ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

Public Hearing - Case Study 50
(Day 251)

Level 17, Governor Macquarie Tower
1 Farrer Place, Sydney

On Monday, 20 February 2017 at 10am

Before:

The Chair: Justice Peter McClellan AM
Before Commissioners: Justice Jennifer Ann Coate
Mr Bob Atkinson AO APM
Mr Robert Fitzgerald AM
Professor Helen Milroy
Mr Andrew Murray

Counsel Assisting: Ms Gail Furness SC
Mr Stephen Free
MS FURNESS: Thank you, your Honour. Your Honour, the
hearing today will hear from a panel of those associated
with the Truth, Justice and Healing Council in respect of
their proposal in relation to a Catholic Professional
Standards company.

<FRANCIS JOHN SULLIVAN, sworn: [10.03am]

<NEVILLE JOHN OWEN, sworn: [10.03am]

<MARK BENEDICT COLERIDGE, on former oath: [10.03am]

<EXAMINATION BY MS FURNESS:

MS FURNESS: Mr Owen, can I begin with you. Could you
tell the Royal Commission your full name?

THE HON. NEVILLE OWEN: Neville John Owen.

MS FURNESS: And the relative position you have to this
hearing?

THE HON. NEVILLE OWEN: Since the middle of 2014, I have
been the Chair of the Truth, Justice and Healing Council.

MS FURNESS: And, archbishop, your full name?

ARCHBISHOP COLERIDGE: Mark Benedict Coleridge.

MS FURNESS: You are the Archbishop of Brisbane?

ARCHBISHOP COLERIDGE: The Archbishop of Brisbane.

MS FURNESS: Mr Sullivan, your full name?

MR SULLIVAN: Francis John Sullivan, and I'm the Chief
Executive of the Truth, Justice and Healing Council.

MS FURNESS: How long have you held that position?

MR SULLIVAN: I was formally appointed in December 2012.

MS FURNESS: Mr Owen, I think you are the second Chair of
the Truth, Justice and Healing Council; that's right?

THE HON. NEVILLE OWEN: Correct.
MS FURNESS: Perhaps if I could start with you, Mr Owen, and could you tell the Royal Commission what the purpose and role of the Truth, Justice and Healing Council is?

THE HON. NEVILLE OWEN: The Truth, Justice and Healing Council was set up by Catholic Religious Australia, which is the body that represents about 180 or so of the major religious congregations, and the Australian Catholic Bishops Conference, which represents the dioceses and eparchies in Australia, and it was set up for the purpose of creating a situation where the Church could, wherever possible, speak with one voice in its dealings with the Royal Commission.

MS FURNESS: "With one voice" - you refer to dioceses and orders rather than individuals within those?

THE HON. NEVILLE OWEN: That's correct.

MS FURNESS: The Royal Commission can assume, I take it, that where the Council has published views, those views represent the views of the members?

THE HON. NEVILLE OWEN: That's my understanding.

MS FURNESS: Given your role and purpose, is it intended that the Council will have any ongoing role in relation to the implementation of whatever policies the Church ends up adopting?

THE HON. NEVILLE OWEN: It is likely, I think, that the Truth, Justice and Healing Council will go out of existence. It was set up for a particular purpose, that is, to liaise with the Royal Commission. That is now coming towards an end, and I doubt very much that the Truth, Justice and Healing Council as a council will continue to exist after the Royal Commission has reported. The timing of its demise will of course be a matter for the supervisory group.

In relation to Catholic Professional Standards Limited, we will be available to assist the directors and the members in the implementation phase of that, which would include the passing on of the knowledge that we have developed concerning the preparation and implementation of standards, but we wouldn't have any formal ongoing role.
MS FURNESS: Therefore, to understand the intentions towards implementation, the Royal Commission must look towards those members of the Church who are involved in that work?

THE HON. NEVILLE OWEN: The company was only formed late last year. It was publicly announced in late November. It is very much in its embryonic stage. There are three initial directors who have been appointed, and they are going about the task of appointing a chief executive officer and assembling the remainder of the board. In terms of the intention, I think probably it is the Truth, Justice and Healing Council at the moment that is best placed to assist the Commission in understanding what the intention was and is behind the establishment of the company.

MS FURNESS: But the proposals in relation to the work going forward and the various policies and procedures which the Royal Commission has been provided with - that lays with those who are the leadership of the Church now?

THE HON. NEVILLE OWEN: It does, it does, and of course primarily with the directors of the company.

MS FURNESS: In terms of the policies and procedures of the individual dioceses?

THE HON. NEVILLE OWEN: I'm sorry, I misunderstood you. No, the policies and procedures of the individual dioceses remain with the dioceses, and gradually, as CPS comes into its operational phase, it will liaise with the dioceses and the congregations in relation to those policies and procedures.

MS FURNESS: CPS being the Catholic Professional Standards company?

THE HON. NEVILLE OWEN: Correct.

MS FURNESS: Can I then turn to the details of the company. In your submission to the Royal Commission, which is exhibit 50-004, tab 1, which is the tender bundle for the hearing, it begins on page 90 of that document. Do you have it with you, Mr Owen?

THE HON. NEVILLE OWEN: I do.
MS FURNESS: You begin in the first paragraph by acknowledging that the Church’s professional standards in relation to child protection allegations have not been consistently and adequately applied by all Church authorities?

THE HON. NEVILLE OWEN: Correct.

MS FURNESS: Those professional standards can be found in what documents?

THE HON. NEVILLE OWEN: Mainly in Towards Healing and in Integrity in Ministry and in Integrity in the Service of the Church.

MS FURNESS: What about the Melbourne Response?

THE HON. NEVILLE OWEN: The Melbourne Response is a separate issue, yes.

MS FURNESS: In terms of consistency, the Melbourne Response clearly differs from Towards Healing?

THE HON. NEVILLE OWEN: It does.

MS FURNESS: But you are not referring specifically to that in the first paragraph?

THE HON. NEVILLE OWEN: No, we are referring to inconsistency within the other standards as well.

MS FURNESS: So the way in which, in relation to Towards Healing, individual dioceses applied it?

THE HON. NEVILLE OWEN: Correct.

MS FURNESS: That is in relation to application rather than content. So is it the case we're to understand that no issue is being taken with the content; it's more how, indeed, it has been applied?

THE HON. NEVILLE OWEN: I think that's fair, yes. The content is the content. The words are there. But it has become clear through the case studies, and generally, that there has been inconsistent application of the words in Towards Healing and perhaps also in the other standards.
MS FURNESS: Coming further down the page, you refer to a criticism of Towards Healing of the in-house nature of the process. Do you see that?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: Again, that's in relation to case studies and the Church's own view, I take it, of its policy?

THE HON. NEVILLE OWEN: Certainly in relation to the case studies. I think as with most things in life, people take different views. I couldn't make a statement that says that all Church authorities have the same view of that, but many do.

MS FURNESS: The concern was about the independence, the transparency and the lack of a mechanism for supervision and enforcement?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: Presumably the new proposed body, or the fact that it's in existence but as yet has not become operational, is designed to deal with those three issues probably among other issues?

THE HON. NEVILLE OWEN: In a way, the area of complaints handling has to be looked at separately because the core functions of the Catholic Professional Standards would involve the setting of standards in a wide range of areas. One of those will be complaints handling. To the extent that it does set standards in relation to complaints handling, the intent would certainly be to address the deficiencies in Towards Healing that have been identified.

MS FURNESS: The matters that I've just referred to aren't limited to complaints handling, I don't think, Mr Owen. The first is the in-house nature of the process, that is, that it was being carried out by people associated with the Church; is that right?

THE HON. NEVILLE OWEN: There is a difficulty, I think. If you take the view that was expressed, for example, by Father Tom Doyle that one of the real failings of the Church here is its failure to acknowledge and to use a pastoral approach to its dealings with survivors, it's
difficult to take everything outside.

In my thinking, I like to differentiate between what I call claims resolution on the one hand and complaint handling on the other. Now, some people will want their claim resolved. That can go outside the Church. Other people will want the Church to take responsibility for what has happened. So I find it difficult to see how it can, as a broad statement, always be something other than in-house.

MS FURNESS: In terms of transparency or being subjected to scrutiny, that, I take it, is a reflection of the processes not being publicly known and various deeds of release and the like?

THE HON. NEVILLE OWEN: Yes, and not having a mechanism by which the public can assess the adequacy of the procedures.

MS FURNESS: Thank you. You then refer to another criticism, that those involved in dealing with a particular case have been poorly chosen or insufficiently skilled or trained?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: That's in relation to those within the dioceses who were dealing with the complainants and ultimately resolving the complaints?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: Again, the idea is to set up a structure which resolves that as well as the other issues?

THE HON. NEVILLE OWEN: Well, that will provide the guidance for resolving those sorts of problems.

MS FURNESS: Thank you. You then refer to the Council recommending to the ACBC, the Conference, and the Catholic Religious Australia that a new independently structured company be established to set professional standards and to monitor and report on their implementation?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: When you say "independently structured", that's independent from whom?
THE HON. NEVILLE OWEN: Can I sound a little donnish here?

MS FURNESS: By all means, Mr Owen.

THE HON. NEVILLE OWEN: We do not shy away from the fact that this company is not structurally independent of the institutional Church. The institutional Church will fund it. It is the same issue that arose and that Ms Devlin addressed in her evidence concerning the Irish model. So we don't shy away from that. It is not structurally independent.

I've written from time to time on issues relating to governance, directors duties and so on, and I've always taken a view that you must distinguish between structural independence and functional independence. I have always been concerned about the terminology that we use in the corporate field about independent directors. I think that is misleading, because every director must be independent. If they are not independent, then they can't fulfil their fiduciary duties.

So you look at functional independence, and by "functional independence" I mean the capacity to bring an objective, dispassionate and informed mind to the decision-making process. When we talk about "independent" in that submission and in the structure of Catholic Professional Standards, what I'm referring to is functional independence - a situation where those who are operating the company, managing the company and making the decisions at that level will be functionally independent.

MS FURNESS: So we should read that paragraph as, instead of "independently structured", "functionally structured so as to be independent"?

THE HON. NEVILLE OWEN: Correct.

MS FURNESS: Moving down the page of your submission, you refer to the focus of attention on setting and auditing compliance with professional standards and that the company will not investigate or deal with individual complaints. In terms of the dealing with individual complaints, is it proposed that the complaint handling process which now sits within either Towards Healing or the Melbourne Response will continue?
THE HON. NEVILLE OWEN: That's a matter for the company, and that is something that the standards will have to address because, as the Commission will have seen, particularly last week, there are other models that are now operating. So there are numerous ways of approaching these problems.

What we had hoped - and this was one of the assumptions underlying this - was that there would be a government administered redress scheme so that what I call claims resolution could be done outside the Church and people, the survivors, who choose to go down that route can do so. So the individual complaints that come to the Church authority will still be dealt with by the Church authority but subject to the guidelines, the standards and the principles that are set by Catholic Professional Standards Limited.

It's going to require a pretty significant period of consultations to work out how best to do that. Would you go to one national model? Would you allow each Church authority to develop its own model, provided that they always complied with the set of standards, policies and principles that are in the standards set by Catholic Professional Standards? That's something that I can't answer today, Ms Furness, but that is where this will have to go.

MS FURNESS: So it is expected that the company will set the standards and, as part of that process, perhaps a consultation process, advise whether or not a national scheme is preferable to various independent schemes?

THE HON. NEVILLE OWEN: Correct.

