ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

Public Hearing
(Day 34)

Level 17, Governor Macquarie Tower
Farrer Place, Sydney

On Wednesday, 22 January 2014 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: Your Honour and Commissioners, we have returned today to complete the evidence in two of the four components of the Towards Healing case study. The first concerns Jennifer Ingham and the second is [DK].

There are five witnesses to be heard from over the next two days. It is anticipated that we will complete the evidence of three witnesses today, that is, Michael Salmon, Brother Gerald Burns and Brother Andrew Moraghan. Then, tomorrow, we will hear from Patrick Monahan and Brother Jeffrey Crowe.

It is possible that the evidence today will be completed prior to the usual conclusion at 4pm, but because of travel arrangements and the like, the two other witnesses will be heard tomorrow.

THE CHAIR: Very well.

MS FURNESS: I call Michael Salmon.

<MICHAEL JOHN SALMON, sworn: [10.02am]

<EXAMINATION BY MS FURNESS:

MS FURNESS: Q. Mr Salmon, will you tell the Royal Commission your full name and occupation?
A. My name is Michael John Salmon. I'm the director of the New South Wales and ACT Professional Standards Office for the Catholic Church.

Q. You have prepared two statements, Mr Salmon. The first is in respect of Ms Jennifer Ingham, dated 15 November 2013?
A. That's correct.

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

Q. Are the contents of that true and correct?
A. Yes, they are.

MS FURNESS: I tender that statement.

THE CHAIR: That will be exhibit 4-59.
EXHIBIT #4-59 STATEMENT OF MICHAEL JOHN SALMON IN RELATION TO JENNIFER INGHAM, DATED 15/11/2013

MS FURNESS:  Q. There is also a statement you prepared in relation to [DK], dated also 15 November 2013?
A.  That's correct.
Q.  Are the contents of that true and correct?
A.  Yes, they are.

MS FURNESS:  I tender that statement.

THE CHAIR:  That will be exhibit 4-60.

EXHIBIT #4-60 STATEMENT OF MICHAEL JOHN SALMON IN RELATION TO [DK], DATED 15/11/2013

MS FURNESS:  Q. Since May 2003, Mr Salmon, you have been the director of the New South Wales/ACT Professional Standards Office?
A.  That's correct.
Q.  As you have said in your statement, which operates under the Towards Healing protocol?
A.  Yes.

Q.  Do you have any responsibilities in respect of that job other than under the Towards Healing protocol?
A.  No. I'm also on the National Committee for Professional Standards, but I don't have any other responsibilities.

Q.  Your membership of the national committee - is that because you are a director of a State body or for some other reason?
A.  I believe it's - initially it was because I was a director. I think the further term was because I'm a layperson in the church and may bring some layperson's perspectives to the committee.

Q.  Could I just ask you to speak up a little, Mr Salmon, and perhaps closer to the microphone might assist?
A.  Yes. Sorry about that.

Q.  Who was your employer, as a director of the Professional Standards Office in New South Wales/ACT?
A. I am accountable to the two conferences that auspice the Towards Healing protocol in New South Wales, so that's the New South Wales Conference of Bishops - New South Wales/ACT Conference of Bishops and the Conference of the Leaders of Religious Institutes. So they are effectively my employers.

Q. Who pays your salary?
A. The salary is paid by a levy on - by contributions from the two conferences and also by a contribution from the Catholic Education Commission.

Q. The Catholic Education Commission is a national body?
A. It is the New South Wales Catholic Education Commission. There is an Australian Catholic Education Commission, but the payment, the contribution, into my salary, into the runnings of the New South Wales Professional Standards Office, is from the New South Wales Catholic Education Commission.

Q. In response to my question as to who was your employer, you described that you were accountable to those bodies. How do you make yourself accountable to those bodies; what mechanisms are in place for your conduct to be accountable to them?
A. There is a liaison committee made up of some representatives of the two conferences of religious leaders and Catholic bishops. They meet with me three times a year. And I also send reports through to both conferences, written reports, three or four times a year when the conferences meet.

Q. What do you cover in those written reports?
A. It's generally giving them a sense of how the office is running, any major kinds of issues that may crop up that I think should be brought to their notice, statistics in terms of the amount of cases that we have been dealing with, cases closed and opened and things like that.

Q. With the statistics as to the opened and closed cases, do you provide them with details as to any amounts paid?
A. We have over more recent times provided them with a cumulative total, not an individual breakdown of the outcomes in particular cases.

Q. Do you indicate from where the funds have come that have been paid to those who engage in Towards Healing?
A. Indicate to who?

Q. In the statistics in the report that you provide to those to whom you are accountable.
A. No, I don't.

Q. Do you yourself keep records of whether the funds come from an insurance company and, if so, which one, or some other source?
A. No. I mean, usually, or often, our files would show that there has been CCI involvement or CCI interest, for instance, but we wouldn't necessarily keep a breakdown of figures in terms of - or a breakdown of figures to the extent that it shows the level of CCI contribution. It's just something we have never kept.

Q. Do you keep statistics other than those that you convey to those to whom you are accountable in the report?
A. Well, we don't keep a separate set of statistics. I mean, the statistics that we make available to the conferences are the same statistics that I would make available to the resource group that supports the director, so it's that broad - it's those statistics. We don't have another set of statistics.

Q. So if the Royal Commission were to review the statistics contained in the reports you have referred to, that would be all the statistics kept by your office in respect of Towards Healing?
A. That's correct.

Q. Has there been a change in approach since 2003 to date as to what statistics have been kept?
A. They have changed - I mean, it has been added to. As I said, one that comes to mind is keeping track of financial outcomes, financial settlement outcomes, in each case. That wasn't always recorded initially. And that feeds into the cumulative total.

Identifying the State where the abuse occurred rather than the State where the complainant or the victim lived when they made the complaint is another area where the statistics have been tweaked up.

Attempting to record better and more consistently where the abuse occurred, in the sense of it was in a presbytery or was it in a private home.
So there have been changes to the detail in the statistical charts. That has been incremental over the years, and I couldn't sort of identify every single one, but they're some that come to mind off the top of my head in answer to your question.

Q. Have you always recorded the name of the alleged abuser?
A. Yes, yes.

Q. Has there been any change with respect to the way in which you have recorded that person's identity?
A. It doesn't come to mind readily in answer to your question. I don't think there has been a change that I can - I mean, in some instances where the identity of course is not known and later that is - that may change later, the file would be amended to allow for that. But, no, I don't think there has been a change in terms of how we identify the identity of the perpetrator.

Q. Do you have regular meetings with other directors around the country?
A. Yes.

Q. How frequently do they occur?
A. They would be about three times a year.

Q. Are you aware from those meetings or from any other source whether other directors provide statistics and a report in a similar manner to you?
A. The reality is that the New South Wales Professional Standards Office had a computer database in place from very early on. I think work was put into that in the late 1990s, and it was certainly a database that existed when I came into the job in 2003.

It was set up really more for casework purposes, but effectively it allowed us to generate statistics in a way that the other offices weren't able to do, because, to the best of my knowledge, they didn't have that sort of system in place.

It has only been over very recent times, in the last three years, maybe, give or take, that those offices have put together a database very much modelled on the New South Wales one that would allow them to develop and to produce
statistics in similar form to our own. So they would be by
and large doing that now, but that would be a relatively
recent phenomenon.

Q. When you say they would be "doing that" - that is,
compiling the statistics - is it also your understanding
that those statistics are provided to the conferences in
the same way that you do?
A. Well, I would presume - the Towards Healing mechanism
is a bit of a hybrid protocol in one way, in that not every
Professional Standards Office is supported by the
conferences in the way I am. For instance, my
understanding is that the South Australian Professional
Standards Office is largely supported by the Archdiocese of
Adelaide. But I would presume, depending on the auspicing
bodies that are in place in each State, that statistics are
made available by the directors to those bodies.

Q. Is there discussion at the regular meetings as to the
methods followed in each State so as to consider whether
they are consistent or not consistent?
A. Oh, yes, there has been a lot of discussion over time
around the idiosyncrasies in each State and around the
issues of trying to develop consistency. Yes, that has
been a constant theme.

Q. What have you done to develop consistency? By "you",
I mean that group of people.
A. Well, I guess it's having - not "I guess" - it's an
understanding of, in the first place, what we are doing in
the various States and having discussions about that. At
times those discussions lead to changes in the suggested
amendments that feed into revisions of Towards Healing and
to other supporting documents. So those discussions have
at times been fairly detailed and have, I believe, led to
changes and to a general sense of acting in a consistent
way or a better - more consistently.

Q. Can you point to any change that has been made that
has been made to ensure consistency as a result of
discussions within that group?
A. I think one would be, for instance, that we're not
pedantic about the fact that you would need a formal
contact report to drive a Towards Healing application, that
if we get something in writing from somebody, whether that
be an email or a solicitor's letter or something like that,
that basically gives us the information we seek, then we
don't necessarily need to put that back to a contact person and have a formal contact report to effectively kick-start the process.

Q. How does that ensure consistency?
A. It ensures consistency in the sense that it is an understanding that there could be a range of different ways that we receive a complaint, and provided it is in a written form, then that will be satisfactory.

Q. Are there any other changes you can point to, as a result of the discussions, which were made in order to ensure consistency?
A. I think another one would be that it's clear that if a church authority is able to form a view that there is merit to the complaint, it doesn't need to necessarily be put out to an independent assessor and that it is open to a church authority to conduct its own preliminary investigations and they don't necessarily need to be put out to an independent assessor.

Q. Is that reflected in the Towards Healing protocol?
A. I think it is reflected in some of the supporting documents. It is certainly, I believe, an understanding, a practice and understanding amongst the directors.

Q. Has there been a discussion about consistency in outcomes between that group?
A. There have been discussions about outcomes, but there would be a view, I think, amongst directors that it is very difficult to pin down outcomes. Each case is so different - church authorities are different; they change from time to time as well - that it is really not easy to be specific about outcomes. Whilst we have acknowledged that outcomes vary, and there has been lots of discussion about it, I can't recall meetings that have been really focused on trying to look at consistency in the way that you are asking the question.

Q. Do you, as director of New South Wales/ACT, consider it desirable that there be some process put in place whereby greater consistency can be achieved by way of principles or the like in respect of Australia as a whole?
A. I believe that, yes, consistency is a good thing and something to be aimed for and worked towards, and I think that Towards Healing has - consistency has improved over time in terms of how Towards Healing is practised.
Q. I'm talking particularly about outcomes, you understand, Mr Salmon.
A. Outcomes, sorry. Look, I suppose it depends on the sorts of outcomes that you are talking about. I mean, I think it's good that there is a certain level - you know, having talked about consistency, there is also a certain allowance for matters that don't necessarily fit easily into boxes and to allow for some level of variability that will fit the circumstances of cases. So --

Q. Variability is not inconsistent with there being a consistent application of principles, is it?
A. No, no, it is not. But I am cautious about just being too dogmatic about outcomes, I guess.

Q. So I take it from your answer that no real work has been done towards ensuring consistency in outcomes? By that, I mean consistency in the way each church authority and/or director and/or facilitator considers the complaints that have come forward so as to have an outcome which can be compared.
A. No, not to that degree.

Q. Well, to any degree?
A. Oh, I think to some degree, there has been - as I said, it's not something that has been not considered and not discussed and not on an agenda that has come up in different ways at different times, but the discussions haven't led to --

Q. Any change?
A. -- to the sort of changes that you are talking about.

Q. Any change?
A. No, I think there has been some change, and I have tried to acknowledge some of those changes that I've seen. And there would be others. For instance, when Towards Healing first started, I think it was in some ways sometimes practised defensively - not always.

Q. I'm talking about outcomes, Mr Salmon.
A. Well, an outcome would be that people who make a complaint have the opportunity to meet with the church authority, irrespective of the outcome of that complaint, even if it is not substantiated, that they would be given the opportunity to meet with that church authority, for
instance.

Q. You would have, I take it, when you started work or soon thereafter, read Patrick Parkinson's review that gave rise to your position; is that right?
A. I read elements of it. I don't know whether I read the whole thing. It's going back some time. But I'm certainly aware of it.

Q. Perhaps we can have tab DD of the general tender bundle shown. This is the February 2000 review of Mr Parkinson I'm showing you, Mr Salmon. You would be familiar with that document, I take it?
A. Sure, yes.

Q. Is that right?
A. Yes, yes, I recall it.

Q. Just turn to page 5 or 0053 of that document. Do you see down the bottom of that page, recommendation 4:

There should be a Director of Professional Standards in each State.

A. Yes, I see that.

Q. You understand that before this time, there was a position called a convener, but there was no director?
A. That's correct.

Q. If we can just turn over the page, do you see at the top of that page he recommends that it is up to the bishops and leaders in each State to determine whether it should be part time or full time?
A. Yes.

Q. Then there is a discussion about functions that appear in the next recommendation. The reference there to the bishops and leaders in each State - would you understand that to be a reference to the conferences you described before as the bodies to whom you are accountable?
A. Yes, I would believe so, yes.

Q. So down to recommendation 5, the recommendation there is that the person in your position should manage the process of handling complaints, while the church authorities remain responsible for determining outcomes,
and you understood that that was your role throughout the
time you held the position; is that right?
A. Yes.

Q. Then if we can turn down that page to the paragraph
beginning "In addition", do you see there that
Professor Parkinson sets out some of the problems that he
became aware of during his review process?
A. Yes, I see that.

Q. They are concerns about the lack of independence of
including the investigatory stage of the process, and the
aim was to have a director perform those roles so that
there was that independence from the church authority; is
that right?
A. Yes.

Q. And that's the way that you would have considered your
role to have been over the last decade?
A. Yes.

Q. Is that right?
A. Yes.

Q. Then there is a recommendation of the particular roles
that the directors should have, and the first two are
receiving complaints and liaising. Then over the page,
various other roles are set out: provide advice and
support, assist the church authority, appoint assessors,
keep people informed, consult, liaise with police and be
involved in review decisions.
A. Yes.

Q. They are all functions that you consider that you
should carry out in respect of each complaint?
A. Yes.

Q. Varying depending upon the nature of the complaint; is
that right?
A. Of course, yes.

Q. So what he recommended in 2000 is still what is
effectively done today in your role?
A. Yes.

Q. In relation to the Marist Brothers in particular, do
you understand that their involvement in Towards Healing
differed in any way from what Professor Parkinson
recommended and what you have indicated you've followed
over the last decade?
A. Not really, no, I don't believe so.

Q. Perhaps if we could have that document taken down and
tab 5A of the [DK] tender bundle put up. This was annexed
to Brother Crowe's statement in relation to the [DK]
matter, Mr Salmon. I take it you have had the opportunity
to review the statements that have been tendered in
relation to [DK]?
A. I haven't reviewed those statements, no.

Q. Is this document new to you?
A. No, I've seen it before.

Q. The first sentence provides that the New South Wales
Professional Standards Office has accepted responsibility
for the case management of matters concerning the Marist
Brothers.
A. That's right.

Q. That was your understanding as well?
A. Yes, that's correct.

Q. There was some difficulty, as I understand it, in
Queensland, given the connection between the director there
and the Marist Brothers; is that right?
A. That's correct.

Q. And because of that connection, it had been decided
that all matters involving Marist Brothers, regardless of
the geographical location, would be dealt with by you?
A. That's correct.

Q. Which means that you would have had quite a deal of
involvement with the Marist Brothers over the years, I take
it?
A. I have, yes.

Q. More so, perhaps, than any other order or diocese?
A. No, I wouldn't say more so, but they would be one of
the - would be the leading contenders, but there have been
other orders that I have done a lot of work for, and other
dioceses, because of the size of those orders and the
numbers of schools they ran and whatever, so Marist
Brothers aren't - they're one of a cohort of religious
institutes and dioceses that have been institutions that we
have done a lot of work for.

Q. The Marist Brothers is the only order, is it, that you
work with across Australia?
A. No, the Christian Brothers would be another order that
we work with across Australia.

Q. But if the Christian Brothers complaint arose in
Perth, for example, wouldn't the Perth office deal with it?
A. The Perth - well, that's correct. That's correct, but
the --

Q. But in relation to the Marist Brothers, there is no
other office that deals with the matters --
A. No, not now. That wasn't always the case, yes.

Q. But it has been the case for some years, hasn't it?
A. For two or three years, I think, something like that.

Q. That document can come down. In each of your
statements, Mr Salmon, you refer to your experience as
a mediator or facilitator?
A. Yes.

Q. It is fair to say that you have done a deal of work
and undertaken a deal of study in that area?
A. Yes.

Q. And you would understand, from the work that you have
done and the standards that are generally in place for that
work, that there are a number of important principles that
a mediator or facilitator should work by?
A. Sure, yes.

Q. It is important that you be seen to be, and are,
neutral in your work; you would agree with that?
A. In terms of mediation, I would agree with that. Not
necessarily in terms of facilitation within the Towards
Healing process.

Q. So in terms of Towards Healing, the principle of
neutrality is not one which you consider you should adhere
to?
A. No, I think that facilitation is an unusual process
very specific to Towards Healing. If you look at
facilitations, I mean, there can be lots of examples of
where there is effectively a facilitation where one is brokering and chairing, if you like, a discussion between a victim and a church authority, but in the classic case, in terms of how it is particularly laid out in the protocol, a facilitation is provided where the church authority has accepted the legitimacy of the complaint.

In my view, there is a blurring around the issues of neutrality and impartiality that one would expect to see in place in a more classic mediation, so that one is going in there on the understanding that the person is accepted as a victim, and whilst the church authority has a right to procedural fairness and an element of justice, obviously, it is about getting the best result that one can get for the victim. And that's the premise.

It is not about helping the parties to the facilitation negotiate the best outcome that they agree to. Obviously there has to be agreement at the end of the day, but that's not the starting point. The starting point is to try to assist the victim to get the best outcome that you can achieve, given the circumstances that you have to deal with.

THE CHAIR: Q. I'm not sure I'm understanding this.
A. Sorry?

