. Perhaps we can look at that letter. That's at tab 36. This is now some 16 months later. This letter is actually addressed to Brother Peter Rodney. Who was he?

A. He was the vice-provincial during my --

Q. Is it your understanding that it was addressed to Brother Rodney because barrister Byrne knew Brother Rodney?

A. That's correct, yes.

Q. Then it was passed on by Brother Rodney to you?

A. Yes.

Q. If we can scroll down to the paragraph starting "Mr [DG] is of course", this paragraph identifies what Mr [DG] was wanting as expressed in this letter, and it is worth identifying that. Do you see firstly, in the first sentence:

... some financial compensation to reimburse him for the cost of counselling incurred over many years and necessitated by the abuse ...

Do you see that?

A. Yes, I do.

Q. So one thing that was being sought was financial compensation. You will see in the next sentence, it says:

He would like some form of apology process that could embrace his parent's and family, since his raising of these issues has
resulted in some degree of alienation
between him, his parents and his siblings.

So that would be the second thing that he wanted?
A. Yes.

Q. Thirdly:

He would like some form of public
recognition of the misdeeds of his abuser
in the [particular area], as he perceives
he was identified, or at least
identifiable, as the person who made the
allegations in various news reports at the
time of Brother Foster's death.

I have identified those three requirements, as it is put -
compensation, the family apology and the public apology -
because I will come back to them in due course. But when
you read this letter, I take it you understood those to be
his requirements?
A. I did, yes.

Q. Then the letter goes on to deal with the process. You
will see, firstly, it says:

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

What did you understand that process request to entail?
A. At this point, it represented - or it didn't
"represent"; it was a change of [DG]'s position from
a rejection of the Towards Healing process to an openness
to engage in the final part of the Towards Healing
protocol, the mediation.

Q. Why do you limit it to the final part of the protocol?
A. Because all the initial stages, in a sense, were
irrelevant in this particular case - the contact person,
the assessment. I mean, there was no doubt as to the facts
of the complaint. There was no - it would have been
illogical to go through a contact person, followed by an
assessment stage. That, in effect, had been done by the
police.
Q. It may not have been irrelevant to the complainant, because at this stage you hadn't yet confirmed with him details as to what the Marist Brothers knew about Raymond Foster and Raymond Foster's abuse of him; is that right?
A. That's right, yes.

Q. The purpose of a contact report is to put together a statement from the claimant setting out the historical details and what he requires; is that right?
A. In a normal Towards Healing case, yes, that's correct. This is not a normal Towards Healing case. There are so many differences. First of all, it started off as a police matter. And the suicide. There's very little resemblance between this particular case and what is envisaged in the Towards Healing protocol.

Q. I think you will find there is common ground on that, Brother Hill. The question I'm addressing you on is, leaving this case aside for a moment, the purpose of a contact report. What I had said is that the purpose of a contact report is to put together a statement from the claimant setting out the historical details and what he requires from the process?
A. That's right.

Q. That would be right?
A. In the normal Towards Healing case, that's correct.

Q. And following the contact report, then the church authority would have the opportunity to decide whether an assessment is required or not required?
A. That was normally left to the director of the professional standards in a particular State, who would advise the church authority.

Q. I stand corrected. You are absolutely right. That would be the director of professional standards who would then deal with whether an assessment is required?
A. That's correct, yes.

Q. Once there had been a conviction or sufficient proof for an acceptance of the truth of the allegations, then the matter would proceed to a facilitation?
A. That's correct.

Q. This reference to the very particular version of the
Towards Healing document - I'm going back to the letter now, "the Dec 2000 version" - was that not understood by you to be an indication that a Towards Healing process was being requested?
A. Part of the Towards Healing process was being accepted, only part.

Q. And that part was what, exactly?
A. The mediation.

Q. And presumably that's everything that goes with the mediation? You are not referring just to a meeting; you are referring to the process of mediation?
A. That's correct.

Q. The next part of that letter I draw your attention to is the next paragraph:

If the Marist Brothers are interested in entering into this healing dialogue ... 

You will agree that a "healing dialogue" is consistent with a Towards Healing mediation?
A. Correct, yes.

Q. Then the next sentence:

Understandably he is not inclined to go down the path of public litigation ... 

That's also consistent with Towards Healing; someone chooses not to do public litigation?
A. That's correct.

Q. They may choose Towards Healing; would that be right?
A. That's right.

Q. The next paragraph:

As I see it this is a pastoral matter.

That's also entirely consistent with Towards Healing; do you agree?
A. That's correct, yes.

Q. Then it talks about the "dark night", and so on, and then the latter part of that sentence:
... within the conciliatory spirit of "Towards Healing", for this matter to now proceed to some resolution which recognises the destructive outcome of the abuse he suffered, and sets in place some rehabilitative outcomes.

That would also be entirely consistent with Towards Healing, wouldn't it?

A. Yes, it is.

Q. At the time, you understood that to be a request for a Towards Healing process?

A. Yes.

Q. And that's because you understood that he had shifted the position that you had earlier understood and had now elected Towards Healing?

A. That's correct.

Q. That's recorded in your letter at tab 38 to Michael Byrne in response, in that paragraph starting "As indicated in the notes I made", and at the end of that paragraph:

Interestingly he has rethought his position concerning the Towards Healing process. If this means meeting with [DG] again in [a particular place] then I will certainly do so.

You also then, of course, reported to Howard Harrison, which is at tab 37. Do you see you say in the second paragraph:

... I am willing to meet with Mr [DG] again. Inevitably the question of financial compensation will arise ...

And so on. At tab 42, Mr Byrne responded. From Mr Byrne to you, on 26 October 2001, and you will see in the first paragraph, five lines down:

A good example of my role is evidenced in the change you note in Mr [DG] in respect of the Towards Healing process. I was able
to advise him of the process and provide
a copy of the document and make pertinent
comments on the appropriateness of the
process in this case.

You received that email, presumably?
A. I did.

Q. So at that stage, do you accept that it was clear that
that's what was wanted by Mr [DG] for the Towards Healing
process?
A. That's correct, yes.

Q. That request was obviously in September 2001, so you
would accept that the applicable Towards Healing protocol
at that time was the 2000 protocol; is that right?
A. That's right, yes.

Q. That's at tab D, if we can go to it, in the general
bundle, exhibit 4-1. In particular, at page 7,
clause 33.3:

These procedures are intended to apply to
all complaints of abuse ...

You accept, of course, in particular given the election
that had been made, and as you have accepted, that these
are the procedures which were to have applied?
A. True.

Q. At clause 35.3 on page 9, you will see:

The bishops and leaders of religious
institutes for each State shall jointly be
responsible for appointing a Director of
Professional Standards in each State.

35.3.1 The Director shall manage the
process in relation to specific
complaints ...

There was in fact a State director of professional
standards at that time in 2001; am I right?
A. That's correct, yes.

Q. In both New South Wales and Queensland?
A. Certainly in New South Wales. By 2001, I think the
Queensland person was part time.

Q. But there was someone?
A. Yes.

Q. At that time, the idea, as I understood it, was that the particular director for a State would deal with it if the complaint arose within that State; is that right?
A. That's correct.

Q. The Marist Brothers, of course, is an organisation that operates throughout Australia, but the particular province of which you were the provincial at that time, through several States in Australia?
A. Yes.

Q. And that would cover both New South Wales and Queensland?
A. That's correct.

Q. So in those circumstances, in respect of any particular complaint, which would be the State director of professional standards who would deal with it?
A. Ordinarily, yes, yes.

Q. I am sorry, the question was, which director of professional standards would deal with a particular complaint?
A. This particular one would be Queensland.

Q. Because it arose in Queensland?
A. Yes.

Q. That's as I understood it. Then at page 11, clause 36.1:

> If a complaint of abuse comes to the notice of any Church personnel and the person who has made this complaint wishes to invoke the procedures outlined in this document, the Church personnel shall refer the matter to a Contact Person as soon as possible.

At this stage, there has been a complaint of abuse; you have accepted that. Notice of it has come to church personnel; you accepted that. The complainant wishes to invoke the procedures outlined in this document; you have
accepted that. Therefore, do you not accept that the
church personnel shall refer the matter to a contact person
as soon as possible?
A. Which does not apply in this particular case.

Q. You have said so, but you will have to try to explain
that again. In the light of what I have just been through,
how can it not apply other than if you decided not to apply
it, but it should have applied, shouldn't it?
A. No. All the matters dealt with by the contact person
and the assessor if there is going to be an assessment to
take place - all of that becomes irrelevant in this
particular case, because we're much further down the track.
What we are up to here is the actual mediation process.

Q. There has been no contact report?
A. That's true, because it has been through the hands of
the police.

Q. The police process doesn't substitute for a contact
report?
A. In this case, it would. That would be the contact
report.

Q. The police are not interested in asking what does the
complainant require from the Towards Healing process?
A. Right, and he has discussed that with Mr Byrne.

Q. Yes, and that's one of the important parts or
components of the contact report, is to identify the
complainant's needs?
A. That's true, and that has been done.

Q. But the fact that there has been a police process
doesn't assist?
A. But the contact person part of it, if you like, has
already been achieved here, through Mr Byrne.

Q. Let's look at page 12, clause 38.1:

The following procedures apply only where
the complaint does not concern a criminal
matter, or where a complainant has chosen
not to report the matter to the police or
other civil authority, or the civil
authorities have decided not to take
further action under the criminal law or
At this stage, in this particular case, there is no further criminal process, is there?
A. That's true, yes.

Q. This would then apply, would it not, and, in particular, 38.2:

The Contact Person shall forward the report promptly to the Director of Professional Standards.

A. I'm sorry, is that a question?

Q. In your understanding, should the position not have been that the contact report would be referred, or should be referred, to the director of professional standards?
A. Which, in this case, just does not apply.

Q. Perhaps one needs to look at the role of the director of professional standards. He or she is someone who would put the mediation process together and case manage it, essentially; that would be right?
A. Yes.

Q. Would you accept that the director of professional standards, then, should have done that in this case?
A. I can only assume that Mr Byrne, who was on the Professional Standards Resource Group in Queensland, would have informed the then Queensland director of professional standards. I can't confirm one way or the other whether that actually happened. I assumed it at the time.

Q. Informing the director of professional standards is one thing, but what about actually the director of professional standards managing, case managing, the case and facilitating the arrangements for the mediation? That's what's the director of professional standards is supposed to do?
A. Under normal circumstances, yes.

Q. And in these circumstances too. What is abnormal about these at this stage of the process?
A. At this stage, they are putting together a procedure. He is saying at the moment, "Yes, I am interested in following the mediation path of Towards Healing", but all...
the preliminary steps have already been accomplished.

Q. But in this case, in fact what happened is that you essentially put the mediation together; you arranged when it would take place, and so on?
A. No, no. The position I was in at this particular point is that I returned from a meeting in Rome and it was about six weeks before my term of office was going to conclude, so I was anxious to try to bring it to some form of closure before I finished in office. As it turned out, that didn't happen.

Q. So you were involved in trying to ensure that initially, and then when you left office, then Brother Turton took it over; is that right?
A. That's correct.

Q. Or someone else?
A. Somebody else - I knew that somebody else was going to take it over.

Q. Your successor?
A. Yes.

Q. Can you go to tab 45. Here you are writing to "Dear Stephen". Who is that?
A. He was the principal of the college.

Q. You are reporting on what has happened. In the last paragraph:

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

And you did that, did you? You instructed your solicitors to negotiate as best they could to keep it out of the public eye?
A. No, because I had finished office by then.
I certainly sent this letter to the school principal.
Q. You say you had finished office by October 2001?
A. No, December, the 12th, 2001.

Q. This letter is in October 2001.
A. Correct.

Q. So you still have a couple of months to go, including dealing with the solicitors. In that period, did you instruct the solicitors to negotiate to keep it out of the public eye?
A. No.

Q. You will accept that the ultimate outcome was that there wasn't a public apology?
A. That's correct.

Q. A public apology had been requested, but it was refused?
A. At that point. A public apology would occur at the conclusion of the whole procedure.

THE CHAIR: Q. Brother, the expression here is a hope that the matter can proceed "discreetly"?
A. Yes.

Q. That means keeping it out of the public eye, doesn't it?
A. Yes, your Honour, it certainly appears that way.

Q. "It appears that way" - that's what it says, isn't it?
A. Yes.

Q. But it goes on to say:

... I cannot guarantee that ...

