ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

Public Hearing
(Day 32)

Level 17, Governor Macquarie Tower
Farrer Place, Sydney

On Thursday, 19 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, Ms Furness.

MS FURNESS: Thank you, your Honour. I recall Bishop Jarrett. Your Honour and Commissioners will recall that this evidence is in respect of Ms Jennifer Ingham. We are moving from [DK] back to Jennifer Ingham this morning.

<GEOFFREY HYLTON JARRETT, sworn: [10.05am]

<EXAMINATION BY MS FURNESS:

MS FURNESS: Q. You are the bishop of Lismore?
A. I am.

Q. You gave evidence on Monday of this week, on 16 December?
A. On Monday, yes.

Q. There are just a couple of matters I want to take you to, bishop, arising out of that evidence, in order to clarify your evidence. To do so, I will have on the screen the transcript, and if you need a hard copy, please indicate and we will provide you with one.
A. Thank you.

Q. First of all, if we can turn to page 3055. Do you see at line 25 I was asking you questions about the telephone call you received during the facilitation seeking a contribution from the diocese to the amount that would be paid to Mrs Ingham?
A. Yes.

Q. And I asked you whether that had occurred previously - that is, that you had been asked for a contribution in relation to a settlement, be it in or out of Towards Healing. Do you see that? And your answer was:

I don't recall that it had.
A. Mmm-hmm.

Q. Then if we can turn over to what is my page 3058, do you see at line 8 I say:

I'm asking whether the moneys you're referring to in that answer are moneys in respect of settlements of a similar sort,
whether in Towards Healing or not?

Those questions were in relation to the account that was held at Lismore for payments of general purposes as well as Mrs Ingham's; do you recall that?

A. Yes.

Q. Then I asked at line 14:

But no others have, other than Mrs Ingham; is that right?

And you answered:

Well, in the past, the diocese has made payments to victims under Towards Healing, and that money I would understand had come from that same operating account.

And that was while you were bishop. Do you see that?

A. Yes.

Q. Do you see the apparent inconsistency between those answers, bishop? Can you help us with that?

A. I don't see the inconsistency. I would appreciate that being explained to me.

Q. Certainly. Is it the case that in the time you have been bishop - that is, since 2001 - the diocese has paid funds from its own accounts to complainants in relation to complaints of child sexual abuse --

A. Mmm-hmm.

Q. -- whether the complaint came under Towards Healing or not?

A. Whether the complaint came under Towards Healing or not?

Q. Yes.

A. I would have to check on all of those payments to see what - if there were others that didn't come under Towards Healing.

Q. My first question to you was whether that was the first occasion on which you had been asked to contribute to a settlement as you had in relation to Mrs Ingham, and you said that was the first occasion. Then I asked you whether
or not you had paid settlement moneys in respect of
complainants regardless of whether it was Towards Healing
or not?
A. Mmm-hmm.

Q. And you indicated that, in the past, the diocese had
made payments to victims under Towards Healing?
A. In regard to the question I was asked, while the
facilitation was in progress, my answer then was that I had
not been asked about that particular payment previously.

Q. Do you mean the payment to Mrs Ingham?
A. That's right. I didn't know about that before the
facilitation, and this was my first knowledge of that
amount of money being requested.

Q. So it is the case that the diocese had, from time to
time from 2001, paid moneys out of its own funds to
complainants alleging child sexual abuse at the hands of
clergy or personnel within the Diocese of Lismore; is that
right?
A. Yes, yes.

Q. Thank you. Secondly, and again my transcript is
without lines and so therefore it differs from that on the
screen. At page 3063, it is a question from the Chair,
which immediately follows a question from me in relation to
Working With Children Checks.
A. Yes.

Q. Do you see the Chair asked you a question about the
reputation of the priest in another diocese and whether you
made checks on that. Do you see that?
A. Yes.

Q. The context of that was whether you were approached by
a bishop from another diocese indicating that a priest
wished to move from that diocese to yours?
A. Yes.

Q. And you were asked whether you made checks on the
reputation of the priest, do you see that, and your answer
was "no"?
A. Well, before a priest can minister in my diocese, I do
have to check on whether he is free of any allegation of
improprieties.
Q. So the answer you gave there doesn't reflect your practice; is that right?
A. Well, it doesn't, because no priest can come into the diocese without first having been checked back to his own bishop.

THE CHAIR: Q. Bishop, as you can imagine, the Royal Commission has employed many people, and we're still in the process of employing people. In fact, yesterday, because I was interested in employing a particular lawyer, I rang his current employer - this person's contract comes to an end - to ask the employer what they had thought of this person. That's a fairly usual thing to do in the corporate or private sector. Is that the sort of thing you do?
A. Well, I make a distinction, your Honour, because there are priests who come into my diocese for a single occasion - maybe to do a wedding. They are in the diocese for one day and they go. There are always checks on those.

Then, on the other hand, there are also priests who want to come for an extended period, and in regard to them, I always check, and in fact I have a pro forma of questions, which I send to the bishop to ask about this priest.

Q. But do you ring the bishop up and say, "Bishop, what can you tell me?"
A. Well, it depends on where the bishop is. I find that it's - certainly in Australia, I would be ringing another bishop, but there have been few of those approaches from Australia. Usually it is from another country, and I write a letter and send it to that bishop and wait for his response.

Q. You don't ring him up?
A. Subsequently I might, but the first approach is by mail.

MS FURNESS: Q. If we can turn down the transcript to the next page, there is a question:

Is that done in the church?

Again, it was another question from the Chair, similar to the ones that you have just been asked, bishop. Do you see there at line 18, you answer:
The National Committee for Professional Standards has a protocol ...

A. Yes.

Q. Do you see that answer?
A. Yes.

Q. And then further down, you were taken to that protocol in relation to Towards Healing, if we can just scroll down a bit further. If we can turn over to the next page, do you see at line 3 I showed you paragraph 45.3 in relation to the procedures that you had to have in place?
A. Mmm-hmm.

Q. Then I asked you questions about those procedures?
A. Yes.

Q. Then further on - I won't take you to it - I asked you whether it was a requirement that you consider was imposed on you that you satisfy yourself before transfers take place, and you said "Absolutely" and that you did that?
A. Yes.

Q. So is it the case that, indeed, there are checks that you undertake about the reputation of a priest prior to allowing them in your diocese for any length of time?
A. That is true.

Q. If I can turn to another topic, bishop, at page 3051 I was asking you questions in relation to a meeting in or about 2002 concerning one of the two other complainants against Father Brown; do you remember that? Do you remember that there were two prior complaints against Father Brown before Mrs Ingham's complaint?
A. That's true, yes.

Q. One was 2002 and one was 2007?
A. Yes, that's right.

Q. In respect of 2002, I asked you questions in relation to that meeting?
A. Yes.

Q. I asked you in particular whether Father Mulcahy attended that meeting, and your answer was that he was not
there in any capacity. Do you recall that?
A. At that meeting?

Q. Yes. If we can just scroll further down that page and
then over to the top of the following page?
A. Is that the facilitation meeting that you are
referring to?

Q. That was the facilitation meeting.
A. Father Mulcahy was not present at the facilitation
meeting.

Q. Can I show you a letter, bishop, which just came into
the possession of the Royal Commission yesterday.

MS FURNESS: Perhaps copies can be handed to the Bench.
I understand copies have been distributed to the parties.

THE CHAIR: It can be put on the screen, can it?

MS FURNESS: A redacted version, yes.

Q. Bishop, the name of the person to whom the letter is
addressed has been redacted, but I can tell you it was the
2002 complainant. You see that is a letter from you to her
in June 2003. The evidence you gave earlier in the week
was that the facilitation was in 2002; do you recall that?
A. Yes.

Q. The letter is in respect of "our meeting yesterday";
do you see that?
A. Yes.

Q. Is it your understanding that the meeting referred to
that took place on 3 June was a facilitation meeting or
some other meeting?
A. No, it took place later, as you have pointed out, and
it was in response to one of the undertakings which came
from that earlier facilitation that I would do what I could
to assist the complainant to come back, to be reconciled
with, be more comfortable with her place in the church.
This meeting was arranged to help that process, and
Father Mulcahy's name had been mentioned as a suitable
person who could help the complainant in this regard, so he
was invited to be present.

Q. Can I just stop you there.
A. Yes.

Q. Bishop, when you say Father Mulcahy's name had been mentioned - by whom?
A. I'm not sure whether - I'm not sure who it was, but I remember thinking it would be - he would be a suitable person and I think acceptable to the complainant.

Q. So you spoke with Father Mulcahy in relation to the complaint, according to the letter?
A. Yes, yes.

Q. Is that right?
A. Yes, I had spoken to him and asked him to come to this meeting.

Q. What did you tell him about the complaint?
A. Simply that the complainant had made a complaint and had difficulties in reconciling with the church, and would he be prepared to offer her pastoral support?

Q. Did that meeting on Friday, 20 June take place?
A. I believe it did and - yes, it did, as I had invited there.

Q. And you attended?
A. I attended.

Q. The complainant attended?
A. I don't think so. I think the complainant did not come.

Q. Who, then, did you meet with?
A. Well, Father Mulcahy was there.

Q. The two of you were there?
A. Yes.

Q. Where was the pastoral element in the absence of the complainant?
A. Well, it was not possible. The complainant, I presume, chose not to attend.

Q. So that's your recollection - she didn't --
A. That's my recollection, yes.

MS FURNESS: Your Honour, I won't tender that document.
The evidence, I think, is sufficient in respect of it.

THE CHAIR: Very well.

MS FURNESS: I also understand that there was a statement that has recently been provided to the Royal Commission from Father Mulcahy, and it might be a convenient time to tender that. A copy is being made available and there are three copies for your Honour and the Commissioners.

Can I just indicate that this affidavit - and thank you, bishop, for just remaining there while I attend to this - is in respect of Deacon Wallace's evidence. Deacon Wallace gave evidence in respect of his understanding of the health of Father Mulcahy at a particular point in time. The effect of this statement is to state that Father Mulcahy has never at any time suffered from any stress-related condition, and he certainly wasn't in 1990 when Deacon Wallace referred to that.

THE CHAIR: Yes.

MS FURNESS: I tender that affidavit.

THE CHAIR: The affidavit will be exhibit 4-46.

EXHIBIT #4-46 AFFIDAVIT OF FRANK MULCAHY

MS FURNESS: Q. Bishop, I asked you some questions earlier in the week in relation to your understanding of the circumstances in which you were to forward to the Vatican details of complaints that you receive in your diocese. You recall generally that topic?

A. I do.

Q. Can I show you a document, which is headed "Guide to Understanding Basic CDF Procedures concerning Sexual Abuse Allegations", and you understand that "CDF" means the Congregation for the Doctrine of the Faith?

A. Yes.

Q. Bishop, this one and a half page document has been obtained from the Vatican website, but you understand it to reflect the procedures which have been in place and the law in place since April or May 2001 and this has been written as a helpful guide to laypersons and non-canonists; I think
you have seen this document before, haven't you?
A. Only this morning.

Q. The preliminary procedures which are set out in this
document begin by noting that:

The local diocese investigates every
allegation of sexual abuse of a minor by
a cleric.

Do you see that?
A. Yes.

Q. Has that been your understanding in your time as
bishop?
A. Yes.

Q. It then continues that if the allegation has
a semblance of truth, the case is referred to the CDF.
A. That's correct.

Q. Is that consistent with your understanding of the
circumstances in which you refer it to the CDF?
A. Yes, it is.

Q. On Monday, there was some discussion as to the test
which should be applied in determining what was to be sent,
and your evidence was that it was in relation to
substantiated allegations.
A. Yes.

Q. I'm sure someone will correct me if my recollection is
wrong.
A. That's correct, yes.

Q. You would understand, would you not, bishop, that
a "semblance of the truth" is a lower standard, if I can
put it, of proof, rather than "substantiated"?
A. Yes.

Q. In your practice as bishop, have you referred matters
to the Vatican which were not substantiated but, without
knowing that this was the test, did indeed have a semblance
of truth?
A. Yes, that's right. Semblance of truth is the
criterion. The other term I used was in my mind from the
ombudsman's requirements.
Q. So you accept that "semblance of truth" is the test?
A. Semblance of truth, yes. It is, yes.

Q. In your view, have you satisfied that test in terms of what you have referred to Rome since you have been bishop?
A. Yes, I have. It's a much wider - being lower, it is more broad.

Q. It captures more people?
A. It captures - yes.

Q. The document then continues:

The local bishop transmits all the necessary information to the CDF and expresses his opinion on the procedures to be followed and the measures to be adopted in the short and long term.

A. That's correct.

Q. You recall we discussed what and who would make recommendations earlier this week?
A. Yes.

Q. You accept that that is your role, that is, to express an opinion in the terms set out in this document?
A. Yes.

Q. Have you generally done that?
A. I have.

Q. Then:

During the preliminary stage and until the case is concluded, the bishop may impose precautionary measures ... Do you see that?
A. Yes.

Q. The removal of faculties or not permitting a priest to be in active ministry is a precautionary measure such as is set out in this document?
A. It is.
Q. Just in relation to the removal of faculties, given your power to do that is because you are the bishop and the priest is incardinated in your diocese, is it the case that your removal of faculties only relates to that priest and your diocese?
A. It certainly refers to my diocese, but a priest without faculties in his home diocese doesn't have faculties elsewhere.

Q. What would prevent the priest from gaining faculties in another diocese?
A. Well, he would have to apply to the bishop for faculties, and the bishop would immediately check with his own bishop as to why he didn't have faculties in his own diocese.

Q. You would expect that the bishop to whom he applied would operate under the national protocol --
A. Yes.

Q. -- that we discussed earlier in the week and referred to this morning?
A. Yes.

Q. And make the necessary checks?
A. Yes.

Q. And, in that process, ascertain that the priest had his faculties removed?
A. Yes.

Q. That is the system or process in place to prevent the priest just setting up shop elsewhere, if I can put it in those terms?
A. Exactly, that's right.

Q. Coming back to this guide, part B deals with the procedures authorised by the CDF, and there are penal procedures and disciplinary measures. The first penal procedure refers to either a judicial penal trial or an administrative penal process; do you see that?
A. Yes.

Q. Have you ever been authorised by the CDF to conduct either a judicial penal trial or an administrative penal process?
A. No, I haven't.
Q. Have you known of other bishops who have been so authorised?
A. Not to my knowledge. I don't know.

Q. Is it a matter that is discussed between bishops?
A. I can't recall participating in such a discussion.

Q. So in your experience, it would be rare, to the point of not happening?
A. I think it is rare, mmm. I think it would be rare, but it could happen.

Q. You can't point to when it might have happened in your experience or to your knowledge?
A. Not to my knowledge, no.

Q. If you see the third paragraph under "Penal process", it refers to, should the cleric be judged guilty, there are a number of things that can follow. Then it states in the last sentence:

*The question of damages can also be treated directly during these procedures.*

Do you see that?
A. Yes.

Q. What does that mean?
A. I can't say what the definition of "damages" is in this context.

Q. You understand it has a legal meaning?
A. Yes, oh, yes, in civil law.

Q. Yes. You can't help us whether that has a different or similar meaning?
A. No, no, I can't say for sure.

Q. You have not been experienced in these penal processes to have experienced it yourself?
A. No, I haven't.

Q. Then if we can turn over to B2:

*In very grave cases where a civil criminal trial has found the cleric guilty of sexual*
abuse of minors or where the evidence is overwhelming, the CDF may choose to take the case directly to the Holy Father ...

Do you see that?
A. Yes.

Q. So, according to this, that's not a decision that the bishop can take; that is, the bishop can't bypass the CDF and go to the Holy Father; that's right?
A. Yes.

Q. It is a matter for the CDF to decide to do that?
A. That's true.

Q. The next paragraph refers to the power of the CDF to:
... [bring] to the Holy Father requests by accused priests who, cognisant of their crimes, ask to be dispensed from the obligation of the priesthood ...

Do you see that?
A. Yes.

Q. Are you aware of any priests who have been accused who fit within that paragraph?
A. I don't know any myself.

Q. And in relation to the first paragraph I took you to, the very grave cases where a cleric has been found guilty, are you aware of any of those cases?
A. I've only heard that this has been done in a number of cases just worldwide, really.

Q. But not any in respect of priests with whom you have worked or had responsibility for?
A. No.

Q. Then B3 refers to "Disciplinary Measures":

In cases where the accused priest has admitted to his crimes and has accepted to live a life of prayer and penance, the CDF authorises the local bishop to issue a decree prohibiting or restricting the public ministry ...
Is that the same effect of the priest no longer being in active ministry or his faculties being removed, or is it different?
A. It may involve the removal of faculties, but not necessarily so. He may simply be disciplined in terms of where he lives and what he can do.

Q. Do you see there is reference there to a "decree prohibiting or restricting the public ministry" of such a priest; do you see that?
A. Yes, yes.

Q. Is a decree different from what you can do in respect of removing of faculties? Do you understand my question, bishop?
A. Yes, yes. Yes, the local bishop is to "issue a decree prohibiting or restricting the public ministry of such a priest", yes.

Q. Is that different or the same as when you remove the faculties of a priest without regard to Rome?
A. Yes, it is.

Q. It is different?
A. Yes. I can restrict the public ministry of a priest. I can also remove his faculties.

Q. Do you issue a decree when you do so?
A. Yes.

Q. You see what follows is that:

Such decrees are imposed through a penal precept, which would entail a canonical penalty for a violation ...

Do you see that?
A. Yes.

Q. So is it the case that when you remove a priest's faculties, if the priest does something in violation of whatever conditions are imposed, there is a penalty that can be imposed on him?
A. Yes, that's right.

Q. That's right?
A. Mmm.

Q. So that's no different from the consequences of your removal of someone's faculties and them breaching whatever conditions are imposed?
A. Yes, that's right.

Q. On Monday, bishop, I asked you questions about those whom you had referred to the CDF, and you named one person, which was Father Brown, and at the time - no, it wasn't.
A. No.

Q. I withdraw that. You named one person who you had done so, in 2011 or 2012?
A. I didn't name the person.

Q. There was one person that you had referred --
A. There was one person.

Q. -- in 2011 or 2012?
A. Yes.

Q. And you had not heard back from Rome in respect of that person?
A. That's true.

Q. You indicated to the Royal Commission that where a complainant had been through a Towards Healing facilitation and the priest with respect to whom the complaint had been made was still alive, and it was a complaint effectively of child sexual abuse, you would refer that to the CDF?
A. That's right, yes.

Q. And there was one person who fell within that category?
A. There was one.

Q. I want to show you a spreadsheet, if I can, bishop.

MS FURNESS: Perhaps if copies can be provided to his Honour and the Commissioners.

THE CHAIR: Do you want to tender the guide?

MS FURNESS: Yes, I beg your pardon. I tender the guide.
THE CHAIR: That will be exhibit 4-47.

EXHIBIT #4-47 GUIDE TO UNDERSTANDING BASIC CDF PROCEDURES CONCERNING SEXUAL ABUSE ALLEGATIONS

MS FURNESS: Your Honour, I anticipate there will be much more evidence in respect of these procedures, but it is convenient to have an understanding at this stage of the Towards Healing case study.

THE CHAIR: Yes.

MS FURNESS: Your Honour and Commissioners have been provided with redacted and unredacted copies. Could I suggest that the unredacted copy be considered for the purpose of understanding my questions.

Q. Bishop, I take it that it has been explained to you that this spreadsheet has been compiled within the Royal Commission from information and documents provided to the Royal Commission from the National Committee for Professional Standards and that what was sought from that committee was information about redress sought and provided under Towards Healing in relation to allegations of child sexual abuse; do you understand that?
A. Yes.

Q. This document has been compiled from that information?
A. Yes.

Q. You have an unredacted version in front of you, do you?
A. Thank you.

Q. There is no need to refer to the names at this stage, bishop, but I want to ask you about a number of these. If you can look at the fourth name - and that's the accused's name in the second column; do you see that?
A. Yes.

Q. Is that a name you recognise?
A. It is.

Q. That person was or is a priest in the Lismore Diocese?
A. That person was.

Q. As far as you understand, is that person still alive?
A. This is the fourth name down?

Q. It is the fourth name.
A. It is NS --

Q. 1096.
A. No. Sorry, I've gone the fourth one down, which is NS/1235 on my copy.

Q. On my copy, 1096 is the fourth name, but nevertheless, bishop --

THE CHAIR: I have the same document the bishop has.

MS FURNESS: Mine is clearly different.

