ROYAL COMMISSION INTO INSTITUTIONAL
RESPONSES TO CHILD SEXUAL ABUSE

Public Hearing - Case Study 52
(Day 263)

Level 17, Governor Macquarie Tower
1 Farrer Place, Sydney

On Wednesday, 22 March 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
Ms Naomi Sharp
MS FURNESS: Thank you, your Honour. This is the final panel in relation to the Anglican review hearing. I think one person, Mr Blake, has given evidence earlier.

THE CHAIR: The others have not and need to be sworn. Will you all take an oath on the Bible?

<GARTH OWEN BLAKE, on former oath: [10.06am]

<ANNE ELIZABETH HYWOOD, sworn: [10.06am]

<PHILIP LESLIE FREIER, sworn: [10.06am]

<SARAH ANNE MACNEIL, sworn: [10.06am]

<GLENN NAUMTON DAVIES, sworn: [10.06am]

<GEOFFREY MARTIN SMITH, sworn: [10.06am]

<EXAMINATION BY MS FURNESS:

MS FURNESS: Thank you, your Honour. Bishop Smith, would you tell the Royal Commission your full name and occupation?

BISHOP SMITH: Geoffrey Martin Smith. I am the General Manager, Registrar and Assistant Bishop in the Diocese of Brisbane and the Archbishop's Commissary.

MS FURNESS: You are soon to move, I gather?

BISHOP SMITH: Soon to become the Archbishop of Adelaide.

MS FURNESS: When will that take effect?

BISHOP SMITH: 28 April.

MS FURNESS: Thank you. Can I turn to you Archbishop Davies - your full name?

ARCHBISHOP DAVIES: Glenn Naunton Davies.

MS FURNESS: And your position?

ARCHBISHOP DAVIES: I am the Archbishop of Sydney and Metropolitan of New South Wales.
MS FURNESS: How long have you been the Archbishop of Sydney?

ARCHBISHOP DAVIES: Three and a half years.

MS FURNESS: Prior to that?

ARCHBISHOP DAVIES: Prior to that, I was the Bishop of North Sydney for about 11 and a half years.

MS FURNESS: Thank you. Can I turn to you, Bishop Macneil? Your full name?

BISHOP DR MACNEIL: Sarah Anne Macneil.

MS FURNESS: And your position?

BISHOP DR MACNEIL: The Bishop of Grafton.

MS FURNESS: Do you hold the title of the first female Anglican bishop in New South Wales?

BISHOP DR MACNEIL: I hold the title of the first female diocesan bishop.

MS FURNESS: The distinction you are making between a diocesan bishop is what?

BISHOP DR MACNEIL: There have been some women who have been ordained as bishop into positions as assistant bishops in the dioceses in which they have served, such as Melbourne and Perth.

THE CHAIR: Bishop, your voice is very quiet. I don't know whether the technicians can help. I am not sure that people have heard the important things you have just said.

BISHOP DR MACNEIL: Shall I try again?

MS FURNESS: Yes, thank you.

THE CHAIR: Try again, yes.

BISHOP DR MACNEIL: I am the first woman to be a diocesan bishop. There have been women ordained as bishops before me in the Australian church. They have been ordained as bishops but have served as assistant bishops in larger
dioceses, such as Melbourne, Perth and Canberra and Goulburn.

MS FURNESS: Thank you. I think you are going to need to just speak up a little for us, bishop, we're still having some difficulty hearing you. How long have you been the Bishop of Grafton?

BISHOP DR MACNEIL: Since March 2014.

MS FURNESS: What work did you do before that?

BISHOP DR MACNEIL: I have been a member of the clergy for a considerable period of time. Before that I was a public servant and in the Australian Foreign Service.

MS FURNESS: Thank you. I do believe we're going to need a bit more assistance to hear you, bishop. When you say you were in the Australian Foreign Service, were you a diplomat?

BISHOP DR MACNEIL: I was.

MS FURNESS: And I think you have a PhD; is that correct?

BISHOP DR MACNEIL: That's right.

MS FURNESS: And you prefer the title "Bishop"?

BISHOP DR MACNEIL: It depends on the circumstances. "Bishop" for today.

MS FURNESS: In these circumstances.

BISHOP DR MACNEIL: In these circumstances, certainly.

MS FURNESS: Thank you. Can I turn to you, Archbishop Freier? Your name?

ARCHBISHOP FREIER: Philip Leslie Freier.

MS FURNESS: And your position?

ARCHBISHOP FREIER: I am the Archbishop of Melbourne and I'm concurrently the Primate of the Anglican Church of Australia.
MS FURNESS: Thank you. How long have you been Primate for?

ARCHBISHOP FREIER: I've been Primate since 2014.

MS FURNESS: You took over from Archbishop Aspinall?

ARCHBISHOP FREIER: I did.

MS FURNESS: How long have you been in the position of Archbishop of Melbourne?

ARCHBISHOP FREIER: For a little over 10 years.

MS FURNESS: Prior to that?

ARCHBISHOP FREIER: I was the Bishop of the Northern Territory from 1999.

MS FURNESS: Thank you. Can I turn to you, Mr Blake. You have, clearly, given evidence before, but for the purposes of this panel, would you tell us your name and relevant position?

MR BLAKE: Garth Owen Blake. I am the Chair of the Professional Standards Commission of the General Synod and also the Chair of the Royal Commission Working Group, also established by the General Synod Standing Committee to respond to this Royal Commission.

MS FURNESS: Thank you. Can you just tell us what the Royal Commission Working Group has been doing?

MR BLAKE: We have been coordinating the response of the Anglican Church. We have responded to various issue papers, not all of them, I think to all consultation papers that have been produced, and we have also, in response to the Report of the Royal Commission on Redress and Civil Litigation, been coordinating a response within the Anglican Church to the issue of redress.

MS FURNESS: The group was established by the Synod, did you say?

MR BLAKE: No, by the Standing Committee of the General Synod.
MS FURNESS: And the group reports to that committee?

MR BLAKE: Yes, it does.

MS FURNESS: Thank you. Ms Hywood, could you tell the Royal Commission your name?

MS HYWOOD: Anne Elizabeth Hywood.

MS FURNESS: And your position?

MS HYWOOD: I am General Secretary of the General Synod of the Anglican Church of Australia.

MS FURNESS: What does that entail?

MS HYWOOD: The General Secretary leads the General Synod office. We're responsible for arrangements for staging the meeting of General Synod, which takes place every three to four years. We're responsible for the implementation of the outcomes of that General Synod meeting, which we do through providing support to the standing committee and its executive. We provide resourcing support to the commissions of the General Synod, commissions, working groups, task forces, which are made up of volunteer members, and we provide support to the Primate in his role.

MS FURNESS: Thank you. Can I come back to you, Bishop Smith. I understand that while you personally have not provided information to the Royal Commission, the information that Archbishop Aspinall has provided is information that you would rely upon for the purposes of this panel?

BISHOP SMITH: I believe that to be true.

MS FURNESS: Thank you. Your Honours and Commissioners, can I indicate that the various statements of the panel members have been tendered in evidence on the first day.

To understand the relative size of each of your dioceses, can I start with you, Bishop Smith: as I understand it, the Brisbane Archdiocese has 131 parishes?

BISHOP SMITH: That's correct.

MS FURNESS: About 13,000 church members?
BISHOP SMITH: On an average - average attendance on a Sunday, yes.

MS FURNESS: And 504 licensed clergy.

BISHOP SMITH: That's correct.

MS FURNESS: Your parishes are separately incorporated associations; is that right?

BISHOP SMITH: No, they are not separately incorporated. The entity is the Corporation of the Synod of the Diocese of Brisbane; that's the only incorporated entity.

MS FURNESS: Thank you. Could I turn to you, Archbishop Davies. As I understand it, Sydney has 271 parishes?

ARCHBISHOP DAVIES: Correct.

MS FURNESS: Nearly 48,000 members?

ARCHBISHOP DAVIES: At least.

MS FURNESS: And 960 licensed clergy?

ARCHBISHOP DAVIES: Correct.

MS FURNESS: Bishop Macneil, in relation to Grafton, you have 28 parishes?

BISHOP DR MACNEIL: Correct.

MS FURNESS: And 85 licensed clergy?

BISHOP DR MACNEIL: Correct.

MS FURNESS: And you, I think, share the Professional Standards Director of Newcastle?

BISHOP DR MACNEIL: That's right.

MS FURNESS: Thank you. And Archbishop Freier, if I can turn last to you, you have 200 parishes?

ARCHBISHOP FREIER: Probably - we have parishes and what
we call authorised Anglican congregations and so there are
in excess of 200, but a little more than that figure, about
210 probably.

MS FURNESS: Thank you. About 22,000 church members?

ARCHBISHOP FREIER: Yes.

MS FURNESS: And 690 licensed clergy?

ARCHBISHOP FREIER: Yes.

MS FURNESS: Thank you. I am sure you have all been
following the hearing over the last few days, and you will
have understood from particularly last Friday that the
relevant panel gave evidence about causal factors that they
believed may have contributed to the occurrence of child
sexual abuse within the church and the response to it.
I would like to give each of you an opportunity to give
your opinion as to any causal factors that you think may
have contributed to either the occurrence or response to
the abuse. Can I start with you, Bishop Smith? Is there
anything you wish to say about that?

BISHOP SMITH: The only thing I would want to add,
I think, is the issue of the institutional nature of the
church, the culture which was referred to in the culture
report. I think that culture report is very accurate in
terms of its application to the church. When you are
a member of an institution there seems to be almost
a built-in reaction, a defence mechanism, and I think that
that has been very strong in the past. Changing that
culture is to actively work against that almost automatic
reaction.

MS FURNESS: How far has the church gone, do you think, in
working against that, as you say, almost automatic
reaction?

BISHOP SMITH: I think it is a journey that the church is
on. I think some parts of the church, at least the part of
it that I'm most familiar with, in Brisbane, are further on
the journey than others. I think my experience is that it
is as I've heard the stories of survivors and their
families that I've come to a much greater and clearer
realisation of the awful effect of child abuse.
I think one of the issues that we have going forward is to somehow enable a wider group, more people in the church, to actually become aware of the impact in a real way. It's one thing to know the policies, it's one thing to do the training, it's one thing to be aware, but actually getting the degree of harm is a significant thing to try and enable people to catch on to.

MS FURNESS: Thank you. Archbishop Davies, you would have heard much talk about clericalism last week, as well as over the previous months in the Royal Commission. What do you understand clericalism to be?

ARCHBISHOP DAVIES: I think clericalism is most easily understood as a corrupted use of power, where a person in a position of authority and responsibility doesn't exercise the power, which itself is neutral, of their leadership to care for the people for whom they should be caring.

I think we heard on Friday, for example, with regard to in the Anglo-Catholic tradition. One of the issues from an evangelical point of view is the use of the title "Father" for clergy. Jesus actually said, "Call no man father", and I think that has been a significant aspect, particularly for vulnerable boys, where the fatherhood connection has been lost and the priest becomes the surrogate father, and by using the title "Father" over and over again, we heard terrible evidence in Hobart, for example, with regard to one survivor saying he thought this is what fathers did.

So clericalism is an abuse of power and it can be in evangelicals too, I wouldn't think that evangelicals are immune from corrupted power, but I think that's what clericalism is.

MS FURNESS: Professor Parkinson spoke of three ideologies or theologies within the church - Anglo-Catholic, the evangelism and there is a third one. What's that?

ARCHBISHOP DAVIES: I think the three were the Anglo-Catholic, the evangelical, or "reformed" is what I would probably refer to it as, and perhaps the liberal Catholic would be the way in which it is described. These are loose overlapping definitions and I think even my colleagues here on the table wouldn't necessarily identify with one particular, because they come from different
traditions, and they serve in dioceses where there is
a mixture with regard to this. Your question with regard
to those three distinctions was?

MS FURNESS: In relation to clericalism, you have spoken
of the first two, of the presence of clericalism. What
about the third?

ARCHBISHOP DAVIES: With regard to liberal Catholic,
I would say because liberal Catholic has got a - there is
a Catholic ritualism with regard to a liberal Catholic's
viewpoint, the ritualism of being the father would carry
over to a certain extent and I think although a person with
a more liberal theology might be more expansive and might
be more engaging, on the other hand, there is also the
power problem in terms of being the teacher and that also
can be true with regard to evangelical ministers.

MS FURNESS: Do you have the view that clericalism existed
in the past - talking just about the past for the moment -
in the church and had an influence or was a factor?

ARCHBISHOP DAVIES: As I've looked at the data, I was very
interested to see, I think there were 17 clergy since the
1960s where complaints were made. Of those, only four were
the complaints sustained and a number were - some were
deeceased and there were a couple of examples where there
was a tribunal was held, a person was found guilty, deposed
from orders or they relinquished their orders in most of
those cases.

Our problem in the Diocese of Sydney, for which
I think I have more knowledge, has actually been in
laypeople and I don't think clericalism has been a matter
with regard to child sexual abuse in the Diocese of Sydney,
but with laypersons, and particularly where a layperson
would enter the safety of a church environment, become
a leader of a youth group or whatever it might be, and then
regrettably and ashamedly use the opportunities that they
had to engage in terrible conduct.

I think that it's not clericalism there, but again,
abuse of power, and the grooming which we know so much more
about today than we did know in previous days.

MS FURNESS: The abuse of power which you speak of, that
is a power that is essentially gained from the association
with the church, isn't that right?

ARCHBISHOP DAVIES: That is correct. What I think we have seen is that perpetrators or potential perpetrators seek a safe haven where their activities will not be monitored, where inadequate screening of our laypeople in past years allowed people with corrupt motives to abuse young boys, in particular, but also girls.

MS FURNESS: What other factors do you consider may have contributed to the occurrence of child sexual abuse within the church, including laypeople, and the response to that?

ARCHBISHOP DAVIES: I think that it's interesting. The issue of forgiveness is a very important issue. It is a theologically well-grounded understanding in the Bible and would be across all three spectrums that we mentioned with regard to churchmanship, but forgiveness is corrupted when there is no restitution, when there is no true repentance and I think what has happened in the past is that there has been easy forgiveness, or shall I say cheap forgiveness, whereby a person has been forgiven thinking it is not going to happen again. We are not aware of recidivism as an issue, we too easily forgave. I think at heart people almost didn't believe such behaviour could be engaged in in a church environment, I think it was actually a disbelief with regard to that, and that's why we didn't listen properly to children and when complaints were made, they were not properly addressed, and I've spoken publicly about that and given an apology with regard to that.

