

ROYAL COMMISSION INTO INSTITUTIONAL  
RESPONSES TO CHILD SEXUAL ABUSE

Public Hearing - Case Study 16  
(Day C041)

Court 3.3, County Court of Victoria  
250 William Street, Melbourne

On Thursday, 21 August 2014 at 10.00am

|                       |                           |
|-----------------------|---------------------------|
| Before the Chair:     | Justice Peter McCallum AM |
| Before Commissioners: | Professor Helen Milroy    |
|                       | Mr Andrew Murray          |

|                    |                    |
|--------------------|--------------------|
| Counsel Assisting: | Ms Gail Furness SC |
|                    | Mr Angus Stewart   |

1 <RICHARD ALEXANDER LEDER, recalled: [10.00am]

2

3 <EXAMINATION BY MR STEWART:

4

5 MR STEWART: Q. If we could have tab 228 on the screen,  
6 please. Mr Leder, you will recognise this as an email from  
7 you to Jennifer Cook on 18 April 2013. Jennifer Cook was  
8 at that time a lawyer working for the Archdiocese of  
9 Sydney; is that right?

10 A. Yes.

11

12 Q. And you recall you wrote this email to her in the  
13 context of issues having arisen from what was put to  
14 Cardinal Pell in a 60 Minutes program perhaps the night  
15 before, certainly shortly before?

16 A. The 60 Minutes program was in 2002, so I'm having  
17 difficulty recollecting what had occurred on 18 April 2013  
18 to prompt this email.

19

20 Q. The issue of what had happened in the 60 Minutes  
21 program had then been raised again, as I understand it,  
22 reading this email; is that right?

23 A. Could we scroll down a little because I don't recall?  
24 I'm sorry, I don't recall why I was sending this email to  
25 Ms Cook at this time. No, I don't recall.

26

27 Q. In any event, if we can look at the second paragraph,  
28 the paragraph beginning, "As I mentioned":

29

30 As I mentioned, after the 60 Minutes  
31 interview our pro forma letter of offer was  
32 amended with the assistance of Sue Crennan  
33 to spell out more clearly that there are no  
34 confidentiality restrictions in respect of  
35 the abuse, and I emphasise once again that  
36 it is clear from our standard form release  
37 that it contains no confidentiality  
38 undertakings ...

39

40 Just pausing there, that's correct, as I understand it, in  
41 the release itself, other than the without prejudice  
42 privilege we spoke about yesterday, there are no  
43 confidentiality requirements?

44 A. Yes, that's correct.

45

46 Q. Then it goes on and it says:

47

1 ... and that there have never been  
2 confidentiality obligations imposed on  
3 victims who settle through the Melbourne  
4 Response. His Eminence was mistaken on  
5 this point in the 60 Minutes interview and  
6 as I have commented on various occasions in  
7 discussions, particularly with Michael  
8 Casey, it is important that he be fully  
9 briefed on this point ...

10  
11 And so on. As I understand it, Cardinal Pell had either  
12 said or accepted in the interview that there was a  
13 confidentiality obligation imposed in the Melbourne  
14 Response process?

15 A. Yes, the 60 Minutes interview described the offer that  
16 had been made to Ms Emma Foster as hush money, and in the  
17 interview the Cardinal did not reject that proposition or  
18 disagree with it. But, as I say in this email, he was  
19 mistaken, and indeed after he conducted the interview but  
20 before the 60 Minutes program went to air he swore a  
21 statutory declaration, as set out there - he swore a  
22 statutory declaration correcting the position and that had  
23 been provided to 60 Minutes.

24  
25 Q. Well, was the Cardinal mistaken or are you mistaken in  
26 this email, Mr Leder?

27 A. No. With respect to His Eminence, His Eminence was  
28 mistaken in the 60 Minutes interview, as he confirmed by  
29 swearing a statutory declaration to correct the position.

30  
31 Q. That was with reference to the offer of compensation  
32 to Emma Foster, was it?

33 A. Yes, it was, and I think the point was that if the  
34 Cardinal could have been confused about this, then it was  
35 abundantly clear that victims could also be confused and  
36 that there was clearly a need to do something about that,  
37 which is why we amended the letter of offer to try and make  
38 the position clearer.

39  
40 Q. Perhaps we can go to tab 141. You will see this is  
41 the application for compensation by Anthony Foster, and at  
42 the foot of that page you will see that was in September  
43 1998?

44 A. Yes.

45  
46 Q. The application for Emma Foster, which is not actually  
47 in the bundle as it happens, was on the same terms?

1 A. Yes, it was on the same terms.  
2  
3 Q. You accept it was on the same --  
4 A. Yes, I do, yes. I accept that the form was the same.  
5  
6 Q. And, in any event, this particular one we have on the  
7 screen of Anthony Foster's in September 1998 predated the  
8 60 Minutes interview which I think you said was in 2002; is  
9 that right?  
10 A. Yes.  
11  
12 Q. And this is the same document we were looking at late  
13 yesterday?  
14 A. Yes.  
15  
16 Q. And in particular if it could be scrolled up slightly  
17 to show paragraph (d). Paragraph (d) is the one that  
18 I asked you about yesterday?  
19 A. Yes.  
20  
21 Q. And if we now look at paragraph (f) there is an  
22 undertaking that "I", that's the applicant for  
23 compensation, and then also each member of the panel and  
24 the Archbishop and his advisers "will, unless otherwise  
25 compelled by law, preserve total confidentiality in  
26 relation to all matters arising in the course of or in  
27 relation to the panel's deliberations, whether documentary  
28 or oral, that may be provided to the panel or to me." Do  
29 you accept that Emma Foster signed that undertaking?  
30 A. Or that it was signed on her behalf, yes, I do.  
31  
32 Q. Well, I think it was in fact signed by Emma and  
33 witnessed by her father?  
34 A. Yes, thank you. That's correct.  
35  
36 Q. But be that as it may. And you will accept that that  
37 is a far-reaching confidentiality undertaking with regard  
38 to a number of matters around the abuse, including matters  
39 submitted and deliberations, whether documentary or oral,  
40 provided to the panel?  
41 A. Yes, I agree that it says that.  
42  
43 Q. And that was not waived or the position didn't change  
44 with the offer of compensation?  
45 A. No, it didn't. But if we could go back to - would it  
46 be possible to go back to my email?  
47

1 Q. That's at 228?

2 A. What I say here is that there are no confidentiality  
3 restrictions in respect of the abuse. I think the  
4 distinction and the confusion which arose and which we  
5 sought to clarify in the letter of - in the subsequent  
6 letters of offer was that, although the Compensation Panel  
7 process was without prejudice and confidential, that did  
8 not in any way restrict victims who wanted to talk about  
9 the abuse, the fact that they had been abused, the fact  
10 that the Independent Commissioner had found that they had  
11 been abused or the fact that they had made a complaint to  
12 the police and that had gone through the process or  
13 whatever it was that they, if they wished, wanted to  
14 discuss in relation to the abuse, that that was not - they  
15 were not prevented from doing that. I absolutely accept  
16 that the form of letter as sent to Ms Emma Foster left that  
17 less clear than it ought have been, and, as I say, if the  
18 Cardinal himself was confused about it, then it was  
19 absolutely understandable that others could be as well.  
20 But there has not ever been any restriction on victims who  
21 go through the Melbourne Response from talking about the  
22 abuse and what the priest did to them or the offender did  
23 to them, regardless of whether they have made an  
24 application for compensation and regardless of the status  
25 of that application or the outcome of the application. If  
26 there's any lack of clarity or confusion in the application  
27 for compensation form, which is clearly a legalistically  
28 worded document, that was what we were seeking to clarify  
29 in the amendments to the letter of offer.  
30

31 Q. But what you say there, with the highlighted word  
32 "never", that, "There have never been confidentiality  
33 obligations imposed on victims who settle through the  
34 Melbourne Response"; that is wrong because there are the  
35 confidentiality obligations in the application, including  
36 in paragraph (d) and (f)?

37 A. I'm speaking there in the context of obligations in  
38 respect of the abuse, and, as the paragraph goes on to say,  
39 there is a distinction between the without prejudice  
40 obligations and any confidentiality obligations in relation  
41 to the abuse.  
42

43 Q. The without prejudice obligations don't arise in this  
44 discussion that we are having because what (d) and (f) in  
45 the application form cover is a range of matters relating  
46 to what's been submitted to the panel and the deliberations  
47 of the panel, including in documentary or oral form, and

1 that you would accept would include aspects relating to the  
2 abuse?

3 A. Yes, but it doesn't restrict the victim from  
4 disclosing information that they have in other contexts and  
5 from other sources. If a party to any process has  
6 information and then agrees that in one context it's  
7 confidential, I would say that doesn't make it confidential  
8 for all purposes, and that is what I was seeking to explain  
9 later in this paragraph where I have said "he", namely the  
10 Cardinal, "will need to understand what is meant by without  
11 prejudice offer and that it in no way restricts victims  
12 from talking about the abuse but only that it allows a  
13 settlement to be explored while protecting the rights of  
14 both the victim and the Church".  
15

16 Q. Would I be right that in writing that what you had in  
17 mind was the settlement offer letter, in other words the  
18 terms of settlement, rather than the application form?

19 A. No, I think I had in mind the basis upon which the  
20 compensation process proceeds, which includes the  
21 application form as well as the - it includes the entire  
22 process. So commencing with the application form and  
23 concluding with a release, if accepted, which of course  
24 hadn't happened in the case of Ms Foster.  
25

26 Q. So, whilst a person entering the process and signing  
27 this form, whether ultimately settled or not, would be free  
28 to talk about the fact that they had been abused and by  
29 whom and the circumstances and so on?

30 A. Yes.  
31

32 Q. That's right, isn't it?

33 A. Yes, that's right.  
34

35 Q. But they would be bound under this application form to  
36 not disclose that they had made an application, what they  
37 put in their application, what documents they submitted in  
38 support of their application or what the response to the  
39 application was?

40 A. Yes, which I would describe as a conventional without  
41 prejudice negotiation process or a without prejudice  
42 attempt to resolve a claim that's being made on a basis  
43 that if it is unsuccessful both parties are in the same  
44 position as they would have been in had those - had that  
45 process not happened.  
46

47 Q. Save that in this case if it is successful and a

1 settlement agreement is concluded these provisions still  
2 apply. In a conventional without prejudice situation if  
3 there is no settlement the offers that have been made would  
4 be without prejudice, but when there is settlement then  
5 none of that remains confidential?

6 A. I'm not sure that I agree with that analysis. From  
7 discussions I have had with Mr Curtain, the Chair of the  
8 panel, from whom Your Honour and the Commissioners will  
9 hear later, I understand that he speaks to each applicant  
10 about this issue as well.

11  
12 Q. Perhaps as one of the architects of the scheme,  
13 Mr Leder, you can explain what the thinking was as to the  
14 purpose of these confidentiality undertakings in paragraphs  
15 (d) and (f), and we can have them back on the screen for  
16 you, if you like. That was at tab 141?

17 A. My thinking, as best as I recall, and I think we could  
18 see late yesterday that this document is a document that  
19 needs to be improved and will obviously be one of the  
20 things that will be reviewed in the review of these matters  
21 that Archbishop Hart announced in April, but the intention  
22 was that an application for compensation is without  
23 prejudice. Therefore, if it is not accepted, the matters  
24 remain confidential. So neither party could then go to  
25 court and say, "Well, the Church is liable because they  
26 offered me \$75,000", say, that they would not be able to do  
27 that, which lawyers would understand as being a  
28 conventional without prejudice situation.

29  
30 But if the offer is accepted, then all of those  
31 confidentiality obligations would no longer apply. That's  
32 my understanding of the without prejudice doctrines, and  
33 that's my understanding of - and my recollection of what we  
34 were intending to design here.

35  
36 Q. And do you accept that in the result that intention  
37 wasn't fulfilled because the obligations undertaken in the  
38 application form continue?

39 A. I do accept that, yes.

40  
41 Q. Insofar as the working of the Compensation Panel  
42 itself is concerned --

43 A. I'm sorry, I apologise for interrupting, but  
44 I accept - I absolutely accept that the document in front  
45 of me doesn't reflect what I have just described as being  
46 the intention. But I believe that the letter of offer  
47 clarifies the position, certainly in its improved form, and

1 that letter would release applicants from the ongoing  
2 obligation of confidentiality if the offer is accepted.

3

4 Q. Could we have tab 138 on the screen, please. Perhaps  
5 if we can scroll down so Mr Leder can have an opportunity  
6 to see what's in that document, and particularly on to  
7 page 2. If you can stop there. Is that the paragraph that  
8 you are thinking of, Mr Leder, the one that says:

9

10 If Emma rejects the offer now, she and you  
11 will remain bound by the terms of the  
12 application for compensation form and in  
13 particular may not disclose or rely upon  
14 this offer, which is of course put on a  
15 without prejudice basis.

16

17 A. Yes, but more particularly, sir, that in the  
18 amendments that were made to this form of letter that what  
19 is there only - what is there not addressed, which is what  
20 happens if you accept the offer, that's what we went on to  
21 explain in the amended form of the letter. I think if we  
22 were to look - I'm not sure whether in the tender bundle,  
23 sir, we have the letters that were sent in relation to the  
24 other two case studies we are exploring. But I think  
25 certainly in the case of Mr [AFA] we would see the wording  
26 to which - the wording that I have in mind.

27

28 Q. Yes, that's 285. Tab 285. So this is the offer to  
29 [AFA] in June 2011?

30 A. Yes. So this is some years after the process with  
31 Ms Crennan that we were talking about earlier.

32

33 Q. And in particular the paragraph starting "In  
34 accordance with the procedure"; is that right?

35 A. If we could go a little further --

36

37 Q. And then it goes beyond that?

38 A. Yes. "The release you sign contains no  
39 confidentiality obligations", and then you will see, "If  
40 you reject the offer", but then that's where I believe the  
41 changes start to be made:

42

43 The only matters that you are asked to keep  
44 confidential are the details of your  
45 application to the panel and this "without  
46 prejudice" offer. However, there are no  
47 restrictions on you discussing the



1 circumstances of the abuse and its effect  
2 on you, whether publicly or in any other  
3 forum.

4  
5 So that's seeking to clarify that, even if the offer is  
6 rejected and therefore without prejudice obligations still  
7 apply, there are nevertheless no restrictions on discussing  
8 the circumstances of the abuse and its effect. Then the  
9 next paragraph and the ones that follow provide further  
10 clarification still.

11  
12 Q. And that clarification change in the wording came in  
13 or after 2002?

14 A. Yes. So in particular that next paragraph, which  
15 includes the statement that:

16  
17 Applicants to the Compensation Panel have  
18 never been restricted from speaking  
19 publicly about this, and the Archbishop  
20 wishes to assure you that you have every  
21 right to make your allegations public if  
22 you so wish.

23  
24 I might say that on a very limited number of occasions  
25 I have, Your Honour, received telephone calls from victims  
26 who have received offers and who understandably did not  
27 find the documents as clear as one would like them to be,  
28 and I sought to provide further explanation.

29  
30 Q. The reality is that the terms of the application form  
31 itself have remained the same throughout?

32 A. Yes, that's so, and they clearly need review.

33  
34 Q. That's where some of the opacity lies?

35 A. I'm sorry?

36  
37 Q. That's where some of the difficulty lies, with the  
38 terms of the application form?

39 A. I agree.

40  
41 Q. With regard to the question of the compensation amount  
42 and how the Compensation Panel was expected to deal with  
43 that, was any particular thought given as to how fairness  
44 might be achieved, fairness in the sense of comparability  
45 between awards of different applicants in similar  
46 situations?

47 A. Yes, it was.

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Q. How was it thought that that might be achieved?

A. I think that initially the proposal that Mr Chernov contemplated was that he would keep or the panel would keep a record of each award that it made. I think that was his original intention.

Q. That isn't what occurred, though, as we discussed yesterday?

A. No, it's not. I don't recall - it's possible that he adopted that practice, but I don't believe that Mr Habersberger did or that the subsequent chairs did.

Q. Because what in fact happened is the Compensation Panel chair would send the documents back to you once their job in relation to a particular application had been done?

A. Yes, that's right.

Q. And also there was a fairly steady turnover of chairmen of those panels over time, wasn't there?

A. Well, we have had I think four in 17 years.

Q. Five, I think?

A. Five.

Q. Five, yes. Chernov, Habersberger, Crennan and Curtain?

A. And Curtain.

Q. That's five, I think.

A. I think that's - isn't that four?

Q. That's four?

A. I'm sorry, I hesitate to disagree with you, but it's four.

Q. In 18 years?

A. Yes.

Q. And the other members of the panel, though, have remained constant; is that right?

A. They have, with the exception of the psychiatrist. Dr Vine, who was originally appointed, received - then undertook some - I think a government appointment of some description, and therefore stood down from the panel, I think in 1997.

1 Q. Mr Leder, I want to move on to talk about the case of  
2 the Fosters in particular, and you faced, as I understand  
3 it, some particular novel issues in that application or in  
4 that case broadly described; would that be right?

5 A. Yes, that's right.

6

7 Q. Can you characterise what those were?

8 A. Yes, I can. The first was that it was and has  
9 remained very unusual for a victim to come forward so soon  
10 after the abuse. Apart from Emma Foster's case, Katie  
11 Foster's case and one other, every other victim who has  
12 come forward to the Melbourne Response has come forward as  
13 an adult many years after the abuse. So the fact that we  
14 were dealing with a victim who was still a child was the  
15 first factor that made the case complex and novel.

16

17 The second was that, while many victims have obviously  
18 clearly suffered very, very badly as a result of the abuse  
19 and while it's I think very difficult to and not  
20 appropriate to compare cases, there was no doubt that the  
21 effects on Emma of the abuse were extremely profound.

22

23 The third factor, which perhaps logically should have  
24 been the first factor, was that it was one of the first  
25 cases - I think it was perhaps something like the sixth  
26 case that had come forward to the Melbourne Response after  
27 its introduction, or certainly it was one of the very early  
28 cases, and therefore at the time that Mr O'Callaghan first  
29 had contact with the Fosters he was still in the process of  
30 dealing with the first number of victims.

31

32 Similarly for Carelink, the Fosters made contact with  
33 Carelink very early in its operation. I think in -  
34 certainly during 1996 when Carelink had only been in  
35 operation for a couple of months.

36

37 There was initially the complexity of obtaining in an  
38 appropriate way the records that the Pastoral - and the  
39 information that the Pastoral Response Office had from the  
40 Fosters and the arrangements that had been put in place  
41 through the Pastoral Response Office to provide some  
42 assistance to the family and the process of transferring  
43 that to the Melbourne Response.

44

45 There were also issues in relation to the  
46 appropriateness or otherwise of claiming medical expenses  
47 through Medicare, which we discussed yesterday, and, as

1 best as I recall, it was Mr Foster who first raised - who  
2 was the first client, if that's the right word, of Carelink  
3 to raise that issue with Carelink.  
4

5 And there was also the complication of the Fosters  
6 having what I think I described yesterday as an  
7 understandable reluctance to deal with Professor Ball.  
8

9 Q. Yes. Have a look at your statement at paragraph 76.  
10 You say that you became aware in March 1997 that Peter  
11 O'Callaghan was to meet with the Fosters, and in order to  
12 ensure that Mr O'Callaghan was aware of all the information  
13 of which you were aware you outlined that information to  
14 him in a fax dated 7 March 1997?

15 A. Yes.  
16

17 Q. Firstly, how was it that you became aware that  
18 Mr O'Callaghan was to meet with the Fosters?

19 A. I don't recall.  
20

21 Q. And why is it that you regarded it as appropriate or  
22 necessary to give information to Mr O'Callaghan of which  
23 you were aware?

24 A. There are two reasons. In the first instance the  
25 basis upon which the Independent Commissioners are  
26 appointed is that the Archdiocese is expected to provide to  
27 the Independent Commissioners all information that the  
28 Archdiocese had, and I had some information that I had  
29 received from the Archdiocese in terms of the Pastoral  
30 Response Office, file transfer issue and so on, and  
31 I thought it was appropriate to provide all of that to  
32 Mr O'Callaghan.  
33

34 The second and perhaps more immediate issue was that  
35 I was aware that one of the things that Mr O'Callaghan  
36 would do when he met with any victim was to discuss  
37 Carelink and the assistance that could be made available  
38 through Carelink, and I was also aware that in relation to  
39 the Fosters there had been issues with that that we were  
40 just discussing. I thought that it would be quite  
41 unhelpful for the process and unhelpful for the Fosters or  
42 for any victim to have to go through all of that again with  
43 Mr O'Callaghan. I recall being concerned that if  
44 Mr O'Callaghan said, as he would do invariably, "Well,  
45 assistance from Carelink is available," the Fosters'  
46 understandable response would be to say, "Yes, we have  
47 already been working through all of that and there are

1 problems with it." So I thought it was far preferable that  
2 Mr O'Callaghan had that information.

3

4 Q. Can we look at tab 98. This, as I understand it, is a  
5 file note essentially of a meeting that you had had with  
6 Professor Ball and Sue Sharkey at Carelink?

7 A. Yes.

8

9 Q. On 13 March 1997. Firstly, I'm interested as to the  
10 subject as described as "RCC v Insurance". RCC, I take it,  
11 is Roman Catholic Church. Can you throw some light onto  
12 the role of insurance in that or why this is described in  
13 that way?

14 A. No, I can't because - I can't because I recognise that  
15 file number as being the Corrs file in respect of which our  
16 client was the Archdiocese. So I can't explain that.

17

18 Q. So there was no issue at that time with regard to  
19 coverage of the Archdiocese for settlements under this  
20 scheme?

21 A. No.

22

23 Q. You had consulted, as I recall, with CCI in the  
24 establishment of the scheme; is that right?

25 A. We had had some discussions with them, yes.

26

27 Q. And what had been CCI's view or input as to the  
28 establishment of the scheme and its structure?

29 A. It was relatively limited. The discussions were in  
30 the context of the Archdiocese having decided to introduce  
31 the Melbourne Response and wanting to inform CCI that that  
32 was occurring, and I think to invite them to make any  
33 comments. But clearly for CCI's purposes the relevant  
34 issues were that the Melbourne Response was going to  
35 contemplate payment of counselling and treatment costs and  
36 payment - and the making of the ex gratia payments.  
37 Clearly CCI would have an interest in that.

38

39 As I recall, CCI were not terribly supportive of a  
40 process that would see - particularly in terms of the  
41 ex gratia payments, they were not supportive of a process  
42 that allowed the assessment of compensation to occur and  
43 the payments to be made without their involvement. But the  
44 position put quite forcefully by Mr Exell was that that was  
45 how it was going to be, and ultimately CCI did accept that.

46

47 Q. And then, if we can look at paragraph 2, you identify

1 an issue under the heading "Mandatory reporting". Can you  
2 just explain what the issue was and how that was resolved?  
3 A. Well, I think that what - I think this meeting in  
4 March 1997 was to discuss various issues that Carelink had  
5 encountered in the first months of its operation, one of  
6 which clearly was in relation to the Foster family.  
7 Mandatory reporting, I don't recall this aspect of our -  
8 indeed, I don't recall this meeting at all, but mandatory  
9 reporting is of course the legislative requirements for  
10 some professionals to report allegations of - to report  
11 knowledge they have or suspicion they have of children  
12 being in danger of being sexually abused and so on. That  
13 regime in Victoria certainly now, and I presume then but  
14 certainly now, applies to some professions and not others.  
15 So it appears from that discussion that - it appears from  
16 this file note that we were having some discussion about  
17 whether Mr O'Callaghan as Independent Commissioner was  
18 subject to the mandatory reporting legislation, and he was  
19 not as a - because lawyers are not mandated reporters.

20  
21 Q. But the health care professionals were or may have  
22 been, depending on the circumstances?

23 A. Yes, may have been. I don't recall back in 1997 what  
24 the legislative position was.

25  
26 Q. Then if we can look on page 2 at paragraph 5 at the  
27 foot of the page?

28 A. And of course that regime relates to people who are  
29 still children. So Emma Foster and Katie Foster -  
30 knowledge about Emma and Katie Foster could potentially be  
31 subject to that regime. But in the vast majority of cases,  
32 where victims come forward as adults, that regime doesn't  
33 apply. That is certainly based on my understanding of the  
34 legislation.