Q. Let's go by the case code, shall we, NS/1096?
A. Yes.

Q. Do you see that?
A. Yes.

Q. Is the name against that familiar to you?
A. It is.

Q. That person was a priest in your diocese?
A. That priest is a priest who is in the diocese.

Q. Do you see the complaint was received on 17 January 2002? That's a column four or five across from the name.
A. Yes.

Q. There is a reference to the comment on the incident; do you see that?
A. Yes.

Q. Then there are further references to what was done with it?
A. Yes.

Q. Is that a complaint that you referred to the Vatican?
A. No, it isn't.

Q. Why was that?
A. Because my awareness of that requirement, even though it existed from 2001, really didn't come to my attention until much later, so there's five years when, although
Q. When did you first become conscious of it, bishop?
A. I became conscious of it after a conference of the
Canon Law Society at which Deacon Wallace was present, and
this requirement was discussed at that conference.

Q. So it was first brought to your attention in 2006;
that's right? That's when the conference was, I take it?
A. Yes, yes.

Q. So for a period of some five years, there was
a requirement in place on you, in the terms we have earlier
set out --
A. Yes.

Q. -- that you didn't comply with?
A. That's right.

Q. And no-one within the church structure brought that to
your attention before 2006?
A. No. And - yes, this matter, I think, came to the
attention of the diocese earlier than 2002. So the date
given here is just a few months after I became bishop.

Q. It is, indeed.
A. And I didn't know about this requirement of the CDF at
that stage.

Q. You didn't know about it until 2006, on your evidence?
A. Well, that's right, yes.

THE CHAIR: Q. Bishop, could you help us, then, to
understand how the church operates? As I understand it,
this obligation is found in the canon law; is that right?
A. I don't think it is in canon law. It is a document
issued by the Congregation for the Doctrine of the Faith.

Q. I'm just trying to interpret the users guide, that's
all.
A. It's not incorporated in canon law, I don't think.

Q. Is it a directive?
A. It is a directive.

Q. From whom to whom?
A. It comes from the Pope, this directive.

Q. From the Pope to bishops?
A. The Pope, yes - it is from the Pope through the Congregation for the Doctrine of the Faith.

Q. To bishops?
A. It is to bishops.

Q. And as a direction, it imposes an obligation on bishops to respond in appropriate circumstances?
A. Yes, that's true.

Q. Most organisations, if that was happening, would have some regular procedure whereby the dictate or advice or obligation imposed by the chairman or managing director is communicated effectively to those who must respond to it. Does that not happen in the church?
A. It does happen in the church, and there is a process by which that is done.

Q. Well, how is it that for five years, you didn't know of this obligation?
A. Well, directives can come to the bishop who - they go to the chancery and they will remain there on the file and perhaps not be remembered or acted upon. That's quite possible, until a canonist will say, "Oh, wait a minute, there is a decree on this, in respect of this." In these early days, I don't think there was a great consciousness of this directive to submit to the congregation these matters.

Q. By 2001 the problems with abuse within the church were widely known, weren't they?
A. Oh, they were, yes.

Q. And it had become, I assume, for the church internally a very big issue?
A. It had.

Q. But yet you say to me that in the ordinary course, a directive from the Pope didn't manage to get through to a bishop who was required to respond to the obligation that the Pope was imposing?
A. Well, it could have - yes, it could have in fact got through to the bishop, but there are lacunae in remembering these things and acting on them.

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Q. But in the context of the size of the problem, the publicity being given to it and the Pope saying, "These must be reported to Rome", it didn't get through?
A. No, it didn't in those early years - I am saying in my diocese.

Q. Bishop, I appreciate it is a potential criticism of you - you understand that?
A. I do.

Q. And you can understand my puzzlement about how such an apparently important matter wasn't front of mind?
A. Well, that's true. On the other hand, there weren't a lot of cases coming through in regard to this obligation. I think I said earlier that a number of these priests were dead.

MS FURNESS: Q. Bishop, I understand, and hope to be in a position to show you shortly, that a letter was sent to all bishops advising them of this requirement from the Vatican in about 2002. I will show you that letter once we have it to hand, but does that assist in your memory at all of having received the information via that forum?
A. Well, yes, we constantly - or from time to time, rather, receive communications from the Vatican on a variety of matters, and they would be put on file.

Q. Hopefully actioned as well as put on file?
A. Well, it is. I'm dependent, very largely, on advice, that things will be picked up that are not in the front of my mind.

Q. You, as bishop, would want to be assured that there were procedures in place in your diocese --
A. Yes.

Q. -- so that when complaints that met the description of the edict were made, there was a system whereby consideration was given to the semblance of truth threshold and then it was sent off if it met that?
A. If it met that, yes.

Q. Do you now have procedures in place that permit you to do that?
A. Yes, because we have an awareness now of the requirements, which wasn't front and centre earlier on. My
preoccupation always was with the process of Towards Healing, and the Vatican requirement was not uppermost in my mind there. As I say, the matters that were being dealt with in this earlier period, if my memory serves me correctly, were in regard to complaints against priests who were already dead.

Q. However, this requirement was in respect of priests who were not dead.
A. Yes, that's true, and there were very few of those coming forward. This particular one that you mention - I think there is room for discussion in regard to its seriousness or whether it would come under even this wide “semblance of truth”.

Q. Can I indicate, bishop, just before we go to what is on the screen, that this information was provided under compulsion to the Royal Commission from the national committee in response to a summons concerning allegations of child sexual abuse. So you understand that the National Committee for Professional Standards provided this information, clearly with a view that it fitted within that criteria, that is, an allegation of child sexual abuse; do you understand that?
A. Yes.

Q. Do you see on the screen, which fortunately is not in Latin, is a letter sent from the Congregation for the Doctrine of the Faith to bishops of the entire Catholic Church?
A. Yes.

Q. That would be you, would it not - a bishop of the entire Catholic Church?
A. Yes.

Q. Then if we can read down, perhaps if you can read that to yourself. The first three paragraphs seem to be dealing with what gave rise to the need for it?
A. Mmm-hmm.

Q. Then the fourth paragraph, or the third paragraph, talks in terms of having carefully considered opinions, the work having been completed. Then if we can scroll down further, there is reference to grave delicts, and then further down, a delict against morals; do you see that?
A. Yes.
Q. Namely:

... the delict committed by a cleric against the Sixth Commandment ... with a minor below the age of 18 years.

A. Yes.

Q. Then if one can just continue scrolling down, do you see there is a paragraph:

Only these ... which are indicated above ... are reserved to the ... Congregation for the Doctrine of the Faith.

A. Yes.

Q. And then the further paragraph where there is reference to probable knowledge of the reserved delict after he has carried out the preliminary investigation?

A. Yes.

Q. Then there are questions of appeal. The next paragraph, which doesn't appear to have found its way into the layperson's version, is that:

... the criminal action ... is extinguished by a prescription of 10 years.

Do you see that? Is it your current understanding that if the offence or offending conduct occurred more than 10 years prior to the complaint, then the requirement is a discretionary one, that is, you are not required to send it to the CDF --

A. Yes.

Q. -- but you may; whereas if the conduct, that is offending, occurred within 10 years from it coming to your attention by way of a complaint, you are required to?

A. Yes, yes.

Q. Do you understand that?

A. Within 10 years, yes.

Q. Do you now have a recollection of having received
Q. You don't doubt that you would have received it, given to whom it was addressed?
A. I'm not aware in this instance of the process by which this document would have been officially communicated to the bishops of Australia.

Q. The reference at the top of this document is to a letter.
A. Yes.

Q. Do you or have you from time to time received letters from the Congregation for the Doctrine of the Faith?
A. Yes, I have. These don't come directly from the congregation. They come through the apostolic nuncio in Australia, who communicates to the Australian bishops.

Q. So do you recall having a communication through that means containing information similar to that within this letter?
A. I don't recall it. I would have been only months in office and I don't recall it, at that time ago.

Q. Can we go back to the spreadsheet, bishop. We have dealt with the person who appears after NS/1096. On mine, the next one down is NS/1235?
A. Yes.

THE CHAIR: Before we go too far, do you want the accountability document tendered?

MS FURNESS: I'm sorry, thank you, your Honour.

THE CHAIR: We will make that exhibit 4-48.

EXHIBIT #4-48 DOCUMENT HEADED "BISHOP ACCOUNTABILITY"

THE CHAIR: While we are doing it, do you want the schedule tendered, too?

MS FURNESS: Thank you, your Honour.

THE CHAIR: We will make that 4-49.

MS FURNESS: By "schedule", you are referring to the
spreadsheet?

THE CHAIR: Spreadsheet, yes.

MS FURNESS: The redacted version only, your Honour, should be tendered.

THE CHAIR: Very well.

EXHIBIT #4-49 REDACTED SPREADSHEET

MS FURNESS: Q. Do you see the next reference is NS/1235?
A. Yes.

Q. That's Father Brown?
A. Yes.

Q. In relation to the complaint that was made in 2002?
A. Yes.

Q. You understand that from the name, don't you?
A. Yes, yes.

Q. The next name under NS/1458 - do you see that?
A. Yes.

Q. Is that a priest who is known to you?
A. He is.

Q. He is currently a priest, is he, within your diocese?
A. He is, retired.

Q. A complaint was received on 17 May 2006.
A. Yes.

Q. There were numerous incidents reported?
A. Yes.

Q. There was a facilitation?
A. Yes.

Q. And reparation was paid in the sum of $50,000?
A. Yes.

Q. That priest was not reported to the CDF, was he?
A. That priest was reported to the CDF.
Q. So he is the second priest that you have reported?
A. That's right. After my evidence last Monday, it was
drawn to my attention that there were, in fact, two other
cases that have been reported to the CDF, which I then
recalled.

Q. And this was one of them?
A. And this was one of them, that's right.

Q. When was it reported?
A. I think in 2006/2007, as soon as we were - you know,
we got into action because this fell under the
prescription.

Q. The complaint was received in May 2006; do you see
that from the spreadsheet?
A. Yes, yes.

Q. You referred to being made aware of the requirements
at a conference in 2006; do you recall that?
A. Yes. After that conference, I was reminded of this
earlier document.

Q. I have been provided with a proceedings of
a conference by those who appear on your behalf, bishop,
indicating that that conference took place in September
2006?
A. Yes.

Q. So is it the case that it might have come to your
attention prior to this conference as to the requirements
of the Pope in respect of these matters?
A. In terms of taking action, it was a reminder to me
that - the proceedings of that conference, as were reported
to me by Deacon Wallace, was a reminder to me that I had to
review the cases, from the past, of priests who were still
living.

Q. So it may be that it was referred not in May or June,
soon after, but indeed after September, when Deacon Wallace
told you of what he had learned at the conference?
A. Yes, that's right.

Q. Did you go back in your files to 2002, since you
began, as to who else might fit within that category?
A. Well, yes, and the only other one that came under the
requirement, or appeared to, was that NS/1096.

Q. But no action was taken with respect to that priest and notifying the Vatican?
A. Well, local action was taken, but I think there was discussion at the time as to whether this really fell under - given the conduct that was reported, whether it was of a gravity that required reporting. And also I notice that the incident goes back to longer than 10 years.

Q. I understand from your evidence and from what I indicated earlier, which you accepted, that that meant it was discretionary rather than mandatory. Nevertheless, when it occurred in 2002, you didn't turn your mind to whether you should exercise the discretion, because you weren't aware of the edict; is that right?
A. How aware is a question I - I'm not sure how aware I was. But the gravity of this, of the accusation here, was a question which was certainly in my mind.

Q. What response did you get back from the CDF in respect of that priest who had a complaint in May 2006?
A. Yes, there was a response.

Q. What was the response?
A. The response was in terms of the, in this document here, disciplinary measures.

Q. Sorry, which document are you referring to?
A. I am referring to the document that's downloaded from the Vatican website, "Guide to Understanding Basic CDF Procedures concerning Sexual Abuse Allegations".

Q. So what was the response by the CDF? What did they tell you that you should do?
A. The priest concerned had already been removed from office when the allegations came to my notice, and he was living in retirement, and the CDF required that he live a life of prayer and penance, and, as I recall, he was required to offer mass every Friday for the intentions of his victims.

Q. So I take it that that priest had admitted to his crimes; is that right?
A. He did. He did.

Q. How long did it take you to receive a response back
from the CDF?
A. I haven't got the exact dates.

Q. Just generally?
A. A couple of years.

Q. A couple of years?
A. I think two years I waited for that response.

Q. When you say he had been "removed", does that mean his faculties had been removed?
A. No, his faculties weren't removed, but he was without any office, in other words --

Q. He was still a priest and still able to call himself a priest?
A. Oh yes, yes.

Q. When you say he was "without any office", what does that mean?
A. He had no appointment as a priest in the diocese. He was retired.

Q. Was he retired at the time the complaint was made?
A. No. He was a parish priest and I removed him from office.

Q. So you removed him as a parish priest?
A. Yes.

Q. But didn't take the next step of removing his faculties?
A. No, I didn't.

Q. Why was that?
A. I didn't think it was necessary to remove his faculties. This particular matter had also gone through the Ombudsman's Office, and in the light of the ruling there, I saw no need to remove his faculties but only to restrict his ministry.

Q. That priest is still listed under the Lismore Diocese as a priest?
A. That's correct.

Q. There is no reference in the listing to any limitation upon him as a priest. I take it that is because there is
no limitation upon him?
A. There is a limitation, but it is not necessarily added
to the listing of the priests.

Q. He is referred to as being at the presbytery,
[REDACTED]?
A. Yes.

Q. What does that mean?
A. He is living in retirement in the presbytery with
a number of other priests.

Q. So that's, in effect, where the priests in retirement
live, is it?
A. Some do. Some choose to live in a presbytery. Others
choose to live in accommodation provided, private
accommodation.

MS FURNESS: Your Honour, I tender a redacted version of
the Lismore Diocese contact page, which was printed out
earlier this week.

THE CHAIR: That will become exhibit 4-50.

EXHIBIT #4-50 REDACTED VERSION OF LISMORE DIOCESE CONTACT
PAGE

MS FURNESS: I will provide redacted copies in due course.

Q. If we can move down to NS/1736 - do you see that?
That's a priest you know?
A. No, I don't know him.

Q. There was a complaint made in July 2009; do you see
that?
A. Yes.

Q. He is referred to as a diocesan priest within the
Lismore Diocese?
A. Yes.

Q. The location is in respect of a primary school; do you
see that?
A. Yes.

Q. And this is not a name that is known to you?
A. I don't know the priest by that name.
Q. You understand that there was reparation paid to
a complainant in respect of that priest? You see that in
the column under "Facilitation description"?
A. Yes.

Q. In the previous column, it is noted that it was
reported to the police?
A. Yes.

Q. Had that complaint come to your attention?
A. The complaint came to my attention, but, as I remember
in regard to this priest, it was a long time ago and I'm
not sure that the priest himself was accused of child
sexual abuse. I would have to call for the details to
refresh my memory.

Q. Perhaps I can ask you to do that, Bishop Jarrett?
A. Yes.

Q. Thank you. Then the last one is QL/0274. On mine,
that's four from the bottom; do you see that?
A. Yes.

Q. Do you know that name?
A. I do.

Q. The complaint was in December 2002?
A. Yes.

Q. There is no reference in this spreadsheet to what was
complained about, but, again, this material has been
prepared from material produced in respect to a summons
speaking of allegations of child sexual abuse?
A. Yes.

Q. What do you know about that priest?
A. I only know that when I came to the diocese, he was
elderly and retired outside the diocese.

Q. Did you refer him to the CDF?
A. I did.

Q. You did?
A. That's the second one of which I was reminded
subsequent to my last giving evidence.
Q. So of the four that I have referred you to, the first, your recollection is that there was discussion as to the nature of the complaint and whether it fitted within the edict from the Vatican?
A. That's right, yes.

Q. In relation to the third, you will check the files, and those who are representing you will communicate with the Royal Commission about your findings?
A. Yes.

MS FURNESS: Thank you, bishop. I have nothing further.

THE CHAIR: Q. Bishop, Ms Furness drew your attention to the obligation to report, which is confined to allegations within the last decade, 10 years?
A. Yes.

Q. You are conscious, are you not, of the fact that many people don't report their abuse until well after a 10-year period?
A. Yes.

Q. Do you think it is satisfactory to have 10 years as the cut-off?
A. No, I don't. I think it should go back further than that. It should be a longer period.

Q. Has that been the subject of any discussion between you and your colleagues?
A. It may have been. I'm just giving my opinion.

Q. Yes. The reality is that in the majority of cases, overwhelming majority of cases, they would not be reported within 10 years?
A. Yes.

Q. So that if that protocol is observed, relatively few would end up being reported to Rome, wouldn't they?
A. I suppose so. But the evidence is that, nonetheless, there have still been many cases reported to Rome.

Q. Yes, the evidence is there are many cases reported, but what that tells you, if the protocol is being followed, is that a great many more are not being reported; in fact, the overwhelming majority of cases are not being reported. Is that right?
A. Well, I don't know what the practice of all of the
bishops is, or what the practice of the Holy See is,
whether in fact they are strict about that 10 years or
whether in fact it has been since extended. I don't know.

Q. I don't know whether we know, either, but --

MS FURNESS: Your Honour, I have an extract from the
Murphy report in Ireland in 2009 which, as we know,
concerned priests only in the Archdiocese of Dublin.

THE CHAIR: Q. You are familiar with that issue, bishop,
I assume?
A. Only having read it in papers and magazines.

MS FURNESS: This is the final report. It refers to that
Commission having been informed that the policy was adopted
in order to ensure a coordinated and uniform response to
allegations of child sexual abuse against clergy throughout
the Roman Catholic world.

A particular chancellor gave evidence that the policy
was subsequently modified, as Rome was unable to deal with
the vast numbers of referrals, and the position now is that
for all cases brought to the attention of the archdiocese
before this date, April 2001, which were outside the
10-year rule, it was up to the bishop to apply disciplinary
measures to the management of those priests. So that was
the --

THE CHAIR: So where does it end up? Is anything that's
older than 10 years not required to be reported?

MS FURNESS: Yes, that's as I understand it.

THE CHAIR: And never has been required to be reported?

MS FURNESS: No, it was required for a period of time to
be reported, and according to these findings, a vast number
of referrals inundated the CDF and therefore the rules were
changed so that --

THE CHAIR: When did they change?

MS FURNESS: As I understand it, 2002. These rules that
I have been referring to, and which are now an exhibit, are
2001. A year or so, or slightly less than a year later,
they were changed to introduce the 10-year rule. I'm sure there are --

THE CHAIR: This document, though, has --

MS FURNESS: Yes, and the letter, which is a 2002 letter, which is exhibit 4-48, reflects the 10-year rule. From dates alone --

THE CHAIR: It certainly has the 10-year rule, but what is its date?

MS FURNESS: There is a translation date.


MS FURNESS: Yes, and posted in 2002. Clearly, your Honour, the Royal Commission needs to do more work in this regard, but given that the bishop had given earlier in the week, it was appropriate to consider what the Diocese of Lismore was doing with respect to the lay version of the rules.

THE CHAIR: We will try to get to the bottom of it, bishop. The report will reflect what we find out, so you will be able to read that.

THE WITNESS: Thank you, your Honour.

MS FURNESS: I have nothing further for the bishop, your Honour.

THE CHAIR: Does anyone else have questions for the bishop.

MS NEEDHAM: I have some short questions, your Honour.

<EXAMINATION BY MS NEEDHAM:

MS NEEDHAM: Can I ask you to look at this document, bishop, which was provided to the Royal Commission in production of a file yesterday. I have copies for my learned friends. There is a bundle of copies for the Bench as well. This should not go up on the screen, as it is not redacted in any way. Does the bishop have a copy of that?

THE CHAIR: I have a spare copy here.

.19/12/2013 (32) 3398 G H JARRETT (Ms Needham)

Transcript produced by Merrill Corporation
MS NEEDHAM: Thank you, your Honour.

THE CHAIR: We will give that one to the bishop.

MS NEEDHAM: Q. Bishop, you were asked some questions about the 2002 complaint against Father Brown and Father Mulcahy's role at that facilitation; do you recall those questions - his role, if any, at that facilitation?
A. The 2 June 2003 facilitation?

Q. Yes. I am just asking you whether you recall the questions Ms Furness asked you?
A. Oh, yes, yes.

Q. Thank you. Is this a copy of your notes from the facilitation meeting?
A. Yes, these are my notes.

Q. Without disclosing the name of the complainant, can you see how Father Mulcahy became to be involved in a later meeting? The last paragraph on page 1 might be of assistance.
A. Yes. Yes, that reminds me that that arrangement flowed out of this facilitation.

Q. From the list of attendees at the top, again without giving any of those names, you will see that Father Mulcahy is not listed as an attendee?
A. No, he is not listed.

MS NEEDHAM: Your Honour, given that the original letter was not tendered, I am happy to seek for this to be tendered, or not, as suits the Commission.

MS FURNESS: It doesn't need to be tendered, your Honour.

THE CHAIR: No, we won't tender it.

MS NEEDHAM: Q. Bishop, going to the questions you were asked about referral of matters to the CDF, I believe you became a bishop in December 2001; is that correct?
A. I became the ordinary of the Diocese of Lismore on that date.