A. Yes, that's true.

Q. That rather suggests that the objective you had in mind was that it would be kept out of the public eye; is that right?
A. If that were possible, for the sake of the personnel at the college, but that --

Q. Sorry, for the sake of who?
A. The personnel at the college concerned.
Q. What do you mean by that?
A. Well, publicity surrounding the case. The dilemma I was in was to respond as best I could to [DG] and to somehow reduce whatever impact a public apology would have on the innocents, the innocent people currently at that college.

Q. I'm not sure I am understanding. If a person has been abused, why shouldn't they have the benefit of a public apology, if that's what they want?
A. They certainly should, sir.

Q. Why was it your desire, your endeavour, to avoid that?
A. I don't know at that time.

Q. You see, it might be suggested that the purpose was to protect the reputation of the Catholic body itself?
A. I accept that, certainly I accept that.

Q. Was that your purpose?
A. At the time, it probably was.

Q. That was wrong, wasn't it?
A. It was, yes. It wasn't to protect the reputation of the brothers so much as to protect the people at the school at the time.

Q. I want to come to this in due course. You are a psychologist, aren't you?
A. I am, yes.

Q. You told us yesterday that your initial experience of the response by the brothers was one of denial?
A. Yes.

Q. Does the desire to keep matters out of the public eye go together with the issue of denial?
A. In 2013 I could accept that, certainly, yes.

THE CHAIR: I will come back to all of that later on.

MR STEWART: Q. At the end of your statement, Brother Hill, you have some reflections, so perhaps we can go to your statement at paragraph 84. In paragraphs 84 and 85, essentially what you say is that what you would have done differently is written a letter after the first
meeting to summarise the outcomes of the meeting. Looking back at it now, is there something else that you might have done differently?

A. I certainly would have - and I should have - sent [DG] my recollections of that meeting. I am surprised that I didn't. When I was preparing this statement, I went looking for something that I assumed was there, and it's not, obviously. I take responsibility for that and very much regret it.

Q. That's in paragraph 85 of your statement:

... I would send [DG] a letter summarising the outcomes of our meeting ...

I am asking is there anything else, on reflection now, because it is some time on since you wrote this statement and you have sat through the evidence - is there anything else now, on reflection, that you should have done differently in order to make it a better process?

A. I would not in any way claim that the way I handled [DG] about that. What would I do differently? Perhaps I might have taken the - this says, "I did not want to seem to be harassing him", but perhaps I should have written to him, at least, offering again, quite explicitly, to meet with him again, to keep it moving forward.

Q. Would you accept that you at the time - that is either before, during or after the first meeting - should have given the complainant information about Towards Healing?

A. I still believe that it was too soon to do that.

Q. I put it to you, Brother Hill, that the Towards Healing protocol should have been applied in this case from the first contact by [DG] to you?

A. No, I don't agree with that.

Q. What you should also have done is given [DG] information about the case and, in particular, the apology and reassurance in the suicide note of Raymond Foster?

A. The problem with that is that - well, first of all, the apology certainly, that's got to be first up. But Foster's apology, which - if I had said that on the first meeting, too often the victim hears something like, "Forgive and forget, put it behind you, move on", and we are nowhere near that in the first meeting. It is the
beginning of a long process.

Q. I have addressed with you already, Brother Hill - and I don't intend going back over it - as to why, at that time, it may have been your one and only meeting with [DG]; there may not have been further meetings. I don't intend to go into that again. There is a matter that I can still address with you before the break, and that is this: in your statement, you say that there was no eulogy at Brother Foster's funeral; is that right?

A. That's correct, yes.

Q. Yet you will have seen that by the time it came to the mediation - and I understand that you weren't there then - the question of an apology for a eulogy was addressed. The apology itself - and perhaps we can take you to that so you can see it, at tab 64, the final paragraph:

I understand that some erroneous and misleading comments were made during the eulogy at the mass for Brother Foster.

Do you have an understanding as to how that arose, how it arose that there was an apology in relation to a eulogy that didn't happen?

A. That's right, when I first saw this some weeks ago, I was absolutely shocked, because what's being stated here, "I understand that some erroneous and misleading comments were made during the eulogy at the mass for Brother Foster" - I was at that mass.

Q. And there was no eulogy?

A. There was no eulogy.

Q. But there were erroneous and misleading comments in the press at about that time?

A. There were, yes, yes.

Q. So perhaps that's where the confusion arose; would you accept?

A. I believe that was probably the only explanation for this strange - this statement here.

THE CHAIR: Q. Did people speak about Brother Foster at his funeral?

A. Not at his funeral, no.
Q. Not a word was said?
A. No.

THE CHAIR: Very well.

MR STEWART: Would that be convenient, your Honour?

THE CHAIR: Yes, we will take the morning adjournment.

SHORT ADJOURNMENT

MR STEWART: Your Honour, I have nothing further for this witness.

THE CHAIR: Q. Brother, I'm going to ask you some questions about some slightly different matters. You tell us in your statement that you joined the Sydney Province of the Marist Brothers in 1962?
A. That's correct.

Q. How old were you then?
A. Eighteen, your Honour.

Q. You had just finished school?
A. Yes.

Q. Did you go straight, effectively, from school to join the Marist Brothers?
A. I did, yes.

Q. Was that typical of Marist Brothers of your generation?
A. Oh, very, yes.

Q. Does it remain the case today?
A. No.

Q. When did that practice stop?
A. Probably around the 1970s - late 1970s, I would say.

Q. Then, as I understand your statement, you must have spent some time in the training of the Marist Brothers before you went to university; is that right?
A. That's correct, yes.

Q. How long did you spend in the training of the Marist Brothers?
A. Six years all up.

Q. Before you went to the university?
A. No, university was concurrent with the last four.

Q. The last four?
A. Four, yes.

Q. So you spent two years training and then went to the university; is that right?
A. That's true, but the training still continued.

Q. Yes, I understand that. Presumably you were then living in a Marist Brothers facility; is that right?
A. That's correct, your Honour.

Q. We can read the rest of your professional journey, but it includes, of course, by 1972, studying for a Diploma in Counselling, and then you completed a Master of Science in Clinical Psychology?
A. That's correct.

Q. And, of course, we know that you have held senior leadership positions in the Marist Brothers?
A. That's correct, yes, your Honour.

Q. You probably know of the evidence given by Archbishop Coleridge, I think it was, about the tsunami of sexual abuse that hit the church?
A. True. That's correct.

Q. You must have pondered, as a psychologist and as a leader of the Marist Brothers, why this happened. Have you done that?
A. Often, your Honour, yes.

Q. Can you tell us now about what your training involved in preparing you for a celibate life as a Marist Brother in relation to sexual matters? In what way was that issue approached in your training?
A. In the early days, hardly at all. Quite inadequate.

Q. When you say "hardly at all", can you give us some indication of what that aspect of your training involved?
A. From what I can recall, we would have done many, many weeks, months even, on, say, the vow of poverty, the vow of obedience, particularly. I cannot recall more than a few
days on chastity. It was quite inadequate.

Q. What were you told, what was the discussion that the church, or the order, thought appropriate on that question?
A. Again, as far as I can recall, if you wanted to sum it up in one word, the word would have been "don't".

Q. Don't do what?
A. Anything sexual.

Q. At all?
A. That's correct.

Q. Is that a tolerable position for a young man to have to live in?
A. It's intolerable, but it was not only in religious life; it was in the Catholic Church at that time.

Q. When you say it was intolerable, what do you mean?
A. As well as being totally "non-recognisant" of sexuality, it didn't exactly encourage mature human growth and development. Quite the opposite.

Q. As a psychologist, you have no doubt studied the sexual aspect of human behaviour?
A. That's true.

Q. And as a healthy male yourself, you understand at least your own sexual identity?
A. I would hope so, yes.

Q. Do you see the vow of chastity imposed upon an 18-year-old, as was imposed upon your generation, as a sensible or appropriate thing to do?
A. Certainly in 2013, no. In 1963, might I say, it was typical of the type.

Q. It may have been typical of the time, but human beings haven't changed that much in that time, have they?
A. That's true.

Q. In your reflections on this issue, do you look upon the vow of chastity imposed upon teenage boys, soon to become men, as one of the elements that may be responsible for the tsunami that came?
A. In some cases, I agree that that's a probable cause, yes.
Q. One of the issues which this Royal Commission must address is the question of why; you understand that?
A. Yes, I do.

Q. Should the Commission look carefully at the construct of the church and its imposition of the vow of chastity upon young men when addressing the question of why?
A. Yes, I believe so.

Q. Do you yourself have an answer to that question?
A. Part of an answer - or part of my answer - would be that what was accepted as normal at that time would certainly not be accepted that way today. In other words, there have been significant changes since then.

Q. Can you tell us then about the changes? The norm back in the 1960s and the norm today - what's different?
A. First of all, education is far more comprehensive. Education of young candidates, that is, in terms of human sexuality, human growth and development and expectations.

Q. I'm not quite sure I understand. You are going to have to help me there. The sexual nature of the people going into the church hasn't changed, has it?
A. That's true, yes.

Q. We were talking before about the unrealistic expectation of chastity on an 18-year-old?
A. Yes.

Q. Does talking about human sexual development assist an 18-year-old, a 19-year-old or a young man growing up to come to terms with the vow of chastity?
A. Today, as I say, that would be totally unacceptable.

Q. Well, how is it that today the outcome that you can expect by imposing the vow of chastity on a young man will have a different outcome than it had when the tsunami hit the church?
A. As I see it, your Honour - and I could be quite wrong here - because it was seen as a normal thing up to the later part of the 20th century, to a certain extent it was never really questioned, until about the late 1960s, early 1970s. It was sort of taken for granted, you know, what you are saying, imposing the obligation of chastity on an 18-year-old - it simply wasn't questioned at that time.
Q. I take it from what you are saying that it needs to be questioned seriously?
A. Yes.

Q. In your statement, you tell us that you were involved for two years in Rome, running a program to prepare people to train young brothers?
A. That's correct.

Q. That was in 1989-1991?
A. That's right.

Q. By that time, were you conscious of the problems which the vow of chastity had brought upon the Marist Brothers?
A. Very much so.

Q. Were you saying and doing things to try to change --
A. Yes, my word.

Q. Were you saying that the vow of chastity was no longer appropriate for an 18-year-old?
A. No, I wasn't saying that. There was no need to.

Q. Why no need to?
A. Because there were no 18-year-olds in formation programs.

Q. What's the youngest that a lad goes into the Marist Brothers today?
A. The average would be between mid-20s and mid-30s.

Q. What is the youngest?
A. About 25.

Q. Is there some sort of rule that you can't come in until you are that age?
A. I'm unaware of a rule or a demand specifying a particular age today. Certainly not a teenager. Probably not before the end of undergraduate years.

Q. What sorts of numbers are coming into the Marist Brothers to train in Australia today?
A. Very few, very few. It's a trickle, yes.

Q. How many?
A. At the moment, over the last six years, seven years,
I can think of five. Five, yes.

Q. When you came in back in the 1960s, what were the numbers like then?
A. Twenty-eight, 30, per year.

Q. That's for the whole of Australia?
A. No, for Sydney - for the then Sydney Province.

Q. And the five that you talk about - is that the whole of Australia?
A. Yes.

Q. That's the whole of Australia?
A. Yes.

Q. Can I then take you to your response to [DG]. You knew, of course, as soon as Brother Foster had committed suicide, and you had read his note, that he accepted that he had committed crimes, didn't you?
A. Yes.

Q. Crimes by sexual abuse of [DG]?
A. That's correct, yes.

Q. What does that mean, both the suicide and the admittance of criminal offences, in the understanding of the Marist Brothers as to the consequences after his death for Brother Foster?
A. The consequences for Brother Foster?

Q. Yes.
A. I don't understand you, your Honour.

Q. Well, I don't understand the Catholic doctrine and I am giving you a chance to tell me.
A. Okay.

Q. If someone commits suicide, does that have any consequence for their eternal soul?
A. No, no, we wouldn't see it that way today, no.

Q. But you would have in the past?
A. Yes.

Q. What about someone who has confessed to crime?
A. Yes.
Q. Does that have a consequence for their eternal soul?
A. Well, that would be up to the judgment.

Q. One of the issues for [DG] as a result of Brother Foster's suicide was that his allegations would never be tested in a court of law; correct?
A. That's correct, yes.

Q. As a psychologist and as a Christian Brother, or a Marist Brother, it would be plain to you, would it not, that one of the significant issues for [DG] was the fact that his allegations should receive public vindication?
A. Yes.