35  
36 Q. If you have a look at paragraph 5 on the screen in  
37 front of you, you say that in relation to the Fosters:

38  
39 Again, our discussion then returned to the  
40 Fosters and in particular to the publicity  
41 that Anthony Foster attracts. I said that  
42 I would recommend to the Vicar General  
43 that, as a precaution, Peter --

44  
45 How would you pronounce that? You probably know the man,  
46 Mr Leder?

47 A. Mahon.

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Q. "... be briefed." He was a communications consultant; is that right?

A. Yes.

Q. In popular parlance, a spin doctor?

A. Perhaps, yes.

Q. Can you explain how it came about that you were discussing questions of media strategy or dealing with the media for the Archdiocese with Carelink?

A. I don't recall, but I think that what I would have been discussing was publicity that could impact on the Melbourne Response of which Carelink was a part.

Q. If we can look at paragraph 7 on the next page. Under the heading "Treatment Centre for Priests" you recorded that Professor Ball told you of a national program that had been established for the treatment of priests, and it is headed by Alex Bazynsky of the Department of Psychiatry at the University of New South Wales at Liverpool. Seed funding had been provided for two years to establish one centre in Liverpool, covering New South Wales, Queensland and the Northern Territory, and a second centre in Melbourne, covering Victoria, Tasmania, South Australia and possibly Western Australia. Then it goes on to say Bazynsky is the national director and Professor Ball the Melbourne director. As I understand that, that treatment centre is what became known as Encompass Australasia; is that right?

A. I think so.

Q. As I understand your file note, the first you knew about it was at this meeting when Professor Ball told you about it?

A. Yes, I think that's right because I think elsewhere in this document or in a related document I have made the point that the meeting with Professor Ball had been a useful one for me because I thought that the existence of this centre was something that was useful for me to know about.

Q. And, in the euphemistic language of the Church, the treatment centre was for special issues; is that right?

A. I think that the - and I have had very little contact or involvement with Encompass over the years, but my understanding is that it was a centre that provided

1 treatment, support, whatever for priests who had a range of  
2 medical and other issues, so that - substance abuse issues  
3 and addiction and so on as well as sexual improprieties.  
4

5 Q. And your understanding at that time, in other words in  
6 March 1997, when you learnt about it, was that the  
7 treatment centre included the treatment - assessment and  
8 treatment of priests --

9 A. Yes.

10  
11 Q. -- who had sexual difficulties of one form or another?

12 A. Yes, that's - as I say, I don't recall this  
13 conversation, but that seems to be what my diary note says  
14 and it is consistent with my understanding of Encompass,  
15 yes.  
16

17 Q. So we covered yesterday that, prior to and at the time  
18 of the establishment of the Melbourne Response, it was  
19 known by you and others that Professor Ball had treated  
20 priests and also that he had given evidence in mitigation  
21 of sentence for priests, and here we have a third element  
22 that he was the Melbourne director of this nascent  
23 treatment centre. Did that not raise concern for you as to  
24 whether his position remained tenable?

25 A. No, it didn't. What it raised in my mind was the need  
26 that there would need to be a clear separation and, for  
27 instance, as appears in the last paragraph on the screen,  
28 that assessments of priests should have nothing to do with  
29 Carelink. Separately from that, it was clear in my mind -  
30 and I think I said this yesterday it was clear in my mind -  
31 that, putting the reality to one side, that even the  
32 perception of Professor Ball having a treatment  
33 relationship with a priest and also having contact with a  
34 victim of that priest would have been completely  
35 inappropriate and that we needed to ensure that that did  
36 not occur.  
37

38 Q. And of course as to whether or not it did occur you  
39 would rely on or would have to rely on information from  
40 Professor Ball?

41 A. Yes, although I am aware of, at least in a general  
42 sense, Carelink having made arrangements for Professor Ball  
43 not to be involved in matters relating to a small number of  
44 victims for reasons which I would have assumed was because  
45 he had that potential for conflict.  
46

47 Q. And one of those cases, ultimately how it was



1 resolved, was the Fosters?

2 A. Well, what was proposed in relation to the Fosters,  
3 but ultimately they did see Professor Ball.

4

5 Q. Correct me if I'm wrong, but not either in a treatment  
6 or assessment capacity?

7 A. Certainly not in a treatment capacity. No, not in an  
8 assessment - I think the purpose of their meeting with  
9 Professor Ball was to - for him to have discussions about  
10 what treatment and counselling and support and so on was  
11 appropriate for the family. But my point - my view was  
12 that if they had not wanted to see him at all then that was  
13 perfectly understandable. I think what I proposed was that  
14 as at that time they were seeing - or some members of the  
15 family at least were seeing a psychiatrist who was well  
16 known and respected and known to Professor Ball, was that  
17 that psychiatrist provide the sort of report or assessment  
18 that Professor Ball would ordinarily provide and report on  
19 that to Professor Ball at a high level so that he was  
20 satisfied that things were proceeding as they were, but  
21 without him having any involvement in the decision making  
22 at all.

23

24 Q. Yes. Could we have a look at your statement at  
25 paragraph 81. Perhaps if you can scroll it up in such a  
26 way so that paragraph 80 is also visible. You will see  
27 there that you say:

28

29 In early July 1998 Mr Habersberger asked me  
30 to distribute copies of his file containing  
31 these documents.

32

33 And it is not clear to me in the way in which it is drafted  
34 what "these documents" refers to, and perhaps you can  
35 assist me with that? It doesn't seem to be the documents  
36 in paragraph 80?

37 A. No, it is certainly not the documents in paragraph 80,  
38 and I apologise, Your Honour, for that. I think what I'm  
39 referring to is the documents on the Compensation Panel  
40 file in Emma Foster's application for compensation.

41 I think there must have been a sentence missing at the  
42 start of paragraph 81 to introduce the fact that Emma had  
43 made an application for compensation.

44

45 Q. So that would include the Independent Commissioner's  
46 report and the various psychological and other reports as  
47 annexures?

1 A. Yes, that's right.

2

3 Q. Can we have a look at tab 94. What I intend doing is  
4 showing you a few documents which deal with promises of  
5 confidentiality, and then my questions will arise  
6 thereafter. So if you look first at this document. So  
7 that's a letter from the Independent Commissioner dated  
8 19 December 1996, and it's addressed to Mr Anthony Foster.  
9 In the second paragraph it records in the second sentence:

10

11 I confirm my undertaking that until you  
12 tell me otherwise, any discussions I have  
13 with you in relation to the relevant  
14 subject will remain confidential.

15

16 The relevant subject of course being Emma's abuse?

17

18

19 Q. And at tab 100, on page 2 - just to identify the  
20 document first perhaps - sorry, on page 1. Again, it's  
21 from the Independent Commissioner, this time to Ms Emma  
22 Foster, March 1997. If we scroll down a little bit, the  
23 Independent Commissioner refers to his meeting with Emma.  
24 Then over the page on page 2, the second paragraph, the  
25 Independent Commissioner says:

26

27 You and your parents could authorise me to  
28 obtain reports from your psychologist and  
29 to discuss your condition with me.

30

31 And you understand that that indeed occurred, didn't it?

32

33

34

35 Q. In that way, because you have already told  
36 me what you have told the psychologist is  
37 true, I would be able to be appropriately  
38 informed and satisfied.

39

40

41

42

43

44

45

46

47

1 Do you see that?

2 A. Yes, I do.

3

4 Q. And at tab 103 there is a letter from the Vicar  
5 General, Vicar General Hart at that time, on 3 April 1997  
6 to Mr Anthony Foster, and on page 2, in the third  
7 paragraph, which begins:

8

9 I am aware that you have been critical of  
10 some elements of the Archdiocesan  
11 initiatives.

12

13 It goes on. Then in the third sentence:

14

15 In the course of my enquiries into your  
16 case, I have established that you have  
17 consulted with the Independent  
18 Commissioner. I am of course not privy to  
19 the matters discussed with him, but I would  
20 urge you to continue to cooperate with  
21 him ...

22

23 And finally at tab 106 there is a letter in manuscript from  
24 Chrissie Foster dated 1 May 1997 to the Independent  
25 Commissioner where she says:

26

27 Please find herewith the medical report  
28 from Monash Medical Centre in response to  
29 my letter (also herewith) - the two must be  
30 read in conjunction with each other as  
31 Monash confirms what is said in my letter  
32 without stating it in full in their report.

33

34 Then over the page:

35

36 As discussed yesterday, here are the  
37 details of the police officer Emma saw on  
38 Thursday, 24 April 1997.

39

40 Then the details of Senior Constable Mark Domchi are set  
41 out. Then it says:

42

43 What was discussed with this police officer  
44 was private and no-one else, including  
45 ourselves, knows the content of this  
46 conversation/disclosure - please treat it  
47 with privacy, for Emma's sake, and respect.

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Those details were of course shared with you in the report and annexures that you referred to that we looked at in the statement at paragraph 81?

A. Well, whatever was contained in the Independent Commissioner's report and its annexures were shared with me. I don't now recall whether all of the things to which you have just taken me are matters that the Independent Commissioner did refer to in his report or not, although I obviously do recall - I heard Mr O'Callaghan's evidence yesterday about him having spoken to the policeman, and I have a recollection of knowing that previously.

Q. Yes. We will go in a minute to a letter where it is apparent what you knew. But, before I get into that, are you aware of any releases by the Fosters enabling the information referred to in these documents I have taken you to to be shared with the Archbishop or Archdiocese?

A. Yes.

Q. Where are those?

A. In particular in a transcript of a meeting that they had with Professor Ball, and the context was that there was a discussion about the difficulties of providing assistance to Emma and the difficulties at that time of the Independent Commissioner conducting his enquiries given the absolutely understandable reluctance of Emma to talk about what happened, and the transcript records Professor Ball saying that, "Look, there are matters that you can tell us. There are matters that you can tell the Independent Commissioner. There are things that it might be better" - I don't know that I have this exact, I clearly don't remember this verbatim, but the point being made was that it could be helpful to Emma's case being established for Carelink and the Independent Commissioner and the Archdiocese - for Carelink and the Independent Commissioner to be able to share information with each other and with the Archdiocese, and Anthony Foster is recorded as saying something to the effect of, "If that will be an effective way of progressing the case, then I'm happy for everyone to be told what they need to be told," or something along those lines. I certainly don't suggest that that's anything like verbatim. But that was the sense of it.

Q. Can you help us, Mr Leder, as to when that conversation with Professor Ball was?

A. I think it must - well, it was certainly before - it

1 must have been after March 1997, when the Independent  
2 Commissioner first had contact with the Fosters, but before  
3 he made his finding.  
4

5 Q. Other than in that meeting, are there any releases  
6 that you have in mind; none in writing?

7 A. I have a recollection that there may have been a  
8 similar conversation between the Fosters and the  
9 Independent Commissioner, but I'm not positive about that.  
10

11 Q. Can we look at tab 136. This is a letter from you to  
12 now Archbishop Hart but in his capacity then, I take it, as  
13 Vicar General; is that right?

14 A. Yes, that's right.  
15

16 Q. On 14 August 1998 addressing the case of Emma Foster.  
17 You will see just below the heading "Background" on the  
18 first page you record that this is one of the most  
19 horrendous cases that you have ever seen in the sense of  
20 what alleged sexual abuse can do to a young and obviously  
21 fragile mind - child, sorry?

22 A. Yes.  
23

24 Q. And I think your words earlier today were that the  
25 effects were extremely profound; is that right?

26 A. Yes.  
27

28 Q. Then if we can go to page 2, in the second paragraph  
29 you record that:

30  
31 This is plainly a situation where special  
32 efforts are needed to try and solve a  
33 horrendous problem.  
34

35 Do you see that?

36 A. I do.  
37

38 Q. And that was obviously your view then?

39 A. Yes, it was.  
40

41 Q. And that remained, I take it, your view throughout the  
42 Church's dealings with Emma Foster and her parents?

43 A. Yes.  
44

45 Q. You acting on the Church's behalf?

46 A. Yes.  
47

1 Q. And at page 3, if we can scroll down a bit further,  
2 you will see the paragraph beginning, "Despite the volume  
3 of medical material", you have recorded that "details of  
4 the abuse itself are sketchy". Then you set out  
5 information in relation to the abuse itself, that,  
6 including in the last sentence of that paragraph, in a  
7 conversation with a policeman subsequently conveyed to  
8 Peter O'Callaghan, Emma suggested that she had been fondled  
9 but not penetrated. I take that information you got from  
10 the Independent Commissioner's report and the annexures?

11 A. Yes.

12 Q. All the information in that paragraph?

13 A. Yes.

14 Q. And that of course was the same information - in  
15 relation to the policeman, was the same information that  
16 Chrissie Foster had dealt with in her manuscript letter we  
17 looked at earlier; is that right?

18 A. Yes, it was.

19 Q. Can you help the Royal Commission understand why it is  
20 that you were sharing this information with the Archdiocese  
21 itself and the Vicar General?

22 A. Yes, I can. I can certainly try. In the lead-up to  
23 Emma's case going to the Compensation Panel there had been  
24 an exchange of various pieces of correspondence between  
25 Carelink and the Vicar General, with Carelink talking about  
26 some of the - the seriousness of the case and the level of  
27 support that Emma was receiving and was clearly going to  
28 need to continue to receive for a long time; that there  
29 were requests being made for support by the Fosters, some  
30 of which clearly fell within Carelink's responsibilities  
31 and some of which fell outside, and some of which were  
32 probably in a grey area; and Professor Ball was seeking  
33 some guidance from the Vicar General in relation to matters  
34 that fell in the grey area and that fell outside; and the  
35 Vicar General was seeking some - was seeking my views on  
36 some of that.

37 It got to I think a point in July where Professor Ball  
38 had written to the Vicar General about that, and the Vicar  
39 General sent that to me, and my view was that these matters  
40 should best wait until the Compensation Panel application  
41 had been heard and we could see exactly where things were  
42 at. Then what - so what I was seeking to do in this letter  
43 was to draw together all of that relevant information,

1 bearing in mind that the Independent Commissioner's report  
2 with its various annexures was very bulky and I believe was  
3 not provided - certainly the annexures were not provided to  
4 the Vicar General, and I don't think the report itself was  
5 provided to the Vicar General at that time, although it may  
6 have been.

7  
8 So what I was seeking to do was in effect to draw all  
9 of that information together into a briefing for him so  
10 that he had the best understanding that he could have of  
11 the profound and serious impacts of the abuse on Emma and  
12 in the light of that information make decisions about what  
13 would be funded although beyond Carelink's remit and what  
14 might not be funded although beyond Carelink's remit.

15  
16 I knew in addition that the Vicar General and the  
17 Archbishop were both personally aware of the Foster case  
18 because of their involvement in it through other matters  
19 and that they would want to know that the case was  
20 proceeding through the Melbourne Response.

21  
22 Q. You will appreciate the difficulty, Mr Leder, that you  
23 were in at least looking at it from the outside of being  
24 the Archdiocese's solicitor, in effect the instructing  
25 solicitor for the Independent Commissioner and in some  
26 senses his adviser or confidante, similarly with the Chair  
27 of the Compensation Panel, similarly with Carelink, yet  
28 there were also a series of confidentiality obligations at  
29 play?

30 A. Yes, I can see that, and I would say two things, first  
31 of all, that this sort of briefing letter - this is the  
32 only time that I recall ever writing a letter in this much  
33 detail. It's reflective of some of the complexities of  
34 Emma's case.

35  
36 But, secondly, had there not been the clearance from  
37 the Fosters to discuss - you know, to exchange information  
38 in the way that I described earlier then this couldn't have  
39 occurred, and I think what I would have done at some point  
40 and what the Independent Commissioner, I expect, would have  
41 done and what Carelink would have done at some point, and  
42 what I know they have done in other matters, is to speak to  
43 victims and talk about whether they are willing for some  
44 information to be shared, and if they are so willing it  
45 would happen and if they are not then it is not. But  
46 ultimately it is really not - it is very difficult to make  
47 sound decisions or any decisions about a case without the

1 information.

2

3 Q. We will track down the interview with Professor Ball  
4 if we can, but you will appreciate the impression that one  
5 gets from the outside is that, despite it being said that  
6 these various elements were independent of each other and  
7 of the Church, behind the scenes there was really a  
8 relatively free flow of information?

9 A. The various elements are independent of the Church,  
10 and they are independent of each other to some extent. But  
11 in some respects - the independence is different because  
12 plainly the intent of the Melbourne Response is to provide  
13 a comprehensive response to a victim in terms of the  
14 investigation and the counselling and treatment and the  
15 compensation, and that comprehensive response can't be  
16 sensibly or effectively provided if the Independent  
17 Commissioner operates in one silo with no interaction with  
18 Carelink and with no interaction with the Compensation  
19 Panel. So I don't agree that the three elements operate  
20 independently of each other in the way that they together  
21 operate independently of the Church.

22

23 Q. Well, they plainly don't or didn't. But the  
24 difficulty is, is it not, that this system was and  
25 continues to be sold on the basis or promoted on the basis  
26 that there is that independence, both from the Church and  
27 from each other. So there may be a gap?

28 A. No, I don't agree with that. I think if we look at  
29 the application for compensation form the consents to the  
30 exchange of information indicate that the three processes  
31 don't operate completely independently of each other. If  
32 those consents aren't given, then clearly they must operate  
33 more independently of each other and they will operate less  
34 effectively from a victim's point of view.

35

36 Q. If we look at page 9 and under the heading "Foster's  
37 further requests", the principal request here was one in  
38 relation to accommodation; is that right? Do you recall?

39 A. No, I don't think - not at that time, no.

40

41 Q. We will come to that in a moment. You will see that  
42 you say that:

43

44 The Compensation Panel was provided with a  
45 copy of the 12 March 1998 transcript, to  
46 which I have referred above.

47



1 Then you say:

2

3 I had rehearsed with David Habersberger the  
4 fact that, although the Fosters seemed to  
5 be very angry, and very dissatisfied, it  
6 was not clear what specific requests they  
7 had.

8

9 Is that reference there to having "rehearsed with  
10 Mr Habersberger" the same instance as the conversation that  
11 you referred to in paragraph 87 of your statement?

12 A. Not in paragraph 87.

13

14 Q. I beg your pardon, that's 86?

15 A. Is it?

16

17 Q. "I was advised" --

18 A. No, I think the conversation that I was referring to  
19 in the letter was a conversation with Mr Habersberger  
20 before the panel had met, not after. I think perhaps at  
21 paragraph 83 and 84.

22

23 Q. Yes, that would appear to be right. So it's the same  
24 as 83 and 84?

25 A. Yes.

26

27 Q. Once again, do you perceive there to be any difficulty  
28 with you - I withdraw that. Do you see perceive there to  
29 be any difficulty in relation to the independence of  
30 the operation of the Compensation Panel by you rehearsing  
31 with the chairman of the panel certain matters and how they  
32 might be dealt with?

33 A. I see the perception that arises from that word  
34 "rehearse", and that's not what was happening. But  
35 I understand your question.

36

37 Q. What was happening?

38 A. What was happening was that I knew that there was an  
39 application coming up before the panel by Emma, who was a  
40 minor, and that there clearly needed to be some  
41 consideration given as to how the application process would  
42 work and whether - if she accepted the offer, she clearly  
43 at that time did not have legal capacity to provide a  
44 release, and I talked through with Mr Habersberger how that  
45 might be addressed, and it was felt by both of us that a  
46 trust could be created, and it was agreed that that was  
47 something that I should raise with - I think that either

1 I or he, but I think that I should raise with Mr and  
2 Mrs Foster in advance of the panel hearing, which is what  
3 occurred.  
4

5 The second thing that I am sure that I would have  
6 discussed would have been how the panel - that we would  
7 have discussed would have been how the panel would deal  
8 with an applicant before it who was a minor, because they  
9 had not done that before and clearly there were special  
10 considerations that would need to be given.  
11

12 Then the third, as I say in paragraph 84, is that  
13 there were requests that the Fosters had been making of  
14 Carelink for funding for certain things which Carelink was  
15 saying fell outside Carelink's remit and that, as a general  
16 proposition, the position within the Melbourne Response is  
17 that, "Any request you make for finance that is not by  
18 Carelink is intended to be covered within the ex gratia  
19 payment." I well understand that the Fosters considered  
20 that view to be unacceptable to them. But that was the  
21 discussion that I was having with Mr Habersberger, that it  
22 seemed likely that when the Fosters appeared before the  
23 panel they would be talking about requests that they had  
24 that they felt were not being met by the Melbourne  
25 Response.  
26

27 Q. Can we have a look at paragraph 87 of your statement.  
28 I think it's the following page. Do you see in that  
29 paragraph you are dealing with this letter we are looking  
30 at at tab 136, the letter of 14 August of Bishop Hart?  
31 A. Yes.  
32

33 Q. 14 August 1998. You, as it were, precis some of the  
34 contents of the letter. In the last sentence you say that  
35 you also noted "the extreme harm that had been caused to  
36 Emma and that the experts were of the view that this harm  
37 was the result of O'Donnell's abuse"?  
38 A. Yes.  
39

40 Q. Now, correct me if I'm wrong, but I don't see that  
41 last aspect in the letter; in other words, that the experts  
42 were of the view that this harm was the result of  
43 O'Donnell's abuse?  
44 A. You don't see that in the letter?  
45

46 Q. Yes. But, in your own words, it is a long letter.  
47 So --

1 A. Yes, well, certainly that is the case and it's also  
2 I think something that was abundantly clear from the  
3 Independent Commissioner's report and the various  
4 attachments to it.

5  
6 Q. So that was the experts' view?

7 A. I believe so, yes. I mean, at that time what was  
8 known about the nature of the abuse was - and I don't mean  
9 to be in any way disrespectful in saying this, but it was  
10 relatively minor abuse which had had an absolutely profound  
11 and devastating effect. Now, subsequently far more details  
12 emerged, and, as I say, I don't - I'm not in any way  
13 seeking to say anything other than what was known, which  
14 was - at that time, which was that Emma had potentially  
15 been drugged and then what I set out in that statement, but  
16 that the effects had been as serious as one could imagine,  
17 although the abuse itself was not nearly as serious as  
18 subsequently - as it was subsequently understood to be.

19  
20 Q. At that time, Mr Leder, you knew that pursuant to  
21 Mr O'Callaghan's efforts more and more detail had emerged;  
22 is that right?

23 A. Well, the detail that had emerged is what's set out in  
24 paragraph 87.

25  
26 Q. Yes, but my question is directed to this: at that time  
27 you were aware that it had emerged in, if I might put it  
28 like this, pieces over a period of time?

29 A. Yes.

30  
31 Q. And you were also aware that it would not be in any  
32 way out of the ordinary for particularly a very young  
33 person to disclose the details only in stages?

34 A. Absolutely.

35  
36 Q. And maybe never reach the point of being able to  
37 access those details and be able to disclose them?

38 A. I agree.

39  
40 Q. And that's quite typical?

41 A. Yes.

42  
43 Q. And so at that time you were aware that the likelihood  
44 was that more had happened than what was currently known?

45 A. I don't know that I was aware that that was likely,  
46 but the point was that - the view I held then and hold now  
47 was that the support that should be provided should be

1 provided on the assumption - on that assumption. So in  
2 Carelink seeking to establish links between the abuse and  
3 the effects that they would do that with as much latitude  
4 as possible.

5

6 Q. If we have a look at the paragraph you are referring  
7 to, it's in the letter on page 3. It's the one we looked  
8 at previously, beginning with the word "despite". Starting  
9 in the second sentence:

10

11 It is known that Emma remembers O'Donnell  
12 taking her to a room in a school hall  
13 marked "shower", and that "O'Donnell would  
14 sit her on his knee and hug her and that  
15 [these are quoting Emma's words] awful  
16 things used to happen in there".

17

18 Now that suggests that there was a lot still to learn as to  
19 what actually happened in there, doesn't it?

20

21 A. I absolutely agree. Yes.

22

23 Q. And in those circumstances at that time was it fair to  
24 characterise the abuse as relatively minor?

25

26 A. I think based on what was then known - and, again,  
27 Your Honour and Commissioners, I don't in any way wish to  
28 cause any distress to Mr and Mrs Foster in saying this, or  
29 to anyone else here - but in the range of abuse, with which  
30 we are all unfortunately very familiar, the fondling that  
31 was alleged was significantly less serious than what we now  
32 know happened to Emma. That was the only point I was  
33 seeking to make, and I haven't explained that well.

34

35 THE CHAIR: Q. Mr Leder, you recognised the very serious  
36 trouble that she was in?

37

38 A. Absolutely, yes, I did, sir.

39

40 Q. And I take it from these documents you accepted that  
41 the abuse of heroin was part of the chain of downward  
42 spiral?