I think those are the causes, or part of the causes, that have allowed this horrific abuse of young people to occur in previous decades.

MS FURNESS: Professor Parkinson gave the example of an institution, a faith-based institution, which, when receiving an allegation of sexual abuse, responds inadequately by perhaps minimising what was said by not taking any action in respect of the accused and continuing as normal, as itself contributing to the occurrence of the abuse because it enables perpetrators to know that they will get away with it. What do you have to say to that proposition?

ARCHBISHOP DAVIES: I think that's very true. I can think of one particular example, in the case of Simon Jacobs,
when an accusation was brought forward and a very
courageous Wayne Guthrie made that accusation. It was
brought to court, Jacobs denied it, the court dismissed it.
It was only because of Wayne Guthrie's courage to come
forward and speak openly on Channel 10 in a news broadcast
when another survivor then came forward, Jacobs went to
gao. He then pleaded guilty and because he pleaded
guilty, he was given a more lenient sentence, which enraged
me when I discovered that, and I subsequently, as you heard
yesterday, wrote to the Attorney-General and to the
Minister for Corrections with regard to what I consider to
be the leniency of the courts for someone who had done such
terrible abuse to a number of boys in the group of which he
was a leader.

MS FURNESS: The response you have given me is one that
concerns the institution of police and prosecutions and the
courts. The proposition that I put to you was in relation
to the response of the institution of the church and the
response of the church enabling further sexual abuse. That
was Professor Parkinson's proposition.

ARCHBISHOP DAVIES: Thank you, that is true, and I was
also enraged by the way in which my church and leaders of
my church mishandled and, in a sense, further traumatised
the survivors of abuse in the way in which they were not
believed and the way in which no proper action was taken.

MS FURNESS: Is there anything further you wish to say
about factors that you believe may have contributed?

ARCHBISHOP DAVIES: No, I think I've said sufficient,
thank you.

MS FURNESS: Thank you. Bishop Macneil?

BISHOP DR MACNEIL: I don't have anything further to add,
counsel, but I would wholeheartedly endorse the comments
that were made about the culture of forgiveness and what I
would describe as a sort of naivety almost about the
dynamics. You can't hear?

MS FURNESS: Perhaps you could just move the microphone a
little bit closer to you: that's much better.

BISHOP DR MACNEIL: I was endorsing what Archbishop Glenn
was saying about the culture of forgiveness and the
consequences of that culture and commenting also on what
I believe to have been a naivety and, indeed, a lack of
knowledge about the dynamics of perpetrators and the
perpetration of sexual abuse. The church has made itself
vulnerable.

MS FURNESS: You have heard me ask about clericalism and
you would, no doubt, be aware of the evidence that was
given last week. As a woman in the church, and
particularly in your current position, do you have any view
on the presence of clericalism now and before and its
effect in the past on the occurrence or response to abuse?

BISHOP DR MACNEIL: I have been ordained as a deacon, then
as a priest and then as a bishop, since 1993, and in that
over 20 years I have seen a significant shift away from
clericalism, a significant shift towards a more open and
transparent use of power and sharing of power between laity
and clergy.

MS FURNESS: Is that what you would see as one of the main
aspects by which clericalism can be broken down, the
sharing of power particularly with laity?

BISHOP DR MACNEIL: Certainly that, yes. Yes.

MS FURNESS: When you speak about transparency, what has
happened that you know of on the ground to say that the
church, insofar as you know, is more transparent?

BISHOP DR MACNEIL: I can only speak for the dioceses with
which I have been associated and that is the Diocese of
Canberra and Goulburn, the Diocese of Adelaide and now the
Diocese of Grafton. The decision-making processes are more
robust in the Bishops-in-Council that I have been part of.
Greater debate has been happening in the various fora of
the church. There have been more women involved and
I believe that is a factor in the higher levels of
leadership in the church.

MS FURNESS: What do women do differently?

BISHOP DR MACNEIL: It is a good question, isn't it.
I think my response would be around consultative responses.
I have noted a greater degree amongst groups that have
women, more women involved in them, for there to be a wider
degree of consultation with people who may be stakeholders
in a particular issue. I come from a time when I was often
the only woman in a particular gathering to a position now
where usually there are several, if not half, of the group
being female.

MS FURNESS: The church is moving towards including laity
and women in the higher levels of decision-making; is that
right?

BISHOP DR MACNEIL: Laity always have been well
represented in the Anglican Church, it is part of our
governance. Part of our polity is the role of the laity in
the church. I think we are now seeing more women, as we
see more women in society in general, in decision-making
processes.

MS FURNESS: Thank you. Archbishop Freier, would you like
to comment on your view as to causal factors?

ARCHBISHOP FREIER: Yes, I would amplify the things that
have been said already, but I think that the profoundly
embedded cultural practice we have had of not thinking that
children are reliable, dismissing views that they had had
and many of us of my generation would know the kind of
almost unquestioning faith that people of our parents'
generation had in authority figures, whether they were
teachers, police, whatever role.

So a child even reporting in a family, which I know
happened often, about things that were great evils, could
easily be compounded by a disbelieving circle of adults
around them who simply told them that they were
misconceived, they were wrong, they were lying and they
were more isolated.

I think we have had a very heavily engaged cultural
perspective on that which, in terms of the bigger picture
of clericalism, I think our society, in terms of
Anglo-Celtic Australia, has largely moved beyond. So
I think that, as I observe clergy in my diocese, who come
and have Anglo-Celtic congregations, they would be highly
questioned in those things, that kind of clericalism. The
society has moved very greatly.

However, my diocese is certainly one which is highly
multicultural and I observe that we need, and we are doing,
a lot of education of these principles in people groups who
come with, as I observe it, a very high deference to
leadership generally, but leadership within the church and
leadership within their cultural group, because I think
that you have mostly seen all of the people from our church
are Anglo-Celtic in their ancestry, but that wouldn't
represent the faces in certainly Melbourne Diocese on
Sunday by Sunday.

We recognise there is a great deal of work we need to
do so this isn't just a cultural reform broadly in
Anglo-Celtic Australia, but it's something that I think is
present in most human societies, unless some of these
essentials about hearing the voices of children and holding
proper accountability and having proper structures of that
accountability being meaningful are implemented.

MS FURNESS: You heard Archbishop Davies refer to the use
of the word "Father" as not being one that was intended.
Is it the case that the term "Father" is commonly used
today?

ARCHBISHOP FREIER: Yes, I think "Father" could be used,
I have heard of some female clergy who are called "Mother".
There is a wide range of views. I don't know whether it by
itself carries as much meaning. I know that from
Archbishop Davies' tradition it would be a term that is
disinclined to be used and understood to be unbiblical, but
in many times of my ministry people have called me "Father"
or "Rector", and I think that was just a phrase they had
become used to. It didn't necessarily import all of the
opportunities of risk that might be being mentioned.

It is the case that clergy have in many situations -
say, if a member of the clergy is going into a situation of
a bereaving family, they are often, without being known,
warmly received into the most intimate aspects of people's
grief, the things of their family, their hearts are open
before the clergy. There are still today, irrespective of
how many terms are thought of, many opportunities where
people are presented with confidence and trust and
I suppose if there is an upside to clericalism, it is the
public accountability, which I hope is built, where
people - and I personally think it is helpful for members
of the clergy, ordained people, to be visibly seen as
members of the clergy in public. I think that helps their
accountability and I encourage certainly ordinands in my
diocese to have confidence, because I think that puts them
in a place where they are in public scrutiny.

I think that in many of these things, where there is this evil of abuse of children, I think it will find its place of action, of being concealed, almost in any expression of any human community. I think it is an evil, it is a sin in theological terms, it mars the image of God and the people who are abused. I think we should not, too quickly, find simple answers, because I think this is something that is a deep thing in our human nature that we need to be very vigilant to protect against.

MS FURNESS: A recent witness said that the clergy are the only people who can walk into a family situation without being asked, without consent being given and without licence.

ARCHBISHOP FREIER: I think I have given an example of one situation which I have often been in, simply called up because someone who is a member of the community seeks to engage the church at the time of bereavement, to arrange a funeral, and it is one of the situations that I'm sure many clergy are in on a daily basis, where they are in the immediate circumstances of all of the things that I have said - people's personal narratives, their grief, the unhappy stories of their life. I think this is one of the gifts that the church brings to the community in ministry, that it is a way that can happen in times of life and many people are well regarded to that ministry, but to the extent that it offers any opportunity of transgression, we need to be very vigilant to that and have the community aware of what are the boundaries that are appropriate for the clergy and, most of all, for the clergy to well understand what boundaries exist and what boundary transgressions cannot be tolerated.

THE CHAIR: Archbishop, I think you are accepting that the sexual abuse of children involves an abuse of the power if it is occasioned by clergy; is that right?

ARCHBISHOP FREIER: I would agree, your Honour, I think it does. It also is a great transgression of the trust, and I think some --

THE CHAIR: That trust comes with the power, doesn't it?

ARCHBISHOP FREIER: Yes, I think they are both related,
and also with opportunity; I think there are a number of things that are closely related.

THE CHAIR: The church plainly provides opportunity.

ARCHBISHOP FREIER: It does.

THE CHAIR: But are we not, through what you are saying and others are saying, identifying that the church - by reason of the power which necessarily resides in clergy, but because of the opportunity which is built upon trust - is a vulnerable place for children.

ARCHBISHOP FREIER: Indeed. That's why I think we need to be highly vigilant in putting proper parameters around its operation.

THE CHAIR: And although not ordained, many of the same characteristics exist in the church in relation to laypeople, which I think is Archbishop Davies' point. You vest laypeople for good purpose but nevertheless with power, and power in a relationship with children, which again is built on trust, because that person is working on behalf of the church. Is that --

ARCHBISHOP FREIER: Yes, that's very true.

THE CHAIR: Now, the abuse of that power, of course, will be more likely the more powerful the individual is seen to be in the eyes of the child. Do you understand?

ARCHBISHOP FREIER: Yes, I'm following you, yes.

THE CHAIR: Is there not, then, good reason for the church to look very carefully at the way it represents the power in clergy and laypeople to children within the church?

ARCHBISHOP FREIER: Yes, there is.

THE CHAIR: You know this, because I've told you before. I was brought up as an Anglican, but with the greatest of respect - I'm not suggesting you should necessarily change - there are a lot of things about the way the clergy are represented physically, the way they dress, the way the ceremony is conducted which, in the eyes of a child, brings an extraordinary sense of power in that person. Do you understand?
ARCHBISHOP FREIER: Yes, I'm following your line of reasoning, yes.

THE CHAIR: Is there not good reason for the church to look very carefully at the way the trappings of power are represented and whether or not that's a factor which may play a part in the abuse of power by some who have access to children?

ARCHBISHOP FREIER: Yes, I think we would want to act on the evidence that is before us, that they are causal factors that should be changed.

THE CHAIR: What I am saying to you is that requires perhaps the church itself - it is not for me, necessarily - to reflect upon whether the way you physically represent yourself to children, particularly children, but adults as well, accords an unreal sense of power which is a cloak from which some will abuse.

ARCHBISHOP FREIER: Yes, I think there is a whole cultural expression of how symbols work and symbols can be corruptive as well. I suppose in my ministry experience I've continually wanted to explain why I might wear a white robe in worship is as a symbol of the vocation of the baptised, that all the baptised often are. When they are baptised, they have some sort of white robe and this is a symbol of the ministry of all people. So it was not so much a uniqueness that I was being singled out for but a representedness that I was enacting on behalf of the whole community.

I think you would want to really culturally locate signs and symbols because, I think as your Honour is saying, they are very influential and very powerful, and were they corrupted and allowed to be uncritiqued - all I think I'm trying to reflect is that some of those changes by themselves, without the cultural change underneath, might simply transfer the risk, because the relationship of anyone in a leadership to a voluntary community I think is one of the things that people in that voluntary community - they have a confidence in the leader, however described, and that needs to be mediated by proper circumscribed boundaries.

MS FURNESS: Ms Hywood, is there anything you wish to say
about causal factors?

MS HYWOOD: No, I don't think I've anything to add to what has been said over the last few days.

MS FURNESS: Thank you. Mr Blake?

MR BLAKE: Yes. I think within the Anglican Church we have seen two broad types of perpetrators. There has been the predator, the one who has infiltrated the church with an intention of grooming children and abusing them, but I think there has been another category of abuser who has, through being unwell, really broken boundaries progressively and incrementally and often through stress and burnout and without adequate supports in their ministry have ultimately ended up abusing children. I think there has been a category of abuser in that category, and it reflects, I think in times gone past, a view that a member of the clergy could carry out a ministry really without support, and the idea of mentoring or supervision was not something commonly promoted or, if promoted, was taken up by clergy. I think that has changed.

I think we have seen a category of perpetrator through inadequate support and unwellness, that we have seen; that has been a factor.

I think another factor that we have seen in the church, particularly in times gone by, is a disjunction between child sexual abuse being criminal and sort of the belief system of those in authority that it was not that serious. At my public school I experienced some form of inappropriate touching, or I knew a classmate who did, and it didn't affect them all that much, we got on with life, and so I think there was this disjunction between what the criminal law said and the personal experience of people which fed into responses of the church.

I think another factor - and this is the flip side of not believing children - was a disbelief that your colleague in ministry, the person you had been at seminary with, or theological college, who embraced the same values that you did, could possibly commit an act of child sexual abuse. I think there was just an incredulity that it could possibly happen. I think that was a factor.

I think another factor was ignorance, wholesale
ignorance, of the effects of child sexual abuse. People just did not understand the serious, long-term consequences, and I think, again, that fed into very inadequate responses on behalf of the church.

If I can just touch upon forgiveness, I agree with everything that has been said, but I think there was an aligning of forgiveness and trust, and I think that the practice of forgiveness was to say, "Once you are forgiven, we now trust you", and there is a difference, I think, between forgiveness and trust, which we now recognise, which, in its practice, was not always recognised.

MS FURNESS: How is it recognised now?

MR BLAKE: I think there has been a real emphasis that genuine forgiveness requires an act of reparation. You just can't go to the priest and say, "I'm very, very sorry, I'm contrite", and expect that there would be no act of reparation, and with child sexual abuse - and this appears in various of our policies - it would be incumbent on the minister, the priest, to encourage the person confessing to go to the police or make other reparation that may be appropriate.