Q. You had it within your capacity not to give him public vindication but to tell him straightaway that the allegations he had made were substantiated by Brother Foster's own deeds and words, didn't you?
A. And I said those words - words to that effect, anyway, during our meeting.

Q. You had the capacity to tell him well before the meeting of that position, didn't you?
A. No.

Q. Why not?
A. I didn't know who he was.

Q. As soon as he made contact, you knew who he was, didn't you?
A. Yes.

Q. You wrote to the brothers - it's the letter at tab 14, I think, if we can bring that up. Do you remember this letter?
A. I do.

Q. You were writing to the brothers to tell them of your interaction with Brother Foster before he took his own life; correct?
A. Yes, your Honour, yes.

Q. If we can go to the second page, you record in there some excerpts from Brother Foster's letter?
A. Yes.
Q. And the funeral arrangements?
A. Yes.

Q. You then go on to say:

At a time like this I can only resonate with what many of you would be feeling ... devastation, anguish, deep sadness and puzzlement.

A. Correct.

Q. I take it that the "devastation" was the response that you thought many would have had to the death of Brother Foster by suicide?
A. That's correct.

Q. "Anguish" the same?
A. Yes.

Q. "Deep sadness" the same?
A. Yes.

Q. And "puzzlement"?
A. Yes.

Q. And you say:

Our faith is sorely tested by such an action.

A. That's true.

Q. Is that a reference to the suicide?
A. Yes.

Q. So their faith would be tested by Brother Foster's suicide?
A. Yes.

Q. Our sense of hope can be exposed as something quite fragile.

A. That's correct.

Q. That, again, is because of the suicide?
A. Yes.

Q. You say:

Yet it is in faith, hope and love that we
must support each other more than ever.

A. That's correct.

Q. We ask the Lord to receive Ray into his
presence so that he may experience the
peace which clearly eluded him in the final
days of his life.

You say that?

A. Yes.

Q. We pray particularly for the Brothers of
the Marist Centre community. Their loss is
deep and painful.

That's, again, the loss of Brother Foster by suicide?

A. That's correct.

Q. Knowing that they have our unconditional
fraternal support will be of great
consolation to them.

A. Correct.

Q. Why didn't you once mention the need to assist [DG] in
this letter?

A. This is a letter to the brothers. Right? I intended
to - well, at this stage, as I say, I did not know the
identity of [DG].

Q. You knew someone --

A. I knew someone.

Q. -- had been the subject of sexual abuse --

A. That's correct.

Q. -- resulting in criminal charges --

A. Yes.
Q. -- and a confession?
A. That's true.

Q. You don't mention one word about any response, indeed perhaps prayer, for that person, do you?
A. That's true, and I agree that's an omission and a serious one at that. I agree with you.

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

MR GRAY: I do have a few, yes, your Honour.

<EXAMINATION BY MR GRAY:>

MR GRAY: Q. Brother Hill, you were asked questions about the draft letter that Mr Harrison of Carroll & O'Dea had sent to you, at tab 21.
A. Mmm.

Q. If we could have tab 22 on the screen, please, which is the letter you actually finished up writing back on 16 March 2000. You made a number of changes to the draft that Mr Harrison had offered; is that right?
A. I did, yes.

Q. One of those was to put in the first paragraph, the second sentence, the word "very", before the word "saddened"; is that right?
A. That's correct.

Q. Another one was to add the last sentence of the first paragraph, reading:

That such events could have occurred is the very antithesis of what we aspire to as Marist Brothers.

A. That's correct.

Q. Another one was to add the second-last paragraph in its entirety:

I wish to assure you that I do take your statement seriously ...

and so on; is that right?
A. That's correct, yes.

Q. Another one was to add the last paragraph:

I look forward to hearing from you.

Is that right?
A. That's correct.

Q. Of course, in the third paragraph, which does correspond to Mr Harrison's draft, you said to Mr [DG]:

Perhaps you could contact me to discuss how we might best go forward ...

Is that right?
A. That's correct, yes.

Q. It was put to you this morning that in the paragraph before that, the one beginning, "The Towards Healing Resource Group", you were putting to Mr [DG] in this letter that he had only two choices - (a) or (b), one or the other, mutually exclusive. Do you remember that being suggested?
A. I remember that, yes.

Q. Did you intend, by this letter, to be putting to Mr [DG] that he only had two choices and that they were the two in that paragraph?
A. No, I was suggesting two possibilities. There were several.

Q. And when you went on to say:

Perhaps you could contact me to discuss how we might best go forward ...

what did you have in mind might be discussed, if that should happen?
A. A meeting, first and foremost - to meet with him.

Q. To discuss, among other things, what kind of process might be chosen?
A. That's right, yes.

Q. Including those two possibilities but not limited to them?
A. That's correct.

Q. Then if tab 31 could be brought up, please, this is your note of the meeting that you had with [DG] in Queensland on 11 May 2000. The paragraph that you were particularly asked about was the one towards the bottom of the first page, beginning "I repeated to him options". Do you remember being asked about that this morning?
A. Yes, I do.

Q. The sentence that was focused on is the second sentence, which reads:

He is not attracted by the prospect of a Towards Healing line of action, but agreed with my strong suggestion that a settlement be negotiated through two sets of solicitors.

It was put to you this morning, I think a few times, that you were making a strong suggestion to him that he not go with Towards Healing. Were you making such a suggestion to him?
A. No, no, not at all.

Q. So is this the position, that he said that he did not want to engage in Towards Healing at this meeting?
A. Certainly words to that effect, yes.

Q. He had already expressed in his initial letter to you great suspicion and mistrust of any church people?
A. That's correct.

Q. Therefore, you were confronted with a need to suggest something else?
A. That's right.

Q. Not being Towards Healing, that he said he didn't want, that could be a process for moving forward; is that right?
A. Yes, that's correct.

Q. Was it in those circumstances and in that context that you suggested that a way forward might be to use solicitors to negotiate a settlement?
A. That's true.
Q. Lastly, Brother Hill, if we go to tab 36, which is Mr Byrne's letter to you of 20 September 2001, the second-bottom short paragraph is the one that you were particularly taken to, where Mr Byrne says:

   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 being asked about that? If we could scroll down to the words on the second page of the letter, where there is reference to it being a pastoral matter and a conciliatory spirit of Towards Healing, do you remember being taken to that this morning?
A. Yes.

Q. Just keeping those thoughts in your mind, and if we could have tab 42, which is the email from Mr Byrne to you about a month later, in that email Mr Byrne says, among other things, towards the bottom of the first paragraph, in relation to Towards Healing:

   I was able to advise him of the process and provide a copy of the document and make pertinent comments on the appropriateness of the process in his case.

Do you remember you were shown that this morning?
A. Yes.

Q. This morning - I don't have this verbatim - you answered approximately to the effect that you understood both from the letter, "openness to engage in a mediation process along the lines identified in Towards Healing", and from that email, that Mr [DG], through his barrister, was now actually proposing that Towards Healing itself, at least in part, be engaged in; is that the sense of what you said this morning, I thought?
A. Not precisely Towards Healing. I think the phrase was "along the lines of Towards Healing".

Q. Yes, well, that was the question I wanted to ask you. If we go to your statement, please, which is exhibit 4-39, at paragraph 77, do you see you there are referring to a letter that you sent to Mr Harrison, which I think you were also taken to this morning, and you say in the last
sentence of paragraph 77:

[DG] had initially stipulated that he did not want to use Towards Healing, and Mr Byrne had referred to a mediation "along the lines" identified in Towards Healing. In those circumstances some other appropriate approach, not being Towards Healing, was needed.

Do you see that?

A. Yes.

Q. If there is a difference between that and what you said this morning - and the transcript will reveal whether there is or not - do you stand by what appears in paragraph 77 or do you need to change that?

A. I stand by those sentences, yes.

Q. Then similarly in paragraph 78, which is a reference to the Carroll & O'Dea letter which is at tab 40, you say in paragraph 78, quoting from the Carroll & O'Dea letter where Carroll & O'Dea say that your instructions were that "some form of mediation process should be put together to assist the parties to bring these issues to closure" - you say:

In giving those instructions, I was consenting to the proposal put by Mr Byrne in his letter dated 20 September 2001.

Does paragraph 78 still set out your understanding of what you were doing?

A. Yes, it does, yes.

MR GRAY: I have nothing further, your Honour.

THE CHAIR: Q. Brother, in paragraph 24 of your statement, you refer to Encompass. You say it was a treatment facility for clergy and religious. Can you describe for us the nature of the facility and the nature of the treatment?

A. It was part of an overall suite of responses of the bishops and leaders, the congregations, to complaints of abuse against church personnel. Encompass was a treatment program, a residential treatment program, run by experts in the field. It lasted six months, and I believe at the time
it was opened, it was remarkably successful --

Q. Who was treated there?
A. Clergy and religious.

Q. Who had done what?
A. Initially, were sexual abusers.

Q. You mean had been convicted of sexual abuse?
A. Not necessarily convicted, no.

Q. So were those who had been convicted treated there or were they --
A. Often, yes, yes.

Q. After their release from prison if they were incarcerated?
A. That's correct, yes.

Q. So they weren't treated within the prison system?
A. No.

Q. And there were others who hadn't been convicted who would be treated?
A. That's correct, yes.

Q. How did they come to end up there?
A. Generally they were abusers of people who, for whatever reason, chose not to take the matters to the police.

Q. Were these abusers abusers of children or were they treated if they had a sexual involvement with an adult as well?
A. Both, your Honour.

Q. When it started, what sort of numbers were being treated?
A. As far as I can recall, a dozen, 15 perhaps, at any one time.

Q. How many of those were there because they had abused children as opposed to sexual relations with adults?
A. I can't give you figures on that, your Honour. I would be guessing. I would be guessing.

Q. Were you involved in the treatment programs as such?
A. No, no, I wasn't. I was on the board.

Q. So you can't tell me what the program involved?
A. I can tell you a little from what I can recall of it. There were education modules on human sexuality. There was both individual and group therapy, and different modes of psychotherapy. I suppose they were the two critical elements in the overall program.

Q. Were the programs significantly different for those who had sexual relations with adults as opposed to children?
A. Yes, I believe so.

Q. You were on the board for ten years until it closed in 2007. When did it actually start?
A. When?

Q. Yes.

Q. So you were on the board for the whole time, were you?
A. Pretty - yes, I was.

Q. And the numbers, 15 to start with - what were the numbers like over the next decade?
A. Substantial, up to about 2003, 2002 perhaps, then they started to drop off.

Q. Did it stay at 15 or did it increase --
A. No, it would be more than 15. By the end of the 1990s, the numbers, from memory, were in the 20s.

Q. That's 20 at each course?
A. True.

Q. So 40-odd a year?
A. Yes, yes, it would be, yes.

Q. And then you say the numbers started to drop off?
A. Significantly, yes.

Q. Was there any identifiable reason why they dropped off?
A. Probably because - I can only - this is conjecture on my part. To use the tsunami analogy, it was starting to subside, in terms of identifying offenders and getting them
into treatment.

Q. You say the numbers had started to subside by the early 2000s, had they?
A. By the mid-2000s, certainly, yes.

Q. Then it closed. Why it did close?
A. Financial reasons; it was too expensive to run.

Q. I assume there is still a need to provide the treatment program?
A. There is. There is, your Honour, yes.

Q. But it is not now being provided by the church?
A. Not in Australia, anyway.

Q. So if you are an abuser in Australia, are you sent for treatment somewhere else?
A. If that's possible legally. There is a treatment centre in the United States and another one in Canada, similar residential treatment facilities.

Q. But what now happens to someone who is not the subject of criminal prosecution because the complainant doesn't want to go through that process? Is that person now given treatment in Australia or not?
A. Generally, yes, yes.

Q. Where?
A. It would be outsourced to private practitioners.

Q. Paid for by the church?
A. Yes.

THE CHAIR: Very well. Mr Stewart?

MR STEWART: I have nothing further for this witness. The next witness is Alexis Turton.

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

THE WITNESS WITHDREW

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MR STEWART: Q. Brother Turton, will you state your full name and occupation, for the record?
A. Brother Alexis Turton. Chaplain at Marist Youth Care.

Q. You have signed a statement, provided to the Royal Commission, dated 15 November 2013. Do you have a copy of your statement?
A. I do.

Q. Do you wish to make any corrections to the statement?
A. No.

Q. Do you confirm that it is true and correct?
A. Yes.

MR STEWART: I tender the statement.