43

44 A. Yes, I did.

45

46 Q. Although you say you didn't understand the extent of  
47 the abuse at that stage, did it occur to you that it must  
48 have been a larger story than you then understood because  
49 of the terrible consequences of which you were aware?

50

51 A. Not necessarily, sir. I think rather that, even if  
52 that had been the extent of the abuse, the effects were

53

1 nevertheless as serious as they were. So, yes.

2

3 Q. So you accepted that all of the effects of which you  
4 had been told were as a consequence of the abuse, whatever  
5 its character?

6 A. Yes, sir.

7

8 Q. Did you continue to hold that view then throughout?

9 A. Yes, sir.

10

11 Q. Because of course you were asked to advise in relation  
12 to what benefits should be given to her and the family over  
13 a number of years, weren't you?

14 A. Yes

15

16 MR STEWART: Q. In that letter, at the foot of page 9,  
17 the last paragraph, in writing to the Vicar General you say  
18 that you would mention that from your own assessment:

19

20 It is by no means clear that Emma's  
21 difficulties can all be related to sexual  
22 abuse. Clearly, this issue is at the core  
23 of the difficulties in this case. My view  
24 is that while we must act with compassion,  
25 we must also act reasonably.

26

27 A. Yes.

28

29 Q. So in effect you were calling into question the  
30 judgment of the experts you referred to earlier; is that  
31 right?

32 A. No, I don't think that I was. I think what I was  
33 saying is that - I think what I was saying is that, while  
34 to the extent that I am qualified to judge these things,  
35 and I absolutely concede that I'm not and these are matters  
36 for experts, it is not necessarily that clear and that  
37 that's one of the difficulties in working out how the  
38 Church ought act. The experts' views were as they were.

39

40 THE CHAIR: Q. Mr Leder, I thought you and I had agreed  
41 that you accepted that all of the identified consequences  
42 were as a result of sexual abuse?

43 A. It's possible, sir, I was applying the benefit of -  
44 some benefit of hindsight in my answer to you. I can see  
45 what I said there and - to the extent that what I say there  
46 is different from what I said to Your Honour, I was wrong  
47 then.

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Q. Were you wrong on other occasions about the advice you gave in relation to the relationship between the abuse and Emma's state of health and other issues?

A. I hope not, but it's possible that I was.

MR STEWART: Q. Just on that question of the severity of the abuse, you are aware, are you, that in 2008 - and I accept of course that's 10 years after this letter - there was a report from the psychologist Petroula Tsoudis which recorded that Emma had said in relation to her abuse by O'Donnell that she had "had enough sex to last a lifetime"?

A. Yes, sir.

Q. Can we look at page 10 of that letter. Given that it is page 10, perhaps rightly you start by apologising for the length of the letter. What follows then is your recommendations; am I right?

A. Yes.

Q. In paragraph 1 you recommend that there be an offer of compensation to Emma in accordance with the panel's recommendation?

A. Yes.

Q. Of course that was superfluous --

A. Superfluous advice, yes.

Q. Because that was an undertaking that had been made in the scheme, that the Archbishop would accept that recommendation?

A. Yes.

Q. By "that recommendation", I mean the recommendation of the Compensation Panel?

A. That's right.

Q. Yes. Then if we look in recommendation No. 3 you say you:

... believe there should be some flexibility in terms of what can be paid to the Fosters through Carelink. Certainly we should continue to insist that there be regular and presumably annual appraisals by Professor Ball. But subject to that and as

1 you indicated in your letter to Carelink of  
2 25 June all appropriate costs can be  
3 charged against Carelink. For example, if  
4 urgent detoxification is required at  
5 Warburton, that would be an appropriate  
6 medical expense unless Professor Ball  
7 advised otherwise.

8  
9 Then you say:

10  
11 On the other hand, the link between what  
12 appears to be relatively minor abuse and  
13 treatment for a heroin addiction might be  
14 thought tenuous.

15  
16 That, I take it, you would accept that you were in error at  
17 that time?

18 A. Yes, but I also say that:

19  
20 On the other hand, and for the reasons set  
21 out in this letter, there are compelling  
22 reasons to do whatever we can for Emma.

23  
24 Q. And that picks up the language that I took you to  
25 earlier in the letter where you recognise that this is one  
26 of the most horrendous cases you had seen and also that  
27 special efforts were needed to solve a horrendous  
28 situation?

29 A. Yes.

30  
31 THE CHAIR: Q. What was the foundation for your view  
32 that, as you understood it, minor abuse and heroin  
33 addiction had a tenuous connection?

34 A. I think, Your Honour, understanding much less about  
35 these issues than I do now, I think that that view was not  
36 an appropriate view and I apologise that the answer I gave  
37 to Your Honour earlier was clearly applying the benefit of  
38 hindsight and not strictly reflective of what I thought  
39 then, but I was wrong about that.

40  
41 MR STEWART: Q. Just on the question of the disclosure  
42 of abuse, and one can perhaps refer particularly to the  
43 case before us of Emma and Katie Foster, their situation is  
44 they met with the Independent Commissioner to explain what  
45 had happened to them; is that right?

46 A. I understand so.

1 Q. And an Independent Commissioner at that time perhaps  
2 in his late 60s or 70s?

3 A. Yes.

4  
5 Q. And they were children?

6 A. Yes.

7  
8 Q. And at the time that they had been abused they had  
9 been abused by a man of perhaps similar age?

10 A. Yes.

11  
12 Q. And you would appreciate, I expect, that they might  
13 face some difficulty in making a full disclosure at that  
14 time in those circumstances?

15 A. Yes.

16  
17 Q. Was that what I might term "structural difficulty" one  
18 which was given any consideration in designing the scheme  
19 and in the appointment of an Independent Commissioner of  
20 that type, by which I mean a senior counsel?

21 A. Yes, it was. It was, but I cannot conceive of a  
22 single person with relevant attributes that would be most  
23 ideally suited to every different type of victim that would  
24 come forward, and there's therefore the option of having a  
25 panel or a range of people that victims can speak to or of  
26 having a single point of contact. For reasons that  
27 I sought to explain yesterday, we had taken the decision to  
28 have a single point of contact. But I can see that that is  
29 a disadvantage and perhaps a strength of Towards Healing.

30  
31 THE CHAIR: Q. When we now look at the criminal process  
32 to deal with these problems we have generally made very  
33 special arrangements through professionally qualified  
34 people to help the law understand what may have happened to  
35 children. You must be aware of those?

36 A. Yes.

37  
38 Q. It never occurred to anyone as part of the Melbourne  
39 Response that in relation to children one should be  
40 thinking about special arrangements?

41 A. Well, sir, the issue of complaints with children is  
42 dealt with expressly in the Independent Commissioner's  
43 terms of appointment. So clearly we had thought of the  
44 issue at least to that extent. Beyond that, I think that  
45 the sorts of arrangements that are available now were, at  
46 least so far as I knew, not - and those to whom I was  
47 speaking at the time, were not nearly as developed in 1996.



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Q. That's true. But I was really interested in your answer that you couldn't think of anyone else who might be better placed to take the account and assess the position of a child?

A. Sir, what I was saying was I couldn't think of a single person who would be best placed to deal with every different type of victim. So that, having decided that the contact point into the Melbourne Response was an Independent Commissioner, there is no such person who would be - have the appropriate attributes for victims who are of different ages and different genders and so on. Then the only way to - the solution would be - rather than having one person, would be to have a range as for instance Towards Healing does by allowing for different contact persons in different cases. That's what I was trying to say.

Q. One of the most straightforward ways to deal with it would be to have a trained person interview the child and report to the Commissioner, wouldn't it?

A. Yes, that could occur. But that would not be consistent with the Independent Commissioner receiving cases.

Q. Why not? It's just that that's the vehicle whereby the information is provided to the Commissioner. What's wrong with that?

A. I'm not saying there's anything wrong with it, sir. I'm saying that the process as designed contemplates that the Independent Commissioner meets personally with each victim. I'm not in any way saying that there's anything wrong with your suggestion. It wasn't something that we had contemplated and it's not something that - it's an issue that has arisen only in the case of Emma and Katie Foster and one other out of the hundreds and hundreds of victims. But, Your Honour, I'm not in any way seeking to disagree with Your Honour's suggestion.

Q. No, but if another one was to arise tomorrow and you were asked to advise would you suggest that perhaps it may be best to have a trained person to talk and receive the account of the abuse from the child?

A. Yes, I would, and I expect that Mr Gleeson or Mr O'Callaghan, whose decision it would ultimately be, would be sympathetic to those views as well. But that would be a matter for Mr Gleeson or Mr O'Callaghan, not for

1 me.

2

3 MR STEWART: Now might be an appropriate time, Your  
4 Honour.

5

6 THE CHAIR: We will take the morning adjournment.

7

8 SHORT ADJOURNMENT

9

10 THE CHAIR: Yes, Mr Stewart.

11

12 MR STEWART: Thank you, Your Honour. Q. Yesterday,  
13 Mr Leder, you said that you were the Archdiocese's  
14 principal solicitor in relation to sexual abuse matters as  
15 I understand it; is that right?

16 A. Yes.

17

18 Q. Did you make any particular effort to learn about the  
19 effects of child sexual abuse on victims in that role?

20 A. I haven't studied the subject formally, but over the  
21 years I have had many discussions with Professor Ball, with  
22 Susan Sharkey of Carelink and subsequently with Michele  
23 Pathe - Dr Michele Pathe, who then became the coordinator  
24 of Carelink, and many discussions over the years with  
25 Dr Sandra Hacker, who are all expert psychiatrists in the  
26 area.

27

28 Q. And those were in the context of as issues arose as  
29 you handled them from time to time; is that right?

30 A. Generally, yes. But from time to time I have also had  
31 discussions about more generally the understanding which  
32 I would describe in my own mind as having evolved over the  
33 years of the fact that not only can the impacts of abuse be  
34 profound and long lasting but that they can be very  
35 different for different people.

36

37 Q. You haven't made any effort to read the literature or  
38 take any course dealing with these matters?

39 A. No.

40

41 Q. If you had done as the Archdiocese's principal  
42 solicitor on sexual abuse matters, do you accept you might  
43 have given different advice in regard to causation?

44 A. I have very rarely been called upon to give advice on  
45 causation.

46

47 Q. I'm talking specifically about the advice we were

1 looking at before the short adjournment in the Fosters case  
2 where you raised a doubt as to the link between the abuse  
3 and some of the effects that were said by others to be as a  
4 consequence of the abuse?

5 A. Yes, I think to the extent that I was perhaps  
6 sceptical of some of those matters then, if I had known  
7 then what I know now I would have been less sceptical.  
8

9 Q. And had you read the literature you might have had a  
10 different view back then?

11 A. I might have. I can't comment as to what the state of  
12 the literature was back then either.  
13

14 Q. Reverting to the matter of the release of the  
15 confidential information, you will recall that you referred  
16 to an interview that the Fosters had with Professor Ball?  
17

18 A. Yes.  
19

20 Q. The transcript we have is in relation to an interview  
21 on 29 July 1997. I'm not aware of another one. Are you  
22 aware of another one?

23 A. I stand to be corrected, but I believe that there are  
24 two transcripts; in other words, two interviews which were  
25 transcribed.

26 Q. Those acting for you have just given me a transcript  
27 dated 12 March 1998. That's perhaps the second one you are  
28 referring to?

29 A. Perhaps.  
30

31 Q. I want to move on, Mr Leder, and deal with the  
32 question of the Fosters, that is Mr and Mrs Foster being  
33 dealt with as secondary victims. If we can have a look at  
34 tab 140. Here you are writing to the Independent  
35 Commissioner in September 1998. If we can scroll down, the  
36 heading is in relation to Emma Foster. In particular in  
37 the second paragraph you say:  
38

39 After some discussion, he [I take it that's  
40 Anthony Foster] made the comment that the  
41 compensation payment was intended for Emma.  
42 I said that this was correct. He asked  
43 about other members of the family. I said  
44 that generally speaking, compensation was  
45 only available for so-called "primary  
46 victims". I explained that the law  
47 recognised that in some circumstances, a

1 person could have a claim arising out of  
2 physical injury, although they had not been  
3 physically injured themselves. I gave the  
4 example of a mother who witnessed her child  
5 being run over, and suffered nervous shock.  
6 I said that consideration had already been  
7 given to the question of whether he and his  
8 wife were victims, and that as I understood  
9 it, Peter O'Callaghan's view was that they  
10 were not.  
11

12 I understand from that that that was also your view?

13 A. Look, not necessarily. It was for Mr O'Callaghan, who  
14 as well as being Independent Commissioner was also a  
15 clearly very experienced senior counsel, to make that legal  
16 decision. I don't know that I turned my independent mind  
17 to that question as opposed to knowing that that was his  
18 view and holding the position that as Independent  
19 Commissioner that was for him to decide. I don't --  
20

21 Q. This letter records you having justified or explained  
22 to Mr Foster the basis for them not being recognised under  
23 the scheme with reference to the common law?

24 A. Yes, that that was - I was seeking to set out the  
25 legal position and the question at law, which was  
26 effectively the nervous shock question, of which I don't  
27 claim to be expert. As I said there, I obviously could not  
28 speak for Peter.  
29

30 Q. This scheme of course was set up on the basis that  
31 there's no acceptance of legal liability; that it exists  
32 separate from whatever legal liability there may be, not  
33 so? So why in those circumstances is there reference to  
34 the law as opposed to reference to the terms of the scheme  
35 itself?

36 A. I think because in the scheme itself there's no  
37 definition of "victim" and therefore it fell to the  
38 Independent Commissioner to determine who qualified as  
39 victims and who did not.  
40

41 Q. That raises two questions. One is the terms of the  
42 scheme and the other one is, assuming that there was no  
43 qualification for secondary victims, whether as a matter of  
44 policy the scheme should be changed. I will come to the  
45 second one in due course. Dealing with the first, if we  
46 can have a look at tab 36, which is the Independent  
47 Commissioner's terms of appointment. If we look towards

1 the foot of the first page you will see there is a  
2 definition of "Complaint".

3  
4 ... means any complaint made to the  
5 Commissioner by a person that he or she has  
6 been abused by a church person or a  
7 complaint made to the Commissioner by a  
8 person who complains that some other person  
9 has been abused by a church person, and any  
10 complaint of abuse by a church person which  
11 is referred to the Commissioner by any  
12 other person.

13  
14 So a complaint certainly would include a complaint by  
15 someone who was not themselves abused?

16 A. Yes.

17  
18 Q. If we scroll down slightly further you will see there  
19 is a further definition which you will see. Again it says,  
20 obviously in error, "'Complaint' means any person making a  
21 complaint of sexual abuse as aforesaid." That should be  
22 "complainant"?

23 A. Yes.

24  
25 Q. So a complainant would include someone who wasn't  
26 necessarily themselves the subject of sexual abuse?

27 A. That's right.

28  
29 Q. Then if we look at the terms of the scheme at tab 13,  
30 starting at paragraph 1.4, it says:

31  
32 In this plan a "complainant" is any person  
33 making a complaint of sexual abuse against  
34 a church person, and an "accused" is a  
35 church person against whom an allegation of  
36 sexual assault is made.

37  
38 Of course it is perhaps not quite as clear as the other  
39 definitions of "complaint" and "complainant", but it  
40 certainly does not exclude the possibility of a person who  
41 was not themselves the subject of sexual abuse being a  
42 complainant?

43 A. Yes, I agree.

44  
45 Q. And then if we have a look at paragraph 4.1, which  
46 deals with compensation, that's on page 5:

1 A compensation panel will be established to  
2 provide ex gratia compensation to  
3 complainants of sexual abuse by accused  
4 Church persons.

5  
6 And then it goes on:

7  
8 The function of the panel is to provide  
9 complainants ...

10  
11 And so on. You would accept from those terms that they are  
12 certainly wide enough on their face to include secondary  
13 victims?

14 A. I can see that argument, and as I recall it fell to  
15 Mr O'Callaghan to form a view about that and he formed the  
16 view of which we are aware.

17  
18 Q. And as the Church's solicitor you at that time was  
19 obviously aware of the view that he had formed?

20 A. Yes.

21  
22 Q. And was that then an issue that was addressed by you  
23 with your client as to whether that was correct, either as  
24 to a correct view or as to whether it was right that this  
25 scheme should exclude secondary victims?

26 A. As to whether it was a correct view legally, if I can  
27 put it that way, I don't have any recollection of  
28 discussing that with the Archdiocese. As to the intention  
29 of the Melbourne Response, the intention when the Melbourne  
30 Response was established was that compensation be available  
31 only to primary victims. So the view that Mr O'Callaghan  
32 formed was one that I felt reflected the intention.

33  
34 Q. And where do you - or on what do you draw to state  
35 your understanding that that was the intention?

36 A. That's my recollection, and I think it's - I'm of  
37 course speaking of the views that were held back in 1996.  
38 But I think it's reflective again of the position that  
39 there was no legal liability, the establishment of the  
40 Melbourne Response was seen as novel and the first time in  
41 the world that this had been done, and the view formed was  
42 that, in relation to ex gratia payments, that they were  
43 available to primary victims. That was the view held back  
44 then, that in determining the ambit of people to whom  
45 assistance was being provided, that was the view.

46  
47 Q. The Foster family, of course, is a stark example of a

1 whole family being devastated by the effects of child  
2 sexual abuse?

3 A. I agree.

4  
5 Q. And the Hersbach family is perhaps another example of  
6 the effects on a family wider than just those who were  
7 themselves subject to abuse?

8 A. Yes, I agree.

9  
10 Q. And you will understand of course that this is a  
11 matter which will have to be grappled with in any possible  
12 future redress scheme as to how far it can go?

13 A. Yes. And I would make two comments if I may, sir.

14 First, between 1996 and now the law has expanded the  
15 definition of - expanded the concept of who can claim, make  
16 nervous shock claims, and that provides a signpost for what  
17 I think the Church should do. Secondly, regardless of the  
18 developments of the law, I think that assistance ought to  
19 be provided to secondary victims as well.

20  
21 Q. Moving on to deal with perhaps another systemic issue  
22 which is illustrated at least in the Fosters' case and  
23 that's the one of the Fosters' claim for accommodation for  
24 Emma?

25 A. Yes.

26  
27 Q. Perhaps we can look first at tab 166. You will see  
28 that this is a letter from Anthony and Chrissie Foster to  
29 the then Vicar General Monsignor Prowse dated 2 April 2003.  
30 They say that they have been advised by Elizabeth Harding  
31 and Professor Ball to write to the Vicar General with their  
32 request as they, being Ms Harding and Professor Ball, are  
33 unable to give assistance. Then they say:

34  
35 As you are aware, our daughter Emma Foster  
36 was sexually assaulted by Father Kevin  
37 O'Donnell.

38  
39 They go on in the next paragraph:

40  
41 Because of Emma's long history of  
42 depression, self-harm and substance abuse  
43 we are no longer able to care for her in  
44 the family home.

45  
46 Then they go on and outline some of the difficulties that  
47 that's created. You saw that letter at that time or

1       shortly thereafter, not so?

2       A.     Yes.

3

4       Q.     And then at 167, on 11 April the Vicar General  
5       Monsignor Prowse, in fact at that time it would appear  
6       Bishop-Elect Prowse, wrote to you and said:

7

8             I have received today a letter from  
9             Christine and Anthony Foster in regard to  
10            their daughter, Emma. The letter is  
11            self-explanatory.

12

13       And attached is a letter in support from a family  
14       therapist, Nicki Maheras. Do you see that?

15       A.     Yes.

16

17       Q.     Your advice was then sought on - if we scroll down a  
18       little bit further, the paragraph at the bottom of the  
19       screen:

20

21             I would be most grateful, Richard, if you  
22             could advise the Archbishop on the  
23             direction indicated above. You may even  
24             wish to draft him a letter if you are in  
25             agreement with such a direction.

26

27       That's in relation to what is to be done with the request  
28       for assistance for accommodation; is that right?

29       A.     Yes.

30

31       Q.     I will show you, Mr Leder, a copy of the report from  
32       Nicki Maheras that is referred to.

33

34       THE CHAIR:   Is it in the bundle?

35

36       MR STEWART:   It isn't, Your Honour. We are getting copies  
37       to you right this minute, Your Honour, and to the Bar  
38       table.

39

40       THE CHAIR:   And what about the screen? Can we put it on  
41       the screen?

42

43       MR STEWART:   Yes, we can, Your Honour.

44

45       THE CHAIR:   You wanted to tender it?

46

47       MR STEWART:   Yes, Your Honour, I do tender it



1  
2 EXHIBIT #16-8 REPORT FROM NICKI MAHERAS IN RELATION TO EMMA  
3 FOSTER  
4

5 MR STEWART: It may be a while since you have seen this  
6 letter, Mr Leder. So I will just give you an opportunity  
7 to familiarise yourself with it. You will see that  
8 Ms Maheras starts off by saying:  
9

10 I write in support of the enclosed letter  
11 forwarded to you by Mr and Mrs Foster.  
12

13 She sets out who she is and then in the second paragraph  
14 she says:  
15

16 Emma has experienced sexual abuse  
17 perpetrated by a Catholic Church priest.  
18 This abuse occurred over a prolonged period  
19 commencing as early as age six. Disclosure  
20 about the abuse did not occur until after  
21 Emma was a teenager and became a patient of  
22 a mental health service showing symptoms of  
23 anorexia, substance abuse, self-harming and  
24 suicidality. These symptoms are present in  
25 nearly all cases of survivors of prolonged  
26 sexual abuse. Treatment of such symptoms  
27 is made more difficult if patients are not  
28 stabilised in secure and supportive  
29 accommodation. The abuse creates a lack of  
30 safety and a lack of safety in other  
31 situations exacerbates the symptoms.  
32

33 Then she goes on and she says:  
34

35 Emma has not been able to maintain her  
36 accommodation within the family home  
37 because of these symptoms and their impact  
38 on the family relationships. To preserve  
39 these family relationships and to ensure  
40 that Emma does not become cut off and  
41 socially isolated from vital support  
42 networks it has been necessary for her to  
43 leave home. Her parents continue to  
44 provide emotional and practical support in  
45 a way that can be more useful to Emma from  
46 a position of living away.  
47

1 Then going on:

2

3 Although her homelessness has resulted from  
4 a series of crises including an overdose,  
5 leaving home has also been an important  
6 transition for Emma in regards to  
7 maintaining the normal life stage  
8 developments of independence and autonomy.  
9 However, because of the specific  
10 characteristics of her psychiatric  
11 disability it has not been possible for  
12 Emma to be placed in suitable accommodation  
13 that caters for her special needs. Some of  
14 her special needs are outlined below.

15

16 Then indeed Nicki Maheras goes on to outline those and some  
17 of the difficulties that had been faced in acquiring  
18 accommodation for Emma. That was a letter that was given  
19 to you with the fax from Bishop-elect Prowse seeking your  
20 advice; is that right?

21 A. I believe so, yes.

22

23 Q. If we can go to the Bishop-elect's fax, which is at  
24 tab 167, you will see in the second paragraph that is  
25 currently on screen he said to you:

26

27 I have discussed the matter with  
28 the Archbishop. He is aware that we have  
29 already assisted this family in the tragedy  
30 that has unfolded. Such assistance may be  
31 said to be more than reasonable and  
32 generous given our parameters.

33

34 What do you understand the parameters to have been that the  
35 Bishop-elect was referring to?

36 A. The sorts of assistance that were provided through the  
37 Melbourne Response.

38

39 Q. So effectively the terms of the Melbourne Response  
40 scheme?

41 A. Yes.

42

43 Q. They certainly weren't affordability parameters?

44 A. No.

45

46 Q. Essentially your advice was being sought on where to  
47 draw the line between what should be provided for and what

1 not provided for?

2 A. Yes. Yes.

3

4 Q. If we could have a look at tab 168, which is your  
5 response on 15 April 2003. If we scroll down you will see  
6 it references the facsimile of 11 April that we have just  
7 had a look at?

8 A. Yes.

9

10 Q. And you record that some weeks ago you had been rung  
11 by Professor Ball and Elizabeth Harding to discuss Emma  
12 Foster's situation, "and in particular the issues relating  
13 to her accommodation"?