MS FURNESS: We will come back to the confession process a bit later, Mr Blake, and thank you for that. All of you will have heard or been aware of the evidence given yesterday about the various professional standards schemes that operate in the states and, in particular, the inconsistencies between those schemes, notwithstanding national models and the like.

Starting with you, Bishop Smith, is there anything you wish to add to the evidence that was given yesterday, or comment on the evidence given yesterday, about the inconsistencies of the various schemes?

BISHOP SMITH: No, I don't think I have anything to add, Ms Furness, no.

MS FURNESS: Thank you. Archbishop Davies?

ARCHBISHOP DAVIES: Protecting children is the paramount issue. The United Nations Charter which formed the basis, I think, of the 10 principles of the Commission, it is paramount, the welfare of the child.
In my view, consistency is a second-order issue. It is important, but it is far more important to have children protected.

I think the evidence I have heard this week has been the fact that in many dioceses - I can speak of my own - rigorous child protection measures have been in place recently, and we continue to improve them along those 10 principles.

Therefore, I recognise that there has been a failure of the national church to have consistency across the board, but it shouldn't be forgotten that there are a number of robust systems of child protection in place in most dioceses in the national church, and we are still working towards getting the consistency and raising the bar, having those minimum standards accepted across the board, that's true, that is still work to be done, but it shouldn't be forgotten that good work has been done.

MS FURNESS: You say that there are robust systems in most dioceses. I take it there are some that don't have robust systems?

ARCHBISHOP DAVIES: That would be true.

MS FURNESS: What is the national response to the knowledge that some of your dioceses do not have robust systems, in light of the view that you each take that the paramount issue is the protection of children?

ARCHBISHOP DAVIES: I share Mr Blake's profound disappointment.

If I can take one issue, our code of conduct, Faithfulness in Service, which was brought to the General Synod in 2004, has been endorsed and adopted in most dioceses, but, regrettably, some dioceses have not adopted all of it. In one diocese it is an aspiration rather than a code of conduct, in another diocese they already had a code of conduct and they chose not to go with the Faithfulness in Service. Presumably there was overlap, but it left us vulnerable in terms of saying our code of conduct - we've sworn our evidence on a Bible. The Bible is paramount for us in understanding how we're to live, how we protect children in particular. Therefore, that
commonality of what we believe is across our national church. That we haven’t been able to enact it into adopting that same Faithfulness in Service code of conduct is extremely disappointing.

MS FURNESS: As Primate, Archbishop Freier, is there anything you can do about that?

ARCHBISHOP FREIER: As you have heard, there is a General Synod which takes place in September this year and there is work that is going on at this moment and will be crystallised when we meet at the Standing Committee in May, to bring about responses coming out of the discussions we're having here and generally to the General Synod. As you know, there is a legislative process the General Synod has.

I think that as Primate I can commit to the Commission that I will expend my best energy between now and the General Synod seeking to gather the support for the proposals which will be about uniform child protection going to the General Synod.

Equally, I suppose, I should say in my experience as Archbishop of Melbourne - you heard yesterday Mr Shand's testimony that we have developed things which in a way have broken the uniformity, because it seems to me that we are in a stage where we are wanting to continually improve and develop things, and until we reach a stage we think we have the highest levels, it is more incumbent upon us to keep developing things than simply get uniformity of something which might be an earlier work or a standard that isn't as high.

I think that we're in an uncomfortable place, as has been widely discussed here at the Commission, but I think the intention is for us to drive the highest standards we can and some of it might be a bit messy getting there. I hope we can get there at our General Synod in September.

MS FURNESS: Archbishop Davies was speaking of less than robust systems, not merely inconsistent or lacking in uniformity, but less than robust. Do you understand that?

ARCHBISHOP FREIER: I understand what he is meaning, yes.

MS FURNESS: Which suggests, doesn't it, that there are
those who are not just consistent or uniform but are well
below the mark in terms of their approach.

ARCHBISHOP FREIER: I would be interested to understand
Archbishop Davies' examples, in his mind, as to the effect
of what he said making the child protection commitment of
those dioceses that might have some inconsistency in the
adopting of the Faithfulness in Service as their standard.
I think they still have a very strong commitment to child
protection and to the proper response to any allegations of
child abuse. I would be interested to know what
Archbishop Davies thinks is the impact of that, because as
I look at the church and experience it, irrespective of
some of those inconsistencies, I see a real determination
that any allegations of child sexual abuse will be taken
with the utmost seriousness.

MS FURNESS: You refer to the work that Melbourne has done
and is doing to keep developing the policies and
approaches. Isn't it the case that a system of minimum
standards would permit Melbourne to fly high above those if
it wished to do so, but perhaps require or influence the
dioceses that Archbishop Davies is speaking of to at least
comply with those minimum standards?

ARCHBISHOP FREIER: I think that would be good. I think
that probably there is the compliance with the minimum
standards. If we start talking about the broad
professional standards area, where the discrepancies exist
would be in often the conduct of adult clergy and church
workers towards perhaps other adults, so, say, for
instance, bullying in the character of their interaction.

I think at the level of the child protection
standards, we do have a very strong common core and I think
that the General Synod in September will reinforce that and
bring that to the fore and probably, as you are suggesting,
make it very explicit what those minimum standards are.

MS FURNESS: I take it it is on the agenda?

ARCHBISHOP FREIER: Yes, it will be on the agenda.

MS FURNESS: Thank you. Bishop Macneil, is there anything
you wish to contribute?

BISHOP DR MACNEIL: No, thank you, it has been well
covered. Thank you.

MS FURNESS: Ms Hywood?

MS HYWOOD: I would follow on from what the Primate said. I think that there has been some consideration, and probably driven by the work of this Royal Commission, that the professional standards system that we put in place broadly covers adult sexual misconduct and child sexual abuse, and so trying to get agreement around how those matters might be managed is where the difficulty is.

In recent forums - the bishops' meeting that was held in March this year and recent meetings of the Standing Committee - there is a general view that it would be quite possible to come together around a child protection system, and so we do have work to do before the General Synod meeting in September this year, but I will be putting my efforts behind bringing something to General Synod that will ask all dioceses to commit to a consistent child protection system that would leave open to them for each diocese to manage their own professional standards systems that might deal with other behaviours, but when it comes to child protection, we can work as one. I would support that very much, the work that we need to do between now and the General Synod.

MS FURNESS: Thank you. Part of the Model Ordinance, or certainly part of the intention at the Synod level, is in relation to a national register, and you are responsible, I think, for that register. Can you start by telling us how it came about that there is a national register?

MS HYWOOD: The national register is a screening tool to assist bishops and other diocesan leaders consider all the information necessary when they are considering appointing people to positions within their diocese.

It started to be developed late in 2004 when it was becoming clear through the failures that the church had to confront, in the way that response to survivors and child protection had been managed, in that the way information about abusers had been shared was quite informal and relied very much on bishops and other leaders to alert people to concerns.

It was identified that that was not sufficient and
that we needed to have one place where information about people of concern could be held and accessible to those who needed that information. So a canon was created and all dioceses in the Anglican Church of Australia are subject to obligations under that canon.

Information about people of concern is loaded into the register by the Directors of Professional Standards. The information that they are required to load in is consistent with the complaints process that operates in their diocese, so effectively, any information that a Director of Professional Standards is operating or is dealing with would be recorded in the national register.

That means that another diocese, if they are considering someone for appointment, has the opportunity to search that register to see if there is any information about that person; that includes both clergy and laypeople.

Currently, there are 42 authorised users of the register. They are a mix of bishops and their delegates and the Professional Standards Directors, and I receive statistical reports on the use of the register, and in the last 12 months, 5,000 searches have been conducted of that register in regards to people who are seeking to undertake roles in the church.

MS FURNESS: So to the extent that the professional standards system differs between states, the information which is uploaded to the register will necessarily differ?

MS HYWOOD: Not necessarily. There are clear definitions in the canon that guide the operation of the national register about what information should be put in. I consider that they are broad enough to pick up every matter of concern. As I said, it does link to the requirements of the Professional Standards Director, so, in effect, if a Professional Standards Director receives information which would initiate an investigation then that information would be loaded on to the register.

MS FURNESS: If there were different definitions relevant to these matters, some dioceses may provide more or less information, depending upon their definition of a matter that might be in the canon; is that right?

MS HYWOOD: The canon very specifically says that
information about persons will be loaded in when that
information is determined by the Professional Standards
Director to construe sexual misconduct or child sexual
abuse. The onus is on the Professional Standards Director
to determine that it meets those categories, but I don't
foresee any concern about those categories in picking up
matters that would be of concern to others who are
considering the appointment of people.

MS FURNESS: Is there an audit process in relation to the
register?

MS HYWOOD: Yes. The national register is audited every
year. Because it is the obligation of the Professional
Standards Directors to load information into the register,
it's not possible, from a central point, to actually be
assured that all information that should be in there has
been loaded. Part of the audit process is to ask each
Professional Standards Director to, in effect, self-declare
whether they feel that they have met their obligations,
that they have loaded all the information necessary.

MS FURNESS: The audit results in a report?

MS HYWOOD: The report is presented to the Standing
Committee and received by the Standing Committee.

MS FURNESS: How long have you had the audit in place?

MR BLAKE: Since the beginning - since 2007, when the
canon started operating, it was part of the original
structure of the canon.

MS FURNESS: In that 10-year period, is it the case that
there has been any diocese or Professional Standards
Director who has self-reported non compliance?

MS HYWOOD: Yes, there has, and it has been in some minor
matters. The audit is very thorough. It asks people to
report things, "Did you load information within the 30-day
period required?" Some have admitted that, no, they were
outside that 30-day period, so it is instantly
non compliant. Other people, particularly over recent
years, have alerted us that there has been a backlog of
historical information that they are still working at
putting on the register.
I am quite confident that our professional standards directors absolutely recognise the importance of the national register as a screening tool and ensuring that any current matters, any matters relating to people who are currently in ministry or likely to be seeking active ministry, would be the first priority for loading on to the register.

We are in the middle of an audit process now. The questionnaires are currently out with Professional Standards Directors, asking them to self-declare their compliance. Not all of them have come back in. Some have come back in and have acknowledged, yes, that they are still in a position of dealing with a backlog and could not declare that they are fully compliant.

MS FURNESS: You will recall that in the Grafton case study there was some criticism of the way in which the register operated at that time. You are aware of that?

MS HYWOOD: Yes, I am.

MS FURNESS: I think the recommendation was that it didn't record the names of all people who might need to be registered because the dioceses had been unable to review all their files.

MS HYWOOD: That's right. That was back in 2013 and there has been a concerted effort to bring that up to a more compliant position.

The Royal Commission requested information on the national register in July 2013 and we provided that information, including details of the records that related to child sexual abuse. It is important to understand that the national register holds more records, because the definition is "sexual misconduct". It is not our usual practice to actually go and review the register to identify categories of abusers in that way, but at the request of the Royal Commission we provided information on those on the register who had been categorised as child sex abusers.

I have had reason to continue to review that information. In preparation for this hearing, I noted that the information that we provided in July 2013 I think recorded something like just over 100 persons on the register relating to child sexual abuse. There have been
probably a further 100 people loaded on to the register under that category since July 2015, so in the last 18 months.

I did note, when the Anglican Data Project was released, that the number of abusers over a period of time was much higher than that, so I think we have a task ahead of us to have a look at how there may be a discrepancy.

It is a fact that people are removed from the register when they are deceased and that is obvious given that it is a screening tool for checking people who may be seeking ministry, so deceased people are not on there, but given that the data that was provided to the Royal Commission's Anglican Data Project is drawn from the same files, where the information is put on to the national register, I will be initiating a task to see if we can identify if that discrepancy can be explained through deceased persons or other areas.

MS FURNESS: Are schools required to provide that information to directors?

MS HYWOOD: Professional standards directors are obligated to put information on to the register that they receive and investigate and as you heard throughout this hearing, the Diocese of Brisbane, for example, their Professional Standards Director manages complaints relating to schools and other dioceses do not. The national register, in effect, reflects that same structure that we have, that the information that is on there is related to how the diocese manages its professional standards processes.

MS FURNESS: That was a question I asked you earlier, whether or not the register necessarily reflected the inconsistencies, and your answer is clearly yes, because it is an inconsistency between one system and another that schools are included and they're not in others?

MS HYWOOD: Yes, that's exactly correct, you are correct. Because the information that is loaded from each diocese reflects the scope of the complaints that they deal with, then yes, the national register reflects that inconsistency.

MS FURNESS: As Primate, Archbishop Freier, can you help us with why some dioceses have a central system for
complaints - that is, schools report in - and some don't?

ARCHBISHOP FREIER: Yes, I think I can. I think it is to do with the way in which the schools exist in relationship to the diocese. You have heard evidence from the Diocese of Brisbane that substantially the majority of the schools in the Diocese of Brisbane are wholly owned by the Corporation of the Synod, whereas, by contrast, in a place like Melbourne, we've had a long and historical devolvement of authority, generally, to pretty much all the schools, with one or two exceptions, being given into their own incorporation as companies limited by guarantee.

In those where they are governed by a board under the Corporations Act, the directors, the school principal, effectively, the CEO, they bear the responsibility for how matters are dealt with. Some of those schools, say, in my diocese, they do engage with our Professional Standards Office and in that case that data would be loaded on to the national register.

I would think that any matter to do with the conduct of a member of the clergy, universally, would be picked up and loaded on to the national register if that misconduct happened within a school environment, but for other situations, if it were schoolteachers or other employees, that would probably fall within questions of the teacher registration authorities in each state.

I think the primary design of this national register was to capture people who are likely to come into the member of the clergy or licensed lay worker, more in a parish context, and I think we're probably convinced that in each case the state registration authorities have quite robust methods of screening and reporting misconduct of teachers and other people who would work in a school.

MS FURNESS: You say that you would think that a complaint against a clergy that originated in a school would end up with the Director of Professional Standards and therefore on the register.

ARCHBISHOP FREIER: Yes.

MS FURNESS: Is that thought reflected in any written policy or guideline that tells schools that that's what they should do?
ARCHBISHOP FREIER: Mr Blake might have some more knowledge of the details of various policies we've put out, but certainly, say, for instance, in the situation in Melbourne, where I have most of my schools institutionally separate - even though they are Anglican schools, they are institutionally separate - I would meet with the heads of those schools and I would meet separately with the chairs of their boards, and that would be information I'm telling them quite frequently.