Q. I'm not sure I'm understanding this. There will be many mediations which occur where the liability of the offending or transgressing party is accepted, but there is a need to mediate an outcome which provides a satisfactory resolution. What's the difference between that and a facilitation as you put it?
A. Your Honour, I believe the facilitation is predicated on getting the best outcome, as I've said, for the victim and that therefore the role of the facilitator is one where the facilitator can be very proactive and almost a player in the process. And it's not really about neutrality, in the sense that one is trying to have an acknowledgment of that complaint formulated into a formal apology, which is a typically important outcome in Towards Healing facilitations. It is really not a matter of just leaving it to the church authority to generate a complaint that may not be as good as it should be, for instance.

Q. Mr Salmon, it seems to me that if the purpose of the facilitator is to get the best outcome for the person who
has suffered, a lack of identity with the church would be fundamental to a perception of a fair process. Do you understand my difficulty?

A. I understand what you are saying, yes, I understand your difficulty.

Q. Even more than in a mediation, if a facilitation is as you say it is - that is, the person, as it were, takes sides to seek the best outcome for the person who has suffered - if the facilitator is someone who comes from the church, is there not a fundamental problem?

A. There is a fundamental problem if the person doesn't understand the relationship that that person has with the church and that's the reality. But if they do understand and they accept, then I don't see that that is the fundamental problem that you describe.

Q. You see, some people faced with the task of engaging with the church through the facilitated process - probably many people - will find the circumstances of the engagement difficult. They will be confronting people they haven't met; they will be telling their personal story of immense grief in many cases; and they may well understand that the facilitator is in fact employed by the church and accept at the point of engagement that that can happen, but of course there will be a lifetime thereafter to reflect on the process, won't there?

A. There will be.

Q. Do you think that some people, however accepting they were that a church person was the facilitator, might, when they come to reflect after the event, say to themselves, "Was the process a fair one?" Do you understand what I'm saying?

A. I understand what you are saying, and there is certainly the potentiality for that.

Q. It is a potentiality that shouldn't be allowed to occur, isn't it?

A. As I said, as I was saying, the other side of it is where the person does have knowledge and makes an informed decision and I believe that that flexibility is reasonable within the process, and I don't - yes, there is the possibility in terms of the problem that you have articulated, but I think that often relationships are built up in Towards Healing. Sometimes people come in and they make - they have some of these preliminary pastoral
meetings; they go on into a facilitated sort of context; they have made a relationship with a person and they are comfortable in that relationship.

Q. I understand that. That was the purpose of my question. The process of engagement may bring them an acceptance of the church person as the facilitator, but it is the reflection after the event, when they are freed of the pressures of the process, that may well be the issue for them.

But can I take you to another aspect of this and reduce it to one of the fundamentals, and that is the amount of money by way of redress, I think you have called it. Is the role of the facilitator to get as much as possible, for the person who has suffered, in the way of money from the church?
A. I believe so, to use their best endeavours to push that so that the payment is maximised.

Q. So that's the role you adopt, is it, to say to the church, "I'm here to act for this person to achieve for them as much as I possibly can in the way of monetary compensation"?
A. I don't necessarily say it in that way, but I believe that in exercising the role and going back and putting the case for the complainant, you push that as hard as you can and if offered - and if asked advice, which I am from time to time, in terms of whether they should pay more or go above the figure that they figured was going to be their cut-off amount, that they should do so.

Q. Do you presumably, on behalf of the person who has suffered, say what the right amount should be, do you?
A. No, I don't say what the right amount should be.

Q. Isn't that what someone who is acting in the interests of the person who has suffered would do?
A. No, I don't know what the amount of that should be. I mean, it's up to the person to put their case, and they more often than not have some sort of legal advice or legal representation in these processes. I see it as my role to push for that as strongly as I can, that if there is any flexibility, if there is any flexibility on the church side, that they exercise that flexibility on behalf of the victim and not rule off at that lower figure.
Q. I assume that when you go into a facilitation, you have in your mind what the particular church body who is part of the particular facilitation has as its identified scale, if you like, of appropriate awards of redress?
A. Not always. I mean, sometimes you have some idea of a figure that they may have on the table in a given case. But that's not always the case, by any means. Often you have no idea, really, what their figure, their scale, is. You have some sense of what it might be in terms of your past experience in these matters and some of the other outcomes you have seen, and so you have some sense of what you think they might be looking at, but they won't necessarily always tell you that.

MS FURNESS: Q. In your statement in relation to Mrs Ingham, Mr Salmon, you describe in some detail the facilitation process. We might have that on the screen. It is at paragraph 28, page 0005. Can I firstly suggest to you, Mr Salmon, that your description in your statement makes reference to none of the matters that you have just referred to, that is, your role as an advocate for the victim; do you accept that?
A. Well, I don't believe that I've - that it's - that I've characterised myself as an advocate. It's simply to say that the traditional ideas of neutrality and impartiality aren't necessarily in place, and one uses one's best endeavours within that construct to try and obtain the best outcomes for victims. I don't necessarily believe that that makes me an advocate.

Q. Well, you have described your role as to obtain the best outcome you can for the victim, haven't you?
A. That's correct.

Q. And you take issue with that being an advocate for the victim, do you?
A. Yes, I do.

Q. Well, using your language of seeing your role as to obtain the best outcome for the victim, and distinguishing between facilitation and mediation - that's the evidence you have given today?
A. That's correct.

Q. I suggest to you again that that is inconsistent with your statement. Perhaps if we can come down to
paragraph 28(f). You describe there:

The financial reparation part of the facilitation process will often occur in a manner that is more typical of a mediation of a legal claim.

A. Yes.

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

Q. Then you talk in paragraph (g) of you moving back and forward between the rooms, communicating between the parties about what the victim is seeking or what the church authority is willing to offer?
A. Yes.

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

Q. That description is consistent with the role of a mediator, isn't it?
A. It is. It is also consistent with the role of a facilitator.

Q. So there is no distinction to be made between the role of a mediator and a facilitator in respect of this part of the facilitation, is there?
A. No, not necessarily, because there is a broad range - Towards Healing facilitations can vary in their character depending on the persons that are involved and there can be sometimes quite a difference between the more typically characterised pastoral first part of the mediation and the financial part of it.

Q. We are dealing here with the financial part.
A. If you look at the financial part, for instance, a lot of that process that was followed in the case of Jennifer Ingham was pretty close to as I have described it in the statement and is more typical of, as you would say, a mediation. When I was asked my opinion, for instance, on whether some extra money should be paid by the diocese to top up that payment, my opinion was that it should be paid. When I was asked to speak to the bishop, to put that recommendation to him, then that's what I did. I don't see that as being so typical of a mediation in the way that you
have characterised it. I think it is where it comes more
into that flexible facilitatory part of it that is more
typically Towards Healing.

THE CHAIR: Q. That takes me back to what I asked you
before: when you went to the bishop, did you tell him by
how much there should be an increase?
A. I said to him that - my memory is that the amount
needed to get it to somewhere that would be acceptable to
Jennifer Ingham was the figure that I put to him as one
that he should seriously consider.

Q. That sounds to me like a mediation. But I take it
what you are doing there is putting what Ms Ingham wanted
as opposed to advising what you thought was the right
figure; is that right?
A. Yes, I didn't put the right figure - I didn't put
a figure that I suggested was the right figure, if my
memory is correct. My memory was that it should be a -
that the diocese should pay some money on its own account
that would presumably meet the figure that would satisfy
Jennifer for the purposes of the process, and we knew what
that figure kind of looked like.

Q. Well, isn't that what a mediator would do?
A. Well, I guess there's - you know, it's - certainly it
is, in many ways, what a mediator would do, too. But
I suppose it's how you have that discussion and it's the
nuancing of all of that. In many ways, my view was that
the money was not about the money in its own right, and
that is important enough, but it is about what the money
would represent to Jennifer Ingham in the sense of her
feeling that she counted for the church, with the church.
I framed my recommendation to the bishop very much in terms
of that it was about her healing, not about the money
per se; it is what the money represented, because for
Jennifer Ingham to leave that process with it unresolved
would have been a bridge too far, given her previous
experiences with the church.

MS FURNESS: Q. You have given evidence, Mr Salmon, that
you believe that the principles of neutrality and
impartiality don't apply in facilitations in Towards
Healing, for the reasons you have given. That's right?
A. That's correct, yes.

Q. So I take it, then, that in your view, the role of

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facilitator that you adopt is to be partial towards the victim; is that right?
A. That's correct.

Q. Are there any other principles which ordinarily apply to a mediator that you say don't apply to you when you are facilitating a Towards Healing process?
A. I believe that the - it is essentially contained in the answers that I have given, that it is very much about you being not impartial, in terms of trying to achieve the best outcomes for the victim, in terms of the cards that you are dealt with in a given case, and also that you, as I have already answered, can be quite - you become in some ways, or at least can become in some ways, almost a party, you know, a player within the process.

By that, I mean, to give examples, where people are, say, for instance, talking about how difficult it was for them to disclose abuse and for them even, say, to tell their mother, I might typically say, "I understand that. I understand that because I was socialised a Catholic the same way you were. I would have known how difficult it would have been to tell my mother." So it is just that you join the process in different ways, or you may.

In the Jennifer Ingham one, I think in my evidence I record my own personal view of Father Mulcahy's response to Jennifer Ingham, that I was, like the bishop, appalled that he could not even remember her family or her as an individual, let alone anything else. I don't think a mediator in a typical mediation would say something like that, but I felt that within the construct of the facilitation as I have explained it, and also as a director of professional standards, I should say that to her. She should hear that from me as much as from the bishop.

Q. Mr Salmon, did you write paragraph 28 of your statement that is on the screen?
A. Which - that's the one on the screen?
Q. Yes. That's in relation to facilitation.
A. Yes, I --
Q. It begins as we just saw.
A. Yes, I did.
Q. You did?
A. I did it with the assistance of Gilbert+Tobin, but that's my statement.

Q. Can you tell the Royal Commission why it is that in that lengthy discussion of facilitation, none of the matters you have given evidence about today appear?
A. Well, I answered the question as I felt - I made the statement as I felt it needed to be made in terms of the issues I was asked to address. In terms of your questions, I have expanded on things. I mean, that's the only way I can answer it.

Q. Has there been any change in your position in respect of your role as facilitator since November 2013?
A. No, only that I'm more proactive in being clear that people understand my position and also in terms of making reference back to the national office for professional standards.

Q. You referred earlier, in response to a question by his Honour, that as long as the person is aware of your role, then it is appropriate for you to act as a facilitator - that is, your role as an employee of the church authority. Do you recall giving evidence to that effect?
A. Yes, yes.

Q. I take it from that answer that the consent is a significant component, then, of your continuing in that role?
A. It is.

Q. That consent, in order for you to be satisfied that it has been obtained, should be obtained by you and in writing, should it not?
A. I believe so, yes.

Q. You didn't do that with [DK], did you?
A. No, no.

Q. You didn't put anything in writing in respect of him?
A. No, I didn't.

Q. And you accepted the appointment without you having had any conversation with him about your role?
A. That's correct.
Q. What do you say about that conduct of yours in respect of [DK] now?
A. Well, I say in retrospect, if I had my chance, I would do it differently. But I responded in good faith. I believed that there should be some flexibility in the process. It was an unusual way that the case had come in to Towards Healing. In many ways, we have worked to encourage church leaders, like Brother Alexis in this instance, to meet and engage and form a relationship with an individual sooner rather than later, and that's what happened in this case. I see that as entirely appropriate. Out of that, it came into Towards Healing through the mechanism that has been detailed, and I just accepted that Brother Alexis had felt that I was an appropriate fit and that he had discussed that with [DK] and had his approval.

Q. You say, Mr Salmon, "in retrospect". Why didn't you, back then, know the importance of properly conveying to a person attending Towards Healing your employment and doing so in writing before agreeing to engage as the facilitator? Why do you have to say that's in retrospect?
A. Well, I say it in retrospect because of the issues that have developed in this case. But as I said, I made the decisions I made in good faith. It is in my evidence - I mean, I certainly was informed by Brother Alexis that he had disclosed my position to [DK]. I certainly had a discussion with [DK] on 2 March, when I telephoned him, and spoke about the fact that - or raised the issue that I was employed by the Catholic Church. And in the private meeting with [DK] and his support person and wife prior to the facilitation proper, I explicitly informed him that I was responsible for managing Towards Healing in New South Wales.

So I did have those discussions with him, but I accept that it would have been wiser to have put something in writing, and it's just something that I didn't do in the face of the relationship that appeared to be in place between Brother Alexis and [DK] and I went with that.

Q. But the relationship between Brother Alexis and [DK] had nothing to do with your obligation as facilitator to make sure that this person attending Towards Healing knew precisely who you were and agreed to you being there?
A. Well, as I said, I had that - I had a discussion with him. I believed he knew precisely who I was. If
I'd believed that he didn't know precisely who I was, I would have handled that differently.

THE CHAIR: Q. Tell me, if the answer had been, "No, I don't want you", what would have happened?
A. I would have provided [DK] with some names of other facilitators that he might consider.

Q. Don't name them, but where do they come from?
A. They are people who are on our list that have performed the task in the past and come from various backgrounds.

Q. Are they all associated with the church in one way or another?
A. No, they are not associated with the church.

MS FURNESS: Q. Are you the only one associated with the church?
A. Yes, I - no, sorry. There's one - there's only a small number. One is, but not - he is now. But the bulk of them aren't associated with the church.

Q. The Towards Healing protocol that was in place at the time of each of Jennifer Ingham's and [DK]'s Towards Healing facilitations is the most recent one?
A. That's correct.

Q. That can be found in tab B, if that can come up on the screen. You are familiar with this document, I take it?
A. Yes.

Q. If we can have paragraph 41.4, which appears on page 25 of the document, this deals with the facilitation process; that's right?
A. Yes.

Q. It speaks in 41.4 of the church authority and the victim endeavouring to agree on a facilitator; do you see that?
A. Yes, I do.

Q. In practice, from your experience, what happens is that the church authority will speak with you first and get your agreement to do it and then approach the victim with your name; that's your understanding of how it works?
A. Yes.
Q. Your understanding, from your knowledge, is that rarely is a person given a range of names to choose from; usually they are given the one name and, in your case, it is you?

A. Yes, that's correct.

Q. Is that within the spirit of 41.4, do you think?

A. I don't necessarily believe it is not within the spirit of it. I think that often it is difficult for people to really understand and wouldn't really know one from the other. I don't know that it is really contrary to the spirit of it. I haven't seen it raised as an issue over time where a name has been given to somebody - not necessarily my name, but a name has been given to somebody - and it has not been satisfactory. Often people have legal representatives and they have been aware of that facilitator or dealt with them in the past, and most people are happy to go on our recommendation of somebody that we believe would be a reasonable fit.

Q. It would be important, then, if that recommendation - in the case of you - was a person who was employed by the church, that that be conveyed properly in order for the person attending the process to properly consider and give consent to it?

A. Yes, I believe so.

Q. And there is no general practice of that being done in writing, is there, as far as you are aware?

A. So far as I'm aware, not in this case, not in writing.

Q. Would you agree that that would be one way in which there would be little doubt that the person attending knew of the precise nature of the connection --

A. Absolutely, yes, absolutely.

Q. But that hasn't been thought of, to be put in place, before now?

A. No, no.

Q. Is it in place now?

A. We would certainly do it now. I would certainly do it now.

Q. If we just scroll down that page to 41.4.3:
The facilitator shall seek to know the ongoing needs of the victim and the response of the Church Authority...

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

Q. And then in 41.4.4:
... also seek to know the support needs...

So that's your role - to determine the needs on the one hand, and the response of the church authority on the other hand?
A. Yes.

Q. It smacks of a traditional mediation, doesn't it?
A. It does, yes.

THE CHAIR: Q. More than that. If you go back to 41.4.2, the document moves straight from facilitation to mediation. The document itself contemplates a mediation. Do you see that, Mr Salmon?
A. Yes, I do, yes.

Q. I am still at a loss to understand what you are saying to be the difference. It seems to me that this document contemplates that this is a mediation process. Is that your understanding of it?
A. It contemplates a type of mediation process that is referred to as facilitation and often the words are used interchangeably, but, as I said, I believe the facilitation has certain characteristics that are quite different from mediation in many ways. So you have those elements of mediation.

Q. Can I try to bring it back to simple language here. Are you saying that the primary role of the facilitator is to make sure that the person who has suffered is able to tell the church of their suffering --
A. Yes, yes, and to hopefully achieve the best outcomes that can be generated in the face of that.

Q. Well, that's the second step.
A. Yes.

Q. That's my problem. I can understand an attempt to
make sure the person tells the church authorities about what happened to them and what consequences there are. But the second step, resolving, and ultimately resolving the relationship through the agreed outcome - isn't that just mediation?

A. As I have said, there is a lot of similarities to mediation, but I believe that if need be, the facilitator can be a lot more proactive in different ways to try and achieve those outcomes.

Q. That's where Ms Furness's questions are ultimately going and it is a manner of concern to the Commissioners, because there seems to be, whether identified by you or anyone else, a real potential for conflict when the person who is advancing the interests of the person who has suffered in fact is paid by the church. You understand the problem?

A. I understand that. I understand.

Q. As I said to you earlier, now that you have had a chance to think about all this and it is being scrutinised by the Commission, is that really something that should be allowed to happen?

A. As I said, if there is clear - if it is an informed decision by the victim, then I believe that the process should allow for degrees of flexibility that will best meet the needs of that person. If that's what they feel will work for them and it is an informed decision, then I think that that is something that should be preserved.

Q. Do you understand why many people outside the church and removed from all these processes, looking in and understanding now the relationship that you have with the church and with those who come to the Towards Healing process, might have real concerns that the process is flawed by reason of your employment by the church?

A. I understand that some people might feel that way.

MS FURNESS: Q. By relying on the informed consent of the person, you are effectively, Mr Salmon, putting the onus on the victim, who is already having to come back into the jaws of the abuser by coming back to the church, to decide whether you should do it or not, rather than taking that decision upon yourself; isn't that the effect of what you are doing?