EXHIBIT #4-40 STATEMENT OF ALEXIS TURTON, DATED 15/11/2013, BARCODED STAT.0085.001.0001_R_M

MR STEWART: Q. Brother Turton, you were the provincial of the Sydney Province of the Marist Brothers from June 1989 to June 1995; is that right?
A. Yes.

Q. You were the director of professional standards for the Marist Brothers from January 2002 to March 2012; is that right?
A. Yes.

Q. You had an involvement, as it were, in this case in both those periods, when you were provincial - it was the time when there were first allegations against Raymond Foster and he was withdrawn from teaching; is that right?
A. Yes.

Q. When you were director of professional standards is when you became involved in the mediation in this case; is that right?
A. In the final mediation, correct.

Q. In the final mediation. You came in really at the
tail end?
A. Very much, yes.

Q. Dealing with the first of those periods, perhaps if you would take a look at the document at tab 1. This is a note of a telephone call from someone referred to here by their pseudonym, [DR]. It reflects that this person was a student at St Augustine's College, Cairns in 1954 to 1958:


That's not the brother we know as Raymond Foster; is that right?
A. That's correct.

Q. Since left the Order and may be deceased. Considered him quite perverse and capable of humiliation. Less frequently a Brother Celestine subsequently, RF, ran the tuckshop...

That's a reference to Raymond Foster, is it?
A. Correct.

Q. ... and said he enjoyed watching people abuse themselves and masturbate. Not as serious as Sebastian.

That's obviously a serious allegation to make of someone in a position teaching at a college; do you agree?
A. Yes.

Q. And especially of a brother?
A. Yes.

Q. You say in your statement that at that time, the time of this telephone call, 30 August 1993, you were "en route to Rome". What do mean by that?
A. I was travelling to Rome for a conference, a major conference of the order.

Q. Do you accept that whoever made this note, which comes from the Marist Brothers files, would have taken it
Q. As provincial at that time, the likelihood is that it would have been brought to your attention, either in Rome or on your return?
A. Yes.

Q. Tab 4, you will see, is a letter directed to the provincial in May 1994. It is from Sister Mary Jude Freyne, "Dear Brother". You can read it there, but it refers to a letter which was received by the bishop on 16 May 1994 from Father John O'Connor. That is at tab 9. I will come back to this letter in a minute, but let's just identify the first letter, tab 9. That is the letter from the priest identified as Father John O'Connor, and it is addressed to "James", who would be James Foley. It says:

Yesterday I visited [DR] -
The same name as we saw in tab 1 -
of [a particular address] Tully Heads. In the course of conversation he said that he had been sexually molested by two Marist Brothers while a boarder at St Augustine's Cairns. It happened over a period of two years. He was 12 and 13 years old at the time. He is now 53 so this would have happened 40 years ago about the years 1954 and 1953.

I don't think he is going to lay any legal charges.

Kindest regards.

If we go back, then, to tab 4, this is what was then, as I understand it, brought to your attention; is that right?
A. I did not recall this at the time when it was shown to me, but I am quite sure it was brought to my attention, yes.

Q. That would have been shortly after 25 May 1994?
A. Yes.

Q. Once again, that is obviously a serious allegation to
A. Yes, yes.

Q. To be taken seriously by you, as provincial?
A. It wasn't certain whether they were the same people, but I would suspect they are, yes.

Q. In fact, the allegation is of molestation by two Marist Brothers?
A. Yes.

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

Q. This of course was before the Towards Healing protocol was first introduced in 1996. At that time there was a special issues protocol or investigative procedure in place, was there not?
A. There was a special issues committee set up that was the beginning of the process that led to Towards Healing, yes.

Q. This term "special issues" - what did that refer to?
A. Basically, matters concerning sexual abuse.

Q. What was a special issues incident report, as referred to in this letter?
A. I don't remember the detail of it, but it was a pro forma, I believe, that was established by that committee of the bishops committee.

Q. This letter indicates that the special issues report would be sent to CCI - that's Catholic Church Insurance - in that particular case on behalf of the Cairns diocese, I guess, because that's where the claim arose; would that be right?
A. I believe so, yes.

Q. What other purpose did a special issues report serve, in your recollection?
A. I don't have any other knowledge of the special issues report. At that stage, this was all very new territory and I didn't have a lot of detailed knowledge of it, I have to say. It was developing at the time.

Q. So on receipt of this information, this letter, do you recall what your response was; in other words, what did you make of one of the Marist Brothers?
do about this?
A. At this stage, I did not take any further action.

Q. At that time, the name of the complainant had been
given; that's right, isn't it?
A. In the first communication, there was a name.
Correction. I think there was a name in the second
communication; is that right?

Q. Yes, at tab 9, if we can just go back to the
manuscript note.
A. Sorry.

Q. You will see it says, "Yesterday I visited", and the
name has been redacted and the address has been redacted.
So the complainant was identified?
A. I assume - at this stage I do not recall all my
thought processes, but I note that the persons concerned
did not want to take the matter any further. I presume
that meant "did not want to be contacted".

Q. Is that right? That note which is on the screen now
says, "I don't think he is going to lay any legal charges."
That didn't preclude you from taking action?
A. It didn't preclude me, but I did not take any further
action at that stage.

Q. Whilst in that note on the screen the two Marist
Brothers are not identified, there is the identification of
the college, St Augustine's, Cairns, and the identification
of the name. If one goes back to tab 1, one can see the
name, [DR], is the same, St Augustine's College is the
same, and there are two brothers who are mentioned,
Brother Sebastian and a brother then known as Celestine,
subsequently Raymond Foster. So putting these two
together, you could easily have known who those brothers
were?

MR GRAY: I hesitate to object, but my friend knows that
the two names were not actually the same. They have been
given the same "[DR]", but they are not actually the same,
as my friend would be aware. They are similar, but they
are not the same.

MR STEWART: I'm not aware, your Honour, but I will
obviously look into that.
Q. Are you aware that those two names which have been reflected here as [DR] are very similar?
A. They are similar, but they are not the same, yes.

Q. In any event, you had the names of the brothers in tab 1, which you accept came to your attention, and the common college, and this information now from someone similarly named, and you took no action?
A. That's correct.

Q. Perhaps we can go back to tab 4. That is the letter that you received. At that time, do you know where Brother Celestine, Raymond Foster - what his position was?
A. Yes.

Q. Would you tell the Commission?
A. He was at a boarding school in Sydney.

Q. He was teaching at a boarding school in Sydney?
A. Yes.

Q. At St Joseph's at Hunters Hill?
A. Correct.

Q. So following the receipt of that information in May 1994, he continued to be a teacher at St Joseph's, until the end of August, at least?
A. Correct.

Q. You didn't inform the principal of St Joseph's at that time?
A. I don't recall. I can't say either way.

Q. Would you have a look at tab 5. Stopping there, "Allegations Regarding AB24" - you have described that as being a code. That particular code, AB24, refers to Brother Foster; is that right?
A. That's correct.

Q. What does the "AB" stand for?
A. Nothing, really, except that it was just a code that was used to - it was decided to summarise in 1994 those people who had had an allegation of abuse against them, and they were simply referred to as ABs, for no particular reason, and given a number to indicate who they were.

Q. Was the reason not that "ABs" was the shortform for
"abusers"?
A. Not that I'm aware of. It was simply just plucked out of the air as "AB". Maybe it was. But I don't recall that.

Q. Who developed that code?
A. I'm not sure.

Q. And I presume it worked sequentially, did it - AB1, 2, 3 and so on?
A. As I recall in putting it together, there was no particular sequence; it was more just trying to identify those people that we had had complaints about as abusers. I don't think there was any chronological or any particular order like that.

Q. Well, if it is a code, it must have some logic to it. The "24", I presume, doesn't refer, for example, to the age or birth date of the person concerned?
A. The 24, as I recall, simply refers to it was the 24th person I happened to make a note of.

Q. Yes, that's what I am getting at.
A. It's not chronological or has any other relevance that I'm aware of.

Q. But at least by the time you allocated the code to Brother Foster, there were another 23 brothers to whom codes had been allocated?
A. Yes.

Q. Because this code is specific to the Marist Brothers?
A. As far as I know, yes.

Q. Do I understand this file note coming from the Marist Brothers files correctly to be, as it were, a summary of allegations regarding Brother Foster at a particular time?
A. I am sorry, could you repeat that?

Q. Do I understand this file note correctly that this is a summary at a particular time of the allegations received to that date against or regarding AB24?
A. Correct.

Q. Brother Turton, why was there a code? What was the purpose or need for a code? Why not refer in the Marist Brothers files simply to the names of the brothers?
A. It was just the decision. I don't know any other answer.

Q. At that time, it is recorded that there had been the phone call from a Mr [DR] that we have seen at tab 1. It also says:

About 1991 an anonymous caller rang the Brothers' house ...

What would "the Brothers' house" be a reference to?
A. The brothers' residence.

Q. I am assuming across the Province of Sydney at that time, there was more than one residence, or would that be understood as a reference to a particular residence?
A. I assume it's to the residence where AB24 was at the time.

Q. ... alleging certain things against AB24 of a sexual nature. No further information was available.

Then the next entry:

[DR] -

and perhaps it's a slightly different name -

wished to take the matter no further but wanted to tell someone in authority. The anonymous call could not be followed up.

And then in the last one:

Discussions by Provincial with AB24 gained an acknowledgment that there had been two incidents in the Fifties which were inappropriate.

Do I understand that correctly that you, as the provincial at that time, ascertained that there had been two incidents in the 1950s that were inappropriate; is that what it records?
A. I assume that I have written that document and that's correct.
Q. And that reference to "inappropriate" presumably is a reference back to the allegation of molestation which we saw at tab 9, the handwritten note?
A. I can't be sure of that, but there is a good chance that it was. I don't recall writing that, but I'm sure I did, as it is the format that I used. I don't think that one has my initials under it, but that's the format that was used, that I used.

Q. It can be scrolled down, and you will see that there are no initials on that.
A. Yes, but it is the format that I used.

Q. If we scroll up, you will see that there is a fax header at the top, 29 June '94. I understand in your statement you accept, therefore, that that note must have been created on or before that date?
A. Yes.

Q. Why did you take no action?
A. I can't remember my thought process at that time, but I didn't consider that it was necessary, what the meaning, the severity of "inappropriate" - I don't know. Given the learnings that we have made, the severe learnings over the years, I am quite sure that I would have taken action today.

Q. Tell us something about the school at which Brother Foster was at that time, in May/June 1994, St Joseph's, where he was teaching. At what age did children enter that school?
A. It's a secondary school, so they would enter around the age of 12 or 13, I would presume.

Q. And leave around the age of 17, 18?
A. About that, yes.

Q. It's astonishing, Brother Turton, that someone could be left continuing to teach in that environment, with no further investigation on your part and not withdrawing him from teaching?
A. I cannot recall the conversation that I had with AB24. I assume I would have got an assurance from him that what was referred to 40 years ago was not an issue now, but I cannot state that for sure, since I don't recall that.
Q. And you accept, looking back now, that that's unacceptable?
A. Oh, it would be quite different now, yes, absolutely.

THE CHAIR: Q. Why would it be different now?
A. It would be different now because we have quite a different understanding of abuse, the impact on young people, and also we have quite clear protocols now, which are well enforced, as to any allegations at all, what the response would be regarding the person who is accused, notification of people. Those protocols are much more comprehensive now, your Honour.

Q. But, brother, sexual misbehaviour back then was still sexual misbehaviour, wasn't it?
A. Correct.

Q. That hasn't changed?
A. Yes. Yes, your Honour.

Q. So I take it what you say has changed is the church's preparedness to do something about it; is that right?
A. Very much, your Honour, yes.

Q. So do I get the impression that in the former days you are talking about, it wasn't taken all that seriously?
A. I don't know that I could say it wasn't taken seriously. I think it was taken seriously, but not fully understood as it is now, nor were the consequences of it the same as they are now. So it has been a painful learning process for the church and for the Marist Brothers.

Q. Well, when you say "not understood", I will have to say to you again that sexual misbehaviour then was the same as sexual misbehaviour now, so what was missing? Did the church not realise that it was sexual misbehaviour?
A. One of the things I believe was missing was the whole source of - I believe the church, or Marist Brothers, in naivety saw it pretty much as a moral problem, which was essentially a matter of following up with someone, with little understanding of the comprehensive psychosexual understandings that we have now that lead to the development of things like the Encompass program, which was referred to earlier, and also the understanding that it simply wasn't enough to get from people an assurance that, "I recognise this is wrong and it won't happen again."
That was far from being the reality. So that has all been a very painful learning for us.