14 A. Yes.

15

16 Q. In the next paragraph you say:

17

18 My analysis was that to the extent that  
19 Emma had accommodation needs that were  
20 therapeutic and were part of a program of  
21 treatment that was finite in time, one  
22 could justify meeting those costs through  
23 Carelink. It seems to me that just as  
24 Carelink would arrange emergency  
25 residential treatment of someone who was  
26 suicidal, or might arrange respite care for  
27 someone with particular difficulties, there  
28 was ample justification in Carelink  
29 arranging for Emma's accommodation at a  
30 detox or drug treatment facility.

31

32 So that's in a sense one side of the line, as you were  
33 putting it?

34 A. Yes.

35

36 Q. And then you go on:

37

38 However, beyond that it is quite clear that  
39 it is not Carelink's role to provide  
40 long-term accommodation for anybody.

41

42 A. Yes.

43

44 Q. That's how you saw the line being drawn. Was that  
45 particularly with reference to the terms of the scheme or  
46 as matter of policy for the Church?

47 A. I don't know that I see a distinction, really.

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Q. Well, the distinction might be this: that if the terms of the scheme are quite clear, one way or another the question might arise as to whether they should be different?

A. Yes, well, in the sense in which you are putting the question, that's how I understood the line to be drawn within the terms of the scheme.

Q. And then you go on in the next paragraph:

The request from Mr and Mrs Foster does not suggest that there is any link between Emma's need for accommodation and any treatment that she requires.

Then you say:

Rather, she is homeless because her parents have thrown her out.

I take it you accept that's not a fair characterisation of the situation as it was?

A. I do, and I apologise for using that language.

Q. If we can move on and address the litigation. As I understand it, in July 2003 you received service of writs in the suits by --

THE CHAIR: Q. Just before you do that, Mr Stewart, in the next sentence or the next paragraph, you offer an opinion contrary to that that's provided by the counsellor's letter, as I understand it?

A. Yes, I do.

Q. Do you think it was right for you to do that?

A. I think that what was really being asked of me and what I was seeking to say there was that it was my opinion at that time that the link between Emma's homelessness and the abuse was too remote. I think that's what I was being asked to express an opinion on, and that was the opinion that I expressed.

Q. The only evidence you had was from the counsellor, wasn't it?

A. Yes.

1 Q. And that clearly created the link. How could you  
2 offer a contrary opinion?

3 A. Well, looking, sir, at the letter from the counsellor,  
4 that refers to various factors and expresses an opinion, a  
5 professional opinion by Ms Maheras. I was seeking to  
6 express a legal opinion about remoteness, which may or may  
7 not have been correct, but that's what I was seeking to do  
8 at that time.

9

10 Q. The only evidence you could base that on was the  
11 counsellor's letter?

12 A. Yes.

13

14 Q. How could you therefore come to any contrary  
15 conclusion? It wasn't a legal question. It was a question  
16 of fact?

17 A. I didn't see it that way, sir.

18

19 Q. That's what remoteness is, isn't it? It's a question  
20 of fact?

21 A. Yes, and sir, as I would understand it, looking at  
22 whether there are relevant intervening events or not, and  
23 I think at the time the view I felt was that - the view  
24 I formed was that there were too many other things that  
25 would be going on in one's life to be able to draw that  
26 link. It's not a view that I would necessarily hold now,  
27 but I think that was the view I held then.

28

29 Q. It's not a view that gained any support from the only  
30 evidence you had, which was the counsellor's letter?

31 A. That may be so, sir, yes.

32

33 Q. It wasn't right then, was it, to offer that view at  
34 that time?

35 A. Perhaps it was not, sir.

36

37 MR STEWART: Q. Mr Leder, I understand that in July 2003  
38 you received service of writs in the suits by the Fosters?

39 A. Yes.

40

41 Q. And some time was taken up in you acquiring  
42 instructions to act on behalf of all six named defendants;  
43 is that right?

44 A. That's right, yes.

45

46 Q. But ultimately that became the position?

47 A. Yes.

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Q. And thereafter statements of claim were filed and served in each of the actions?

A. Yes.

Q. And the statements of claim came to be amended?

A. They did.

Q. And what I intend doing is - and I will take you to them in a moment - we will go to the amended statements of claim as they ultimately appeared. If we can look at tab 175, this is a file note of yours, is it?

A. Yes, it is.

Q. And that's your handwriting?

A. Yes, if that's what it can be called, yes.

Q. And the matter in respect to which it relates is RCC and Foster; is that right?

A. Yes, it is.

Q. And this records, does it, a telephone call from Archbishop Hart?

A. Yes.

Q. I suppose the Archbishop was probably returning a call of yours?

A. I don't know, but probably.

Q. In any event, the subject of discussion was the case and in particular the defences; is that right?

A. I think the subject of discussion was the fact that legal proceedings had been served and, yes, how they would be defended.

Q. Can you assist us with your writing by just reading out what is written there?

A. Yes, certainly. It says "Take the defences". Then on the next line "Medical examinations early".

Q. Can you briefly just explain that telephone call and what the significance of those two notations is?

A. Yes, I can. I would have to say first that I don't now have an independent recollection of the conversation. But I believe that the discussion that I had with the Archbishop was that the various defences along the lines of those that we discussed yesterday would be taken in

1 response to the claims that were put. I believe that  
2 I also - I believe that we also discussed the fact that in  
3 relation to the allegation of abuse itself in the statement  
4 of claim the details were very scant and that there would  
5 be various ways through the proceeding to draw that out and  
6 that what was proposed was that it would be - I probably  
7 can't assist with the context except to say that we  
8 discussed the fact that for the plaintiffs to undergo  
9 medical examinations in order to get an expert opinion, an  
10 expert report, that it would be helpful for that to occur  
11 earlier in the proceedings rather than later. So the  
12 reference to "medical examinations" is a reference to  
13 seeking expert psychological or psychiatric opinion in  
14 relation to the plaintiffs' claims.  
15

16 Q. Although the note is not dated, I understood you to  
17 have identified that this telephone call was after the  
18 writs had been served but probably prior to the statements  
19 of claim; is that right?

20 A. Well, certainly after the writs and prior to the  
21 defence. Because the writs were served with general  
22 endorsements, with statements of claims following later,  
23 I can't now say when within that period it occurred. The  
24 note is not dated, which is unusual for me and I don't know  
25 why it is not, but it is not.  
26

27 Q. If we have a look at perhaps the statement of claim in  
28 relation to Emma Foster as an example, that's at tab 182.  
29 It is, as I indicated earlier, the amended statement of  
30 claim. You will see that the defendants are described as  
31 "Noreen Harrison and others, according to the schedule  
32 attached." Unfortunately in the version of each of the  
33 statements of claim that we have in the bundle, there isn't  
34 a schedule attached. So the first thing perhaps we need to  
35 do is just identify who the defendants were. So, starting  
36 with the first defendant, if we can go to page 4, paragraph  
37 2. The firstnamed defendant during the period was the  
38 school principal of the school, so that was Noreen  
39 Harrison?

40 A. Yes.  
41

42 Q. And on the next page, paragraph 3, the secondnamed  
43 defendant is said to be an Emeritus Archbishop for the --

44 A. So that would have been Archbishop Little.  
45

46 Q. Yes. And on page 6, paragraph 4, the thirdnamed  
47 defendant is the Catholic Archbishop for the Diocese of

1 Melbourne. That would have been Archbishop Hart?

2 A. Yes.

3

4 Q. And the fourth defendant on page 8, paragraph 5, is  
5 said to have been at all times material and in particular  
6 during the period a body corporate pursuant to the Roman  
7 Catholic Trust Act and so on. So that was the Roman  
8 Catholic Trusts Corporation for the Archdiocese of  
9 Melbourne; is that right?

10 A. I think it's called for the Diocese of Melbourne, yes.

11

12 Q. And then on the next page the fifth named defendant at  
13 all times material and in particular during the period was  
14 an ordained priest of the Roman Catholic Church,  
15 incardinated in the Diocese of Melbourne. He was attached  
16 to various parishes throughout the Diocese of Melbourne,  
17 and in or about 1992 was the Vicar General for the Diocese  
18 of Melbourne. That was Reverend Father Hilton Deakin, is  
19 that right?

20 A. That was Bishop Hilton Deakin, yes.

21

22 Q. And the sixth defendant on page 12, paragraph 7, was  
23 also an ordained priest of the Roman Catholic Church  
24 incardinated in the Diocese of Melbourne and he was  
25 attached to various parishes and so on. That was Father  
26 Anthony Guelen; is that right?

27 A. Yes, I recall that's correct.

28

29 Q. If we can go to page 18. I'm sorry, perhaps we should  
30 start at page 17. Before I go into it, it's the case,  
31 isn't it, that generally speaking the statements of claim  
32 replicate each other insofar as the allegations are  
33 concerned with regard to the abuse itself and then as to  
34 who had what knowledge and involvement?

35 A. Yes, and there was a distinction between on the one  
36 hand the pleadings on behalf of Emma and Katie as primary  
37 victims and the other members of the family as secondary  
38 victims. But otherwise, yes.

39

40 Q. Scroll up just slightly. So it says that, "The  
41 plaintiff," and here we are dealing with Emma, of course,  
42 "suffered and continues to suffer the abovementioned  
43 injuries, loss and damage as a consequence of the breach by  
44 the defendants of their duties referred to in paragraphs 9  
45 and 10." Then it has "particulars of breach" and if we can  
46 scroll down and into the next page it has what's referred  
47 to as "particulars of 'knowledge' ". In particular, if we



1 can look at subparagraph (iii):

2

3 In or about 1958 complaints were made by a  
4 Mr [and it is redacted] and Mr [someone  
5 else redacted] in respect of the  
6 interference by the deceased --

7

8 That was Kevin O'Connell?

9 A. O'Donnell.

10

11 Q. O'Donnell, I beg your pardon:

12

13 "... with a young boy. Such complaints  
14 were made to Monsignor Laurence Moran, the  
15 then Chief Administrator for the Diocese of  
16 Melbourne.

17

18 Then it is defined as "the 1958 complaints". Do you see  
19 that?

20 A. I do.

21

22 Q. So I am identifying then there were 1958 complaints  
23 and then I will go and identify each of the others?

24 A. Yes.

25

26 Q. If we scroll down further, it is said that:

27

28 Subsequent to the 1958 complaints Mr [and  
29 it is once again redacted] once more  
30 complained to a priest at St Francis  
31 Church, Melbourne in the Diocese of  
32 Melbourne as to the inappropriate behaviour  
33 of the deceased towards infants ...

34

35 And that is referred to as "the St Francis complaints".  
36 Then in (a):

37

38 In early 1992, Reverend Father John Salvano  
39 complained to the fifth named defendant --

40

41 That is I think you said Bishop Deakin?

42 A. Yes.

43

44 Q.

45 ... about the inappropriate behaviour of  
46 the deceased with young children (the  
47 Salvano complaints).

1  
2 Those are then given some further details, if we can look  
3 at page 23. There is a heading which says, "Particulars of  
4 breach of duty by the fourthnamed defendant as alleged in  
5 paragraph 10 hereof". The fourthnamed defendant was of  
6 course the Trusts Corporation?

7 A. Yes.

8  
9 Q. Then below that, "Particulars of breach of duty of the  
10 fifthnamed defendant". That was Bishop Deakin. It says:

11  
12 Failing to act upon complaints made by  
13 Father John Salvano in early 1992 in  
14 respect of the inappropriate behaviour of  
15 the deceased towards young children.

16  
17 Then if we look over the page, the particulars of duty of  
18 the sixthnamed defendant, that's Father Guelen:

19  
20 Failing to act upon his observations of the  
21 deceased engaging in inappropriate  
22 behaviour with a young boy whilst in the  
23 Diocese of Melbourne, in or about 1958.

24  
25 A. Yes.

26  
27 Q. Now, as solicitor for these six defendants you were  
28 then involved in investigating the factual basis for these  
29 allegations in the statements of claim; is that right?

30 A. Yes.

31  
32 Q. At tab 189 there is a file note of yours in relation  
33 to a discussion or a couple of discussions. We can look at  
34 the retyped version on the next page.

35 A. Yes.

36  
37 Q. Can you just explain briefly what is the first  
38 reference there with regard to Kevin Lyons?

39 A. Kevin Lyons was junior counsel briefed with David  
40 Collins SC to draft the defences for the defendants.

41  
42 Q. And you had a conversation with him?

43 A. Yes, so I briefed him and I had a conversation with  
44 him.

45  
46 Q. And this is a brief note of your conversation with  
47 him?

1 A. Yes.

2

3 Q. Or shall I say taken during your conversation with  
4 him?

5 A. Yes.

6

7 Q. And where it says, "Guelen - where does he fit in?  
8 Was he" - I take it that's "parish priest"?

9 A. I have no recollection, I have to say, of these  
10 conversations from 10 years ago, but I would be confident  
11 that "pp" is parish priest.

12

13 Q. There would appear to be a subsequent conversation on  
14 30 November, "T/F PJOC", I take it a telephone conversation  
15 between you and Mr Peter O'Callaghan?

16 A. Yes.

17

18 Q. Can you explain, with reference to your note to remind  
19 you, what the substance of that conversation was?

20 A. I can, but there's a bit of background that I probably  
21 need to give in order to - given I have no recollection of  
22 the conversation, in order to give you my best  
23 interpretation of it there's a little background I need to  
24 give. The background is that some years prior to - what  
25 year are we in now? 2004, I think. Some years prior --

26

27 Q. This is November 2004?

28 A. Thank you.

29

30 Q. This phone call?

31 A. So some years prior, in the late 1990s, I had been  
32 acting for various defendants associated with the Church in  
33 other proceedings issued by victims of O'Donnell, and  
34 relevantly in particular a proceeding issued by the person  
35 whose name is redacted in that diary note. In that  
36 proceeding similar allegations were ultimately made, by  
37 which I mean made in amended versions of the pleading in  
38 relation to Father Guelen having witnessed O'Donnell  
39 abusing a boy.

40

41 My best recollection is that when I received the  
42 statements of claim from the Fosters I had a recollection  
43 of having seen that allegation before, and I had a  
44 recollection also that the plaintiff, whose name is  
45 redacted, was one of the complainants in the criminal  
46 prosecution of O'Donnell. I can't be sure whether  
47 I recollected that then, but I now know that to be the

1 case. I think I recollected that then as well. So that  
2 was the context in which - but at the time I think I could  
3 not remember - either I couldn't remember who - I couldn't  
4 remember the names of the redacted person or - I had some  
5 confusion as to the dates and how it all fitted together.  
6 That's my best recollection of where I was. So I phoned  
7 Peter O'Callaghan.

8  
9 Q. For assistance?

10 A. For assistance.

11  
12 Q. To remember?

13 A. Yes.

14  
15 Q. Just on a point of accuracy, as I understand it from  
16 the documents that I was given by those instructing you  
17 this morning, that if it is the same case you are referring  
18 to, that the plaintiff in the case was someone else, not  
19 the person who said that Father Guelen had walked in on  
20 Kevin O'Donnell and that person?

21 A. That's so. So it was Mr Redacted, if I can call him  
22 that, Mr Redacted who had alleged that Guelen had walked in  
23 on O'Donnell and in a separate proceeding which had been  
24 issued with a pseudonym, so I think I'm safe to refer to  
25 the pseudonym of [ID], that Mr [ID] was, in the same way as  
26 the Fosters were seeking to do, Mr [ID] was relying - was  
27 seeking to rely on the allegation that Father Guelen had  
28 witnessed O'Donnell abusing Mr Redacted as evidence of  
29 prior knowledge.

30  
31 Q. And information that Mr O'Callaghan was able to  
32 disclose to you assisted you to recollect the matters you  
33 have described?

34 A. Well, it appears from the diary note that that is the  
35 case, yes.

36  
37 Q. And your statement dealing with this, you will recall,  
38 in its original form said that Mr O'Callaghan advised you  
39 of matters of which you had not previously been aware and  
40 in correcting the statement at the commencement of your  
41 evidence you changed that to matters of which you didn't  
42 recollect; in other words, didn't recollect at the time of  
43 the phone call?

44 A. That's so, and also didn't recollect at the time of  
45 making my statement.

46  
47 Q. Yes.

1 A. Yes. So, while I don't have a recollection, any  
2 recollection of this conversation at all, what I can say is  
3 that from time to time I contacted Mr O'Callaghan seeking  
4 information from him and that I'm mindful, very mindful of  
5 the fact that there is information he has as Independent  
6 Commissioner that is confidential and that it is  
7 inappropriate for him to tell me, but also that there is  
8 information that he has from other sources that he can tell  
9 me. As I think this entire discussion demonstrates, my  
10 memory is not as good as his. Mr O'Callaghan, in my  
11 experience, has an excellent memory. I knew also that  
12 Mr O'Callaghan had studied in some detail the criminal  
13 prosecution of O'Donnell as well as the criminal  
14 prosecution of other priests who had been prosecuted.  
15

16 So, in a context such as this where I was acting as  
17 solicitor for the Archbishop and others and I had a  
18 statement of claim in front of me that I was seeking to  
19 respond to, I would have told Mr O'Callaghan why I was  
20 ringing and the purpose for which I was asking him  
21 questions, and I would have asked him whether there was  
22 anything that he could tell me, or words to that effect.  
23

24 THE CHAIR: Q. Mr Leder, you have been involved in this  
25 work for the Church for a long time?

26 A. Yes.  
27

28 Q. And we understand the work that you have done in a  
29 general sense. I presume that over that time you have had  
30 many discussions with archbishops, bishops, vicars general,  
31 priests and so on about paedophile activity within the  
32 Church?

33 A. Yes.  
34

35 Q. And in those discussions I assume the topic of what  
36 the Church might have known or understood has been raised  
37 on many occasions?

38 A. Yes.  
39

40 Q. Is that right?

41 A. Yes, it is.  
42

43 Q. Those outside the Church have some understanding of  
44 the way the Church operates and the way priests are  
45 accommodated and no doubt meet on a regular basis with each  
46 other, both socially and for professional reasons; would  
47 that be right?

1 A. I'm sure that's so, yes.

2

3 Q. Well, have you not learnt of that in your discussions  
4 about the Church and the way it operates?

5 A. I think I have learnt of that, yes.

6

7 Q. In the discussions that you have had when you first  
8 started this work, I assume you spoke with the Archbishop  
9 about paedophile activity within the Church?

10 A. I am sure that I must have had some discussions - you  
11 are asking me about when I started, so you are asking me  
12 about Archbishop Little and I'm sure that when I started  
13 I would have had a discussion or two with him. But at that  
14 time I was a relatively junior solicitor and I didn't have  
15 a lot of direct contact with Archbishop Little.

16

17 Q. You are older and greyer now. But nevertheless you  
18 were being called in, as it were, with your firm to advise  
19 the Church in relation to this problem?

20 A. I suppose my firm was there and I became involved,  
21 yes.

22

23 Q. And the central issue was paedophilic activity within  
24 the Church, wasn't it?

25 A. Yes.

26

27 Q. And you say you had or were involved in some  
28 discussions with Archbishop Little about the matter?

29 A. I'm sure that I was, yes.

30

31 Q. Were you involved in discussions with him about what  
32 he might have known about paedophile activity within the  
33 Church?

34 A. I certainly was involved in those discussions in  
35 relation to O'Donnell.

36

37 Q. What about others?

38 A. Undoubtedly, yes, most likely in the context of other  
39 litigation. In other words, litigation in relation to  
40 priests other than O'Donnell, I'm sure that I did.

41

42 Q. What about apart from litigation, just as a general  
43 issue, now it was emerging and public knowledge was coming  
44 along?

45 A. I don't believe that I had those discussions with  
46 Archbishop Little, as best as I can remember. I don't  
47 remember any general discussions with Archbishop Little.

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Q. What discussions did you have with Archbishop Little about Father O'Donnell?

A. In a proceeding which was neither the proceeding issued - in a proceeding brought by a victim of O'Donnell which was neither the proceeding brought by Mr Redacted, if I can call him that, or by Mr [ID], but by someone else who issued proceedings under the pseudonym [SP], the proceedings reached a point at which Archbishop Little was required to answer interrogatories and I had various discussions with him in order to take instructions for the drafting of the answers to interrogatories. So I can point to that context quite specifically as an occasion where I did have detailed discussions with Archbishop Little.

Q. And I assume the interrogatory was asking him, amongst other things, whether he knew?

A. When he knew, yes.

Q. What was his answer?

A. His answer was that he had no knowledge of any activity on behalf of O'Donnell until 1992.

Q. And what did he know in 1992?

A. What he knew was the complaints brought forward by Mr Redacted; in other words, in 1992, if I have all of these people right - certainly in 1992 a victim came forward to the then Vicar General Monsignor Cudmore complaining about O'Donnell.

Q. And the Archbishop was told?

A. Yes.

Q. What did the Archbishop do about it?

A. At that time - sorry, Your Honour, I have said 1992. I need to correct myself. It's 1994, and at that time O'Donnell was already retired.

Q. So your evidence is that it was in 1994 that the complaint came forward?

A. Yes, I think so. Certainly - look, I'm slightly hesitant as to dates and I would be grateful for the opportunity to refresh my memory on these matters. But certainly that Archbishop Little had no knowledge of any complaint by O'Donnell until after O'Donnell had retired. That was the central point of the interrogatory and the answer.

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Q. Archbishop Little retired in 1996?

A. Yes, in 1996.

Q. One of his auxiliary or assistant bishops for some time had been, as he then was, Bishop Pell?

A. Yes.

Q. And I assume you have had discussions with Bishop Pell about his knowledge of paedophile activity within the Church; is that right?

A. I have.

Q. And those discussions, did they start before he became the Archbishop?

A. They started after he was - after his appointment as Archbishop was announced. So in late July 1996, but before he was formally appointed. I had not known him at all as a Bishop.

Q. And I assume that you had discussions with him in relation to the Fosters' allegations; is that right?

A. Yes.

Q. And, as he now is the Cardinal, the Cardinal's knowledge of paedophile activity within the Church during his time as Bishop and Archbishop in Melbourne?

A. Yes.

Q. Did those discussions range to the general question of knowledge of paedophile activity within the Archdiocese?

A. Yes.

Q. And can you recall those discussions now?

A. I can recall the - I don't recall specific discussions.

Q. Can you recall the general content?

A. Yes.

Q. And when did those discussions start?

A. In July 1996 when we were discussing what became - the introduction of what became the Melbourne Response.

Q. And what did the Cardinal tell you as to his knowledge of paedophile activity within the Archdiocese?

A. The Cardinal was aware of prosecutions that had



1 occurred, particularly by that time of course O'Donnell and  
2 Glennon and others. He was aware of that. He also told  
3 me, and I had some detailed discussions with him on these  
4 matters, that he had no knowledge of any other activity, he  
5 had no knowledge of activity that had not been acted on,  
6 but that it was his general impression that that had  
7 occurred within the Church and that one of the reasons for  
8 the establishment of the Melbourne Response was to deal  
9 with that.

10  
11 Q. In terms of his knowledge of what had happened, you  
12 say that was confined to becoming aware of it when priests  
13 were prosecuted?

14 A. Yes, or that allegations became known somehow  
15 publicly. I have a clear recollection that what he told me  
16 was that he only knew about these allegations as they  
17 became public.

18  
19 Q. Yes, very well.

20  
21 MR STEWART: Q. Thank you, Your Honour. Returning to  
22 the note that's on the screen, I take it at the foot of the  
23 page where it is "T/T Kevin", you phoned Kevin Lyons, you  
24 advised him of what you had learnt, he said David Collins  
25 is looking at it all and that you would fax or email the  
26 details; is that right?

27 A. Yes.

28  
29 Q. That's the sum of it, really?

30 A. Yes.

31  
32 Q. If we look at tab 190, this is now, as I understand  
33 it, your promised fax with the details?

34 A. Yes. Sir, could we go back to the diary note?

35  
36 Q. Yes, of course. That's the previous tab.

37 A. What the diary note says is that someone walked in and  
38 Mr Redacted was with Kevin O'Donnell and the "- denied"  
39 I understand to be a reference to Father Guelen denying the  
40 allegation that he had walked in on O'Donnell with a boy.  
41 It goes on to say that after that the scoutmaster went to  
42 the cathedral. But in looking at this diary note I can see  
43 that that is not consistent with my understanding of the  
44 chronology, because my understanding of the chronology is  
45 that the scoutmaster went to the cathedral in 1958 and that  
46 it's in 1962 that Guelen allegedly witnessed O'Donnell with  
47 a boy. So I can't - what I wanted to say about that diary

1 note is I don't believe that that's recording anything  
2 Mr O'Callaghan told me because the chronology doesn't make  
3 sense. I think most likely it's a reflection of the fact  
4 that in the statement of claim the allegation about Guelen  
5 was said to have been in 1958 and that that's not right  
6 because it was 1962 and that is what was in part confusing.  
7

8 Q. Let's take a look at what you then advised counsel who  
9 were tasked with drafting defences in these actions,  
10 because that might clear it up to some degree?