A. No. No, I don't believe that. I believe that in, for instance, the [DK] case, there had been a relationship of
some quality formed between [DK] and Brother Turton and that there was ample opportunity for the proper discussions that should have taken place to have taken place then, and I accepted that they had. So it wasn't just left to the victim to make that decision or to be left with that in isolation. That's not what happened in this case, I don't believe.

Q. When you say you don't believe it didn't happen, you weren't party to any discussion between Brother Turton and [DK]?
A. No, I wasn't, but I accepted in good faith what Brother Turton told me.

Q. But isn't it your obligation to be satisfied that the person attending has consented to your presence on an informed basis, and it is your obligation to provide that information so as to be satisfied that it is an informed consent?
A. Yes, it is my obligation, and I did raise the issue with [DK] when I spoke to him over the telephone on 2 March. It's not that I didn't raise it. And I raised it again in that meeting, the private meeting, on the morning of the facilitation.

Q. You had already accepted the brief, as it were, by that stage?
A. I had already accepted it, but I raised it with [DK] on 2 March when I spoke to him, admittedly on the basis that I believed, because it had been flagged to me, that he had agreed. But I didn't let that go through to the keeper, because I had been given that information; I did raise it with [DK] during that discussion, that telephone discussion.

Q. You understand [DK]'s evidence that he never understood that?
A. I understand his evidence that he didn't understand that, but that's not how I interpreted my discussion with him.

Q. Do you accept that whatever you said to him, you did not effectively communicate to him your role?
A. I don't accept that I didn't effectively communicate my role. I believe I did.

Q. Coming back to 41.4.2, which is on the screen, the
The final sentence of that paragraph says:

The Director of Professional Standards should not normally participate in the facilitation process.

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

Q. You would have been aware of that clause in Towards Healing before both Jennifer Ingham's and [DK]'s facilitations, I take it?
A. Yes.

Q. What did you understand to be the reasoning behind that statement?
A. I think the reasoning behind that statement was the perceptions that his Honour has identified.

Q. Well, perhaps you can tell us what you understood to be behind that statement?
A. That the director may be in a conflict position or there may be a perception of a conflict.

Q. Then why did you act as facilitator in those cases?
A. Well, firstly, I don't believe that it's necessarily referable to the director from another State, and I don't think it was necessarily referable to the situation in the Jennifer Ingham matter.

Q. Can I just stop you there, Mr Salmon, and deal with that.
A. Yes.

Q. What is it in those words that causes you to interpret that as being not the director in the same State?
A. Because on my reading of it, the director of professional standards - I believe it implies the director of that particular State, and I think that has generally been the understanding of it, as I have been aware, in terms of practice.

Q. But your understanding of the purpose of it would apply whether you were the director in that State or not?
A. No, I don't - as I said, I don't believe that it's - I don't read it as being about the director per se. I read it as being about the director of the particular State.
Q. As I understood your evidence a minute ago, you understood the purpose of that being because of the conflict, although I don't think that was the word you used, in respect of the role of the director?
A. Yes.

Q. That applies whether you are the director in that State or another State, doesn't it?
A. It could do, but, as I said, I don't believe that that was - that it has been interpreted by people on the ground as being specific to a director from one State operating in another State.

Q. But you accept that the perception would be the same?
A. The perception could be the same, yes.

Q. Well, it would be, wouldn't it? If the basis of the perception would be that you are an employee of the church, whether you are employed in Victoria or New South Wales would make no difference?
A. Well, the perception - the possibility that it would be perceived that there is a conflict is certainly existent across those borders, yes.

Q. So if that is the basis for that statement, there is no reasonable basis, I suggest to you, for interpreting it as being the director in one State or another?
A. I still maintain that it is reasonable to believe that it is more specific to the - that the person is more at arm's length. As I said, it has been my sense of the understanding amongst people on the ground that they have interpreted it the same way, so it's not my own single interpretation; I believe it's --

Q. You are the one I'm asking, though, Mr Salmon, so it is your interpretation.
A. It is my interpretation, yes.

Q. You will see there is a footnote 4 against that statement. If we scroll down to the bottom of the page, it says:

The Director may participate in the facilitation if approval is given in accordance with 39.5.
A. Yes.

Q. So there is a specific provision for a director to participate, and that is if approval is given by a national body. Perhaps if we could just turn up 39.5:

With the written approval of the Executive Officer of the National Committee for Professional Standards, the Director may depart from these processes if to do so would better accord with the principles in the special circumstances of the case.

Do you see that?
A. I see that.

Q. Firstly, this document says you normally shouldn't do it, but, if you are going to do it, you have to get written approval?
A. Sure.

Q. That's as you understand it?
A. Sure.

Q. You didn't seek written approval in either of the cases of Mrs Ingham or [DK], did you?
A. No, I didn't.

Q. In relation to Mrs Ingham, did you give consideration to seeking it and for some reason, and, if so, what reason, not seek it?
A. No, I didn't, for the reasons that I have already indicated, that I didn't believe that that applied to a director from another State.

Q. Have there been circumstances in the past where you have sought the written approval set out in that clause?
A. There have been, yes. Not a lot, but there have been.

Q. Perhaps you could tell us how many there have been?
A. There wouldn't be many. I can't give a specific incident.

Q. Fewer than ten?
A. Probably fewer than ten.

Q. Fewer than five?
A. Maybe fewer than five, yes. I'm - yes.

Q. Would a handful cover it?
A. A handful would cover it, yes.

Q. Of those handful, what was the most recent?
A. It would be, I think, just not long before Christmas.

Q. I beg your pardon?
A. Not long before Christmas, a week or two before Christmas.

Q. Would you tell the Royal Commission the circumstances of that?
A. That was a case where the person is - was incarcerated in a prison in Queensland and --

Q. When you say "the person", do you mean --
A. The complainant, the victim, yes, and wanted the meeting with the church authority to be as discrete as possible and to happen fairly quickly and was clear that he preferred that I come up with the church authority to effectively facilitate that meeting.

Q. You were acting in the role of director in that case?
A. I was, yes.

Q. And you sought a written approval?
A. Yes, I did.

Q. Did you obtain it?
A. Yes, I did.

Q. Prior to the facilitation in the [DK] case in 2010, how many times had you - of that handful, what percentage of that handful of cases had you gone to the executive officer for written approval?
A. Sorry, could you ask that question again?

Q. Certainly. Let me go back. A handful of cases, you have sought written approval?
A. Sure.

Q. The most recent was late last year?
A. Yes.

Q. In how many of that handful had you sought written
approval prior to [DK]'s facilitation in 2010?
A. It would have been - that would have been all prior to
[DK]'s --

Q. I beg your pardon?
A. They would have all been prior to [DK]'s case,
I believe.

Q. So the handful minus one you had sought written
approval about before [DK]?
A. Yes.

Q. Had you received it?
A. Yes, I have received it, yes. And at times I have
raised issues verbally and received it.

Q. But you had obtained written approval prior to [DK]'s
case?
A. Yes, I believe so, on one or two occasions - only
a handful, yes.

Q. On one or two occasions?
A. Only a handful of occasions, I believe so.

THE CHAIR: Q. Mr Salmon, the Towards Healing document
is a comprehensive document, as you know?
A. It is, yes.

Q. It starts, as commonly happens in such a document,
with definitions, and certain roles and persons carrying
out those roles are defined. The document then moves into
its operative parts and contemplates in clause 35.1, under
the heading "Structures and Personnel", that there will be
a resource group, and, as I understand it, the director in
each State or Territory is responsible for effectively
managing the resource group; is that right?
A. Well, convening or bringing together the resource
group, yes, and chairing those meetings.

Q. "When required, convene and chair meetings", and so
on?
A. That's right.

Q. Then liaise with the national committee and do various
other things, at 35.3, that it contemplates a director will
do?
A. Yes.
Q. So, in summary, the role of the director in each State or Territory is clearly identified in the document, isn't it?
A. Yes, it is.

Q. In the same clause, the role of other persons is identified as well, and that includes assessors and facilitators, doesn't it?
A. Yes, it does.

Q. What the group itself is required to do is maintain a list of suitable persons, not from its own members, who will be assessors and facilitators. Now, I understand what you say about the confining of the operative parts to the particular State or Territory - I understand what you say in that. But there is nothing in this document to - well, I should pause for a moment so those who don't have the document can understand. Clause 35.5 refers to assessors who are to be responsible for investigating complaints, and there is to be a list maintained of those persons; correct?
A. Yes, that's correct.

Q. Then facilitators are also to be included in a list maintained by the resource group?
A. Yes.

Q. That's provided by the second part of 35.5. They are to facilitate the meeting and mediate an agreement between the victim and the church authority. So there we have again the word "mediation", don't we?
A. We do, yes.

Q. So their role is to facilitate a meeting - that is, set it up - and endeavour to mediate an agreement; correct?
A. Yes.

Q. Given that directors are given a particular responsibility in the earlier part of clause 35 of this document, do you think it is compatible with the expectation in this document that the list that is maintained of facilitators by each resource group should include directors from other States?
A. I believe so, and for the reasons that I have said, that --

Q. Well, are you on the list of other States?
A. I don't know.

Q. This document contemplates that there will be such a list, doesn't it?
A. Yes, but I don't know, your Honour, whether I am on the list for other States. I have been called on some occasions by other States, but I don't know whether I'm on a list, as such.

Q. The names of approved facilitators, this document says, are to be made publicly available by the director. Does that happen?
A. I don't - I'm not sure that it does.

Q. Do you do that?
A. No. No, I don't.

Q. Why don't you do that?
A. Well, it is just something that hasn't happened, your Honour. It's just something that we haven't done, and I'm not aware whether it is done in any other State.

Q. So the document requires it, but you haven't done it?
A. It is not made public, no. We have a list of people who we use, but we don't publicise it.

Q. The reason for publicising it, of course, is so that the community can assess for itself the fairness of the process; correct?
A. That may well be the case, but I've answered the question. We don't publicise it. It's just something that has never been done, and I'm not aware that it's published in the way that you are asking the question in other States. It may be, but I'm not aware of it.

MS FURNESS: Q. Coming back to your statement in relation to [DK], Mr Salmon, at paragraph 32 you refer to not having obtained written approval in respect of [DK]. Perhaps if we can have that up on the screen. You say there that you didn't consider it necessary, because you believed [DK] had been informed by Brother Turton and had consented?
A. Yes.

Q. Then over the page, you note that, in any event, given your experience mediating complaints and discussions with current and previous executive officers in relation to
similar circumstances, you were confident that in the
circumstances such as these, consent would be given?
A. Yes.

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

Q. What were the circumstances which were "these" and
"similar to other circumstances"?
A. I believe the circumstances were that Brother Turton
had effectively established a very significant pastoral
relationship with [DK] over a period of time, that it was
his opinion that he thought that my involvement as
facilitator would be an appropriate fit in meeting the
challenges that were inherent in the case and that my
approval had [DK]'s informed consent.

Q. But the purpose of seeking approval was because the
protocol was such that you shouldn't normally do it, and
you shouldn't normally do it because of the perception that
you weren't separate from the church; isn't that right?
A. Yes, yes.

Q. Which has nothing to do with Brother Turton's
relationship with [DK], has it?
A. Well, I believe it does. I believe that the
circumstances allow for a broad exemption in terms of my
appointment as a facilitator and that they would be all
factors taken on board by the executive officer.

Q. But you didn't give the executive officer the
opportunity to take them on board --
A. No, I've already said that, I didn't do that.

Q. But there was a handful, minus one, of cases where you
had given the executive officer that opportunity?
A. I believe so. I believe that I've written on previous
occasions, only on a handful of times.

Q. Your confidence was based on that handful of
occasions?
A. My confidence was also based on my general discussions
with the executive officers over many, many years,
discussing practice and procedures in the New South Wales
office and suchlike.

Q. You refer to the very significant pastoral
relationship that you understood Brother Turton had with [DK]. I take it you are aware that Brother Turton didn't meet [DK] until the facilitation?
A. Yes, I'm aware of that.

Q. Notwithstanding that lack of meeting, you are still confident that there was a significant pastoral relationship?
A. I believe so. There had been, as I understood, numerous communications and of some length. I believe so, yes.

MS FURNESS: I note the time, your Honour.

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

SHORT ADJOURNMENT

MS FURNESS: Q. Perhaps if we can have on the screen Mr Salmon's statement in relation to Mrs Ingham. Just while that is coming up, Mr Salmon, when you act as facilitator, do you get paid separately for that role?
A. Only if it is a case that is out of State, not in the cases where I am the director as well, so in --

Q. Can I just ask you to focus on the microphone? I'm having trouble hearing you.
A. Sorry. Only in a case where it is out of State.

Q. So in relation to Mrs Ingham, it was, in Queensland?
A. Yes.

Q. So you were paid a rate as facilitator?
A. That's correct. That's correct.

Q. And did you take a day off your job as director?
A. Yes, I did.

Q. So you took leave from that job?
A. Yes, I did.

Q. And you were paid in accordance with some schedule as facilitator?
A. That's correct.

Q. In relation to [DK], what happened?
A. I wasn't paid; I took that as my normal pay, part of my normal duties.

Q. You took that as part of your role as director, that you were there as facilitator?
A. Well, I took it as part of the fact that it was a case that was on my list. I was acting in the role of facilitator, but it was also on my list, so I didn't receive any payment for that.

Q. When you say "on your list", it was a part of your --
A. Well, it was on the New South Wales - it was registered as a New South Wales Towards Healing case.

Q. So you had some role as director in respect of it, too?
A. Yes - well, at least notionally, yes.

Q. We will come to that. If we can just have paragraph 82 on the screen, which is on page 0015, do you see in that paragraph, in the last sentence, you record saying to Mrs Ingham that based on your experience, the financial reparation that she was to receive was at the upper end of Towards Healing payments?
A. Yes, I do.

Q. What data did you base that on?
A. I just based that on my experience in terms of cases that I've had involvement with in one form or another.

Q. By "one form or another", do you mean as director or as facilitator or as director and facilitator?
A. All of those.

Q. What was the purpose of telling Mrs Ingham that?
A. The purpose of telling Mrs Ingham that was that I was aware that the amount that had finally been negotiated was short of what had been her preferred outcome and I was concerned that, given her treatment by the church in the past and this profound sense that she had that she really didn't count with the church, she understood that even though the payment was less than what would have been her preferred outcome, it was still, in my opinion, a significant one within a Towards Healing context.

Q. Significant in terms of amounts that had been paid in the past?
A. That I was aware of, yes.

Q. Was there any schedule of payments that you were aware of, as either director or facilitator or both, that was applied in Towards Healing?
A. No, I'm not aware of a schedule of payments that have - are you talking about historically or now?

Q. We can start with historically and then we can move to now, Mr Salmon?
A. I'm not aware of a schedule of payments. I'm aware that in the early years of Towards Healing, it was kind of accepted that sums around about $50,000 were often getting close to - but there was never a cap and there were always circumstances, even in the very early days, where payments were in excess of that. But as Towards Healing has evolved, the level of payments have increased. I'm not aware of some sort of schedule. I don't believe that one exists, in that sense.

Q. You said that in the early days, "sums around $50,000 were often getting close to", and then you said there was never a cap. So what were they getting close to?
A. Sums around about $50,000, I think, were typically seen as very much close to a maximum payout, all things being equal, and that church authorities had a - I think it was kind of like a mindset that maybe $50,000 was a significant payment, and so that would influence how they would approach the issue of reparation. But, as I said, those amounts have progressively increased over time, as a generalisation. There has never been a cap. And the approach to payments has changed in other ways. Some church authorities would be open to people coming back and reconsidering the issue of payment and issues like that.

Q. What do you mean, "coming back"?
A. Where people might come back and --

Q. After they have been through the process once, do you mean?
A. After they have been through the process once, and at least be willing to talk to them if they believed that, for whatever reason, the payment was inappropriate or that their needs were particularly dire, or whatever, that they would at least be willing to have discussions with them.

Q. Was the amount of $50,000 increased by reference to
some other amount?
A. No, not that I'm aware of. I think it's just something that happened. I think it happened with a better understanding by church of the damaging effects of child sexual abuse. It has been something that the church has been on a journey in understanding, and I'm talking in generalisations, because there have always been individuals in senior positions in the church who have been more sensitive to these issues than perhaps some other persons in senior positions. But as a generalisation, I think the church authority, senior people in the church, have become much more aware of the damaging effects of child sexual abuse and the importance to understand that all things being equal in relation to Towards Healing applications, the issue - or the amount of reparation has to be realistic.

Q. Is there an amount above which you would understand that many church authorities would not go now?
A. I'm not aware of an amount that they would not go beyond. I'm not aware of an amount that they would not go beyond.

Q. What is the most that has been paid out in New South Wales/ACT?
A. I think it's something up around about $800,000 to $900,000, something to that order, I think.

Q. Do you know if there are more than one that fall within that range?
A. To the best of my knowledge, there is a small - again, a handful, to use that, a handful of cases, that would be up in that range.

Q. Can you tell the Royal Commission what were the characteristics of those cases that you think led to the outcome financially?
A. In those cases where the --

Q. Mmm. Were there any common characteristics or features?
A. I think a lot of those cases relate to the Archdiocese of Sydney and the Archdiocese of Sydney's approach to be very open to, you know, keen to continuing pastoral dialogue in relation to matters that are brought before the archdiocese and where, more typically, over the years since about 2004 or 2005 - I can't be absolutely specific - they
haven't, in terms of Towards Healing matters, relied on deeds of release. So those matters, you know, those big amounts, I think, in the handful of cases, to the best of my knowledge, relate to Sydney Archdiocese. There may well be one or two other cases that relate to another church authority, but there wouldn't be a lot of them up in that end of the continuum.

Q. But can you help us with the characteristics of the case? You have described to us that most of them are within the archdiocese, which is a common characteristic. Are there any other characteristics within the individuals or the individuals' experience that are common?
A. It would be a consideration by the archdiocese on the particular needs of those persons who have made the complaints.