MS FURNESS: Just continuing over - this is on page 91 of your submission - you refer to the company not being structurally independent but functionally independent, subject to the reserve powers. You then refer to the reserve powers a little later on. Perhaps you can explain those?

THE HON. NEVILLE OWEN: Can I say that in corporate organisations that have developed in the Catholic world over the last 20 or so years - and this was a matter to which one of the witnesses in the first week referred - to
see reserve powers is not uncommon. They differ from time
to time. But what it means is that you are looking at
uncharted waters, often, for an organisation, and this is
an example. This is going into areas that the bishops and
the congregational leaders have not before been. So there
are some reserve powers which are there to assist everyone
to get confidence in the system. Do you want me to go --

MS FURNESS: Certainly.

THE HON. NEVILLE OWEN: How would you like me to do this?

MS FURNESS: I'm happy if you want to complete your
answer, or if that is sufficient for your purposes, we can
move on, Mr Owen.

THE HON. NEVILLE OWEN: I'm happy.

MS FURNESS: We will come to the terms of the document
shortly. The primary goal of it is to set the standards
and enforce those standards that it has set?

THE HON. NEVILLE OWEN: Correct, and to educate and train.

MS FURNESS: If you continue down, you refer to the
authorities being required to enter into a contract with
the company and agree that compliance will be audited and
the results made public. How will that requirement be
effected?

THE HON. NEVILLE OWEN: Which requirement?

MS FURNESS: The requirement of the authorities to enter
into a contract.

THE HON. NEVILLE OWEN: It will be much the same as the
Irish experience, where there will be dealings between
Catholic Professional Standards Limited and the Church
authorities - that's the dioceses and the major religious
institutions - in which the nature of the contractual
arrangement will be hammered out.

Now, as we heard from Ms Devlin, that has gone through
changes from time to time and I have no doubt that that's
what will happen here, but it will be a case of
consultation, drafts, redrafts and then a contractually
binding arrangement by which the Church authorities agree
to honour and comply with the standards and to submit
themselves to audit of the level of their compliance and
application of those standards and to take on board the
public reporting of the results of the audit.

MS FURNESS: Are you expecting that each of the major
dioceses and orders will participate?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: And that expectation is based on
consultation?

THE HON. NEVILLE OWEN: That expectation comes from the
fact that the approval to this initiative was given by both
the Australian Catholic Bishops Conference, which is
constituted by the dioceses and eparchies, and by Catholic
Religious Australia, which is constituted by the major
religious organisations.

THE CHAIR: Mr Owen, Towards Healing, I think, was
a product of the bishops, wasn't it?

THE HON. NEVILLE OWEN: Yes.

THE CHAIR: As I understand it, and I think you have
confirmed, it hasn't always been applied by the different
dioceses?

THE HON. NEVILLE OWEN: Correct, yes.

THE CHAIR: How can we have confidence, then, going
forward with this new initiative?

THE HON. NEVILLE OWEN: Because there is an audit
requirement that wasn't in that initial arrangement, and it
is an audit requirement which will be backed by public
reporting.

THE CHAIR: But how do we know they will all come in?

THE HON. NEVILLE OWEN: We can only go on the fact that
this has been through a long period of discussion and
consultation. Various views were expressed. All sorts of
reservations were expressed and held from time to time. So
I think the fact that there has been an endorsement by
those two bodies is one thing that you can go on. And the
nature of the discussions which have been carried out gives me, certainly, some confidence. I can't give any guarantees.

I think Ms Devlin said that in the rewrite of their memoranda of understanding or memoranda of agreement, there are some that are still outside the tent. I can't give any guarantees, but those two things - the nature of the discussions and the endorsement by the organisations - are things that you, the Commissioners, could look at to have some confidence that this is more than just window dressing or words.

MS FURNESS: Is it intended that the bishop or provincial enter into the contract?

THE HON. NEVILLE OWEN: Correct.

MS FURNESS: The responsibilities, nevertheless, remain with the diocese or order?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: So the standards are created by the body, and, when promulgated, those standards are required, through the contract with the bishop, to be followed?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: Then it is the responsibility of the bishop to ensure that that happens?

THE HON. NEVILLE OWEN: Correct.

MS FURNESS: How does the bishop ensure that those beneath him comply? How is that intended to work?

THE HON. NEVILLE OWEN: That is something that will no doubt be part of this overall system. There is some level of that already, for example, with the Catholic Education systems, and we've heard that there are different models. In the case of a Catholic Education system which is responsible to government but which is acting on a delegated authority from the bishops, as is the case in Western Australia, for example, there are mechanisms in place, reporting mechanisms, between the directors of Catholic Education and the Catholic Education Commission.
and between the Catholic Education Commission and the
directors and the bishops. So in some areas, that is
already in place, but I would imagine that there will be
guidance notes similar to the ones about which Ms Devlin
spoke, which will go into detail on that sort of thing.

It comes back to something that Commissioner Murray
mentioned about stress testing: how do you stress test all
of this? These are things that just have to be worked out.

MS FURNESS: In terms of the priest and the bishop, are
you suggesting that there might be some form of delegation
similar to the Catholic Education Commission?

THE HON. NEVILLE OWEN: I wouldn't think so - not
a delegation as such, other than to the extent to which
there is delegation already. Parish priests, for example,
do have a certain amount of autonomy separate from the
bishop under canon law, so there is already that in place.
I wouldn't have thought that there would be express
delegation of these sorts of standards, for example,
particularly child safety standards. If the bishop adopts
a child safety standard or protocol for application within
his diocese, I can't imagine that he would delegate to the
parish priest an authority, for example, to tinker with it
and apply it in part or not at all.

MS FURNESS: What happens if the parish priest doesn't
comply with the standards?

THE HON. NEVILLE OWEN: Then there is going to be an
adverse audit report on the bishop. So the bishop has
to --

MS FURNESS: Perhaps if I could repeat the question for
you. What happens if the parish priest doesn't comply with
the standards?

THE HON. NEVILLE OWEN: There will be an adverse audit
report that will be published.

MS FURNESS: What power does the bishop have to require
the parish priest to comply with the standards?

THE HON. NEVILLE OWEN: That is the normal situation that
applies in canon law between the bishop and his priest.
I can't really take that any further than that. Perhaps
someone else on the panel may be able to give you a more specific answer to that, as to what the actual powers of the bishop are to deal with a recalcitrant individual.

MS FURNESS: If the priest doesn't follow the standards, the bishop has power under canon law to, effectively, stand him down?

THE HON. NEVILLE OWEN: That's right, yes.

MS FURNESS: That power would be able to be exercised in relation to failing to comply with the standards, I take it?

THE HON. NEVILLE OWEN: It could.

COMMISSIONER MURRAY: Before you move on, Justice Owen - I think you are still referred to in that way?

THE HON. NEVILLE OWEN: It depends whether it's my grandchildren or someone outside.

COMMISSIONER MURRAY: One of the difficulties with enforcement is if the person who is subject to enforcement is independent. We understand that whilst there are employee-like relationships between a bishop and a priest, the priest is functionally independent. Therefore, for enforcement and audit to be effective, it would seem to me that not only would the diocese and the bishop have to sign up to the standards, but also the priests, because otherwise they could simply defy, legitimately defy, any enforcement over them.

Given that peculiar nature of the religious relationship in employment law, do you think that it's necessary for the priests themselves to agree contractually to this obligation?

THE HON. NEVILLE OWEN: I don't think it would operate where there was a contractual arrangement between the priest and Catholic Professional Standards Limited. I can only speak from the Western Australian experience, but as I understand the safeguarding protocols that operate in the Western Australian environment, the priests sign a code of conduct to be bound by those standards and to apply those standards. That's as I understand it. I may be wrong in that, but that's as I understand it. So that would be the
mechanism, I think. But that would not be a code of
conduct between the priest and Catholic Professional
Standards Limited; it would be between the priest and his
ordinary.

MS FURNESS: So it is the case that existing standards
imposed by contract or law, legislation, such as
educational standards and out-of-home care standards, will
not be replicated or otherwise interfered with by the
standards that the company will set?

THE HON. NEVILLE OWEN: That was a linchpin of this
arrangement. Particularly the education authorities made
it abundantly clear that they didn't want to be put in
a position where they were having to do twice the paperwork
and undergo twice the audit pain for the same result, so
that the standards that are set by governments - for
example, the Child Safe Standards in Victoria under the
recent ministerial order - will apply and they will have to
be honoured. They will be part of the standards, but they
won't be separately audited. So if the authority concerned
can demonstrate that it has complied with the regulatory
regime to the satisfaction of the government regulatory
agency, it won't have to do all of that again.

THE CHAIR: Ms Furness, that noise is just impossible.
I think we should adjourn and someone can do something to
check the system. It has to be fixed. I am sorry,
gentlemen, I think we should stop and just clear it up. We
will adjourn for a short time.

SHORT ADJOURNMENT

MS FURNESS: Your Honour, nothing has actually changed,
other than that all of the microphones have been checked.
So one has to proceed. If it doesn't work, we will have to
adjourn.

Mr Owen, I was asking you about the standards that are
already applied through legislation or contracts, and you
have spoken primarily of schools, Catholic schools, which
have to comply with various other standards, and they won't
be required to comply with the standards that the company
ultimately sets; that's right?

THE HON. NEVILLE OWEN: No, they won't have to duplicate
the process of establishing compliance. They will still
have to comply with those standards, and those standards
will be, by incorporation, part of the overall standards of
the system.

MS FURNESS: I understand that, but the standards that the
company will set will be in addition to or the same as and
therefore already covered by the school standards?

THE HON. NEVILLE OWEN: In harmony with and then in
addition to areas that are not covered by the government
mandated standards.

MS FURNESS: So that, I take it, it is the same in
relation to the Catholic welfare arm that provides
out-of-home care and other youth-based services?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: It is too early to tell whether the standards
set by the company will significantly extend those or not?

THE HON. NEVILLE OWEN: Correct.

MS FURNESS: It is the case, isn't it, that most dioceses'
and perhaps orders' engagement with children is through
schools and the out-of-home care work?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: So that to the extent that the standards
either replicate or don't go further than the existing
legislative or contractual standards, the engagement that
will be covered by the standards of the company is
a relatively small group of children?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: And those will be children who engage with
the parish through parish and presbytery activities?

THE HON. NEVILLE OWEN: That would be one, yes.

MS FURNESS: And to the extent that the parish priest
engages with children in schools, other than, of course, as
a teacher?

THE HON. NEVILLE OWEN: Yes.
MS FURNESS: Any others?

THE HON. NEVILLE OWEN: There may be organisations, the younger arms of groups like Catholic Youth, for example - it would extend to those as well.

MS FURNESS: The Royal Commission has heard from a number of those agencies, as you know, and their evidence is that nearly all of their activities are funded by Commonwealth or state governments, and with that funding comes conditions. You are conscious of that?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: So to the extent that there are youth arm, as you describe it, activities and it's funded, it will have its own sets of conditions?

THE HON. NEVILLE OWEN: It would do, yes.

MS FURNESS: Can we turn to the constitution of your company, which is appendix C or annexure C to your submission. It begins with 0099 at the top, for the Ringtail reference. If we can turn first to the objects and powers - this is at 5.1 on page 4. Do you have that in front of you?

THE HON. NEVILLE OWEN: I do.

MS FURNESS: You can see that is:

(i) promote the safety of,
(ii) prevent abuse and/or misconduct ... and
(iii) respond to allegations ...