I think that where in each case the bishop will be the licensing authority for any member of the clergy, that would automatically trigger a relationship of information going to the bishop and the diocesan system. I think it would be not so much in the directive to a school, but in the licensing responsibility between the bishop and a member of the clergy who serves as a chaplain, that that immediate reporting relationship back into the diocese and the professional standards system would be established.

MS FURNESS: So, in that case, the principal of the school who is not an ordained member of the clergy, on receipt of a complaint, you would expect to tell you because you license that priest or minister?

ARCHBISHOP FREIER: Yes. Yes, that would be a direct consequence of the licensing, that we are not a remote party, at that point, from any member of the clergy who is licensed.

MS FURNESS: Mr Blake, is there anything you can add to that?

MR BLAKE: I agree with Archbishop Freier. There are two relationships in that context. There will be an employment relationship, the member of the clergy, the chaplain, will be employed by the school, but will also be licensed by the bishop or archbishop of the diocese.

The code of conduct, Faithfulness in Service, has a whistleblower requirement and if another member of the clergy or a church worker bound by the code is aware of a breach, they are bound to report it to the Director of Professional Standards.

That will only work if that obligation is complied
with, but that's an existing obligation in the code of
conduct. There is I think good reason to think that an
allegation against a school chaplain would find its way
very quickly within the diocesan professional standards
process, as well as the employment situation, and I know in
the Diocese of Sydney, I think just last year when we dealt
with chaplains in schools, we were very astute to give the
headmaster power to suspend immediately, if that was
required, knowing that there might be a professional
standards process.

I hope that would ensure that children would be
immediately protected, even though the process might take
some time to be finalised.

MS FURNESS: Is it the case in Sydney that it's more like
Melbourne rather than Brisbane, in that the schools are
independent entities?

ARCHBISHOP DAVIES: Certainly, we have different types of
schools in Sydney. Some schools are corporations and other
schools are diocesan schools. They are all independent.
We have a group of schools under a Schools Commission,
about 14 schools under a Schools Commission under a board.
That's the board appointed by the Synod. Most of the
schools have board appointments by the Synod but they are
actually independent.

As Mr Blake said, we have a schools ordinance for all
schools which are directly under the control of the Synod.
There is a reporting mechanism there established with the
responsibility of the head or the principal of each school.

MS FURNESS: Is it the case in the data that your diocese
provided to the Royal Commission, it necessarily, by virtue
of the structure, captured all complaints to schools about
clergy and laypeople?

ARCHBISHOP DAVIES: I don't believe the data that the
Royal Commission asked of us included schools; it was just
parishes.

MS FURNESS: What it included was reports or complaints
that the diocese held. In the case of Brisbane, that
diocese held all complaints from schools because it was
part of their structure that that occurred. What I'm
asking you is whether it was part of your structure that
complaints at a school level about clergy or laypeople necessarily, because of the structure of the diocese, became part of diocesan records and therefore was captured by the data process?

ARCHBISHOP DAVIES: I don’t believe it is captured by the Professional Standards Unit, but I am ignorant of the answer.

MS FURNESS: Thank you. Now, Bishop Macneil, your professional standards work goes through Newcastle?

BISHOP DR MACNEIL: No. Mr Elliott is a Professional Standards Director for both dioceses, but we engage him separately. Until last year it was through the Diocese of Newcastle, but we have recently entered into a separate arrangement at the request of the Diocese of Newcastle.

MS FURNESS: Do you understand that reports in relation to allegations in schools must become part of the diocesan records or not?

BISHOP DR MACNEIL: In relation to clergy or clergy and laity?

MS FURNESS: Both.

BISHOP DR MACNEIL: We have five diocesan schools. The arrangement with that is that any allegations concerning clergy then are connected through to our Director of Professional Standards. We are aware of allegations against laypeople. For instance, would a teacher be an example of the sort of person you had in mind?

MS FURNESS: It would, or a gardener or anyone associated with the school.

BISHOP DR MACNEIL: Yes, but they are not handled by our Director of Professional Standards. They are handled through the school's mechanisms in a similar fashion to that described by Archbishop Freier.

MS FURNESS: Thank you. Can I turn to another topic. You will all be aware that the Royal Commission published a report on redress and civil litigation in September 2015, and there have been a couple of announcements since that by the Commonwealth Government, most recently in November,
where a national redress scheme was announced, and
in December where an independent advisory council was
announced.

Am I correct in understanding, Ms Hywood, that you
represent the General Synod in discussions with the
Commonwealth about the scheme?

MS HYWOOD: Myself and Mr Blake have had some
opportunities to meet with the Commonwealth after the
scheme was announced.

MS FURNESS: Perhaps if I can go back to when the
Royal Commission's report was published in September 2015
and perhaps you can self-select as to the best person to
answer this question. What work did the Anglican Church as
a whole, or the General Synod, do after that report was
published in respect of the topic of redress?

MS HYWOOD: I would probably be happy to follow that up.

The Royal Commission Working Group - you heard
Mr Blake describe the function of that group - took
responsibility for reviewing the recommendations in the
Royal Commission's report and making recommendations to
Standing Committee about how we might progress. It was
in November 2015 that we took a detailed recommendation to
the General Synod Standing Committee.

We noted at that time that while the Royal Commission
had strongly recommended that there be a national scheme,
that the Commonwealth Government at that time, and other
states, seemed that they may be unsure about their support
for that, and we also noted the Royal Commission's strong
recommendation that any institution should commence the
development of an interim scheme while we waited on the
outcome of a national scheme.

It was actually the recommendation of the
Royal Commission Working Group to Standing Committee that
the Anglican Church of Australia develop an independent,
incorporated entity to provide redress services for those
Anglican dioceses and agencies and schools that may wish to
make use of that.

We took on board very much the important principle of
independence that the Royal Commission had stressed and you
are all well aware of the challenge of that for the Anglican Church, given our structure, but it was the recommendation of the Royal Commission that we move in an interim way until we knew what the Commonwealth Government was going to do to develop an independent incorporated entity.

The Standing Committee endorsed that project and asked us to consult with dioceses and agencies on that. We conducted two consultation forums within the Anglican Church. They were well attended by representative groups of bishops, of registrars, of chancellors, of people involved in the welfare and schools sector. The first consultation was held in June 2016. I would be honest and say that that was an opportunity for everyone's concerns to be put on the table.

It enabled me to reflect, hearing the feedback that came from that consultation, that there was an incredible commitment by everybody in the room to respond to survivors, and many of the people in that room had been doing so for many years. Many of the dioceses have had some form of pastoral care or assistance package in place since the early 2000s and many of the bishops in the room, many of the registrars in the room who had been involved in responding to survivors, felt that there had been some achievements made through those pastoral care and assistance schemes, in particular, that direct personal response that the church could provide.

Much of the anxiety about moving to an independent scheme revolved around anxiety that opportunity for an apology and direct personal response and very direct care and support to survivors when they came forward, might be lost in something slightly more bureaucratic.

We were well assisted by a presentation given to us by a member or an employee of the Royal Commission, Ms Leigh Sanderson, who had been an author of the report, and she was very influential I think in bringing about an understanding, which had been stressed in the Commission's report, that there are many people that we do not see, that while we have been able to engage with survivors who have come forward to us, there are many that do not wish to deal with the institution in which they are abused, and so if we held fast to our current model of managing our own redress, that there was a whole group of people that we had the
potential not to engage with.

We had a second consultation in September and I would reflect that the mood had shifted substantially. I think that there was a greater recognition of the importance of an independent scheme.

We were still unclear in September where the Commonwealth Government sat on making the national scheme, as imagined by the Royal Commission, available, and so we gathered support in that room to progress to the development of such an independent scheme to the point of drafting terms of reference and constitutions. When we reported back to Standing Committee that that is where the view of our consultations had come, we were to put a recommendation that we were going to progress that.

It was only days before the Standing Committee was to meet that Minister Porter announced the Commonwealth scheme. At that Standing Committee in November the support was that we do everything we can to engage with the Commonwealth to develop a greater understanding about what the Commonwealth scheme would be and to progress our engagement in that process.

Mr Blake and I had been meeting with other faith organisations around a consistent approach to redress, and a meeting was arranged to meet with the Commonwealth Redress Task Force, which at that time was being managed out of the Department of Prime Minister and Cabinet.

At that first meeting there were some concerns around whether what might be designed by the Commonwealth could accommodate some of the specific issues relevant to faith institutions, but, I should say, that while we took on board those concerns, we knew it was very early days and thought these are matters that would need to be worked through.

MS FURNESS: What concerns are you referring to?

MS HYWOOD: I describe the Commonwealth scheme as a Commonwealth Government scheme rather than a national scheme. They made it clear in their first presentation to us that it would be a scheme designed by the Commonwealth Government to assist those who had been abused in Commonwealth institutions and other entities would have the
opportunity to opt in, to join, but that the design of the
scheme would be primarily designed to respond to those who
had been abused in a Commonwealth situation.

One of the very first concerns that was raised, but
I do understand in the development of the scheme they may
have moved beyond this, is that they thought that the
confidentiality for a survivor was of paramount importance,
as we do, but they painted a picture where it might be that
the institution may not be informed of who the actual
perpetrator had been, and we said that that would not be
a scheme that we could join. We are committed to ensuring
safe places in our churches and other institutions. We
would need information about a perpetrator. How a redress
scheme that was managed independently might link with
disciplinary processes within the church was something that
clearly was going to need some work.

The other issue was I noted the Commissioners over the
last few days have asked the various agencies of the church
whether they would be committed to joining the national
scheme. When it was first presented to us and we said, "Do
you understand that there may be 23 individual dioceses and
however many Anglicares and hundreds of schools?", they
said, "Well, no, we would be wanting to engage with one
Anglican entity that would have the ability to represent
all of those agencies." Knowing what you know about our
structure, that posed the issue for us that if we were to
engage in what the Commonwealth were potentially designing,
we might have to do our own piece of work to establishing
some sort of entity that could be the one body that engaged
with the Commonwealth.

The Commonwealth then appointed an advisory group -
and there are faith organisations represented on that, the
Catholics and the Uniting Church. We are not represented
on that - and we've had limited engagement with the
Commonwealth in terms of having an understanding of how
those issues that were of concern to us in the first
instance have been and will be resolved, but we are very
much looking forward to more information about the scheme
and hope that those faith institutions involved in having
input into its design will raise some of the issues of
concern to ensure that the scheme, as it is designed to
respond to Commonwealth institutions, is also a scheme that
we can very much consider opting-in to and providing
national consistency.
MS FURNESS:  Do you understand that other faith-based institutions - for example, the Catholics - have been told something similar: that is, all of the archdioceses and dioceses have to join as one?

MS HYWOOD:  Yes. Well, look, I've already said that when we were developing an interim scheme, we were looking at establishing an independent incorporated entity that might facilitate that, so it may be that we need to look at that type of structure that would facilitate an engagement with the national scheme.

The disadvantage of that might be that while the Anglican Church would be seen to be a member of the scheme, we would still have work to do to ensure that the dioceses and agencies opted in. If we are really committed to a national, consistent response, it would be unfortunate if we did create that structure to engage with the Commonwealth scheme, but then, when someone came forward, they said, "Oh, but your abuse occurred in a diocese which has not opted in to the Anglican membership"; so these are the sorts of issues that we will still have to struggle with.

THE CHAIR:  If, as we are now satisfied will happen, there will be a national scheme, it would be disappointing, to say the least - and I could use a stronger word - if a component of the Anglican Church did not participate and join in that scheme. And it is right, you may well have to set up an individual body or a separate body, but if any component part of the Anglican Church stands aside from it, I'm not sure our society would approve. Indeed, I think our society would say very strong things to the contrary. We might have morning tea.

SHORT ADJOURNMENT

MS FURNESS:  Thank you, your Honour. Perhaps if I could ask you, Archbishop Freier, having heard what Ms Hywood had to say about the engagement with the Commonwealth, and no doubt being aware of the history of the Commonwealth's various announcements, has your diocese come to a view as to whether it wishes to independently opt in, independent of the Anglican Church as a whole?

ARCHBISHOP FREIER:  No, we haven't considered that
question yet until we can see what those opportunities
might look at, but as you heard yesterday, we have
developed a redress protocol in Melbourne which sits within
the independent corporate entity, Kooyoora Corporation,
that we formed, because we wanted to respond to the
invitation of the Commission for interim arrangements to be
put in place and I think we were all very conscious of the
expectation that the redress report set of the middle of
this year being the first time that redress matters might
be able to be dealt with by the Commonwealth. That seems
possibly not likely, so we will keep developing that until
we understand what are the opportunities, but I think we
would be inclined to want to fit into the way which gives
survivors of child sexual abuse the greatest opportunity of
participating in something which is their choice.

MS FURNESS: Just to be a bit clearer, would you opt in to
an Anglican-run, if you like, an Anglican-structured
process, which would then, in turn, opt in to the
Commonwealth scheme?

ARCHBISHOP FREIER: I think we would be likely to. We
generally are supportive of national initiatives in
Melbourne. I think we would be likely to do that.
However, I can understand that there are a range of things
that are happening, as you have heard described, and we
would want to honour the choice of survivors to participate
how they wanted to. So imaginably, there could be some
survivors who do prefer to, against other evidence, deal
with the institution, so I think depending on where choice
lay, we may want to keep matters open because, as
I understand it, a Commonwealth scheme will be only running
for a period of time, it won't cater for contemporaneous or
future matters. I think we would want to put something in
place that gave people the confidence we were going to be
fully accountable into the future, not just when the
Commonwealth scheme ran its term and closed.

MS FURNESS: Are we to understand from that that you would
wish for survivors the choice of going through the
Commonwealth scheme, which meant that some Commonwealth
entity or structure may make a decision about reparation,
but still have in place some form of system within the
diocese, should they wish not to engage in that forum, to
engage with you?

ARCHBISHOP FREIER: Yes. I think we would want to give
survivors that choice.

MS FURNESS: And in terms of opting in independently of the Anglican Church, that is, a structure that the Anglican Church --

ARCHBISHOP FREIER: Yes. I am unaware if we will have that opportunity, but I suspect we would be inclined, if we did have that opportunity, to opt in.

MS FURNESS: Thank you. Bishop Macneil?

BISHOP DR MACNEIL: It is not my decision alone, of course, it would be the Bishop-in-Council or the Synod of the Diocese of Grafton. My belief is that the diocese would wish to opt in to the Commonwealth scheme and I certainly would be arguing very strongly that if the Anglican Church interacts with the Commonwealth scheme in the kind of entity that Ms Hywood suggested, that that would be a solution which, for the Diocese of Grafton, would seem to meet many of the needs that we have and the needs that the survivors who would be seeking redress have.