Q. You were consecrated --
A. Earlier in 2001, but I was coadjutor bishop to...
Q. If I could show you two documents. Again, we have copies for my learned friend and for the Bench. I will describe what they are as they are handed up. One is a letter from the Australian Catholic Bishops Conference, dated 24 August 2001. The other is the document referred to in it, headed "Epistula", which I seem to recall might have something to do with "letter" in Latin; is that right?

A. Yes.

Q. Is it the case that this appears to be a circular letter from the General Secretariat of the ACBC --

THE CHAIR: I am sorry, the bundle of documents we have been given - I'm not sure how we make sense of it.

MS NEEDHAM: There should be two documents in that. There should be a circular number C7/2001 from the ACBC General Secretariat, dated 24 August 2001, and then there is a document in Latin headed "Epistula".

THE CHAIR: There is a letter signed by Reverend Finnigan; is that it?

MS NEEDHAM: Yes, that's correct.

THE CHAIR: Then the second document is the Latin?

MS NEEDHAM: The Latin.

THE CHAIR: So I have a surplus of copies.

MS NEEDHAM: I apologise, your Honour.

Q. 24 August 2001 is the date of the circular letter. Is that, from your knowledge of the kinds of matters that came out of the ACBC at the time, early in your episcopy, the kind of regular correspondence that the ACBC might send out?

A. Yes.

Q. Does the letter, the Epistula attached, appear to meet the description, which is also in Latin, of item number 12 in the circular?

A. Yes.
Q. So is it likely, from your knowledge of how the ACBC and promulgations from the Vatican work, that this was how the letter from the CDF originally came to the Diocese of Lismore?
A. Yes, this is how it would have come to the diocese.

Q. It is fair to say, is it not, that there is not an awful lot of explanation along with it?
A. No.

MS NEEDHAM: Your Honours, I seek to have that tendered, through counsel assisting.

THE CHAIR: Well, it doesn't make any sense to me, I'm afraid.

MS NEEDHAM: It is more establishing the fact that the communication came rather than the sense. I think your Honour has the translation of the letter in a previous exhibit.

THE CHAIR: You say there is not much explanation - I don't know whether there is or not. I don't understand the document.

MS NEEDHAM: Your Honour, it is a letter in Latin that came under a Latin explanation.

THE CHAIR: I know that. But to satisfy me that it doesn't have full explanation, I would need to know what it says, and I'm afraid my Latin stopped at third year.

MS NEEDHAM: I can't be a lot of assistance to your Honour. I could check this and get instructions, but it appears that the Latin document is in translation in the document that was put up on the screen.

THE CHAIR: I will take it as an exhibit, but you will need to help us to make any sense of it, because at the moment, it doesn't.

MS NEEDHAM: No. It is basically being tendered to prove that very point, your Honour.

THE CHAIR: I'm sorry, to prove what?

MS NEEDHAM: That it came in that form to the Diocese of

THE CHAIR: But I make the assumption that the bishop readily understands the Latin.

THE WITNESS: More or less, your Honour. My Latin is not perfect, but --

THE CHAIR: Q. Well, you are not telling me that you get documents from Rome that you don't understand?
A. Usually they provide an English translation as well. Not all the bishops are fluent in Latin, not these days. Once we were.

THE CHAIR: That just leaves me wondering what the ultimate consequence of this document is.

MS NEEDHAM: Your Honour, we have the English translation, which came around, apparently, later.

THE CHAIR: I think you had better find the letter and the translation to establish how it was communicated, effectively.

MS NEEDHAM: Yes. Your Honour, I will deal with it perhaps with my learned friend counsel assisting later, but it does appear that this was the first communication and then a later communication in English, but we can establish that.

THE CHAIR: We will take the letter of 24 August 2001 and its accompanying document. Both the relevant part of the letter and the document are in Latin. We will look forward to receiving in due course evidence of how, in fact, it was communicated in English.

MS NEEDHAM: Thank you, your Honour. We will take that on board.

THE CHAIR: That will become exhibit 4-51.

EXHIBIT #4-51 CIRCULAR NUMBER C7/2001 FROM ACBC GENERAL SECRETARIAT, DATED 24/08/2013, AND ACCOMPANYING DOCUMENT HEADED "EPISTULA"

MS NEEDHAM: Q. You gave some evidence, bishop, that in 2006 you had some communication with Deacon Wallace about

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the information he had received at a conference?
A. Yes.

Q. I believe counsel assisting has a copy of that report from the conference. There are copies of that, and perhaps the bishop could be shown that document. For the record, it is the proceedings of the Fortieth Annual Conference of the Canon Law Society of Australia and New Zealand, held in Hobart, 18-21 September 2006. Bishop, do you recall discussing this document with Deacon Wallace?
A. Subsequently, yes.

Q. If you go to page 7, you will see that there are some notes on procedure. In the first paragraph under paragraph B, "Notes on procedure", there is a reference to an investigation?
A. Yes.

Q. Do you see in Latin it is referred to as "investigatio praevia"?
A. Yes, "preliminary investigation".

Q. If the result of that preliminary investigation is that the accusation is credible, then that is, is it not, according to this document, what triggers the referral to Rome?
A. Yes.

Q. Then are set out, under the heading "The Options of the CDF", what appears to be a longer version of the earlier print-out from the website that was shown to you?
A. Yes.

MS NEEDHAM: Might I seek to have that tendered?

THE CHAIR: Does this have the 10-year rule in it?

MS FURNESS: There is a reference on page 6, your Honour, at the bottom.

MS NEEDHAM: Yes. The 10-year rule, your Honour, appears to be from the date of the 18th birthday; the last paragraph on page 6.

THE CHAIR: So you have to be less than 28?

MS NEEDHAM: Yes.
THE CHAIR: Otherwise, it doesn't capture --

MS NEEDHAM: Your Honour will note there is commentary on the bottom of page 6, that:

Experience has shown that a term of 10 years is inadequate for these types of cases and it would be desirable to return to the former system in which these delicts were not subject to prescription at all.

THE CHAIR: What happened?

MS NEEDHAM: The answer to that, your Honour, is I don't know.

THE CHAIR: You will have to help Ms Furness find out.

MS NEEDHAM: I will. There is, as I understand it, some review within the CDF of the letter and the procedures, but I would need to have some more information about that.

THE CHAIR: I'm sorry, you seek to tender this document?

MS NEEDHAM: I do.

THE CHAIR: Yes. The document from the Fortieth Annual Conference of the Canon Law Society will be exhibit 4-52.

EXHIBIT #4-52 DOCUMENT FROM FORTIETH ANNUAL CONFERENCE OF THE CANON LAW SOCIETY

MS NEEDHAM: Q. Bishop, are you able to listen to some propositions I would like to put to you and say whether you agree or disagree with whether they reflect the stages required for referral to the CDF in Rome?

A. Yes.

Q. The first is that there must be a cleric involved?

A. There must be a cleric, yes.

Q. And there must be a minor under the age of 18?

A. Yes.

Q. And there must be some conduct which falls within the relevant article of the letter?
A. Yes.

Q. Then there must be a preliminary investigation or inquiry?
A. Yes.

Q. Just in a practical sense, does that investigation take some time, or can it take some time?
A. It can take some time, yes.

Q. But it is a requirement, before the level of satisfaction of a credible complaint is reached, to have that inquiry?
A. Yes.

Q. If those requirements are fulfilled, then the matter must be referred to the CDF?
A. Yes.

Q. That was the process which you followed in relation to the three priests you have given evidence of who were referred to Rome?
A. Yes.

Q. Of those three priests, is it the case that the one you have referred to was given a penal precept?
A. Yes.

Q. Another, the one you referred to on Monday, you are still waiting for a reply?
A. Yes.

Q. And the third died whilst his case was before Rome?
A. That's true, he died.

Q. Going to the priests about which you were asked, do you still have the spreadsheet in front of you?
A. Yes.

Q. Priest NS/1096 - can you locate him?
A. Yes, 1096.

Q. He was reported to the police, was he not - Grafton police?
A. I believe that's correct.

Q. And he was reported to the New South Wales Ombudsman
and the CCYP, Commissioner for Children and Young People?
A. He was, yes.

Q. That notification was in 2004?
A. I think so, yes.

Q. He is in retirement currently?
A. He is.

Q. And he is subject to an order by the ombudsman that he
not have unsupervised contact with children?
A. That's correct.

Q. Are you concerned to ensure that that order is, as far
as you can have control over him, observed?
A. Yes.

Q. How do you do that?
A. At the beginning, I would have - I wrote to him and
would have told him, and I can't recall whether I have
reminded him of it ever since, but he still remains under
that precept.

Q. Is he allowed to conduct any ministry that might
involve children?
A. No, he is not.

Q. The next priest, if we can jump down to QL/0274, which
on my sheet is three from the bottom, but I understand my
learned friend's differs - is that a case in which the
complaint within the Towards Healing process was not able
to be actively substantiated, as in whilst it was accepted
through Towards Healing, it was not a case where the
complaint had any compelling evidence in its favour?

MS FURNESS: Your Honour, my friend is introducing some
new concepts here, "actively substantiated" and "compelling
evidence in its favour".

MS NEEDHAM: I will withdraw that.

Q. That case, did it not, met the requirements for
a reference to the CDF?
A. It did.

Q. Is that a lesser standard, in effect, than
substantiation of a complaint within Towards Healing, as
a general question, not in relation to that particular
priest?
A. Would you just repeat that, please? I'm trying to
balance it out in my mind.

Q. In the interests of time, I think my learned friend
dealt with that, so I might just move on. The next priest
is NS/1458.
A. Yes.

Q. This particular priest, I think you have told the
Commission, was stood down from ministry?
A. He was removed from office as parish priest.

Q. Removed from office as parish priest, thank you. And
he was referred to Rome, as we have heard?
A. Yes.

Q. He was given a penal precept from Rome?
A. Yes.

Q. And he was reported to the ombudsman?
A. Yes.

Q. And there was an ombudsman's direction that he not
have unsupervised contact with children; is that correct?
A. That's correct, yes.

Q. The final priest is NS/1736.
A. Yes.

Q. This particular priest was reported to the police; is
that right?
A. Yes.

Q. This particular priest had retired in 1980?
A. Yes.

Q. Had he left the priesthood, are you aware?
A. I'm not aware of his status, whether he has applied
for laicisation or has been laicised; I don't know.

Q. But that's your recollection?
A. Yes. Oh, yes, he has been out of ministry for a long
time.

Q. Do you recall that the matter about which the
complaint under Towards Healing was made in relation to this priest was more in the line of a non-report rather than an actual sexual abuse?

A. Well, that's what I was wanting to check up about. I wasn't clear. This case is a very old matter.

Q. It is the case, isn't it, that this priest has never been an active priest whilst you have been bishop?

A. No, I think it will be commonly said that he has left the priesthood.

Q. Just moving on to the questions you were asked by my learned friend about reputation checking of priests --

THE CHAIR: We might take the short adjournment, Ms Needham.

MS NEEDHAM: I am sorry, your Honour.

SHORT ADJOURNMENT

MS NEEDHAM: Q. Bishop, just a few final questions on the issue of referral of priests to the CDF in Rome. Is it the case that the referral is, in effect, the last step in a number of steps that the diocese or the church authority takes when a complaint is brought by a victim?

A. Yes, it is the last one.

Q. Is the first one, on acceptance of the complaint, a pastoral response through Towards Healing?

A. Usually, yes, it - I think in all cases it's a pastoral response under Towards Healing.

Q. There is also a child protection response, which can be taken by referral to the ombudsman and the Commissioner for Children and Young People?

A. Yes.

Q. The ombudsman oversees the investigation by the diocese; is that correct?

A. It does, yes.

Q. There is then an administrative process open to you, as bishop, to react to child protection issues by removal of the priest from active ministry or ministry with children; is that right?

A. That's correct, yes.
Q. There is then a civil response, which is referral to
the police in appropriate cases?
A. Yes.

Q. And at the end of those various processes comes the
referral of the priest to Rome?
A. That's right.

Q. You were asked some questions by learned counsel
assisting about the transfer of the priests in and out of
dioceses. Is it the case that in the Diocese of Lismore,
you have some what could be called pro forma documents that
are used in that process?
A. Yes, there are.

Q. I have a bundle of documents, if that could be
distributed. Bishop, you have seen these documents before?
A. Yes.

Q. Are these documents prepared through the chancery and
the work of Deacon Wallace for the process of priests
transferring into Lismore?
A. That's correct, yes.

Q. This particular version of the documents is relevantly
recent, is it not?
A. They are relatively recent, but they are in continuity
with earlier documents and procedures.

Q. So this is merely an update of earlier documents,
which were to the same general effect?
A. Yes, there is greater precision in these documents.

Q. The first document is a declaration which is required,
is it not, to be made by a priest, and that is
a declaration as to there having been no substantiated
complaints of abuse against him and that he is not aware of
any circumstances that might give rise to a complaint of
abuse against him regarding professional standards?
A. Yes, this is the declaration document, is it?

Q. Yes.
A. Yes, the declaration document.

Q. That's to be signed by a priest coming into your
diocese?
A. Yes, and this has to be received in advance of his coming.

Q. That document cites 44.6 of Towards Healing as the trigger for the requirement for that document?
A. That's correct, yes.

Q. If you go to the next one, it is a document called "Testimonial of Suitability for Ministry as Priest or Deacon".
A. Yes.

Q. Do you recognise that document?
A. I do.

Q. You will see that that is a document requiring a testimonial, in effect, as to the matters in points 1 to 7 listed on that page?
A. Yes.

Q. Who is that sent to and from?
A. That is sent by - the practice is that this is my document, which I send to the bishop of another priest who wishes to exercise any ministry in my diocese, and the bishop will respond according to this document and return it to me.

Q. Can you tell the Commission in what circumstances this document is required?
A. In all circumstances for a priest to exercise any ministry within my diocese.

Q. You will see on the second page paragraphs 45.6 and 45.7 of Towards Healing are set out?
A. Yes.

Q. Those are the requirements, as you understand it, of the National Committee for Professional Standards and Towards Healing for the checking of a priest's good standing?
A. That's right, that is what we follow.

Q. If you can go to the third document, this appears to be a pro forma agreement?
A. Yes.

Q. Can you tell the Commission what the use of this
agreement is?
A. When the bishops have been in negotiation, this is the
agreement which they each sign, and it comes into effect
when the priest in question begins his ministry in the
diocese.

Q. You will see in paragraphs 9 and 10 of that agreement
there are references to the warranties given by the bishop
of the other diocese as to the priest's good standing?
A. That's correct, yes.

Q. You mentioned that priests sometimes sought to come
from overseas to work in the Diocese of Lismore?
A. Yes.

Q. Is it the case that there are specific visa
requirements for such priests?
A. There are.

Q. You probably don't remember the numbers, but they are
subclass 402 and 401, and 401 is entitled "Temporary Work
(Long Stay Activity) visa" under the Religious Workers
Stream?
A. Yes.

Q. Are you aware that personal character assessments are
required to be filled out in order to apply for that visa?
A. Yes.

Q. And that a police check is required?
A. Yes.

Q. And that the Department of Immigration and Citizenship
is responsible for checking those requirements?
A. Yes.

Q. And that there are also character testimonials from
the home bishop required for those visa classes?
A. Yes.

THE CHAIR: Q. Bishop, just looking at the declaration,
I know it picks up the words of Towards Healing, but what
do you understand to be a "substantiated complaint"?
A. A substantiated complaint is one that has come forward
and has been investigated and the outcome of it is that the
priest has committed some act of child abuse or been guilty
of some other behaviour.

.19/12/2013 (32) 3411 G H JARRETT (Ms Needham)
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Q. How does the document, the declaration, capture the circumstance where a complaint has been made, but an investigation hasn't been completed?
A. I'm sorry, can you repeat that again, please, your Honour?

Q. How does the declaration capture the circumstance where a complaint has been made, but the investigation hasn't been completed?
A. I don't think it does. It doesn't speak about just a complaint.

Q. That's a bit of a gap, isn't it?
A. The fact of a complaint.

Q. I mean, there may be a complaint which is undergoing investigation --
A. Not yet substantiated.

Q. -- which may reveal ultimately that it is substantiated. The document doesn't capture that, does it?
A. It doesn't.

Q. It should, shouldn't it?
A. So that it should read "any complaint has been made" rather than "substantiated"?

THE CHAIR: Well, "complaint made", and only if the complaint is found not to be substantiated would you put it to one side, I would have thought.

Ms Needham, I know it's a reflection of what is in Towards Healing; I appreciate that.

MS NEEDHAM: It is.

THE CHAIR: But, logically, it is a gap.

MS NEEDHAM: I suppose on a reading of the last clause of that sentence, that could capture --

THE CHAIR: I'm sorry, "might give rise to a complaint"?

MS NEEDHAM: Yes.

THE CHAIR: I don't think so, because you already have
a complaint.

MS NEEDHAM: That's correct.

THE CHAIR: Anyway, we will come back to that, no doubt, in due course.

MS NEEDHAM: Indeed. Thank you, your Honour.

THE CHAIR: Do you want to tender that?

MS NEEDHAM: I do, yes, those three documents.

THE CHAIR: The testimonial of suitability and accompanying documents will become exhibit 4-53.

EXHIBIT #4-53 TESTIMONIAL OF SUITABILITY AND ACCOMPANYING DOCUMENTS

MS NEEDHAM: Q. Bishop, can you give his Honour and the Commissioners an example of the kinds of circumstances, without necessarily identifying anyone in particular, which might bring a priest into your diocese on a temporary basis, which might trigger the agreement that we have seen as part of exhibit 4-53?

A. A priest could ask his own bishop for permission to serve in another diocese or to increase his pastoral experience. A bishop of another diocese could approach me and say, "I have a priest in my diocese whose relatives live in your diocese or close to it. His mother is very ill and could you receive him into your diocese so that he can be close to his family?" Those are the sorts of circumstances.

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

THE CHAIR: Does anyone else have any questions for the bishop?

MR ATTIWILL: No.

THE CHAIR: Ms Furness?

MS FURNESS: Nothing further, your Honour.

THE CHAIR: Yes, thank you, bishop. You are again thanked.
and excused.

<THE WITNESS WITHDREW>

MS FURNESS:  Your Honour, I call Peter Kelso.

<PETER LESLIE KELSO, sworn:  [12.05pm]

<EXAMINATION BY MS FURNESS:

MS FURNESS:  Q. Would you tell the Royal Commission your full name and occupation?
A.  My full name is Peter Leslie Kelso, and I'm a solicitor.

Q.  Mr Kelso, you represented Jennifer Ingham in respect of her facilitation with the church?
A.  Yes, that's right.

Q.  You prepared a witness statement dated 13 December 2013?
A.  Yes.

Q.  You have a copy of that with you?
A.  Yes, I do.

Q.  There are a number of annexures to your statement, one of which, which is the tax invoice dated 29 May 2013, was missing a page.  I think you have now provided us with this extra page?
A.  Yes, that's right.

MS FURNESS:  I understand that the statement as provided has been provided to those at the Bar table. However, we will have to provide the additional page.

THE CHAIR:  Do we have it?

MS FURNESS:  No, and I will hand up three copies for your Honour and Commissioners. These are three copies of the redacted document. It is incomplete insofar as page 2 of the invoice is concerned, but I might just ask for page 2 to be put on the screen - not at the moment but when we come to it in due course, if that is convenient.

Q.  The contents of that statement are true and correct, Mr Kelso?
A. There are a couple of amendments that I want to draw your attention to.

Q. Certainly.
A. Firstly, in paragraph 4, there is the word "on" missing. It should read:

Over the ensuing days I focused on Jennifer's case.

Q. Thank you.
A. In paragraph 10, over the page, the second sentence, where it says, "This was done in June 2013", that should read, "This was done in May 2013". And the last sentence in paragraph 10, which says, "The fee scale remained unchanged", we should add to that - it should read:

The fee scale remained unchanged in relation to offers of $200,000 or greater.

That's all the amendments.

Q. With those changes, Mr Kelso, the statement is true and correct?
A. That's correct.

MS FURNESS: I tender the statement, with the addition of the missing page of the tax invoice.

THE CHAIR: Exhibit 4-54.

EXHIBIT #4-54 STATEMENT OF PETER LESLIE KELSO, DATED 13/12/2013

MS FURNESS: Q. You provided the Royal Commission with a bundle of documents this morning?
A. Yes.

Q. Do you have a copy of that bundle with you?
A. I do.

MS FURNESS: Might copies of that bundle be provided to his Honour and the Commissioners.

Q. Just to identify this, Mr Kelso, the first document is an email from you to somebody at the Law Society, on 27 May 2013?
A. Yes, it's an email from me to John Fleming at the Law Society of that date.

Q. The next document is a response from Mr Fleming to you on 29 May 2013?
A. That's right.

Q. The next document is a letter from the professional standards of the Law Society of New South Wales to your law firm on 29 May 2013?
A. That's right.