Q. But it wasn't just a moral problem; it was always a criminal problem, wasn't it?
A. Correct. I understand, your Honour, yes. And that took us some time to appreciate, I believe.

Q. You mean those with responsible positions in the Marist Brothers didn't understand that sexual assault or any form of sexual offence was a criminal matter?
A. I don't believe so. I think in some cases it was a question of severity and whether it was a difference between inappropriate and sexual. It was certainly inadequate, I acknowledge that, yes, and, in many cases, the wrong interpretation of the law.

THE CHAIR: Yes, Mr Stewart.

MR STEWART: Q. Can we go to the general tender bundle, 4-1, tab P. You will see, Brother Turton, that this is the protocol for dealing with allegations of criminal behaviour that applied at the time that I referred to earlier, adopted in the plenary meeting in April 1992. You remember this document, I take it?
A. I don't recall seeing this document before.

Q. Can it be enlarged?
A. I mean, I have seen it recently, but I don't recall seeing it back at the time we are referring to.

Q. At the top of the second page, you will see that the preamble there explains its background:

In November-December 1988, the Australian Catholic Bishops Conference considered the implications of allegations of criminal behaviour, especially relating to children, made against clerics and religious. The Conference was made aware of the problems that had arisen in the United States of America and Canada.

It established the Australian Catholic Bishops Conference Special Issues Committee relating to Priests and Religious (now titled Special Issues Sub-Committee).
Then perhaps skipping a paragraph:

This protocol, which has been approved by the Australian Catholic Bishops Conference, is limited to allegations of criminal behaviour made against a cleric or religious.

Did this apply to the Marist Brothers?
A. I believe so, yes.

Q. On the third page, Ringtail 0297, "Criminal behaviour" is defined, the third definition:
... shall refer to criminal offences in civil law and shall include sexual assault relating to children.

If one then goes to Ringtail 0300, which is page 6 of the document, at clause 6, or paragraph 6, this then sets out how complaints were to be dealt with, at 6.1 and 6.2:

Whenever the competent ecclesial authority ...

I take it that you, as the provincial of the Marist Brothers, would be the competent ecclesial authority at that time?
A. Yes, that's correct.

Q. ... receives information of alleged criminal behaviour the matter shall immediately be referred ...

And then an exception is created:
... except in circumstances of a most serious and extraordinary nature, to the relevant Special Issues Resource Group.

Then 6.2 deals with the exception:

In circumstances of a most serious and extraordinary nature, the competent ecclesial authority shall immediately
conducted, through another suitably qualified
delegate, an inquiry into the complaint
about the alleged criminal behaviour.

This didn't happen in this case at this time, May/June
1994, did it?
A. No.

THE CHAIR: Q. Brother, just before we adjourn, you said
that in earlier days the nature of the sexual misconduct
was not appreciated and, as a consequence, wasn't
appropriately responded to. Am I right in thinking that we
can assume that the nature and degree of sexual misconduct
that has been revealed - you have heard it described by
Archbishop Coleridge as a "tsunami" - was a phenomenon that
must extend back in time?
A. Yes, I believe so, your Honour, yes.

Q. Through decades, if not centuries?
A. Centuries, I can't comment, but I believe certainly
decades, yes.

THE CHAIR: Yes. Very well, we will have lunch.

LUNCHEON ADJOURNMENT
UPON RESUMPTION

MR STEWART: Q. Brother Turton, if we could move on to tab 6, you will see this is a note bearing your initials, AT. I take it the date there, 8-25-94 is 25 August 1994; would that be right?
A. I presume so, yes.

Q. And once again, this is a note in respect of AB24. You spoke earlier as to the purpose of the code and you said you were unsure as to its purpose. But, of course, the effect of the code was to hide the identities of brothers against whom allegations of sexual abuse had been made in the records of the Marist Brothers?
A. Yes, it's a form of security in insecure records, yes.

Q. This note records that Brother Foster was contacted regarding an accusation some 20 years ago. Perhaps one can understand the note in its proper context by first considering the document at tab 7 and then coming back. If we could look at the document at tab 7, which is a Queensland Police Service memorandum. You will see it is dated 19 October, but then the first substantive paragraph says:

On 24 August 1994 the suspect person Raymond Foster was interviewed by New South Wales Police in relation to a complaint made by [DG].

And then it goes on. We know that Raymond Foster was interviewed on 24 August. Now if we go back to the note at tab 6, do I understand that correctly, then, where it says, "AB24 contacted", that that is a reference to AB24 was contacted by the police; is that how that should be understood?
A. That's how I understand it, yes.

Q. And it says:

AB24 declined any comment subject to seeking advice.

Is that to be understood that Raymond Foster declined any comment to the police?
A. That's correct.
Q. Then it says:

   AB24 contacted AT ...

That's you; that's right, isn't it?
A. Yes.

Q. Then:

   ... and after discussion legal obtained 
   from your Honour.

I take it that is Howard Harrison?
A. Yes.

Q. And by "legal obtained", I take it that was to arrange 
lawyers to advise or represent Raymond Foster?
A. Sorry, could I just have that last --

Q. Perhaps you could explain how we are to understand 
that "legal obtained", what is "after discussion legal 
obtained from your Honour"?
A. Legal advice.

Q. For Raymond Foster?
A. Yes.

Q. Then there is a record of what I understand to be your 
conclusion:

   In the interim AB24 will be withdrawn from 
   ministry.

A. Correct.

Q. He was then withdrawn from St Joseph's College then or 
shortly after; is that right?
A. Correct, yes.

Q. What did you know then about the allegations against 
Raymond Foster, when you took that decision?
A. I knew nothing about the allegations apart from the 
fact that it seemed - I'm pretty sure he said to me that 
the police had called to see him. He made no advice. He 
had said it was about a matter at [REDACTED], which - I beg 
your pardon.
Q. That's all right, proceed, Brother Turton.
A. He mentioned the place where it was. My recollection is it was a fairly brief interview. He did not want to give me any detail except to say that there was police; he declined to make comment. And I think I asked him was it a serious matter, and he said it could be, and he particularly came to see me to request legal advice and he didn't want to say any more about it. So the only thing I knew about it was that it was - or things were - it was a police investigation, could be a serious matter, and the location where it was, and on that basis I withdrew him from ministry.

Q. So do I understand correctly that other than the involvement of the police, you had no more detail as to this allegation than you did in relation to the other allegations we dealt with before lunch?
A. The way I interpreted what he said to me was that it was a sexual matter and interpreted seriously, so that's all I know - knew, sorry.

Q. The other matters were also sexual matters to be taken seriously?
A. I'm not sure that I assessed them so seriously, but they were sexual matters, yes.

Q. In the previous matters, there had been no police involvement. In this matter, there was police involvement. Was that not the reason why you withdrew Raymond Foster from what you call ministry in relation to this matter, when you hadn't done earlier?
A. I don't recall all my thought processes at the time, but my sense is it was a more recent matter, more easily he was able to comment on it, and the fact that it was a police matter and that he was in a boarding school, yes.

Q. Brother Turton, did you hear the evidence of Brother Hill?
A. I heard a good deal of it. I can't say I heard all of it, sorry.

Q. Brother Hill, in his statement, says in paragraph 30 that you had told him that Brother Foster had made some sort of admission to you about one or more of the 1993-1994 complaints. What was the admission that Brother Foster had made to you?
A. About the 1993-1994 complaints?
Q. 1993-1994. In other words, these complaints, including the one of [DG] and the others we looked at before lunch. Did Raymond Foster make some form of admission to you in relation to those?
A. He made the admission that was mentioned earlier about the inappropriate conduct, two incidences of inappropriate conduct, yes.

Q. And is that the admission that you conveyed to Brother Hill?
A. I'm not sure at this stage. I can't remember that exactly - anything else, yes.

Q. Brother Foster was then moved to Eastwood. Can you tell us what is that reference - Eastwood, what is that?
A. Eastwood was a community residence for a group of brothers.

Q. What activities were there there?
A. It was basically a residence for brothers to live. There were no activities or ministries, as we say, there.

Q. What duties or service was Brother Foster then to perform for the Marist Brothers?
A. He was allocated the general duties, support of that community in terms of local things for the community, cooking and that sort of thing, and there was a consideration that he would move into work to do with publishing and things, out of contact with minors.

Q. And establishing or running a resource centre; is that right?
A. Yes, we were looking at a resource centre, which was a combination of publishing and archival materials, things like that.

Q. Did you put in place any particular measures other than what you've just said to ensure that Brother Foster did not come into contact with minors during his work?
A. Other than a direction that he was not to be associated with minors, no, there was no other plan made out at that stage.

Q. That direction was made to him, I take it?
A. Yes.
Q. Was it made to anyone else?
A. I believe I made it to the community person there, but I cannot say that for sure.

Q. By "the community person", do you mean a person who was in charge, as it were, or the most senior at that facility?
A. Yes. In that house, yes.

Q. About how many brothers lived there, do you know?
A. There was a retreat team, which was four brothers. I'm not sure of the number, but I would say a total of seven, I'd say, plus or minus. It wouldn't be very different from that.

Q. And later Brother Foster was moved to Mittagong. Brother Hill told us a little about that. Were you the provincial when he was moved to Mittagong?
A. I don't think so, no.

Q. Are you aware of what measures were put in place at that time to ensure that he didn't work with minors?
A. No. Not - no, no.

Q. You're not aware? Am I to understand you are not aware of such measures?
A. I was not aware of what the details of his transfer were.

Q. Dealing with the second aspect of your involvement in this case, and that's really the mediation or, more accurately possibly, settlement conference that you came to.
A. Yes.

Q. That was in June 2000. Just so I understand this in context, by then Brother Hill, who had succeeded you as provincial - his term had come to an end and he was no longer provincial; is that correct?
A. Correct.

Q. And there was a new provincial?
A. Correct.

Q. And that was Brother John Thompson; is that right?
A. Yes.
Q. You had started your role as director of professional standards some six months before the conference?
A. Three or four, probably. Oh, June - yes, three or four. It took a little while to get going. I was appointed, I understand, in January.

Q. But it was a new office that had been created?
A. It was a new office, yes.

Q. Do you understand what the thinking was behind the creation of such an office?
A. I don't believe any charter was made out for the role, but my understanding was that I would represent the provincial and deal with any matters concerned with complaints against brothers regarding abuse, to inform the provincial of those and act on his behalf as he wished in terms of responding to those and relating to the State Professional Standards Office.

Q. Because the State Professional Standards Offices had been established quite some years earlier, following the introduction of the Towards Healing protocol in 1996; is that correct?
A. I don't know if they were concurrent, simultaneous, but fairly soon, I think, after the Towards Healing protocol was established.

Q. So do I understand from your description of the role of the Marist Brothers director of professional standards, it was not to replicate the director of professional standards at a State level, but it performed a different role?
A. Not to replicate, but where working with the State Professional Standards Office, various elements of the Towards Healing procedure would often - as I was representing the church authority, the professional standards officer would fill that role.

Q. On behalf of the Marist Brothers?
A. On behalf of the Marist Brothers, yes.

Q. If we could go to paragraph 47 of your statement, here you are setting out your recollection of how you came to attend the conference. You say:

... I was only asked to attend that conference shortly before it took place.
Initially I was not aware of who the victim was, but agreed to participate. As I recall, I was not informed whether it was a Towards Healing complaint or otherwise, and was only informed there would be a settlement conference with lawyers present. I was asked to attend to represent the Marist Brothers, to listen to the victim, to respond and to convey an apology to the victim on behalf of the Marist Brothers.

In wearing the director of professional standards hat within the Marist Brothers context, you were essentially representing the provincial at this conference; is that right?
A. That's correct.

Q. As I understand it, before you attended the conference you didn't know who the complainant was; is that right?
A. That's correct. I can't recall at exactly what time I was given the name of the complainant and - yes, that's correct.

Q. When did you learn the identity of the brother against whom the complaint was made, in other words, that this was a conference relating to abuse by Raymond Foster?
A. I can't recall. It wasn't long beforehand, I believe.

Q. One of the things you say that you were to do at that conference was to respond. I assume, of course, that that is to respond, amongst other things, compassionately?
A. Yes.

Q. And effectively?
A. Hopefully, yes.

Q. And to do that, I take it, you would need to have - let me put it like this - you would need to prepare, and to prepare you would need information as to what it was about; would that be right?
A. Yes.