MS FURNESS: In the event that the national scheme doesn't come to pass because the dioceses can't agree to join it, would you advise your Diocesan Council to opt in singularly, as the Diocese of Grafton?

BISHOP DR MACNEIL: Probably. Probably, yes. Again, at the moment we don't know what the structure of the scheme would be. One concern I would have is the suggestion that the scheme might close after a period of time. I think this is an issue that is going to be with us for a very long time, though I hope in considerably reduced levels, and so we would be looking for something which offered longevity.

MS FURNESS: Thank you. Archbishop Davies?

ARCHBISHOP DAVIES: We in the Diocese of Sydney have adopted the recommended cap that the Federal Government has suggested. We have adopted the matrix that the Royal Commission has recommended also in their paper. With regard to what the Diocese of Sydney would do, it would be a terrible exercise of episcopal clericalism if I was to decide what the Diocese of Sydney would do, but that would be a matter for the Synod or the Standing Committee to
decide.

We would seek to do whatever was in the best interests of children and how we protect children and particularly survivors of child abuse. That would be our main motivation and our decision for making any decisions.

MS FURNESS: As archbishop, what do you believe is in the best interests of children in terms of opting in to the Anglican model, which would then deal with the Commonwealth, or opting directly into the Commonwealth scheme?

ARCHBISHOP DAVIES: I can see advantages of adopting an Anglican model which was consistent. I think that would be very helpful. We have, I believe, a high benchmark, although we have had failures in the past and I recognise that. We currently have a high benchmark and I would like to see that accepted.

One of the issues of being completely independent - and I think Archbishop Freier makes this point - I do think survivors need to have choice. We shouldn't be making decisions for survivors. If they do want pastoral care, we offer pastoral care support with chaplains and contact persons and I would not like to see that lost.

It may be that some people don't wish that, and that I can understand, and then to have a system whereby they could pursue redress I think is perfectly appropriate, but I wouldn't want to see the loss of the opportunity for pastoral support and care for persons who have been so traumatised.

THE CHAIR: Archbishop, I don't think anyone is suggesting that a Commonwealth scheme would deny that opportunity to any individual institution and the survivor, so I don't think you need be too concerned about that.

ARCHBISHOP DAVIES: Thank you, your Honour, I'm very pleased to hear that, because I had heard matters to the contrary.

MS FURNESS: In the event that a national scheme operated so as the decision as to amounts of money was determined by an independent body, obviously paid for by the church, and questions of apologies or a direct response were matters
for the church and the individual, would that satisfy you?

ARCHBISHOP DAVIES: I think that that could be satisfactory. I think you would obviously need a framework with regard to it, and the recommended cap I think from the Commission was $200,000. For example, the Federal Government --

MS FURNESS: $150,000.

ARCHBISHOP DAVIES: Pardon?

MS FURNESS: $150,000.

ARCHBISHOP DAVIES: No, from the Commission.

MS FURNESS: I am sorry, I thought you meant from the --

ARCHBISHOP DAVIES: No. The Commission recommended $200,000 and I think the Federal Government recommended $150,000. We have gone to $150,000. If it was considered appropriate in the circumstances to have that independent judgment, I think we would be happy to abide by that.

MS FURNESS: Archbishop Smith?

BISHOP SMITH: When the Federal Government made its announcement last year, our Diocesan Council resolved that I should write to the Federal Government welcoming their announcement, so my hunch is that the Diocesan Council would be in favour of us signing up to the national scheme.

If the Anglican Church couldn’t get its act together, in terms of a single entity to relate to that scheme, then I think the Diocese of Brisbane would still be keen to link up with the Federal Government scheme, on the basis that we think it provides the best option for survivors, particularly in terms of independence, and a consistent kind of approach.

MS FURNESS: Thank you. Mr Blake, I understand you have had some involvement, with Ms Hywood. Is there anything you want to say in addition to her account as to what has happened so far?

MR BLAKE: There is one thing arising out of the meeting with the Commonwealth task force on 13 December. It was
indicated to us, which is consistent with I think
Minister Porter's press conference, that institutions in
the states would not be able to opt in unless the state
either referred their powers to the Commonwealth or, if
they were not prepared to do that, passed legislation to
facilitate institutions opting in.

Now, I don't know the current position as at today, as
to where the states are, but that seemed to be
a fundamental principle that was articulated in that
meeting.

MS FURNESS: Thank you.

THE CHAIR: I think it has a constitutional origin, but
just as I said some strong things before the adjournment in
relation to component parts of the Anglican community, you
could say the same thing for the states. Even if a state
decides to stand out, itself, its capacity to legislate to
provide that others go in and ensure there is an effective
Commonwealth response of course remains available, and we
would have some strong things to say if any state suggested
it would seek to frustrate, for example, parts of the
Anglican community joining the national scheme by not
legislating to facilitate that outcome. So you should work
in that direction, I think, Mr Blake.

COMMISSIONER FITZGERALD: Could I ask a point
clarification. Archbishop Davies, in Sydney, are the
schools that hold an Anglican brand, to use that
expression, all part of your current scheme or do those
schools that are more independent operate their own schemes
in relation to redress?

ARCHBISHOP DAVIES: Thank you, Commissioner. It is
complex. There are basically four types of schools in our
diocese. There are those which are directly governed - the
councils are elected or the majority is elected by the
Synod; then there are those where I might have an
appointment on the board; and then there are those which
I have no appointment; and then there is the Commission -
we have a Schools Commission as well.

With regards to the Schools Commission, which is much
more closely related to the diocese, we are very much
aligned with regard to the redress system.
With regard to schools, then they have their own scheme, and I'm not aware of any clergy; it's the laypersons - my previous answer with regard to record keeping was with regard to laypersons.

COMMISSIONER FITZGERALD: Is it of concern to you that within your diocese different arrangements and different components would be being applied to different victims, given that, to the outside world at least, they are all Anglican schools, differently owned and differently governed? So has there been any attempt over the last three or four years to get a uniformity in the Sydney Archdiocese across all schools, however owned, so that victims are treated equally or with some equity across the Archdiocese?

ARCHBISHOP DAVIES: Certainly. I meet with the heads of all schools, regardless of their level of affiliation with the diocese, every year - it's actually on the agenda for next month, as a matter of fact - and we always have conversations, with our Professional Standards Unit, so that in terms of relationships they get information from us.

I don't know enough about the redress system in each of the schools to be able to answer your question, except to say, yes, having consistency within the Diocese of Sydney would certainly be an aim of mine.

COMMISSIONER FITZGERALD: But at this stage you are not sure whether or not there is consistency in relation to the way in which a victim survivor would be dealt with by those more independent of your schools?

ARCHBISHOP DAVIES: No, I'm not aware of that.

COMMISSIONER FITZGERALD: Is there any reporting back to you so that you are aware, either of incidents of abuse or, in fact, redress arrangements that have been entered into, and, if not, do you think it would be a good idea that you were in the loop in some way, shape or form?

ARCHBISHOP DAVIES: The normal conduit is through the Director of Professional Standards. I may hear of it secondarily, but that's the normal conduit.

COMMISSIONER FITZGERALD: Do you think it is a weakness in
the Anglican system where some bishops and archbishops are fully informed of what is happening in relation to both child protection matters and also responses to those that are victims or survivors and, in other dioceses, there is almost no knowledge at all being passed to the bishop or archbishop? Is that a concern?

ARCHBISHOP DAVIES: It could be perceived as a concern. The independence of schools - they are called "independent schools" for various reasons - is very highly cherished, but also is their connection to the diocese.

I'm not aware of many instances in our schools, apart from those which have come to my attention through the Royal Commission in particular; two of the schools have come to your attention in the last couple of years - and I've certainly had conversations with the heads with regard to that, certainly.

COMMISSIONER FITZGERALD: But you said that some might perceive it to be a weakness. Am I to take your answer that you don't actually see that as a weakness, that you, as the head of the Anglican Church in Sydney, are not fully informed of what is taking place in those institutions which, to the outside world, are Anglican?

ARCHBISHOP DAVIES: It is a weakness in understanding what the relationship of the school is to the Diocese of Sydney. It is the nature of that relationship which differs from school to school. Does that answer your question?

COMMISSIONER FITZGERALD: Can I press that a little bit further. Are you satisfied with the current arrangements or do you think this is a moment in history where those arrangements, not necessarily in terms of removing the independence, but certainly information flows and consistency of approach to victims and survivors, could be looked at so that, to the outside world, Anglican schools and institutions in the Diocese of Sydney are dealing with this issue in a similar way?

ARCHBISHOP DAVIES: Yes, to that question I agree. I think that in order to have the Anglican brand there is some responsibility to understand what that means in a particular diocese, and I think the flow of information ought to be better than it has been in the past, and we would certainly benefit from it, just from our own point of
view, let alone from society's point of view.

COMMISSIONER FITZGERALD: And I would just ask in relation to Melbourne, just similar sorts of issues, Archbishop Freier?

ARCHBISHOP FREIER: Yes, a very similar situation, except we have more schools which are wholly independent under their own incorporation.

I suspect this would have been a good question for Mr Laussen, when he was here, to answer, because I understand that there may well be far more consistency, but through other networks - through the relationship of the Heads of Anglican Schools, or through the Association of Independent Schools of Victoria, and I'm aware that those bodies meet quite often, and I suspect in the community of schools there would be much more consistency about that. But I would not be in the loop of knowing that for the reasons of their structural independence.

COMMISSIONER FITZGERALD: Given their legal independence, nevertheless, do you not feel somewhat vulnerable that, as the Archbishop of Melbourne, you are not fully informed of either incidents that are occurring within those institutions or their responses to victims and survivors? So as the head of the church, ignoring the niceties around the governance arrangements, is that not a weakness that you would perceive needs to be addressed - without removing the independence in a legal sense? Certainly wouldn't you feel more comfortable as archbishop if you were informed of what was occurring in those institutions and their responses?

ARCHBISHOP FREIER: Yes, I'm meeting the heads shortly and I will convey the strength of those impressions back to --

COMMISSIONER FITZGERALD: It is really a question of whether you think it is a weakness or whether you are satisfied with the current arrangements, rather than what we might think.

ARCHBISHOP FREIER: Look, I think I live with the current arrangements because of their character, but I would certainly be keen to have that reporting in one place. So I agree with you: there is a weakness and I would be keen to advocate that that change.
COMMISSIONER FITZGERALD: The Bishop of Tasmania recounted to us in a panel recently in relation to a school where two previous Bishops of Tasmania had asked the school board to issue an apology as part of redress and the school board, on both occasions, refused to accept the advice or guidance of the bishop and the bishop was powerless to do anything. As it turned out in the case study, there were serious problems in that school. Is that a possibility that could occur in Melbourne?

ARCHBISHOP FREIER: Possibly even more so, in that as I understand it from what Bishop Condie said in his testimony, there is a statutory basis and a clear description of what the role of the visitor is according to a particular Act of the Tasmanian Parliament. In some cases I am a visitor to schools, but I think it is not in a codified way, or if sometimes it has been codified in the constitution, it has been actually codified in the constitution of those schools as being purely a ceremonial role and actually has removed any persuasive or governance role. So I think it would be more so than in Tasmania, because of that fact.

COMMISSIONER FITZGERALD: And, again, do you think that's a weakness, that you, as archbishop, might come to the conclusion that the Anglican Church should apologise in relation to a particular victim or survivor, and a board could, in fact, not provide that apology? Do you think that's a satisfactory position given what we now know through the case studies and the evidence more generally?

ARCHBISHOP FREIER: I think, as you put it that way, the answer is no, it is not a satisfactory position, but I am given a lot of confidence that each of the boards are very conscious of their responsibility to respond within their proper responsibilities, and so they assure me that they are attentive and responsive to these matters. But I think in the actual terms of your question, yes, it is a weakness.

COMMISSIONER FITZGERALD: Thank you.

COMMISSIONER MURRAY: Just to follow that line of argument and the ability of the church to impose standards and its will in certain respects, in the commercial world the use of a brand is reinforced by trademark registration and the
recognition that those who use it get a value, and, in
return for that value, there are certain requirements put
upon the organisation that uses that brand - so typically
standards, performance standards. Is there any such legal
concept in the church's mind with respect to the use of
your brand by schools and, therefore, your ability to
impose standards?

ARCHBISHOP FREIER: As far as I'm aware, the only
jurisdiction in Australia where "Anglican" is a protected
word in some way is in the State of New South Wales. In
other states there is no protection of that name.

The entities which have been - say in the state of my
diocese, where there has been a long history of fostering
independent organisations, they, in a way, could argue that
they have as much of the inheritance and conception of what
is being Anglican as the diocese has, because of their long
parallel history. Some of these entities have been
operating for almost as long as the diocese. So it is
a lack.

I would be keen to see that it was a controlled name
in the way you say and greater relationship, but I don't -
I'm not aware of any vehicle, apart from through good will,
that would achieve that. There is no legal vehicle open
for me in the State of Victoria for that to be the case.

COMMISSIONER MURRAY: Mr Blake, do you have anything to
add to that reply?

MR BLAKE: There is a section I think in a New South Wales
Act of 1976 which protects the Anglican name, and that has
led to a canon of General Synod - I think it is the use of
names canon. But that only applies to dioceses in
New South Wales. So there is an ability within the
Province of New South Wales to regulate or use - stipulate
requirements for the use of the name "Anglican", but only
in New South Wales.

COMMISSIONER MURRAY: Thank you.

MS FURNESS: Mr Blake, as you are aware, the report that
was published by the Royal Commission in relation to
redress also covered matters concerning civil litigation.
Through your working group has there been devised any
common approach to be recommended to the dioceses about how
they should deal with the recommendations?

MR BLAKE: In short, no. Our focus has been on redress. I think I can say, as I understand it, in the Diocese of Melbourne, a corporation has been formed that would be a legal entity that could be sued in the event of child sexual abuse or, indeed, any claim. I think as a matter of practice, as I'm aware of it, where dioceses have been unincorporated bodies and there have been claims of child sexual abuse, the diocese has sought to put forward a body corporate to be a defendant. I know that has happened in one case of which I'm aware.

MS FURNESS: Which diocese are you referring to?