Q. I understand that. I'm asking whether there are any common characteristics of those needs that you can help us with?
A. Well, not really. I mean, they're different cases. They're different individuals. One was certainly in terms of a person whose life was in a lot of disorder and a lot of moving around and in and out of gaol and issues like that. I think, with others, it has been very much about trying to assist the particular individuals in terms of their unresolved issues with the church. They have particularly profound unresolved issues in terms of how they have been dealt with by the church in the past, and I think partly - this is my interpretation of it - partly the payments were based on a response to that as much as their actual physical needs.

Q. In terms of your reference to ongoing discussions by the Archdiocese of Sydney, do I take it that you mean that payments continued for a period of time and that individuals came back with changed circumstances or something of the like?
A. That's what I'm referring to, yes.

Q. So the amounts added up to a significant amount rather than a lump sum payment?
A. That's correct.

Q. Is that a common characteristic of those handful of cases?
A. In terms of there being incremental payments that
ultimately - yes, it is.

Q. Just turning to [DK] and the statement you have made in respect of [DK], if we can have that on the screen, it is the case, isn't it, with [DK] that Brother Turton case-managed his complaint?
A. That's correct.

Q. He effectively acted as contact person, assessor, church authority?
A. That's correct, composite roles, yes.

Q. And it wasn't referred to you as director?
A. Not as such.

Q. Well, not at all, was it?
A. Not really, no.

Q. Was it referred to you at all?
A. Well, it was referred to me in terms of me acting as the facilitator in the case.

Q. But I think you did have contact with the police in respect of that?
A. Yes, I did.

Q. That is something ordinarily that a director would do?
A. That's correct.

Q. So to the extent you acted other than as facilitator, that role was performed?
A. Yes, that's correct.

Q. You understood that the Marist Brothers protocol, to which I took you earlier, and the Towards Healing protocol both provided that the complaint should have come to you?
A. Yes, I understand that, yes.

Q. You knew very early on that that was not happening?
A. Yes.

Q. Why, Mr Salmon, did you not say to Brother Turton, "Hang on a moment. We're not acting, or you are not acting, within Towards Healing or the Marist Brothers' protocol"?
A. Because as I understood it from discussions that were taking place between Brother Turton and [DK], it was
unclear as to where [DK] wanted to go. He certainly wasn't in Towards Healing at that time, and I think it was what we encourage, as I said earlier, leaders to do - to engage pastorally with somebody, to not kind of fob it off in any way, or whatever. It wasn't the subject of a formal complaint at that stage and it was just something that built up its own life. It wasn't necessarily referable to me as director before a formal complaint had been made, at any rate.

Q. But it was never referred to you as the director when a complaint was made and it was known to be under Towards Healing, was it?
A. Well, it was referred in a way. Brother Turton made it clear that he believed at that point [DK] was wanting to come into the Towards Healing process. But it was an atypical situation in terms of how it developed and how it came forward.

Q. But once it was clear it was Towards Healing, it was not dealt with in terms of the protocol, either the Marist Brothers or the Towards Healing protocol?
A. No, it wasn't, because it had developed its own life, and, as I've said, sometimes these things are treated with a degree of flexibility and that's what happened on this occasion.

Q. You have said in your statement that in the course of conversations with Brother Turton, he said that he thought [DK] was understandably angry and suspicious of the Marist Brothers?
A. Yes.

Q. Can I suggest to you, when you had that information, you could and should have insisted to Brother Turton that it be dealt with properly and in accordance with the protocol and not by the Marist Brothers?
A. Well, as I said, I formed the view that Brother Turton was engaging pastorally with [DK] and that was an appropriate engagement at that stage.

Q. The purpose of the amendment to the protocol that created your position was to provide that independence from the church authority, wasn't it?
A. Yes, to a point, but the whole practice and procedure of Towards Healing over recent years has been to get church authorities to come out of their bunkers and to engage
pastorally with people like [DK], which is what
Brother Turton was, I believe, doing.

Q. Regardless of engaging pastorally with him, he was
running the process under Towards Healing, wasn't he?
A. He was running a process, but there wasn't a formal
Towards Healing application in so many words until it was
received well down the track in terms of Brother Turton's
involvement with [DK].

Q. Regardless of when it became a Towards Healing matter,
it did become a Towards Healing matter, didn't it?
A. I treated it as a Towards Healing matter as
a New South Wales case when it --

Q. But not one that you acted as director in, other than,
as we understand, by referring the matter to the police?
A. That's correct.

Q. Coming back to your statement, you indicate at
paragraph 24 that after a number of informal discussions
with Brother Turton, you said that you would be happy to
act as facilitator; is that right?
A. That's correct.

Q. You say there that you had a strong professional
relationship with Brother Turton; do you see that?
A. Yes, I do.

Q. Ordinarily I take it you would accept that in
a mediation, the mediator should not have a strong
professional relationship with one of the parties; would
you accept that?
A. Not necessarily. I mean --

Q. Why wouldn't you accept that?
A. Because I think that there would be lots of instances
where mediators would have some sort of a relationship
with - let me just go back a minute. Look, I accept your
point, that in classic mediation, that would be the case.
But, as I said, this is facilitation under Towards Healing.
It has lots of similarities to mediation, but it is
a different beast, and I think sometimes it is of a benefit
that where you do have a professional relationship with
a party, for instance, my knowledge of church authorities,
how they act - you know, I often have those discussions
with complainants, some sense of who they are, how I think
they might present themselves in a facilitation context, and one thing and another - I think sometimes that's helpful.

Q. Just looking at it from the point of view of the victim, for a moment, Mr Salmon, a victim who knew that you had a strong professional relationship with the church authority who was the contact person, the assessor, was the church authority at the facilitation and ultimately signed the apology letter, would be right to be concerned; isn't that right?
A. They may well have a right to be concerned, sure.

Q. It is the case, isn't it, Mr Salmon, that you should not have acted as facilitator, because you were a director and an employee of the church; you had a strong professional relationship with the church authority - do you agree with that?
A. I believe that what I failed to do was to seek the approval from the executive officer. If they had supported the appointment, which I believe was reasonable in the circumstances, if they had supported it, I think it would have been reasonable.

Q. Well, that wasn't your only failure, with respect, Mr Salmon, was it? You failed to communicate in writing with [DK] about your position, did you not?
A. I've already conceded that I failed to communicate in writing to [DK].

Q. Well, you have also already conceded that you failed to seek approval from the executive officer?
A. Yes, I have, yes.

Q. During the facilitation, Mr Monahan was present, was he not?
A. He was.

Q. He was the lawyer for the insurers; is that right?
A. That's correct.

Q. In paragraph 49(d) of your statement, which is on page 13, you recall Mr Monahan's contribution at one point; do you see that?
A. Yes, I do.

Q. Can you tell me why the legal representative for the
insurer spoke at all in that part of the facilitation that was the pastoral element?
A. No, I can't.

Q. Did you have discussions with Mr Monahan as to his role before that facilitation?
A. No, I didn't, because I accepted that he would be just there as an observer and I didn't feel the need to have that discussion.

Q. When you say you accepted that he would be there as an observer, you didn't obtain his understanding of his role, I take it?
A. No, I didn't, and Mr Monahan is an experienced practitioner in this field. I accepted that he would understand his role by that date.

Q. You were of the view that he shouldn't have said anything at that stage of the facilitation?
A. Yes, that's my view.

Q. And, to the extent that he did, he was acting outside what you considered his proper role to be?
A. Yes, I believe it was inappropriate for him to have made that comment.

Q. Was that the only comment that he made that you thought was inappropriate?
A. Yes, that's the only one that I can recall. I don't recall him making other comments that were inappropriate.

Q. In other facilitations you have had, has the CCI representative had cause to speak during the pastoral aspect?
A. I think that my memory is, yes, particularly Emma Fenby might say something in her role as representing CCI, but it was not a lot. But it would always be something that would be affirming of the victim, not something that you would deem to be inappropriate.

Q. Tell me why the CCI representative is there during the pastoral element?
A. I think it is to have a better understanding of the complainant and the effect of the abuse on the complainant, because there's nothing like hearing it from the person themselves. That understanding is much more enhanced than if one is just reading documents. I think that's the
reason that they should be in the room, not for any other reason.

Q. Is it common practice for them to be in the room in
the facilitations you undertake?
A. It has been common practice over recent times,
particularly with Emma Fenby. It wasn't always the case
in - it varied in facilitations I think in the time prior
to her appointment as to whether they would be involved or
they would have a presence in the pastoral part of the
mediation or not. Often they didn't, but there have been
occasions where that would have happened.

Q. Where, in a facilitation, the CCI is present and you,
as you have given evidence, seek to obtain the best outcome
for the victim, who do you deal primarily with - the church
authority or the insurer?
A. With both, really. I mean, the church authority is
the person that ultimately has to confirm an offer to
a complainant and the final settlement figure. They would
have, clearly, dialogue with CCI. Referral is to really
both parties, but at the end of the day, final instructions
come from the church authority, not from CCI.

Q. So you don't distinguish, in your acting in the best
interests of the victim, in who you deal with; you deal
with both of them?
A. Yes.

Q. As the director of professional standards, have you at
any time been assisted by the national committee to develop
appropriate mechanisms to audit adherence to policies and
procedures of Towards Healing?
A. I can't recall. I can't recall an auditing process
for compliance with Towards Healing at the functionary's
end. There is a process in train at the moment in terms of
looking at auditing compliance from church authorities, the
church authority perspective.

Q. How long has that process been in train for?
A. I think something perhaps akin to 12 to 18 months
developing that process.

Q. What initiated that process?
A. I believe it was really pressure from the former head
of the panel for review of process that there needed to be
some clarity that outcomes that were generated out of
Towards Healing were complied with and followed through. I think that was the genesis of it.

Q. Who was that former head?
A. Gerry Gleeson.

Q. Has the committee, to your knowledge, reported on progress made in implementing policies and procedures of Towards Healing?
A. I'm not aware that they have done so to date.

Q. You would expect to know if they had, wouldn't you?
A. Yes, I would. I don't think they have.

Q. So, in fact, they haven't?
A. Well, I don't believe so. No, I can't recall that they have.

Q. Is there any public report published on the national committee?
A. The national committee, over more recent times, has resolved to put a report on the Australian Catholic Bishops website. I don't know whether the report has come up yet, but that has certainly been a decision to do that.

Q. But what is the content of that report?
A. I think it's just a general report in terms of how matters - the general landscape of Towards Healing across the nation.

Q. Mr Salmon, leaving aside what this Royal Commission may report on or recommend, what is your view of the future of Towards Healing?
A. I believe that Towards Healing has - I think it is a miracle that Towards Healing is still existent, because it has had lots of critics, but plenty of them have been from within the church as well as outside the church. Notwithstanding the criticism - and it has been there, some informed, some ill-informed - I believe that Towards Healing has helped a significant amount of people. In fact, I'm absolutely convinced of that.

It deals with unhappy circumstances of childhood sexual abuse, amongst other issues of abuse, and it is about trying to help people on a journey of healing. You know, the word "Towards" is just as important as the word "Healing". People who have suffered abuse will be dealing
with its consequences for the rest of their lives. Towards Healing doesn't make those consequences go away; it doesn't expunge the fact that the abuse occurred. But I'm confident that it does, as a generalisation, equip people, and has equipped people, to be better placed to deal with the effect of the abuse in terms of their journey, and I think in many ways it has been a significant pastoral response by the Australian Catholic Church in that regard.

I believe that there will always be the need for the church to respond pastorally to victims of abuse, so whether they do so under Towards Healing or in some other mechanism that is badged differently, it would be a sad day if the church is not attempting to exercise a core function, and that is to deal with people who have been hurt and damaged - in this case, hurt and damaged by the very church.

But the issue of the monetary side of it has been problematic, and I know that there has been lots of criticism about that and I know that there have been certain submissions made. I don't have a broad objection to somehow looking at a mechanism that would deal with the issue of financial reparation differently, but I think there has to be, and should be, a continuing role for something like Towards Healing in terms of the pastoral engagement with individuals, and it should be predicated on the understanding that the church has to proactively be with these people for the rest of their lives if they want the church to be there for them. It's their call.

Some people won't want a bar of the Catholic Church because of what happened to them. That's understandable. Some people won't want a bar of the Catholic Church at this point but will change their mind at some time in their future. And some people will want to re-establish links with the Catholic Church at the time they come into a process like Towards Healing. Some people have never separated from the church.

But in reality, in all the different forms, the victims of abuse, the church needs to be there for them and needs to have a process and an apparatus that is there for them. So I hope there is a future for Towards Healing at least around the pastoral and the continuing pastoral needs of people. I accept that there may well be cogent arguments to look at the issue of financial reparation
differently.

Q. Going forward, Mr Salmon, will you continue to accept requests to act as a facilitator in the Towards Healing process?
A. I will certainly consider it deeply and I will look at all the issues, and if I feel that the request in all the interests - in all the circumstances may be beneficial or would be beneficial, prima facie beneficial, to the complainant, then I would take it to the executive officer.

Q. In each case?
A. In each case, yes.

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

THE CHAIR: Q. Have you thought about perhaps the appropriate course might be to say no?
A. Well, I said I would consider that, your Honour.

Q. You gave me the impression that you would still be prepared to do it?
A. I would need to look at what I felt were the best interests of the individual coming forward in all the circumstances.

Q. Mr Salmon, one of the purposes of my questions this morning was that I had hoped to explore the issue of whether, by reason of your relationship with the church - and no-one questions your integrity and determination to do the right thing - what I was seeking to discuss with you was whether or not you actually were in a position, because of all your relationships, to actually evaluate that question for yourself?
A. Well, I would need to do that, your Honour, and I would certainly go away from this hearing and look at it very closely. I have already been doing that. But in the circumstances of the dialogue and questions today, I will do that again, better informed in terms of that internal process.

Q. But you understand, don't you, that your capacity to make that judgment may itself be diminished --
A. I understand. I understand.

Q. -- because of your role and relationship?
A. I understand fully what you are saying, your Honour,
yes. I think it is fair to say that I would not be in
a hurry to take on that role in the future.

THE CHAIR: Does anyone else have any questions?

<EXAMINATION BY MR ANDERSON:

MR ANDERSON: Q. Mr Salmon, my name is Andrew Anderson.
I represent [DK] and [DL] in this matter.

In your statement, you say that it was in early 2010
that you started to have some informal discussions with
Brother Turton. Can I just ask you about one
communication; it is at tab 15, if we could bring that up.
If we can go to the bottom of that first page, do you see
there in the email it says "From: Keith Turton". That's
Alexis Turton?
A. That's correct.

Q. Your email there is copied in, "PSO NSW"?
A. Yes.

Q. That's your email?
A. That's correct.

Q. If we go down to that email on the next page, we can
see there that it is written by Brother Turton:

If it would help I am happy to discuss with
Howard and Michael Salmon to check
processes and risks.

That email was sent on 19 November 2009, it is recorded.
Did you have any discussions at that point with
Brother Turton?
A. About this case?

Q. What he had raised, copying you in to that email?
A. I recall - and I can't be specific, but I believe that
at some point around about that time and in those early
discussions, Brother Turton raised with me [DK]'s wish to
have the particular brothers who were on staff at
St Augustine's present at the facilitation.

Q. So early on, you were aware of this case?
A. Early on, I was aware of this case, yes, to a greater
or lesser degree, yes.
Q. Then if I could take you to tab 26, this is, you might recall - and you will be shown - an email from Brother Turton to you on 18 February 2010?
A. Yes.

Q. I just want to draw some items to your attention, because I want to ask you some questions after that. In the third paragraph, you have:

   After you have read the material and we've (incl CCI) had a discussion we could look at whether there is a need for an assessment or a psych assessment.

A. Mmm-hmm.

Q. In making that decision and you saying that you look to act in the best interests of the victim, did you hold any discussions with Mr [DK]?
A. The only discussion I had with Mr [DK] was on 2 March when I telephoned him.

Q. So these discussions, including, we can see in the paragraph above, the last sentence, "I have also to finalise with CCI what format they are happy with" - and I understand him to be talking there about the format for the mediation; do you agree?
A. I would agree; I think that's --

Q. So really what is being put to you is how this facilitation will go on, but you, in looking to act in the best interests of Mr [DK], are not yourself checking anything with him at that time?
A. Not at that time, no.

Q. You do have a discussion with Mr [DK] on 2 March 2010?
A. That's correct.

Q. You have repeated that date a few times in your evidence. You made a file note on that date, didn't you?
A. I believe so.

Q. Did you make that file note on that day, or did you leave it until another date to make a file note?
A. I can't recall, but usually I - probably more likely than not, it would have been on the day, but I can't be
Q. That is at tab 42, and we might bring that up. It is here that you say you got really what would be informed consent from Mr [DK] to act as mediator, but we don't see that recorded anywhere in your file note; do you agree?
A. Yes, I agree, it is not in the file note.

Q. That's a significant thing to omit from a file note, from the discussion you had?
A. As I said in previous evidence, I accepted that it had been worked out between [DK] and Brother Turton, and I really raised it just as a matter of making sure I had raised it, but I felt that that had been sorted between himself and Brother Turton and there was no particular issue that came out. So, yes, you might say that's a significant thing to leave out. I did leave it out, but I had that conversation with [DL] [sic], irrespective of the fact that it is not recorded in that file note.

Q. You mean [DK]?
A. [DK], sorry.

Q. I want to put to you that you did not say to Mr [DK] on that occasion that you were employed by the Catholic Church and held the position you did within it?
A. I deny that. I can remember having that conversation. I can't be specific as to whether I raised - whether I alluded to the fact that I was employed by the Catholic Church as a generalisation or whether I actually said on that occasion I was the director of professional standards. But I deny your assertion. I certainly raised with [DK] the fact that I was employed by the Catholic Church, and I remember the language that I used in having that discussion.

Q. You deny something you - do you say it is clear in your mind?
A. Yes, it is clear in my mind.

Q. It's an important discussion?
A. It's an important discussion. It's clear in my mind.

Q. And one, for someone with your experience, in your position, not easily forgotten?
A. That's correct.
Q. Can I take you to tab 85. Again, this is a file note that you have created?
A. Yes, that is correct.

Q. It is recalling the telephone call you received from Mr [DK]?
A. That's correct.

Q. He was obviously upset about your position as director of New South Wales Professional Standards Office?
A. That's correct.