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: So that covers the complaint handling process as well?

THE HON. NEVILLE OWEN: It does.

MS FURNESS: Then, secondly:

Entering into contractual arrangements ...
THE HON. NEVILLE OWEN: Yes.

MS FURNESS: That's the matter you have referred to before?

THE HON. NEVILLE OWEN: Correct.

MS FURNESS: By that means or mechanism, the authorities will have compliance checks?

THE HON. NEVILLE OWEN: Correct.

MS FURNESS: And then education and training and auditing compliance?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: Just in relation to (d), auditing compliance, is that proposed to be done by an external auditor?

THE HON. NEVILLE OWEN: I would imagine so. That's the thinking, that Catholic Professional Standards Limited would accredit external audit agencies and it would be the external audit agencies that would conduct the audits.

MS FURNESS: Thank you. Turning over to 5.3, there is reference there to the reports - that is, the compliance reports - being:

... made public unless the Board resolves that the information:
(a) has the potential to cause harm to Church Contacts ...

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: Can you help us with "Contacts"?

THE HON. NEVILLE OWEN: "Church Contacts" is a defined term in the constitution and it relates to, in this context, effectively, children and vulnerable adults who come into contact with the Church, who are either in the care of the Church or who have some association with Church. In other words, it is the identification of the people to whom the protective mechanism is addressed.
MS FURNESS: The clause doesn't refer to redacting or otherwise limiting the publication to protect those people, but I take it that would be anticipated?

THE HON. NEVILLE OWEN: Yes. By nature, I'm in favour of principles rather than prescription. I don't like clauses in agreements that go on for pages and pages.

MS FURNESS: However, you would appreciate that it is extremely broad to say "has the potential to cause harm to Church Contacts" --

THE HON. NEVILLE OWEN: I do.

MS FURNESS: -- when, indeed, most of the work to be done will be with vulnerable people?

THE HON. NEVILLE OWEN: Yes, I accept that.

MS FURNESS: The second one, "is inaccurate"; the third, "is likely to cause confusion or to mislead the public" - again, very broad?

THE HON. NEVILLE OWEN: It is.

MS FURNESS: And then "could endanger public safety"?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: Taking all of these four together, it could be argued that they provide very large reasons for not publishing?

THE HON. NEVILLE OWEN: Yes, that's one way of interpreting it, but I can only go on the intention that is behind this. The teeth in this system is public reporting.

MS FURNESS: That's why I take you to these clauses, Mr Owen. I understand that, and that's clear from what you have said earlier. However, this clause seems to provide extraordinary power to the board not to publish?

THE HON. NEVILLE OWEN: Yes, it does. It does. But the intention is that public reporting will be the norm.

THE CHAIR: Mr Owen, it may be that public confidence in this body won't be enhanced, though, by a clause that is so
broad.

THE HON. NEVILLE OWEN: Well, it's in its embryonic stages, your Honour. This, I suppose, is an easy answer. There is a lot yet to be worked out, and if the board, for example - or, as you say, through expressions of public concern, perhaps coming from what happens today, perhaps as the mechanisms work themselves out - if the constitution needs to be changed, then there is a mechanism for doing that.

THE CHAIR: The question is who judges the need for the change? That's the issue. I mean, the Church proffers this as the, as it were, current position, and if, as you accept, there is such a broad discretion in the board not to publish, then people might think that this will never change; there won't be publication.

THE HON. NEVILLE OWEN: That is not the intention. It never was the intention. Throughout the discussions in which I've been involved, it was made clear that this was the mechanism by which accountability would be held into the system. The drafting is there. I can't take it any further than that, your Honour.

MS FURNESS: Then in terms of membership, at the bottom of that page, there is reference to the members being (a) the Australian Episcopal Conference, which is effectively the Catholic Religious? No, I'm sorry --

THE HON. NEVILLE OWEN: No, that's the Bishops Conference.

MS FURNESS: That's the Bishops Conference. Then (b) is the Catholic Religious?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: And then (c) is "any other entity that is admitted as a Member". Is there intended there to be anyone else identified?

THE HON. NEVILLE OWEN: The logical one would be the umbrella body just recently established for the ministerial public juridic person. I think there are 11 or 12 of them that have assumed the missions of various religious congregations, in health and education in particular. That would be one body that could come in under the "any other".
MS FURNESS: Has that body given an indication to come in yet or not?

THE HON. NEVILLE OWEN: No. They have been involved in discussions, but like Catholic Professional Standards Limited itself, they are still feeling their way.

MS FURNESS: If we can come to clause 35, this is the clause that regulates the number of directors. You see that it is between 3 and 9 directors, and the nomination committee shall take into account considerations in clause 39, to which I will come, and:

... the Member Representatives shall by resolution determine whether a candidate ... shall become a Director.

So it is the case that, effectively, the archbishops and the provincials determine who is a director; is that how we read that?

THE HON. NEVILLE OWEN: Correct. It's the members - the members act through their member representatives. That's the efficiency part. But it will be the member representatives who will make the appointment of the directors.

MS FURNESS: And, shortly, that means the archbishops and the provincials?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: Thank you. At clause 36.4 there is reference to:

When electing a Director, Member Representatives should consider whether the Board is comprised of an appropriate range of skills.

Do you see that?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: Then the considerations by the nomination committee are in clause 39, and the first is:
... a commitment to and understanding of
the philosophy and work of the Company ...

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: That can best be understood with reference to
the objects of the company?

THE HON. NEVILLE OWEN: Correct.

MS FURNESS: Secondly:

... exemplifies the Company's vision,
mission and core values ...

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: What's the source of that for the nomination
committee?

THE HON. NEVILLE OWEN: I would imagine - most
organisations these days develop mission statements, and
I think that's what that is referring to. The company will
develop a mission statement, and that will then be one of
the guiding principles for use by the nominations
committee.

MS FURNESS: This will be, in effect, directors that will
be appointed when vacancies arise rather than the initial
directors; is that right?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: Then the third one is:

... demonstrates a commitment to and
understanding of the philosophy and works
of the Church ...

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: Effectively, a committed Catholic?

THE HON. NEVILLE OWEN: No, not at all. Could I give you
an example?
MS FURNESS: Certainly.

THE HON. NEVILLE OWEN: I've been involved with a large number of Catholic educational establishments, secondary schools in particular. In my time, the most effective deputy principal was a person who was totally committed to the philosophy and works of the Church, and he was a Baptist.

MS FURNESS: So a religious person, just not of the Catholic faith?

THE HON. NEVILLE OWEN: In that particular example. I can't think of any others that you would say were agnostic, but there may have been.

MS FURNESS: You understand looking at the considerations by the nomination committee in (a), (b) and (c), it is almost inevitable to assume that the directors will be committed Catholics?

THE HON. NEVILLE OWEN: I don't think that's right.

MS FURNESS: No?

THE HON. NEVILLE OWEN: No, I don't.

MS FURNESS: That's by reference to what you have given as an example in (c) of somebody who could be committed to the work of the Church but of a different faith?

THE HON. NEVILLE OWEN: Yes, I would take it a little bit further than that. I think that an organisation like this, to fulfil its role, will need a broader range of thinking than simply people who are committed Catholics.

MS FURNESS: Although that is an essential consideration, according to the clause?

THE HON. NEVILLE OWEN: Being a committed Catholic?

MS FURNESS: Being "committed to and understanding the philosophy and works of the Church".

THE HON. NEVILLE OWEN: That's different to being a committed Catholic. People can, I think, have a commitment to the sorts of values and ideals that are
central to the gospel values of the Catholic Church and yet not be Catholics.

MS FURNESS: I don't quite understand that, Mr Owen, but unless you want to explain it further, we can move beyond that.

THE HON. NEVILLE OWEN: Well, I don't think I can.

MS FURNESS: Thank you. Then coming over to the reserve powers that you referred to earlier, the effect of the reserve powers is that the approval of the archbishops and provincials is necessary before any of these matters become effective?

THE HON. NEVILLE OWEN: Correct.

MS FURNESS: The first is:

Adoption or amendment of any Professional Standard ...

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: One of the key objects of the company is to set those standards?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: Secondly:

Approval of the strategic plan, business plan and annual budget ...

which is fairly standard?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: Thirdly:

A decision to terminate membership ...

THE HON. NEVILLE OWEN: I have a problem with that, because the directors don't have a power to terminate membership.

MS FURNESS: Well, no, because the membership are those
who appoint the board?

THE HON. NEVILLE OWEN: I think that's a decision to terminate membership of the company.

MS FURNESS: These powers are:

... the approval of the Member Representatives shall be required as a pre-requisite to any decision of the Board becoming effective ...

So you are assuming that the board, in this case, would say to the membership, "We want to terminate one of you", and --

THE HON. NEVILLE OWEN: What I'm saying is I think - I haven't used this phrase for a long time - it is inelegantly drafted. I don't think it should be there at all, because the board has no power to terminate membership of the company.

MS FURNESS: Then (d) is:

Taking any disciplinary action against a Catholic Entity concerning non-compliance with Professional Standards ...

That's perhaps the second key aspect of the objects of the board, to set the standards and then audit compliance and take action; is that right?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: So effectively what is reserved to the members is the key work the company, isn't it?

THE HON. NEVILLE OWEN: Again, can I say, reading this closely over the last few days, I would make the same comment: I think it's inelegantly drafted. I don't think it is actually a reserve power, and I say that because the directors don't have a power to discipline.

MS FURNESS: Is there any reference in the constitution to disciplining?

THE HON. NEVILLE OWEN: No.
MS FURNESS: The reference is only to auditing compliance?

THE HON. NEVILLE OWEN: And publication.

MS FURNESS: So the constitution, other than the reserve power, doesn't provide for what to do if a bishop doesn't comply with the standards?

THE HON. NEVILLE OWEN: That's right. I'm using the word "teeth" because I'm trying to avoid the use of the word "sanction", but the teeth is publication. There are no other disciplinary functions.

MS FURNESS: The effect of this in the reserve powers is nullified by the fact that the board doesn't have any of the powers to give effect to (d); is that what you are saying?

THE HON. NEVILLE OWEN: Yes. I could proffer a view as to why it might be there, if that would help the Commissioners?

MS FURNESS: Certainly.

THE HON. NEVILLE OWEN: The wording is "disciplinary action against a Catholic Entity". There is no contractual relationship between a Catholic entity and Catholic Professional Standards Limited. It may be that what that is there for is to reinforce the view that the only body that could discipline a Catholic entity within the structures of canon law would be a bishop. Now, those disciplinary powers are limited. It would be for others to tell you what they are or what they may be.

I think it may be there out of an abundance of caution to indicate that it is not the role of CPS to discipline Catholic entities. But in my view, again, the drafting is not particularly happy because I don't think that there is a power to discipline, and therefore it can't be a reserve power.

MS FURNESS: So in the event that there wasn't compliance with the standards by a bishop, then would you see that canon law provisions, whatever they might be, would have a part to play in relation to the bishop rather than this constitution?
THE HON. NEVILLE OWEN: Correct.

MS FURNESS: And whether or not there is a role in canon law for that, for the moment we just don't know?

THE HON. NEVILLE OWEN: I don't know. Sorry, I can't explain it.

MS FURNESS: Thank you. Now, the members appoint the first directors?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: And subsequent directors after a vacancy arises - is that still the members?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: You will know that under the Irish scheme that Ms Devlin described the other day, after the first vacancies arise, the chair of the board appoints the directors.