MR BLAKE: That's the Diocese of Bathurst. The body corporate may even have been sued as a defendant. I think the strict legal position would have been the members at the time of the particular St Michael's Home, I think, who would have been in law the correct defendants, but I think the property trust may have been sued and that matter is resolved through the property trust. I'm not aware of any Anglican body - but I could be wrong - taking an Ellis defence. So far as the other matters --

MS FURNESS: By the Ellis defence, you mean arguing that the property trust, for example, which was sued, was not the appropriate defendant?

MR BLAKE: Or saying that there was no body which could legally respond. I know that there are other aspects of the Ellis case as well.

So far as statute of limitations, there is legislative action I think being taken since the Royal Commission delivered its report. I think in WA there has been a change to the law, there has in Queensland, there has in Victoria, and I'm aware that the Prince Alfred College case in the High Court of Australia in late last year, I think, arguably has made the rules for establishing vicarious liability somewhat easier, or certainly more fact based, rather than simply because criminal activity happened, you cannot be liable.

We haven't adopted any particular view about whether there should be a reverse onus of proof, for example, we have made a submission about that, but as far as I'm aware,
there has been no legislative response by any government about that.

THE CHAIR: I think Victoria has moved on that space.

MS FURNESS: Can I ask you, Archbishop Freier, Mr Blake has referred to a legal entity that has been created in your state to be, effectively, the proper defendant, that's right?

ARCHBISHOP FREIER: Yes.

MS FURNESS: And the statute of limitations is not I think available to you to rely upon, given legislation; is that right?

ARCHBISHOP FREIER: Yes.

MS FURNESS: Do you have any model litigant policies in place?

ARCHBISHOP FREIER: No. I know the Diocese of Wangaratta has put that position in place in Victoria and that certainly we would be interested to learn from their experience, but I think we haven't explicit policies, and I would probably need more advice as to what are the implications of having or not having model litigant approaches. I know the Diocese of Wangaratta had adopted that I think at a meeting of their council some time last year.

MS FURNESS: Thank you. Mr Blake, can I suggest it might be an area that you give some advice, via the Synod or some other method, to the dioceses, as to an approach or response to the recommendations on civil litigation?

MR BLAKE: It's something we could do and I'm aware the Catholic Church has produced some guidelines. There is no reason why, I think, we couldn't do something similar.

I think I am aware that while there are not guidelines, just from my own practice, that Anglican institutions have endeavoured to do more than, for example, just what their insurer tells them. I am aware of cases where the limit of indemnity has been X and the institution has, out of their own resources, paid Y, in order to achieve a just outcome. I think there have been informal
things like that that I'm aware have been operating, but clearer guidelines, I'm sure, would be useful rather than just informal responses.

THE CHAIR: Mr Blake, that's a good thing to hear, but Bishop Macneil would know well - it would be seared in her mind now - that the lawyer who the particular church body engages can have a very significant influence on how the church's response is litigated.

MR BLAKE: Yes.

THE CHAIR: Can I say, Archbishop Freier, a set of principles adopted, which will guide your lawyer as much as guide you, is a very important vehicle to ensure that you have an appropriate response to a litigant's problem. If you have any doubt about that, have a chat to Bishop Macneil and she'll let you know the detail of where things can go wrong.

BISHOP DR MACNEIL: Indeed.

MS FURNESS: Bishop Macneil, this seems an opportune time to ask you what your diocese has done as a result of Case Study Number 3 conducted by the Royal Commission.

BISHOP DR MACNEIL: We have, as I think you heard yesterday from Mr Elliott, significantly improved the functioning of the relationships. One of the things that the Royal Commission identified very clearly was that the relationships between the Professional Standards Director, the Professional Standards Committee, the bishop and the registrar did not function appropriately, and as you heard from Mr Elliott, and I was very pleased to hear him say this, he now believes this is functioning well and that we have good systems in place to ensure that the policies are, in fact, implemented as they should be.

The Commission will be aware that the diocese, in response to the understanding that the settlements that had been made in the case of the North Coast Children's Home were inadequate and did not meet the diocese's own benchmarking, under its Pastoral Care and Assistance Scheme, contacted the complainants, the victims in the North Coast Children's Home case, and offered ex gratia payments to bring their settlements, their payments, to the level that they would have received under the Pastoral Care
and Assistance Scheme.

MS FURNESS: Thank you. Do you have any model litigant policies in place?

BISHOP DR MACNEIL: We don't.

MS FURNESS: It is something you would seek advice on, I take it?

BISHOP DR MACNEIL: Absolutely. I look forward to anything that might come out.

MS FURNESS: Thank you. Is there an entity that you have identified or created that would enable survivors to sue - let's just call it the diocese for the moment - in relation to claims arising out of child sexual abuse?

BISHOP DR MACNEIL: There have been some cases like that, some civil litigation cases, and it is our corporate trustees who are the respondent in those cases.

MS FURNESS: Thank you. Archbishop Davies, have you put in place model litigant guidelines?

ARCHBISHOP DAVIES: Not to my knowledge. Most of our cases are handled through the pastoral care and assistance, and litigation is normally settled beforehand, so that's my understanding.

MS FURNESS: Again, I take it that's something that you would like further advice from the General Synod about the benefits of having such policies in place?

ARCHBISHOP DAVIES: We are always happy to receive advice from the General Synod.

MS FURNESS: That's not quite the question I asked. It is something that you would like further advice on, as opposed to always being happy to receive it, Archbishop?

ARCHBISHOP DAVIES: Happy to receive it and I would like to receive it, although, in my experience, the way in which we have been handling the events, incidents of child sexual abuse in the recent past, have been far better than it was previously, and so I'm not aware of any litigants at the moment, but because that is obviously an option which will
take place, it would be good to receive advice.

THE CHAIR: The fact that you recognise you are doing it better now than you were in the past reinforces the need, I think, for a clear policy, a set of model provisions, whatever you like to call it, going forward, because you won't be there forever and those around you won't be there forever.

ARCHBISHOP DAVIES: That's certainly true, your Honour, and indeed, another good reason why I would like it.

MS FURNESS: Bishop Smith, I believe you have, representing the diocese, approached the Queensland Government in relation to limitation periods; is that right?

BISHOP SMITH: The Archbishop had written to the Queensland Government lobbying for the removal of limitation periods, and our state government has changed legislation to do that with respect to child sexual abuse and also has included a provision whereby people who have settled in the past, where there have been deeds of release executed, can now seek the approval of a court to have those deeds of release set aside. That is a situation that we're dealing with at the moment because that legislation came into effect on 1 March this year.

MS FURNESS: Do you have model litigant policies in place?

BISHOP SMITH: We don't have model litigant policies in place. However, we do say to our lawyers that we want to get to the mediation, the compulsory mediation stage of our process as reasonably, quickly and easily as possible. I think it's true to say that almost all the claims against us that have been pursued via the personal injuries legislation have been settled at the compulsory mediation stage or before, by mediation, so we want to get there as soon as we reasonably can.

MS FURNESS: Thank you. Bishop Macneil?

BISHOP DR MACNEIL: May I add to my answer? We have also instructed the lawyers who act for us in these cases to negotiate an outcome and there have been very few cases, but none of them have gone to court, they have all been settled.
MS FURNESS: Thank you. Can I turn back to you, Mr Blake. You have been involved with the church for a long time, including in relation to the approach the church has taken and now takes concerning matters disclosed in the confessional?

MR BLAKE: Yes.

MS FURNESS: Perhaps you could first tell us to what extent within the church confession is part of the structure?

MR BLAKE: Within the Book of Common Prayer and in subsequent prayer books there is a provision for a private confession. It's difficult to get any sort of statistical information as to how often or not private confession takes place, but it's part of our authorised liturgy and part of the practice of the church.

MS FURNESS: Is that invariably a practice within each diocese?

MR BLAKE: As a priest, a member of the clergy, it's part of the function of being a priest to receive a private confession.

MS FURNESS: Thank you. There has been some development over the years, and perhaps decades, in relation to the approach of the church to this issue. Are you aware of that history?

MR BLAKE: Yes.

MS FURNESS: Perhaps you can take us through it.

MR BLAKE: It is probably more helpful to go back centuries, because that helps to explain where we are today. In the break of the Church of England from the Roman Catholic Church, the Church of England inherited the law of the Roman Catholic Church and every confession was subject to complete confidentiality.

The Church of England revised its canons in 1603 and it provided for a very limited exception to the seal of the confessional, if I could call it that, generally thought only to relate to treason.
When the Anglican Church of Australia was formed in 1962, then called the Church of England in Australia, in every covering Act to which the Schedule of the Constitution was a schedule, there was a section then which still provides that any rule of the church which is inconsistent with the written or unwritten law of the jurisdiction, is null and void. So that has meant any rule of the church, for example, that might be said to be inconsistent with mandatory reporting, would be null and void.

The church in Australia in 1962 inherited the applicable English canon law. That included the seal of the confessional, except in that very limited context, and as part of the project in the 1980s to update the canon law, a canon concerning confessions was enacted at a General Synod level and taken up in every one but one diocese. That provided that the seal was absolute except with the consent of the penitent and so we had two systems operating: one, the old Church of England canon in one diocese and in 20 dioceses absolute confidentiality except with consent.

In 1998 I moved on the General Synod a canon, as a private member, to require the disclosure of confessions of child sexual abuse. That was debated but not put to a vote. It led to the establishment of a committee to look at that issue. I chaired that and we reported to the next General Synod and we were satisfied that if someone approached a member of the clergy to make a confession of child sexual abuse and indicated they were not prepared to go to the police, that that would not be a valid confession and therefore the seal wouldn’t apply, and that was the substance of our report to the General Synod, which was received and the principles were recommended. I was satisfied that a confession could not be used as a cover-up.

That position pertained until 2013 when some contrary advice was put forward at the General Synod Standing Committee, that irrespective --

MS FURNESS: Just before you continue, you said that was the substance of your report to the General Synod, which was received and the principles recommended. By saying the principles recommended, does that mean that they changed
anything that had any enforceability?

MR BLAKE: No. It was an understanding as to how the
canon should work. We were saying there is such a thing as
an invalid confession and therefore the seal didn't apply.
That was the substance of what we said.

THE CHAIR: Having reached that position, what was the
position then in relation to any state which obligated
someone with knowledge to report the crime?

MR BLAKE: That would always have been of no force and
effect. The rules of the church could not override that
because of that particular --

THE CHAIR: Was that accepted and understood?

MR BLAKE: I don't think that was understood.

THE CHAIR: No.

MR BLAKE: No, and probably it is still not well
understood.

MS FURNESS: So we've reached the 1990s?


MS FURNESS: Beyond the 1990s.

MR BLAKE: Yes, beyond the 1990s. In 2013 some advice was
provided to the Standing Committee that if anyone
approached a member of the clergy to make a confession, it
didn't matter what their intention was, the seal
automatically operated. That was contrary to what the
report of the committee I had chaired had said.

That led the Professional Standards Commission, of
which I am chair, to promote a canon at the 2014 General
Synod to ensure that there was no rule of the church which
prevented the disclosure of child sexual abuse amongst
other things.

That canon was passed but subsequently an issue has
arisen as to its validity because of the procedure adopted,
and so there is a determination to revisit that at the
coming General Synod to pass it in a way that there will be
That has also been accompanied by the work of the Doctrine Commission of the church, which has identified that, at least in our understanding of confession, there is scope to disclose a matter of child sexual abuse or a grave offence involving a vulnerable person. They are the sorts of exceptions that are being built into this canon to go to the General Synod in September, and I understand from the bishops who attended the recent bishops' meeting that there is unanimous view amongst the bishops that that is an appropriate way for the church to move.

MS FURNESS: So what do you understand to be what will be put before the Synod - and I hear what you say about the bishops' view? What precisely is going to be put before the Synod about this issue?

MR BLAKE: It will abolish any rule of the church which would require a member of the clergy to keep a confession of child sexual abuse and other matters confidential.

MS FURNESS: The other matters being generally serious crimes?

MR BLAKE: Child pornography and a matter described as a grave offence against a vulnerable person.

MS FURNESS: Thank you. How will that canon be communicated, in the event that it is passed in the terms you suggest?

MR BLAKE: It will need to go to every diocese for adoption. Given our constitution, because that matter affects a matter of discipline, it must be adopted in each diocese. I understand there is a will to do that. And it would be a matter particularly for the bishop to instruct the clergy of the diocese about.

MS FURNESS: Can I ask you, Archbishop Freier, what your response will be in the event that such a canon is passed at the September Synod in relation to the advice you give?

ARCHBISHOP FREIER: Yes. We have consistently sought to implement the advice coming from General Synod in respect of this matter. So there have been various, I suppose you might call them, pastoral guidelines about how these
matters are implemented, and they have been sought to be communicated to the clergy. However, there has also been a restriction of people who are authorised to actually hear confessions of child sexual abuse. So we wanted to tell the clergy generally if a person comes and reaches that point, that it is not necessarily in their ambit to continue; they need to take this matter to a person who we are very confident is well informed about how their response should be made. So we've communicated in those terms, and so as the policy is made clearer, that will be communicated through our normal means of clergy education in the diocese.

MS FURNESS: So in the event that a person came to the clergy who happened to be in their church and said, "I want to tell you what I've done in relation to children", are you saying that that clergy has to say, "No, stop there. You have to tell someone other than me"?

ARCHBISHOP FREIER: Yes, we have set up people who, we are confident, are knowledgeable about how to deal with those issues.

MS FURNESS: So you would ask the penitent to come back at another time when this person might be available?

ARCHBISHOP FREIER: Look, perhaps there is a bit of an overarching picture here, but I think that in many cases private confession is not common in the Anglican Church. It certainly is not anonymous, in that we don't have, as probably people might conjecture from movies, a confessional box or some other place.

Where it takes place, and where it is authorised in our Formularies in the Book of Common Prayer, it is in respect to people in the congregation, and the preface to our Holy Communion Service in the Book of Common Prayer says that those who can't quieten their conscience should seek out a learned minister to work through these things.

So when it would occur it would be, by and large, within a well-known pastoral context of individuals. So it is not as if, in a way, people just come out of the blue, I don't think, in our context. So the fact that it is in relationship makes the kinds of things I'm saying very workable rather than unworkable.
MS FURNESS: Thank you. Bishop Macneil, will you recommend or advise to your diocese that they adopt the canon as Mr Blake has indicated it will be?

BISHOP DR MACNEIL: Yes, I will.

MS FURNESS: Thank you. Archbishop Davies?

ARCHBISHOP DAVIES: It is unlikely that the Diocese of Sydney would adopt the canon because, at the moment, there is no legislation for confessions in the Diocese of Sydney.