Q. That's just a summary, but you have recorded there:

Informed [DK] that I had assumed at the time that Brother Alexis had informed him of my role at the PSO.

You don't, in your file note, record anything about responding, "Well, of course I told you back then." Do you agree that your response to him that you have recorded is that you assumed that Brother Alexis had told him?
A. The response to [DK] was one where I picked up the telephone, and I don't think I even had some feed-in that it was [DK] and it took me by surprise, and it's one of those situations where you think - you know, you doubt yourself for a bit. You think, "What did I tell this man? Did I tell him what I think I told him, or did I get it wrong?" And that's reflected in that file note, because at that point I was taken on the hop and, you know, I just - it was reflected in my response to him.

But I'm very clear that on 2 March I had a conversation with [DK] that, at the very least, informed him I was employed by the Catholic Church. And I also had a conversation with [DK] in the private session leading in to the mediation, when his wife and support person and barrister were present, when I informed him that my role was to manage the Towards Healing complaints in New South Wales. I remember the circumstance - I remember specifically telling [DK] that information and the reasons why I told him that information on that morning.

Q. If I can just stick with this - I will come to the mediation or facilitation, or however it is described. With this note, is it the case that your evidence is that you were taken by surprise, caught on the hop, and what you
have recorded there, that you had assumed Brother Alexis had informed him of your role, is what you told him at the time, being caught on the hop?
A. Yes, yes. I assumed he was aware of my role and if I hadn't told him - because I wasn't sure whether he was talking about my specific role as director of professional standards as distinct from me being employed by the Catholic Church. I knew I had told him I was employed by the Catholic Church, but, you know, my assumption was - and I needed to check back, and my memory and the records show that Brother Turton had rung me, but I couldn't just recall that at that stage.

Q. Did you make any efforts to call Mr [DK] back and explain that, of course, you had told him on more than one occasion?
A. No, I didn't, because Mr [DK] made it very clear to me that he wanted to talk to somebody from the Marist Brothers, but not a brother, and I gave him the reference point there, Mr Norm Maroney, and he also made it clear to me that he had started to or intended to talk to the Royal Commission, and I validated his right to do that.

Q. With respect to writing the file note, that's something that you can do at the time or you can do later. Do you recall when you wrote this file note?
A. I would have written that file note pretty much around about the time the call was taken, I think.

Q. At that stage, you don't recall anything about telling him yourself - in that file note, you don't make any notes recalling those things?
A. No.

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

Q. I want to take you to the mediation, and you say that in a private session at the beginning of the day, you outlined what would be the partiality that you had because of your position with the Catholic Church?
A. That's correct.

Q. I want to suggest that you never did that to Mr [DK] in the private session?
A. Well, as I said, I deny that, and I can recall very specifically having that discussion with him and the
reasons why I had that discussion.

Q. The reasons you would have had that discussion are because it is important for a mediator to not only be impartial but be seen to be impartial, and if there is any change to that norm, then it should be disclosed to all involved; correct?
A. No, the reasons I had that - are you talking about the discussion in the private session?

Q. Yes.
A. Now you have moved on. The reasons why I had that discussion were, I went to that mediation believing that [DK] knew where I fitted with the Catholic Church and had accepted that.

In the private session, [DK] struck me as being significantly more angry with the brothers who would be attending - not so much Brother Turton, but with the two brothers who would be attending - than he was during the telephone conversation on 2 March. At the same time, his level of emotional rapprochement, for a better word, with the perpetrator, Ross Murrin, seemed to have increased significantly. And I don't want to imply that [DK] in any way had a view that Murrin's behaviour, both to him or to anybody else, was anything but totally unacceptable, nor that Murrin should not necessarily be serving a prison sentence, but he had made it very clear to me that he had made an adjustment in his mind and his heart in terms of his issues with Murrin.

But, as I said, at the same time, his issues in terms of his anger against the brothers and his sense that they had been complicit in the abuse by Murrin had increased significantly. And that was expressed then in this sense that the Catholic Church, Towards Healing, the Marist Brothers themselves, were really not going to deal with him properly in this process and that somehow it would be - it wouldn't be fair, a fair process for him, and that he would be treated in a way that would not be above board. And so in trying to reassure him that I had confidence in the process, but at the end of the day it was going to be his judgment that counted, I told him why I had confidence, which was related, amongst other things, to the role that I - my substantive role in New South Wales.

Q. So this was all in the presence of Mr [DL], the
barrister who was there with him?
A. It was. It was.

Q. And so it is clear in your mind, from what you say, that it really couldn't have been more plain that you were employed by the Catholic Church and you were concerned about your own independence; is that correct?
A. I wasn't so much, as I think I have made the point, flagging my own independence; it was more about the integrity of the Towards Healing process and the Marist Brothers' commitment to it, and my position to be able to make some comment on that. And in doing so, I again flagged the substantive position I held in New South Wales.

Q. I want to suggest that at no stage did you do that.
A. Well, I have already denied your suggestion once and I will deny it a second time.

Q. With respect to the way that the day developed, the parties, all people who were present, came into the room, and you were facilitating that discussion; correct?
A. No, there was a private session in the first instance.

Q. Yes.
A. Yes. And I had a private session with [DK]; his wife and his support person/barrister were present. And after that I had another shorter private session with the Marist Brothers present and the CCI people, and then convened the joint session where all parties - where all the attendees were present.

Q. That's what I was getting to. Now, during that time, do you accept that you at any stage got short with or wished to move on Mr [DK] from things he was saying?
A. No, I don't. I believe that I facilitated the meeting appropriately. It was a challenging meeting to facilitate initially and became less so as it went along, and there were times when one would need to kind of refocus matters and reframe them and use different techniques, but I don't accept that I got short with [DK] at all.

Q. Did you at any point alert Mr [DK] or Mr [DL] to the fact that you had had these background discussions, albeit sought out by Brother Turton, with respect to how this would occur and whether reports or anything like that would need to be commissioned? Were they informed about those discussions that occurred in the background?
A. No, because any discussions I had with Brother Turton were not in any great detail, because essentially, in many ways, he took responsibility for effectively organising the facilitation. And so whilst he alluded - most of the discussions I had with Brother Turton, until my role was formalised to be the facilitator, were very brief and on the run.

Q. So it is the case that you didn't raise at any time those things that happened in the background with Mr [DK] or his lawyer, Mr [DL]?
A. What things are you talking about that were in the background?

Q. Such as these emails with Brother Turton, raising --
A. No, I didn't. No, I didn't.

Q. -- the way things could proceed?
A. No, I didn't.

MR ANDERSON: Those are the questions I have. Thank you.

THE CHAIR: Yes. Does anyone else of any questions?

MR ATTIWILL: No.

MR GRAY: Yes, I do.

<EXAMINATION BY MR GRAY:

THE CHAIR: Mr Gray, just for the benefit of those who may be watching on the screen, you appear for?

MR GRAY: In this matter, your Honour, I appear for the Marist Brothers and for the Professional Standards Office and for the other entities that I mentioned at the opening of these hearings.

THE CHAIR: Yes.

MR GRAY: Q. Mr Salmon, you have mentioned in your statement, for example, in paragraph 18 - do you have your statement with you in the box?
A. Yes, I do.

Q. -- that during your time as director of professional standards you have conducted at least hundreds and possibly
more than a thousand, pastoral meetings, legal settlement
conferences, mediations or facilitations, including
numerous Towards Healing facilitations - that's right?
A. That's correct.

Q. You have, of course, been the director of professional
standards for New South Wales/ACT since 2003. In terms of
the hundreds, or even more than a thousand, meetings of the
general kind mentioned there, are you able to estimate
approximately how many Towards Healing facilitations you
have conducted?
A. Look, it is a bit hard to put a figure on that,
Mr Gray. Probably a few hundred - a number of hundreds.

Q. In all of those - and I'm focusing on the Towards
Healing ones now - presumably you necessarily spoke to each
victim in connection with each of those various
facilitations?
A. That's correct.

Q. At least during the facilitation, if not both before
and after the facilitation?
A. That's correct.

Q. And did you hear from each victim, either during the
facilitation process or after it, how the victim had found
that Towards Healing had worked for that person or not
worked for that person?
A. Yes, I did. I'm aware of a lot of information
reported back by the victim and, in some instances, by the
support person for the victim or by the legal
representative for the victim. Almost universally, victims
seem to find their involvement in the Towards Healing
process, at least around the pastoral aspect of it, to be
a validating experience, and that's irrespective of how the
financial - the part that may involve financial
negotiations may turn out for them. I think what they
find, what I've heard reported to me, is that it is a very
validating experience to effectively confront the church,
to put back in the face of the church, so to speak, their
experience. It is very much about breaking the silence
that has been existent for them for the best part of their
life and, in many instances, they may have not told anybody
much about the abuse, if at all, and sometimes only very
recently. But, certainly, irrespective of who they had
told, they had really not told the church, and so it takes
great courage to do that, and everybody's journey is
different as to when they are ready to do that, but, as
I said, it has been reported to me that that ability to put
that back to the church and to be listened to in a very
personal way, in a very personal and intimate environment -
to be listened to, to be respected and to receive that
apology is of utmost importance to them.

As I've said, my experience is the church authorities
have got better at handling and dealing with those issues,
which aren't easy to deal with. So, yes, I believe that on
the basis of my experience, in terms of what I have
observed and what I have been told, that people have got
something significant out of it. And in some ways it can
be summarised up in what a number of victims have said to
me, words to the effect that - and it relates to the church
authority and it also relates to the perpetrator, if the
perpetrator is alive, "I want him or them to know that what
happened to me was wrong." And there is no better way of
telling them what happened to them as being wrong in them
doing that directly and really in their face.

Q. In the course of that answer you mentioned once or
twice "it's been reported to me", or "things have been
reported to me". Were you there alluding to what victims
have reported to you yourself?
A. Yes.

Q. Or in some cases their representative?
A. In some cases, their support person or their
representative, but more often than not it is the victim
themselves.

Q. And even where a victim may not have articulated such
a feeling to you, has it been your observation in your
experience, so far as your observation is reliable, that
that seems to have been the kind of effect that the process
has had on victims?
A. That's my observation. And I saw that, for instance,
in the case that is the subject for this case study, like
the [DK] case, for instance, where at the end of that
meeting, you know, [DK] was in friendly, amicable and
cordial discussions with brothers that, before he came into
the room, he had a very high degree of anger towards and
who he believed, before he came into the room, were
complicit in his abuse. So that is an example of the kind
of transformative effects that Towards Healing can have and
does, I think, typically have, in those pastoral
connections.

I think one of the key parts of the person dealing with the church authority is not just the opportunity to say what happened to them. Most - a lot don't go into that part of it because it is already in their written statement and it is more a forensic type thing that's been - some do go into that. But it is the opportunity to say how the abuse affected them and, incrementally, other people close to them. That's not typically what you see in a statement of complaint. There is not a lot to that part of it. It is more the forensic bit, the part of it, which is saying - explaining the circumstances of the abuse themselves.

Even where there are psychological reports and whatever, medical reports that are tendered as part of the process, they still don't tell it like the victim tells it in terms of their own experiences. I think they often see the very profound sobering effect that that would have on a church authority.

Q. In the course of one of your answers a couple of answers ago you said that your experience was that the kind of effect of Towards Healing on victims that you have been describing has, from your own observations and experience, been almost universal - do you remember using that expression?
A. Yes, I did use that word.

Q. What can you help the Commission with in terms of the question about whether sometimes Towards Healing can initially have a positive or valuable or healing effect, say at the time of facilitation, but later some dissatisfaction or unhappiness may crop up or recur with some victims and, as you know, Mr [DK] is in some respects perhaps an example of something of that sort. What can you say to the Commission about your experience in that regard?
A. It is a hard question, but I think the nub of the answer to it is that sexual abuse of children and young people is profoundly damaging, to state the obvious, and the fact that people engage in a Towards Healing process that hopefully, more often than not, at least in the pastoral part of it, yields some reasonably significant outcomes for them - not in everyone; I wouldn't want to suggest that everyone goes that way, I think most do, for the reasons I have said - but it is not that you attend that meeting on the Friday and you are kind of healed on
the Monday. It is not. It is a difficult journey for
people. And I think people - you know, the damage there,
it is easy to look back and feel that at the end of the
day, even in the best outcomes, it was still - it does seem
to be still so inappropriate in the face of what they have
had to contend with. Because you are dealing with people
who have been abused as children, who have effectively had,
in many ways, their life as young people, the formative
parts of their life, compromised, and the things that we
would take for granted, those of us who are not victims,
are the things that they didn't have.

No matter how good Towards Healing is or no matter how
finely tuned it is and how it operates and how well the
church authorities are at engaging, you are always
conscious of the fact that you can't undo what was done,
and a child's birthright, or what should be their
birthright, for safety and for innocence and for the
reasonable and happy and protected childhood that should be
their right - that it's been taken from them.

I just think - it is a longwinded answer to your
question, I know, but I just think for people, too, they
look back and they must think, "Well, yes, but I've still
lost all that."

Q. In your own experience, apart from [DK], have you had
direct personal experience of such a situation, where
somebody has subsequently, after what had seemed to be, on
the face of it, a reasonably productive or constructive
Towards Healing experience, subsequently had reservations
or criticisms or the like?
A. I can't recall any. I mean, not in the sense that
[DK] has formulated his issues before the Royal Commission.
But certainly, you know, where people have come back and
made an approach where there have been aspects of one thing
or another that they feel it might have been that something
was not followed up on where they thought it should have
been, or an outcome - or, to give an example, that they
believed that some of the things that they sought as
outcomes were too limited and that they have since, you
know, thought things through and want to revisit, to look
at expanding on those outcomes.

So there is a range of reasons as to why people might
come back and flag some area of issue or concern, but
I haven't seen anything, really, quite in the [DK] vein,
I have got to say, in my experience.

MR GRAY: I see the time. I won't be a lot longer, but I imagine I might be 10 or 15 minutes.

THE CHAIR: We will take the luncheon adjournment.

LUNCHEON ADJOURNMENT
UPON RESUMPTION

THE CHAIR: Yes, Mr Gray.

MR GRAY: Q. Mr Salmon, you mentioned in your evidence this morning, or you spoke in your evidence this morning, about your conception of the role of a facilitator within the Towards Healing framework and you mentioned, for example, that perhaps unlike a more classical mediation, a facilitator was, as you saw it, more likely to be proactive and you used the expression "almost a player". Do you remember that?
A. Yes, I do.

Q. You explained how, with a facilitation, the starting point, or the premise, is that the happening of the abuse is accepted and that the objective is to get, as you said, the best outcome for the victim. Do you remember that part of your evidence?
A. Yes.

Q. It was suggested to you that in your statement in the Ingham matter, in paragraph 28, there was no reference to this proactive role. Do you remember that being suggested?
A. Yes, I do remember that.

Q. You were taken to part of paragraph 28. I just want to direct your attention to a couple of other parts of that statement and also to a couple of parts of your statement in the [DK] matter so that you can assist the Commission with what you were getting at.

In your Ingham statement, in paragraph 28(h), you note that discussions about any financial reparation would usually proceed in a manner that reflected the victim's wishes about the manner and substance of those issues; do you see that?
A. Yes, I do.

Q. What kinds of factors did you have in mind there when you included that statement apropos the topic that I'm asking you about - that is, the role of the facilitator?
A. What I had in my mind when I made that statement was that there could be lots of ways, in terms of the way the facilitation was progressed in terms of, you know, off site, and in further communications not necessarily all handled in the body of one meeting in one place, but also
it would be - it may well be the victim's wish that some
level of financial settlement be directed in terms of
specific needs rather than a quantum, such as the repayment
for university costs, or the payment for university costs
if university hasn't started, or for certain medical needs,
or - it's really unending, because Towards Healing is very
much focused on needs and that's what it purports to do and
what it should try to do. So really sometimes those things
aren't - it's very much trying to identify those needs
rather than just talking in terms of quantums.

Q. So far as your role - that is, the role of the
facilitator - was concerned, did you see your role, as
paragraph 28(h) says, as doing your best to promote or
further what the victim wanted in relation to financial
reparation?

MS FURNESS: Your Honour, that is not what paragraph (h)
says.

MR GRAY: I press the question.

MS FURNESS: I maintain the objection.

THE CHAIR: What's the question? I don't think you can
have that question, Mr Gray, because I think the objection
is well made. You can ask a question, but I don't know
that you can lead it out of paragraph (h), because I don't
think paragraph (h) says that.

MR GRAY: I accept that, your Honour. I'll ask another
question.

Q. Paragraph (h) deals with discussions about financial
reparation proceeding in a manner reflecting the victim's
wishes, et cetera. Do you see that?
A. Yes, I do.

Q. What application does that concept, as described in
paragraph (h), have to the role as you understood it of the
facilitator concerning financial reparation?
A. Just leading on from my previous answer, it is about
the facilitator being conscious and sensitive to the fact
as to where and how negotiations might go forward but also
to look at assisting the victim identify needs, and
sometimes package needs in a way that would be more
understandable and perhaps even more acceptable to a church
authority.

Q. If you would turn to paragraph 31 in the same statement, you say, among other things, that you would expect the facilitator to encourage the church authority to engage in an open and constructive way with the complainant and to consider all the options available to the church authority in respect of redress to the complainant.

A. Yes.

Q. Were you there referring in whole or in part or at all to the proactive approach that you referred to this morning?

A. Yes, I was. I think one of the benefits, in some ways, in terms of the one's position in the church, say director, performing the role of facilitator from time to time, is that your relationship with the church authority does mean often that you can be particularly robust in your discussions with that church authority to try to effect the outcome that would be in the best interests of the victim.

Q. In paragraph 30 you refer to the slightly different but related topic of the spiritual needs of the complainant and what the facilitator might do there in terms of those needs being met, in whole or in part. Is that an instance of the kind of proactive role that you referred to?