Q. I understand from your statement, in paragraphs 47 and 48, that really you were quite unprepared by way of information to enable you to respond to and deal with what would happen in the conference?
A. My belief is that shortly before, a month or two before, I did have some time to prepare. My recollection is two things regarding Mr [DG]. When I first heard the name, I did not associate it with a person that I knew. The second thing is that I was not aware of a lot of details regarding the offender in this case, apart from the fact that I had suspended him from teaching, and I was not aware of a lot of the details that had transposed between that time and this settlement meeting. But I had the basic details. I was aware of the mode of his death. And so I don't recall - I believe I saw a summary of offences, but I cannot - I'm not sure of that, before the meeting.

Q. As the director of professional standards, you obviously had access to the provincial's records with regard to Raymond Foster?
A. I did.

Q. Did you seek to access those records to get a proper picture of his history?
A. I believe I did, but I don't think there was much there. For example, I had never seen those police reports and that statement before this matter was raised.

Q. The records that were there included the records that we looked at before lunch in relation to the 1991 and then the 1993 and 1994 complaints; is that right?
A. Yes, that's correct.

Q. Did they include the, if I might term it, suicide note to Brother Hill?
A. I don't recall having seen that note until some years later.

Q. Some years after the settlement conference?
A. Some years after the settlement conference.

Q. Would it be fair to say, in the absence of a facilitator or mediator at that conference, that it was, in a sense, run by the CCI lawyer, Patrick Monahan?
A. That wasn't the way that I understood it. In the other settlement conferences of this kind that I had attended, with lawyers and so on, my understanding is that it was mutually agreed to between the two parties. In this case, I think there was a lawyer and a barrister representing Mr [DG], and Mr Monahan was representing the Marist Brothers.
Q. Was there someone in particular taking initiative and moving the conference on?
A. I recall Mr Monahan proposed where the meeting - actually, I think there were two proposals as to where it would happen.

Q. Sorry, Brother Turton, I'm just going to cut you short because I'm not asking about before the conference. I'm talking about the conference itself.
A. Sorry.

Q. So in the conference itself, was there someone who took the initiative to move the meeting along and ensure progress was being made?
A. No, I didn't get that impression. There seemed to be agreement between the two groups of lawyers as to how it would run, and Mr Monahan said to me that Mr Byrne had made comments about Mr [DG] and so on, et cetera. So, no, I didn't get a sense that one person was running it. There seemed to have been consultation between them beforehand and agreement, as far as I could see, as to how it would run.

Q. It wasn't anything like a Towards Healing facilitation, was it?
A. No.

Q. Not even along the lines of a Towards Healing facilitation?
A. No. Well, that was my impression.

Q. If we could look at your paragraphs 54 and 55, you've just dealt with paragraph 54. In paragraph 55, you say:

While the lawyers negotiated as to the financial aspect, I remained in a separate room by myself ... The negotiations went on for a few hours ... Mr Monahan would give me an update from time to time ...

The financial aspect, as I understand it, was really taken care of by CCI; is that right?
A. Basically in those sorts of meetings, the financial aspect was usually between lawyers.

Q. Did you play no role in that?
A. I was aware of it, and Mr Monahan would come back and say, "We're doing this, we're doing that", so I was kept informed, I suppose you could say, yes. I did not take a direct role in it.

Q. At tab 59C, there is a manuscript note of the conference. Have you seen this in the last few weeks in preparing for this hearing?
A. Yes, I have.

Q. So you will be familiar, then, that this is a manuscript note by Karen Mole of CCI?
A. Yes.

Q. Some of what happened at the conference is recorded there. You will see, if we scroll down a little bit, it says "Brother Alexis Provincial 1989-95", and it is recorded there "vaguely recalls a 'murmur' of Brother Foster having problems". Do you accept that you probably said something to that effect?
A. Yes, I acknowledged that Brother Foster had had problems.

Q. But in fact, you knew far more than having a vague recollection as to a "murmur" of his problems, didn't you?
A. I had no knowledge of the matters that were raised in the - what I call the final event of his removal from ministry. I did not get any information regarding what those charges were. I had the knowledge of the earlier - the two letters, and the anonymous phone call, and so on.

Q. But in fact it is the same complaint. We looked at that earlier - the complaint in respect of which you withdrew Brother Foster from ministry is the same complainant and the same events in respect of which [DG] was now asserting a claim or a complaint against the Marist Brothers?
A. When I withdrew him from ministry, I did not know any details of the complaints. It was accepted for police complaints, and directed, that we did not do any investigation of matters under police investigation. I was not aware of any of the police matters that followed that for the next number of years up till 1999, so I was not aware of any of those details at that stage.

Q. You say "it was accepted for police complaints, and directed, that we did not do any investigation of matters
under police investigation." Accepted by whom?
A. My understanding is that the police expected that
while a matter was under police investigation, we were not
in a position to do any investigatory work ourselves, and
it wasn't until there was a statement that it was no longer
a police matter that we could carry out investigation. And
I've had a couple of experiences of that.

Q. Still on this handwritten note, you would have been
aware, of course, that one of the things that [DG] wanted
was a public apology?
A. Yes.

Q. If we can scroll down on that same page, you will see
that it is recorded - this is under the entry for
Michael Byrne. It says:

More public apology in general terms
similar to what has been given in
[something] and a pro forma was provided
for a newspaper statement.

Do you remember that?
A. I don't recall a pro forma being presented. I do
remember a discussion about a personal and public apology.
There may have been pro formas exchanged between the
lawyers.

MR STEWART: Your Honour, we have been able to get some
further documents arising out of what occurred yesterday in
relation to the drafting of the apology, which this witness
may be able to speak to. And there are one or two other
documents also from the CCI file.

I intend to tender them as their own separate bundle,
if they might be given a number.

THE CHAIR: How should I describe them?

MR STEWART: Bundle of ten pages of documents from CCI.
THE CHAIR: Very well, that will become exhibit 4-41.

EXHIBIT #4-41 BUNDLE OF TEN PAGES OF DOCUMENTS FROM CCI

MR STEWART: The pages are numbered using the Ringtail
numbering in the top right-hand corner.
Q. Were you given a copy, Brother Turton?
A. I'm not sure, I'm sorry, counsel assisting, sorry.
Thank you.

Q. Brother Turton, if I can take you, firstly, to the page which is numbered 0005 in the top right-hand corner. It confusingly starts with "TEN", which presumably stands for "tender". Do you see that?
A. Yes.

Q. If we can scroll down a bit, you will see there is an email from Joelle Coulon, provincial's secretary. Was that your secretary at the time?
A. That was the provincial's secretary.

Q. I'm sorry, you were not the provincial then, obviously. This is addressed to Mr Monahan, "Letter of apology to [DG]". It says:

Brother Alexis Turton has asked me to forward the attached letter to you.

I'm not suggesting that the pages that follow are necessarily the attachments, because I don't know that. They just came as documents in a file, but I want to ask you whether this helps you to remember about this reference as to a pro forma apology. So if you look at the document 0007, that would seem to be the pro forma general apology that was provided in the meeting; would that be your understanding?
A. I don't recognise that as any Marist - as any - as one of our documents.

Q. Then the next page would appear to be a family apology, which then has some manuscript changes in it.
A. Yes.

Q. Do you, firstly, recognise that manuscript writing there?
A. No, I don't.

Q. That general apology, going back a page to 0007, you say is not a Marist Brothers document, so far as you can tell. Are you suggesting or accepting that that was the pro forma that was provided by or on behalf of [DG] at the conference?
A. I don't really know. I know that Mr Byrne and
Mr Monahan talked about this at times out of my presence,
so it may have come from Mr Byrne. I don't know. I don't
recall having seen one of that form. I have with me
apologies that have been written by the brothers and by
myself.

The other comment I would make on the general apology
is that the term "Marist Brothers Community of Australia
acknowledges" is not the language we use.

Q. Aside from that, "Marist Brothers Community of
Australia", where you would use, I suppose, "The Sydney
Province of the Marist Brothers" - is that how you would
put it?
A. We might use that. We might just say "The Marist
Brothers", or "The Institute of the Marist Brothers" is
a common one. Just to clarify that, when brothers speak
about a community, they usually mean the local community of
six or seven brothers.

Q. Is there anything in that apology, the detail of it as
opposed to the principle of making a public apology, is
there anything in the detail there, that is inaccurate or
that you disagree with?
A. No, that seems very acceptable.

Q. Patrick Monahan has given us a statement this morning
where he says that this is the pro forma general apology
that was provided at the meeting, and, as I understand your
evidence, you wouldn't say that it isn't?
A. Sorry, could you just say that again?

Q. You would not say that this was not the pro forma
general apology that was provided at the meeting?
A. No, because I'm not aware either way.

Q. If we go to tab 59C, on the second page, which is
0006_R, perhaps if we could scroll so we see the bottom of
the previous page as well, you will see that's what we had
been looking at - "More public apology in general terms" is
what was requested, referring to the pro forma. Then
"PJM" - Patrick Monahan - said that some concern was raised
at this. Then do you see it says "BrA" - that's
a reference to Brother Alexis, isn't it?
A. Yes.
Q. It is recorded there that you said something to the
effect of:

Would prefer to address the family rather
than write a letter. Reported his
experience of newspaper/media articles from
other past victims and brothers.

Do I understand it that you were resistant to the idea of
a public apology?
A. My reading of that - and I don't have a detailed
memory now of that - is that if an apology was to be
effective for the family, it was better done personally and
face to face. As to how the media would handle it,
I couldn't really make any other comment.

Q. But in the face of the complainant seeking a general
apology, the ultimate position taken by you on behalf of
the Marist Brothers at the meeting was to refuse that; am
I right?
A. No, not at all, no. No, I was simply expressing
a preference. I remember there was some discussion about
a public and a private - I was not opposed to that.

Q. If we scroll down towards the foot of that page, it is
recorded - you will see there it says Patrick Monahan:

"Family apology" can be done with some
tweaking.

"Public apology" - can't be done for
various reasons.

Am I to understand that at the meeting, the position taken
on behalf of the Marist Brothers was that a public apology
would not be done?
A. I really don't know how to interpret that, I'm sorry.

Q. And do you recall whether [DG], the complainant, was
in or outside the room at the time that you gave the
explanation at the top of this page that we just looked at,
that you would prefer to address the family rather than
write a letter and that you reported your experience in
respect of public apologies?
A. My recollection is that our time together was fairly
brief, that I had the impression that Mr [DG] was stressed
himself, and the time that I had was a time to acknowledge
what had happened and to apologise to him for that. And when that basic meeting finished after he and I had made some comments and statements to each other, I don't think we gathered together again after that. I don't recall him being present for this sort of discussion. I understood that anything like that, his lawyer would carry back to him in their own discussion.

Q. If we scroll down again to the foot of the page, I read the bit about Patrick Monahan saying a public apology can't be done for various reasons. Below that, it says "MB", Michael Byrne, the barrister for [DG]:

Wants it to address his hurt following the glowing eulogy.

Then it says "PJ", and something which I'm not sure of, and then under that, it says "MB" again, Michael Byrne:

Still wants the public injury readdressed via the draft statement.

So am I to understand that at that stage, on behalf of [DG], it was still being asserted that a public apology or public statement needed to be made to address the public injury?

A. I don't recall this ongoing discussion about the public and the private statement, so I really can't comment on that. Nor can I comment on the earlier statement by Mr Monahan that there were problems with the public statement. I don't quite know what that was about.

Q. Perhaps it is revealed a little further, because then the next entry is "PJM" again, Patrick Monahan:

We can't see the benefit of such a general statement and will do more harm than good, but we will not close our minds.

And then it would appear that Karen Mole suggested:

Apologise for eulogy in family apology? ?

And then it is recorded "PJM" and "MB", "Possible alternative", and then below that, "PJM":

Limitations difficulties/liability for
Do you recall what that's about?
A. I'm sorry, just redirect me, please, counsel assisting?

Q. Do you see where there is an entry for both "PJM" and "MB"?
A. Right, yes.

Q. And then the one below that, "PJM", it seems to be:
Limitations difficulties/liability for Marists.
A. Yes.

Q. You don't recall that discussion?
A. I'm not even sure that I was present for that part of the discussion. The toing and froing between the lawyers was going on and I'm not entirely sure what that is about.

Q. You may have been present, and I say that because if one refers now to the small bundle I gave you, which is 4-41, at page 0002, which is a separate and further page which was not previously included. If it is scrolled down, you will see there the details of the offers and counter-offers were dealt with. You weren't present when the money was actually discussed, were you?
A. No, I don't think I was present. As I said, there was occasional reporting or acknowledging of progress.