We adopted the canon, the 1989 canon, which excluded the canons of 1603, so they were annulled, and we then excluded that canon. It’s not common in the Diocese of Sydney to have a private confession like this. So matters of child sexual abuse would certainly be reported to the police and the matter would be reported to the bishop, most likely, by a minister, if that occurred, and we would have pastoral ways of doing it along those lines, rather than through the concept of the confessions canon as envisaged by the General Synod legislation.

MS FURNESS: So in the event that a clergy came to another clergy to say, "This is what I've done in relation to children", what you are saying is the clergy hearing the penitent must report to the police regardless of the context of the disclosure by the penitent?

ARCHBISHOP DAVIES: Correct.

MS FURNESS: Thank you. Bishop Smith?

BISHOP SMITH: I would certainly be encouraging - it will be Adelaide Diocese by then - to pass the legislation as described by Mr Blake.

MS FURNESS: Coming back to you, Mr Blake, you referred to mandatory reporting and, as you are well aware, the mandatory reporting regime differs from state to state.

MR BLAKE: Yes.

MS FURNESS: In some states, members of the clergy are required to report; in other states, they are not. You understand that?
MR BLAKE: Yes, I do.

MS FURNESS: Do the differences in those regimes make a difference to how you, at a national level, provide advice to the dioceses?

MR BLAKE: No, not particularly. I mean, I can say at the 2004, 2007 and 2010 General Synods we passed a motion directed to state governments to have a uniform approach to mandatory reporting. That has fallen on deaf ears; that was not successful.

I think personally - and I'm sure throughout many parts of the church - we would like a consistent approach to mandatory reporting, such that ministers of religion are required to mandatorily report. That's my own position.

MS FURNESS: Is that the position of General Synod?

MR BLAKE: Our resolution was more general than that, that there should be a consistent approach throughout Australia.

THE CHAIR: What was the opposition to that?

MR BLAKE: Was there any opposition? No, none.

THE CHAIR: That was adopted, was it?

MR BLAKE: That was adopted in three successive General Synods, but it has not been effective in securing legislative change.

THE CHAIR: You haven't been able to persuade governments to do it?

MR BLAKE: I met with both a Commonwealth minister and a state minister at one stage and explained the motion, but nothing happened. I'm not surprised by that. We did try to pursue it in an active way, but it has been unsuccessful.

COMMISSIONER MURRAY: Mr Blake, the Royal Commission has to consider mandatory reporting and the issue of the confessional within that. I assume somewhere you have documented a case, both moral and canonical, for confession in that context not to be regarded as valid, which is an interesting concept. Have we got a copy of that opinion of
yours or the report?

MR BLAKE: I'm not sure. I'm pretty sure it has been provided. It's on the General Synod website, that report. Whether it has been provided to you I'm not sure, Commissioner.

MS FURNESS: Are you referring to the 2017 report?

MR BLAKE: No, I am referring to a report of - it was called the Clergy Discipline Working Group which reported to the 2001 General Synod, which is confined to the issue of confessions of child sexual abuse.

MS FURNESS: We will see if we have it. If not, I'm sure it can be provided.

COMMISSIONER MURRAY: It would be useful for us to understand your arguments both moral and canonical for a confession of that kind not to be regarded as valid.

MR BLAKE: And probably, I would think, a more recent document would be the report of the Doctrine Commission, which looked at the moral considerations around confession of child sexual abuse and serious crimes involving vulnerable persons. That's a theological understanding of that which informs what we have done at a General Synod level.

MS FURNESS: We will table them in chambers, as it were, if we don't have them before we close today.

Can I ask each of the bishops and archbishops, would any of you have any opposition to being mandatory reporters?

ARCHBISHOP FREIER: No, I wouldn't have any opposition.

BISHOP DR MACNEIL: Nor would I.

ARCHBISHOP DAVIES: No.

BISHOP SMITH: No.

MS FURNESS: In New South Wales there is a reportable conduct scheme which operates in the way that specified or designated agencies are to report to the Ombudsman, for our
purposes, complaints in relation to child sexual abuse.
You understand that, Mr Blake?

MR BLAKE: I do.

MS FURNESS: That scheme operates in I think Victoria, or
will soon operate in Victoria and the ACT. Is that
a scheme which you think the church would benefit from
being part of in those states and territories where it is
not proposed?

MR BLAKE: I think it would be regrettable if the
New South Wales scheme was adopted as is. The concept of
"substitute residential care" is very difficult to
understand what it means, and I have seen some advice of
the Solicitor General of New South Wales which suggests
that an activity that lasts more than three days could be
considered substitute residential care, but something less
than three days is not, and I think it should apply to all
church activities. There are overnight camps and other
activities which are less than three days. I can't see
a principled reason to confining it to a concept like
substitute residential care. I understand the Victorian
legislation has a broader scope, and I think I would
support that.

MS FURNESS: Leaving aside the recent advice as to the
appropriate definition of substitute residential care, are
there any other aspects of the New South Wales scheme that
you believe should not be replicated in other
jurisdictions?

MR BLAKE: I think the Victorian scheme, as I understand
it, will apply to religious institutions generally, and
I think that would be a good thing.

It seems to me, from what I understand, that the
Victorian model, which is of course more recent, provides
a better model for going ahead, but the concept of
reportable conduct I think is very helpful and I think the
experience of the church in New South Wales and working
with the Ombudsman has been helpful, too. It has assisted
the church. So I can only see benefit if that were
replicated around Australia.

MS FURNESS: There is a Working With Children Check in
each state and territory, albeit called by different
names - you understand that?

MR BLAKE: Yes, I do.

MS FURNESS: Again, that regime differs in states, similar to the differences in the mandatory reporting regime.

MR BLAKE: Yes.

MS FURNESS: Is that a matter which, from the Synod's point of view, would be better dealt with by a uniform or consistent approach?

MR BLAKE: The answer is yes. And again, in 2004, 2007 and 2010 - it may have even been in 2014 - we passed a similar motion as we did about mandatory reporting, that there should be a uniform approach to Working With Children Checks, and we would like to see some mutual recognition of those, because people do, in the course of their ministry, go across boundaries and of course move as well. So that would be of great advantage, I think, to any institution like ours which operates nationally.

MS FURNESS: Thank you. Can I turn to you, Archbishop Davies. Your diocese was involved in the CEBS hearing?

ARCHBISHOP DAVIES: Correct.

MS FURNESS: You have no doubt made yourself acquainted with the report from the Royal Commission?

ARCHBISHOP DAVIES: Yes, I did. May I, Ms Furness, add something to what Mr Blake said?

MS FURNESS: Certainly.

ARCHBISHOP DAVIES: I was at a meeting in 2015 on reportable conduct with the Ombudsman, and I wrote on behalf of all the bishops in the Province of New South Wales, so Bishop Sarah included, with regard to the fact that we wanted mandatory reporting across all parish activities - on the lacuna, the inconsistency of the three days. I wrote to the Attorney-General of New South Wales accordingly, and the Catholic bishops in New South Wales did the same thing. So there is a consistency across both Catholics and Anglicans in New South Wales for this
mandatory reporting. Thank you.

MS FURNESS: Thank you. Does anyone else wish to say anything about mandatory reporting or the reportable conduct scheme, before I move on from that.

ARCHBISHOP FREIER: Could I just comment. As I understand it in Victoria, it is the Office of the Children's Commissioner who will be the responsible entity. There will be a roll-out over three years. It applies to religious organisations from mid-2018, and it is something we welcome. We think that there has been good learning from the New South Wales work, which was early work, and we would welcome the model that is being put in place in Victoria.

MS FURNESS: Thank you. Bishop Smith, do you have anything you wish to add to that topic?

BISHOP SMITH: Just that in my understanding, in our diocese anyway, clergy are already mandatory reporters. So if I am aware of information with respect to matters that are covered by our professional standards canon, it's mandatory for me to report them to the Director of Professional Standards or a member of that committee. So whilst that is not a broad requirement across the community, it certainly is for clergy and licensed church workers.

MS FURNESS: I think that Queensland doesn't have a reportable conduct scheme. Are you familiar with the notion of a reportable conduct scheme?

BISHOP SMITH: No, I am not.

MS FURNESS: Thank you. Can I come back to you, Archbishop Davies. You are aware, obviously, of the CEBS report, and in evidence yesterday a colleague of yours referred to the Wayne Guthrie Protocol - you know what I'm referring to?

ARCHBISHOP DAVIES: Correct.

MS FURNESS: Perhaps if we can have a copy of that on the screen, and perhaps if the Commissioners and your Honours could have a copy, and perhaps if we can provide the witness with a copy. You are familiar with that document,
archbishop?

ARCHBISHOP DAVIES: I certainly am.

MS FURNESS: Can you tell us how it came about that, firstly, there was a protocol, and, secondly, it was called the Wayne Guthrie Protocol?

ARCHBISHOP DAVIES: This relates to the abuse of Simon Jacobs that I mentioned earlier and it was also tendered specifically in the Hobart hearing.

Wayne Guthrie was identified as [BYJ] for the hearing, but then later on the identification has been allowed by his mother, Mrs Fortescue, who is present here with us today.

The sad circumstances of Wayne's death, just a month before the Royal Commission hearing in Hobart, in January of last year, brought to our attention, how do we support a situation like this? So we have been working particularly with Mrs Fortescue over the last couple of years. I have had the opportunity of giving an apology to her and to Wayne in 2014, I think it was. And so this policy, this protocol, was developed in particular to assist the families of those who have experienced premature death of a person who has been abused. That was the case with Wayne.

We asked Mrs Fortescue's agreement to call it the Wayne Guthrie Protocol so that Wayne Guthrie's name would never be lost and would always be remembered.

This protocol goes through issues - I won't go through it in detail. It is really a trauma informed approach with regard to this. So it is the way in which we deal with the family - care and comfort; attend the funeral; provide support - financial support, pastoral support in the process; the chaplain's role, very important, and the contact person's. So this protocol has been developed, and I am very grateful for Mrs Fortescue's part in this and particularly the willingness for it to be called in her son's name.

MS FURNESS: Thank you. If we can just scroll down, under the subheading "The Name Of the Protocol", there is reference in the second paragraph to:
As an adult, Wayne's abuse was reported to the local church leadership in 1993 and no action was taken.

ARCHBISHOP DAVIES: That is regrettably correct.

MS FURNESS: I tender that document, your Honour.

EXHIBIT #52-011 WAYNE GUTHRIE PROTOCOL

MS FURNESS: You have reflected, I take it, Archbishop Davies, on what the diocese's then approach was to Mr Guthrie and to his mother, and I understand that you wish to say to Mrs Fortescue your acknowledgment of the betrayal of trust by the diocese of both her and her son?

ARCHBISHOP DAVIES: I'm certainly very happy to say that, and Marion is there. I have said this to her privately and I am very happy to have it on public record.

It was a betrayal of trust that where you allowed your son to come to a CEBS group in one of our churches, you should have expected a safe environment, and that was not provided. And when reports were made of the abuse, that was not believed. Even when a whistleblower came, as we know from the hearings, it was not acted upon appropriately, adequately or sensitively, and it was a betrayal of our trust and of Christian grace, and my heartfelt apology to you, Marion, and the loss of Wayne is a heavy burden for you and for us.

I hope that this protocol will go some measure to addressing the need to care particularly for all people, all families - the families are secondary victims, really, in this situation, or secondary survivors, if we use that term - to care for them, because that is such an important part of our role in our pastoral care.

MS FURNESS: Now, Wayne I think went to the police in 2009 or thereabouts?

ARCHBISHOP DAVIES: Yes. I think it was actually [BYC] - I think I got that wrong in my evidence earlier. It was [BYC] who went to the police earlier. I apologise for that. There were two boys identified in the CEBS hearing, [BYC] and Wayne. Both suffered abuse from Simon Jacobs.
[BYC] had come forward - and his mother is also present here today. I apologise, as I have to her, and I am happy to have it on the public record, for the way in which the whole matter with Simon Jacobs was handled so poorly by the church leadership at the time. We have learnt an enormous amount of lessons and this protocol is part of that.

I understand, too, with regard to [BYC], that the Director of Professional Standards gave advice, "If you go to the courts, then you will receive no more pastoral support". That's an abhorrent piece of advice to be given to anyone, and I resile from that and I am sorry that that ever took place. That is not the culture which we have today and I don't know how it could ever have been given even as little ago as last decade.

MS FURNESS: Thank you, archbishop.

ARCHBISHOP DAVIES: Thank you, Ms Furness.

MS FURNESS: YourHonours, I have nothing further.

COMMISSIONER MURRAY: I have less than five minutes.

COMMISSIONER ATKINSON: Excuse me, your Honour; I have five minutes too.

COMMISSIONER MILROY: And I have a question.

THE CHAIR: What about the Bar table?

MS ENGLAND: Less than five, your Honour.

MS ELLYARD: I hope less than one, your Honour.

MS FURNESS: It sounds like lunch, your Honour.

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

LUNCHEON ADJOURNMENT

THE CHAIR: Commissioner Murray?

COMMISSIONER MURRAY: Thank you, your Honour.

Mr Blake, just a quick question to you. I noted in
one of your responses to Counsel Assisting you spoke of the pathology of abusers - you identified two different types --

MR BLAKE: Yes.

COMMISSIONER MURRAY: -- one of which is an abuser who enters the church because he knows the shield of trust and status will assist their aims; and the other was of a priest, a member of the clergy, who, because of their work, as you described it, falls into these activities.

My own understanding is that the understanding of victims and survivors has accelerated over the last couple of decades as more and more research and more and more work has been done, but the understanding of abusers has not accelerated to the same extent.

Within a church setting, particularly your church setting, I have wondered whether you would think it appropriate for the church itself to see if it could contribute to understanding by funding or sponsoring a proper independent and professional research study into what happens within your church setting. Have you ever thought of or discussed that kind of inquiry?

MR BLAKE: Not of that type, but I can say currently the Professional Standards Commission is revising policy for persons of concern, and in the context of that revision - it is almost complete - we consulted with a forensic psychiatrist who discussed extensively with us the pathology of offenders, and we have sought to incorporate those learnings into this revised policy.

Now, that doesn't go as far as you have identified, Commissioner, but in the particular context of the project in mind we have sought to do that, and in the code of conduct there is also a brief section on the pathology of abusers, but not as far as a study on it.

COMMISSIONER MURRAY: Because what you said was that within your own church setting there may be a particular pathology that develops as a result of the nature of clergy work.