A. It is, and in the Jennifer Ingham matter, putting forward the proposition that Deacon Chris Wallace, at least on an interim basis, if not longer, be the spiritual director or offer the opportunity for spiritual direction for Jennifer Ingham came from me. But I knew in many ways it was a proposition that, once floated, it would be impossible to not accept. Not that I had any doubt that Chris Wallace wouldn't accept it, but effectively it could not be declined.

Q. In paragraph 38 you refer to sometimes being asked to perform the role of facilitator by another Professional Standards Office or church authority or CCI and to your experience and approach as a facilitator being well known to those who work within professional standards in the Catholic Church in Australia. Then you say:

\[ \text{It is also well known that I try to take a strong pastoral approach to the process.} \]

What did you mean by that and what relation, if any, is
there between what is in that paragraph and the proactive role that you mentioned this morning?
A. I mean that I'm very clear in my mind, as I have said, I think, on numerous occasions during the course of this day, that my role is to achieve the best outcomes that I can in assisting the victim, and that's really a pastoral approach. It's what I predicate my practice on, but it also then reflects - the way I pursue that approach is to be pretty proactive and to be pretty interventionist in different ways.

Q. In your statement in the [DK] matter, if we could go to that, in paragraph 36(a), you are referring here to the telephone call with Mr [DK] on 2 March 2010 and setting out there your recollection of what you said to [DK], and it includes - and I'm not focusing now on the question of what was said about employment by the church, although I'll come back to that, perhaps - you were saying to him, according to 36(a):

... my role is to be an honest broker and to get the best outcome. It is not my role to protect the backside of the Marist Brothers.

What is the relevance, if any, of that statement by you to Mr [DK] to the kind of role that you were describing this morning - the proactive role, doing the best for the victim?
A. Well, it's again an expression of my commitment to him that that's what I would be trying to do; that I wasn't really concerned about the Marist Brothers, I was concerned about him in that process.

Q. In paragraph 56 of that same statement, which is relating to later on in the afternoon part of the [DK] facilitation, you say that your recollection is that [DK] himself was "quite determined and effective in his negotiations", and you then say:

I also did my best myself (as I had told Mr [DK] that I would) to impress on the other parties the legitimacy of his position in relation to the offers put by [him].

Do you stand by that evidence?
A. Yes, I do, and I think I exercised that in different ways. One was to try to use any skills I might have to properly and fully put to the church authority or the CCI the position as put by [DK] to me in the private sessions when I would take some instructions from him.

The other part of that was to impress on them that whilst [DK] had been wrong, by his own admission, in suggesting that the three brothers who were on staff at St Augustine's were complicit in the abuse by Murrin in that they knew what was happening, they had indicated to him that he was not necessarily erroneous in his view of the culture of the school and that that provided a context or part of the context for the abuse.

I also pressed on them the fact that this was a case where there could be no ambiguity lingering in the background, because there were admissions from Murrin, and that, whether they liked it or not, they were dealing with a significant level of anger that certainly had been dissipated by the facilitation, but it had been part of [DK]'s reality for a long time.

So for all those reasons, I believed that it was the best option to try to get to the figure that I believed, given what I'd been told by [DK], would be something that he would readily settle, which was about $100,000.

But also it was my - and I've since recalled, and particularly having light of having some access to the statement from [DL] - it was my invitation to [DL], when I got the offer up to $80,000, which was the last and final offer they were willing to make and I was clear that I couldn't get any more and I couldn't get it to the $100,000 - it was my invitation to [DL] that he come down and make a submission directly to the church authorities in case he might be able to sway them beyond the point that I'd got them to. That was my initiative.

It was also my initiative at the very end to suggest to [DL] that it was legitimate for him to put in an application for counselling on top of the quantum for $80,000, which effectively secured another five, and I made it clear to him that he may not use that for counselling down the track, but he may well need it; it was legitimate for him to make some separate application and that that money, if the church authority agreed to it, would be paid
to him unencumbered in the sense that at some point he
would be able to use it in whatever way he wanted to, but
they would be paying it to him as something he could apply
to counselling, should he need it.

So they were sorts of examples of some of the
interventions I was running with to really push it as hard
as I could to get it to 100, and I didn't. We didn't get
it there, but effectively, as a global figure, we got it to
85.

Q. In the Ingham matter, did you in fact, in any
comparable ways, engage in the kind of proactive approach
that you have described today?
A. I said to Emma Fenby on more than one occasion that
whatever was the limit that she had authority for, she
should go to that, and then I was very supportive of her -
I think she asked my opinion, if I remember correctly, in
terms of her seeking to track down some persons of
authority in CCI for her to obtain approval to go higher in
terms of what might be offered. I supported her in that
and encouraged her in that.

And as I have already given evidence, I encouraged the
bishop to be open to making a contribution on his own bat.

Q. I'll move to a different topic, the second-last topic
I want to ask you about, and that is the question of
potential for conflict of interest or perception of
conflict of interest, where in this case you, but where
someone who is a church person or a church employee is the
facilitator. Do you remember that line of country?
A. Yes, I do.

Q. Included in this morning's evidence his Honour invited
you to agree that there was at least the potential for
conflict in having the person advancing the victim's
interests, as you had said that you were trying to do,
being someone who was paid for or in the employ of the
church. Do you remember that?
A. Yes, I do.

Q. His Honour asked whether, on reflection, you thought
that should be allowed to happen, as it were, at all. You
said essentially that you could, indeed, see why some
people might well perceive a conflict problem in that
scenario, because the facilitator, essentially, was
a church insider.

A. Yes.

Q. That's my word - "insider"?
A. Yes, I understand.

Q. You remember that line of questioning?
A. Yes, I do.

Q. As I say, you accepted that it could be seen that way. So without derogating from that, what would you say to the Commission as to whether, nevertheless, there could possibly be advantages in someone such as yourself - that is, a church employee or insider - being someone who has long experience of Towards Healing and Towards Healing facilitations, and a reputation of the kind that you've mentioned in your statement, being the facilitator? Is it possible, in your understanding, that there could actually be advantages or pluses to that situation?
A. Well, some of the advantages that I would see would be not only in terms of the experience that you build up generally in terms of working in that field and at different levels to integrate that experience into, but I think it's also the fact that you're not the director of professional standards because you're not also trusted by church authorities and you do have an understanding of how they work and how they think, and, as I've said previously, it does enable you to be perhaps, in times, very challenging and very robust in some of the representations that you make back to them that maybe somebody in another position may be a bit more muted in doing.

THE CHAIR: Q. Mr Salmon, Mr Gray is correct to identify the advantage that can come in a negotiation from the fact that the parties are each advised by people familiar with their situation and with an understanding of the difficulties of the individual or corporation with which they're negotiating. It's a role which competent lawyers perform on behalf of their clients in litigated disputes. A competent lawyer is able to give robust advice to the client but also fully understand the position of the opposition with whom the negotiation is taking place. You understand that context?
A. Yes.

Q. The role you perform as director for the church, I understand fully, is one where, by reason of that
relationship, you are able to give the church robust, firm, blunt advice. I have no difficulty with that. But do you understand, when I put it into the context which I have, that what is missing from the equation is the person in the middle who, in the conventional situation, will be the mediator, who sits between both parties, or multiple parties, each of whom has their own robust adviser capable of communicating to their client the position of the other side but also giving blunt advice about the proper response of that client? Do you understand?

A. I understand the issue.

Q. Well, then, when we put it into that context, do you again see - and I for a moment don't question your bona fides - how the perception of the outsider will be one where it is difficult to accept that the process that you engage in is an appropriate process when you are seeking to mediate a solution to a very difficult problem between an individual and the church?

A. I believe, your Honour, I've acknowledged the reality of that - the possibility of that perception.

Q. What that means is you can equally give the robust and firm advice to the church when acting as the church's director, but you don't need to be the facilitator or mediator to be able to give that advice to the church to the advantage of both parties? Do you understand?

A. I understand what you're saying.

MR GRAY: If I may pick up on that, your Honour?

Q. In a situation where a facilitation is taking place with some, if I may use the word, neutral facilitator, unconnected with the church, typically, the director of professional standards would not be at the facilitation. Would that be right?

A. That would be the case.

Q. So that in your case, if you were there as facilitator, as you were in the [DK] case, it would be your presence as facilitator that gave you the position from which to be able to give robust points of view to the church --

A. That's correct, at that time.

THE CHAIR: Mr Gray, that now just completely mischaracterises what I was saying to Mr Salmon, with every
respect to you. You can't justify a process by the fact that the process itself otherwise would exclude the director. The answer to that is the church perhaps should have someone there who can give it robust and proper advice. If that's the director, then so be it. But that is the answer to the proposition.

Can I say to you, with respect, the argument ultimately becomes a bootstraps one, when you put it that way.

MR GRAY: Your Honour, I don't have in mind making an argument in contradiction to anything your Honour has put. I simply was picking up on one perhaps minor aspect of what I understood your Honour was putting --

THE CHAIR: I don't think it's minor, Mr Gray. I think this is a real issue. I agree with Mr Salmon that it is important that the church would have someone there who is able to give robust, blunt advice. No question about that.

MR GRAY: I accept that. In the case of the [DK] matter, the evidence before the Commission is that Mr Monahan was there in the interests of both the relevant church authority, the Marist Brothers, and CCI. That is the evidence that you will hear tomorrow. So there was someone there who could give, and presumably did give, whatever advice, robust or otherwise, the church authority needed to get.

I am simply drawing Mr Salmon's attention to the fact, if it is the fact, that so far as what he had said to your Honour this morning about his role as facilitator, it would be his presence as facilitator only that had him in the room at all, that's all.

Q. I only have one other thing to ask you, Mr Salmon. You will recall that you agreed readily that in this [DK] matter, Brother Turton, in effect, fulfilled multiple roles?
A. That's correct.

Q. In effect, as contact person and, in effect, as taking the part that, under the Towards Healing protocol, one would expect the director of professional standards to take in terms of organising the meeting and so forth?
A. Yes, I agree.

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Q. You agreed with all of that?
A. I did.

Q. And you agreed that, for the most part, in the [DK] matter, you were not really acting as director; you were mainly acting as facilitator apart from, for example, sending the information to the police?
A. That's correct.

Q. I just want to draw your attention to paragraph 33 of your statement, where you deal with this very topic in chief, as it were. If you just glance at that paragraph, do you see towards the latter part of the paragraph you mention a couple of the features which were relevant to how matters proceeded as they in fact did and as the facts have revealed, namely, whereby you took the role as facilitator and didn't fulfil the role that the protocol would indicate the director would take. You mention that [DK] had already provided his statement, that Brother Murrin was in gaol, that the statement would be used as the contact report, that there was going to be no need for an assessment and therefore it was possible, in effect, to move straight to the facilitation. You mentioned those things.
A. I did, yes.

Q. In addition to that, it was also the case, was it not - and I'll show you the document - that you had been told that Mr [DK] was very anxious to proceed with some speed?
A. I recall that, yes.

Q. I wonder if tab 26 in the tender bundle could be brought up. This is an email from Brother Turton to you, copied to Mr Bucci, on 18 February. He mentioned in the second paragraph, after he attached various documents to that email, which included some of his file notes about his conversations with Mr [DK] - what I want to direct you to in particular is towards the end of the second paragraph, Brother Turton said to you:

He seems genuine to me and mainly wants to let go of his anger and get on with life. Basically he is looking at a Tuesday and/or Wednesday meeting and would very much like to have the matter completed during March.
That was something you were aware of?
A. Yes.

Q. Did that play a part and was that a factor, and if so to what extent, in your being content to occupy the place in this particular Towards Healing process between 18 February and the date in March when the meeting took place?
A. It was one of the factors I considered.

MR GRAY: Those are my questions, your Honour.

THE CHAIR: Q. Mr Salmon, Mr Sullivan has spoken on behalf of the bishops conference about Towards Healing and the question of redress going forward. I'm sure you are familiar with what he has had to say?
A. Yes, I am.

Q. The essence of it is that in terms of the redress component, that should be taken out of the Towards Healing process and a whole new process, separate from the church, should be considered. I trust I do justice to his words, but is that how you understand it?
A. That's as I understand it, yes, your Honour.

Q. Do you share that view?
A. Yes. I think I've intimated earlier today, your Honour, that I believe there's an argument for that. I share it, yes. I do share it.

Q. Why do you share it?
A. I share it because I think the criticism of Towards Healing, in a lot of ways, is focused on the variation in financial outcomes. Part of that relates to the fact that cases are dealt with very much in Towards Healing on the issue of needs and the needs at the given time that the complaint is within the Towards Healing process, not necessarily the needs of somebody in the past. So it does have built into it the reality that it will allow for different outcomes, but I do think that, having said that, there is a disparity, at any rate, that can occur between the fact that some church authorities approach the matter differently. Some can be objectively intrinsically more generous, some less so. There are variables like that.

There can be variables associated with whether a case attracts insurance coverage or not. There can be variables
in terms of whether a person is represented or whether they're just there by themselves. That can play into it. So there are factors at play that do mitigate against different outcomes financially, across a variation, wide variation, that I think go beyond what's inherent in the process itself that would influence some of those. So they're the reasons that I would share that view, your Honour.

Q. When one is considering the position of someone who has suffered abuse, the pastoral need is clearly identifiable, and you've discussed that today. There may also be other needs of the individual, as has also been discussed. The Commission has learnt already that for a great many people, there is a need for counselling.

A. Yes.

Q. And that's a need that will vary, depending upon the person, and may be required for many years, as you understand it?

A. I do.

Q. And for some people, required for the whole of their life. You understand that, too?

A. Yes.

Q. For others, the immediate need for counselling may not be apparent, but later in their life their psychological well-being can collapse, and at that point they need counselling and may again need it for the rest of their lives. You're familiar with that problem as well?

A. Yes, I am, yes.

Q. How does Towards Healing address the need for a person to have perhaps - of course, not certain but perhaps - whole-of-life counselling?

A. I think, your Honour, my answer to the question is, firstly, to look at the response of Towards Healing around the counselling issue generally, and that is that I think that when it started, it defined - it very much defined the counselling response in very limited terms. Largely - I mean, there were certain church authorities that might be exceptions to that; I'm only speaking in terms of generalities and there are always exceptions, but by and large it was constructed narrowly, you know, a few sessions, not many, to my mind, not really a greatly generous response.
I think over time and with a better understanding of
the effect of abuse and generally in terms of the church
adopting a much less defensive attitude in terms of how it
might respond to abuse and whatever else might have
influenced the change, but it certainly occurred, the
church has become more generous and more realistic in its
understanding that counselling needs to be supported on
a longer-term, often a much longer-term, basis than was
initially envisaged when Towards Healing first started.

I think church authorities would understand that they
would need psychological and medical reports to give some
guidance in relation to that. Whether it's a bridge too
far to say that the church generally is - how much it has
embraced the concept of whole-of-life counselling,
I wouldn't want to be too dogmatic about that. I can
simply say again and reiterate that the church has become,
to my mind, much more realistic, much more sensitive about
the need to be supportive of objectively realistic
counselling options for people.

At the same time, I think, as emerges and is
emerging - I use the word "emerging" - an emerging
understanding that it is not correct to construct Towards
Healing as a kind of ephemeral, transitory sort of response
to people. Somehow it needs to be constructed as something
that's there for people on an ongoing basis, at least the
potentiality for them to come back. That would
particularly fit well with an understanding that people's
needs around counselling change.

Some people may come into Towards Healing and not feel
they need counselling, and maybe they don't, but later they
change or their situation changes.

Some people may have had counselling, made a certain
recovery and then there has been some sort of relapse.
Some people - life is in such disarray and things are so
difficult that counselling can only be seen as a long-term
option.

So I fully, and always have, supported the need for
the church to be generous. That seems to me a core issue
in terms of where Towards Healing has to be seen to be
functioning, in that it is generous in its support of
counselling options.
Q. I'm not sure about the question of generosity, but I get the impression from what you say that you accept that if the person's psychological needs are as a consequence of their abuse, then the responsibility of the church, at the very least, is to meet their counselling needs? Is that your position?
A. Yes, I don't have an argument. That's my position, yes.

Q. If that be whole of life, then so be it?
A. If that be whole of life. And I don't think there's - I think it would be the church's right to seek some reports and professional advice, of course, but if that professional advice supports that proposition, then I can't see but how the church must accept that.

Q. Does the church presently accept that?
A. As I was saying, your Honour, I think the church has become much more realistic - I won't use the word "generous"; much more realistic - in the way it considers counselling needs, and I see that there has been a net improvement in terms of that response from the early days of Towards Healing.

I still think that the idea of whole-of-life counselling, something like that, is something that, as a generalisation, the church still needs to consider. It's not saying that there would not be elements within the church structure, certain church authorities, who might be more predisposed to that, but I do think that that's something that has not been really fully understood and embraced by the church. I think that's still a work in process.

Q. At the moment, we are in a position where Towards Healing may provide some counselling support --
A. And some perhaps even relatively long term and fairly full on, but I think it's still a work in progress in terms of the church - referring to the church generally - accepting that a core responsibility will be the need for it to be there for the long term for victims, in whatever case that may be. It's not just about professional counselling, but the whole issue of spiritual direction and their connection to the church, if that's what they want. If they don't want it, well, that's to be respected. That goes without saying.
One of the issues about clerical abuse, abuse within the church, is that often it so badly compromises one's relationship with God and a person's sense of God, and it should be a core responsibility of the church, understanding that, to understand that it may well need to be engaging with victims who come in and out. They drift away, they come back. Whatever their situations, but it needs to be there for the long term and whether it's about spiritual direction, whether it's about counselling, whether it's about further discussions about how that abuse affected their life, and one thing and another, it is not something where you say, you know, a case was opened on this day and it was closed on that day.

Q. I'm sure from your experience now in your job you fully understand the devastating consequences that abuse may have for some people?
A. Absolutely, yes.

Q. Is that, in your experience, generally accepted in the church?
A. I think it is generally accepted in the church now. I don't think it was understood well at all across the church in the earlier days when these issues started to really become fully on the radar, particularly after the Wood Royal Commission and that period of time following, and the early days of Towards Healing. I don't think, as a generalisation, that the church understood the effects of abuse all that well. I think there were stand-out people, people like Bishop Geoff Robinson, who did, but I think as a generalisation the church didn't. I think there was kind of - this is my view - a sense that - and I'm overstating it a bit - a cup of tea, a Bex and a good lie down and you kind of get on with it. I think that over time, and I'm confident in saying this, the church leaders are much better equipped now to understand the devastating effect of abuse and to understand that healing is a life journey for people.