Q. The upshot of it is that there was no agreement to a public apology; is that right?
A. I'm not sure.

Q. Are you saying that in this pro forma general apology at 0007, aside from the reference to "The Marist Brothers Community of Australia", there is nothing in there that you would not feel able to say publicly?
A. No, I think the spirit of it is what I would agree with.

Q. Are you aware, Brother Turton, that there was apparently no eulogy at the mass for Raymond Foster?
A. That's what I understand.
Q. Do you recall, were you aware of that at the time of this mediation?
A. I think I would have been, yes. I was not at the funeral, but I think I read that, yes.

Q. Are you able to explain how the need for a public apology seems to have been linked to the eulogy as opposed to other public statements made at the time?
A. I'm not sure, but my understanding of that is that there was some other source from some other community, and I think Brother Hill may have mentioned this, eulogising Brother Foster, and I'm guessing that that's what is being referred to there as a eulogy. But my understanding is, at the mass, there was no eulogy.

Q. I suggest, Brother Turton, that what this record ultimately shows, this written record that we've been looking at, is that [DG] wanted a public apology and the Marist Brothers refused that and negotiated the terms of a family apology; would that be right?
A. That wouldn't be my understanding.

Q. Would it not be right that a public apology was refused because that would draw publicity, adverse publicity, to the Marist Brothers?
A. It may, yes.

Q. Well, it would, if an apology was made in these terms, it would draw adverse publicity to the Marist Brothers - yes, you're agreeing?
A. I agree.

Q. And is that not why a public apology was not agreed to, despite it being requested by [DG]?
A. I don't recall settling whether or not there be a public apology at this particular meeting.

Q. And the Towards Healing principles at that time, of course, required an outcome that was just and compassionate. Would you agree that it was not in accordance with justice and compassion to refuse a public apology?
A. If that were the case, I think that should be reconsidered, yes. As I say, I don't recall refusing a public apology.

Q. It would not be in accordance with or it would not be
meeting the needs of the victim to refuse a public apology
sought by the victim?
A. If at the end of that discussion the victim, Mr [DG],
still wanted a public apology, I think that should be
considered.

MR STEWART: Nothing further for this witness,
your Honour.

THE CHAIR: Yes, Mr Gray?

<EXAMINATION BY MR GRAY:

MR GRAY: Q. Brother Turton, I think you say in your
statement that during your ten years as director of
professional standards for the Marist Brothers, from 2002
to 2012, you received around 128 complaints of child sexual
abuse?
A. Yes, approximately, yes.

Q. Of those, are you able to estimate approximately how
many proceeded under Towards Healing?
A. Nearly 80.

Q. In those 80 or so, were you personally involved, that
is, speaking to the victims?
A. Yes.

Q. Did you hear from them how, during the course of their
respective Towards Healing processes, they had found
Towards Healing had worked for them or not worked for them?
A. I did, but there are a lot of different answers to
that. Some wished to maintain contact and found it
a positive healing experience. Some withdrew, for a number
of reasons, a small number. Many, I found, came to Towards
Healing to let go of something, and, having done that, they
never wanted to have further contact. That was their
healing, to let go.

Q. So of the 80 or so, would you be able to estimate for
the Commission what proportion of those victims
communicated to you that the process had been of support or
value to them?
A. After the formal process was complete, a small number
would communicate, and there are a number now that I meet
with regularly because that's part of their healing and
they want to maintain that contact. I took it as
a positive sign, when we finished a Towards Healing
mediation, that there was a shake of hands and a smile.
I don't think I'd ever call Towards Healing successful, in
the sense that anyone who has undergone sexual abuse
I think is damaged seriously, and some of that damage is
never left behind, but I'd call it satisfactory in terms of
they've taken a step to move forward.

Q. In terms of your impressions in that way, of the 80
about what proportion had that characteristic?
A. I'd be hesitant to put a number on it. My sense is
the majority, but certainly there were people who left
unhappily and went to a different process, which was
entirely up to them.

Q. Can you assist the Royal Commission generally as to
whether, in your experience and in your view, Towards
Healing has delivered real and valuable pastoral support
for some or many victims?
A. I believe, and my experience is, that it has done
that.

THE CHAIR: Q. Brother, you said you keep in contact
with some people.
A. Yes, your Honour.

Q. How many people have you spoken to after they have
been through Towards Healing?
A. As distinct from keeping in contact with, sort of
thing?

Q. Well, both.
A. I make contact with them in different circumstances,
but I would estimate 20 to 25.

Q. Have you had the experience which has been reported to
the Commission of some people who leave the actual session
in a positive frame of mind, but some time later that
disappears?
A. Yes. Yes, your Honour.

Q. It is not uncommon, is it, for people who have gone
through the experience of relating their story and being
helped by that to subsequently again retreat and continue
to suffer?
A. I've certainly had that experience. In my experience,
it would be a low percentage, but most definitely it has
happened, and it's happened for a number of different reasons. Yes.

Q. Well, for a number of different reasons, but the fundamental cause, of course, is the abuse they suffered in the first place?
A. Oh, the abuse, yes, and whatever might have happened after, yes, your Honour.

MR GRAY:  Q. I wonder if we could have tab 17 of the exhibit bundle, please. Brother Turton, this is Mr [DG]'s initial letter to Brother Michael Hill in January 2000, being his first written contact with Brother Hill. Do you follow?
A. Yes.

Q. Do you see that he attaches - we see it at the bottom of the second page - a copy of the complaint that he had made to the Queensland Police? Do you see that there? It says, "Attached"?
A. I see, "Attached", yes.

Q. Have you seen this letter before - that is, in the last month or two?
A. This letter or the attachment?

Q. First of all, the letter.
A. The letter I've seen recently, but before that I hadn't seen it.

Q. But you've seen that in the letter Mr [DG] sets out something of what had happened to him?
A. Yes.

Q. And he attaches the complaint. If we go to tab - I'm sorry, it has a non-publication order. Can I ask you to assume that there was attached a statement by Mr [DG] to the Queensland Police setting out his account of what had happened?
A. Yes.

Q. In those circumstances, that is, an initial letter, such as the one you see before you, attaching a statement to the police of about five pages, in terms of what had happened as to the abuse, would you have understood at the time of this letter, that is early 2000, that there was a need, in addition, for a contact report, in circumstances
where the offender in question, the abuser, was deceased?
A. I'm sorry, I don't know that I quite understand the
question, Mr Gray.

Q. If the victim writes a letter, such as the one that
you see here, a couple of pages with the outline of the
story, and also attaches a longer statement, being
a statement that he had given to the police earlier, would
you have seen there that was a need, in addition, for there
to be a contact report?
A. I think the term "contact report" is used in different
senses by different people. Some people refer to the
contact report as "the story of what happened to me", and
that's what the contact person goes to get, or they receive
its equivalent. Others will see the contact report as "the
story of what happened to me, plus a statement of what
I expect, plus a statement that I am not currently involved
with the police and do not want to go to the police". But
given that, I would think that would be sufficient for
a contact report, given that somewhere there is some
expectation of what's looked for.

Q. Next, I want to go through with you the sequence of
these things that you came to learn of in 1993-1994, and
can I start with tab 5, please. This is the document that
you have said that it's very likely that you prepared
yourself?
A. Yes.

Q. And that you obviously must have done so, as you
agreed, on or before 29 June 1994?
A. Yes.

Q. There are four paragraphs there, but chronologically
the first paragraph would be the second one, do you
agree --
A. Yes.

Q. -- which refers to an anonymous caller in 1991?
A. Yes.

Q. I think you've said in your statement that at the
present time you have no knowledge or recollection of what
that paragraph is referring to; is that right?
A. Yes.

Q. The second one chronologically is what's referred to
in the top bullet point on the page, "phone call from a Mr [DR]." If we could then have tab 1, please, of the bundle, that is the phone call in question, is it not, the 1993 phone call?

Q. Which was received by somebody other than you and which you saw some time later - that is, a note that you saw some time later?

A. Yes.

Q. It refers to Brother Foster in the fourth, fifth and sixth lines of the first paragraph; is that right?

A. Yes.

Q. And the person who had made the call said that he wanted no publicity and no action, according to the note of whoever took the call?

A. Yes.

Q. Can I just ask you this, hopefully not offending any pseudonym problems. Mr [DR], as it's recorded there on the note, was, before the initials [DR] were substituted, for a name, the first initial of the second name starting with D. Do you remember that?

A. Mmm-hmm.

Q. Then if we go back to tab 5 --

MR STEWART: Your Honour, I'm sorry to interrupt my friend. It may assist if we stop the web broadcast briefly so this can be dealt with more easily by my learned friend. So I'll just ask for that.

MR GRAY: I'm sorry, I just haven't followed that, I'm sorry, your Honour.

THE CHAIR: Well, what they've done, they've stopped the transmission to the web. I'm not clear in my mind why we're doing that.

MR STEWART: We've put it on again.

THE CHAIR: Thank you.

MR GRAY: Q. Sorry, Brother Turton. When we come back to the document at tab 5, which is your four-bullet-point
document, the top paragraph is referring to that 1993 phone message that we just looked at. Then we have next chronologically the document at tab 9, which is the letter from retired priest John O'Connor to the bishop in the relevant diocese. His letter begins:

Yesterday I visited [someone] ...

And the initials [DR] are given. Do you recall that the actual name of that person is a surname beginning not with D but with N?
A. Yes.

Q. And of course this letter of 14 May 1994 does not identify by name any brother; is that right?
A. That's correct.

Q. Then as you say in your statement, it may very well be, nevertheless, that the person being referred to by John O'Connor, by the name he has referred to, may have been the same person as referred to in the phone message where the name is different?
A. May have, yes. I agree.

Q. Then coming back to tab 5, the second bullet point deals with the 1991 anonymous call. The first bullet point then deals with the 1993 phone call, which we've just established may be the same subject matter as the 14 May 1994 letter from John O'Connor. The third bullet point refers to [DR] wishing to take the matter no further but wanting to tell someone in authority. As you understood it, is that expression picking up the subject matter or the contents of the 1993 phone message, which we can see again at tab 1, which refers to him wanting no publicity, wanting no action, just wanting to tell someone?
A. That's my sense, yes.

Q. Then the fourth bullet point refers to:

Discussions by Provincial with AB24 ...

Who of course is Brother Foster. I think you say in your statement that although you don't recall such a conversation, you accept there must have been one; is that right?
A. Yes.
Q. But you can't say now when that was, other than that it must have been before 29 June 1994?
A. Mmm. Agreed.

Q. With all of the matters, or at least the matters referred to in the 1993 phone call and the 1994 letter from John O'Connor, the subject matter was incidents from the 1950s?
A. Yes.

Q. When we get to the conversation that Brother Foster has with you, which we find at tab 6, if that could be brought up, that concerns an accusation in relation to the early 1970s?
A. Yes.

Q. Twenty years later, thus 20 years more recent?
A. Yes.

Q. Moving to a different topic, you were asked a couple of questions about when in relation to the conference meeting that you went to in June 2002 you first learned the identity of the person whom we know as [DG]. Do you remember that?
A. Yes.

Q. Your statement uses the expression "shortly before the meeting", and you said this afternoon that "shortly before" could have been a month or two before?
A. Mmm-hmm.

Q. I wonder if tab 59 could be brought up, please. Do you see that's a letter from Karen Mole of CCI to you on 10 May, which was, I suppose, about five and a bit weeks before the meeting? The heading of her letter is "Marist Brothers ats [DG]", so at least the name, [DG]'s actual name, was on that letter?
A. Yes.

Q. At that point, did you link that name with the person that you had known at the school; that you had known the actual Mr [DG] at back in the late 1970s?
A. I can't say exactly, but I'm guessing, I'm assuming, that it was around that time that I --

Q. That you made the link?
A. -- that this person whose name was not uncommon was
actually just not another person but someone that I had
taught, and so on.

Q. Now I want to ask you some questions about the apology
sequence at the meeting. If we could have tab 59C, please.
These are the notes of Ms Mole taken on the day. You have
been taken to this - I'll try to be quick about it. On the
first page, against the initials "MD", which I think it is
accepted in fact should be "MB", it means Michael Byrne?
A. I think so.

Q. You can see that these notes have Mr Byrne saying
something about family impact:

> Personal letter to parents & siblings from
> Brother Alexis. Have a pro forma
> letter ...

Do you see that?
A. Yes, yes.

Q. And then they have Mr Byrne saying below that:

> More public apology in general terms ...

Et cetera, and you've been taken to that this afternoon?
A. Yes.