THE HON. NEVILLE OWEN: I heard Ms Devlin say that. I can only assume that she is talking about a practice that has developed because in the constitution of the Irish company, articles 32 and 34 indicate that it is exactly the same system as the Australian model, which is that the members appoint the directors. I can only assume she is talking about a practice that has developed.

MS FURNESS: And that practice could or could not develop here?

THE HON. NEVILLE OWEN: My memory from reading the Irish constitution is that they don't have a nominations committee - they don't have provision for a nominations committee.

MS FURNESS: That's right.

THE HON. NEVILLE OWEN: To that extent, our system is more structured. So that practice might develop, but if you are going to comply strictly with the constitution, it would need to go through and get a recommendation from the nominations committee.
MS FURNESS: Do you have a view on whether that is a preferable approach or not?

THE HON. NEVILLE OWEN: Me personally?

MS FURNESS: Yes.

THE HON. NEVILLE OWEN: I think boards should be self-renewing. My preference would be to follow a practice similar to the Irish model, but that's not what the constitution says.

MS FURNESS: No, but the constitution could be amended?

THE HON. NEVILLE OWEN: The constitution could be amended, yes.

MS FURNESS: Is there any provision for the directors to have a stated duration of directorship?

THE HON. NEVILLE OWEN: I think there is. I'm not sure where it is, but I think it's a three-year term.

MS FURNESS: Thank you. In terms of the training of directors, you will have heard there has been a deal of evidence about the necessity to train those who have roles in relation to child protection more broadly, and that includes directors. Is there any proposal in relation to that?

THE HON. NEVILLE OWEN: Are you talking about directors of the state Professional Standards Offices or directors of this company?

MS FURNESS: Directors of this company.

THE HON. NEVILLE OWEN: I would be very surprised if the directors didn't involve themselves in training, because this is a very specialised area, child protection, and also the protection of vulnerable adults is a very specialised area. It is the way of the "corporate" world these days that directors do involve themselves in training.

MS FURNESS: Modern governance would tell us that the directors should be trained?
THE HON. NEVILLE OWEN: Correct, yes.

MS FURNESS: Who appoints the staff?

THE HON. NEVILLE OWEN: The directors.

MS FURNESS: With the approval of the members?

THE HON. NEVILLE OWEN: There is nothing in the constitution that says that. I notice that that is the case in the Irish constitution, that it is actually I think the sponsoring body that approves the appointment of the CEO and the senior staff, but under this constitution, it would be the standard conventional system where it is the directors, not the members, that appoint the CEO and the senior staff, or all staff.

MS FURNESS: How is the appointment of the CEO progressing?

THE HON. NEVILLE OWEN: As I understand it, there is a head-hunter who has been engaged, and the process of finding candidates and short listing is reasonably well advanced, but I haven't had an update for some weeks.

MS FURNESS: Is there a budget that has been set?

THE HON. NEVILLE OWEN: That is outside my knowledge. I don't know.

MS FURNESS: You will recall from Ms Devlin's evidence that the resources were provided by the bishops and provincials based on how much money they had, effectively.

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: Is it expected that a similar approach will happen here?

THE HON. NEVILLE OWEN: As far as I'm aware, the funding model as between the members has not been finalised.

MS FURNESS: During the course of the last two weeks, there has been much mention of governance and the like, and there has been some evidence that without the necessary resources, initiatives - which could include this - either perform inadequately or fail because they just don't have
enough money. Has anything been put in place that you are aware of here to make sure that that doesn't happen?

THE HON. NEVILLE OWEN: No, and the same situation applies. In all of the discussions in which I have been involved, there is a recognition that this body must be properly resourced. It is recognised that that was one of the problems with the National Committee for Professional Standards. It must be resourced. You are quite right, if it is not, it will fail.

MS FURNESS: Who is responsible for making sure it is, as opposed to providing the funds?

THE HON. NEVILLE OWEN: It comes back to the Australian Catholic Bishops Conference and Catholic Religious Australia.

MS FURNESS: You have indicated that the teeth of the company are in the publication of the audits; is that right?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: Is it proposed to publish any other information in addition to the audits?

THE HON. NEVILLE OWEN: As I understand it, there will be the annual reports. This company, again as I understand it, will have its statutory reporting obligations. Also, I think it either is or is to be registered under the charities and not-for-profits legislation, so that carries with it some reporting functions. It would publish an annual report, in much the same way as Ms Devlin has described and is in the papers for the Irish model.

MS FURNESS: Is it anticipated that that annual report will include statistics on numbers and outcomes of complaints at all?

THE HON. NEVILLE OWEN: That's my understanding, that it would. I can't be specific. But, yes, I think - certainly there will be statistical information and I am assuming that part of that statistical information will go to the outcomes and handling of complaints.

MS FURNESS: There will need to be some arrangement in
relation to the redress scheme, however it ultimately
looks, so that that information will be conveyed via
a reporting mechanism, a public reporting mechanism?

THE HON. NEVILLE OWEN: Yes, because we are going to be
operating in at least two compensatory and complaints
handling systems, yes.

MS FURNESS: Is it proposed that outcomes for priests and
religious the subject of complaints and/or redress be
published?

THE HON. NEVILLE OWEN: Individuals?

MS FURNESS: Yes.

THE HON. NEVILLE OWEN: I don't know. No, I don't know
that.

MS FURNESS: The United States system, which I'm sure you
are aware of - its annual report, which is in the tender
documents, contains pages and pages of statistics. Have
you had a look at those?

THE HON. NEVILLE OWEN: I have, yes.

MS FURNESS: Is it something that the Council can answer -
not now but perhaps by the end of this week - by reference
to those pages and pages of statistics, what it is intended
be published, by using that as a benchmark?

THE HON. NEVILLE OWEN: I doubt it, Ms Furness, because
that would be, in a way, binding the directors. That's
a decision for the directors. I am quite happy - quite
happy - to give you some information as to what the
thinking of the Council has been, but I can't take it that
one step further and bind the directors.

MS FURNESS: No, my question was the intention of the
Council in respect of it. So I think from what you have
just said, you could provide that?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: Thank you. Perhaps if I could ask whether
that is possible to be done by Thursday?
THE HON. NEVILLE OWEN: I am having a nod from my right.

Yes.

MS FURNESS: That's probably all you need, Mr Owen, is a nod from your right. Thank you. Now, as you would know, in terms of good governance, there is usually a process of review of the work of a company or the process to be followed by a company; do you accept that?

THE HON. NEVILLE OWEN: I do.

MS FURNESS: And there is in respect of this company and its work?

THE HON. NEVILLE OWEN: I think it is specifically provided for.

MS FURNESS: And you would expect that?

THE HON. NEVILLE OWEN: Absolutely.

MS FURNESS: In terms of the standards which are to be set, equally it would be expected that within a reasonable period of time, they would be reviewed?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: Much as Ms Devlin provided?

THE HON. NEVILLE OWEN: Correct.

MS FURNESS: One of the issues that she specifically raised was in relation to data sharing --

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: -- and the difficulties, obviously working within their particular legal framework, that have arisen in relation to data sharing between different dioceses and the company. What do you think will happen in that area with this company?

THE HON. NEVILLE OWEN: Under our privacy laws, I think there will be similar problems. Some of them may be able to be cured by the contractual arrangements that are entered into, but for others there may need to be some sort of legislative assistance. I haven't developed my thinking.

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because I haven't actually needed to address that particular issue, but the sorts of problems to which Ms Devlin referred I think will also occur here because of our privacy laws.

MS FURNESS: I don't think there is a constitutional problem in quite the same way that she described there, but certainly there are a number of laws here as well as contractual provisions?

THE HON. NEVILLE OWEN: Yes, that's right. But that's why I say that some of that may be able to be cured by the contractual arrangements through the memorandum of understanding.

MS FURNESS: But it would be an issue that would need to be on the members' or board's table very early on, wouldn't it?

THE HON. NEVILLE OWEN: I'm sure it will be, because it's fundamental.

MS FURNESS: It's also fundamental to publishing statistics?

THE HON. NEVILLE OWEN: Correct.

MS FURNESS: You will also know from Ms Devlin's evidence that she has a safeguarding review process - that's perhaps more my language than hers. Do you understand what I mean?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: Where members can sign up to be part of this process where the board engages external people to review what they are doing in that area?

THE HON. NEVILLE OWEN: Are you talking about what she referred to as the national case management scheme?

MS FURNESS: I was referring to the safeguarding review, which was somewhat different, I thought. The case management was more in relation to individual cases, was it not?

THE HON. NEVILLE OWEN: Yes, it was.
MS FURNESS: And the review was more broadly about policies and processes.

THE HON. NEVILLE OWEN: Mmm-hmm.

MS FURNESS: Anything that the Council has thought of in relation to the broader reviews, or do you think the compliance process will cover that?

THE HON. NEVILLE OWEN: I think that would probably be part of the compliance process. The use of external accredited auditors is one thing, but I think there may well be a need to get other assistance from outside to ensure that what is being done is in accordance not only with what the company thinks are appropriate standards but which general experience dictates likewise.

MS FURNESS: That's in relation to the creation of the standards, and I will come to that. This is more looking at whether or not the work of, let's say, a diocese as a whole is complying with the terms of the standards but also the principles?

THE HON. NEVILLE OWEN: I'm sorry, that is what I was referring to.

MS FURNESS: Thank you. Now, the case management committee that she referred to is a body, again, that a member can join that provides information on more individual cases; is that your understanding?

THE HON. NEVILLE OWEN: Yes.

MS FURNESS: Is that something the Council has considered?

THE HON. NEVILLE OWEN: From my perspective, not until we heard Ms Devlin's evidence. As far as I'm concerned, that has a lot to recommend it, but, again, I can't bind the directors. The constitution would be broad enough, under its education and training function, to provide for that sort of a mechanism. That's something that the directors will be apprised of.

MS FURNESS: That is an issue that would relate closely, I suggest, with the developing of the complaint handling standards and also how it fits in with the redress processes?
MS FURNESS: Complying with the standard, but nevertheless the practice differing between dioceses, although it is said that they comply with the standards or principles?

THE HON. NEVILLE OWEN: Yes, that's right.

MS FURNESS: That would leave you in the situation you are in today, firstly, in relation to the Melbourne Response standing outside, but, secondly, in relation to inconsistent application of Towards Healing?

THE HON. NEVILLE OWEN: Yes. That has to be avoided.

MS FURNESS: How can it be avoided under this company structure?

THE HON. NEVILLE OWEN: Because the standards will give guidance as to principles to which whatever the model is that is being used by a particular Church authority - that must comply with those particular standards. Those standards will be backed by - they will be at the level of principles and policies, but I would imagine that they will also be supplemented by strong guidance notes. So the actual operation of the adopted model will have to be within the confines that are developed within that overall framework of assistance mechanisms.

MS FURNESS: That sounds like a description of Towards Healing.

THE HON. NEVILLE OWEN: No, it's not, because Towards Healing - as I understand the criticism, the tying together aspect of Towards Healing was never really properly implemented, and so that's why the inconsistencies developed.

If you had more direct standards, policies and guidance, then the likelihood of these inconsistent approaches developing would be lessened. You are never going to be able to eliminate that unless you have a single standard approach, and, even then, I suppose, it depends on
the way the individual person approaches them. Without that, without that strong guidance and something tying it all together, there is a danger of inconsistency arising again, just as it has in Towards Healing.