Q. The next document is headed "Kelso's The Law Firm, No Win No Fee Costs Agreement, Unlitigated Claims". That's the document that you provided to the Law Society when seeking its advice; is that right?
A. Yes, that's the document - the document which was an attachment to the email to John Fleming of 27 May.

Q. The next document is headed "Conditional Costs Agreement, Non-Litigious Claims", and that's the version that was created after the advice was received from the Law Society; is that right?
A. That's right. That's the current edition that we use at the law firm, and it contains the changes recommended by the Law Society.

Q. Would you mind just speaking into the microphone. Perhaps you can move forward.
A. Yes. That's the document we currently use at the law firm, and it does contain the changes recommended by the Law Society.

MS FURNESS: Thank you. I tender that bundle of documents as described.

EXHIBIT #4-55 BUNDLE OF DOCUMENTS PROVIDED TO THE ROYAL COMMISSION BY MR KELSO ON 19/12/2013

MR ATTIWILL: We don't actually have copies of these documents at present. This bundle of documents hasn't been provided to us. I don't know if anyone has a copy that they can provide to us.

MS FURNESS: We were only provided with four copies minutes ago, your Honour, so we will seek to do what we can.
Q. You don't have any further copies, I take it, Mr Kelso?
A. I do have a few.

MS FURNESS: Perhaps those copies can be obtained from the witness and distributed.

THE CHAIR: Do we have a copy of the Legal Practitioners Act here?

MS FURNESS: I do, your Honour. Would your Honour like to have regard to it?

THE CHAIR: I would like to see it.

MS FURNESS: I think Mr Attiwill is the person with perhaps the most interest.

Q. Mr Kelso, in your statement you say that on 13 May you received a phone call from Mrs Ingham; that's right?
A. Yes.

Q. And the work that was done then occurred between that date and 24 May, when the facilitation took place?
A. Oh, and some work after that date, when the moneys were received.

Q. I understand that. But the first phase was from instructions on 13 May, up to and including the facilitation?
A. That's right.

Q. And then following the facilitation, there was work in respect of disbursement of moneys and the like?
A. Yes.

Q. You attached to your statement a standard costs agreement with Mrs Ingham's name. Had you used that costs agreement with other clients in relation to Towards Healing matters before?
A. I think so. I can't recall exactly how many or how long before 20 May that I had. It might have been maybe four or six weeks, just using the best of my recollection.

Q. So this was one of --
A. But I had used it with at least one other that I can
remember at the moment.

Q. So this is one of the first or early uses of this agreement?
A. That's correct.

Q. You entered into it with Mrs Ingham before you had contacted the Law Society?
A. Yes.

Q. Just in relation to the paragraph headed "1. The Work and Persons Responsible for the Work", page 1, going over to page 2 - do you have that in front of you?
A. Yes, I have that.

Q. The top of page 2 refers to - we might just see if we can get a copy put up on the screen, your Honour, for those with an interest. The document I am referring to is the second page but fourth side of the documents, and it refers to "act for you in relation to an unlitigated claim against Father Paul Rex Brown"; do you see that?
A. Yes.

Q. What was the reference to "unlitigated claim"? What did that mean?
A. Well, it means a claim that didn't involve proceedings filed in court, an attempt to settle it without going to court.

THE CHAIR: Q. An attempt to settle without going to court?
A. Yes.

Q. Meaning that there may be court proceedings, but after an attempt such as you contemplated failed; is that right?
A. No, there wouldn't be going to court, because Father Brown was deceased, for a start. The document really should have said --

Q. That wouldn't preclude you suing someone else?
A. -- the diocese really. It wouldn't preclude us suing someone else.

Q. Precisely.
A. But it was a document drawn up to attempt to resolve a claim without the need to take proceedings.
Q. Was the document drawn up in that way in order to avoid any implications of the Legal Practitioners Act or the Legal Profession Act?
A. No.

Q. Why was it necessary to nominate the matter in that way?
A. Because it contains a sliding scale, which - there is an exemption in the Legal Profession Act.

Q. Precisely. That's my point. This was drafted in order to avoid the Legal Profession Act, wasn't it?
A. I wouldn't say to avoid the Legal Profession Act.

Q. Well, to take it outside its provisions. That's what was being attempted, isn't it?
A. Well, the exemption is allowable for --

Q. No, no, please answer the question. It was drafted in this way in order to seek to take it outside the operation of the Legal Profession Act; is that not correct?
A. I don't consider that's correct.

Q. Why else did you put it in?
A. Well, the document is under the Legal Profession Act, because there is a number of statutory disclosures.

Q. Why else did you put that phrase in? Please answer the question.
A. Well, the reason why that phrase is in - to make it clear that it is a non-litigious matter, and I am allowed to charge a fee with reference to an outcome.

THE CHAIR: Very well. Yes, Ms Furness.

MS FURNESS: Q. There is a particular provision in the Legal Profession Act which specifically refers to unlitigated or non-litigious claims, isn't there?
A. Yes.

Q. You were seeking to bring yourself within the terms of that section?
A. That's correct.

Q. The effect of that section, without having it before me, is that the otherwise limitation on the amount you can add to your bill is removed; is that right?
A. Could you repeat that, sorry?

Q. Certainly. The effect of the section - again, I don't have it in front of me - is that the limitation that that section contains in relation to litigious matters doesn't apply if it is an unlitigated or non-litigious matter?
A. Yes, I believe that's right.

THE CHAIR: Ms Furness, can we do this by reference to the Act? I will give you back the Act.

MS FURNESS: Thank you, your Honour.

THE CHAIR: Do we have another copy?

MS FURNESS: I don't.

MR ROYLE: I have a copy of the relevant parts. I am happy if your Honour would like to have mine.

THE CHAIR: Can I have a look at it? Thank you. Yes.

MS FURNESS: Q. There is a provision in relation to conditional costs agreements involving uplift fees; you are aware of that? Section 324.
A. I'm not an expert on the Legal Profession Act, I'm sorry.

Q. Perhaps if I can read you a clause of it.
Subclause (5) says:

If a conditional costs agreement relates to a litigious matter, the uplift fee must not exceed 25% of the legal costs, excluding disbursements, otherwise payable.

A. Mmm-hmm.

Q. What you have done by reference to this agreement is refer to it as an unlitigated claim in order to avoid the limitation contained in the section I read you; is that right?
A. Yes, I believe that's right, it doesn't apply.

Q. The purpose of specifying "unlitigated" was to remove you from that ambit?
A. I think so, yes.
THE CHAIR: How does the Act operate to exclude "unlitigated claim"?

MS FURNESS: The section that follows, section 325, refers to the prohibition on contingency fees, that is:

(1) A law practice must not enter into a costs agreement under which the amount payable to the law practice, or any part of that amount, is calculated by reference to:

(b) the amount of any award or settlement or the value of any property that may be recovered in any proceedings to which the agreement relates.

THE CHAIR: Yes. How does that --

MS FURNESS: Then subsection (2) is that the subsection I have just read, subsection (1):

... does not apply to the extent that the costs agreement adopts an applicable fixed costs provision.

THE CHAIR: What is an applicable fixed costs provision?

MS FURNESS: There may well be a definition.

Q. Can you help us with that, Mr Kelso?
A. Yes, as best as I understand, and when you read my email of 27 May to John Fleming at the Law Society, I think paragraph 2 --

Q. This is exhibit 4-55.
A. It is the use of the word "proceedings". As I understand, in section 325(1)(b) where it uses the expression "may be recovered in any proceedings", therefore as non-litigious matters do not relate to proceedings, it brings in subparagraph (2), I believe, which is therefore the applicable fixed costs provision, which is contained in this costs agreement.

Q. How do the fixed costs provision and the non-litigious matter work together, as you understand it, Mr Kelso?
A. I don't understand what you mean, sorry.
Q. Well, there is the reference that you have just made to the fixed costs provision and then the reference that I took you to in relation to a conditional costs agreement relating to a litigious matter?
A. Yes.

Q. And you indicated that you worded the work to be done in order to not fall within that subsection that referred to a litigious matter; is that right?
A. Yes.

Q. I am asking you how that fits with the costs agreement having a fixed costs provision - how do those provisions work together in relation to how you charge?
A. Well, a fixed costs provision is charging in relation to a flat fee and a fee that is calculated by reference to a settlement or outcome, and that's what the table in the costs agreement in paragraph 2 refers to.

THE CHAIR: Q. Mr Kelso, I understand that you don't have a complete understanding of the Act and that you went to the Law Society to seek advice?
A. Yes.

Q. Even with an incomplete understanding, it is plain that the Act says that if you are acting for someone in proceedings where you seek to recover money on their behalf, you cannot charge a fee based upon the size of the award, the amount recovered, unless you are within the uplift component; correct?
A. I think so, yes.

Q. Well, that's right, isn't it?
A. Yes.

Q. Now, here you are acting for people, and at the time they come to you, the expectation is that there will be a process which will involve an argument, through a mediator, when you seek to recover money on behalf of your client; is that correct?
A. Correct.

Q. Although it is not in a court, the nature of the process is exactly the same as it would be in a court, is it not?
A. I don't think it is exactly the same, no.
Q. Well, you frame the facts upon which your client's claim is based; correct?
A. Yes.

Q. You present those facts to the church?
A. Yes.

Q. The church responds to those facts?
A. Yes.

Q. There is a mediator then put in place in order to see whether or not there can be agreement between you, on behalf of your client, and the church as to the amount of money that person should receive by way of appropriate compensation or redress for the harm done to them?
A. Sometimes there would be a mediator, if it is Towards Healing; but outside of that, there is not.

Q. There will be a process of negotiation, won't there?
A. That's correct, yes.

Q. Based upon the factual assertions that you make on behalf of your client and the response from the church?
A. That is correct.

Q. In other words, the process, although not in a courtroom, is one which commences with the expectation that there will be ultimately a decision made to give your client money?
A. That's correct.

Q. If we are looking at the principle of this, the Act makes plain that when you are actually involved in litigation, you cannot charge in the way that you are seeking to charge; correct?
A. If it is litigation, yes.

Q. That's right?
A. That's right.

Q. And to the extent that the process that you are involved with mirrors litigation, what you are doing is something which, if in litigation, the Act would not allow you to do, isn't it?
A. That's correct.
Q. The effect of it, I appreciate, is that some people, if they recover a very modest sum, may benefit from the low fee that you charge; correct?
A. Correct.

Q. But when someone recovers a higher sum, they will in fact pay more than a time costed charge may have obliged them to pay --
A. They could do, yes.

Q. In ordinary parlance, it is robbing Peter to pay Paul, isn't it?
A. Not necessarily. It depends on how long the matter goes for.

Q. Of course. But to the extent that you are recovering from some people more than you would be allowed to charge on a proper time costed basis, you are taking a bonus, as it were, from those clients?
A. Well, I have referred to that in my letter to the Law Society.

Q. I understand that you have gone to the Law Society.
A. Yes.

Q. You act for many people, don't you?
A. Yes.

Q. How many, in this --
A. Well, with these types of cases at the moment, it's probably in the order of 60 or so.

Q. Sixty?
A. Mmm.

Q. Each of them, I take it, is required to enter into this fee agreement before you will act for them?
A. Yes.

Q. The effect of it should be understood by everyone, that for those who recover a significant sum, there is a good chance that you will recover in fees more than the time charge would justify; correct?
A. Correct, but there is a reason for that.

Q. Well, I understand the reason is because you sometimes don't recover the fee that you say you would have been
entitled to on a time charged basis?
A. Yes, and sometimes --

Q. So some clients are paying for others; that's what it amounts to?
A. That's true, but it enables people who have low-paying awards - it enables that their award will not be swallowed up with legal fees. I think the Commission heard evidence in these current sittings, there was somebody awarded $30,000 and all they were left with, at the end of the day, was I think $5,000 worth of shares and a new sewing machine, and the legal fees were probably in the order of $25,000 out of the 30,000.

But under this type of arrangement, that would benefit that person so that they gained the major share. I never want to see a situation where I would recover more than my client would, and in this particular case of Jennifer Ingham, she recovered almost - just on 90 per cent of the total award.

Q. If someone was given an award of $100,000, on your fee scale, you get a quarter of that sum, don't you?
A. I think in this one here, it's $20,000.

Q. $25,000, isn't it?

MS FURNESS: There are two different - there is the one that applied with Mrs Ingham and then the subsequent one.

THE CHAIR: The one I am looking at is $25,000.

MS FURNESS: Q. His Honour is looking at the current --
A. Well, there is a current one, but I am looking at the one with Mrs Ingham, and that's $20,000.

THE CHAIR: Q. The current one. If someone today enters into this agreement and they recover $100,000, you take a quarter of it?
A. If that's what the current one says, that would be right.

Q. That's irrespective of whether you have spent $5,000 or $15,000 pursuing the claim?
A. Well, technically, yes.

Q. Technically? What do you mean?
A. Well, it could, but one doesn't know how long the
claim is going to take.

Q. No, and that's why the rules normally provide for
a time costed approach which can be assessed by the court?
A. The time costed approach in these particular matters -
that's why I changed it to this style of arrangement with
the client, because I thought it was a more fair and
equitable arrangement. The client can contact my firm as
much as they like; they can ring me several times a day,
which many of them do; they can rest assured that we're not
recording and charging them for every single time they
contact us.

Many of our clients have mental health issues or are
highly anxious and want to contact us frequently, so this
style of arrangement means that they can have a frequent
and high level of contact with the law firm when they feel
they need to, and they will not be charged any more. It
gives them certainty. When they sign the fee agreement,
they can see the scale and they can know for sure exactly
what it is going to cost them at the end, and I believe
that gives them comfort to see that. If we were charging
in a number of our matters per time, I would hate to see
what the ultimate bill would come to.

Q. Does the church pay costs when you reach agreement
with them?
A. Most of the time, the figure is a global figure
inclusive of costs.

Q. Inclusive of costs?
A. It is. Sometimes --

Q. Do you have to justify the costs to the church when
that happens?
A. Not usually. What happens is that they have a figure
in mind, which they say, "That's what we're allowing for
costs, and that's it", and there is often very little
negotiation with that. With this particular case of
Jennifer Ingham, they said they would only pay $10,000,
inclusive of GST, plus disbursements. I noticed in their
subpoenaed documents that they had instructions to go to as
much as $20,000, which was never made clear or offered at
the facilitation meeting for Mrs Ingham.

Q. But that decision was made on the basis of what you
could justify, wasn't it?
A. Not really. I told Ms Fenby that it was a flat-fee
arrangement I had with her. I told her it was $30,000 plus
GST. The fact that it is a flat fee rate was actually
mentioned in her notes, which I have seen, so she knew
that. The only things that she required me to itemise were
disbursements, such as airfares, accommodation and meals,
which the church insurance already agreed to pay for before
I left my office.

Q. That's the disbursements?
A. That's the disbursements only.

Q. But the professional costs was assessed having regard
to what you told her was the work that you had done, wasn't
it?
A. I told her what my agreement was with Mrs Ingham, and
she said she would only pay $10,000, and I asked her for
more. She wouldn't pay more. And I asked her for plus
GST, and she said, "No, inclusive of GST", and that's the
way the negotiation went.

MS FURNESS: Perhaps we can have Ms Fenby's statement on
the screen.

Q. I think you were here, Mr Kelso, when Ms Fenby gave
evidence?
A. Yes.

MS FURNESS: Her statement is exhibit 4-27. It is
page 0013 of Ringtail, paragraph (g).

Q. That was in her statement, you recall, Mr Kelso?
A. Yes.

Q.
A note that [you] initially advised that
[you] thought [your] legal costs and
disbursements were $36,000. However, this
amount was reduced by [you] to $11,736.64
when I requested that he itemise his
professional costs and disbursements.

Do you see that?
A. I see that.

Q. So in her statement, she is reflecting her
understanding that that $11,000-odd was costs and
disbursements?
A. Yes.

Q. Then she gave evidence about this paragraph at
page 2970 of the transcript. Her answer begins at line 20.
Do you see that? Perhaps you could just read that to
yourself, Mr Kelso?
A. I have read that.

Q. You see her evidence is that the professional costs
were $10,000 and then the disbursements made up the rest of
it?
A. Yes.

Q. You were here when she gave evidence to that effect?
A. I was.

Q. That evidence wasn't challenged by you or anyone on
your behalf; that's right?
A. That's right.

Q. You accept that what she said was correct?
A. Well, it's not exactly correct. It's her
recollection, but it's not my recollection.

Q. So your recollection is that the amount you gave her
was disbursements only?
A. I did. I itemised my disbursements only. I had my
receipts there, which I gave to her, and she didn't
challenge those at all. I think she mentioned in her
evidence that it included me taking Jennifer and her family
to lunch in the lunch break. But to say that, "He came
back and said the professionals were 10", that's not my
recollection at all. My recollection is that she would not
increase the $10,000 for professionals.

Q. I'm sorry, that she would not increase the $10,000 for
professionals? So your understanding is that she said to
you, "I will give you $10,000 for your fees, plus
disbursements"?
A. That's correct. That's what she said.

Q. That was based on the $11,000-odd that you told her?
A. Yes, but I had no choice but to accept it. That's all
she was offering to pay, and at that stage we had agreed to
the other figures, being the $250,000 from Catholic Church
Insurance and the $15,000 to be paid direct from the
diocese.

Q. Just going back to the costs agreement that you had
with Ms Ingham, which is attached to your statement, at the
top of page 3, which is just above the heading "Expenses",
if we can have that on the screen - you have that in front
of you, I think, Mr Kelso?
A. Yes.

Q. There is reference there to:

In cases where you are receiving a "top-up"
of an earlier settlement paid to you, the
final settlement figure will be deemed to
include the earlier settlement for the
purposes of calculating our professional
charges.

A. Yes.

Q. I think the Law Society came back to you on that and
said, no, that wasn't fair or reasonable?
A. That's correct.

Q. And it could only be where you were involved and
acting in respect of the earlier settlement; is that right?
A. Yes, yes.

Q. Is it also the case that you don't charge twice:
whatever you have charged before for that amount is not
replicated in the amount you charge for the top-up?
A. No, we don't charge twice.

Q. Further in your agreement with Ms Ingham, under the
heading "Termination", section 8, which is on page 4, you
set out circumstances in which you won't continue to do the
work. You then indicate that you will:

... give ... seven (7) days' notice of our
intention to terminate ...

And the person:

... will be required to pay a flat fee of
$5,000.00 plus ... expenses ...
Do you see that?
A. Yes.

Q. ... in fair recognition of the work that we have done for you.
A. Yes.

Q. Then, if the client terminates, they are liable to pay $10,000?
A. Yes.

Q. ... in fair recognition of the work that we have done for you.

Do you see that?
A. Yes.

Q. Why do you provide for a flat fee in respect of termination rather than the costs of the work that was actually done on a time costed basis?
A. Well, that was a clause that I drafted, trying to come to terms with that possibility myself, and that's why I submitted it to the Law Society for their suggestions, and they made a suggestion about that and we changed that immediately in our next edition of our costs agreement.

Q. What was their suggestion about that? Is this in exhibit 4-55, is it?
A. I think I might have given away my last copy - oh, here it is.

Q. I have it here.
A. Yes.

Q. I'm quoting from the Law Society:

We have concerns the flat fees plus GST charged ... may not be considered to be fair and reasonable ...

And they suggest the wording be changed to something like:
You will be required to pay our reasonable fees on a pro rata basis up to the date of
A. Yes, and we changed that straightaway.

THE CHAIR: So what is it now?

MS FURNESS: What it is now is the last document behind exhibit 4-55, which is headed "Conditional Costs Agreement, Non-Litigious Matters".

THE CHAIR: The last document is the letter, so I then go back behind that.

MS FURNESS: I think the order in which we have it is different.

THE CHAIR: It may be different. I have a "No Win No Fee Costs Agreement, Unlitigated Claims" document; is that right?

MS FURNESS: That's the version that went to the Law Society.

THE CHAIR: That's right. I don't have another version in these.

MS FURNESS: I will provide your Honour with what I have. Before I do so, I will just check the provision, the change that we are referring to.

THE WITNESS: It is in the new document. "Termination" is paragraph 10 in the new document.

MS FURNESS: Thank you. Your Honour, is it sufficient if I just indicate what it says, or would your Honour like to see it?

THE CHAIR: I would like to see it, I think. Ultimately, we will need it in evidence, if it is not already.

MS FURNESS: Clause 10, your Honour.

THE CHAIR: Thank you.

Q. What is a "pro rata basis"?
A. Your Honour, that would require us to estimate what a reasonable settlement might have been and then to take
a proportion of what the fee might have been for that, depending on how far along the work was in stages.

For example, in this agreement, looking at the scale, say if it was under the Melbourne response and the ceiling was $75,000, and we estimate, say, it would have settled for around $50,000 and the fees were $10,000, and we thought it was probably 50 per cent along the way, we would halve the $10,000 and charge $5,000 if the client was terminating. But we exercise a discretion in that, because we act for people who don't have any money and, you know, we decide whether or not that's appropriate.