11 A. Yes.

12  
13 Q. If we can scroll down. So you say in the first  
14 paragraph here you have a little further information on the  
15 sixth defendant, Father Guelen?

16 A. Yes.

17  
18 Q. Then you set it out:

19  
20 He is a priest, and he is in good standing.  
21 The relevant allegation against him appears  
22 to be that, according to the police  
23 statement of an O'Donnell victim [and it is  
24 redacted] in 1962 --  
25

26 Guelen, would you understand that, "was called by  
27 O'Donnell" - I beg your pardon, the redacted person "was  
28 called by O'Donnell into O'Donnell's bedroom." I'm going  
29 to get the unredacted one so I can be sure not to be  
30 misleading you, Mr Leder. Yes, that's right. So victim A,  
31 we might call him:

32  
33 ... was called by O'Donnell into  
34 O'Donnell's bedroom. O'Donnell was in bed  
35 and pulled back the covers. O'Donnell was  
36 wearing pyjamas and he pulled [that person  
37 A] into the bed on top of him. The door  
38 opened and Father Guelen walked in.  
39 O'Donnell pushed [A] away. Guelen left.  
40 I am informed of the foregoing by Peter  
41 O'Callaghan.  
42

43 A. Yes.

44  
45 Q. There is no indication there, of course, that you knew  
46 that information from any other source?

47 A. I did know that information from another source, and

1 I know that positively because in the [ID] proceeding, as  
2 I said before, the same allegation had been made, not  
3 initially. What occurred was that Mr [ID] had issued his  
4 writ and there were over a significant number of months in  
5 1998 various applications seeking leave to amend the  
6 statement of claim. In support of the application to amend  
7 the statement of claim to include what I might call this  
8 1962 Guelen allegation, Mr ID's solicitor swore an  
9 affidavit in support and he exhibited to that affidavit the  
10 police statement of Mr Redacted.

11  
12 Q. Yes, that's the one I referred to earlier. That's  
13 what I have, yes?

14 A. Yes, and I am able to say that I had that police  
15 statement as a result of it having been exhibited to the  
16 affidavit in support which was tendered in court - yes, so  
17 I had that police statement. I had clearly forgotten about  
18 that when I spoke with Mr O'Callaghan. My best  
19 recollection is that my conversation with Mr O'Callaghan  
20 assisted me in sorting out the confusion about 1958 and  
21 1962, and I suspect sorting out the confusion between the  
22 identity of Mr Redacted and Mr [ID], and ultimately  
23 allowing me to go back to my file in relation to [ID], find  
24 the affidavit in support and the police statement on it,  
25 and I can say with some confidence that I must have had the  
26 police statement in front of me when I drafted that fax  
27 because the fax contains details that aren't recorded in my  
28 diary note with Mr O'Callaghan. I believe in any event  
29 that I would not have prepared a fax to counsel giving  
30 instructions about those details without referring to some  
31 document.

32  
33 Q. And you go on to say:

34  
35 I have ascertained Guelen was the assistant  
36 [parish priest] to O'Donnell at the time.

37  
38 A. I also say, sir, at the end of the paragraph that we  
39 were talking about:

40  
41 I am informed of the foregoing by Peter  
42 O'Callaghan.

43  
44 Your Honour, I don't believe that I was informed of all the  
45 matters in that paragraph by Mr O'Callaghan specifically.  
46 I believe that I was - I must have been informed by  
47 Mr O'Callaghan that Guelen was a priest in good standing

1 and I believe that the source of my information for the  
2 rest of the paragraph was the police statement which  
3 I already had but which I had been unable to locate until  
4 Mr O'Callaghan was able to, as best as I recall, give me  
5 some information that allowed me to go to which file to  
6 look for it on.

7

8 Q. This is your present reconstruction of what you think  
9 occurred at the time; is that right?

10 A. Yes, it is.

11

12 Q. Because, firstly, you have said Mr O'Callaghan has a  
13 very good memory?

14 A. Yes.

15

16 Q. And that would include a memory for detail, I take it?

17 A. Yes.

18

19 Q. And, secondly, you wrote this fax very shortly after,  
20 in fact as I understand it the very same day that you spoke  
21 to Mr O'Callaghan?

22 A. Yes.

23

24 Q. And so had he given you the detail that appears in  
25 this paragraph you might still have been able to record it  
26 in a fax in that --

27 A. Yes, it's possible that I did. I'm now able to say  
28 that I already had the information in a police statement  
29 which was the exhibit referred to, although plainly I did  
30 not recall that earlier on 30 November or I wouldn't have  
31 needed to talk to Mr O'Callaghan about it.

32

33 Q. Or indeed when you prepared your statement for this  
34 hearing?

35 A. That's correct.

36

37 THE CHAIR: Q. You proffer the proposition a couple of  
38 paragraphs down:

39

40 Of itself none of this would seem to  
41 implicate Guelen, unless it could be said  
42 that he saw something, had a duty to  
43 report ... and breached that duty.

44

45 A. Yes. On reflection, plainly if he saw something he  
46 would have had a duty. Of course he would have.

47

1 Q. Yes, of course he would have?

2 A. Yes.

3

4 Q. So, just so we all understand, the information that  
5 you had was that he had seen something; is that right?

6 A. No, the information I had was that Mr Redacted had  
7 given a statement to the police.

8

9 Q. Saying that he had seen --

10 A. Saying that he had. But the other information that  
11 I had was that at the time that that had been alleged in  
12 the [ID] proceeding I had somehow become aware, probably by  
13 talking to Father Guelen, that he absolutely denied the  
14 allegation.

15

16 MR STEWART: Q. Mr Leder, those representing you advised  
17 of your wish to amend your statement on this question; in  
18 other words, whether it was knowledge you acquired from  
19 Mr O'Callaghan or whether it was just recollection that you  
20 acquired after Mr O'Callaghan had given evidence on this  
21 point, is it not?

22 A. Yes. The amendment that I have sought to make is that  
23 in paragraph 115 I had initially said that initially I did  
24 not know the details of the history or relationship between  
25 O'Donnell and Father Guelen, but I now realise that that  
26 must have been incorrect because I had knowledge from the  
27 [ID] proceeding, which I had forgotten when preparing this  
28 statement. What I meant to say is at the time that I was  
29 preparing the defences in the Fosters' litigation I had  
30 knowledge from some six years previously.

31

32 Q. And it was listening to Mr O'Callaghan's evidence when  
33 that occurred to you?

34 A. It was not so much listening to Mr O'Callaghan's  
35 evidence as reflecting on the diary note, I think.

36

37 MR STEWART: Your Honour, would that be a convenient time?

38

39 THE CHAIR: Yes. We will take lunch.

40

41 <THE WITNESS WITHDREW

42

43 LUNCHEON ADJOURNMENT

44

45 <RICHARD ALEXANDER LEDER, recalled: [2.00pm]

46

47 THE CHAIR: Yes, Mr Stewart.

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MR STEWART: Q. Thank you, Your Honour. Dealing, Mr Leder, back where we were with the 1962 Father Guelen incident, so the information from the police statement was that Father Guelen had walked in and observed Father Kevin O'Donnell and the complainant in circumstances which, so said the complainant, should have put Father Guelen on notice as to Father Kevin O'Donnell's abuse of him; is that right?

A. Yes, the allegation was that Father Guelen had walked in and seen O'Donnell in bed with the boy.

Q. And Guelen was at that time O'Donnell's assistant parish priest?

A. In 1962, I think so, yes.

Q. And he was subsequently O'Donnell's executor?

A. Yes, I understand he was.

Q. Which would suggest that they were close?

A. Yes, that was certainly what I was wondering about myself at that time.

Q. And depending on just what Father Guelen had said - at least had seen, that could be very significant because, if Guelen had raised the alarm at that time in relation to Kevin O'Donnell, it might have saved many, many victims thereafter?

A. I absolutely agree, yes.

Q. Including Emma and Katie Foster?

A. That's so, yes.

Q. In your file note you record "denied" and you said that Father Guelen had denied it?

A. Yes.

Q. At that time, in other words of your telephone call on 30 November, was that that he had denied it to you or that he had denied it to Mr O'Callaghan, who had reported that to you?

A. I don't know. I know that he had denied it to me back in 1988, but I don't know whether he had also denied it to Mr O'Callaghan.

Q. And then dealing with the 1958 complaint, that's been dealt with in a letter which you attached to your fax. So

1 that's at tab 190, the third page. This is a letter on  
2 31 October 1994 to Monsignor Cudmore and it's from Father  
3 Guelen?

4 A. That's right, and I believe that this letter helps me  
5 clarify the confusion I had earlier as to whether  
6 Archbishop Little's knowledge was in 1992 or 1994, and this  
7 helps me recall that it was 1994. It helps me with the  
8 chronology.  
9

10 Q. And that's because your understanding is that what's  
11 recorded in this letter, in other words Father Guelen's  
12 visit to someone, was part of investigating the allegations  
13 which arose in 1994?

14 A. Yes.  
15

16 Q. So, if we just have a look at the letter, what Father  
17 Guelen is saying is, to the Monsignor, the Vicar General:

18  
19 At your request I hereby submit the details  
20 of a visit and an interview I had on  
21 Friday, 13 September 1994 with ...  
22

23 And because there are a few people mentioned here I am  
24 going to call that Mr [A]. Mr [A] is the person being  
25 visited "at his home":  
26

27 I went to his home at approximately 5.45  
28 pm; I knew Mr [A] from my last stay  
29 (1958-65) in Dandenong, when he was  
30 involved with the Scout movement.  
31

32 He was home by himself; he received me  
33 well; I had not seen him in our church  
34 since my return in 1986, but he claims, he  
35 attends St John Vianney's in North  
36 Springvale.  
37

38 I brought up the subject of Father  
39 O'Donnell and he expressed great sympathy  
40 with this whole affair.  
41

42 Are we to understand from that that --

43 A. By then there must have been publicity, yes.  
44

45 Q.  
46 As far as he recalls, a young fellow ...  
47

1           So we will refer to him as [B]:

2

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... approached him in 1958 (he thinks that's the year) regarding interfering by Kevin O'Donnell with this boy. [A] agreed with [B] to approach the authorities at the cathedral. He and a Mr [C] went to see Monsignor Laurence Moran, the administrator of the cathedral. He received them well, was kind and listened to their story (complaint). Monsignor asked them to leave it with him and he would follow it up. From that day onwards he was out of the case.

So, in other words, that is Mr [A] was out of it; is that right?

A. (Witness nods.)

Q.

He had only heard from [B] that someone from the cathedral had come to see Kevin O'Donnell and also had talked to [B] and that everything was squared up since that time.

In the beginning of this year, possibly March, April, he received a phone call from [B] with the request that he would testify or make it known, what happened in 1958 and that the cathedral was involved and knew all about Kevin O'Donnell and let him carry on.

Mr [A] refused emphatically to get involved in any way. He told [B] that he could not understand him; he said he could not believe that these so-called traumas could come up after 35 years or more; he saw it more as a sort of revenge; and [B] should never forget how good O'Donnell had been to him over many years.

Mr [A] said that was the end of their conversation and [B] had not tried to get into contact since and Mr [A] was still of



1 the same attitude in the matter.

2

3 So in brief [B] had complained to [A] in what he thinks was  
4 1958 that O'Donnell had interfered with him and together  
5 they had reported it to Monsignor Moran; is that right?

6 A. Yes.

7

8 Q. And he had been the administrator of the cathedral and  
9 it had been left with him to follow up?

10 A. Yes.

11

12 Q. Of course, once again, if what Mr [A] said was true  
13 it's very significant. Four more years, in other words  
14 going back four from 1962, of abuse by O'Donnell might have  
15 been avoided, depending on what had been done by Moran?

16 A. I agree.

17

18 Q. So your position then was that there was evidence that  
19 a senior figure in the Archdiocese had information in 1958  
20 that, properly handled, might have led to O'Donnell being  
21 found out then and subsequent abuse then being avoided?

22 A. Yes.

23

24 Q. You will be aware that there's reference in these  
25 documents to there being an agreement between the  
26 Archdiocese and Catholic Church Insurances that for  
27 O'Donnell claims of abuse after 1958 the CCI would pay -  
28 would not fully indemnify, they would pay only half?

29 A. Yes.

30

31 Q. What do you know about that agreement?

32 A. I understand that is the agreement and I understand  
33 that it reflects a difference of opinion between CCI and  
34 the Archdiocese as to the Archdiocese's entitlement to  
35 indemnity in relation to O'Donnell cases.

36

37 THE CHAIR: Q. Can I bring this back to terms that  
38 everyone might understand. Is it the position that you  
39 established that the Church had knowledge which may  
40 indicate that it should have acted and done something about  
41 O'Donnell from 1958?

42 A. Yes, that's what this indicates.

43

44 Q. And the consequence of that is that in law it could be  
45 said there was a breach of duty by the Church - and  
46 I appreciate the problems defining the Church but by the  
47 Church - to those that were subsequently abused by

1 O'Donnell; is that right?

2 A. Yes.

3

4 Q. So if there had been a vehicle that could have been  
5 sued in the relevant sense at the time then it's very  
6 likely that common law claims would have succeeded?

7 A. I think that is so.

8

9 Q. And as a consequence it's for that reason that CCI  
10 says, "Well, in circumstances where you had knowledge and  
11 did not act, we are not prepared to stand 100 per cent  
12 behind the claim"?

13 A. That was one of the grounds on which CCI relied, yes.

14

15 Q. So in lay terms, so that everyone understands what  
16 this means is that the Church - you are satisfied the  
17 Church had knowledge which if there had been a suitable  
18 vehicle to sue rather than the legal structure which the  
19 Church actually had, then a common law claim would have  
20 succeeded?

21 A. I'm satisfied that Monsignor Moran knew. There is  
22 clearly a question as to the distinction between Monsignor  
23 Moran's knowledge and the Church's knowledge, but with that  
24 clarification I agree absolutely --

25

26 Q. He is a member of the Church and had responsibilities  
27 no doubt within the Church?

28 A. I think, Your Honour, that's where there is room for  
29 legal debate. Your Honour is seeking to put propositions  
30 to me in plain English and, subject to the qualification  
31 I have made, I agree with what Your Honour has said.

32

33 Q. Just so people understand what the qualification might  
34 be, the knowledge is knowledge held by a senior member of  
35 the Church?

36 A. Yes.

37

38 Q. And does nothing?

39 A. Well, I'm not sure that he did nothing. I think what  
40 is absolutely clear is whatever he did failed to prevent  
41 future abuse, clearly, and that's terrible.

42

43 Q. And the real impediment in terms of recovery which  
44 stood of course in everyone's way was the legal structure  
45 of the Church?

46 A. Yes

47

1 MR STEWART: Q. He was the administrator of the  
2 cathedral, Moran?

3 A. I'm aware that "administrator" has a particular  
4 meaning and I'm not - I see that he is described as  
5 "administrator" there. I'm not entirely sure what that  
6 means. When I say "administrator" has a particular meaning  
7 within the Church structure, and I'm not sure what exactly  
8 his position was in 1958, but he plainly was a - he plainly  
9 was a person within the hierarchy. At a point in time -  
10 and I don't know whether it was 1958 or later, but at a  
11 point in time he was Vicar General and I believe he became  
12 a Bishop as well.

13  
14 Q. Somewhere else in the documents he has been given  
15 another title. I'm just trying to find it quickly. Chief  
16 Administrator for the Diocese of Melbourne. So that's in  
17 the allegation in the statement of claim. You don't know  
18 whether that was an accurate description?

19 A. I suspect that the term "Chief Administrator" is not  
20 an accurate description but - as a technical matter, but,  
21 as I say, he was certainly a person within the hierarchy  
22 who, if not a Bishop then, became a Bishop.

23  
24 Q. You then, Mr Leder, had cause to telephone Father  
25 Guelen to get his account of these events at 196 - tab 196  
26 I think is your file note. Perhaps we can go to the typed  
27 version, which is on the eighth page, I think.

28 A. I think this is a file note of a face-to-face meeting,  
29 not a telephone call.

30  
31 Q. I stand corrected. So you visited Father Guelen, did  
32 you, or did he come to see you?

33 A. I think he came to see me.

34  
35 Q. I understand him to have said that in 1958 to 1965 he  
36 and Kevin O'Donnell, I take it, lived together in  
37 Dandenong?

38 A. Yes, I think that - I would be confident that's what  
39 the diary note is recording, yes.

40  
41 Q. And he said that he was the assistant?

42 A. Yes.

43  
44 Q. And then he refers to some others?

45 A. Yes.

46  
47 Q. And then he said that O'Donnell left in 1969,

1 presumably went to Hastings; would that be right?

2 A. Yes.

3

4 Q. And that Guelen and O'Donnell hadn't lived together  
5 since then; they were good friends?

6 A. Yes.

7

8 Q. Am I understanding it correctly?

9 A. Yes.

10

11 Q. And then in relation to the 1958 allegation there are  
12 some matters that are recorded there, but in substance he  
13 denied having seen anything; is that right?

14 A. That's right, yes.

15

16 Q. Of course in relation to what had happened in at least  
17 1962, which is when Mr [B] had said that he had been walked  
18 in on with O'Donnell?

19 A. Yes.

20

21 Q. You had no reason to prefer Mr Guelen's account to  
22 that of the person who signed a police statement?

23 A. Well, I accepted what Father Guelen told me.  
24 I believed him.

25

26 Q. Yes, I understand that that may be so. And, having  
27 two contrary accounts of what had occurred, you weren't in  
28 a position to prefer Father Guelen's account?

29 A. I agree. There was a police statement and there was  
30 Father Guelen's account. I suppose whenever one is faced  
31 with two conflicting accounts one sometimes will be unable  
32 to decide which version is correct; in other circumstances  
33 one does accept one version over another. I wouldn't want  
34 to be in any way understood as suggesting that the victim  
35 was not telling the truth or anything like that, but Father  
36 Guelen was - I met with him face to face, and I believed  
37 what he told me. I believed that he said, yes, he had  
38 walked - he remembered the incident when O'Donnell had been  
39 sick in bed and he had walked in, but he told me that he  
40 did not see anyone in there. That's what he told me, and  
41 I believed him.

42

43 Q. Well, he also said the room was dark, implying he may  
44 not have been able to see if there had been someone in  
45 there?

46 A. Yes.

47

1 Q. And then he said, "I do remember someone coming out of  
2 the room later"?

3 A. Yes.

4  
5 Q. Which would, as it is written there in any event,  
6 suggest that someone had been in the room or someone whom  
7 he saw coming out of the room later had been in there  
8 earlier?

9 A. I'm sure that I was concentrating very closely on what  
10 he told me and that I wrote down what he said, and it  
11 seemed to me that, faced with this very serious allegation  
12 that he had seen O'Donnell in bed with a child and done  
13 nothing about it, his admission that - and I don't claim in  
14 any way to be the best judge of who is telling the truth  
15 and who is not, but it did seem to me that he was being  
16 frank and honest with me in saying, "Yes, I remember the  
17 incident and I remember walking in. I didn't see anybody  
18 in there. Someone came out afterwards." That's what he  
19 told me, and I believed that.

20  
21 Q. Did you ask him who the someone was - adult, child,  
22 someone he knew, someone he didn't know?

23 A. I think because I have recorded "someone" and not the  
24 name that he didn't know - it's possible I didn't ask him,  
25 but I would expect that I would have because, I agree with  
26 you, it is an obvious question to ask.

27  
28 Q. 198, there is the file note in relation to your  
29 investigation of the Father Salvano allegations in the  
30 statements of claim?

31 A. Yes.

32  
33 Q. And I take it what's written here in the first person  
34 we are to understand is Father Salvano talking to you?

35 A. This is the wrong document.

36  
37 Q. If we look at the typed version, at 198?

38 A. No, this is --

39  
40 Q. That's not 198, I don't think. There you go?

41 A. Thank you, yes. "I was O'Donnell's assistant" is  
42 clearly me recording Father Salvano telling me that he was  
43 O'Donnell's assistant, that he was assistant priest.

44  
45 Q. The allegation - the relevant allegation in the  
46 statement of claim was essentially that Father John Salvano  
47 had failed to act upon allegations made to him in, as it

1 was put, early 1992; is that right?  
2 A. I think the allegation was rather that Father Salvano  
3 had made complaints to Bishop Deakin about O'Donnell.  
4  
5 Q. That had not --  
6 A. That had not been acted on, yes.  
7  
8 Q. And O'Donnell retired in August 1992; you are aware of  
9 that?  
10 A. Yes.  
11  
12 Q. And he was not charged until March 1994?  
13 A. I think that's right, yes.  
14  
15 Q. Perhaps we can look at the defences, and since we  
16 looked at the Emma statement of claim we will look at the  
17 Emma defence. But just to look at the statement of claim  
18 first at 182, page 15, paragraph 11. You will be familiar  
19 with this paragraph in the particulars because this deals  
20 with the abuse?  
21 A. Yes.  
22  
23 Q. As it was alleged in the statement of claim:  
24  
25 In the period, the plaintiff was subjected  
26 to physical and/or sexual and/or  
27 psychological abuse [defined as "the  
28 abuse"] whilst an infant student at the  
29 school by the deceased whilst the deceased  
30 was carrying out or purportedly carrying  
31 out his priestly duties and functions at  
32 the school and in the premises whilst a  
33 servant and/or agent and/or otherwise under  
34 the control of the firstnamed to sixthnamed  
35 defendants and/or each or other of them as  
36 described in paragraph 1.  
37  
38 Then the particulars of abuse are:  
39  
40 The abuse occurred during class time at  
41 school and after mass on Sundays. It  
42 occurred at various sites at the school  
43 and/or on the premises. The deceased would  
44 request that the plaintiff be removed from  
45 her class whilst at school, or after mass  
46 would otherwise be required to accompany  
47 the deceased in order that she would be

1 involved with him in the discharge of his  
2 responsibilities referred to in paragraph  
3 1 ... on occasions the deceased would  
4 provide the plaintiff with tainted soft  
5 drink which would make her feel "weird".  
6 The nature of the abuse included genital  
7 contact.

8  
9 I have gone through that obviously to then look at what was  
10 pleaded in the defence in response to that, and that's at  
11 tab 184, page 3, paragraph 11. It says:

12  
13 As to paragraph 11 ...

14  
15 That, you accept, is a reference back to the paragraph  
16 I have just read?

17 A. I do.

18  
19 Q. (1) "They", being the defendants:

20  
21 ... do not admit that the plaintiff was  
22 subjected to physical and/or sexual and/or  
23 psychological abuse while an infant by  
24 Kevin O'Donnell.

25  
26 (2):

27  
28 They otherwise deny each and every  
29 allegation contained in paragraph 11.

30  
31 So let's deal with paragraph (1). By then, of course, in  
32 other words by the time the defence was prepared,  
33 Mr O'Callaghan had long since found that Emma had been  
34 abused by O'Donnell; is that right?

35 A. Yes, that's right.

36  
37 Q. And you had his report and the various annexures to  
38 his report?

39 A. Yes.

40  
41 Q. Why did you not admit the abuse or at least some of it  
42 that - which you were able to admit, given what you knew  
43 from the reports?

44 A. I dealt with this issue in some detail in my  
45 statement, and with respect both to the Fosters and to the  
46 pleader of the statement of claim, the statement of claim  
47 was pleaded in what I would describe as a generic form in

1 the sense that I had seen the precise formulation of  
2 physical and/or sexual and/or emotional abuse in other  
3 cases. The particulars, by which I mean the details to  
4 support that allegation, were so vague that in a legal  
5 sense, in the context of a pleading and with the precision  
6 required of a pleading, it was and is my view that it was  
7 not possible to make that admission.

8  
9 Q. Could you not have pleaded, save to admit that the  
10 plaintiff was sexually abused by Kevin O'Donnell, the  
11 defendants do not admit the relevant allegations?

12 A. I don't think - I don't think at the end - I have  
13 given this a lot of thought obviously in the lead-up to the  
14 hearing today. I don't think that that would have been an  
15 appropriate way for defendants to proceed, and because we  
16 are dealing with pleadings these are technical matters  
17 that, if anyone understands them, lawyers do, but probably  
18 not all lawyers even do, but to have adopted the  
19 formulation that you are suggesting would have then, in my  
20 view, led to the probability that the defendants were asked  
21 to particularise what they admitted and what they did not,  
22 and the defendants would not have been able to do that.