MS FURNESS: But the Council, certainly, to the extent that it has influence in this respect, acknowledges the inconsistencies in Towards Healing and the reason for reducing or eliminating that inconsistency, and that approach will be told to or at least influence the work of the company?

THE HON. NEVILLE OWEN: It will certainly be told to the company, and I would hope it influences the work of the company.

MS FURNESS: Thank you. Your Honour, I'm about to move on to a different topic.

THE CHAIR: Will you be much longer with these gentlemen today?

MS FURNESS: A little bit.

THE CHAIR: All right. We will take the short adjournment.

SHORT ADJOURNMENT

MS FURNESS: Could I turn to you, archbishop. Your diocese, the Archdiocese of Brisbane, is one of the authorising Church bodies for the Council; that's right?

ARCHBISHOP COLERIDGE: That's right.

MS FURNESS: In addition, I think you are a member of the supervisory group?

ARCHBISHOP COLERIDGE: I am, and a member of the Truth, Justice and Healing Council as well, and the National Committee for Professional Standards.

MS FURNESS: With the supervisory group, what role does that play with the Council?

ARCHBISHOP COLERIDGE: It was simply to supervise the work of the Council and to advise the Council on what might be
the best way forward. It was to keep in touch with the
work of the Council, the bishops and the major superiors,
so to facilitate a kind of exchange between the Council and
the bodies which established it.

MS FURNESS: The supervisory group has clergy and
religious?

ARCHBISHOP COLERIDGE: Indeed. It has what is called the
Permanent Committee of the Bishops Conference, which is
a group of about six or seven bishops, most of them fairly
senior, and then a smaller group of religious superiors.

MS FURNESS: The Council itself has laypeople as well as
clergy?

ARCHBISHOP COLERIDGE: It is predominantly lay, and there
are two bishops who sit on the Council - myself and
Bishop Wright.

MS FURNESS: As Mr Owen has given evidence, the prime
purpose of the company is to set standards. In the
Council's submission, there is reference to the sorts of
areas in which standards might be set. I wanted to ask
you, archbishop, what you consider to be the areas in which
standards should be set?

ARCHBISHOP COLERIDGE: In the end, it would be any area
that the board decided, but some of the areas are quite
obvious. One is the handling of complaints, in other
words, dealing with abuse that has happened but also
proposing standards that embody preventative measures.
That would be a crucial part of the setting of standards.
Then a third part would have to do with the process of
education, which would look, as would the other two areas,
to shifting the culture.

MS FURNESS: Education of whom?

ARCHBISHOP COLERIDGE: Education across the board, but
particularly those who have responsibility, including
bishops and major superiors, but anyone who is involved
with young people - clergy certainly. Education
understood, therefore, in the broader sense and in an
ongoing way.

MS FURNESS: What about seminary training?

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ARCHBISHOP COLERIDGE: Absolutely.

MS FURNESS: Selection of positions such as parish priests?

ARCHBISHOP COLERIDGE: Yes, that would certainly have to come into it. Selection of people across the board, but clearly the clergy are in a very strategic position, so there would have to be a standard, I think, that would touch upon the selection of people to be parish priests or to hold any position of clerical responsibility in the Church.

MS FURNESS: What about standards in relation to taking disciplinary action against priests or dismissal, leaving aside canon law?

ARCHBISHOP COLERIDGE: That could certainly happen, and it may in fact help, in a process that can be difficult and very complex. As a bishop, I would welcome any guidance that CPS might be able to offer that was consonant, obviously, with canon law. Again, CPS with its standards wouldn't supplant canon law but would work harmoniously with it. If there were standards proposed that could help in that process, I for one, and I think many of the bishops and others, would welcome them.

MS FURNESS: Given the role of members on the board, I take it that you consider that you would be able to speak frankly to the directors as to the areas in which you think you and your fellow bishops would benefit from advice?

ARCHBISHOP COLERIDGE: There would certainly be that open exchange, but I would be very hesitant, certainly in these early stages, of giving any impression of wanting to lay down the law or tell the directors what to do. I think they need to be helped in a process of induction, but the last thing they would need, I think, is to have bishops or others breathing down their neck or telling them what to do.

I have spoken already with the three directors that we have but in a way that is deeply respectful of their independence, because given what Mr Owen has said about functional independence rather than structural, I think people like me - as a member representative, I need to be
very sensitive to the need to respect that functional independence.

MS FURNESS: Who are the three board members?

ARCHBISHOP COLERIDGE: Justice Geoffrey Giudice, Mr John Watkins and Ms Patricia Faulkner.

MS FURNESS: They were appointed, obviously, recently, given the company was established I think in November?

ARCHBISHOP COLERIDGE: They were appointed subsequent to the launch of the company in November, so at the very end of last year.

MS FURNESS: They are paid, presumably, for their work?

ARCHBISHOP COLERIDGE: There has been some discussion about remuneration, and it has only been resolved in quite recent times, but, yes, they are remunerated appropriately.

MS FURNESS: Are they part time or full time?

ARCHBISHOP COLERIDGE: They are part time.

THE CHAIR: I am sorry, the transcription people have missed the name of the judge.

ARCHBISHOP COLERIDGE: Justice Geoffrey Giudice, Federal Court judge, retired. He was also Chair, I think, of the Fair Work Commission.

COMMISSIONER MURRAY: He was a former head of the body that preceded the Fair Work Commission.

ARCHBISHOP COLERIDGE: G-I-U-D-I-C-E, Italian for "judge".

MS FURNESS: There has been a deal of evidence over the last couple of weeks about the interaction with canon law, particularly in relation to disciplinary matters and the role of the CDF. Is that an area where you think that you and fellow bishops and religious would benefit from standards?

ARCHBISHOP COLERIDGE: It could well be. What is certain - and I think this has emerged in earlier sessions - is that a neglect of canon law in many ways has
been one of our problems - not an excessive dependence upon it but, rather, a neglect of it. I was very interested in listening to Ms Devlin speak the other day, when she spoke about how helpful canon law can be if it is appropriately interpreted and applied. So if there could be a standard that helped the bishops to draw upon the considerable resources of the canons, again, I certainly would welcome it and I think others would, too.

MS FURNESS: The need for diversity in the Church - is that a standard that you would like to see available?

ARCHBISHOP COLERIDGE: That could be a little too broad. By "diversity", do you mean the involvement of laypeople and perhaps women at the point of governance or - it's not clear to me immediately what you mean by "diversity".

MS FURNESS: Do you have your own understanding of what "diversity" means in the context of the Church?

ARCHBISHOP COLERIDGE: I have my own understanding and experience. The Catholic Church is extraordinarily diverse.

MS FURNESS: So what are the components that make up the diversity you have identified?

ARCHBISHOP COLERIDGE: Ethnic diversity; the diversity that exists between the Church in urban settings and rural settings; the Church of the young and the not so young. Someone once said that the motto of the Catholic Church should be, "Here comes everybody." Diversity is, I think, one of the hallmarks of a Church that calls itself Catholic - universal. But if you look at the concept of diversity in a narrower sense, so who governs in the Church, then of course you have to speak in different terms about diversity.

MS FURNESS: So diversity in terms of governance - is that something for which a standard could be devised that would assist you and your colleagues?

ARCHBISHOP COLERIDGE: I could certainly see that, as long as it wasn't motherhood and apple pie, if I could put it in those terms - stated in such a broad and obvious way as to be less than really helpful. If there were specific standards devised to foster the process already taking
place of broadening the base of decision-making in the
Church, then, again, that would seem to me to be a very
creative thing.

MS FURNESS: What about a standard on transparency in
terms of decision-making and the preparation of written
reasons and record-keeping?

ARCHBISHOP COLERIDGE: Yes, I think, again, that could be
very helpful. Record-keeping has been at times one of our
problems, certainly, and anything that would generate
a greater transparency of a kind appropriate to the Church
I think would be a very positive move.

MS FURNESS: Thank you. Archbishop, is there anything you
want to add to what Mr Owen has said this morning?

ARCHBISHOP COLERIDGE: Perhaps I should just touch upon
the relationship between bishop and priest. Mr Owen
touched upon it but deferred to others, and I may be one of
those others.

I don't think it's realistic to think of a priest in
a diocese entering into a contract with this new company,
but I do think it's worth bishops considering some kind of
formal agreement with people like clergy, but I wouldn't
exclude others either, entering into some kind of formal
agreement with them that they will be part of this general
compliance, because although the duty to comply applies
primarily to the Church authority - to the bishop, in this
case - it has to include the whole community. It can't be
just the Church authority.

Now, if a priest fails to abide by the duty to comply,
I then, as the bishop, do have a duty, even though, in the
strict sense, he is not my employee. But were this to be
a pattern of non-compliance, I would be obliged to act.

What would acting mean? It would mean, in the first
place, I would sit down and speak very directly to the
priest and seek an explanation from him. If there was
still a failure to comply, I would have to consider other
options, such as standing him aside from his parish
appointment or even removing his faculties.

So there are sanctions available - these are serious
sanctions, to stand a man aside or to remove his
faculties - but given the seriousness of what we are discussing, they are measures that I would consider, and it is not unthinkable that such measures could be touched upon by new standards that were proposed.

MS FURNESS: Canon law, I take it, wouldn't preclude you standing a man down or removing his faculties for the reason of non-compliance with a standard which was the subject of a contract to which he was party?

ARCHBISHOP COLERIDGE: Well, again, I wouldn't speak of it as a contract. I would enter into the contract with CPS. But if he was consistently in breach of something that might be a formal agreement with me as the bishop, then I would have to act.

MS FURNESS: And canon law wouldn't preclude you from doing that?

ARCHBISHOP COLERIDGE: It wouldn't.

MS FURNESS: Thank you.

THE CHAIR: Archbishop, you heard the discussion before the adjournment about clause 5.3 of the constitution. I raised the provisions of that clause with Mr Owen. It is the one that provides the discretion not to publish. Do you understand why there will be people who will react adversely to such a broad discretion?

ARCHBISHOP COLERIDGE: Yes, I can. For me, it is important to note that it's the board that makes the decision. It wouldn't be the member representatives. Nonetheless, I think as it's phrased, it has the potential for a range of interpretations, some of which could certainly give the impression that it's an attempt to resist the publication of the information. Without that publication, this whole proposal lacks teeth.

THE CHAIR: It just falls to the ground, doesn't it?

ARCHBISHOP COLERIDGE: Precisely.

THE CHAIR: Yes.

ARCHBISHOP COLERIDGE: Might I also say, your Honour, that in general terms - and I think Mr Owen touched upon this -
there are elements of the drafting of this constitution which even now, in the light of this final hearing and the discussions that it has prompted - there are elements of the drafting which will have to be revisited, but that can be done. I personally think that's one of them, and Mr Owen has already touched upon the reserve powers.

THE HON. NEVILLE OWEN: Ms Furness, would you mind if I re-enter the fray on that particular issue?

MS FURNESS: Certainly.

THE HON. NEVILLE OWEN: Your Honour, I've been reflecting on what you said, and there is one other thing that I would like to throw in to the mix in thinking about this. I'm not going back on anything I said about the breadth of that provision. It is this: you can't read it without reference to the object, the main object, of this company, and because it is a power of the board, you can't read it absent the fiduciary duty of a director to act in the best interests of the company and only for proper purposes, which certainly in 2008 was the law, that they were fiduciary duties.