THE CHAIR: Yes.

MS FURNESS: Q. Mr Kelso, in the memorandum of costs and disbursements you sent to Mrs Ingham - this is the version that you provided today which had the missing page - do you have a copy of that with you? Perhaps the missing page can be put on the screen, which was page 2.

I'm not sure whether your Honour has the missing page. Perhaps not?

THE CHAIR: How do I tell?

MS FURNESS: Because the page numbers go 1, 2, 3, rather than 1, 3. In any event, it is on the screen.

Q. This is your description of the work you did?
A. Yes.

Q. In the time available to me I have looked at this, Mr Kelso, and I couldn't see any reference to preparing a statement of Mrs Ingham. Can you tell me if I have missed it?
A. I don't have a hard copy in front of me. I think I have given them all away.

Q. Perhaps if we can scroll down the screen, if you can read the screen and ask the operator to scroll it as you are ready.
A. But if that's missing from there, that would have been by accident that that's missing, because there was a statement prepared, a comprehensive statement.

Q. I note you say in your statement at paragraph 5 that
you prepared a comprehensive statement?
A. Correct.

Q. You will recall Ms Fenby's evidence that Jennifer
didn't read from a statement, to her observation?
A. Yes, yes.

Q. Were you at the facilitation?
A. I was.

Q. And you obviously saw her. Did she use the statement?
A. No, she didn't, because when the pastoral side
started, which was first in the morning, I had already met
with Jennifer for about two and a half hours the day
before, and that morning I met with her and her family
before going into the facilitation, and it was decided that
she would just speak off the top of her head, that she
would just speak freely, without reading anything formally.

Q. You prepared the statement for the purposes of the
facilitation, did you?
A. Yes.

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

THE CHAIR: Yes. Any questions from anyone else?

MR ROYLE: I should indicate, your Honour, I represent the
interests of Jennifer Ingham. I don't think it is
appropriate that I should ask questions beyond that.

<EXAMINATION BY MR ATTIWILL:

MR ATTIWILL: Q. Mr Kelso, I just wanted to ask you some
questions, firstly, in relation to this flat fee matter
that was raised with you by his Honour. You were asked
some questions about section 325, if that could be brought
up on the screen, of the Legal Profession Act.

MS FURNESS: Your Honour, I might give your Honour the Act
back for this purpose.

MR ATTIWILL: Q. You will see that in subsection (2) -
and you were taken to this - it says:

subsection (1) does not apply to the extent
that the costs agreement adopts an applicable fixed costs provision.

As I understood your evidence, your evidence was that you considered that your costs agreement complied with subsection (2); is that correct?
A. Yes, and that's the opinion of the Law Society.

Q. Well, take me to the opinion of the Law Society where it says that this costs agreement of yours adopted an applicable fixed costs provision - could you take his Honour to that, please?
A. Now, in the letter from the Law Society, it says:

We refer to your email enclosing a conditional costs agreement which you propose to use in all non-litigated matters involving churches, charities and religious organisations to negotiate settlements of a financial nature for victims of child sexual abuse. You have asked us to scrutinise the proposed agreement and advise if any statutory disclosures are missing or further suggestions. We have reviewed the agreement and advise as follows:

Litigious matters ...

Q. Can I just stop you there? We have all got the letter and we can all read it.
A. Yes.

Q. My question to you is where in this letter does it say, by the Law Society, that this costs agreement adopts an applicable fixed costs provision?
A. Well, not as such, but --

Q. It doesn't at all, does it?
A. But it says:

In the event settlement negotiations fail and it is likely the matter will become litigious with the issue of court proceedings, a further costs agreement will need to be entered into which complies with the Legal Profession Act and covers the work then to be done.
I think that is words in effect agreeing to that.

Q. It does not state anywhere in this letter that your costs agreement adopts an applicable fixed costs provision, does it?
A. It doesn't as such, but I have asked them for their suggestions and advice and if that was the case, if that was not applicable, if it didn't comply, I would have imagined they would have told me very shortly.

THE CHAIR: Q. Mr Kelso, what do you understand to be an applicable fixed costs provision?
A. My understanding is that that's referring to a provision - a costs provision in relation to a non-litigious matter which doesn't involve proceedings.

Q. Where do you get that from?
A. I get that from - I think that's discussed in Riley Solicitors Manual, and I have read that, and I have also discussed it with Mr Fleming from the Law Society.

THE CHAIR: It has to be somewhere in this Act, doesn't it?

MR ATTIWILL: Your Honour, I can take you to it. If the Legal Profession Regulations could be brought up on the screen, and go to I believe regulation 112 to 115. I think that is the correct regulation. Can I just check that? Regulation 112 to 115 of the Legal Profession Regulations do set out applicable fixed costs in relation to certain agreements.

Q. Are you familiar with those provisions?
A. No.

THE CHAIR: Are they relevant to the current --

MR ATTIWILL: No, your Honour, they are not.

Q. Have you had any regard to regulations 112 to 115?
A. I don't believe so, no.

Q. And when you were giving evidence about your view being that this was a costs agreement that adopted an applicable fixed costs provision, was that something that only came to your mind today in giving evidence?
A. No.

Q. And if your opinion turns out to be erroneous about that, I put it to you that that was just something that you formulated yourself about this being a costs agreement that adopted an applicable fixed costs provision?
A. No, that's not correct.

Q. But you can't point to any advice provided to you by the Law Society that it is, in fact, one?
A. Well, they haven't used those words.

Q. Isn't it the case that what the Law Society was telling you is that section 325(1) doesn't apply because the amount of the legal costs isn't referable to any award or settlement that might be recovered in proceedings - that's correct, isn't it? They were talking about the fact that the section just doesn't apply because 325(1) does not apply? That was the opinion, wasn't it?
A. I think so, yes.

Q. Could I take you to your statement. Do you have that there, Mr Kelso?
A. Yes.

Q. You will see that in paragraph 5 you set out the work that you undertook?
A. Yes.

Q. Did you maintain, during the course of your retainer by Ms Ingham, your work in progress - some sort of statement of your work in progress, so recording your time against the file?
A. I didn't prepare a time sheet, no. I didn't record it on a time sheet, as such.

Q. So you don't record any of your time during the course of the retainer; is that right?
A. Not in a matter where it is a fixed fee.

Q. Here, it would be right, wouldn't it, that you would have spent no more than about three to four days of work in relation to this matter? That's about right, isn't it?
A. Well, it says that it started when I received a phone call on 13 May, and the matter finished after the cheques were distributed.
Q. What is the answer to my question? I'm putting to you that you would have spent a total of about three to four days of work. Is that about right?
A. I don't think so.

Q. How long do you think you would have spent on this case?
A. Well.

Q. How much time? How many days?
A. Well, I couldn't say.

Q. Right. So you might have spent three to four days?
A. I would say it would be more than that.

Q. Well, how much more?
A. Well it says there that as soon as I got instructions from her I began to focus on her work. There was numerous email exchanges and phone conferences in the ensuing days.

Q. Well, who with?
A. That all adds up.

Q. Who with?
A. With my client.

Q. So phone calls, conversations, emails with Ms Ingham?
A. Yes.

Q. Who else?
A. There was some contact with Bernadette Rogers, the professional standards director.

Q. When you say "some", what sort of contact?
A. Phone calls. She was --

Q. How many?
A. I wouldn't know how many. I couldn't tell you off the top of my head.

Q. But only a few?
A. It would be only a few, yes.

Q. Because the fact is when you come into this matter, Mr Kelso, on 13 May, you know that this facilitation is on in 11 days, don't you?
A. Well, at that time, 13 May, the date hadn't been set.
Q. When did you receive instructions that the facilitation was to be conducted on 24 May?
A. It was only a few days before that. I had to clear my diary. She was told that if it didn't take part, didn't take place then, I think it was August was the next available date. So I - she said that the insurance representative was coming up from Melbourne and the church representative was going to be there, so she wanted me there to represent her, so I cleared my diary and made myself available for her.

Q. Ms Rogers has made a statement, and in that statement she sets out an email of Ms Ingham's, where Ms Ingham, as of 9 May 2013, confirmed 24 May 2013 as being a suitable date to her. So that had already been decided by the time that you were retained, hadn't it?
A. Not on my understanding. It might have been an option, a certain date. There was a few dates. I think it was the 23rd and 24th or it was a date in August. But it certainly wasn't confirmed when I first received instructions.

Q. You can see what I'm putting to you: you are retained on 13 May; you know that there is a real likelihood, I put to you, that the facilitation could be on within the next couple of weeks - that's right, isn't it?
A. I think so, yes, that's fair.

Q. You know that this is, from your client's point of view, a very serious claim, don't you?
A. Yes.

Q. It is a big claim?
A. Yes.

Q. It is a claim where you had an expectation that there could be a sizeable settlement amount paid, didn't you?
A. I had no idea what the church would be offering or agreeing to settle for. There were other factors. She had had a medical negligence claim only a few years before, which was complicating it. Mmm.

Q. But it was a big case, wasn't it?
A. I certainly regarded it as a big case. I regarded it as a serious case and a very important one.
Q. That means, then, that if one looks at paragraph 7 of
your statement, where you seem to give a justification for
this sort of agreement being one that generally can
accommodate the disadvantaged, so-called to you, in smaller
cases, simply didn't apply, did it?
A. Well, it may have. I wasn't aware at that time what
the church would be prepared to offer.

Q. No, but you knew that this was not one of these small
cases where you need to protect you with such a fee
agreement - you knew that this was a big case, didn't you?
A. It could be a big case, but it may not, but I had no
idea, and I certainly didn't have that in mind when I took
on the instructions.

Q. And you knew as of 13 May that this was a big case,
where there was likely to be a big settlement amount paid,
and you were going to get a very large flat fee for not
doing much?
A. No, I disagree.

Q. You have given evidence now that you did not tell
Ms Fenby that your legal costs were $10,000?
A. That's correct.

Q. You were present in court during all of Ms Fenby's
evidence?
A. Yes.

Q. And you heard her give unequivocal oral evidence to
the contrary, didn't you?
A. I heard her give evidence of what her recollection
was, which is different to my recollection.

Q. Yes. And her evidence was very clear, wasn't it?
A. Yes.

Q. And not only were you present, but you were in fact
instructing Mr Royle on behalf of Ms Ingham, weren't you?
A. Yes, yes.

Q. And providing instructions to him during the course of
this hearing before the Commission, weren't you?
A. That's correct.

Q. You were present when Mr Royle cross-examined Ms Fenby
and asked her questions?
A. Yes.

Q. You know, don't you, that Mr Royle did not ask one question about that discussion, did he?
A. No, he didn't.

Q. You were asked by the Commission to put on a witness statement about this matter, weren't you - about Ms Ingham's case?
A. I was asked by Mr Royle to do that, yes.

Q. Okay, by Mr Royle?
A. Mmm.

Q. And you did not set out in that witness statement anything about Ms Fenby or any conversations you had with her, did you?
A. No, I wasn't asked to.

Q. Well, let's just deal with that.
A. Mmm.

Q. What did Mr Royle actually ask you to do?

MR ROYLE: Your Honour, perhaps I can assist. Counsel assisting - and this is on the record - requested that I obtain a statement from Mr Kelso and consequently that was obtained. That was done.

THE CHAIR: Yes.

MR ATTIWILL: Q. On your evidence you heard something that you disagreed with that Ms Fenby said - that's true, isn't it?
A. I said my recollection was different to her recollection.

Q. Did you talk to Mr Royle about putting that into your statement?
A. Yes, I did - not into my statement, no. No. I was purely - Mr Royle was approached, and myself, by counsel assisting the Commission, to produce a copy of my costs agreement and Mr Royle suggested to me that I do a statement annexing it.

Q. Did you tell Mr Royle at any time prior to him cross-examining Ms Fenby of your conversation with Ms Fenby
and that you in fact disagreed with her evidence?
A. Yes.

Q. As a practitioner who is instructing counsel before this Commission, are you familiar with the Practice Guideline 1, published by this Commission?
A. Not off the top of my head, I'm sorry.

Q. Are you familiar with it at all?
A. No.

Q. You have never read it?
A. I don't think so.

Q. Paragraph 67 of Practice Guideline 1 - I will just read it to you - says this:

Except as set out below, the Royal Commission will not apply the rule in Browne v Dunn.

Do you know what that is?
A. Yes.

Q. (a) If the Royal Commission is to be invited to disbelieve a witness, the material grounds upon which it is said that the evidence should be disbelieved should be put to the witness so that the witness may have an opportunity to offer an explanation.

It makes sense, doesn't it?
A. It does.

Q. And you were content to sit here while your counsel didn't ask a single question?
A. Well, I discussed it with counsel and I took his advice as to what he should do.

Q. Let's deal with that. What did he say to you was the reason why he wouldn't put this to Ms Fenby?
A. I can't remember the reason. But he said to me words to the effect that, "I don't think we need to go - to ask that."
MR ATTIWILL: I only have a few more questions, your Honour.

THE CHAIR: We might finish after lunch. We will take the luncheon adjournment.

LUNCHEON ADJOURNMENT
UPON RESUMPTION

THE CHAIR: Yes, Ms Furness.

MS FURNESS: Mr Kelso was being questioned by my friend.

MR ATTIWILL: Q. Mr Kelso, you were here, weren't you, for the opening by senior counsel for the Commission? When senior counsel for the Commission opened this matter, you were present, weren't you?
A. Are you referring to Jennifer Ingham's matter?

Q. I'm referring to the matter - right at the commencement of this matter?
A. No. No, I wasn't.

Q. Are you aware that senior counsel for the Commission also provided to the parties a written form of that opening?
A. No.

Q. If I could just tell you, then, that senior counsel for the Commission, both in the written and in the oral opening, said this, and this is at paragraph 80 of the written opening, your Honour, and also at transcript page 2484 lines 14 to 16, I believe. It says this about Ms Ingham's matter, in part:

Ultimately, her complaint was settled, with Ms Ingham receiving $265,000 plus nearly $12,000 to cover her legal costs. Her legal costs were actually $34,320.

That's both in the oral and in the written opening. Now, Ms Fenby gave evidence before the Commission and provided an explanation for that, in part, which was that she asked you to particularise the costs that you were saying had been incurred of $36,000 and that when you were asked about that, you came back and said that your professionals were in fact $10,000 plus disbursements.
A. I disagree.

Q. What I'm putting to you is that this issue about the quantification of the legal costs has always been an issue before the Commission from day one. You wouldn't dispute that, would you?
A. I wouldn't know.
Q. Can I just ask you a few questions about your costs agreement with Ms Ingham. It's right, isn't it, that if at the facilitation the settlement amount was $10,000, you would have taken 50 per cent of that - $5,000; that's correct, isn't it? You can have regard to your agreement, if you have it there, Mr Kelso.
A. Yes, that's correct.

Q. Do you think that in these sorts of circumstances and this being a Towards Healing matter, if the matter did in fact settle for $10,000, you would have insisted on that payment, $5,000 to your firm?
A. Yes.

Q. If the matter settled for $11,000, you would have taken $10,000; that's right, isn't it?
A. Oh, I see what you mean, but, no, I think I would have definitely reconsidered that.

Q. Well, just looking at the --
A. Because that's not in the spirit of what we do and the spirit of the agreement here.

Q. I'll come to the spirit of this in a moment, because I do want to ask you questions about the spirit of the agreement. Looking at the agreement itself, you sent Ms Ingham an agreement whereby if the matter settled for $11,000, your firm could have legally insisted upon a payment of $10,000; that's correct, isn't it?
A. I said I would have reconsidered that.

Q. I'm just asking you about what the agreement says.
A. That's what the agreement says that I could do, yes.

Q. So you would have had a legal right to insist on a payment of the $10,000?
A. I would have had a legal right, yes.

Q. In fact, these figures that we're dealing with are exclusive of GST, aren't they?
A. Yes.

Q. So if the settlement figure was $11,000, you could have taken $10,000 plus insisted on the GST as well?
A. I could have, yes.
Q. And if one goes to a settlement of $50,000, you could have insisted upon a payment of $15,000 plus GST?
A. Yes.

Q. In relation to the spirit of the agreement, this is because, as you said, this agreement concerns a non-litigious matter?
A. Yes.

Q. Towards Healing?
A. Yes.

Q. And you knew that the church authority was obliged, as part of the Towards Healing process, to give and ensure a just and compassionate outcome?
A. Yes.

Q. Unlike a litigious matter, you presumably considered that you were also working towards such an outcome for your client?
A. Exactly, yes.

Q. In other words, one just wasn't looking at numbers and obtaining a settlement and looking at costs; you were working towards Ms Ingham to obtain a just and compassionate outcome for her?
A. Exactly.

Q. The reality of it is this, I put to you, Mr Kelso: at the facilitation, there was a discussion about your costs, and you said that they were $36,000, didn't you, to Ms Fenby?
A. Yes.

Q. She asked you to particularise those, didn't she?
A. No. She asked me to particularise the disbursements.

Q. Just so there's no doubt about it, I put it to you that she said and asked you to particularise your $36,000?
A. No.

Q. She was flabbergasted by that amount, wasn't she?
A. That's what she said.

Q. Did she tell you that?
A. No. She said that in her evidence.
Q. But did she say that to you?
A. No.

Q. That she was flabbergasted by it?
A. No, she didn't say "flabbergasted", no.

Q. What did she say?
A. I can't remember.

Q. Was it water off a duck's back or did she look at you and say, "You can't be serious", or words to that effect?
A. Words to that effect.

Q. So she was surprised and possibly shocked about your costs being $36,000?
A. She was surprised, yes.

Q. What I suggest happened was this: you were asked to particularise them - and I know that you say that you weren't - and what you did was you in fact said to Ms Fenby, when she asked you that, "Well, look, they're $10,000 plus disbursements". I put it to you that that's what you told her. Do you deny that?
A. I deny that.

Q. The reason you did that is because that's about what they would have been for the 11 days that you had been involved in this matter?
A. No, I didn't do that at all.

Q. That's because, to use your phrase, in the spirit of the agreement, that was about what was fair and just for Ms Ingham to pay for the work that you had performed in the very limited time before the facilitation; now, that's correct, isn't it?
A. No.

Q. In fact, what happened here was that you said that your costs were $10,000 plus disbursements to Ms Fenby, but then you still insisted on Ms Ingham paying you the $36,000 flat fee?
A. That's not correct at all.

Q. Do you consider, as you're giving evidence before the Commission, that your fixed fee that you charged Ms Ingham was, in the circumstances of this case, just and compassionate to her?
A. Yes.

Q. Why?
A. Well, I've explained before why I devised this method of charging for our clients in this matter. I've explained that if we time cost matters, they can blow out and end up costing the client far more, taking up and swallowing up their settlement money. I've explained before that our clients are usually highly anxious and needing to contact us frequently, and we have a whole lot of considerations. Sometimes the matters don't even go to completion. Sometimes the facts don't check out. Sometimes people send us volumes of documents to read and we read them and they don't go any further than that. So taking all that in consideration, just and compassionate to all our clients that we take on - this is a very fair and equitable way of charging our clients. It means that sometimes in a matter there's a loading, as I put in my letter to the Law Society - there's a loading at the end. With these smaller matters, the charges reflected there are under, and overall I believe it evens out and it's a fair way of dealing with it.

I can quote some examples and I can bring a schedule of matters and explain how this works out fairly for our clients. In Ms Ingham's matter, that was the agreed fee. When I came up to Brisbane to settle it with her, I wasn't even sure it was going to settle. In fact, at the end of the day, I didn't expect it to settle. It was only when the diocese agreed to pay $15,000 from its own pocket that she felt satisfied and she instructed me to settle.

Q. I'm not asking about other cases. I'm not asking questions about whether generally, when you act for a whole range of people - and I think you said you've got 60 on your books at the moment - that it more or less equals out over everybody. I'm asking you about whether you consider it was just and compassionate for Mrs Ingham to pay to your firm that fixed fee?
A. Yes.

Q. Your answer was yes?
A. Yes.

Q. When you provided your explanation, I didn't hear you tell the Commission one fact as to why it was just and compassionate in her case, but I want you now to do so?
A. I feel I've already explained that, why it was just
and compassionate. The whole system --

THE CHAIR: Q. You say that you can't look at the
matters individually. You express justice and compassion
by looking at all of your clients?
A. That's correct.

Q. What you're being asked by counsel is whether you
really think that's fair to the individual who has to pay
a lot more than the time charges would have provided;
that's what you're being asked?
A. I do. I do believe that's fair.

Q. So the client who gets more should pay to help the
clients who get less?
A. Sometimes that works out, not all the time it works
that way.