23  
24 Q. Would they not have legitimately been able to answer  
25 such a request for particularity by saying that they don't  
26 know, they don't have knowledge?

27 A. I don't believe that that would be a permissible, and  
28 it certainly would not be a conventional, way to plead in  
29 Victoria or to particularise matters in Victoria at that  
30 time.

31  
32 THE CHAIR: Q. Mr Leder, again, we are in the territory  
33 of lawyers but --

34 A. Yes.

35  
36 Q. -- it will sound to lay people like technical games.  
37 Do you understand that?

38 A. I do understand that, sir, yes.

39  
40 Q. Even if Mr Stewart's suggestion wasn't appropriate, why  
41 wouldn't a phone call to the lawyers on the other side have  
42 been appropriate to say, "Look, we know she was abused but  
43 we can't plead to this until we have more particulars. Can  
44 you provide them"?

45 A. Yes, Your Honour, as my statement indicates, there  
46 were various other issues with the statement of claim that  
47 were the subject of quite significant informal discussions



1 between the lawyers, and the opportunity was offered and  
2 accepted by the plaintiffs to replead I think on two  
3 occasions.  
4

5 But the point was I think this: at some point between  
6 the issue of the proceeding and the trial, if there had  
7 been a trial, some more details would have been needed.  
8 But, consistent with my discussion with the Archbishop  
9 about seeking medical examination early, my view and, as  
10 I recall, the Archbishop's view and Mr Exell, who was also  
11 instructing me, was that a requirement to provide further  
12 details was something that would understandably be  
13 difficult for Emma to do and that it would need to occur at  
14 some stage during the proceeding if the proceeding had gone  
15 all the way to trial, but that the thing to do first was to  
16 clarify some of the other legal issues around the duties  
17 that were alleged and so on, and that's what we focused on  
18 first.  
19

20 I might say, and I have said in my statement, that  
21 in - I'm obviously aware that the - I became aware some  
22 years later that Mr and Mrs Foster were upset by the -  
23 understandably upset by the perception that they had that,  
24 the Independent Commissioner having found one thing, the  
25 defence then did another. And what I say in - what I wish  
26 to say in response to that is two things: first of all,  
27 that that distress was not conveyed to us at any time  
28 during the running of the proceeding, and, if it had been,  
29 we would certainly have sought to explain that we were in  
30 the arena of lawyers dealing with the technical legal  
31 pleadings; but that I cannot conceive for one minute that,  
32 had these claims gone to trial, they would have gone to  
33 trial with a dispute as to the - what had actually  
34 happened. I am confident that at some point the plaintiffs  
35 would have provided such details as they were able to and  
36 the defendants would have responded.  
37

38 Q. Did you not see at the time that, whatever might be  
39 the technicalities about the legal structure of the Church  
40 and the breach of duty of care, the one thing that would  
41 hurt most would be for the Church to deny there had been  
42 abuse?

43 A. We didn't deny that there was abuse, sir.  
44

45 Q. Well, didn't admit the abuse?

46 A. That's right, and in pleading terms --  
47

1 Q. Did you not realise that would hurt terribly?  
2 A. In pleading terms, sir, there is a significant  
3 admission, and in particular I would expect that lawyers  
4 reading paragraph 11(1) and (2) would see the distinction  
5 between the "do not admit" and the "deny", and I would  
6 expect that lawyers would explain that to their clients if  
7 asked. So, had the Fosters raised that matter with their  
8 own lawyers at the time, I would be confident that an  
9 explanation would have been given along the lines that I am  
10 suggesting or, had it not, I would have expected that the  
11 lawyers for the plaintiff, with whom I believe I had a  
12 courteous and constructive professional relationship, and  
13 continue to have, would have raised the issue with me.  
14

15 Had I been given any inkling at the time that the  
16 Fosters had been distressed by this pleading, I would have  
17 acted to explain that as best as I could, and I regret that  
18 they didn't.  
19

20 Q. Was there a discussion between you and the plaintiff's  
21 lawyers about the issue and how the concern was that you  
22 wanted more particulars before you pleaded?

23 A. No, there wasn't, sir. The discussion, as I say,  
24 began and continued with other issues that we had with the  
25 pleading, and I would have to say that I - given that the  
26 pleading was amended several times, and given that there  
27 were also - and there were many discussions between me and  
28 Mr Jorgensen, and between me and counsel, and between my  
29 counsel and the plaintiff's counsel, and given that we met  
30 several times, I would have expected that if that had been  
31 an issue then it would have been raised so that it could  
32 have been clarified. I'm sorry that that didn't occur, but  
33 all I can say is that it didn't occur. My view was at the  
34 time and is that this is an entirely conventional way to  
35 plead to that sort of allegation.  
36

37 Q. Can I then seek to put it into context. You knew from  
38 Mr O'Callaghan that he accepted that she had been abused?

39 A. Yes.  
40

41 Q. Leaving aside the issues of suing the Church and duty  
42 of care and so on, the issue then in terms of the abuse,  
43 its relevance in the dispute was as to whether or not it  
44 had occasioned the damage, wasn't it?

45 A. And the extent of the damage, yes.  
46

47 Q. Yes?

1 A. Yes.

2

3 Q. So that the only relevance of further detail was what?

4 A. Well, it's what we just agreed, Your Honour, that  
5 it's - what happened is the foundation of the plaintiff's  
6 case. Putting to one side the questions of who is liable,  
7 there is then question - the questions that would then have  
8 to be determined by the court had the matter gone to trial  
9 would be all the questions of causation and remoteness that  
10 Your Honour would of course be well familiar with.

11

12 Q. That depended on the doctors' opinion, didn't it?

13 A. Yes.

14

15 Q. So that doctors, your doctors, in discussion with  
16 Emma, as they would have done, would have reached a  
17 conclusion?

18 A. Yes.

19

20 Q. That they could express?

21 A. Yes, and I would have expected - again, had the case  
22 not settled, I would have expected that these issues would  
23 have been clarified either by an amended pleading or by  
24 particulars in the entirely conventional way that these  
25 matters are clarified as a proceeding.

26

27 Q. That wouldn't have been necessary either, would it,  
28 because the doctor would have consulted with Emma and  
29 listened to Emma's account and then formed an opinion? It  
30 was only if that opinion took issue with the relationship  
31 between the abuse and the medical consequences that there  
32 would have been an issue?

33 A. With respect, sir, I don't agree with that. One would  
34 also have to consider that the correlation and the extent  
35 of - the consistency between the pleading in paragraph 11  
36 and what Emma would have told her doctors.

37

38 Q. Why? Why would that be necessary?

39 A. Well, in my view - in my view, sir, the foundation of  
40 the case is the allegation of abuse which in - this is  
41 not - the foundation of the case is the allegation of  
42 abuse, which needs to be described in pleadings or  
43 particulars; that's --

44

45 Q. That's if there is to be an issue at the trial about  
46 whether there was abuse?

47 A. And it may be, sir, that there wouldn't have been an

1 issue and it may well be that, once details had been  
2 provided, the defence could have been amended to admit or  
3 it could have been dealt with by agreement or whatever.  
4 Where we were here was 30 days after the statement of claim  
5 is served we need to file a defence based on what we know,  
6 and it's my - it was and is my view that the professional  
7 obligations on those advising the defendants was to not  
8 admit things that were not within their knowledge.  
9

10 Q. You contemplated that there would be an early medical  
11 examination?

12 A. Yes.  
13

14 Q. And that examination would have given you an opinion  
15 as to whether or not all of the damage that was apparent  
16 was the consequence of abuse, wouldn't it?

17 A. I would have contemplated also that the medical  
18 opinion would provide further details of what the abuse  
19 was.  
20

21 Q. It might have but --

22 A. And it might not have.  
23

24 Q. -- if your doctor's opinion was, "All of the medical  
25 consequences that she's suffering from are occasioned by  
26 the abuse, in my professional opinion," would there have  
27 been a need to go any further?

28 A. There may not have been, no. But at the point at  
29 which this document is being pleaded we did not have that  
30 information  
31

32 MR STEWART: Q. Mr Leder, on another occasion you will  
33 recall, and it is the email we looked at earlier from you  
34 to Jennifer Cook some time later, you gave a different  
35 explanation as to why the abuse had not been admitted, and  
36 the explanation you gave on that occasion was that it had  
37 been alleged that Emma had been raped and that hadn't been  
38 established and that's why it hadn't been admitted; do you  
39 recall that explanation?

40 A. I recall that explanation. That explanation was  
41 incorrect. I was - I had confused in my mind the details  
42 as pleaded in the statement of claim and the details as  
43 provided at the mediation. I might say, sir, that, had the  
44 case not settled at mediation, then with the benefit of  
45 details that had been provided at the mediation and  
46 assuming that they were then provided on an open basis,  
47 there clearly would have been amendments to the defence to

1 reflect that. Indeed, I would have expected there probably  
2 would have been either an amendment to the statement of  
3 claim or some particulars provided. But, in one way or  
4 another, I am confident that the parties would have worked  
5 cooperatively to take that issue out of the dispute.

6

7 THE CHAIR: Q. Yes, if the professional advice had been  
8 that your doctors were satisfied that the medical condition  
9 was a consequence of the abuse, that would have been the  
10 end of that issue altogether?

11 A. Yes. But we weren't in that position at the time of  
12 pleading the defence - pleading to the statement of claim.

13

14 MR STEWART: Q. I want to move on and address the  
15 question of settlement. Generally in this case, in the  
16 Fosters' case, what were your instructions with regard to  
17 settlement of these claims?

18 A. My instructions were to settle them.

19

20 Q. Mr Exell's statement, if I recall it correctly, says  
21 that he had instructions from the Archbishop early on to  
22 settle them if at all possible, and I take it those then  
23 became your instructions?

24 A. Yes.

25

26 THE CHAIR: Q. Were you given instructions as to the  
27 amount that you might settle for?

28 A. No.

29

30 Q. How did you, yourself, identify what was the  
31 appropriate amount?

32 A. It was as a result of the negotiations at the  
33 mediation.

34

35 Q. I understand that. How did you identify that it was  
36 appropriate on behalf of your client for you to say yes?

37 A. Your Honour, there are certainly mediations that  
38 I attend with instructions - in other matters, in  
39 commercial matters and so on, with a view as to where a  
40 settlement might occur and then, as Your Honour would  
41 understand, sometimes the negotiations proceed in a way  
42 that you settle within that range, sometimes you don't  
43 settle, sometimes you would make a decision to settle  
44 outside that range.

45

46 My memory of, if you like, the riding instructions  
47 that I had when I went to the mediation with Mr Exell was

1 that we were to do our best to settle the case if possible,  
2 and --

3

4 Q. How did you arrive at the view that you were doing  
5 your best?

6 A. Well, I think we got to the point where there had been  
7 some negotiations backwards and forwards, which are  
8 detailed in Mrs Foster's statement and with which my diary  
9 notes confirm agreement, and we got to a point that the  
10 total amount of 750,000 was a point from which the Fosters  
11 were not prepared to move and it was a point - it was an  
12 amount to which the Church agreed.

13

14 Q. Tell me, did your advice to the Church as to what may  
15 have been appropriate, an appropriate sum to agree to, was  
16 it influenced by the difficulties the Fosters faced in  
17 suing the Church? I globalise that. Did that  
18 influence --

19

A. Yes.

20

21 Q. It did.

22

23 MR STEWART: Q. It follows from what you have said as to  
24 your instructions that it was not your instructions to  
25 fight this case to judgment to establish a precedent for  
26 the Church?

27

A. That's correct.

28

29 Q. And those instructions that you had in this case with  
30 regard to settle if possible, were those the same in other  
31 cases you were handling during the time of Archbishop Hart?

32

33 A. There weren't any other cases by that time. So what  
34 had happened by that time was that the proceedings that  
35 were on foot in 1996 when the Melbourne Response --

36

Q. That's the 30 or so that you referred to?

37

38 A. The 30 or so had all been resolved one way or another,  
39 either through - I largely through the Melbourne Response or  
40 else through - I think a couple had perhaps been resolved  
41 through negotiations, but they had all been resolved  
42 I think - I'd say some years before the period we are now  
43 in.

44

45 Q. During the time of Archbishop Pell or Archbishop Hart  
46 or both?

47

A. Certainly some were resolved during the time of  
Archbishop Pell, of course. Whether they were all resolved

1 before Archbishop Pell moved to Sydney, Archbishop Hart  
2 became Archbishop, I can't quite recall.

3

4 Q. Was there to you a discernible difference in approach  
5 with regard to fighting or settling litigation between  
6 Archbishop Pell and Archbishop Hart?

7 A. No.

8

9 Q. There was a settlement conference on 24 June 2005.  
10 That, as I understand from your statement, just involved  
11 the lawyers; is that right?

12 A. Yes, that's right.

13

14 Q. And nothing was resolved then?

15 A. No.

16

17 Q. But I suppose that was at least a useful start in the  
18 discussions, was it?

19 A. Yes.

20

21 Q. Then there was a mediation on 7 November 2005 in which  
22 all the actions were settled; is that right?

23 A. That's right.

24

25 Q. If we can have a look at your statement, paragraph  
26 160, where you say the Archbishop and Mr Exell expressed  
27 the strongly held views that every effort should be made to  
28 settle the litigation.

29 A. Yes.

30

31 Q. What did you understand motivated that view? What was  
32 in it for the Church to settle the litigation?

33 A. What was in it for the Church was to provide the  
34 Foster family with a meaningful remedy for what had  
35 happened to them; and what was in the Church was also that  
36 a settlement rather than litigation involves the saving of  
37 legal costs on both sides; and I think what was in it for  
38 the Church was the recognition that if the case had gone to  
39 trial and the Church had won that would nevertheless -  
40 while that would be a legal victory, that would not be a  
41 victory that the Archbishop would have enjoyed.

42

43 Q. You would appreciate that stands in contrast to the  
44 approach taken by the Archbishop in Sydney in relation to  
45 the Ellis litigation where one might say that the  
46 Archdiocese did enjoy the victory as a precedent?

47 A. Yes, I see that distinction.

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Q. The cases were settled, as we have heard, at \$750,000 plus solicitor-client costs and no continuing support through Carelink?

A. Yes.

Q. That's the sum of it, isn't it? At tab 208 - sorry, before we go there, stay where we are on the screen. At 161 you will see that it's said there by you in relation to the legal costs, significant legal costs which you referred to earlier in your oral evidence, it's said:

It seemed unlikely that the Archdiocese would ever seek to recover its costs from the Fosters if and when they lost.

Why did that seem to you at that time to be unlikely?

A. Because it's my view that Archbishop Hart and Mr Exell and I would all have taken the view that, having regard to what O'Donnell had done to those girls, that would have been a completely inappropriate thing to do.

Q. And you are aware once again that that stands somewhat in contrast to the approach taken in Sydney in the Ellis case with regard to recovery of costs?

A. For a period of time, yes, and I believe that ultimately the Sydney Archdiocese came to the same view in relation to Mr Ellis. That's my understanding.

Q. Yes, ultimately?

A. Ultimately, yes.

Q. At tab 208 is Mr Collins' advice on the settlement. Now, just to understand, this arose because, as I understand it, you offered to the insurers an advice as to why the matter had been settled at that level and they took up that offer; is that right?

A. Yes, the settlement had been reached without any involvement of the insurers and without any participation of the insurers at mediation, and when, as I understand it, the Archdiocese then went to CCI to say, "We have settled this case for this amount of money and we seek indemnity," the insurer sought some - as you say, the insurer accepted the offer that I made to seek a written memorandum from Mr Collins.

Q. And I take it that you agreed and accepted the reasons



1 given by Mr Collins as recorded in his memorandum?

2 A. Yes.

3

4 Q. Dealing then with the insurance, if we can go to tab  
5 212. Firstly, as I understand it, as recorded in this  
6 letter from Catholic Church Insurances to Mr Ted Exell, the  
7 business manager, in December 2006, the principal sum was  
8 settled by paying half in accordance with the agreement you  
9 have referred to; is that right?

10 A. Yes.

11

12 Q. Then if we look at 217, this then deals with the legal  
13 costs, that is the Archdiocese's own legal costs being for  
14 the most part, I suppose, Corrs's invoices to the  
15 Archdiocese for defending and settling the claims; would  
16 that be right?

17 A. I recollect that the total Corrs costs were about  
18 \$35,000 and I think the difference between the \$35,000 and  
19 that \$65,000 comprised counsel's fees, our share of the  
20 costs of the mediation, the costs of the cost consultant  
21 who had resolved - who had assisted in resolving the claim  
22 by Williams Winter on behalf of the Fosters for their legal  
23 costs and so on.

24

25 Q. In relation to the costs consultant, I may be wrong,  
26 but I think that came later. But in any event that's not a  
27 significant amount. The legal costs were 65,000,  
28 approximately, of which the insurers paid half?

29 A. The insurers paid half. The \$65,000 amount doesn't  
30 actually ring true to me, but it may be. I know that our  
31 costs were around about \$35,000 and that that was obviously  
32 significantly less than the Fosters' costs.

33

34 Q. You will see it says:

35

36 I have attached a spreadsheet outlining the  
37 payments.

38

39 Then if we look at the next page, the tax invoice numbers  
40 that are given in the left-hand column, do you recognise  
41 those as being Corrs' invoice numbers?

42 A. It's possible. It's possible. The amounts seem to be  
43 amounts for both Corrs' fees and disbursements. But  
44 I can't, looking at that, shed any more light on what those  
45 numbers mean. But if the position is that ultimately the  
46 total costs and disbursements were \$65,000, then that's  
47 what they were. As I say, my recollection is that they

1 were a bit lower than that.

2

3 Q. The schedule seems to indicate they were - well,  
4 including GST, 65,085. But, in any event, that once again  
5 stands in stark contrast to the costs in excess of 10 times  
6 that in the Ellis litigation. I don't know whether you are  
7 aware of that?

8 A. I'm not.

9

10 Q. Then at 218 the matter of the Fosters' legal costs are  
11 dealt with. So, in other words, the agreement had been  
12 that the Church, speaking loosely, would pay those costs on  
13 a solicitor and client basis?

14 A. Yes.

15

16 Q. A cost consultant was employed to scrutinise those and  
17 they were settled as to --

18 A. She provided her opinion that, once the costing  
19 process had been gone through, the Fosters' legal costs  
20 would tax out at between 113 and 123,000 and the settlement  
21 was agreed at 122,000.

22

23 Q. Yes. Then at tab 220, CCI have paid half of those as  
24 well?

25 A. Yes. I don't have personal knowledge of these  
26 matters, but that seems to be what the letter says.

27

28 Q. Then at 221 we have the question of Carelink expenses?

29 A. Yes.

30

31 Q. It's hard to follow this email, but this is Joseph  
32 Bucci, a case manager, special issues at CCI, to one of his  
33 colleagues, Marita Wright, and he sets out the costs that  
34 were accepted. As I understand it, what was accepted is  
35 the total of \$81,324, including educational costs of  
36 \$27,000, of which CCI then paid half?

37 A. I don't see the figure that you just mentioned.

38

39 Q. All right. Let's scroll down a little bit?

40 A. This is an internal CCI email that I have not  
41 previously seen, I don't think.

42

43 Q. Yes, I appreciate that. You did not have any personal  
44 knowledge as to what settlement was paid by CCI in relation  
45 to Carelink and related costs?

46 A. I don't think so. I don't have any recollection of  
47 it.

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Q. In any event, you will see there there is a series of sums that add up - a series of amounts that add up to 54,000 and there is an additional 27, a total of 81, and then there is a discrepancy that is calculated of \$11,926 and, as I read the email, on the basis that there would be no more after that, CCI paid half of the 81,000 figure. But we can leave that to another time to try and understand the email. Now, in Mr Hersbach's case, I understand you had very little involvement?

A. Yes, that's right. I think in terms of the progress of Mr Hersbach's case through the Melbourne Response I would describe my involvement in that as being typical of the level of involvement that I have in most cases, which is none at all prior to the claim going to the Compensation Panel and then I do have a role in - which we have seen in part in relation to Emma Foster's claim as well - I have a role in making of the offer, but I made the offer to Mr Hersbach on behalf of the Archbishop based on the Compensation Panel's recommendation, and when he accepted the offer I facilitated the payment and so on.

Q. Perhaps it is worth looking at the offer at 251. That's your offer to Mr Hersbach on behalf of your client; is that right?

A. Yes.

Q. And that's in the amended terms post your discussion with Susan Crennan?

A. I think so, yes. If we could keep scrolling.

Q. If you scroll down you will see that. At the foot of the page and then over the page?

A. Yes.

Q. There you go.

A. Yes.

Q. So the consequence of that, as I understand it, is that it only sought without prejudice confidentiality and no reference to defending any legal action that might be taken?

A. That's right.

Q. That offer was accepted. Then at 255 that was then submitted to - via the Archdiocese to CCI, and to your knowledge that was then accepted and paid, was it?

1 A. I don't have any knowledge of this, I'm sorry.

2

3 Q. That's at 258. Then in the case of [AFA], in that  
4 case of course the Independent Commissioner upheld the  
5 complaint and [AFA] applied to the Compensation Panel?

6 A. Yes.

7

8 Q. Is that right?

9 A. That's right.

10

11 Q. And at what stage did you become aware of that  
12 complaint?

13 A. As with Mr Hersbach, at the time that the Compensation  
14 Panel was getting ready to meet with him. I can't say that  
15 I - I'm not sure in the case of Mr [AFA] that I actually  
16 did become aware at that time. Those documents passed  
17 through Corrs' office, but I actually - I don't have any  
18 memory of that actually happening. But clearly I have  
19 signed some correspondence.

20

21 Q. Someone in your office may have handled that?

22 A. Yes.

23

24 Q. Because there wasn't anything particularly striking or  
25 difficult about the manner in which you had to deal with  
26 that, was there?

27 A. In the sense of the procedural aspect going through  
28 the Melbourne Response, no. Obviously for him, yes, there  
29 was.

30

31 Q. Of course.

32 A. Of course.

33

34 Q. And at 285 is your offer of compensation, and that was  
35 not accepted initially, as I understand it; is that right?

36 A. Yes, that's right.

37

38 Q. You deal with that at 286. Perhaps we can look at the  
39 second page of 286 first. So that's an email from [AFA] to  
40 you on 28 June 2011?

41 A. Yes, it is.

42

43 Q. And he says, starting at the end of the first line:

44

45 I regret that I have to reject the offer of  
46 compensation as inadequate, given the  
47 impact that sexual abuse by Catholic clergy

1 has had on my life.

2  
3 In summary, the impacts are ongoing  
4 physical, emotional and mental suffering  
5 that I have endured since the offences  
6 occurred as well as the financial loss of  
7 approximately \$250,000 in lost wages due to  
8 major depressive disorder precluding me  
9 from undertaking employment.

10  
11 Then on the previous page is you forwarding that to Francis  
12 Moore. What was his position in the Archdiocese?

13 A. By then he had replaced Mr Exell and became the  
14 business manager, subsequently the executive director,  
15 administration of the Archdiocese.

16  
17 Q. And you made then a recommendation to the Vicar  
18 General - I beg your pardon, to Mr Exell - I will start  
19 again, to Mr Moore basically to say that Mr [AFA] can sue  
20 if he wants to but the offer will remain open for  
21 acceptance?

22 A. I think what I said was that, were his case to  
23 succeed, then the - succeed in the legal sense, then the  
24 amounts of money he was talking about, without really  
25 knowing anything - having any particular details about his  
26 earning capacity or anything, but that the propositions he  
27 was putting were eminently reasonable as a probable outcome  
28 of litigation if it was won, but that based on the timing,  
29 in particular based on the fact that he had been abused by  
30 Glennon at a time prior to any complaints about Glennon  
31 coming forward, then based on the law as it then was his  
32 claim would not succeed.

33  
34 Q. At 293 is CCI's claim summary in relation to this  
35 claim. You have seen this document before, I take it?

36 A. I don't think that I have.

37  
38 Q. In any event, on page 3 you will see that there's a  
39 schedule of figures - you can have a look at that - where  
40 "LMR" I take it is Laurie Rolls, is it? Would you know  
41 that?

42 A. I don't know.

43  
44 Q. And the various items are set out as to what the claim  
45 was by the Church to CCI, including one of Corrs' fees for  
46 \$9,300. You look surprised, Mr Leder?