But if you go back to the preamble, which is on the first full page, the last sentence of the preamble refers to the national professional standards seeking to promote accountability and transparency and therefore trust in the life of the Church. The directors, in exercising the power not to publish in clause 5.3, would have to be acutely aware of their fiduciary duty that involves, in part, those words in the object. I just add that.

THE CHAIR: There might be some who would say, Mr Owen, that there is a real conflict there. To not publish because it might mislead the public - how could that ever be a legitimate reason not to publish something that is otherwise accurate?

THE HON. NEVILLE OWEN: All I'm saying, your Honour, is that you couldn't divorce that from the fiduciary nature of the duty which the directors will have to act in the best interests of the company. I just add that as a further consideration.

COMMISSIONER MURRAY: Before you move on, Ms Furness, archbishop, I'm going to ask you a question, and it's not
exclusive to the Catholic Church; it is an issue for all
faith-based organisations and secular organisations, and
that's the issue of managing risk.

Principle 7 of the corporate governance principles
says that organisations should recognise and manage risk.
If we look at what has been before the Royal Commission and
been before your Catholic Church, tremendous financial and
reputational damage and damage to patronage has resulted
from the Church's bad handling of child sexual abuse
issues, their occurrence, their reporting and their
continuance.

Is there anything in this new organisation, the
professional standards organisation, which will focus on
really educating bishops and priests, the managers of
Catholic business, on risk and to avoid that risk and its
terrible consequences in future?

ARCHBISHOP COLERIDGE: Given that education is one of the
prime purposes of this new entity, I would certainly expect
that that would be an essential element of its work, to
continue and develop further the process of education,
which leads to a far greater and more sophisticated
understanding of risk management and what it involves.
So I would see that as essential to the work of Catholic
Professional Standards Limited.

COMMISSIONER MURRAY: I have asked you that question
deliberately, because I have picked up an inference - and
it's certainly not yours, but I have picked up an
inference amongst some commentators - that this child abuse
issue is historical and there is not as much need to worry
about it in the future. I personally disagree with that.
And I stress, I don't see it as your view. But that does
mean that the constant emphasis of risk and the avoidance
of any sense of a cover-up has to be absolutely critical to
the operation of this company. Would you agree?

ARCHBISHOP COLERIDGE: I agree totally with that and I am
deeply suspicious - and that's putting it mildly - of
scenarios that talk about this as merely something of the
past, an apocalyptic sense that it was all bad back then
and everything is right now.

What is abundantly clear to me, Commissioner, is that
there is no room whatsoever for complacency. Given the
nature of what we are dealing with, a lot of the stuff we are dealing with is historic, but that says very little in one angle on things. So any sense of complacency, that there is no need for a great vigilance and to work harder and harder and harder at developing a culture of vigilance that makes for real safeguarding, I think has to be rejected. I see this move, in fact, as one way to guard against that kind of complacency that I do hear voiced myself from time to time, but I reject it out of hand.

MS FURNESS: Could I move to you, Mr Sullivan. Just firstly dealing with redress, you have made some public comments in relation to embracing the Commonwealth Government's response to the Royal Commission's recommendation. Are you able, on behalf of your authorising Church bodies, to opt in to the scheme?

MR SULLIVAN: No.

MS FURNESS: So any opting in by the Council is mere commentary on what you would like to see happen?

MR SULLIVAN: Certainly the comments we made are consistent with the Church leadership's support for a national redress scheme, and when the announcement was made by the Prime Minister, in the broad, that was the type of scheme that our Church leadership supports. That's why we said, in the broad, we can opt in. But I gather there will be, I think, constitutional issues between the Commonwealth and the states over how opting in will occur for any non-government organisation into a scheme that is run by the Commonwealth.

MS FURNESS: So is it the case, as you understand it, just dealing with the Catholic Church, that each bishop and provincial or major religious superior has to opt in for their particular area of work?

MR SULLIVAN: Practically speaking, yes.

MS FURNESS: As you understand it, there may be an issue that if the state, for whatever reason, doesn't opt in, the Catholic authority within that state may have difficulties opting in?

MR SULLIVAN: It's my understanding that that is the current advice on the table at the Commonwealth level, but
I haven't seen it --

THE CHAIR: Nor have we, Mr Sullivan. Nor have we. So this is what you have been told by someone?

MR SULLIVAN: In the months leading up to - straight after the announcement, there was a couple of months of informal consultation by the task force from Prime Minister and Cabinet.

THE CHAIR: Do we know who has given this advice?

MR SULLIVAN: I can only assume it is one of the Commonwealth agencies that give advice around constitutional matters.

THE CHAIR: Do you know what is said? Is it said that a non-government body cannot contract with the Commonwealth? Is that what is being said?

MR SULLIVAN: I haven't read it because I haven't seen it in writing, but at two meetings that I've been at, it was expressed by the Commonwealth officers from Prime Minister and Cabinet that they had advice to that effect, that organisations that would like to opt in to the proposed Commonwealth scheme would only be able to do so if their state government had agreed to - now, don't hold me to the technical terms, but, in effect, opt in. It may not mean that the state government itself would participate, but it enabled those organisations within that state or jurisdiction to participate. I don't understand the fine detail.

THE CHAIR: It would be remarkable if a state stood in the way.

MR SULLIVAN: Well, I hope no state will stand in the way, because of the real reason why we need a national scheme.

MS FURNESS: As part of the work that has been done in recent time by the Council and presumably the leadership of the Church, a Catholic Ministry Register has been created?

MR SULLIVAN: Yes.

MS FURNESS: The purpose of that register is to what?
MR SULLIVAN: As I understand it, the work has been done by the National Committee for Professional Standards. They initiated the work such that priests in a particular diocese, through their bishop and religious leader, will be put on a register. That register will obviously be clear about credentials, qualifications, where they have come from, how long they have served - that type of thing. It is part of this whole process of being more transparent about where priests have come from, if they have transferred from a particular diocese or country - that type of thing.

MS FURNESS: What about complaints?

MR SULLIVAN: I'm not aware if it covers that. It may; it may not.

MS FURNESS: Discipline?

MR SULLIVAN: Same. I don't know for sure.

MS FURNESS: There is reference to good standing and a finding of good standing in relation to individual priests or religious.

MR SULLIVAN: Yes.

MS FURNESS: Can you help us with whether that includes any complaints, substantiated or otherwise, or disciplinary action that has been taken against them being included?

MR SULLIVAN: It was my understanding it does, but maybe Archbishop Coleridge may know more.

MS FURNESS: Archbishop?

ARCHBISHOP COLERIDGE: If I may, Ms Furness. If there have been allegations against a priest, and certainly if they are substantiated, he doesn't qualify for registration on this Australian Catholic Ministry Register, the purpose of which was to create a consistent national registry, which is much harder than it sounds.

Now, if a priest doesn't appear on the ACMR, then the understanding is that the Church authority that is inquiring about the priest would contact the Church authority who is responsible for the priest and would talk
directly and perhaps seek documentation about those allegations. So it's not as if every priest is registered. Not at all. And certainly where there have been allegations made and allegations substantiated or convictions incurred, then they would not appear on the ACMR.

MS FURNESS: And the bishop who was interested in a particular fellow - if he didn't find him on the ACMR, he could conclude it was an administrative error or he could contact the person at the place where he knows the priest has come from?

ARCHBISHOP COLERIDGE: What he would do - and this is the understanding of this whole initiative - is that he would then contact the bishop from the place where this priest is coming and would say, "What is the reason for the non-registration of this priest who wants to come to my diocese, for instance to celebrate a wedding?" The two bishops would then talk, and there may in fact be an exchange - and this has happened from time to time - of documentation that would give more detail of the allegations.

MS FURNESS: Wouldn't it be easier, archbishop, to have all the priests on the register and perhaps a red flag against some of them?

ARCHBISHOP COLERIDGE: That has been considered, but the decision was to move in this other direction.

MS FURNESS: Does it work, do you think?

ARCHBISHOP COLERIDGE: Again, it is in its embryonic stage. Getting it up and running has been a far greater task and more complex than we imagined. So it's hard to know, but if it doesn't work, then we will simply have to revisit it.

MS FURNESS: I take it that it is a register that is available only to those within the Church?

ARCHBISHOP COLERIDGE: Technically no. It would be available to anyone. Certainly the prime purpose of it was to notify other Church authorities of the standing of this or that priest, but what it means is that each priest who is registered has a particular code number and that is then
fed in to the website and you then access the data on that priest.

Now, if someone had access to that code number, whether Church personnel or not, he or she could access the data. But the understanding initially was that it would be an intra-Church initiative.

MS FURNESS: And it would be at the initiative of the priest to say, "I want to be registered"?

ARCHBISHOP COLERIDGE: No, it was at the initiative of the Church authorities. It was compulsory.

MS FURNESS: It still is?

ARCHBISHOP COLERIDGE: It still is.

MS FURNESS: So a Church authority who had a man ordained and working within his diocese would be required to enter details about that man on to the register?

ARCHBISHOP COLERIDGE: That's my understanding.

MS FURNESS: Is there a requirement that that bishop pursue access to records perhaps before his time to understand what indeed was known about that priest?

ARCHBISHOP COLERIDGE: That would certainly happen and it's one of the reasons why, in my own diocese, we have done a rather exhaustive culling of the data from years past.

MS FURNESS: That is by reference to hard copy data that is within the bishop's office; is that right?

ARCHBISHOP COLERIDGE: That's right, the clergy files.

MS FURNESS: To the extent that the clergy files don't contain any of that material, then that would be the end of it?

ARCHBISHOP COLERIDGE: If there were gaps in the clergy file - and there are - then that would create a difficulty. We can only work with what we have, or what has emerged, perhaps, as a result of this Royal Commission.
MS FURNESS: Given that there has been evidence of
documents being not created, moved or destroyed in one way
or another, that creates quite a significant problem for
the credibility of the register, doesn't it?

ARCHBISHOP COLERIDGE: I don't think it does for priests
who are still living and working. It does if you are
looking back upon the deceased priests; it would create
problems. But we are registering those who are still
living and still working, and there is far less of the gaps
and silences in the files in more recent times than there
were in the past. So we haven't struck that as a major
problem in assembling this register.

MS FURNESS: You wouldn't know, archbishop; if the
documents weren't there, you wouldn't know?

ARCHBISHOP COLERIDGE: Again, I can only say we can only
work with what we have. So far, the lack of documentation
hasn't been a major stumbling block.

MS FURNESS: I take it that the person has to agree to
their name being placed on the register?

ARCHBISHOP COLERIDGE: If any priest baulked at it, again,
the Church authority would want to know why, because it is
an obligatory thing for all clergy. If someone said,
"I don't want to be registered", or refused to be, then the
question would be, "Why?", and we would simply have to work
our way through that.

MS FURNESS: The "frequently asked questions" indicate
that the person will not have their name placed on the
register without their cooperation.

ARCHBISHOP COLERIDGE: But I can't imagine why someone who
was in good standing would baulk at having their name put
on the register. Someone who was not in good standing
might, but his name wouldn't be put on the register,
anyway.

MS FURNESS: Therefore, you would expect the bishop that
the priest is moving to to ring up and ask the bishop that
the priest was leaving as to whether or not the man was in
good standing and why his name wasn't on the register?

ARCHBISHOP COLERIDGE: That's right.
MS FURNESS: Has that happened?

ARCHBISHOP COLERIDGE: Yes, it has. I've had, I think, two instances in Brisbane and I presume it has happened elsewhere. I can't say that with certainty, but I presume that.