Q. You think that's fair?
A. I do. I think that's very fair. It enables us as
a firm to devote our full resources of our firm to every
person equally. I've explained before that we have people
ringing us sometimes many times a day or sending us many
emails a day demanding immediate response. We've even had
people ring threatening to commit suicide, even on the
weekends, sending me emails threatening to commit suicide
or telling me what they've just done and that they've had
to call the ambulance.

I get my emails from work all Saturday and all Sunday.
We offer this service to our clients, and it is just and
compassionate. We treat everybody on equal terms and allow
them equal access to our firm.

Q. How much do you charge an hour normally?
A. It's been a long time since I've charged an hourly
rate, your Honour.

Q. For anything?
A. Yes.

Q. You don't just work for victims, do you?
A. I do a lot of work for victims of crime, the statutory
compensation scheme in New South Wales, and that is a fixed
fee by order of the tribunal, which I think was $907.50
including GST for victims compensation.
Q. Irrespective of how much you recover?
A. Exactly.

Q. And the maximum now is $10,000 there.
A. I was talking about legal fees. The maximum --

Q. No, the maximum payout now is $10,000?
A. The maximum is $15,000.

Q. Is it? Okay.
A. But that's only for family victims of homicide people. But for most intents and purposes, $10,000, being the category B payment, is what the vast majority of victims can stand to get as a maximum payment.

Q. And the statutory or regulatory control there keeps your fee at below $1,000?
A. Well, it doesn't pay any fees now. Since the new legislation came in, effective from 7 May this year, there are no legal fees to solicitors. Plus the recognition payments or compensation payments to victims were slashed.

MR ATTIWILL: I only have a few more questions, your Honour.

Q. Is your firm currently retained in any litigious matters?
A. One, I can - yes.

Q. And you provided a fee agreement and a costs disclosure statement in relation to that matter?
A. Yes, yes.

Q. So what's your hourly rate?
A. I think in that one it's $435.

Q. Finally, is it correct - and tell me if it's not so - that the reason why you say it was just and compassionate in relation to the case concerning Ms Ingham is because, in effect, that meant that the sum that Ms Ingham paid for legal fees could subsidise your practice in other respects?
A. Yes. That is one reason, yes.

Q. How many hours do you estimate that you would have spent in relation to Mrs Ingham's case? Do you have any --
A. I have no idea.
MR ATTIWILL: No further questions, your Honour.

THE CHAIR: Q. If you apply your hourly rate for litigation, I think you end up with about 10 days' work; is that right?
A. I may do. I haven't done the calculation.

Q. So the fee you've charged here is the equivalent, in a litigious context at your rate, of 10 days' work?
A. That might be right, your Honour, but I've devised the system to be fair and equitable amongst all of our clients. I believe it's a much better way of doing these matters than purely time costing them. Time costing every time someone rings us or emails us, putting it in a timesheet, writing it down, charging people - I can tell you that some of our clients there, it would just really blow out and be, I think, unfair. We're trying to put our resources, which are limited as a firm - it's a small firm - put our limited resources to the best possible use for all of our clients.

We placed a limit on the number of clients, because the ones that we've got now are the ones that we can handle, and to devote our full time to them.

Q. You maintain a website, don't you?
A. Yes.

Q. It has recently been modified; correct?
A. We are always revising our websites.

Q. You know what happens when you search "Royal Commission", don't you?
A. Yes.

Q. Did you organise it so that your website would be the first to come up?
A. Well, I was hoping it would. I wanted to be found by people.

Q. So you did organise it so it would be the first to come up on a Google search?
A. Yes.

Q. You realise that there have been concerns about whether or not it misrepresents the position?
A. I realise that, and I've taken steps. When I first
put it up, I made it clear that it was not the official
site and, since then, I have put even more statements on
there and links. There was always a link to the official
website. But this time we put the link right up top, as
suggested, and it's no problem at all to do that. It's
never been my intention to be confused with the Royal
Commission. It's my intention to give updates and news to
people and to assist people and direct them to the Royal
Commission, which we do direct many, many people to the
Royal Commission.

Q. That's very helpful, but you understand the concerns
that were raised by the form of your website and the way in
which, when searched, it was the first that you hit upon?
A. I don't think I can remember anybody contacting me and
telling me that they were confused, but I was contacted by
the Australian Government Solicitor, had discussions with
them, and only too happy to make modifications as they
suggested. It was Mrs Ingham that I encouraged to contact
the Royal Commission and to seek a public hearing.

THE CHAIR: Yes, Ms Furness.

MS FURNESS: Your Honour, I understand that --

MR ROYLE: I just have a couple of questions, bearing in
mind some of the restrictions I have with conflict,
your Honour.

THE CHAIR: Sure.

<EXAMINATION BY MR ROYLE:

MR ROYLE: Q. Mrs Ingham is aware of you giving evidence
today; that is correct?
A. That's correct.

Q. And she is aware of the reasons for you giving
evidence today?
A. That's correct.

Q. From your understanding, I think you received
a message from Mrs Ingham at lunchtime today; that's
correct?
A. Yes, I did.

Q. Can you tell the Commission what Mrs Ingham thinks
about your fees, the way they are charged and the service
that you provided?
A. I'll read her message out. This is received at 1.15.
There's no prior contact between me and her.

Thinking of you today. I have not been
able to watch. I don't understand yet why
you're on the stand. My thoughts are you
only ever, ever had my interests as primary
from the minute we spoke till today. You
offered spiritual support to me as well as
getting a settlement. That will always be
with me.

Q. And at other times, has Mrs Ingham ever expressed any
concerns about the fees that you charged and the method by
which you have charged them?
A. Never once.

MR ROYLE: Thank you.

MS FURNESS: I have nothing further, your Honour.

THE CHAIR: Thank you. You may step down. You are
excused, but I understand you will probably stay.

<THE WITNESS WITHDREW

MS FURNESS: Your Honour, there are two witnesses in the
[DK] matter who are unable to give evidence in the week of
21 January and it is proposed that one be called and the
other resume his evidence, in order that they be completed
this afternoon, which has the effect that in the case of
Mr Salmon, his evidence is primarily in respect of [DK],
but there is a very small matter in respect of Mrs Ingham,
and it is far more convenient that he be called in respect
of both of those matters on the one occasion. Given the
likelihood of this afternoon, that will happen now in
January.

THE CHAIR: I will take whatever course is convenient,
subject to whatever Mrs Needham has to say.

MS NEEDHAM: Your Honour, Mr Salmon is the only witness
left in the Ingham case, and our submission is rather than
bringing back Mr Salmon - well, he would have to come back
in January, but it would be preferable, in our submission,
to finish the Ingham case completely and that would leave
only the other matter to come back in January. Of course,
we are in the Commission's hands, but I have spoken to my
learned friend about it. We take different views on that.

THE CHAIR: I think we are all in Ms Furness's hands,
Ms Needham.

MS FURNESS: Your Honour, it is essential that we finish
Mr Bucci and Brother Turton's evidence this afternoon, so
we will proceed to do that.

THE CHAIR: Yes.

MS NEEDHAM: Your Honour, there might be some small
changeover while we go.

MR STEWART: The witness will be Joseph Bucci.

<JOSEPH BUCCI, sworn: [2.22pm]

<EXAMINATION BY MR STEWART:

MR STEWART: Q. Mr Bucci, a statement has been furnished
to the Royal Commission in your name dated 26 November
2013. Do you have a copy of that statement? At least
I think it's the 26th, but the manuscript is not very
clear.
A. Yes, I do.

Q. Is that 26 November, is it?
A. I have a copy, but it's an unredacted copy, but
I assume it's the same one as signed by me.

Q. I understand that as at the date of you signing it, it
was true and correct, but that subsequent to having signed
it, you have a limited further recollection having seen or
met Mr [DK] here at the Royal Commission; is that correct?
A. That's correct, yes.

Q. Sir, will you confirm that, as at the date of the
statement, it was true and correct?
A. At the date of the statement, it was true and correct,
yes.

MR STEWART: I tender the statement, your Honour.
THE CHAIR: That will become exhibit 4-56.

EXHIBIT #4-56 STATEMENT OF JOSEPH BUCCI, DATED 26/11/2013, BARCODED STAT.001.0001_R_M

MR STEWART: Q. Mr Bucci, do you accept that at the mediation or facilitation in this matter, the name of Brother Anthony Hunt was not raised in the presence of [DK], his wife or his barrister, [DL]?
A. I'll have to have a look at my notes from the mediation, if that's okay. I believe that's correct. There was an inference in relation to an infirmary incident, I believe. I believe there was an incident that was referred to as an infirmary incident at the mediation.

Q. Yes, and your note records the name of Anthony Hunt?
A. Yes.

Q. Do I understand, though, that you do not say that his name was raised at a time when [DK], his wife or his barrister friend were present?
A. I can't recall, I'm sorry.

MR STEWART: Your Honour, those are my questions.

THE CHAIR: Yes, that doesn't leave those watching with much understanding of what Mr Bucci is telling us, does it?

MR STEWART: Your Honour, that --

THE CHAIR: I think you might just explain with him his role and involvement, so that those thousands of people who are watching these proceedings have some understanding of what this is about.

MR STEWART: Yes, your Honour, I'll do that.

Q. Mr Bucci, you attended the facilitation on behalf of Catholic Church Insurance?
A. Yes, I did.

Q. And you took some notes while you were there?
A. Yes, I did.

Q. You didn't seek to take a comprehensive set of notes recording everything that everyone said, did you?
A. No, I didn't.
Q. They were more notes of points from time to time?
A. Correct.

Q. And am I right that the mediation was divided into two parts?
A. Yes.

Q. An earlier plenary part dealing with what might be referred to as the pastoral elements, and the second part dealing with a financial negotiation; is that right?
A. That's correct.

Q. In the second part, the parties were in separate rooms?
A. Yes.

Q. And there was a process by which settlement offers and responses to offers were passed between the rooms?
A. That's correct.

MR STEWART: Your Honour, in the circumstances, it is probably just as well to tender Mr Bucci's note of the meeting, which has been redacted. There is a manuscript version and then a retyped version behind that.

THE CHAIR: I think everyone needs to understand his statement is an account of his involvement in those processes. Is that right?

MR STEWART: Yes, it is.

Q. Mr Bucci, that account is not taken from your memory but from documents or, rather, a record, electronic record, that was made available to you by CCI for the purpose of preparing your statement?
A. That's correct.

Q. You no longer work at CCI?
A. No, I don't.

Q. You have very limited, if any, actual recollection of the facilitation; is that right?
A. That's correct.

Q. So what you've put in your statement is essentially just a recordal of some of what you saw in the electronic
record?
A. That's correct.

Q. And one of the documents that you saw in the electronic record was a representation of your manuscript note of the facilitation?
A. That's correct.

Q. That's the document that you have been given.

MR STEWART: I'm sorry, your Honour, was it given a number?

THE CHAIR: No. I'm not sure that we need to give it a number, do we? We just need to understand that he has prepared a statement drawing upon these notes. Is there anything in particular in the notes that we need?

MR STEWART: Your Honour, there is now, yes.

THE CHAIR: Okay. The file note will be exhibit 4-57.

EXHIBIT #4-57 MR BUCCI'S FILE NOTE OF FACILITATION

MR STEWART: Q. Mr Bucci, you prepared this typewritten version of the note; is that right?
A. That's correct.

Q. If one has regard to that, one will see that it begins recording 30 March 2010, it says "10am" and it records some details?
A. That's correct.

Q. Then on the second page, what is written is "Second part of mediation post lunch break", and it records some details?
A. That's correct.

Q. It says "1pm", and so on. In the margin it has the word "Note", and adjacent to that it says:

Recent information to acknowledge Brother Anthony Hunt.

A. Yes.

Q. As I understand it, you accept that that was said in
the second part of the mediation?
A. Yes.

Q. Not in [DK]'s presence?
A. Yes, sorry, that must be correct, yes.

Q. Just at the foot of the page, you will see next to the number 6, it says:

[DL] leaves.

A. Yes.

Q. I would like you to have another look at the manuscript version of that, which is at the foot of the second page of the manuscript, where it says "6" and then it has the first name of [DL] and then there is the word.
A. Yes.

Q. I want to suggest that that probably says "fees", not "leaves"?
A. I'm sorry, my writing is atrocious and I apologise, but I really - I don't know. I think it was "leaves" is what I believed it to be.

Q. Take a look at it again. You will see immediately above that it has "counselling"?
A. Yes.

Q. Then there is an arrow?
A. Yes.

Q. And then below that "[DL]", and then there is the word which is unclear?
A. Yes, you could be right. It could be "fees", because that would fit in with what I was recording, yes.
Possibly.

Q. Does it also fit in because over the page one will see there is a recordal of "[DL]" in the middle of the page, so I'm now on the third typed page. Right in the middle, it says:

Discussed with [DL].

Now, if he had left, it wouldn't have been possible to discuss something with him.
A. Yes, good point.

Q. So it's "fees"?
A. Thank you. Yes, I agree, I'll correct that. My apologies.

Q. Otherwise, the documents that you rely on are, for the most part, if not entirely, already before the Commission?
A. Yes.

MR STEWART: Unless there is any other aspect which would be valuable, those are my questions.

THE CHAIR: Yes. Does anyone else have any questions? Very well. Thank you, Mr Bucci, you may step down. You are excused.

THE WITNESS WITHDREW

THE CHAIR: Yes, Mr Stewart.

MR STEWART: Brother Turton will resume, your Honour.

ALEXIS TURTON, on former oath: [2.35pm]

<EXAMINATION BY MR STEWART CONTINUING:

MR STEWART: Could we have tab 7 up on the screen.

Q. You will remember this document, Brother Turton. It is the handwritten note. If we can see the top of the document, "Possible Sources of Complaints re Professional Standards". Do I understand it correctly, Brother Turton, that you received this document as the director of professional standards for the Marist Brothers?
A. Yes, that's correct, Mr Stewart.

Q. And I take it you received it from Brother Anthony?
A. Yes.

Q. The timing of your receipt of it, I assume, was on or close to the date of the document itself, was it?
A. Yes.

Q. One can see that date at the bottom of the page?
A. Yes, I see that.
Q. What were the circumstances of your receipt of it? In other words, to what end or for what purpose did you receive that document?
A. I'm really not sure. It came as a surprise to me, and it was part of a course that the brother had completed or was nearly completed, and it wasn't a complaint, so it was something very unusual. I wasn't quite sure what to do with it from there, apart from make sure it was noted, filed and --

Q. Are you saying, Brother Turton, you didn't ask for this?
A. I don't recall asking for that, no.

Q. Was it given to you by Brother Anthony himself?
A. As I recall, it was posted to me.

Q. Posted to you?
A. That's my recollection, but I'm not absolutely sure of that.

Q. And Brother Anthony was, of course, well known to you?
A. Yes.

Q. After having received it, did you discuss it with Brother Anthony?
A. I presume I did. I don't actually recall discussing it with him, but I presume that I did.

Q. Brother Turton, we're talking about not a very long time ago - four years, approximately.
A. Yes.

Q. About a document that you would agree is a very significant document?
A. Yes.

Q. It's a document that lists a history through the career of Brother Anthony of possible sources of professional standards complaints?
A. Yes.

Q. And there are a number of them?
A. Yes.

Q. I think perhaps 18, and in most cases named potential complainants; is that right?
A. Yes.

Q. In those circumstances, Brother Turton, I assume that you took the document seriously?
A. I did, yes.

Q. In those circumstances, you surely must have asked Brother Anthony to explain what this document represented, what he intended to convey by it. Did you do that?
A. I don't specifically remember doing that. I would imagine that I would have. I know I had the impression that it was a possible source of complaint, and until complaints arrived we wouldn't know exactly what they were, but we would have that acknowledgment from him.

Q. Other than to put it in the file and make sure it was kept safely, is there anything you did with the information in this document at that time, in other words, on receipt of it or in the immediate aftermath?
A. I'm not sure, but I would normally pass on such information to the provincial superior.

Q. I would like to understand that. Are you saying that you're not sure whether you did in this case?
A. I'm not sure. I'm assuming I did, yes.

Q. So you're assuming you would have passed it on to the provincial at the time?
A. Yes, I would have informed him of it, sorry, yes.

Q. Did you pass it on to anyone else?
A. I'm not sure what date, but at some point I passed it on to CCI, who asked for any information that we had regarding Brother Hunt.

Q. Did you pass it to the police?
A. I don't recall passing it to the police.

Q. Did you take advice on whether you were under any obligation to pass it to the police?
A. I assume I would have, but I can't specifically nominate that.

Q. I suggest, Brother Turton, that your attitude to that document and the information in it at the time, as you've just indicated in your evidence, reflects an alarming indifference to this history of potential abuse; would you
agree?
A. Since I did not have a complaint, I was uncertain
exactly how to move there, but certainly looking at it now,
I would be more - I would certainly take more clear advice
and more specific advice on it. Yes, I agree.

Q. What has changed between October 2009 and December
2013 which is the basis for you to say you would regard it
differently today?
A. I think it’s been a continuation of the fairly steep
learning curve that we’ve been on with regard to these
matters and the need to be more precise in our protocols
and taking advice, so I accept that I would have handled it
differently now.

Q. The protocol that applied, the Towards Healing
protocol that applied at the time, at clause 13 - so that
will be the 2008 version of the protocol, at clause 13 -
says:

The Church makes a commitment to seek to
know the full extent of the problem of
abuse and the causes of such behaviour
within a community that professes the
values of Jesus Christ.

What you did with the document in your failure to make
further inquiries doesn’t fulfil that, does it?
A. Certainly I could have done more. That’s a general
statement of following up that I hear you quote there. We
did not have a specific complaint from anyone regarding
that. But as I said, I would have done more in terms of
taking advice and following up.

Q. Some of the people named as complainants or potential
complainants in that document had already made complaints,
hadn’t they? If we scroll the document up so we can see
near the top, you will see the names there, 1968, [DN], and
1970-71, [DM]. Those two people had already complained by
then, hadn’t they?
A. Yes, yes. Correction. [DN] had complained - his
brother had complained. And [DM] had not complained to me,
but I was made aware of an allegation that he had made
against the brother concerned.

Q. I think we established yesterday this is one of the
documents that you then provided to CCI in the context of
[DK]'s complaint about the infirmary incident; is that right?
A. That's correct.

Q. And it's one of the documents on which you based your conclusion that Brother Anthony was probably the responsible person; is that right?
A. That's not correct. I identified Brother Anthony as being the brother in charge of the infirmary at - sorry, who was the after-hours brother in the infirmary. I had no other information about him connected to [DK]. The other material from [DM] is as you say.

Q. We canvassed that aspect yesterday, Brother Turton, and I'm not going to go back to it now because that may put us in risk of having you back here in January, and it was canvassed quite fully. The result, though, of your identification of Brother Anthony was, of course, that the settlement that was reached with [DK] was recorded in the records of the Marist Brothers as arising from incidents involving two brothers, one being Brother Murrin and the other being Brother Anthony; that's right, isn't it?
A. I didn't set up those records of recording that, as I recall. Someone else would have read that and, I believe, mistakenly made the connection that Brother Anthony had been confirmed as the person, based on my mentioning his name as the person in charge of the infirmary. That's my understanding.

Q. Let's leave the word "confirmed" out of it for a moment, but you accepted in your communication to the insurers that it was Brother Anthony?
A. What I communicated to the insurers was that the only brother that I could identify that fitted the description was Brother Anthony, in [DK]'s description of the brother in the infirmary. That's what I was confirming, I believe.

Q. You in fact wrote to Brother Anthony, indicating - and perhaps we can look at it; it's at tab 69. You will see this is on 27 April 2010, which was following the mediation, and you were writing to Brother Anthony in the second paragraph about it:

The centre of his concerns was regarding RM -

that's Ross Murrin -
who as you know is in custody at the moment. He also had a complaint regarding the infirmary at the College. It seemed to be consistent with other things that we have talked about and we accepted what he said.

That is really you saying to Brother Anthony that that was accepted, isn't it?
A. Yes, the general scenario was accepted. Brother Anthony never admitted to me that he was the person who was the abuser. He admitted that he was in the infirmary. He told me that he did not recall [DK].

Q. You accepted that it was him; you accepted that it was Brother Anthony?
A. I accepted that Brother Anthony fitted the description of the brother in the infirmary. I had no further information than that.

Q. Can we have tab 99, please. If we can move it across slightly, what this is is an extract from the records of the Marist Brothers as to complaints received and resolved arising from Brother Anthony. If we scroll further to the right, we see there it has the accused surname?
A. Yes.

Q. And first names, and if we carry on to the right, you will see that two of the processes were Towards Healing and one wasn't. If we go further along, you will see in the bottom one it says "Apology Acknowledgment", "Yes". And then further, "Out of Court Settlement" - I take "DOR" to be "deed of release"; would that be right?
A. That's my understanding, yes.

Q. On 30 March 2010?
A. Yes.

Q. And a settlement amount, $88,000. Carry on to the right. Now if we go back to the left, to the first column, you will see that the bottom complaint of those three is the one by [DK] arising at St Augustine's College?
A. Yes.