THE CHAIR: Yes.

<EXAMINATION BY MS FURNESS:

MS FURNESS: Q. Mr Salmon, how does the understanding that healing is a life journey fit with the deeds of release that most people are required to sign as part of
Towards Healing?
A. I think the deeds of release don't necessarily mitigate against the fact that a church authority may well have an attitude that down the track, if circumstances have changed appreciably, and so on, that they should not be able to come back and have a discussion with the church. I mean, I don't think the deeds of release mitigate against that. It's really more about the attitude, I think, in terms of church culture and church thinking and --

Q. Just moving away from church thinking to victim thinking for the moment, Mr Salmon, if a person who has gone through the process has got advice about the deed, as would ordinarly be expected, is told in plain terms what the deed means, to that person's thinking that's the end of the process; they wouldn't necessarily think they could go back, regardless of the church thinking. Isn't that right?
A. Well, that may well be what they think and it may well be the reality for some church authorities still. I would hope to see that that changes, that the change continues, and partly it would also be reflected by the advice they're given by church functionaries, too, in terms of the fact that, if they need to, to come back and have dialogue with the church; that it is open for them to come back. I mean, it depends on who is talking to them and what they're being told.

Q. It does, but if one looks at the standard clause in the release - tab 60 is one, and I'll just read it out:

\[
\text{The Releasor acknowledges that by accepting the agreed sum and executing this Deed he is not entitled to make any further approach to the Releasees for financial assistance, including assistance with respect to any specialist medical advice or for damages or otherwise.}
\]

Now, that wouldn't encourage a victim to approach the church, would it?
A. No, that clause certainly wouldn't do so; I agree with that.

Q. If I was to suggest to you, Mr Salmon, that that clause be rethought in light of your evidence of, generally the church leaders' acceptance of life long journey, what would you say?
A. I don't have an argument with that.

MS FURNESS: Nothing further, your Honour.

THE CHAIR: Thank you, Mr Salmon. You are excused.

MS FURNESS: Mr Stewart is taking the next witness, your Honour.

<THE WITNESS WITHDREW

MR STEWART: Thank you, your Honour. I call Gerald Burns.

<GERALD BURNS, sworn: [2.50pm]

<EXAMINATION BY MR STEWART:

MR STEWART: Q. Brother Burns, will you state your full names and occupation?
A. My full name is Gerald Burns. My occupation now is I'm retired.

Q. You signed a statement which has been provided to the Royal Commission dated 4 December 2013. Do you have a copy of that statement?
A. Yes.

Q. Are there any corrections to that statement which you wish to make?
A. No.

Q. Do you confirm that the statement is true and correct?
A. To the best of my knowledge, yes.

MR STEWART: I tender the statement, your Honour. I think that would be 4-61.

THE CHAIR: It will be.

EXHIBIT #4-61 STATEMENT OF GERALD BURNS, DATED 4/12/2013

MR STEWART: Q. Brother Burns, with respect to your professional background, I understand that in 1949 you joined the Marist Brothers and thereafter received teacher training under the auspices of the Marist Brothers; is that correct?
A. That's correct.
Q. That would make, if my arithmetic is correct, you approximately 19 years of age at the time when you joined the Brothers?
A. Yes.

Q. Thereafter, in the period 1950 to 1975, you held various teaching positions at different institutions of learning; is that correct?
A. That's correct.

Q. And from August 1976 to 1981, you were the principal and community leader of St Augustine's College in Cairns, Queensland; is that right?
A. That's correct.

Q. That's the college at which [DK] experienced the abuse that is the subject of his claim; am I right?
A. That's correct.

Q. Since 2010 you have been formally retired, but you've done various volunteer work; is that right?
A. That's correct.

Q. Brother Burns, where were you at school?
A. My primary school was at a little one-teacher State school in the country. I then attended a Marist school in Lismore and I then attended the training college at Mittagong.

Q. Approximately at what age were you when you started to see yourself as possibly becoming a Marist Brother yourself?
A. To enter the initial stage, I was a boy of 13. At a more serious level, I would have been a boy of 17, 18.

Q. Now I'm going to discuss briefly the question of corporal punishment. When I use that term, what I'm referring to is punishment or disciplinary measures inflicted on the body. Was there corporal punishment when you were a schoolboy in the Marist schools that you attended?
A. Yes, and also at the public school.

Q. And are you able to give the Commission an idea of the prevalence of the use of corporal punishment in the high schools that you were at?
A. Yes, I would agree it was prevalent, mmm.

Q. What I'm asking for is an indication - and I know this is a difficult thing to quantify - of the degree of prevalence?
A. I find that a difficult question to answer, but I would say that in most days there would be some example of it.

Q. Not on each student or scholar, I presume, but generally in the student body; is that what you're referring to?
A. What I was referring to was in the classroom, there would be an example of that on most days. Not at the training school at Mittagong.

Q. Perhaps to break that down a bit further, what form of corporal punishment was in use?
A. A cane on the hand.

Q. And for what nature of offences or transgressions or circumstances would it generally be used?
A. It could vary, and unfortunately it was sometimes used as a teaching aid.

Q. I'll come back to corporal punishment in a moment, but also at that period when you were at school were you aware at that time of any sexual abuse taking place in the school context, in your school context?
A. No.

Q. Looking back on your career, are you able to identify when it was that you first became aware of the problem of sexual abuse by brothers?
A. I think the first time was when a case went to court in 1992, 1993.

Q. When you were principal at St Augustine's College in Cairns, was corporal punishment used?
A. Yes.

Q. And what was the form of its use?
A. It would be cane on the hand.

Q. And are you able to give an indication of its prevalence?
A. It was not all that common, but you wouldn't say it
was rare.

Q. [DK], when he gave evidence, said that it was used "very much", that is to say, weekly. Would that be consistent with what you're saying, in other words, not very common but not rare?
A. Yes, I'd like to be more specific and put it in the terms of what was the type of thing for which it would be given rather than the frequency, but I'd find that hard to - I couldn't object to what you say there.

Q. And its form was also, as I understand it, by cane on the hands?
A. Mmm.

Q. And [DK] also said that some of the brothers had a pocket in their gowns in which they were able to carry a cane. Would that be your experience, too?
A. On a technicality, there were no pockets in those garments, but something could have been slipped in and put in a belt or something.

Q. And that was done by some brothers, was it?
A. I don't know. I don't remember it. I couldn't deny it.

Q. Has the thinking and approach of the Marist Brothers over the years - and you've had a very long career teaching in the Marist Brothers - has the thinking and approach over the years changed with regard to the use of corporal punishment?
A. My understanding is that at this present time it is not used in any of our schools or in the type of work I've been involved in.

Q. What do you understand to have been the stimulus for that change in approach?
A. I think it's something multi-faceted. There has been a whole change of public opinion on some of those things. There has been a growing, I'd almost say, change of definition of the thing. Certainly the whole thinking about it in the educational context, as well as in parental context, parents giving corporal punishments to their children - there has been a massive change of thinking.

Q. So it's the general or it's the broader shift in societal thinking which has been the stimulus in the Marist
Brothers, to your understanding; is that what you're saying?
A. Could I have that question again?

Q. You've said that there has been a shift in thinking more broadly about corporal punishment, and indeed that must be right. Are you saying that that was the stimulus to the shift in approach in the Marist Brothers? Because I had asked you what was the stimulus to the shift in approach?
A. I wouldn't say it was "the" stimulus. I intend to say the progress of thinking in the Marist Brothers was pretty commensurate with the progress of thinking within the community generally.

Q. Let me put it slightly differently. Was there a recognition of overlap in circumstances of abuse between corporal punishment and sexual abuse as a factor in that change in thinking?
A. I'm not sure that I understand the question.

Q. That perhaps answers the question. I'm going to move on to the question of [DK]'s case specifically. In your statement, in paragraphs 27 to 34 - and I'll seek to paraphrase them for the purposes of the oral evidence - you give evidence with regard to an incident in June or July 1981 where a matter of inappropriate touching was reported to you. Do you recall that?
A. Yes.

Q. And your evidence is that there was a complaint or a report of inappropriate touching of chests and stomachs of at least two boys in their dormitories at night. Is that right?
A. That's correct.

Q. At least the touching was done by Brother Murrin?
A. That's correct.

Q. Following that, you questioned the boys and you questioned Brother Murrin?
A. That's correct.

Q. And the father of one of the boys threatened to withdraw his son from the school as a consequence of Brother Murrin's conduct; is that right?
A. I'm not sure that he threatened to withdraw the boy.
He came down and saw me and he also saw Brother Murrin, but I'm not sure that he threatened to withdraw him. The decision to withdraw was made some weeks after the father went back to Thursday Island.

Q. Was it not the case that there had already been a decision to withdraw the boy from the school and that that was then reversed after discussions with you and others; is that not the case?

A. I don't know that it was a threat to withdraw and that threat was reviewed.

Q. Brother Burns, to assist you, if you could go to tab 49B, which will come up on the screen, of the tender bundle in the case of [DK], which is exhibit 4-42, this document is a transcript of an interview with you done by Mr Monahan. Have you seen this document before?

A. Yes.

Q. At page 20 of that document, about two-thirds of the way down, at Ringtail 0146, there is talk of a meeting with the father. That's what this is dealing with here. This is the meeting with the father:

PJM So what [do] you remember about your meeting with him, where did it take place?

GB It took place in my office.

PJM Just the two of you?

GB Yes.

PJM What happened?

GB He came, and by that stage, my memory was that at that stage it had already been decided that the boy was going to leave.

I am referring to that when I suggest that there had been, as I characterised it, a threat to remove the boy, but ultimately, in fact, a decision, it would seem, to remove the boy and then that was subsequently changed; is that right?

A. Yes. To say that there was a firm decision to do it and it was reversed - I think when the father came down, I think he would have been open to that as an outcome. By
the time he left, he was happy that the boy stayed on.

Q. Clearly he saw it as a serious matter?
A. Sorry?

Q. Clearly he, the father, saw it as a serious matter?
A. I suppose I can't think for the father, I can't speak for the father, but, yes, I suppose - we discussed it as a serious matter.

Q. You took it seriously?
A. I suppose depending on the degree of severity - it was a quite inappropriate action.

Q. Yes, by Brother Murrin?
A. Yes.

Q. And you took it sufficiently seriously to report it to the provincial at the time?
A. Yes.

Q. Perhaps you can help me with that - that's Brother Kieran, and his surname Geaney, G-E-A-N-E-Y.
A. Kieran Geaney.

Q. So you reported it to the provincial, Brother Kieran Geaney, and you sought guidance from him as to what to do?
A. Yes.

Q. Why did you characterise it as serious, inappropriate touching?
A. Well, it was something - it wasn't normal sort of behaviour. It was inappropriate for a teacher to touch a boy, touch a student, like that.

Q. In particular, in his bed after lights out?
A. Yes.

Q. The provincial directed that Brother Murrin should consult with Brother Claudius, who was a spiritual director to some of the younger brothers; is that right?
A. Yes, "spiritual director" may be a bit of a loose term there, but because of his involvement with them in training, he was something of a confidant to some of them, as time went on, and that was why he was in North Queensland at the time this happened.
Q. Subsequent to that - in other words, the consultation or consultations between Brother Murrin and Brother Claudius - Brother Murrin then also met with the provincial to discuss the matter; is that right?
A. That's correct.

Q. That was also in about July 1981 or shortly thereafter?
A. Yes.

Q. You resolved, as you've already said, that it was inappropriate. You also resolved, following your interviews, that it was non-genital contact; is that right?
A. That's correct.

Q. Do you accept, Brother Burns, that sexual abuse does not necessarily involve genital contact?
A. I would fully accept that now. At the time, I think I had a much more simplistic and incomplete view of the situation. If you asked me in what way, I suppose, to use terminology that mightn't be suitable here, in a sense, I would have seen the touching of the genitals as a moral lapse, look at it in the moral sphere; whereas the other may be the inappropriate sphere. But, yes, I would have seen then, clearly, a line of demarcation which I would not see now.

Q. But if it's characterised as inappropriate, against what standard or reference is that characterisation made? It's either, I would suggest, made as against some set of rules or as against a moral standard. Was it not inappropriate because it was morally or ethically inappropriate?
A. I find that a hard question to answer, because if you want to just reduce it to those two options, to say it was just a breach of rules I would think underestimates it somehow or other.

THE CHAIR: Q. Brother, could I try to be a bit more direct.
A. Yes.

Q. You were told of the touching of the boys on the chest and the stomach. As I understand it, that was in their beds. Is that right?
A. Yes.
Q. At night-time?
A. Yes.

Q. Was it not the case that, as far as you were concerned, that conduct was inappropriate because it plainly had a sexual context?
A. I would certainly say that now.

Q. What other aspect of that conduct would have led you to the conclusion that it was inappropriate back then but for the potential sexual context or interest that the conduct reflected?
A. I suppose my thinking about that would be, I note that one of the boys, when he talked about the fact that he had not revealed it to his parents or to anyone in authority - that's why he didn't mention the sexual - the overt sexual side.

Q. I haven't got to that aspect. I'm just trying to find out what caused you to make the judgment, which you did, that it was inappropriate. We've discussed the sexual aspect of it. That must be the case, mustn't it? Is there any other reason why you would say that's inappropriate, but for the sexual context in which night-time touching of a boy on the chest and stomach in his bed occurs?
A. I would certainly see that now.

Q. Well, the second step. It's plain from what was reported to you that the boy was distressed by what happened; correct?
A. Distressed, probably - angry.

Q. Did it not occur to you that the boy may not have been able to disclose all of what happened to him at the time?
A. I find it a bit hard to recall exactly how I felt about it, but I would want to have checked out with the boy the extent of the touching, which I did. But to identify it as a purely sexual thing, or something with extreme sexual connotations, it was probably a simplistic bit of thinking on my part to put one in terms of a moral failure and the other as inappropriate.

Q. I want to take you up on that too. You said that if you had been told that there was touching of genitals, you said you would have seen that as a moral failure?
A. Yes.
Q. It was criminal, wasn't it, if that happened?
A. Looking at it today, certainly it would be regarded as a criminal thing.

Q. It was a criminal offence back then.
A. Yes, but I think the thinking at the time didn't quite see it the same way.

Q. You'll have to help me with that. The thinking at the time - whose thinking are you talking about?
A. Well, probably in my own thinking, to the extent that I'd never really thought through so much of the issues to do with child sexual abuse.

Q. Are you saying, then, that you didn't appreciate that a brother touching a boy's genitals, back in 1981, would be a criminal offence?
A. It sounds silly for me to say it now, but at that stage I didn't think of it in those terms as the criminality of it rather than the moral failing of it.

Q. Were you aware of brothers, other brothers, who had been reported as touching the genitals of boys?
A. This was 1981. No, I don't think I had knowledge of any incident at that stage. I'm trying to think back. And I suppose, you know, it was something that, in the sense of you didn't think anybody would do it.

Q. When did you start to learn that people were doing it?
A. Sorry?

Q. When did you start to learn that brothers were doing it?
A. I think the first case that I knew of was that case in 1992 or 1993 - I forget which - and that ended up in court. I remember at the time it was an enormous shock to the system for so many of us. An enormous shock to the system.

Q. When did you first come to appreciate that a brother touching the genitals of a boy was a criminal act?
A. Probably around the time of the Wood Royal Commission, and at that stage I was involved in helping prepare policies and principles to go into a handbook, and I think that's when I really first started to become much better informed, and I would then certainly have become aware of it as a criminal matter.
Q. Back in 1981, if it had been reported to you that a teacher had touched the genitals of a boy, you say you would have seen that as a moral failure, not a criminal act. What would have been, as far as you were then concerned, the appropriate response to that moral failure?
A. At one level I would have seen it as the fact that he should not be involved with young people and that probably he needed some professional help. I didn't think in terms, in those days, of the fact that it should be reported to the police.

Q. You were told that Brother Ross had committed various acts and he met with Brother Claudius.
A. Yes.

Q. You were then told that it was believed, or there was the impression, that Brother Ross was unlikely to behave in that way again.
A. Yes.

Q. What were you told by Brother Claudius about his behaviour and the response which led you to the belief that he would be unlikely to behave in that way again?
A. I think personally when I interviewed Ross Murrin, rightly or wrongly I was quite impressed. I felt that he was shocked by the whole - what I was saying, and I think in those days I didn't understand much about people who were inclined to sexually abuse children, that it's some very deep issue in them. I didn't understand that, and I thought by resolving - him reassuring me that it would never happen again, I tended to believe him. I think on my part, there was a whole lot of naivety. I didn't understand the whole field.

Q. You, by of course that time, had become a very senior brother in schools in Australia, hadn't you?
A. By that stage I'd been teaching approximately 30 years, yes.

Q. And you had had some very significant roles before your role as principal, in well-known schools?
A. Yes.

Q. Do you think that your understanding of these issues and approach would have been similar from others holding responsible positions, teaching positions, in the schools of the brothers?
A. I can't speak for others, but I think that was
a fairly general understanding - well, not understanding,
but a general impression of people that, no, this wasn't
a thing you would expect.

Q. Perhaps that's so, but what about an understanding of
the nature of the acts that Brother Ross committed and this
issue of inappropriate moral breach and not understanding
criminality - do you think your views were the views of
those in responsible positions in the schools of the Marist
Brothers?
A. I have no way of answering for other people, but
I think there was certainly a common view among the
brothers - no, I'd better go back and correct that.
I think if you're referring to the technical - sorry, the
delineation I made between inappropriate and sexual,
I can't answer for other people on that probably, but
I think for the big number of us, anyway, no, there wasn't
the awareness of that whole issue. I'm sorry, I'm probably
not answering your question. I got a bit lost on the way.