MR BLAKE: Certainly my experience suggests that those who are unwell have crossed boundaries, including into child
COMMISSIONER MURRAY: And would you think it a good area for proper independent research, because your church is going to continue and clergy are going to continue, and the pressures of that work in the Anglican Church will continue?

MR BLAKE: It's something I've not thought of before and I think it's work thinking about, yes.

COMMISSIONER MURRAY: Thank you.

ARCHBISHOP FREIER: May I just add to the response, Commissioner, if I may? Ms Hywood and I had a discussion with a person who was proposing one of these, in a style like you were saying, in collaboration with a range of other churches, so I think there is some thought being given to an independent study, and I think that proposal may be advanced beyond the discussion we have had just a couple of weeks ago.

COMMISSIONER MURRAY: Thank you.

COMMISSIONER ATKINSON: My questions are for you, archbishop Freier, and essentially because you are the Primate.

Yesterday Mr Shand provided the Royal Commission with a document that set out differences in the dioceses in terms of the diocesan professional standards legislation. Are you aware of that?

ARCHBISHOP FREIER: I recall that, yes.

COMMISSIONER ATKINSON: Have you seen that document too?

ARCHBISHOP FREIER: I have.

COMMISSIONER ATKINSON: We might be able to move fairly quickly on this aspect, then. Do you agree, then, as we discussed yesterday, that in terms of, for example, the Dioceses of Bendigo and Bunbury, that there are differences in their approach?

ARCHBISHOP FREIER: I would agree with the analysis that was made yesterday. I think that that table looks at the
broader ambit of professional standards. It would be very helpful to do a similar analysis on child protection standards. So the differences evidenced here may evidence some difference in responses to child protection, but they may also be evidence of the wider questions of conduct and what is considered to be professional standards that goes beyond child protection and responding to child sexual abuse.

COMMISSIONER ATKINSON: Thank you. So then is it the case, as I understand it from the evidence that has been given, that not every diocese has adopted the code of conduct known as Faithfulness in Service?

ARCHBISHOP FREIER: Yes, that's the case. That has been I think confirmed today, yes.

COMMISSIONER ATKINSON: And clearly not every diocese is the same in terms of the professional standards legislation?

ARCHBISHOP FREIER: Yes, that's correct.

COMMISSIONER ATKINSON: In fact, I think it was agreed yesterday by Bishop Brain that a person in Bendigo and Bunbury could be treated very differently, both in terms of the scope of what might constitute misconduct and in appeal rights?

ARCHBISHOP FREIER: Yes, that's correct.

COMMISSIONER ATKINSON: I am sorry, I might have misunderstood, but are you saying that in terms of child safe standards there could be differences in the dioceses amongst those too?

ARCHBISHOP FREIER: Yes. I don't understand that table to be an analysis of the child safety elements of their professional standards legislation, but that would be a valuable analysis to do in parallel with that, because I understand that, say, for instance, places where Faithfulness in Service may not have been adopted as the code of conduct, as it has in the majority of places, that there still are argued to be robust child protection standards in place.

COMMISSIONER ATKINSON: Archbishop, could I read back to
you a small part, the final part, of Ms Hywood's opening statement to the Commission. It is these words:

Our actions in responding to child sexual abuse cannot be limited by our structures, our culture or our differences. We recognise the imperative for a nationally consistent approach to child protection and a structure to deliver the best possible response to those who have been harmed in our care. We accept the challenge and we are committed to taking action.

My question was this, in terms of those words, "we are committed to taking action", when that word "we" is used, do you believe that encompasses the archbishops and all the bishops?

ARCHBISHOP FREIER: Yes, I think there is a strong determination and I hope we will see the consensus around that in terms of support of measures brought to the General Synod later in the year.

COMMISSIONER ATKINSON: And that all dioceses would adopt the code of conduct, that all dioceses would have an identical professional standards legislation regime and all dioceses would have identical child safe standards?

ARCHBISHOP FREIER: I think that would be the aspiration that I would hold too and I would hope that the measures we bring to the General Synod will enable that to be the case.

COMMISSIONER ATKINSON: I am sensing a little bit of reservation there and if that is so, is that because the culture in the church is so strong and the independence of the dioceses is so strong that there can't be a guarantee of that?

ARCHBISHOP FREIER: At this point, I can only hesitate because we've not reached that point of the proposals being settled that will come to the General Synod, nor the agreement of the General Synod, but it is the fact, as the Commission has heard, there are some mechanisms that each diocese would need to adopt a measure. Even if passed by a very strong majority of the General Synod, which I am anticipating will happen, there are still steps outside of the influence of the General Synod, or the influence that
I can be decisive about, apart from confidence I can have within my own diocese. That's the only reason I would hesitate because I think it would be wrong to see steps happening as already being completed when they are yet to be fulfilled.

COMMISSIONER ATKINSON: Would it be your view, though, that all of the archbishops and all of the bishops would be united in the view of a need for consistency across all three of those areas?

ARCHBISHOP FREIER: Yes, I think there is always discussion around what shape that consistency will take, as you would expect, but I think there is a strong agreement of the importance of having a consistent approach to child protection.

COMMISSIONER ATKINSON: Thank you. I have nothing further.

COMMISSIONER MILROY: I have one question. Thank you. Perhaps Archbishop Freier I will address my question to you, but I'm happy if someone else wants to comment.

In the past we have heard a lot about children not being believed, perhaps the lack of understanding of the impact on children and then the impact throughout life and you can also understand that for professional groups working with children, they would undergo quite extensive training and education regarding child development and other aspects of childhood and developing relationships with children.

My question is really, is there an overarching theology of the child in the Anglican Church that goes to the ministry with children and how that has developed and the professional development that might ensue after that? Is there any sort of --

ARCHBISHOP FREIER: Yes, there has been work done on that. In many of our dioceses there are people who have an expert practice in children's ministry and would be working with people who are involved in children's groups to help them develop those understandings and that best practice.

COMMISSIONER MILROY: Is that something that's consistent in the formation of the priests, or is there not
a consistent curriculum across all of the training?

ARCHBISHOP FREIER: No, there is not a consistent curriculum in that there are several degree accrediting bodies that would have their own curriculum, their own standards, but broadly, there would be core elements to each of the theological degrees that people do.

Not everyone completes a theological degree. Of recent years there have been more practices of people being involved in locally ordained ministry who might not have had a full three or four-year degree level training, but they have had some locally supplied training, and perhaps in some of those there is a - if I think about "context based", if that was the phrase, there might be far more relationship if that is the nature of their work.

I think that people increasingly who are working in a specialist area, perhaps like school chaplains, will have specialist knowledge and training and professional development. As far as I'm aware, in our state all chaplains need to be registered teachers, they have all completed an educational qualification and they will have received training in child psychology and other things as part of that professional formation.

COMMISSIONER MILROY: Do you think there would be some merit in being able to have that broader framework for everyone, really, in the church, so that the child protection issues don't just sit in isolation, but they sit within a broader context for understanding children in the church?

ARCHBISHOP FREIER: Yes, there would be great merit in that. Again, the means by which that might be achieved is harder to say, and it is paradoxical, because at the time when some of the people who are now recognised as abusers were going through theological training, I think there was far more consistency. People all did a theological program that was approved by the Australian College of Theology and pretty much around the colleges there was one qualification that people completed.

Since that time there has been an elaboration of theological education, much more linking with secular universities, or, in my State, we have two accrediting authorities, the Australian College of Theology, which had
its origins as an Anglican entity, and the University of
Divinity, which is a recognised single discipline
university, and they would be the bodies that would develop
the curriculum in relationship with the teaching
enterprises; but there is always an aspect of broadly
pastoral concerns and probably some people could elect to
do far more in those areas, but there certainly is scope
for the things you are talking about, those insights, to be
operative within the curriculum.

COMMISSIONER MILROY: Certainly there needs to be some
sort of minimum standard regarding understanding of the
role of children in the church generally, that would then
fit parallel or together with the child protection regime?

ARCHBISHOP FREIER: Yes, I think that's right, and some of
that would also come, apart from the theological training,
through some of the pastoral training in formation that
I think you heard about on the second day of evidence
and --

COMMISSIONER MILROY: We actually didn't hear much about
what the curriculum was regarding children. We heard a lot
about the child protection training but nothing about the
more general view of children.

ARCHBISHOP FREIER: Yes, it is important. In Victoria, as
we are adopting the new child safe standards, the
understanding of children's interests in what they are
doing, children being consulted and involved in the kind of
activities and programs that they are participating in, is
an important part of that standard which we embrace and
I think will change much about the practice of many
organisations in how they work with children.

COMMISSIONER MILROY: Did anyone else want to make
a comment?

ARCHBISHOP DAVIES: Thank you for the question. I welcome
the Commission's interest in theological matters.

The theological underpinning which is universally held
around the Anglican Church is that children are made in the
image of God. It is therefore an offence to God when
children are abused, that is our fundamental united view,
and that would be true in every theological curriculum
I would think.
The consistency issue you raise may not be exactly the same curriculum in various theological colleges, but the fundamental truths which the Bible teaches about the value of the child - and this is children in the church and outside the church - is that they are made in the image of God and that's what spurs us on to the importance of child protection.

THE CHAIR: Yes. Ms England?

<EXAMINATION BY MS ENGLAND:

MS ENGLAND: Thank you, your Honour. For the benefit of those listening, my name is Ms England and I appear for the Diocese of Sydney. My questions are for you, Archbishop Davies. You gave evidence earlier about Wayne Guthrie’s courage when he made an accusation and came forward in relation to Simon Jacobs, and Jacobs' denial. Do you remember that evidence?

ARCHBISHOP DAVIES: Yes, I do.

MS ENGLAND: Do you accept that [BYC] was the first person who came forward to police?

ARCHBISHOP DAVIES: I certainly do and that was an error, in that I confused the two young men. [BYC] came before the police. That brought about the first court case where Simon Jacobs denied any culpability and that was harrowing for [BYC] in that regard.

MS ENGLAND: And it was in 1988 that [BYC] came forward to police, that's your understanding?

ARCHBISHOP DAVIES: Correct.

MS ENGLAND: The court case that you referred to that was harrowing for him finished in 1999 [sic]?

ARCHBISHOP DAVIES: Correct.

MS ENGLAND: In your earlier evidence were you referring to Wayne Guthrie and five other survivors, including [BYC], their later complaints to police which led to Jacobs' conviction?
ARCHBISHOP DAVIES: Yes, I wasn't explicit, but certainly implicitly that was the value of [BYC]'s evidence and later on Wayne Guthrie's evidence on TV.

MS ENGLAND: I am told by those assisting me that I said it concluded in 1999. I am sorry, I meant to say 1989; is that your understanding?

ARCHBISHOP DAVIES: I'm sorry, because I just followed your lead, so therefore I would concur with the date that you have been advised of.

MS ENGLAND: Thank you, 1989.

ARCHBISHOP DAVIES: Thank you.

<EXAMINATION BY MS ELLYARD:

MS ELLYARD: Thank you, your Honour. Just one matter I would address to Mr Blake, if I may. Mr Blake, the Commission heard evidence last Friday, in particular, comments made by Archbishop Aspinall and Dr Kaye, about the extent to which some external impulse might assist the church in progressing questions of uniformity in episcopal standards and perhaps professional standards more generally. In your capacity as the Chair of the Professional Standards Commission over some time, what would you say about the proposition that an external impulse might be either necessary or useful in this regard?

MR BLAKE: I think, from my perspective, I would regard that as a continuing moral failure, if our church requires an external push, either by this Commission or by legislation, to do the right thing. I think we have been on a journey, particularly since 2004, to achieve a nationally consistent approach. I think the strategy of recommending policies and hoping that dioceses would pick them up has now been shown not to be completely successful, although there has been substantial change. Thus, the intention is to take to General Synod a proposal that would bring about consistency in standards of conduct and a consistent minimum standard of training, screening, audit and perhaps other matters.

As I said, if this requires the Royal Commission or government to tell us to do the right thing, that would only demonstrate that we have really not learnt and we
don't have the courage of the convictions which we bring as a Christian body.

MS ELLYARD: Thank you, Mr Blake. Thank you, your Honour.

MS FURNESS: I have no further questions for the panel but I have some matters to tender, your Honour, that's all.

THE CHAIR: That brings your contribution to an end. Can I thank each of you, as I have thanked others.

Can I also say that of course I have met a number of you in the course of the Commission's work and we are grateful for the opportunity that we have had to speak with you and others.

It won't have escaped all of you that you are significant leaders in different ways in the church - I know there are others - but obviously there are still matters which need to be brought forward and the community will be looking to you as the leaders of the church to bring those matters forward and reach a satisfactory conclusion, but today can I say thank you and you are now excused. You can step down too, if you would like to.

MS FURNESS: Your Honour, I need to tender some documents that Mr Blake referred to. The first is titled "The Doctrine Commission of the Anglican Church of Australia on Confessions and Confidentiality", dated March 2016.

EXHIBIT #52-012 DOCUMENT TITLED THE DOCTRINE COMMISSION OF THE ANGLICAN CHURCH OF AUSTRALIA ON CONFESSIONS AND CONFIDENTIALITY, DATED MARCH 2016

MS FURNESS: The second is the Doctrine Commission of the Anglican Church of Australia Report to Standing Committee on Confidentiality and Confessions, dated January 2014.

EXHIBIT #52-013 DOCUMENT TITLED DOCTRINE COMMISSION OF THE ANGLICAN CHURCH OF AUSTRALIA REPORT TO STANDING COMMITTEE ON CONFIDENTIALITY AND CONFESSIONS, DATED JANUARY 2014

MS FURNESS: The third document, Report of the Clergy Discipline Working Group, is contained in tab 10.323 of the
tender bundle.

THE CHAIR: We don't need to tender that?

MS FURNESS: No, but I'm just referring to it because it was in front of me.

THE CHAIR: Is that all?

MS FURNESS: That's all, your Honour.

THE CHAIR: Now adjourn until 10 in the morning?

MS FURNESS: Yes. Yeshiva is tomorrow, your Honour.

THE CHAIR: So that brings the Anglican segment to an end?

MS FURNESS: It does.

THE CHAIR: And tomorrow at 10 is Yeshiva; is that right?

MS FURNESS: That's right, your Honour.

THE CHAIR: Very well. We will adjourn until 10.

AT 2.22PM THE COMMISSION WAS ADJOURNED TO THURSDAY, 23 MARCH 2017 AT 10AM