47 A. I find that inexplicable. That can't be right.

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Q. I was going to ask you about that, but perhaps that's the answer you would --

A. It's not a document I have seen before, but I can't explain that.

Q. What this document does raise is one question, which is how the ongoing care or support through Carelink, which could take years into the future, would be dealt with at the level of insurance. Was that something that was raised and resolved in the Melbourne Response?

A. I know - I don't know the answer to your question. I know that there were discussions - I know I was involved in some discussions with Mr Exell and CCI many years ago, probably within the first few years of the Melbourne Response, about the issue of recovering compensation payments if indemnity was granted and recovering a contribution to the costs of running the Melbourne Response if - again if indemnity was granted. My best memory is that the question of the ongoing future costs that were paid through Carelink was one that the insurer found itself unable to contemplate in insurance terms and that it was left unresolved - that's my best memory - and that perhaps there is a process of the Archdiocese going back to CCI later, but I really just can't remember.

Q. Very well. If you don't know, you don't know.

A. I don't know.

Q. Mr Leder, just to advise you that, in relation to the two transcripts, our intention is to - once we have got them appropriately redacted and so on, is to - that's of the interview between Professor Ball and the Fosters, to tender those, which will deal with that issue that you raised earlier. Those are my questions, Your Honour.

THE CHAIR: Does anyone else have any questions?

MR CASH: No, thank you.

MR SECCULL: Yes, I do, Your Honour.

<EXAMINATION BY MR SECCULL:

MR SECCULL: Q. Seccull is my name, Mr Leder. I appear on behalf of the Fosters. Mr Leder, could you just set out to the Commission your qualifications, please?

1 A. I have an economics degree and a law degree from  
2 Monash University, and a diploma in -- a post-graduate  
3 diploma in media law from Melbourne University.

4  
5 Q. Is that the extent of your qualification?

6 A. Yes.

7  
8 Q. You don't have any qualifications in respect of  
9 matters of psychology?

10 A. No, I don't.

11  
12 Q. Nor do you have any qualifications in respect of  
13 matters psychiatric?

14 A. I don't.

15  
16 Q. You are aware when you gave your evidence to the  
17 Commission this morning that Ms Sue Sharkey had prepared a  
18 report and in fact that report had been provided to  
19 Mr O'Callaghan and Mr O'Callaghan subsequently used that as  
20 consideration for his ultimate finding that went to the  
21 Compensation Panel; do you recall that?

22 A. I don't, no.

23  
24 Q. I will read it to you. Your Honour, if I could go to  
25 Mr O'Callaghan's statement, please, page 32, paragraph 7.  
26 Perhaps before I do that, if I could take the Commission to  
27 page 22 of Mr O'Callaghan's statement. You will see at  
28 page 22, if we can just scroll down somewhat, please, you  
29 will see "Private and confidential. Report to Compensation  
30 Panel. Re Emma Foster". Mr Leder, that is the  
31 commencement of extracts that are then taken from that  
32 report and culminate at page 32 of that statement, and in  
33 particular paragraph 7, and you will see there, Mr Leder,  
34 paragraph 7, "Extract from report of Sue Sharkey of  
35 Carelink"?

36 A. Yes.

37  
38 Q. And I will read it to you:

39  
40 It would appear that Emma's claims to  
41 having been abused by Kevin O'Donnell are  
42 true ... Emma's presenting psychological  
43 and psychiatric behaviours are consistent  
44 with serious abuse ... because of Emma's  
45 age it may be many years before the real  
46 story is known.

47

1 Now, at the time of giving your evidence this morning you  
2 were aware of that, weren't you, that opinion?

3 A. I certainly would have seen it before. You asked me  
4 before about it and I said I - a moment ago, and I said  
5 I didn't remember it, but clearly I did. I'm not saying  
6 that I hadn't see it before. Clearly I had.  
7

8 Q. Just so we are clear about it, prior to you giving  
9 your evidence to this Commission this morning, you were  
10 aware of that sentiment?

11 A. Yes.  
12

13 Q. And that descriptor as to the severity of abuse?

14 A. Yes.  
15

16 Q. We also know, and if I can take - I don't need to take  
17 you to it. It's been put to you by counsel assisting the  
18 report from Nicki Maheras, the family therapist, and we  
19 know - and I can't recall - I beg your pardon, Your Honour,  
20 it is exhibit 16-8. Perhaps if that could be brought up on  
21 the screen. We know, Mr Leder, do we not, that this was a  
22 report that was provided to you for the purpose of your  
23 comment upon it by Vicar General Prowse, and that was in  
24 about April 2003?

25 A. Yes.  
26

27 Q. And likewise it follows that prior to you giving your  
28 evidence to the Commission this morning you were aware of  
29 the contents of this report?

30 A. Yes. I certainly don't - when I looked at it this  
31 morning I didn't have an independent recollection of having  
32 seen it before, but clearly I did - clearly I had seen it,  
33 there's no doubt, because I was advising on it --  
34

35 Q. Because you were asked to comment upon it?

36 A. Yes, and I did comment on it whenever it was; 10 or so  
37 years ago.  
38

39 Q. So there is no doubt that you had seen it prior to you  
40 giving your evidence to the Commission this morning?

41 A. Yes, at about the time it's dated, yes.  
42

43 Q. I will read it to you. "Nicki Maheras", and just in  
44 terms of her qualifications, Mr Leder:

45  
46 I have over 17 years experience working in  
47 the health and welfare field and within



1 this time have provided counselling  
2 services to many families where trauma,  
3 violence and sexual abuse has occurred.  
4 I have been providing counselling services  
5 to the Foster family for over two years.  
6 These sessions have included contact with  
7 Emma Foster. A summary of her current  
8 status is provided below:  
9

10 Emma has experienced sexual abuse  
11 perpetrated by a Catholic Church priest.  
12 The abuse occurred over a prolonged period  
13 commencing as early as age six. Disclosure  
14 about the abuse did not occur until after  
15 Emma as a teenager, became a patient of a  
16 mental health service showing symptoms of  
17 anorexia, substance abuse, self-harming and  
18 suicidality. These symptoms are present in  
19 nearly all cases of survivors of prolonged  
20 sexual abuse. Treatment of such symptoms  
21 is made more difficult if patients are not  
22 stabilised in secure and supportive  
23 accommodation. The abuse creates a lack of  
24 safety and lack of safety in other  
25 situations exacerbates the symptoms. Emma  
26 has not been able to maintain her  
27 accommodation within the family home  
28 because of these symptoms and their impact  
29 on family relationships. To preserve these  
30 family relationships and to ensure that  
31 Emma does not become cut off and socially  
32 isolated from vital support networks it has  
33 been necessary for her to leave home. Her  
34 parents continue to provide emotional and  
35 practical support in a way that can be more  
36 useful to Emma from the position of living  
37 away.  
38

39 If I can then take you to the last - I beg your pardon,  
40 second last paragraph of that report:  
41

42 The complex symptoms that Emma presents  
43 with are a direct [result] of the violent  
44 abuse she was subjected to as a child.  
45

46 That was a report that you were aware of and sentiments as  
47 to diagnosis and severity and nature of abuse prior to your

1 evidence to this Commission this morning?

2 A. Yes.

3

4 Q. Mr Leder, if I could take you, please, to document and  
5 tab 138, Your Honour. Mr Leder, you will recognise this is  
6 your letter to the Foster family, which was one of three  
7 letters, including a letter from then Archbishop Pell and  
8 the findings of the Compensation Panel?

9 A. Yes.

10

11 Q. If I can take you - firstly, I'm very conscious of  
12 your evidence to the Commission yesterday, Mr Leder, where  
13 you adverted to the perceived difficulties that you were  
14 having with a particular solicitor?

15 A. Yes.

16

17 Q. And therefore the need to include the words  
18 "strenuously defended" in letters that went out to people.  
19 Firstly, if I can take you to the top of this letter. This  
20 is obviously - or a letter that - this was obviously not a  
21 letter to any solicitor, was it?

22 A. No, it wasn't.

23

24 Q. And indeed the solicitor to which you referred  
25 yesterday was not the solicitor who ultimately acted for  
26 the Fosters, was it?

27 A. That's correct.

28

29 Q. If I can take you then to paragraph 3 and in  
30 particular the phrase that's used and has been repeated  
31 before this Commission on many occasions, and I will read  
32 it:

33

34 The compensation offer, together with the  
35 services that remain available through  
36 Carelink, are offered to Emma by the  
37 Archbishop in the hope that they will  
38 assist her recovery and provide a realistic  
39 alternative to litigation that will  
40 otherwise be strenuously defended.

41

42 What was your justification for including those words  
43 "strenuously defended" to the Fosters?

44 A. As I sought to explain yesterday, those words were  
45 words that were introduced in 1996 for the reasons that  
46 I explained. They were used in every letter of offer that  
47 was made up until this time, and, as I said yesterday and

1 as I said in my statement, they were inappropriate, and  
2 I think I apologised yesterday and I certainly apologise  
3 now.

4  
5 MR SECCULL: Thank you, Mr Leder.

6  
7 THE CHAIR: Does anyone else have any questions?

8  
9 MR WOODS: No, Your Honour.

10  
11 MR RUSKIN: I do, sir. Just a few matters. Mr Leder --

12  
13 THE CHAIR: Can you identify yourself for those watching?

14  
15 <EXAMINATION BY MR RUSKIN:

16  
17 MR RUSKIN: Q. My name is Jeremy Ruskin, and Mr Hoyne  
18 and I appear for Mr Leder; and you know that, Mr Leder.  
19 Mr Leder, you gave some evidence about Professor Ball, and  
20 you gave evidence about the fact that he had experience  
21 with respect to paedophile priests but on the other hand he  
22 was a very experienced and, as you saw it, appropriate  
23 person to assist in this exercise that you were  
24 undertaking; is that correct?

25 A. That's correct.

26  
27 Q. Just putting aside his CV and his experience which we  
28 will see in his statement, did you have personal dialogue  
29 with him to make your own assessment of him as a person and  
30 as to whether he would be objective?

31 A. I did. I should say that the - we spent quite a deal  
32 of time talking about my role in relation to the  
33 establishment of the Melbourne Response. The decisions  
34 such as who would be appointed were certainly not mine,  
35 but, yes, I did over the years I think both before he was  
36 appointed and after I had, I had contact with him.

37  
38 Q. And what was your evaluation of him, face to face, as  
39 it were?

40 A. I found him to be a very sympathetic man who I found  
41 easy to talk to. I found that he was able to explain  
42 issues in a plain English - I'm struggling to explain it,  
43 but I found that he was able to express himself well and to  
44 explain issues to me in a way that I found easy to  
45 understand.

46  
47 Q. And his expertise?

1 A. He clearly, as far as I could see, had significant  
2 expertise.

3

4 Q. You also told us that you had other psychiatrists  
5 available to cope with the very problem that faced with  
6 the Fosters. Where did these other psychiatrists come  
7 from? In the area of sexual abuse or where?

8 A. In the case of the Fosters, they had an existing  
9 relationship with - they were already being seen by a  
10 psychiatrist who was someone who, as I recall, Professor  
11 Ball knew and thought highly of and thought was  
12 appropriately experienced.

13

14 Q. Thank you. I'm jumping to another topic. You were  
15 asked some questions by counsel assisting about the police  
16 statement with respect to the other case which you called  
17 [ID], and the affidavit and the statement that was annexed  
18 to it; is that correct?

19 A. Yes.

20

21 Q. Your Honour, I want to show the witness this. I see  
22 as I look at it that with respect to the police statement  
23 there's a name which will need to be redacted. So to do it  
24 properly could I first just show it to - counsel has it,  
25 and we have copies. Can I show it to the witness but make  
26 sure that when it is tendered, which I seek to do, that  
27 there is a redaction of the name.

28

29 THE CHAIR: Yes.

30

31 MR RUSKIN: Thank you. If that could be just shown to  
32 Mr Leder to identify. What we are able to see here,  
33 conforming to your evidence, that this is a case involving  
34 somebody called [ID]. There is an affidavit from the  
35 solicitor which says, "I want to amend the statement of  
36 claim" with respect to the matters involving the evidence  
37 of Father Guelen; is that correct?

38 A. That's correct.

39

40 Q. And then annexed as exhibit RM-2 is the police  
41 statement concerning the complainant in that case; is that  
42 correct?

43 A. Yes, that's right.

44

45 Q. And that's the document that you are referring to  
46 which was the product of discussion with Mr O'Callaghan?

47 A. That's the document that I was clearly referring to in

1 the fax that I sent to Mr Lyons after I had spoken with  
2 Mr O'Callaghan, yes.

3

4 MR RUSKIN: Your Honour, I tender that with the condition  
5 that the name be excised.

6

7 MR STEWART: Yes, Your Honour. We have prepared a  
8 redacted one in any event. I intend to tender it.

9

10 MR RUSKIN: If that could happen.

11

12 THE CHAIR: Will we tender it now?

13

14 MR STEWART: We can tender it now, although we would like  
15 the opportunity to check the redactions before it is  
16 published.

17

18 THE CHAIR: We will wait until you have checked it and  
19 then we will take it in.

20

21 MR RUSKIN: Thank you. That is perfectly satisfactory.  
22 The point of this, in the way you gave your evidence, so we  
23 can clarify it, is you spoke of Mr O'Callaghan having not  
24 just complainant files but he had unconfidential files, if  
25 you like, of a police kind involving various priests,  
26 including O'Donnell; is that right?

27 A. I believe so. That's what he's told me, yes.

28

29 Q. So in respect of the information concerning this  
30 police statement in terms of where its provenance was, what  
31 do you say as to its provenance?

32 A. Well, I say that the copy that I had and that is the  
33 subject of this exhibit I had received in the [ID]  
34 proceeding and I had it. I think from looking at the diary  
35 notes and my - and the fax and so on that it seems probable  
36 that Mr O'Callaghan must have had it as well.

37

38 Q. From the police files?

39 A. Yes.

40

41 Q. If that is the case, is it within propriety that he  
42 gives you something from the police file as distinct from  
43 the confidential files?

44 A. That would seem to me to be so, yes.

45

46 Q. This is a different topic. You were asked some  
47 questions about the pleading, the non-admission, and you

1 have given a lot of evidence about that. In your statement  
2 you talk about the fact that it was a compound pleading, if  
3 I can do that, "and/or, and/or", and you have explained  
4 that. In your whole dealing with the Foster case,  
5 including the mediation, and your discussions with the  
6 solicitor, was the topic of possible distress from that  
7 raised with you?

8 A. No.

9

10 Q. But looking now at what might happen in the future,  
11 which is what we are interested in, what do you say about  
12 any value in - if this was repeated, in some - His Honour  
13 raised the question of a phone call - in respect of a  
14 letter that might ameliorate or solve the misunderstanding  
15 that what comes from the pleading isn't intended to cause  
16 distress? How do you see that playing itself out?

17 A. I think that that is precisely what I would do, and  
18 that one way or another I would seek to have discussions  
19 with the plaintiff's solicitors both as to the issue of  
20 what ultimately is contested and what is not contested in  
21 the litigation, but also I suppose make it clear that  
22 I would really be guided by the plaintiff's solicitors as  
23 to the appropriate - the most appropriate way of obtaining  
24 whatever information needs to be obtained. I would really  
25 seek to - I would like to think that I understand the  
26 difficulties and the sensitivities of this and that I'd act  
27 appropriately.

28

29 THE CHAIR: Q. You appreciate of course that what  
30 happened in the light of a letter that says "we are going  
31 to strenuously defend" immediately raises concerns, doesn't  
32 it?

33 A. Yes.

34

35 Q. Whether expressed or not?

36 A. I do. I would say, sir, that the way in which the  
37 litigation was ultimately run was not that it was  
38 strenuously defended at all. It was defended for a period  
39 of time and settled I think some 18 months after first  
40 being issued.

41

42 MR RUSKIN: Q. You gave some evidence, I think, on that  
43 topic of "strenuous defend" and that after the complaint  
44 you had discussions with Susan Crennan QC, as she then was,  
45 immediately having been alerted to the very problem we have  
46 talked about today, and that was dealt with quickly?

47 A. Yes, and I would have, I'm sure, had discussions with

1 the Archdiocese as well.

2

3 Q. Of course. Of course. I go back in less than a  
4 minute to a topic. You were asked some questions about  
5 your interview with Father Guelen and that you believed  
6 him. Apart from what he said, how did he say it? What was  
7 his manner and demeanour and how did he - how old was he,  
8 by the way, when you had this?

9 A. I believe that he's well into his 80s now. So  
10 I suppose then he would have been in his 70s, I think.

11

12 Q. And, in terms of how he impressed you as a witness of  
13 truth and reliability, what do you say?

14 A. He did impress me as a witness of truth, and I think  
15 there was a sense in talking to him that he - he absolutely  
16 understood the seriousness of what was being put against  
17 him, and all I can say is that he impressed me as being  
18 genuine and I suppose somewhat affronted that it would be  
19 said of him that he had seen this and done nothing.

20

21 Q. Putting the question negatively, have you been in  
22 situations where you might interview a witness but find  
23 conversely that he might be evasive or unreliable, in your  
24 own opinion?

25 A. Yes.

26

27 Q. The final question is this. We have heard about the  
28 mediation, and there are notes of the mediation in our  
29 book. Am I right in saying this: you were represented by  
30 very experienced senior counsel and junior counsel, that is  
31 your side of the case?

32 A. Yes.

33

34 Q. The plaintiff was represented by very experienced  
35 senior counsel and junior counsel?

36 A. Yes.

37

38 Q. You had an experienced mediator?

39 A. Yes, we did.

40

41 Q. Who was a barrister very experienced in this  
42 particular area?

43 A. Yes, he was.

44

45 Q. Who played a role in the whole process?

46 A. He did.

47

1 Q. And in relation to the negotiations - we can read it  
2 for ourselves, but back and forth there were submissions,  
3 if I can put it that way, that there were real liability  
4 issues, some concessions by the other side and in the  
5 normal way that mediations work eventually a figure that  
6 both sides found accommodating was arrived at?  
7 A. That's right, yes.

8  
9 MR RUSKIN: Your Honour, I have no further re-examination.

10  
11 THE CHAIR: Q. Thank you. There is just one question  
12 I should have asked you earlier. I asked you about  
13 discussions you have had with Church people when you first  
14 became involved in these issues?  
15 A. Yes.

16  
17 Q. We have heard on other occasions that there was a view  
18 in the Church that may have influenced the conduct that we  
19 have seen that this was a moral failure rather than a  
20 criminal issue. Was that ever discussed with you?  
21 A. I think only in the context of it being disagreed  
22 with. Certainly I know from my discussions with Cardinal  
23 Pell and with Archbishop Hart and with the various Vicars  
24 General that I have dealt with over the years that that  
25 view, that sex abuse is only a moral issue, is one that  
26 they find quite repugnant and quite wrong.

27  
28 Q. What about discussions with others in the Church?  
29 A. I don't -- I am confident that I have not had that  
30 discussion with anyone in the Church because if I had  
31 I would recall it as something that I disagreed with.

32  
33 Q. I understand that you say they found it a repugnant  
34 view. But I assume from what you have said that they  
35 acknowledged to you that there had been that view in the  
36 Church?  
37 A. Yes.

38  
39 THE CHAIR: Yes, Mr Ruskin, you have nothing on that,  
40 I assume?

41  
42 MR RUSKIN: No, I have no more questions, thank you.

43  
44 THE CHAIR: Mr Stewart?

45  
46 MR STEWART: No, I have nothing further, Your Honour.

47



1 THE CHAIR: Thank you, Mr Leder. Thank you for giving us  
2 your evidence. You are now formally excused.

3  
4 <THE WITNESS WITHDREW

5  
6 THE CHAIR: I think we should adjourn and resume again at  
7 4 o'clock.

8  
9 SHORT ADJOURNMENT

10  
11 THE CHAIR: Yes, Ms Furness.

12  
13 MS FURNESS: Your Honour, I understand that Cardinal Pell  
14 is online. Hello, Cardinal.

15  
16 THE CHAIR: Cardinal, we can see you. Can you see us?

17  
18 CARDINAL PELL: I certainly can. Good afternoon.

19  
20 THE CHAIR: I understand good morning.

21  
22 CARDINAL PELL: That's correct, yes.

23  
24 THE CHAIR: Cardinal, as you know, before giving your  
25 evidence you will have to take an oath. I assume --

26  
27 CARDINAL PELL: Certainly.

28  
29 THE CHAIR: You have a Bible there?

30  
31 CARDINAL PELL: I do.

32  
33 <CARDINAL GEORGE PELL, sworn: [3.59pm]

34  
35 <EXAMINATION BY MS FURNESS:

36  
37 MS FURNESS: Q. Cardinal, will you tell the Royal  
38 Commission your full name and occupation?  
39 A. Certainly. Before that, could I just say a word of  
40 explanation. The only other man - only other person in the  
41 room with me is my secretary, Father Withoos, and his sole  
42 task will be to help me find the tabs in the various  
43 bundles.

44  
45 Q. Thank you, Cardinal.

46 A. I am Prefect of the Secretariat for the Economy here  
47 in Rome. It's akin to being the treasurer of the Holy See.

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Q. You have prepared a statement, Cardinal, to assist the Royal Commission?

A. I have.

Q. You have a copy of that statement with you?

A. I do.

Q. Are the contents of that statement true and correct?

A. They are.

MS FURNESS: I tender that statement.

EXHIBIT #16-9 STATEMENT OF CARDINAL PELL

MS FURNESS: Q. Cardinal, can I take you to paragraph 25 of your statement?

A. Yes, I have that.

Q. In paragraph 25 you state that the Melbourne Response involves three elements which operate independently from the Archdiocese of Melbourne and from each other; do you see that?

A. I do.

Q. That was the intention you had when you established the Melbourne Response in October 1996?

A. Yes.

Q. You refer in the subparagraphs to an Independent Commissioner; do you see that, in subparagraph (a)?

A. I do.

Q. And that is a Commissioner who is independent of the Archdiocese and from the other elements of the Response?

A. Yes. He was not to interfere in their decision making, or vice versa.

Q. Secondly, an independent Compensation Panel?

A. Yes.

Q. And that, again, panel was independent from the Archdiocese and from the other elements?

A. That is correct.

Q. And then, thirdly, the provision of independent counselling services at no cost to victims; do you see

1 that?

2 A. I do. That is correct.

3

4 Q. And, again, that was independent from the Archdiocese  
5 and from the other elements?

6 A. That is correct.

7

8 Q. You then refer to a pastoral - parish Pastoral  
9 Response providing spiritual support and counselling at a  
10 parish level. That was an element that operated not at an  
11 Archdiocese level but at a parish level; is that correct?

12 A. The activities were at the parish level, but - and  
13 eventually it became independent of the Catholic Family  
14 Welfare Bureau, but originally I think it was part of the  
15 diocesan operation.

16

17 Q. In paragraph 27 you say that the independence of all  
18 three elements from the Archdiocese was of fundamental  
19 importance to you in establishing a system for responding  
20 more effectively to victims of child sexual abuse; do you  
21 see that?

22 A. I do.

23

24 Q. Is it the case that if in practice that independence  
25 of all three elements was not achieved, then the system  
26 would be a less effective one than you had intended?

27 A. I am not aware of the independence of any of these  
28 agencies being violated.

29

30 Q. If I can, Cardinal Pell, if in practice the  
31 independence was not achieved, then it would follow,  
32 wouldn't it, that the system would be a less effective one  
33 than you had intended?

34 A. That is correct.

35

36 Q. I take it that you have available to you what we call  
37 the tender bundle, Cardinal; that's correct?

38 A. I do.

39

40 Q. And perhaps if the Father assisting you could help you  
41 turn to tab 11, which is in volume 1?

42 A. Yes, I have it.

43

44 Q. That document is headed, "Appointment of Independent  
45 Commissioner to inquire into sexual abuse"?

46 A. That is correct.

47

1 Q. And you were involved in settling the appointment and  
2 the terms of the appointment of the Independent  
3 Commissioner?

4 A. I was.

5

6 Q. Can I ask you to turn to paragraph 2(i), which appears  
7 on page 5 of that document?

8 A. Page 5, (i), yes, 2, yes.

9

10 Q. That provides that the retainer of the Commissioner  
11 shall be for a period of six months?

12 A. That is correct.

13

14 Q. How did you arrive at a period of six months?

15 A. I have got no clear recollection of that. Two factors  
16 were probably important. One was to see how Mr O'Callaghan  
17 would go and, secondly, we never anticipated the volume of  
18 responses that would go on for years.