MS FURNESS: Is this an issue that the standards setters in the company could take up - advice on how to set up a registration system that, among other reasons, had the purpose of protecting children?

ARCHBISHOP COLERIDGE: Again, I can only say, as one of the bishops, I would be very open to anything that came from CPS, from the board - a standard that would help us to operate a more effective ministry register.

MS FURNESS: Thank you. Coming back to you, Mr Sullivan, Mr Owen suggested that you might be a more appropriate person to ask questions about the statistics which it is intended - understanding that you are not binding the company - will be published.

MR SULLIVAN: What particularly would you like?

MS FURNESS: Which statistics will be published?

MR SULLIVAN: Oh, I see. Well, a couple of things, if I may. As you know, we have cooperated with the Royal Commission's research project over a number of years now, and prior to that, we tried to do it ourselves, not very successfully, and that's bringing together some type of national database of claims. It really did take the rigour of the Royal Commission to produce that.

It was always envisaged that something like this oversight company could be the place in which a national database could then reside. We never outlined what particular categories would comprise the database, but clearly, given the exercise we've just been through, it would be silly of us not to build on those categories of the current survey. That would be my thinking.

What is important, firstly, as you know, from our own experience, is making sure that whatever we call claims, whatever we call alleged accused, and so on, those
categories are as accurate as they can be, and then how you
would like to split the stats and do the analysis. But
I would have thought the basic categories would be around
claims, claimants, alleged abuse, outcome, moneys paid,
reporting lines, whether it was reported to the police, or
whatever - in other words, pretty similar to the types of
criteria that were used in the current survey.

MS FURNESS: And you would intend that that be made
public?

MR SULLIVAN: Of course.

MS FURNESS: On a presumably periodic basis, it would be
updated?

MR SULLIVAN: Yes, given the way it took us this long to
get this far, I wouldn't say annually but hopefully as
regularly as possible and certainly publicly.

MS FURNESS: The company we've been discussing is
a product of the Council's work?

MR SULLIVAN: Yes.

MS FURNESS: Are there any other recommendations or
changes that have been initiated by the Council in
a similar way?

MR SULLIVAN: When we put in our first major submission to
the Royal Commission, we did talk about a number of
reforms, one of which was the idea of establishing an
oversight body, and this is the product of that.

If I could just say, getting change in the Catholic
Church is heroic, and it takes a lot of time, sometimes to
get small changes.

This type of change, although it has its problems, is
quite a significant change. The real driver for this
change has been the historic poor performance of Church
leaders.

You will notice in some of our materials that bodies
like the Irish body or, say, the US body, or whatever,
already exist, and in Australia we had the National
Committee for Professional Standards which, for its time,
was a real innovation, and over time it has sort of run out of puff. But the real problem is that the Church leadership was never held to account. You have seen this in your own case studies. That's why our Council wanted to go down this pathway of trying to put something in place that could hold Church leaders to account, because, in reality, a bishop is basically, in a technical sense, accountable to the Pope.

MS FURNESS: So is it the case that the accountability, through this mechanism, is via compulsory audits and publication of the results?

MR SULLIVAN: Correct. That's the best we can come up with at the moment.

Can I also say, though, this momentum is also being done because although the Royal Commission has its own considerations and we don't wish in any way to seem to pre-empt it, at the same time, I don't think we could go through four and a bit years of the Royal Commission continually saying that, you know, there's something wrong with the administration of Towards Healing and not begin something to do with that.

Secondly, if the governments decide to turn around from some recommendation the Royal Commission makes, and in effect, it nearly makes our company superfluous, well, fine. I mean, we're not trying to set up something to ward off something else. If there is a way of doing this better, I'm sure the Church leadership would seriously consider that. I don't want to overstress it - I suppose you can't - but the loss of credibility and trust in the Catholic Church, in the way it has managed this whole, for decades, scandal, in the way we are even now trying to put something together that is new and innovative, and the degree to which people are looking at that and sort of going "hmm", reflects that loss of credibility. Frankly, whatever it takes to regain that credibility will need to be done, including that if there need to be changes to the constitution to tighten up the way people feel it should better reflect the preamble, then so be it.

MS FURNESS: When you made a statement at the beginning of the hearing, Mr Sullivan, you said in relation to the Church leadership - and I will quote you:
The fact that the Church leadership chose to rely on the Truth, Justice and Healing Council, a lay-led advisory body, and that it has accepted all of its policy recommendations is, in itself, a reflection of that change.

What policy recommendations have you been put up that have been accepted by the Church leadership?

MR SULLIVAN: It would start with every issues paper response that has come forward to the Royal Commission. Most of the issues papers the Royal Commission has put out are part of its policy development and our formal responses have been designed and compiled by the Council, and we have obviously shown them to the supervisory group, not for approval but for endorsement. None of our positions in any of those position papers or responses has been knocked back.

This particular recommendation, for an oversight body, was fully unanimously endorsed, not only by the supervisory group but by the two peak bodies at formal plenary meetings.

Throughout the course of time of the four years you may note that we as a Council have put out sometimes, for want of a better term, model litigant guidelines for assistance in revisiting cases and so on, and leaders within the sector have used those as policy directives, again, not knocking back our position.

MS FURNESS: But you are not suggesting, Mr Sullivan, that there weren't discussions with the supervisory group and others within the Church leadership before you devised your position?

MR SULLIVAN: No, no, I'm certainly not suggesting that, because, you know, as good policy goes, there is always consultation around everything. We had draft position papers that went out not just to archbishops and religious leaders but to broader people with competency in the area.

MS FURNESS: So the extent to which you weren't knocked back reflects what the final document looked like; it doesn't reflect the discussions that went on before that final document was put up.
MR SULLIVAN: That's true, although any significant position that we wanted to adopt that was in our original drafts wasn't changed.

MS FURNESS: Thank you. Is there anything you wish to add to what Mr Owen had to say?

MR SULLIVAN: No, nothing.

MS FURNESS: Archbishop, is there anything further you wish to say?

ARCHBISHOP COLERIDGE: Perhaps just to say that the establishment of the Truth, Justice and Healing Council itself was in some ways not just a major achievement but a monumental achievement. It was an attempt to shape a one-Church approach, which, when you are dealing with the Catholic Church, is much harder than it sounds.

It was, particularly in the early stages, very difficult to keep everyone in the tent, and the fact that we managed it, I think, again is a very significant achievement and indeed historic in terms of the Catholic Church in Australia.

Catholic Professional Standards Limited seems to me to build upon that achievement and to consolidate it, because, again, for all of these Church bodies to come together and to coordinate and to collaborate in a new way I think is genuinely historic. For me, at least, it is a glimmer of hope in a situation which at times can seem hopeless. But I think it does represent a slow and painful shift of the culture, and I think something has been set in train that I would certainly hope - and I actually think - is unstoppable now.

But, again, I come back to the point that there is no cause whatsoever for complacency. As has emerged in the discussion this morning, this proposal of Catholic Professional Standards Limited is an embryonic proposal. It is aspirational and we can already see the need for some kind of modification.

Similarly, the ministry register is embryonic. So these are initiatives which we have taken, rather than simply wait for the Royal Commission's recommendations and
report - which we do, but we felt that we had to act now.

What we have done may seem modest enough, but I think, in fact, in other terms it is very significant and even historic in terms of the Catholic Church in this country.

MS FURNESS: Thank you. Mr Owen, is there anything further you wish to say?

THE HON. NEVILLE OWEN: No, Ms Furness, thank you.

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

THE CHAIR: Ms Needham?

<EXAMINATION BY MS NEEDHAM:

MS NEEDHAM: Mr Sullivan, you were asked some questions about the process by which the constitution of CPS was developed and referred to consultation. Could you tell the Commissioners how long that consultation has gone on and what the processes by which it was finalised were?

MR SULLIVAN: Yes, thank you. We started a process in February 2014 with a concept paper about what an oversight body could look like. In those days, we were talking about an oversight body that was about the protection of children.

The way things work in the Catholic Church is you firstly need to get some buy-in by the leaders. That was a draft paper and it went for some months. So by the middle of that year, 2014, we had demonstrated that a broader consultation was now required within the Catholic Church.

To do that, we needed to put in a much more substantial effort in a green paper process, as governments would use it. A green paper process was developed on research, on background papers and the like. We designed all that and got that ready for a process that ran at the beginning of 2015, and that ran for the best part of seven months, where we ran consultations across Australia in every capital city, and this was across individuals with expertise in the Church, in the areas of child protection, obviously in the areas of Towards Healing, in the
management of allegations, but also people who understood
ministration in the Church and the like. That consultation
was run for us by an independent consultant who then wrote
a report.

The report was then given to our Council. We also
shared that report with the board of the National Committee
for Professional Standards. That was really important, so
that they would at least be in the loop about what could
end up being their future. And as you will realise, the
National Committee for Professional Standards will now
merge its functions into this company on a basis on which
the company can cope with it. So that took us to the end
of 2015.

By the end of 2015, the Bishops Conference and the
religious leaders had signed off on the model. So for the
first third of 2016 it was the drafting process, which was
given to a firm, as you can see, by the Bishops Conference
and religious leaders, to do the drafting.

From that point on, the drafting of the constitution
occurred and now you have the final product.

MS NEEDHAM: And the final product was launched at the end
of last year?

MR SULLIVAN: Yes.

MS NEEDHAM: Is it fair to say that this is something that
all of the myriad bodies making up the Catholic Church in
Australia are prepared to do and to carry out?

MR SULLIVAN: That's our understanding, yes.

MS NEEDHAM: You mentioned the rolling of the National
Committee for Professional Standards into the new body.
Are you aware that 5.1(e) also provides for any state
Professional Standards Offices also to be encapsulated in
the new body?

MR SULLIVAN: I am, yes.

MS NEEDHAM: Have there been any steps down that path as
yet?

MR SULLIVAN: No. The idea in the first instance was for
this oversight body to literally replace the National Committee for Professional Standards, because there needed to be change. At one point, there was the option of whether we would just give extra powers to the National Committee for Professional Standards. But as the archbishop has mentioned, there needs to be a culture change, and sometimes structure helps and function helps. It doesn't mean that culture - I'm very alive to what Father O'Hanlon said about culture and breakfast.

The point is that sometimes a new approach can bring with it changes of behaviour, and that hopefully begins to start to address the underlying cultural issues.

So this company will take on the functions of the National Committee for Professional Standards, hopefully in a timely way but also in a manageable way. The state-based Professional Standards Offices are separate to that and they may well, for the time being, continue in their role, but making sure that they meet the standards that are required of them, too, by way of timely service of individuals and the like.

COMMISSIONER MURRAY: Sorry, just on that point, will there be a formal agreement between the state-based authorities and the company?

MR SULLIVAN: It's possible. When we had the consultations, of course, the obvious point from some was, "Uh-oh, does this mean that the state-based Professional Standards Offices are going to be abolished, or are they going to become branches of the new company?" I think the way it works is that the board of the new company itself will want to consider those things, but the actual state Professional Standards Offices are funded by bishops and religious leaders in that state, so the board would need to get into dialogue with the owners of those state-based offices if there is going to be any change in circumstance or role.

COMMISSIONER MURRAY: That doesn't answer the question. Do you envisage a formal agreement between the two bodies?

MR SULLIVAN: I don't know what it will be, Commissioner, because it will be up to the board. But if I was on the board, I would be looking at some sort of agreement.
THE CHAIR: Mr Sullivan - and, archbishop, you might like to respond to this as well - you both mentioned the need for a change of culture.