Q. I'm just trying to see whether your views - and
I appreciate the difficulty - were views that were held by
others in senior and responsible positions in the Marist
Brothers at the time. Just to disclose the reason - the
Commission is tasked with trying, amongst other things, to
try to work out why this all happened and what the response
of institutions to it was. Given your senior position, by
this stage, in the Marist Brothers, it may be that you can
help us, because I make the assumption that you spoke with
your colleagues in senior positions from time to time.
A. Yes, I'm finding it difficult to answer for other
people, but I think it certainly would not have been an
uncommon understanding, or misunderstanding, among a whole
lot of us because we were uneducated in the whole area -
uneducated in a broad sense. We didn't understand. We
didn't have the awarenesses.

Q. Can I then go back. You say that the Wood Royal
Commission was important and a 1992 prosecution was
important. What in your thinking is a moral failure as
against a criminal act? How should we understand your
intellectual construct for a moral failure which is not
a criminal act?
A. I'm afraid I'm finding it difficult to understand,
to - yes, to comprehend the question, somehow or other, and
I'm thinking in terms --
Q. Well, I'll start again. You say that touching of genitals you would have seen as a moral failure in 1981 but not a criminal act. I'm not schooled in your theological understanding. I want to know what it is for you to find a moral failing which is not a criminal act? To add to the understanding, you speak of inappropriate conduct, moral failure, criminal act - three stages, if you like. What is it that informs your concept of moral failure making it different from criminal act?
A. Putting it that way, I would accept, now, that it would be very difficult to speak of something that was morally wrong but not criminally wrong. I can't think of an example. But certainly in the issue that we're talking about, at that stage I would have had a clear sort of a thinking, and I suppose it's because of the - yes, over time, the whole question of sexual behaviour and so on in our church has been seen in the terms that are not necessarily criminality terms. I just can't quite put into words what I'm trying to sort out. I'm not trying to avoid the question.

Q. You understand, though, that your difficulty now does reflect an issue of significance for the church in the way it did or did not deal with this issue in previous times?
A. I suppose I can only speak for myself as a member of the church. I take your point.

THE CHAIR: Yes, Mr Stewart.

MR STEWART: Q. Brother Burns, back in 1981, were you shown or made aware of the contents of a letter from Brother Ross Murrin to Brother Kieran Geaney, in July 1981, where Brother Murrin said that the boy had told his parents that he, Brother Murrin, had been sexually involved with the boy and that Brother Murrin said, "I suppose I was worried that it might be that somewhere I did want genital sex with the boys but was unaware of it" - were you aware of the contents of that letter back in 1981?
A. I didn't see that letter then and I've never seen it since.

Q. But its contents have been brought to your attention in more recent times, haven't they?
A. I still haven't seen a copy of that letter or been given details of the content.
Q. Dealing, then, with the consequences of this incident that we've spoken about, which I'll refer to as the "Smith incident", was Brother Murrin relieved of any of his duties at the school?
A. No.

Q. Was he differently supervised at the school?
A. I personally kept a lot more contact with him, yes.

Q. Other than that?
A. Other than that, no, there was no punishment of him or depriving him of any of his duties.

Q. So he wasn't removed from being a dormitory master?
A. No.

Q. And the boys concerned were not removed from his dormitory?
A. No.

Q. And other than what you've spoken about, you keeping closer contact with him, were any protective measures taken?
A. Not beyond getting an assurance from him that it wasn't going to happen again, and speaking to him fairly regularly to see how things were going for him, but again taking his word for it.

Q. Brother Murrin left that school at the end of that year, 1981, and he went on to another school and subsequently many other schools after that. Why did he leave St Augustine's College at the end of that year?
A. My belief is that a decision had been made earlier that year that he was going to leave. That was confirmed. My belief is that that move had nothing to do with this particular incident. If it did have anything to do, I was never made aware of that. And I know the allegation has been made that that is the reason why he was moved. The same allegation was made that it was the reason for my move, which was absolutely nothing to do with it.

Q. The subsequent schools that Brother Murrin went to, you would be aware, were also Marist Brothers schools?
A. Yes, although I didn't follow his career after that.

Q. You had been his most immediately preceding principal when he moved from St Augustine's. Was his new principal
or other authority, such as a Marist community leader where he then went, informed of the issue that had arisen in relation to the Smith incident?
A. I don't know.

Q. Is that not something that you, as principal, would have been involved in in giving some sort of reference or report?
A. No. And because I had fully informed the provincial and he had been involved in the whole decision, I wouldn't have seen it as my place, really.

Q. Now, are you aware that Brother Murrin admitted to abuse at a school called St Gregory's in Campbelltown in 1985?
A. I wasn't aware of that until it became public knowledge.

Q. Yes, but are you aware now that he subsequently admitted that in 1985, there was abuse at St Gregory's?

Q. And a very large settlement was paid?
A. I had no idea what the settlement was then and I still don't know.

Q. One doesn't need to go to it, but it is in tab 100, the second-last line; it has the details. Could that not have been avoided, Brother Burns, if different steps had been taken following the Smith incident at St Augustine's?
A. In one sense, yes, if - yes, had a decision been made that something was to be done, more done for Ross Murrin after he left Cairns, who knows, it may have been avoided, but one can't be totally sure about those things.

Q. Will you accept that different protective steps should have been taken?
A. Yes.

Q. [DK] says in his evidence that controversy around the conduct of Brother Murrin was well known amongst the boys at the school, at St Augustine's, at the time, and it is probably just as well to show you that. That is at tab 24, paragraphs 12 and 13. That's tab 24 of the [DK] tender bundle, page 2, near the foot of the page. This is, in effect, [DK]'s contact report at the time of his Towards Healing claim. He says:

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I remember hearing that Brother Ross had sexually abused a Grade 8 boy from his dorm on a school camp, and that the boy's parents had reported it to the Brothers. I remember finding out ...

And so on. Then one can also look at paragraph 13. I'm not going into the question of factually why both you and Brother Murrin left the school. I'm just addressing the question of the perception amongst the boys at the time. Do you accept that that's right, in other words, that there was controversy amongst the boys; they knew about it, there were rumours circulating?

A. I was not aware of it at the time, and at that time [DK], or anybody else, would not have known that I was going to be shifted at the end of the year, because in fact that hadn't been decided at that stage.

Q. You would accept that a boys' boarding school is a place very susceptible to fast gossip amongst the boys of a sexual nature?

A. Yes, but that doesn't necessarily get made known to staff.

Q. You would accept that [DK] at that time may have had an understanding or perception that Brother Murrin's activities were well known?

A. I don't know what his grounds for that are, but maybe he did.

Q. You attended the mediation or facilitation in the case of [DK], and, as I understand it, you attended in order to answer [DK]'s complaints about your alleged prior knowledge of Brother Murrin's abuse?

A. No, my understanding was that I was there to be involved in discussion on [DK]'s allegations. I didn't know then that he was linking that with Murrin's behaviour, and it certainly wasn't the main topic for the mediation session or the session that I went to, which is variously described in documents as "facilitation", "mediation" or, in one statement, as a conference prior to the mediation.

Q. What I'm addressing now is just your reason for being there, and perhaps it's just as well to identify what others said about that, and then I'll address your understanding of it. So at tab 19 of the [DK] tender
bundle, in the second half of that - this is a file note taken by Brother Alexis Turton on 15 February following a phone call from [DK]. Perhaps we can scroll down further:

After the discussion about Towards Healing he indicated that he had 3 main objectives ... Just dealing with objective (a):

He would like to have a meeting with Peter Rodney, Gerry Burns -

that's you - and Andrew Moraghan as he wanted to clarify for himself how much they knew at the time and whether or not they were trying to protect [Ross Murrin] from any allegations.

So that was the reason, at least recorded there, for your attendance.

It is also canvassed at tab 23, if we can go to that. If one scrolls down. This is an email from [DK] on 17 February to Brother Alexis Turton. He says:

I would like the following outcomes through the Towards Healing process if it is to be a success.

. I would like to meet with Brothers Gerald -

that's you -

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

Were you aware, in attending the mediation or facilitation, that the purpose of your attending was to respond to the
request that you do so by [DK] and that you would then be
able to answer his allegations or concerns with regard to
your prior knowledge and these matters we've just gone
through in these two tabs?
A. I didn't see anything in writing about the invitation
for me to attend. I was told verbally that [DK] wanted me
to attend. I had the impression that my being there was to
add what I could, because I'd been there and been principal
at the time - anything I could contribute, but with the
emphasis on what had happened to [DK]. I don't - quite
honestly, I don't remember at that time thinking that it
had anything to do with Murrin.

Q. In the facilitation itself, [DK] raised these matters,
which are recorded here in these two tabs that I've gone
through, with you and with Brother Andrew; is that right?
A. Sorry?.

Q. In the facilitation meeting itself, the part of it
which you attended, these matters of your knowledge and
whether you were protecting Ross Murrin were raised with
you by [DK]?
A. I'm not sure, not totally sure, that was the case, but
it may well have been.

Q. You were there, Brother Burns. It wasn't that long
ago. You say in your statement, at paragraph 42(d), that
you responded at some length to the questions and
allegations made by [DK]. All I'm asking is a simple
question: what were those questions and allegations? Were
they not these same matters of your prior knowledge and
whether or not you protected Ross Murrin and, as it's put
here, punished [DK] for Ross Murrin's actions?
A. I don't remember any detail around that. My memory of
that session was all focusing on [DK]. But I couldn't
definitively say, now, I remember that he didn't say that.

Q. In responding to what [DK] had to say, did you tell
[DK] about the Smith incident and your knowledge and
involvement in it in 1981?
A. No, I don't believe I ever told [DK] that.

Q. But you accept, as I understand it, that at least one
of the criticisms that [DK] levelled in the mediation to
you was that you had not protected him from Ross Murrin's
actions?
A. Not protected him from Ross Murrin's actions? I'm not
sure what you mean.

Q. Not protected him from abuse by Ross Murrin.
A. Oh, I see what you mean. Where he says in his
statement that we - that I failed to protect him, I thought
that was a wider thing than just anything to do with
Murrin. I didn't get the impression, when he used that
term, that he was referring specifically to Ross Murrin.
It was a general thing, his interests weren't protected.
He makes all sorts of understatements, too, some of which
I --

Q. Brother Burns, let's address it in this way: what do
you understand the criticism by [DK] of you to have been in
the mediation? What did he criticise you of?
A. His main line of questioning to me was about why
I didn't take steps to do something about the fact that his
marks in one subject declined enormously in the last
semester. That's what he wanted - that was the main thing
he wanted to talk to me about, and I had to remind him of
the system that was involved then, and I think I say
somewhere that I wouldn't have known that, the detail of
that, unless it had been brought to my attention by the
teacher or the subject master, or even the deputy, who had
a role in the whole moderation process. But that was the
main focus of his complaint that he was focused on me.

And then, quite surprisingly, he brought up the issue
that I had been given some sort of recognition, and more so
still that I had given the medal back.

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

THE CHAIR: Q. You were asked, when you were interviewed
by the lawyers - it's page 21 of the transcript of your
interview, which is tab 49B, if we can bring that up. Do
you see that paragraph there:

GB: No. My memory of this was of a quiet
sort of a man ... 

That's a reference to your interview with the boy's father.
A. Oh, I see, yes.

Q. Do you see that?
A. That was my impression - that he was a quiet sort of
a man.

Q. Yes, sure. In the course of that paragraph, you say that you were asked whether you believed Brother Ross was a homosexual.
A. Yes.

Q. It's clear, isn't it, from the discussion that you had at the time, that the question of whether the inappropriate conduct, as you describe it, was sexual, homosexual, was clearly raised, wasn't it?
A. I remember the parent saying to me, did I believe, but it came out of the blue, as far as I remember, but I don't remember him specifically relating it to what I was referring to as the inappropriate touching, and I thought it was looking at it in a broader way, particularly --

Q. But this meeting was about a discussion about the boy and the boy leaving the school and what had happened to him at the school, wasn't it?
A. Yes.

Q. That's the touching?
A. Mmm.

Q. And the father is raising the question, is he a homosexual?
A. I don't want to be wise after the event, but I think even then I thought it was a bit funny to link homosexuality with the abuse.

Q. The Commission now knows in various ways of significant issues, which we'll explore during the course of our work, which have arisen in the Marist Brothers in relation to the abuse of children. You understand that, I'm sure?
A. Yes.

Q. I assume that it has been the subject of significant discussion amongst the Marist Brothers in recent times; would that be right?
A. Discussion of the fact there had been abuse?

Q. Yes.
A. Certainly.

Q. And I imagine concern about it; correct?
A. Mmm. It was a great surprise. It was a great concern, yes, mmm.

Q. In your long experience in the brothers, the issue of sexuality for brothers and homosexuality - has it been a subject of discussion going back in time, in your life in the brothers?
A. Open discussion about the issue of homosexuality, no. No.

Q. What about other forms of discussion?
A. I think by that stage some people would have been aware that there were people, homosexual men.

Q. By what stage?
A. By the 1981 that we're referring to.

Q. So you yourself, I take it, were observant to the extent of believing that some of the brothers were homosexual?
A. Yes.

Q. Was it at that stage a matter of open discussion or not?
A. No, no, it wasn't a matter of open discussion - or it wasn't a matter of any open discussion that I was involved in or present with.

THE CHAIR: Yes, thank you.

<EXAMINATION BY MR ANDERSON:

MR ANDERSON: Q. Brother Burns, my name is Andrew Anderson. I'm representing [DK] and [DL] in this matter. If we can start with something you said to counsel assisting, you were asked about a letter that had been written on 22 July 1981. You said that you had never seen that letter and you didn't see it back then.
A. That's a letter written by Ross Murrin to?

Q. Brother Kieran Geaney, I think it was.
A. Oh, right.

Q. You said that you had not seen that letter?
A. When I said before I hadn't seen that letter, I thought you were referring, or reference was being made, to a letter that Ross Murrin wrote to one of the boys.
That's a letter I never saw. I didn't even know he had written it. But this letter to Kieran Geaney - I don't know that I'd ever seen that. I don't know.

Q. What I might do is ask for tab 49B to be brought up and if we could turn to page 32. Tab 49B is the interview that you did in relation to the complaint of Y Smith and Ross Murrin. That was on 18 March 2010.

A. I'm sorry, I'm on page 32.

Q. Yes, and down the bottom of the page, you are recorded as saying, I take it, "I haven't seen that letter." It is then recorded:

Now, Brother Gerald, I have just left you for 5 minutes to read this letter of 21 July 1981 ...

Now, that date is inconsistent with the paragraph above, but you might take it we're all talking about the same letter that's referred to in the paragraph above, and it says, "which you have done. Just to get your comments on a few things", and it goes on, and this is where one of the things is the allegation that he was sexually involved with one of the boys. Do you see that?

A. I see that.

Q. The interview goes on, and you're recorded as discussing your comments in that way. Again, this was 18 March 2010. This was 12 days before you attended the facilitation with [DK]. What I want to suggest is that he was clearly talking to you and Brother Moraghan about Ross Murrin's behaviour and what was done about it in general, not just with respect to himself?

A. I'm afraid you've lost me a bit here. You're talking about my having now - the letter has been shown to me?

Q. Yes.

A. "One of the things Brother Ross is doing in this letter is telling Brother Kieran himself about the complaint", "he told his parents", "I want to assure you that I have not been sexually involved with him", "and I certainly do not want to become involved in this way" - I'm not sure of your question now.

Q. What I want to establish is that at this date, on 18 March, you've seen that the complaints back then were
characterised as sexual. You yourself have had
difficulty in really characterising it to that degree,
you say, back then when it was all happening; correct?
A. Yes.

Q. You're saying now, in evidence before the Commission,
that you now appreciate, with the benefit of hindsight,
that you might have been naive to not consider it as
a criminal matter to be investigated more fully; is that
fair?
A. Yes, fair comment.

Q. What I'm really getting to is when you attended the
facilitation, you did not acknowledge any of these things,
nor did you acknowledge that things might have been done
better by you in this respect with Ross Murrin to Mr [DK]?
A. I don't remember any question to me from [DK] that
would have elicited that response. As I said, the whole
focus of [DK] to me was an attack, or - yes, it was an
attack for what I had or hadn't done as far as his year 12
marks went, and the other issue, too, but I don't remember
any question he asked where I would have been comparing for
him how I would think about the issue now with what I would
have thought then.

Q. Might I suggest this: you at no stage admitted that
you had any knowledge of Ross Murrin doing anything
inappropriate, at the facilitation; you denied that you had
any knowledge of that kind?
A. At the time of the facilitation?

Q. Yes.
A. No, that's not correct.

Q. What did you say to Mr [DK] about your knowledge of
Ross Murrin?
A. I don't recall him specifically asking me about that
sort of thing. I presumed from the way he was talking that
he knew what had happened, and I assumed he knew that
I knew what had happened, but I don't remember him
questioning me in a way that would overtly have wanted me
to say, "Yes, I do remember that at that time I was aware
of it", because I had to be aware of it. I talked to the
boys. I'm still not sure whether I'm answering your
question.

Q. What I suggest is that it would have been plain, from
what Mr [DK] was raising, that he was interested in the knowledge of yourself, as the responsible person in the school, of Ross Murrin generally and what was being done about it?
A. I don't recall that as part of the [DK] - part of the mediation.

Q. You were taken before to the correspondence between [DK] and Alexis Turton. Do you remember being taken to that by counsel assisting?
A. Yes.

Q. I won't traverse it, but do you accept that that makes plain that what Mr [DK] was interested in was, again, your knowledge more generally of what Ross Murrin was doing at the school while you were the principal?
A. At no stage did I deny or claim that I wasn't aware of what - in 1981 of what had happened then. I'm still not sure I'm answering your question.

Q. I have to put to you that you did deny knowledge of any allegations against Ross Murrin back at that time?
A. I can't accept that.

MR ANDERSON: Your Honour, I do have some time to go. I'm conscious of the time.

THE CHAIR: All right, we had best come back tomorrow. We will adjourn until 10 o'clock in the morning.

AT 4PM THE COMMISSION WAS ADJOURNED TO TUESDAY, 23 JANUARY 2014 AT 10AM
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