Q. So following the facilitation and resolution, as it were, of [DK]'s complaint, the Marist Brothers records were
then made to reflect that there had been a complaint by [DK] against Brother Anthony, you agree?
A. There was never any complaint directly by name against Brother Anthony that I recall.

Q. By [DK], that is?
A. By [DK].

Q. That's absolutely right.
A. Yes.

Q. But my question was with regard to the record which we have just been looking at. The Marist Brothers record was then caused to reflect this information; that's correct?
A. It does reflect it there. Could I just make a comment on that?

Q. Yes, by all means.
A. Thank you. Those records were made recently, I understand, in preparation for the Royal Commission. They were not made by me, and I can quite understand that anyone reading the records in the way that I identified Brother Anthony as the brother in the infirmary, that they could make that connection that that admission was made. It was not, to my best knowledge, certainly not made by me.

Q. To your knowledge, isn't the position not that these records were made for the Royal Commission but that this information was compiled from existing records for the Royal Commission?
A. That's correct.

Q. Can we go to tab 97. This is now the extract from the record of the National Professional Standards Committee. You will see there is recorded there a complaint in respect of Brother Anthony Hunt. If we scroll to the right - well, you see the victim is said to be [DK]. Scrolling to the right, it has various details about it. Further along, then it reflects that it was reported to the police on 15 April. It records that there was a pastoral meeting; an apology. The church authority undertook to forward to the complainant certain information, and so on. Then scrolling further to the right, reparation was agreed, and in the third from the right-hand column, it says "Complainant other than victim". Here it is recorded as "Self". That would reflect that the victim did complain. Are you not familiar with this record?
A.  Sorry, I'm not, Mr Stewart, sorry.

Q.  You're not familiar with the record?
A.  No.

Q.  Okay. Then on the furthest column, "Complaint on behalf of victim", "Yes". So the consequence was that there came to be recorded in the records of the National Committee for Professional Standards that [DK] had made a complaint in respect of Brother Anthony?
A.  Well, if that's what that record means, that seems to be correct. I don't know.

Q.  Then finally one can look at tab 101. This is now an extract from the CCI data or records provided to the Royal Commission. If one scrolls to the right, you will see two complaints - those two claim numbers coincide with the CCI claim files. Scrolling further to the right, if you stop there, you will see in the right-hand column, the complainant is said to be [DK]. If one goes back to the left to "Date of Loss", there are two claims. One is November 1980. The other one is reflected as February 1976. And two payments are recorded, which come to essentially the amount of the settlement in this case, or close to it, plus some additional costs, I take it. And further to the right, please. What that record reflects, then, is [DK]'s complaint being reflected in the records of the insurer as being two separate complaints and two separate files; do you accept that?
A.  I don't quite understand that, I'm afraid. Could we go back to the left?

Q.  Yes, of course.
A.  The "Date of Loss", that refers to the two incidents that [DK] refers to.

Q.  Yes. 1976 or thereabouts was the infirmary one?
A.  Yes.

Q.  And 1981, actually, was the Ross Murrin one. If you go to the left, those file numbers - or, rather, claim numbers, are given in Mr Bucci's statement. The CCI file numbers are given, one of them being "2852171", actually, in his statement, "2852481" being the other one. We seem to have one digit that's different. The first one is said to be in relation to Brother Ross Murrin; and the second one, the one which is reflected there on the screen as the
second one, 2852481, being in relation to Brother Anthony.

That's the state of the record. You weren't party to the record, but what I suggest to you is that the consequence of your investigation, such as it was, and having furnished the information to the insurer and accepting the claim to the insurer for the purpose of the facilitation, was that these records were then created; would you accept that?

A. Yes, that's correct.

Q. We know that on a number of occasions you sought to elicit from [DK] the identity of the person responsible in the infirmary incident; is that right?

A. I'm sorry, could you just say that again, please?

Q. There were a number of occasions on which you sought to elicit from [DK] the identity of the person in the infirmary incident?

A. That's correct.

Q. And he always declined to identify the person?

A. Yes.

Q. In your discussions with [DK] on this subject in the lead-up to the facilitation, did you at any time ask him whether it was Brother Anthony?

A. Yes.

Q. You did?

A. Yes, I did.

Q. In isolation or just as one name in a list of names?

A. Probably both. I think I wrote a letter listing all the brothers in the community.

Q. We looked at that yesterday.

A. I'm sorry, I can't identify numbers and things. But I can't state a time or whether it was a phone - I presume it was a phone call, but I have a strong sense that I actually asked him, "Was it Brother Anthony?", because I had identified that the main brother in the infirmary was Brother Anthony after hours.

Q. Is that as high as it goes, Brother Turton - a strong sense? You don't have any independent recollection of it, do you?
A. I couldn't swear to it, no, but that's my sense, yes.

Q. You accept it's not reflected in the documentation at all?
A. I accept that. I'm not sure. I haven't checked the documentation that way.

Q. You accept, of course, that it's not in anyone's statement - yours or [DK]'s, or anyone else, for that matter?
A. That I put the question to him individually?

Q. Yes.
A. No, I accept that.

Q. Of course, you didn't say to [DK], did you, that you thought that it was or could have been Brother Anthony because of the position that he was in?
A. Again, I just can't remember every documentation, but I feel, without being able to name the letter or the time or the phone call, that I had said to [DK] - we had so many telephone conversations, because I wanted him to feel absolutely free to clarify all these matters - that I would have asked him, "Brother Anthony was the brother in the infirmary?", but he continued, as you saw on a number of the things there, to say he was not going to say who it was, until that last one I think when he said - he indicated that he would probably say something at the meeting, but, as I recall, that didn't happen.

Q. And you accept, of course, that it wasn't put on behalf of the Marist Brothers in this hearing to [DK] that you had asked him specifically whether it was Brother Anthony or that you had suggested to him that you thought it might be or was Brother Anthony?
A. I'm not sure. That's a detail that I'm not sure of. Having been over the question so many times before, it may not have been directly put that way. My understanding is that we basically accepted that there was no need for an assessment on his whole claim, and so we accepted what he was claiming without having the name. That's all I can say, Mr Stewart.

Q. You didn't tell [DK] that the records of the Marist Brothers would record his complaint as having been against Brother Anthony?
A. I'm not sure those records existed then, in the form
Q. [DK], in his evidence, I believe, in his, as it were, closing statement of evidence, said that he was never asked whether it was Brother Anthony; it was never asked specifically of him whether it was Brother Anthony. Do you remember that?
A. I remember him saying that, yes, Mr Stewart.

Q. Was [DK] not entitled to know that the records - and by that, I'm not referring to the schedule specifically but the documentary record from which this schedule was prepared - of the Marist Brothers would reflect him as having made a claim against someone when he hadn't actually made such a claim?
A. I was not aware of that, and the only way I can assume that would have gone into those records is a misunderstanding of my statement that Brother Anthony was the brother in the infirmary. If I had understood that to be the message, then I think it would be fair that he could expect that, yes.

Q. Brother Turton, did you not, in effect, act as the assessor in relation to that claim - that there were these two incidents, one, the Brother Murrin one, that was quite easy, in a sense, and then there was the Brother Anthony one, or let me call it the infirmary one, which was difficult because no-one was identified by [DK]; that's right, isn't it?
A. Yes.

Q. Ultimately, on behalf of the church authority, you accepted the claim as being a valid claim?
A. We accepted his claim in total, yes.

Q. I should use the word "complaint" rather than "claim". You accepted the complaint?
A. Yes. Just to clarify, I don't think at any stage in the discussion was there any attempt to allocate one amount to another amount. I wasn't really involved in the money amounts. That is the first time, as I understand it, that I've seen a distinction between the two amounts.

Q. Was it fair to Brother Hunt, Brother Anthony, that the records of the Marist Brothers would reflect a claim against him that hadn't been made?
A. Insofar as they were what we thought at the time as confidential records, what the records, as I understand it, recorded was that Brother Anthony was the brother who fitted the description best of the brother in the infirmary, and on that basis I communicated that fact to CCI.

Q. You said in your ten years or so as director of professional standards there were 128 professional standards or sexual abuse claims; is that right?
A. Pretty close, anyway, yes.

Q. You got that figure from somewhere. You didn't just remember that there were 128. You must have referred back to your files. Is that right?
A. That's correct.

Q. So there are, or were, Marist Brothers records of claims made?
A. Yes.

Q. Or complaints made?
A. Yes.

Q. As director of professional standards, those records were under your responsibility and province; is that right?
A. Yes.

Q. It stands to reason, then, that this subsequent record which I've shown you comes from that record, which reflected a claim by [DK] against Brother Anthony and that the claim had been accepted; is that right?
A. The records initially were individual records in envelopes, which were developed over many years. Prior to the Royal Commission, the team, the new team in professional standards, which did not include myself, worked very hard to assemble all of those into a summary sheet, and I looked at that before the Royal Commission started to basically get that figure. So that's very, very recent and it's possible that there could have been a few interpretations similar to this one, where it wasn't exactly the situation, as I recall it, certainly. But I think your original question was did I go back to all of those records. No, I went to the recently compiled summary of those and used that.
Q. And that recently compiled summary extracted information obviously from the pre-existing records which were there at the time that you were the director?
A. I presume so, because they would have held all those records.

Q. I suggest, Brother Turton, that it was not compassionate to not engage [DK] with this information that you had, to assist him to understand and appreciate what had happened to him and to help him in his process of healing following that incident?
A. I don't quite understand the question, Mr Stewart. Could you - that it wasn't compassionate?

Q. It wasn't compassionate of you, on behalf of the Marist Brothers, not to share the information that you had and the conclusions that you were reaching and engage him in that, in the process of healing?
A. Over the process of many, many phone calls and discussions with him and the facilitated meeting, I felt that we had communicated to him all the knowledge that we had.

Q. That's simply not right, Brother Turton, is it, because you've already agreed that you never communicated to [DK] that you thought that it might be - rather, that you had concluded that it might be Brother Anthony?
A. I still have the sense that I did ask [DK], but I cannot - I cannot name the document or the time, because the name Brother Anthony had come up so often, so to the best of my knowledge [DK] was aware of everything that we knew. And that was my aim - to be compassionate, so that we could get as close as we could to some form of healing.

Q. I may come back to that, Brother Turton.

THE CHAIR: Mr Stewart, Commissioner Murray believes that there may be an error in the transcript in relation to the identification of the CCI file from the infirmary. It should be 76 instead of 81. We might note that in the transcript so we don't lose it later on.

MR STEWART: Thank you. I'm indebted to you, Commissioner.

Q. These 128 complaints, can you assist the Royal Commission in understanding them a bit better, is that...
128 different complainants or different incidents or different Brothers? How do you get to the 128?
A. Since I didn't assemble the final list, my understanding is that they were 128 contacts from people, individuals, who had complaints of one form or another which needed to be resolved, discriminated as to whether they were sexual or physical, and so on. In some cases, they were simply requests for knowledge as to whether or not a person who was suspect was still alive or still teaching. So not all of them went to the stage of final deed of release, and so on.

Q. But they were complaints?
A. They were complaints of one form or another.

Q. If I take you to paragraph 36 of your statement, do you see there you say:

I estimate that during my 10 years as Director of Professional Standards, I received around 128 complaints of child sexual abuse.

Now your evidence is quite different. Now you say they are of one form or another, including contacts, and maybe only physical, not necessarily sexual. At line 3, you say:

Since I didn't assemble the final list, my understanding is that they were 128 contacts from people, individuals, who had complaints of one form or another which needed to be resolved, discriminated as to whether they were sexual or physical, and so on.

So the reality is that you are now trying to soften this 128 from what it was in your statement. In your statement, it is unambiguously 128 complaints of child sexual abuse, and now you are trying to say there were all sorts of other things as well; that's right, isn't it?
A. No, I'm happy to accept that they were statements of child sexual abuse. It's just that, in the process of working through them, some people decided not to pursue, for a large number of reasons, one of them being that sometimes they would say this is more emotional than sexual, and my understanding of the Royal Commission was that it was into sexual complaints.
Q. You have to accept that it's 128 complaints of child sexual abuse, don't you, because, firstly, it's in your statement that you've confirmed --
A. Yes, I accept that.

Q. -- and, secondly, you know that the Royal Commission has available to it, or it can have made available to it if it doesn't have it already, the record of all those complaints?
A. Yes.

THE CHAIR: I think, Mr Stewart, we have probably exhausted the topic. We'll have to look at the records. That will tell us the real position in due course.

MR STEWART: Q. I want to deal briefly with the question of Peter Rodney. You will remember that it was very important to [DK] that he had the opportunity to meet Peter Rodney and address the issues that he had with regard to his time at St Augustine's; you remember that?
A. Yes.

Q. And the position was that at the time that the mediation was going to be held, Peter Rodney was abroad on a sabbatical, some long-term commitment abroad; is that right?
A. Yes, that's correct.

Q. So it wasn't possible or practical for him to attend the mediation?
A. Correct.

Q. If you can recall back, and I can take you to your statement, if necessary - it's at 62 - on 18 February 2010 you had a conversation and [DK] understood then from that conversation that Brother Rodney was overseas and said that he was happy to speak with him when he returned.
A. Yes.

Q. Do you accept that?
A. Yes.

Q. If we can have tab 30, you will recall some days later, on 22 February, [DK] had a different position on that. If you can scroll down to the paragraph starting, "I also do not believe". It is on the screen there now,
near the middle:

I also do not believe that is good enough for Peter Rodney not to attend my mediation because he is on holidays.

You then responded to that at tab 33. Can we look at that? You will see in that second main paragraph, the last sentence. This is you, now, to [DK], copied to various others. You say:

He [Peter Rodney] indicated that he is ready to speak to you and could have done so in January but he had to head overseas at the end of January.

The position then was that Peter Rodney was still, in the words that you used, ready to speak to [DK]; that's right?

A. Yes, yes.

Q. And willing to do so?

A. Yes.

Q. And [DK], you accept, would have understood that from this email from you?

A. Yes, I believe so, yes.

Q. If you would have a look at tab 46, you will see the paragraph that starts "Hopefully" about six or so lines in:

Hopefully it will be a step forward.

Do you see that?

A. Yes.

Q. So this is an email from you to Peter Rodney on 18 March?

A. Yes.

Q. You say:

He would still like to speak with you when you return but we pointed out it was not possible now.

Do you see that?

A. Yes, I see that.
Q. In other words, you at that time had the state of mind that you understood that [DK] would still like to speak to Peter Rodney; that's correct, isn't it?
A. That's correct.

Q. Even if it's after Peter Rodney returned from abroad?
A. Correct, yes.

Q. And that particular issue about Peter Rodney wasn't tied up at the facilitation, was it? In other words, there was no particular resolution of that issue?
A. No. As I recall, there was no mention of it.

Q. So you would understand, then, why following the facilitation [DK] would still have an expectation of meeting Peter Rodney?
A. Yes, I can quite understand that. I don't recall any discussion of Peter Rodney at the meeting, and I made the assumption, and I put it in a note, I think, to Brother Peter Rodney, that the facilitation had gone so well that I didn't think that [DK] would still want to pursue a discussion with him, and I acknowledge that I presumed too much, and I'm very sorry that I - that that was an interpretation I made which was unfortunate, and I'm very sorry about that, because I think it would have been a good thing had we pursued it. But I did feel at the time that it had gone well and that there was no further request to follow up. But you are correct, yes.

Q. Looking back at the process as a whole, the role that you played was, firstly, the role of the contact person in as much as you were the original contact and you arranged what was then used as the contact report; is that correct?
A. Normally, once a request comes in and there's clarification, where the story has to be told, the contact person is a person who goes to visit the person. Quite often in Towards Healing matters where a person has already written out their story to anyone - police or lawyers or whatever - and signed it, that is accepted, rather than having to go through the process of sending a contact person. So I informed the PSO - they were copied in to my emails, and so on - [DK] said he would like to use a statement he had already made. So, in a sense, there wasn't a contact person, per se; there was the contact report already done.
Q. Well, there was a statement, but that statement, of course, didn't, because it was a police statement, reflect what [DK]'s needs or expectations were in the Towards Healing process, did it?
A. Joined with the letter he wrote detailing what he expected of the process, it fulfilled what I understand as the conditions of Towards Healing. I think, by the way, that it was a report written for a lawyer, not a police report. I may be wrong there.

Q. It doesn't matter for present purposes.

Brother Turton, the point was that you were the person who communicated with [DK] in order to get him to send you the email in the requisite form or identifying the right information and including the statement; that's right, isn't it?
A. Yes, I explained to him what the contact report was, and he said, "I would like to send this as my contact report."

Q. And that's just what a contact person might have done; in other words, a contact person might elicit a contact report prepared by the complainant in that way, or the contact person might go and have a meeting and actually prepare the report themselves?
A. My understanding is the contact person is a person who goes to see the individual and helps them to write out their report, unless they have a report written out and signed which they are happy with. I have spoken with meetings of contact people who do that. But I was not technically the contact person there. I was obtaining the contact report.

Q. Yes, that's the point I'm making. You weren't technically the contact person, but you performed the role in eliciting a document which served the purpose of the contact report; is that right?
A. I pointed out that a contact report was necessary and [DK] provided that.

Q. You also then assessed the complaints made in the report in order to arrive at a position on behalf of the church authority that the complaints could be accepted; is that right?
A. Normally the assessor is a professional person appointed to carry out an assessment where a complaint is denied. In this case, we accepted that there was no need
for an assessment.

Q. It was your work that led to that acceptance, wasn't it? Your work of investigating and reaching a judgment to say that, yes, the Marist Brothers accept these complaints?
A. Work or simply an acknowledgment of the fact that a person was in custody because of the similarity to the complaints of [DK], and we accepted that.

Q. Brother Turton, it's not true that that's all you did, and you know that, and I don't want to have to trawl you through the documents again to demonstrate it, but I'll give you one example. You went to visit Brother Murrin in prison and you canvassed with him the precise allegations that were made by [DK] against Brother Murrin, and you received communications from Brother Murrin, and on the basis of those communications, as well as other information, you concluded that the Marist Brothers could accept the complaint by [DK] against Brother Murrin?
A. My understanding in the Towards Healing process is that the church authority will check with the person who is accused whether they deny it or not, and that's what I saw as my role there in checking with Ross Murrin.

Q. And I'm suggesting that's part of what would ordinarily be the process of assessment of the complaint?
A. Well, I didn't understand it that way, but I accept what you say, that you see it that way, because in an assessment there are lots of details and facts and so on to be weighed up. I was checking a couple of details.

Q. You essentially played the role of case manager in that you organised the process, moved it forward, arranged the parties to the facilitation, and so on; do you accept that?
A. Yes, I certainly visited Brother Ross and he wrote his note of apology and so on. If that's case management, yes, that's what I was doing.

Q. And organised the facilitation - who would be there, the venue, timing, liaised between the parties, all of that? Sorry, did you give an answer?
A. Well, organised in the sense that there were going to be - there were different options. [DK] had suggested Cairns at one stage, and by discussion we agreed on coming to Brisbane for the meeting there, with the agreement of the other parties, yes.
Q. You attended the facilitation on behalf of the church authority; is that right?
A. That's correct.

Q. You signed the apology on behalf of the Marist Brothers?
A. That's correct.

Q. I suggest that for you to have played all those roles - of contact person, assessor, director of professional standards, church authority and signing the apology - was contrary to the principles and provisions of Towards Healing; do you accept that?
A. It didn't follow the procedure exactly. The steps were taken, but certainly I acknowledge that I would not be as involved in each of those steps; certainly it's not appropriate, yes.

Q. You ran the show, essentially, and there was no or little division of roles?
A. I wouldn't - if you're speaking about the facilitated meeting, I certainly didn't run the show.

Q. I'm talking about the process, Brother Turton.
A. Oh, the process - I had most information about the process, while detailing every stage to the director of professional standards as it went along.

MR STEWART: Those are my questions.

THE CHAIR: Who else has questions?

<EXAMINATION BY MR ANDERSON:

MR ANDERSON: Q. Brother Turton, you have been asked questions by counsel assisting about --

THE CHAIR: Just remind Brother Turton who you appear for.

MR ANDERSON: I do apologise.

Q. My name is Andrew Anderson. I appear for [DK], so in that capacity I would like to ask you some questions.
A. Yes.

Q. You have been asked about Peter Rodney and the
facilitation not being able to proceed with him present because he was overseas.
A. Yes.

Q. Do you accept, because you had so much communication with [DK] leading up to that, that a promise may have been given or an assurance may have been given to him that within six months of the facilitation, a meeting or contact would be made with [DK] by Peter Rodney?
A. I did indicate to him I didn't see any problem in having the follow-up in the next six months, yes.