MR SULLIVAN: Yes.

THE CHAIR: What are you talking about?

MR SULLIVAN: Well, your Honour, if we talk about the matter at hand, which is the whole scandal of child sexual abuse in the Catholic Church, from where I sit and from what I have read and what I have heard over the time, it has ultimately been an abuse of power not only by the perpetrators but by those who have administered the complaints, the abuse itself. There has been an instinctive protectiveness within the institution of the Church to look after itself, to almost be hypersensitive to the risk of image rather than, as Commissioner Murray says, the broader issues of risk management to children.

Now, that goes to deeper questions around who makes decisions, who participates in decisions, who protects whom. That's culture of an organisation. I would really hope that the new company decides to look at the standards by way of domains. One of the domains would be culture, and there would be a series of standards around that that Church authorities would have to apply and comply with.

You could easily see within that, if you like, principles around participation in decision-making and consultation and transparency of decisions and how they are reported. That, in a sense, would then force Church authorities to articulate clearly how they go about those crucial decisions and how they actually keep records that people can understand, that are obvious and transparent enough for objective scrutiny - when decisions are made about personnel and who gets to go where, that we don't simply have to be bound by the canons but that improved best practice management arrangements can be put in place, so you have personnel committees, and who sits on them; what level of competence is there of people on those committees? How wide, as Justice Owen said, are we prepared to make membership of those committees? And so on.

THE CHAIR: Archbishop, do you want to respond?
ARCHBISHOP COLERIDGE: I agree with everything that
Mr Sullivan has said, but just to add my own angle on it,
the first shift, it seems to me, and it is cultural, would
be at the level of awareness, and that's a massive but
essential educational task, an awareness of what child
safeguarding really does entail.

Secondly, then, the point of accountability. This
applies to the Church as a whole and to individuals within
the Church, like bishops, because there has been
a tendency - and I have said this earlier - for bishops and
the Church to have a sense of themselves as a law unto
themselves. Now, that has to change.

In coming to the unanimous agreement to support this
initiative of Catholic Professional Standards Limited, one
of the great questions that exercised the Bishops
Conference concerned episcopal governance, which can take
many forms in the Church, and has historically, but is
regarded as a non-negotiable element of the Church's life
and structure. Some felt that this initiative was, in some
ways, compromising or undermining the principle of
episcopal governance.

My own view and the view of others was that it is not
in any way compromising or undermining the principle of
episcopal governance; what it is trying to do is to help
people like bishops and other Church leaders to exercise
the responsibility which they have patently failed to do.
This new form of accountability does represent, in a Church
like mine, a genuine cultural shift to new forms of
accountability.

I would also think that it touches upon coordination
or collaboration - new forms of coordination and
collaboration within the Church, and Catholic Professional
Standards is one of those, but also new forms of
coordination and collaboration between the Church and the
wider society, and this Royal Commission is a dramatic
instance of that, so all kinds of new forms of
collaboration and coordination, which, again, for us
represent cultural change.

The other thing is a consistency across the board,
which is part of what I mean by "coordination". Again, in
Australia generally, to have a consistency that reaches
beyond the states is not easy. To have it within the
Catholic Church, you have difficulty to the power of two. To bring about a genuine consistency of approach will have to represent genuine cultural change.

But also, and here I conclude, compassion, to address all of these issues in their complexity and their intense practicality, their urgency, but to address them with the sense that the child or the vulnerable person must take priority and that all of these issues must be seen through their eyes. That's what I mean by compassion.

Now, you might say that's obvious in the case of a Church. Well, yes and no. There have been dramatic failures, as has emerged in the course of this Royal Commission. That kind of perspective on what we are talking about and dealing with does represent another form of cultural change.

They would be some of the elements of change that I mean when I speak about the need to shift the culture and not just to shift the protocols and procedures. That has to happen. But if that doesn't lead to cultural change, the danger is that we go round and round and round, and the appalling prospect is that we could end up where we started.

MS NEEDHAM: Moving on to Mr Owen, were you present in the hearing room when Teresa Devlin gave evidence?

THE HON. NEVILLE OWEN: I was.

MS NEEDHAM: Hearing her account of the Irish experience with the national safeguarding board, has that informed the answers that you have given today in any way?

THE HON. NEVILLE OWEN: It has. It has indeed. It resonated with me because I have been around Catholic institutions for many years, and those challenges about which she spoke are always there. So it resonated with me and it has informed a lot of what I have said this morning, and I think it will continue to inform, because what I've noticed is that when I now go back and re-read the Irish documents, I'm learning more from them than I did when I first read them.

MS NEEDHAM: One of the aspects of her evidence is that they have been doing part of what CPS seeks to do for some
considerable time.

THE HON. NEVILLE OWEN: That's right.

MS NEEDHAM: In particular, she gave some evidence about the publication of reports in relation to Church authorities. Do you recall that evidence that she gave?

THE HON. NEVILLE OWEN: I do.

MS NEEDHAM: And the fact that the reporting didn't happen by the board, but it was left to the Church authorities.

THE HON. NEVILLE OWEN: Yes.

MS NEEDHAM: That's not the model that CPS has?

THE HON. NEVILLE OWEN: Well, we have clause 5, which mandates public reporting, subject to what has been said about clause 5.3, and I have nothing further to say about clause 5.3. So we have a constitutional mandate - sorry, Catholic Professional Standards will have a constitutional mandate to report, and no doubt that will also be taken up in the memoranda of agreement that are entered into.

MS NEEDHAM: You heard Ms Devlin give evidence that whilst the choice whether to publish or not lay with the particular Church authorities, to this point no-one had so refused to publish. Do you recall that evidence?

THE HON. NEVILLE OWEN: I do.

MS NEEDHAM: Does that reflect, to some extent, your differentiation between functional independence and structural independence?

THE HON. NEVILLE OWEN: Yes, it does. It does. That's an example of it. That's an example of functional independence in operation.

MS NEEDHAM: The carve-outs in 5.3 - I know you said you didn't want to say anything more about them, but, in your view, does the constitution give the company a power to make the reports either accurate or less confusing or less harmful to the Church contacts?

THE HON. NEVILLE OWEN: That would certainly be part of
the process, you would expect, that if the board of Catholic Professional Standards received an audit report—and bear in mind that that's what it would be—that it thought was inaccurate or could mislead, the natural thing would be to go back to the auditors and seek to have it clarified.

MS NEEDHAM: Rather than just refuse to publish it, full stop?

THE HON. NEVILLE OWEN: Well, that's the way I would operate.

MS NEEDHAM: Yes, and that would be a power that the constitution would give the board?

THE HON. NEVILLE OWEN: There is nothing in the constitution that would prevent that, and it would be a normal operating procedure.

MS NEEDHAM: You also referred to a differentiation between standards in relation to claims resolution and standards in relation to complaints handling. Would you like to expand upon that differentiation slightly?

THE HON. NEVILLE OWEN: What I had in mind when I said that was that I think that if a survivor wished to go directly to civil litigation or the redress scheme, there is the lesser role for the Church authority to play in the handling of that allegation and complaint. So you would be looking, I think, then, more at the model litigant guidelines and compliance with the model litigant guidelines. But to the extent that the complaints handling procedure, by the choice of the survivor, is left within, either wholly or partly, the province of the Church authority, then I think the standards would need to be more specific, more exact and more wide ranging.

MS NEEDHAM: Moving to Archbishop Coleridge, you are one of the member representatives within the company, and you have been appointed by the corporate body of the ACBC; is that correct?

ARCHBISHOP COLERIDGE: Yes, I was not appointed; I was elected.
MS NEEDHAM: Elected, I'm sorry. You would be in a position to know the attitude of the ACBC and, presumably, the CRA as to funding the CPS?

ARCHBISHOP COLERIDGE: Yes.

MS NEEDHAM: Is it going to cost more than the NCPS has cost to date?

ARCHBISHOP COLERIDGE: It will cost substantially more, and we have no option on that. I might say that in both bodies, the Bishops Conference and the CRA, there was initially some apprehension about cost, in part because there was this sense that it's going to be a massive bureaucracy, and how are we going to pay for this massive bureaucracy? But in fact the intention, at least, and the reassurance that was given - both bodies - was that this will not be a massive and a massively expensive bureaucracy; it will in fact be very lean, but it will also, over time, be a costly undertaking. The rhetorical question is: do we have a choice? And the answer given by both bodies was: no.

So despite the apprehension initially, there was a very strong, indeed unanimous, commitment to fund CPS in any way that it needs to be funded, because we don't want a repetition of what has happened in the past where an ambivalence or a lack of commitment has led to an under-resourcing, underfunding, and therefore has restricted or even crippled an operation. We certainly don't want that to happen with CPS.

MS NEEDHAM: Thank you. Finally - and this is a question for each of you - various witnesses during the last couple of weeks have expressed a hope that CPS will provide guidance in particular outcomes, and one in particular, which I don't think Ms Furness has mentioned, was the regulation of overseas priests, and I use that only as an example. Have you each taken note of the various expressions by various witnesses and sought to learn from what has been expressed to date?

THE HON. NEVILLE OWEN: I certainly have. The marginal notes in my notebook are full of "CPS?"

ARCHBISHOP COLERIDGE: I have taken very careful note,
because this is something that I deal with literally from day to day. We do have very great challenges. They are not impossible to meet, but they are great challenges in this area, and I am very hopeful that CPS will help me and others who have to make decisions to handle the challenges or meet the challenges more effectively than we have.

MR SULLIVAN: Yes, I've taken note and I think the whole point is that where CPS is at at the moment is a work in progress, and a lot of what has been said in this session and also in the last couple of weeks I think needs to be taken on board.

MS NEEDHAM: Thank you, your Honour. I have no further questions.

COMMISSIONER FITZGERALD: Could I just ask one question only, and it's relating to the publication of information. There has been general agreement by the panel that future information would be published in some form.

In relation to the historic claims, the Royal Commission, based on the surveys that we jointly undertook, published the names of 28 institutions and the number of claims against those institutions. There is another more than 1,000 institutions in the Church that have been disclosed in those surveys - parishes and schools. Would the starting point for transparency be the publication of the institutions by name and the number of claims that have been received in relation to those institutions?

MR SULLIVAN: Commissioner, in theory, yes. I think you may know that when we were working on the survey results with the Commission, we were concerned about the privacy of some victims - if, for example, we talk about St Francis School, one victim. Of course, some people may identify who that victim is simply by the fact that they knew there was one victim there, and we were worried about whether that would cause some stress in this process.

I'm certainly not averse to naming the institutions. That was our only concern. So then we said, well, maybe it should be institutions that had more than five people, or something like that. Totally agree with the idea. We have to work out a way in which we don't in some way inadvertently cause stress for some individuals.
This is certainly where our thinking is at: as far as future reporting, future data collection, and so on, it must lead to enhancing the credibility of the Church in its commitment to being open and not covering anything up. That would be the working principle.

MS FURNESS: Nothing further, your Honour.

THE CHAIR: Thank you, gentlemen. Again, thank you for your contribution. Archbishop, I think you come back to us again on Wednesday or Thursday, so I won't excuse you, but I will excuse the other two. Thank you again. We will adjourn until --

THE WITNESSES WITHDREW

MS FURNESS: 10 o'clock tomorrow morning, your Honour.

THE CHAIR: 10 o'clock in the morning.

AT 1.05PM THE COMMISSION WAS ADJOURNED TO TUESDAY, 21 FEBRUARY 2017 AT 10AM

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