Q. Then at the top of page 2, if we scroll a little bit
further, there is attributed to you the idea:

> Would prefer to address the family rather
> than write a letter.

It was suggested to you that that indicated that you were
refusing an apology to the family. Was that what you were
doing?
A. No.

THE CHAIR: Q. Well, it goes on to say:

> Reported his experience of
> newspaper/[radio] articles from other past
> victims and Brothers.

So that's you talking about these matters getting into the
newspapers and the radio, isn't it?
A. Well, I've only seen this document recently. It's written by someone else, so I do not recall speaking against any public apology. I guess I'm just expressing a desire that it's very carefully worded and as to how it would go in. That would be my thought, your Honour.

Q. Can I say to you that's not the impression the note gives? Do you agree that the note gives a different impression?
A. My interpretation of the note is I would prefer to do the personal thing with the family and that the newspaper apology is open to a number of interpretations. But I didn't have a sense of blocking it or objecting to - to it not happening, your Honour.

MR GRAY: Q. In fact, brother, the family apology in due course was given, was it not?
A. Yes. That was a written apology.

Q. In writing?
A. Yes.

Q. At the bottom of page 2, the page that we're on here, against Mr Monahan's initials, those two lines, "Family apology" and "public apology", and the note seems to be suggesting that Mr Monahan was saying that the family apology could be done with some tweaking, but the public apology couldn't be done. Do you recall whether you were still in the room at this point?
A. No, I'm not sure.

Q. On the next page, at about point 3 on the page, there is attributed to Mr Monahan the words:

> We can't see the benefit of such a general statement and will do more harm than good, but we will not close our minds.

That seems to indicate that Mr Monahan was not rejecting a general statement at that stage?
A. Yes.

Q. Then later on that page, there is attributed to you something, "Brother Alexis: Has no knowledge of this", and the "this" presumably is what appears just above that - this is Mr Byrne saying that there were "clues", presumably about Brother Foster, in terms of "prowling", and so on,
and then it has this attributed to you:

Has no knowledge of this and he was the principal at the time.

You were not the principal at the time, were you?
A. No.

Q. You were not the principal at the school where the abuse that we're now talking about --
A. I never taught at that school.

Q. No, so it's pretty unlikely that you would have said that?
A. Yes, I just don't recognise that sort of statement.

Q. So if somebody said it, it's unlikely to have been you; is that right?
A. Well, I don't know how I could have made that statement, no.

Q. Then, finally, you may or may not have seen this, brother, but are you aware that Mr Monahan has provided to the Commission a statement today setting out his recollection of how the apology, which ultimately was signed by John Thompson, came to be drafted?
A. I was aware that he'd made a statement. The detail --

Q. Well, if you would assume that, according to Mr Monahan, the two documents that you were shown a little while ago as part of exhibit 4-41 - and perhaps they could be shown to you again - headed "General Apology" and headed "Family Apology".
A. Yes.

Q. They were the ones that you said didn't look like Marist Brothers documents.
A. I have them.

Q. According to Mr Monahan, those two documents were prepared by Mr [DG]'s legal team and provided to you at the settlement meeting. Do you have any recollection of that one way or the other?
A. I don't actually remember seeing them at the settlement meeting.

Q. According to Mr Monahan, the parties at the meeting
ultimately agreed that you would consider the wording of
the family apology - that's the one that has various
handwriting on it in the form we have it today?
A. Yes, yes.

Q. And send it to him, Mr Monahan, and that he would in
turn provide it to Mr [DG]'s solicitors for their approval.
Does that ring a bell with you at all, that sequence?
A. I don't specifically remember it, but it would be
normal and reasonable, if an apology is to come from the
provincial, that I would be the one that would convey it
for the provincial to consider aspects of the wording and
so on.

Q. Mr Monahan then attaches to his statement a letter
from Joelle Coulon, the provincial secretary --
A. The provincial's PA, yes.

Q. -- to him, headed "Letter of apology to [DG]", and the
contents of the letter, which is just attaching a document,
are "Brother Alexis Turton has asked me to forward the
attached letter to you." The letter which is attached to
that email is the letter that we find at tab 61A, if that
could be brought up. I would ask you to assume this: if
one does the exercise of comparing the family apology
document with its various handwritten annotations and
notations with this draft letter of apology to be signed by
John Thompson, one does indeed find that they are virtually
the same once the appropriate adjustments are made?
A. Yes, I think I see that, yes.

Q. Does anything come back to you as to whether it was
with the aid of the family apology document that you
prepared the draft letter of apology for John Thompson to
sign?
A. I just can't be sure whether I prepared the draft or
I gave John Thompson the ideas of the draft, because
usually if I was responsible for the apology, I would write
it myself. If the provincial was writing it, usually they
would ask if there were specific things they wanted to be
included. I don't recognise my writing on that document.
I suspect it's someone else, and probably the provincial,
is my - since it ends up as his letter.

Q. Do you mean the word "erroneous" being corrected?
A. No, I think the provincial would have been part of
those - determining the handwriting. Does that make sense?
Q. Well, you're not sure whose handwriting that is?
A. I'm not sure. I'm not sure.

Q. All right. Then finally, according to Mr Monahan's statement today, that draft which is on the screen at the moment was sent by him to Mr [DG]'s solicitors, and they then wrote back to him saying that an apology in those terms was one that [DG] was satisfied with?
A. Yes.

MR GRAY: I have nothing further for Brother Turton, your Honour, but I do wish to tender Mr Monahan's statement, which has been provided.

MR STEWART: My intention is to tender that when Mr Monahan comes, probably later in the week, in the other case, and then he can deal with both statements at once.

THE CHAIR: Yes, very well.

MR GRAY: If that is the procedure, I have no problem with that. I have no further questions.

THE CHAIR: Q. Brother, we have a statement from Brother Crowe, who is the current provincial. He tells us that there have been some 1,046 Marist Brothers in Australia since 1948. You understand that?
A. Yes, your Honour.

Q. Now, in the scheme of things, how many would be in the Sydney Province as opposed to other provinces throughout Australia, as a proportion?
A. At the present moment?

Q. Since 1948, have the numbers remained --
A. Okay - sorry.

Q. I'm not going to hold you to the last percentage, but just some idea.
A. In 1948, the brothers of Australia divided in half and at that time - I'm not sure of the numbers at that time, but the maximum number of brothers who were in the Sydney Province, which is the eastern province, was - because it happens to be an interesting number - 444. That was the maximum number, and that was about 1965, I think.
At the present time - now those two provinces have been re-amalgamated and presently in Australia I would --

Q. I can tell you. Brother Crowe says 234.
A. I will not dispute that.

Q. You tell us that in your time, the ten-year period, you know of 128 complaints against brothers?
A. Yes, in that ten years, yes.

Q. That, of course, is but a proportion of the complaints since 1948?
A. No, that would be - oh, sorry, yes, that would only be a proportion of complaints since 1948, yes.

Q. And I assume you would accept that the complaints don't represent all of the incidents of abuse that have occurred?
A. No.

Q. When we look at those numbers, there's a very significant problem, isn't there?
A. Yes, they're significant numbers, your Honour, yes.

Q. I mean, when we look at the number of brothers and the number of complaints and make assumptions that the complaints don't reflect the number of incidents of abuse, there is a very significant problem, isn't there?
A. Yes, there is, yes. We had a significant problem. We have a significant problem, yes.

THE CHAIR: Yes, Mr Stewart.

MR STEWART: Your Honour, in this part of the case study, as your Honour has appreciated, Brother Crowe will give some evidence, but he will deal with the two together, and Patrick Monahan as well. So that will, for the present at least, be the end of the witnesses in this case study.

THE CHAIR: Do you have any more questions for Brother Turton?

MR STEWART: No.

THE CHAIR: Thank you, Brother Turton, you may step down. You are excused.
<THE WITNESS WITHDREW>

MR STEWART: Then there is our next case, which is the
case of [DK]. If I can call [DK]. In the interests of
time, I won't do a recap of the case, because we may be
able to get through his initial statement at least this
afternoon.

THE CHAIR: Are you going to read his statement or is he
going to read it?

MR STEWART: He is going to read it.

THE CHAIR: Yes, very well.

We have some different faces.

MR AD ANDERSON: Your Honour, I am a solicitor with
Boe Williams Anderson Lawyers. Leave has been sought and
given for me to represent Mr [DK] in these proceedings.

MR R ATTIWILL SC: Your Honour, I appear with
Mr Nicholas Ghabar for Mr Joseph Bucci and leave has been
granted, your Honour.

THE CHAIR: Yes, thank you.

MR PJ CALLAGHAN SC: I am instructed by Boe Williams
Anderson. I understand that leave has been granted for me
to appear for the witness [DL], so I would seek to be
present at this point.

THE CHAIR: Yes, very well. Yes, Mr Stewart.

MR STEWART: There is a tender bundle in this case, the
[DK] tender bundle. Subject to any applications that my
friends may or may not be bringing, I tender that.

THE CHAIR: Yes, so the tender bundle we will make
exhibit 4-42.

EXHIBIT #4-42 TENDER BUNDLE IN RELATION TO THE [DK] CASE
STUDY

MR STEWART: Your Honour, contrary to what I said a few
minutes ago about not doing a repeated opening, in view of
the time, the witness [DK] will not get through even his
statement before 4 o'clock, and in those circumstances it
would probably be of value for me to set the scene and then
we will proceed tomorrow.

THE CHAIR: I think so, and then we might call him
tomorrow.

MR STEWART: As your Honour pleases.

THE CHAIR: Yes.

MR STEWART: [DK] was a boarder at a Marist Brothers
college in the late 1970s. He will give evidence that,
during that time, he was sexually abused by three different
brothers, each being in the Marist Brothers.

[DK] approached the Marist Brothers in 2009 and told
them of the abuse he suffered. He was told of Towards
Healing and given a phone number. He rang, and when it was
not answered and instead a voice message was given, he did
not persevere.

Some months later, [DK] rang the Marist Brothers head
office and was put through to Brother Turton.
Brother Turton was the director of standards for the Marist
Brothers at the time. This is not the same as the director
of professional standards position referred to in Towards
Healing.

Three months later, in early 2010, [DK] emailed
Brother Turton to tell him what he wanted to achieve from
Towards Healing. That included meeting with the three
named brothers, some of whom he believed were aware of
abuse at the school at the time and covered it up;
compensation; the payment of future treatment costs; and to
know how the church was dealing with child sexual abuse.

[DK] will give evidence that he named two of the
brothers who abused him. The other brother he did not name
but gave information regarding his abuse at the college
infirmary. The evidence is anticipated to reveal that
without engagement or communication with [DK], the Marist
Brothers and Catholic Church Insurance made a determination
as to the identity of the third brother. This aspect of
[DK]'s experience of Towards Healing also highlights those
procedures relating to the assessment of risk to children
as identified in Towards Healing.
The examination of the Towards Healing process regarding [DK] will also focus on the steps taken by Brother Turton and others to investigate the allegations made by [DK] that certain brothers at the college knew of his abuse at the time.

[DK]'s evidence is expected to be that this investigation occurred without engagement or communication with him.

[DK] agreed to Michael Salmon being appointed as a mediator on being told he was independent and a lawyer. He will give evidence that he later found out that Mr Salmon was employed by the church as the director of professional standards for New South Wales and ACT.

Evidence from those in the order and the director about whether [DK] was told of Mr Salmon's usual job is expected to be to the contrary to that of [DK].

The mediation was held on 30 March 2010 and was attended by [DK], his wife and a friend, [DL], who was a barrister and whose fees the Marist Brothers agreed to cover. In addition to Brother Turton, two of the brothers [DK] had asked to attend and a lawyer and insurance representative for the Marist Brothers, as well as Mr Salmon as the facilitator, were present. The third brother [DK] had asked to attend was overseas at the time of the facilitation.

[DK] will give evidence about his experience on that day. He ultimately was paid $88,000, including his legal costs and signed a deed of release, which did not require him to keep matters confidential. He received a written apology.

The evidence is expected to reveal that Brother Turton played a number of roles in this process, including as contact person, assessor, director of professional standards, representative of the church authority - that is, the Marist Brothers - as well as the person who signed the apology.

Whether this and the process more generally were consistent with the Towards Healing principles and procedures will be explored in the public hearing.
That will be all, then, your Honour, for this afternoon.

THE CHAIR: Nothing further today? We will adjourn, then, until 10 o'clock tomorrow morning.

AT 3.45PM THE COMMISSION WAS ADJOURNED TO WEDNESDAY, 18 DECEMBER 2013 AT 10AM
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