Q. So you accept that conversation did take place?
A. Yes. It's written down, yes.

Q. Was there any conversation that you had with [DK] at the facilitation about Peter Rodney?
A. I don't recall that, no.

Q. He had sent you a letter, which is at tab 51, if we could bring that up. When I say "he", this is Peter Rodney wrote you a letter. It's undated, but would you agree this is prior to the facilitation that you received this letter?
A. Yes, I presume so, yes.

Q. It provided you a response with the issues that had been raised with you by [DK] with respect to the knowledge Peter Rodney had back at the time [DK] was at school at St Augustine's?
A. I'm sorry, could you just say that again, please?

Q. I do apologise. This letter outlined to you from Peter Rodney's perspective his knowledge of Ross Murrin and any inappropriate behaviour by Ross Murrin during [DK]'s time at St Augustine's?
A. Yes.

Q. Was anything in this letter conveyed to [DK] by you at the facilitation? I might ask you more specifically if you're having trouble answering that.
A. Yes. Thank you.

Q. In the third paragraph, if we scroll down, you will see, as to his belief that Ross's behaviour was common knowledge among the brothers and boys:

... I cannot speak for the boys. As
I think I said to you, I have
a recollection of a conversation with Ross
in the staff room/printing room one
evening. But I cannot fix the year. At
that time a boy in Ross's dorm (Year 8 -
I think) must have made a complaint to
Gerry. Then and now I was not aware of the
details of the complaint. For whatever
reason, Ross felt the need to explain his
side of the story.

It goes on and gives some detail about that. It's not
necessary to go through that. But you can see there, there
were some questions about Ross Murrin's behaviour that
existed at the time. Was that conveyed to [DK] at any
time, that there were those questions that had been raised,
even if nobody thought it was necessary to take action?

A. I can't say for sure one way or the other. I do
remember reading this letter, and I noted that
Brother Peter said, "I had no reason to suspect anything
untoward", and I suppose that stood out to me in terms of
his knowledge. But I'm not absolutely sure whether
I conveyed the sense of that. I would think that I would
have told [DK] that I had heard from Brother Peter, yes.

Q. Would you say it's fair to say that [DK] at the
facilitation was told the brothers did not have an
awareness of any inappropriate behaviour by Ross Murrin?
A. That's correct.

Q. Did you ask, because we see the reference to "Gerry" -
that's Gerald Burns, isn't it?
A. Yes.

Q. Did you ask Gerald Burns about this incident?
A. I informed him, when [DK] requested to speak with the
brothers, that he had complaints about Brother Ross, so
I would have told him that, yes.

Q. You went and saw Brother Ross in prison?
A. Yes.

Q. Did you go by yourself?
A. I think I did. I'm not absolutely sure, but I think
I did.

Q. Is it possible that you went with Gerald Burns to see
Ross Murrin?
A. It's possible, but it's not my recollection. I don't recall that.

Q. If I could ask for tab 37 to be placed on the screen. Would you have a look at the opening lines of this letter. This, you would see, is the letter to you by Ross Murrin after you had seen him in prison?
A. Oh, yes, yes, I see.

Q. He said:
... I enjoyed seeing you and Gerry very much.

A. No, I accept that.

Q. Do you know why - this would be a reference to Gerald Burns, I presume?
A. Yes, that's correct.

Q. Why would it be that Gerald Burns would go with you to see Ross Murrin in prison whilst you were undertaking these investigations for Towards Healing?
A. I presume because he was as concerned as I was; he was the brother there at the time, and he wanted to visit a brother who was in custody and this matter had come up.

Q. If I could take you to tab 45, this you might identify as a file note that you made on 11 March 2010?
A. Yes.

Q. This has in the third paragraph, if we go down, a reference to discussions with Brother Gerald, but "since there was no indication of anything genital in the matter, more inappropriate conduct and inexperience", that Brother Murrin, in the complaint that had been made against him, would not be taken out of dormitory supervisory work at that stage. Do you see that note you've made?
A. I'm just looking for it. Are we looking at the --

Q. The third paragraph, but it follows on from the second, where there were recollections of inappropriate contact and some investigation that was made. You can see Brother Claudius came up from Ayr to meet Ross Murrin. Do you see that?
A. Yes, yes, I do.
Q. Do you see there it's indicated that Brother Gerald, in that document, is said to have been involved in some way with being told about what was alleged against Ross Murrin?
A. Yes, yes, I see that.

Q. My question to you is: if Towards Healing is about getting to the truth and ensuring victims are told the truth, why was Mr [DK] not informed about these events at his facilitation, when these are the very questions he had sought to have resolved?
A. I don't really have any other comment. The fact that it was - not being "genital", I assume, was not a sexual matter, that had been accepted, that it was not at the level of the allegations that [DK] was referring to for the facilitation.

Q. It was noted to be not inappropriate conduct to that degree, but it's not noted to be appropriate conduct?
A. Yes, and I can't make any other comment on that, because "inappropriate" could refer to a number of areas.

Q. But you sought to take no action in correcting what [DK]'s understanding would be from what he was told on that day, that nobody - that's Brother Moraghan, Brother Burns, and you didn't say anything about Brother Rodney - had any knowledge of anything being alleged against Ross Murrin back at his time at St Augustine's?
A. Well, I take your point. If that would have been helpful, then I wish I had noted that, yes.

Q. You accept the full truth would have been helpful?
A. Yes, any further information would have been helpful, yes.

Q. You didn't raise Anthony Hunt with [DK] at the facilitation?
A. Not at the facilitation that I recall.

Q. I suggest you did not at any time raise Anthony Hunt as someone you had identified as matching the complaint and really attributing responsibility to him; do you accept that?
A. As I said before, my recollection is that I did put the name to [DK] at some stage, but I cannot say exactly when that was. That is still my recollection.
Q. If we go to tab 44, and on page 2, down the bottom, in your email to [DK] that we can see on the screen, you give a number of names to him. This was shown to you yesterday by Mr Stewart. Then you can see his response up the top of the page to you:

    Thanks Keith

    I know exactly who was from the names, so no need for the photos.

    I will discuss with you on the 30th.

The 30th being the day of the facilitation?
A. Yes.

Q. Did you, at the facilitation, take any steps to raise this issue or ensure the mediator would raise the issue?
A. Not that I recall, no.

Q. Do I understand it that in that way you were acting passively and waiting for [DK] to raise it with you?
A. That was always a possibility, since he was given total freedom to raise any questions, and he had a very, very long statement to read. My understanding was that we had - I had questioned him so often beforehand about it that, you know, it had been well and truly canvassed.

Q. Well, it hadn't been, had it?
A. Yes, and he was more than free to do that.

Q. The point is that you didn't, on the 30th, you accept, make any efforts to raise the issue?
A. The whole meeting was 100 per cent open to any issue to be raised. If he still wished to raise it, I'd understand it was totally open to him. I would have been very pleased had he.

Q. You would accept that this facilitation would have been most stressful on Mr [DK]?
A. Yes.

Q. Would you accept that it would be helpful to someone
in [DK]'s position to have someone in your position take
a note of the sorts of things that, leading up to it, he
had informed you were important to him, or at least were
open to be raised at the mediation?
A. Yes, I'm sure there were more things that could have
been done. I felt, given the large number of
communications already being held and records such as this,
and the very long, detailed statement he'd made - I wasn't
sure what else one could do. And at the facilitation -
leave that in the hands of the facilitator to work both
sides.

Q. Was there any concern that what you had discovered
through this process about Brother Anthony Hunt might be
too terrible to reveal at the facilitation?
A. No.

Q. Can I suggest to you that through this process, you
have really put the responsibility on Mr [DK] to approach
you about what he wants rather than you seeking him out
proactively and responding to what he has raised with you?
A. I felt the appropriate thing to do was to give Mr [DK]
every opportunity to put his case, to express what he
wanted, and I thought he had expressed that.

Q. But you didn't raise with him, as we've said, the
identity of this person on the 30th; correct?
A. I don't recall that, no, that's correct.

Q. With respect to Peter Rodney, your evidence is that
you presumed too much and that you left the mediation
feeling like he may not want to approach Brother Rodney?
A. Yes, that's correct.

Q. But, in fact, it wasn't really the responsibility of
Mr [DK] to contact Peter Rodney, because he had been told
that contact would be made with him within six months;
correct?
A. Correct.

Q. So again it was really put on Mr [DK] to ensure the
Towards Healing process was working in the way it should
for him?
A. I wouldn't put that one matter as the whole Towards
Healing process, but given the fact that we had
communicated so freely before, if my oversight in not
following up on Peter Rodney was there, I would have
thought that [DK] would have felt free to communicate with
me as he had so many times before. I noted in the
following email that I received after that indicating that
it was a worthwhile process for him, he did not mention
Peter Rodney.

Q. But you didn't, either, did you, Brother Turton?
A. No.

MR ANDERSON: Thank you. Those are the questions I have.

THE CHAIR: Anyone else?

MR ATTIWILL: Your Honour, could I clarify in relation to
the claim file numbers? I note that your Honour raised
a belief by Commissioner Murray in relation to those.

Very briefly, Brother Murrin is 2852176. Brother Hunt
is 2852481. That is shown by documents 38, 39, 49A and
101. I just note that in Mr Bucci's statement at paragraph
30 he refers to 2852171; it should be 76. That's where the
confusion may have come from.

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

MR GRAY: Yes. I see the time, so I will try to be very
brief.

<EXAMINATION BY MR GRAY:

MR GRAY: Q. Yesterday, or when you were in the witness
box before today, there were questions from Mr Stewart
about the topic of whether you said to Mr [DK] in the
telephone call on 22 February about which you wrote that
draft email which was never sent --
A. Yes.

Q. -- that Mr Salmon was employed by the church. Do you
remember questions about that topic?
A. Yes, yes, I do.

Q. At transcript page 3355 you eventually made a number
of concessions, one of which was that you accepted that
whatever it was exactly that you said, it wasn't effective
in [DK] understanding the true position of Mr Salmon. You
accepted that?
A. That's correct, yes.

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Q. And there were some other concessions as well. I just want to ask you this, though, just to get the sequence straight. In your statement, where you dealt with this topic, in paragraph 68 you tell the Commission that you actually had in mind this very possibility of a perception of conflict because of an earlier experience that you had had; do you remember that?
A. Yes, that's correct.

Q. And because of that, your recollection as contained in paragraph 68 is that you deliberately took steps to raise with [DK] Mr Salmon's position?
A. Yes.

Q. Then in paragraph 69 you tell the Commission that what you raised with Mr [DK] in that conversation was the points contained in your draft email?
A. Yes.

Q. Then you mention that, in particular, you said one particular thing, namely, "I just need to make it clear to you that Michael Salmon is employed by the church", and that passage goes on?
A. Yes, yes.

Q. What I want to ask you is this: then in paragraph 72 of your statement you say that the following day - that is, 23 February - the day after your conversation with [DK], you had a telephone discussion with Michael Salmon himself and that during that conversation you said to Michael Salmon:

I raised the question with [DK] pointing out clearly that you are employed by the Church to oversee the Towards Healing process, and he saw no trouble with this.

Do you remember saying that? Then you referred to your file note of that conversation, which is tab 32, if that could be brought up. Do you see in the first paragraph of that file note of 23 February of your phone call with Mr Salmon, it does indeed say that you informed Mr Salmon that you had "raised the question with [DK] pointing out clearly to [DK] that Michael Salmon was employed by the Church", et cetera. That was your file note of that day; is that right?
A. Yes, yes.

Q. My question simply is would you have told Mr Salmon that or made such a note if you had not in fact said that to [DK]?
A. Well, I don't believe so.

Q. Then if I could have tab 7 brought up, please. This is the note that you were asked about today, written by Brother Hunt. I just want to ask you a couple of things about that. First of all, in December 2010 was a personal safety plan implemented for Brother Hunt?
A. I'm not sure of the date, I'm sorry, but I know a safety plan was developed.

MR GRAY: The safety plan was previously in the tender bundle, your Honour, but was withdrawn. In the light of the questions that have occurred, I would tender the personal safety plan.

THE CHAIR: The personal safety plan will become exhibit 4-58.

EXHIBIT #4-58 PERSONAL SAFETY PLAN FOR BROTHER HUNT

MR GRAY: Q. In brief, Brother Turton, what is the personal safety plan?
A. The personal safety plan is where there are questions raised about a person's appropriateness to work with minors, a personal safety plan is developed which gives their basic biological details, their history, if there have been any questions raised as to their suitability, what steps have been taken about that, and finally if it's decided that there are restrictions or rules for supervision to be placed on them, they will be detailed and the people responsible for that will be detailed.

Q. In the case of this one, looking at it, can we see that it was implemented - it says on the top - in December 2010 and then was reviewed, it seems from the dates on the second page, in January 2013?
A. Yes, I don't have a copy with me, I'm sorry, Mr Gray.

Q. I see. The document, I think, will speak for itself.
A. But it sounds correct.

Q. Back on to tab 7, the two that are not redacted,
[DN] - is this right, in the case of [DN], it was a complaint by the brother of the boy in question, the complaint being made in 1999 or so about events in 1968?
A. Correct.

Q. The behaviour in question involved a letter, that is, an inappropriate letter?
A. That's correct.

Q. Rather than any physical conduct; is that right?
A. Yes, it involved a letter.

Q. Do you know or recall what the outcome was of that topic?
A. The outcome of that - there was a question about the affection being expressed in a letter, and two things happened. The family were concerned when the person referred to in this letter, his life went very awry and he eventually suicided, and the family were concerned that there may have been an inappropriate relationship with Brother Hunt.

As a result of a number of letters and meetings, first of all with the family, then later on with the mother after the father had died, everyone agreed that the whole matter was clarified, there were no problems there, and basically the matter was resolved.

Q. Speaking perhaps a little loosely, did the family accept that there was no inappropriate conduct?
A. The family did accept that. Not too long after that, the father died, and then the mother got worried that she may have played a part in her son's death, and there was a second meeting whereby Brother Hunt reassured her that that wasn't the case, and that seemed to go very well.

Q. Thank you. Just coming back to it, and I appreciate you don't have the document in front of you, but on the personal safety plan, on the second page, there is a line which reads - the heading is "Risk Reduction Plan". Do you see on the second page there is a table at the top?
A. Yes.

Q. The first line of that under the heading "Risk Reduction Plan" is "Not working with minors"?
A. Yes.
Q. And against that is the column "Date of implementation" and the date given is 2008?
A. Yes.

Q. As far as you know, that would be correct, would it?
A. Yes, I believe so, yes.

Q. Just coming back to this tab 7, and now moving to [DM], the events in question, according to the note, were in 1970-71. Is that right, brother?
A. Yes, yes, I believe that's correct.

Q. By the time the matter took the form of a complaint, it was 2003?
A. Yes.

Q. By that time, the boy in question was himself a Marist Brother?
A. Yes.

Q. That Marist Brother wrote to Brother Anthony Hunt and there was some correspondence back and forth?
A. Yes.

Q. As you understand it, did that Marist Brother take the position that he - that Marist Brother - did not want any other action taken except what he might himself choose?
A. That's my recollection of the letter. They never came to me. I was simply provided with copies of their interpersonal correspondence.

Q. On the same topic of Brother Hunt, it was suggested to you by Mr Stewart that in order to be compassionate, you should have told [DK] at the facilitation, or at some point, of what you yourself had concluded or surmised about whether it was Anthony Hunt who was the person in the infirmary?
A. Yes.

Q. That conclusion or surmise on your part was essentially speculation or deduction by you, wasn't it?
A. Yes, that's correct.

Q. If we could briefly have tab 26, do you see at the bottom paragraph on that page - this is your email to Michael Salmon of 18 February - you refer in the second line to:

.19/12/2013 (32) 3488 A TURTON (Mr Gray)

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He -

that's [DK] -

*mentions a totally separate case of*

*specific sexual abuse in the College*

*infirmary.*

A. Yes.

Q. The note says that you raised this with him, and

I quote:

... and he indicated that this is not an

issue for him and he does not want that to

be part of the whole mediation process.

A. Yes.

Q. Is that what he said to you?

A. That is my sense at the beginning, yes.

Q. One or two last things. In terms of whether, under

the Towards Healing process, there is a need for an

assessment, brother, is it your understanding that an

assessment is necessary where the accused person denies the

allegation?

A. "Disputes", I think is the word that they use, yes.

Q. Or disputes the allegation, but of course in this case

Ross Murrin did not dispute it?

A. No.

Q. So, as you understood it, there was no need for an

assessment?

A. That's correct.

Q. And as you understood it, there in fact was no

assessment?

A. There was no assessment.

Q. Tab 51 was put to you by Mr Anderson. This was

Brother Peter Rodney's letter to you from Dublin.

Mr Anderson took you to the long paragraph on the bottom of

the first page about some kind of conversation between

Ross Murrin and Peter Rodney in the print room. Do you
remember that?
A. I do.

Q. At the bottom of which, on the first page, Peter Rodney says:

    I had no reason to suspect anything untoward ...

And you made a reference to that?
A. Yes.

Q. Then if we could scroll over to the next page, do you see on the top line Peter Rodney says:

    In the time Ross was at Cairns, I had no reason to suspect that he was abusing boys.

A. Yes.

Q. And three paragraphs down, Peter Rodney says:

    In summary, Alex, at no time in my years in Cairns did I know or suspect Ross of any misbehaviour.

When you got that letter, did those two sentences summarise your understanding of Peter Rodney's position about whether he knew anything about Ross Murrin's behaviour?
A. That's correct.

Q. At tab 45, Mr Anderson put to you the other note of yours, which concerned your note of having had a discussion with Ross Murrin, which included reference to some earlier incident that Brother Gerald knew something about?
A. Mmm-hmm, yes.

Q. In the case of that one, it was Brother Gerald, wasn't it, who was in possession of whatever information existed about that matter?
A. That's correct.

Q. Rather than you?
A. Mmm.

Q. That wasn't a matter that you knew anything about yourself?
Q. Then I think, lastly, brother, on a couple of occasions Mr Stewart suggested to you that you had either made something up or had changed your evidence to protect your position, or suggestions of that kind. Have you done your best since you've been in the witness box this week to be entirely truthful in your evidence to the Royal Commission, to the best of your recollection?
A. I believe I have.

MR GRAY: I have no other questions, your Honour.

THE CHAIR: Mr Stewart?

MR STEWART: No questions.

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

THE WITNESS WITHDREW

MS FURNESS: Your Honour, could I indicate that there remains five witnesses in the matter of [DK]. One of those witnesses also is to give a very short amount of evidence in respect of Jennifer Ingham.

The schedule, as communicated to those with an interest, was to return on Tuesday, 21 January. It has been suggested to me that that might be more conveniently the 22nd, which is the Wednesday.

The only basis, your Honour, on which that might be accommodated is if it was to be understood that those witnesses must finish that week because the schedule for the Royal Commission is to sit in another matter the next working day, as it were, the Tuesday.

Accordingly, from the point of view of those assisting the Royal Commission, we could certainly accommodate those witnesses, but it is really entirely a matter for my friends. If each is prepared to accept that it will be completed on the Friday, then we can commence on the Wednesday.

THE CHAIR: Have you all discussed this matter?
MR ANDERSON: It has not been raised with either myself or Mr Callaghan, but we don't expect we would add too much time to any of the witnesses, your Honour.

MR ATTIWILL: Neither would we, your Honour.

MR GRAY: Your Honour, I would be very surprised if it would take even three days, but that's the best I can do.

THE CHAIR: Well, the surprise would be if it takes more, Mr Gray. I could say we will start on the Tuesday, but I am prepared to start on the Wednesday, provided I have an assurance that it will finish.

MR GRAY: Your Honour, I don't know about an assurance, but --

THE CHAIR: We will start on the Tuesday unless we're sure. Is there a difficulty in starting on the Tuesday? What's the problem?

MS FURNESS: We are certainly prepared to.

MR GRAY: The difficulty is that at an earlier time, the Commission indicated that this matter would go over to the 28th, and people made travel arrangements and so on. If your Honour would make it the Wednesday, I expect there will be absolutely no difficulty.

THE CHAIR: I will take that as an assurance and we will start on the Wednesday.

MR GRAY: I understand, your Honour.

MS FURNESS: Your Honour, given that there are two matters which have been completed - that is, [DG] and Ms Isaacs - given the connection between those with Ms Ingham respectively and [DK], it is not proposed that a direction be sought in respect of submissions, although it is expected that work will be done on those submissions, but it is more convenient for the two related matters to be dealt with at the same time.

THE CHAIR: Yes, very well. Is there anything further today in these matters?

MS FURNESS: There are a number of statements to be
tendered, but we'll do that on our return.

THE CHAIR: All right. We will adjourn these matters to 10am on 22 January and we will resume in the YMCA tomorrow.

MS FURNESS: Yes, at 10am tomorrow.

AT 4.10PM THE COMMISSION WAS ADJOURNED TO WEDNESDAY, 22 JANUARY 2013 AT 10AM
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