19

20 Q. Was there any work that you did or you instructed to  
21 be done to come to a view as to how many complaints there  
22 may be out there who wished to come forward to the  
23 Independent Commissioner?

24 A. I was aware that there were dozens of complaints that  
25 Monsignor Cudmore was dealing with in I think an effective  
26 way under great, great pressure. I was aware of a report  
27 in the newspapers, and of course through my eventual  
28 meetings at groups of survivors and victims that was  
29 brought home to me very clearly, and there were groups such  
30 as Broken Rites which were very active.

31

32 Q. And the presence of those groups and the material they  
33 disseminated gave you some indication as to the number of  
34 people that might be interested in participating in the  
35 Melbourne Response?

36 A. Well, with some of those groups I took what they said  
37 with a grain of salt, but nonetheless there was evidence  
38 that something needed to be done to deal with this  
39 suffering.

40

41 Q. Now, can I ask you then to turn to tab 13 of the same  
42 volume that's in front of you?

43 A. Yes.

44

45 Q. You recognise that document as the Four Part Plan, as  
46 it was then known, which set out the nature and operation  
47 of what was to become the Melbourne Response?

1 A. I do.

2

3 Q. And this is the final version, of which there had been  
4 a deal of earlier drafts; that's correct?

5 A. Yes, there had been seven drafts, I believe, to my  
6 recollection, and, yes, this is the final version.

7

8 Q. Can I turn your attention to paragraph 4.3, which  
9 appears on page 5?

10 A. Yes.

11

12 Q. You refer there to the establishment of the panel and  
13 the payment or offer to pay compensation not being an  
14 admission of legal liability; do you see that?

15 A. I do.

16

17 Q. You refer to the term "compensation" in this paragraph  
18 and indeed in the heading. Was it the case that you were  
19 of the view that the amounts which were to be paid were  
20 indeed compensatory payments?

21 A. In retrospect, at this stage whether "compensation" is  
22 the best phrase, I'm quite uncertain. It might have been  
23 better headed "Ex gratia payments".

24

25 Q. What do you consider to be the difference between an  
26 ex gratia payment and a payment of compensation?

27 A. The ex gratia payments excluded factors such as loss  
28 of earnings, loss of earning capacity. Often in  
29 compensation there is an adversarial approach so that the  
30 facts are tested, so that the degree of culpability of the  
31 offences is estimated against other factors, and in the ex  
32 gratia payments what was considered was the physical,  
33 mental and spiritual suffering, not the other factors that  
34 I have mentioned.

35

36 Q. Is it the case then when you used the term  
37 "compensation" in this first public document indicating the  
38 nature and components of the scheme you were intending that  
39 the scheme would indeed compensate people in terms not just  
40 of physical, mental and spiritual suffering but also actual  
41 losses they had occasioned as a result of the abuse?

42 A. No, I don't think that would have been my  
43 understanding at all because the cap was put at 50,000 and  
44 in some cases the loss of earnings might have been more  
45 than that.

46

47 Q. Continuing down this paragraph, the second last

1 sentence states that you as Archbishop at the time  
2 recognised that there is a strong opposition from some  
3 quarters to the making of any compensation payments. You  
4 are accepting what I read out is accurate from the  
5 document; that's right?

6 A. I am.

7  
8 Q. What were the quarters from which there was strong  
9 opposition?

10 A. Some people in the Church felt that they personally  
11 had not been involved and therefore their money should not  
12 be used to help victims, that the moneys should be taken  
13 from the perpetrators.

14  
15 Q. Are you referring to parishioners of the Church or  
16 officials or officeholders within the Church?

17 A. No, I was referring primarily to parishioners.

18  
19 Q. How did that information come to your attention?

20 A. I just can't recall whether there were letters, but  
21 certainly that point was made - has been made to me and was  
22 made to me, not over-regularly but certainly was made at  
23 different times.

24  
25 Q. How did you take into account that strong opposition  
26 in determining the components of the Melbourne Response?

27 A. I think you can say I ignored it.

28  
29 Q. Well, if we then turn to the next sentence, "The  
30 compensation scheme takes these factors into account"; do  
31 you see that?

32 A. I do.

33  
34 Q. Those factors included that the Archdiocese and the  
35 Church and you did not accept any legal obligation; that's  
36 right?

37 A. That is correct, for the ex gratia payment.

38  
39 Q. And it also takes into account, doesn't it, the strong  
40 opposition from some quarters to the making of any  
41 payments?

42 A. It certainly takes it into account to the extent that  
43 it was considered and rejected.

44  
45 Q. You then say that the scheme strived to achieve a fair  
46 and reasonable compromise. Can you tell the Royal  
47 Commission what aspects were compromised in the

1 construction of the Melbourne Response?

2 A. Yes. In the Melbourne Response there was nothing  
3 adversarial, and because of that it was easier and quicker  
4 for the victims to obtain this help, and I have never  
5 wanted to say, and I hope I haven't, that we only did what  
6 other comparable groups did or paid; certainly I, myself,  
7 and the distinguished members of that Compensation Panel  
8 were aware of the contemporary standards of compensation  
9 then, and our records show that we were ahead of the curve,  
10 that in terms of a deal of - well, I'm not sure there was  
11 any other system in Australia, perhaps anywhere else, for  
12 this. But, with the rough parallels, we were certainly no  
13 less generous.

14  
15 Q. You suggest in that last sentence, Cardinal, that a  
16 compromise was achieved, which suggests that you achieved  
17 in the scheme something less than you might otherwise had  
18 if it was not for taking the factors into account in  
19 paragraph 4.3. So I ask you again: what was it that you  
20 compromised in the scheme that ultimately was introduced?  
21 What did you not do that you would otherwise have done  
22 without the compromise?

23 A. Well, one factor in the compromise was that before  
24 1996 there had been no settlements whatsoever. The  
25 compromise was that it was felt that if there's no  
26 adversarial action, that at the compensation hearing the  
27 facts are not disputed, what is not disputed is the  
28 percentage of causality of the sufferings, these were taken  
29 into account in estimating the amount to be paid. I must  
30 say, not being a lawyer, I was not closely involved in  
31 these - in the setting up of these, but I was satisfied at  
32 that time with the end result.

33  
34 Q. Was the compromise that the cap that was arrived at  
35 was significantly less than many people would achieve  
36 during a common law claim, and was that compromise reached  
37 because of the acceptance by you, the Archdiocese and the  
38 Church that there was no legal obligation?

39 A. Another factor, possibly more important, is that many  
40 of the people we helped through the Compensation Panel  
41 would have received nothing or very little after going  
42 through the courts. Some certainly would have received  
43 more, and they were free to choose whether they entered  
44 into our compensation system, knowing there was a \$50,000  
45 cap, or went through the courts.

46  
47 Q. How did you take into account, Cardinal, that you

1 believed there was no legal obligation to make payments in  
2 devising the Melbourne Response?

3 A. We did not admit that there was a legal obligation,  
4 but that in practice in the Compensation Panel we fully  
5 accepted our moral responsibility towards those who had  
6 suffered.

7  
8 Q. Did you take it into account by reducing the amount  
9 that you would impose as a cap on the scheme?

10 A. I was not involved in these discussions. I have  
11 attempted to explain the extent to which I participated and  
12 understood them. I was satisfied enough at the time.

13  
14 THE CHAIR: Q. Cardinal, you said you accepted a moral  
15 responsibility for those who had suffered. What was the  
16 foundation for that acceptance of a moral responsibility?

17 A. The establishment of the facts by the Independent  
18 Commissioner.

19  
20 Q. No, I'm looking for something different. Why was it  
21 that you accepted that there was a moral responsibility?

22 A. Because these activities had been committed by  
23 officials of the Church. It was not a legal conclusion.  
24 There was no decision that, if the legal way of dealing  
25 with things was followed, we would abandon our common law  
26 rights. But it was felt that this Compensation Panel, as  
27 only one of - one arm of the approach, was an attempt to  
28 lessen suffering and to help these people and to do it  
29 quickly rather than have it drag on forever - not forever,  
30 for a long time.

31  
32 MS FURNESS: Q. Cardinal, can I draw your attention to  
33 paragraph 4.6, which appears on page 6 of this document?

34 A. Yes.

35  
36 Q. You see there in the second sentence there's reference  
37 to, in the event that a complainant chooses the normal  
38 court processes other than the Melbourne Response, they  
39 should expect that the proceedings will "continue to be  
40 strenuously defended"?

41 A. I do.

42  
43 Q. Was that a view that you held in 1996, that any  
44 complainant who took civil action against the Church could  
45 expect that action to be strenuously defended?

46 A. I believe that word "strenuously" was no longer used  
47 after 2002 in Melbourne. It's an unfortunate phrase, but



1 I believe that some phrase would need to be there in a  
2 non-offensive way stating that, if the matters were taken  
3 to court, the Church would certainly consider using the  
4 defences available to every citizen and organisation in  
5 Australia. In fairness to those contemplating that action,  
6 I think that would necessarily have been included but in a  
7 less confrontational phraseology.

8  
9 Q. By referring to the fact that the Archdiocese would  
10 defend all proceedings, that would satisfy what you have  
11 indicated, that is telling them that they will take the  
12 defences available; wouldn't that be the case?

13 A. You would have to ask a lawyer. I suppose it would.

14  
15 Q. The addition of the word "strenuous" could be seen to  
16 be superfluous, Cardinal. Do you have a view on that?

17 A. I think I would now see it as superfluous.

18  
19 Q. The only circumstance in which it wouldn't be  
20 superfluous if indeed what the Archdiocese was seeking to  
21 convey was that complainants should be discouraged from  
22 taking civil action because the defence would be not merely  
23 a defence of the action but a strenuous one?

24 A. The position of the Archdiocese always was that people  
25 could choose this option. We removed many of these legal  
26 defences and difficulties in our system of compensation.  
27 But we did not encourage people across the board to seek  
28 compensation through the courts because a lot of them would  
29 not have been able to achieve that - to achieve much or any  
30 compensation.

31  
32 Q. And the reason they wouldn't be able to achieve much  
33 or any compensation was because the structure of the Church  
34 had the effect of making it very difficult for many  
35 complainants to identify the appropriate person to sue; is  
36 that right?

37 A. That's only one factor. It's a factor which did not  
38 enter into the Melbourne Response. The other factors in a  
39 court of law would be to establish facts in an adversarial  
40 way and to establish just what degree of suffering was  
41 caused by the offences.

42  
43 Q. If I can turn your attention to paragraph 6, which  
44 appears on page 8 of that document, Cardinal?

45 A. Yes.

46  
47 Q. There's reference to the Vicar General's Office

1 administering the provision of appropriate counselling and  
2 support for Church persons against whom allegations had  
3 been made. Did you have at the time that the scheme was  
4 introduced an idea as to who or what agency would provide  
5 that counselling and support?

6 A. Well, my recollections on this are not crystal clear.  
7 Obviously from this it indicates that at that stage the  
8 Vicar General's Office will provide this counselling. We  
9 moved eventually to a position - well, I was - a primary  
10 factor in everything that was done was the pressure of work  
11 on the Vicar General. It was just overwhelming and  
12 impossible. Eventually we thought it better that the  
13 counselling services were offered by an agency independent  
14 of the Vicar General's Office and even independent of the  
15 Catholic Family Welfare Bureau.

16  
17 Q. And who or what was that agency?

18 A. I think it became known as Carelink.

19  
20 Q. Carelink provided services for victims or complainants  
21 in relation to sexual abuse, did it not?

22 A. Yes. No, I think I'm in error. There was - I just  
23 forget the name of it - another group that was set up to  
24 help people in the parishes and explain the situation.

25  
26 Q. Are you referring to the Encompass program, which was  
27 established in relation to providing treatment for priests  
28 or other religious accused of sexual abuse of minors?

29 A. No, no, I'm definitely not. That is another arm of  
30 help that we offered to better protect people in the future  
31 by enabling perpetrators to control their evil  
32 inclinations. There was another agency which dealt with  
33 the pastoral care in parishes and from people affected by  
34 these awful developments.

35  
36 Q. Paragraph 6 refers to counselling and support for  
37 priests, Cardinal, not victims or others in a parish that  
38 might be affected; do you see that?

39 A. Yes, I didn't read that clearly enough. Yes, that is  
40 Encompass, the support for priests.

41  
42 Q. Encompass at some stage -- I'm sorry, Cardinal, had  
43 you finished?

44 A. No. It was just I was confused there with the  
45 counselling and support for parishioners.

46  
47 Q. At some stage Encompass had as a senior official

1 Professor Ball; is that right?

2 A. I believe that is correct, that for some time he was.

3

4 Q. Professor Ball was also the person named in this  
5 document as providing support services for victims of  
6 accused church persons within the Archdiocese, wasn't he?

7 A. He was responsible for the oversight and organisation  
8 and monitoring of that.

9

10 Q. So is it the case at this stage that in your  
11 contemplation Professor Ball would provide both counselling  
12 and support to victims or oversight of such as well as  
13 counselling and support for Church persons against whom  
14 allegations had been made?

15 A. I'm not sure to what extent I was aware of that double  
16 role in precisely that way at that time.

17

18 Q. We will come back to that, Cardinal. Can I ask you  
19 then to turn to tab 22. This, Cardinal, is a letter from  
20 you as Archbishop of Melbourne to a woman who was an early  
21 member of the Compensation Panel; do you have that in front  
22 of you?

23 A. I do.

24

25 Q. Now, in this letter you, in the first paragraph,  
26 express to her the hope that the initiatives, that is the  
27 three elements of the Melbourne Response, "will in time  
28 heal the hurt of victims, restore the Church's credibility  
29 and convince all people ... of the Church's determination  
30 to deal with the issue comprehensively, in terms of both  
31 prevention and cure." Do you see that?

32 A. I do.

33

34 Q. Where was the cure going to come from, Cardinal?

35 A. Not from the Compensation Panel but from the  
36 counselling services.

37

38 Q. The counselling --

39 A. Which were uncapped.

40

41 Q. I'm sorry, Cardinal, I interrupted you.

42 A. Well, the cure, it was hoped, would primarily come  
43 from the counselling services, but the cure - there would  
44 be a contribution to the cure of course from the  
45 acknowledgment of the crimes and also through here through  
46 the financial contributions made to victims.

47

1 Q. So the reference to prevention is a reference to  
2 preventing sexual abuse of minors occurring into the future  
3 by Catholic clergy and other religious; that's right?  
4 A. Where is this reference to "prevention"?  
5  
6 Q. It's in the last line of the first paragraph?  
7 A. Yes. Could I have the question again, I'm sorry?  
8  
9 Q. Certainly. The reference to prevention is a reference  
10 to preventing sexual abuse of minors occurring into the  
11 future by Catholic clergy and other religious?  
12 A. Yes.  
13  
14 Q. And the reference to cure is a reference, is it not,  
15 to curing those accused of or convicted of such crimes?  
16 A. No, I thought it was to heal the hurt of victims.  
17  
18 Q. So the cure is supposed to be curing the victims  
19 rather than the offenders?  
20 A. That was certainly the intention.  
21  
22 Q. You didn't have any system in place at that time which  
23 would enable any confidence as to a cure for offenders, did  
24 you?  
25 A. Yes, we did. We - well, I'm not sure how confident  
26 you can be, but eventually the Encompass - I think it was  
27 called Encompass - a system was set up to help priests,  
28 teachers who had been perpetrators to do much better in the  
29 future, and when that organisation was officially set up  
30 was probably a little bit later, but I believe that that  
31 work had already started on a case-by-case basis at this  
32 stage. But I would have to check that.  
33  
34 Q. So the term "cure" was intended to refer to both  
35 offenders and victims?  
36 A. No, the cure was to refer mainly - primarily to the  
37 victim. The prevention, I suppose, referred primarily to  
38 the removal of offenders from the Church. But I did not  
39 indulge in such an extended exegesis of these terms at that  
40 stage.  
41  
42 Q. Prevention by removal of the offenders from the Church  
43 or prevention by removing the offenders from active  
44 ministry?  
45 A. Removing them from active ministry.  
46  
47 Q. Because at this time --

1 A. From Church activities.

2

3 Q. Because at this time in 1997 the laicisation of clergy  
4 was quite difficult in the absence of their consent, was it  
5 not?

6 A. Almost impossible.

7

8 Q. Just moving down to the third paragraph, you are  
9 advising the person who is to become a member of the  
10 Compensation Panel that it will be through the contact of a  
11 complainant with the Compensation Panel that victims will  
12 be convinced either to accept the recommended settlement or  
13 press on with litigation; do you see that?

14 A. I do.

15

16 Q. Was it your intention that the Compensation Panel had  
17 some advocacy role in respect of its work so as to persuade  
18 victims to accept the ex gratia payment rather than take  
19 their complaints to the civil courts?

20 A. No. I would not have seen that as their role, and  
21 I think such a role would have been superfluous because the  
22 people had chosen to come in before the Compensation Panel.

23

24 Q. And it was only if they signed a deed of release that  
25 they could not afterwards take any civil action; isn't that  
26 right?

27 A. Only if they signed the release they - I'm sorry,  
28 could you repeat?

29

30 Q. It's only if they signed a deed of release as part of  
31 accepting the settlement as referred to in this paragraph  
32 that they could not afterwards take any civil action?

33 A. That was a consequence of signing the deed of release.

34

35 Q. Just in relation to deeds of release, you refer in  
36 your statement at paragraph 89 that you don't recall any  
37 specific discussions about deeds of release during the  
38 planning of the Melbourne Response, but you had a  
39 recollection in general terms that they were seen to be  
40 standard or necessary, but you can't now recall what advice  
41 you received to that effect. Cardinal, the Royal  
42 Commission knows that as Archbishop of Sydney you decided  
43 that deeds of release would no longer be required in any  
44 resolution of a victim's complaint under Towards Healing,  
45 and you have already given evidence to that effect?

46 A. That is correct.

47

1 Q. What caused you in your role as Archbishop of Sydney  
2 and in following Towards Healing to not require deeds when  
3 in 1996 you had required deeds as part of the Melbourne  
4 Response?

5 A. The first part of the situation was to the extent that  
6 I understood it I thought it was a normal part of the  
7 procedure. Secondly, one consideration myself in the  
8 removal of the deeds or the deed of release was I couldn't  
9 imagine - myself, at any rate, as a Church authority -  
10 pursuing somebody who - or objecting forcefully if somebody  
11 did not respect the terms of the deed of release.

12  
13 I can see that some clarification might be useful, and  
14 the redress scheme that the Truth, Justice and Healing  
15 Council have put forward has some consideration of this.  
16 But I did not think any useful purpose was served by  
17 getting people to sign a deed of release, and of course in  
18 Melbourne that never prevented anyone from speaking  
19 publicly about their situation.

20  
21 Q. And it would be the case, wouldn't it, that, if they  
22 did take civil action and they recovered money, that money  
23 would almost inevitably be reduced by whatever amount they  
24 had been paid under the Melbourne Response; isn't that  
25 right?

26 A. I believe that that is a suggestion from the Truth,  
27 Justice and Healing Council. I don't know that - I can't  
28 recall us ever considering such a hypothesis.

29  
30 Q. But if that is the case, that that would almost  
31 inevitably arise, there would be no question of double  
32 dipping, would there?

33 A. There would be no question of?

34  
35 Q. Double dipping; a complainant receiving amounts of  
36 money for the same pain and suffering, as it were?

37 A. Well, I don't know whether double dipping is the  
38 phrase for some people who feel they haven't been  
39 sufficiently compensated. But any redress scheme in the  
40 future will have to deal with these practical problems. We  
41 did in this way. We have learnt in the process.

42  
43 Q. Just turning to the second page of that letter, if you  
44 will, Cardinal, you set out that the other terms of  
45 appointment will be that the basis upon recommendations  
46 will be formulated will be subject to the previously  
47 announced limit of \$50,000 per person; do you see that?

1 A. I do.

2

3 Q. What was your view when you were developing with your  
4 advisers the Melbourne Response as to whether there should  
5 be a cap, leaving aside the amount of it for the moment?

6 A. My own recollection to the extent that I have it is  
7 that I was not really comfortable with that.

8 I acknowledged there would have to be some standards, if  
9 that's the word, for comparable levels of offences and  
10 comparable levels of suffering. But one point I might make  
11 here to help understand this position of mine, money was  
12 never my primary concern. My primary concern was to try to  
13 help the victims, and I regarded the other arms of the  
14 Melbourne Response as being more important than this  
15 particular arm because many victims then and probably now  
16 did not have money as their primary concern.

17

18 Q. When you say that money wasn't a primary concern of  
19 yours, Cardinal, do you mean that the affordability of the  
20 scheme was not a concern of yours in that you knew that the  
21 Archdiocese would have sufficient funds to cover payments?

22 A. That was likely to be the case. I have said publicly  
23 over many years that if necessary we would borrow the  
24 money. The first criterion was to try to help these  
25 people, diminish their suffering and do it in a way which  
26 was congruent with what was happening in the rest of the  
27 country. In fact, the records will show that during my  
28 time in Melbourne and my time in Sydney those Archdiocese  
29 were more generous than most other Australian agencies.

30

31 Q. If it was the case that money was not a concern of  
32 yours and affordability of the scheme was not a concern of  
33 yours, why place a cap at all?

34 A. I didn't say it was not a concern of mine. I said it  
35 was not my prime concern. I have an obligation or had an  
36 obligation as Archbishop to take care of the resources of  
37 the Archdiocese. But I was quite clear that we provide  
38 what was regarded as appropriate by these very significant  
39 figures who were working on the Compensation Panel, and  
40 I don't recall any request from them to vary the cap at  
41 least during my time.

42

43 I would like also to say that we are talking about  
44 1996. Today it is 2014. Fifty thousand in 1996 is  
45 variously estimated what it would be worth today and,  
46 depending on how you calculate the growth, one estimate is  
47 that 50,000 then would be worth about 120,000 now.

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Q. But it is the case, isn't it, Cardinal, that now the cap is 75,000, which suggests it might have gone backwards?

A. Well, I would imagine that going from 50,000 to 75,000 is going forward. I would also suggest that it would be useful to compare that amount that Melbourne offered and is offering with what other agencies, government sponsored agencies, offer, and I repeat that I, myself, have never been a fan of caps.

Q. I think this is a matter that we have dealt with before, Cardinal, but it is the fact, isn't it, that generally a government-sponsored agency offers amounts of money for matters that aren't necessarily matters that the government agency is responsible for; do you accept that?

A. That government agencies do not pay for offences for which they are not responsible?

Q. That in particular dealing with victims of crime legislation the government, when establishing such a scheme, makes payments, notwithstanding that the government agency is not itself responsible or through its officials responsible for having committed the crimes for which it compensates; you understand that?

THE CHAIR: Cardinal, can you hear me, because I'm afraid the line seems to have broken?

MS FURNESS: The Cardinal unmoving on the screen would suggest it has.

THE CHAIR: If you can hear me, Cardinal, I'm afraid we can't hear you. There are people pushing buttons here to try to retrieve it.

MS FURNESS: Does Your Honour want to consider a short adjournment?

THE CHAIR: I'm told, ladies and gentlemen, that we will probably need another five minutes or so because the line has failed in Rome rather than here. So I think we will adjourn for five minutes or so and then come back when the line is re-established.

SHORT ADJOURNMENT

THE CHAIR: Cardinal, we do now see you again and I trust



1       you can hear us too?

2  
3       THE WITNESS:     I certainly can, Your Honour.

4  
5       THE CHAIR:     And we can certainly hear you.

6  
7       THE WITNESS:     Thank you.

8  
9       THE CHAIR:     Ms Furness, it might be sensible if you ask  
10      the question you were asking again. Cardinal, we got  
11      nothing of your answer, so we will need to do it again.

12  
13      MS FURNESS:     Q.    If I can just have the transcript  
14      brought up, I will. Cardinal, I was asking you in relation  
15      to government schemes that have been established to  
16      compensate people in various circumstances, and in  
17      particular in relation to the victims of crime legislation,  
18      that the government makes payments, notwithstanding that  
19      the government itself is not responsible nor are any of its  
20      agencies responsible for the crime for which it is  
21      compensating; do you understand that?

22      A.    I do.

23  
24      Q.    Whereas the Melbourne Response, you had accepted a  
25      moral, if not a legal, responsibility to compensate victims  
26      of crimes committed by, as I think you described them,  
27      officials of the Church; is that right?

28      A.    It is.

29  
30      Q.    Therefore, the analogy between a State system such as  
31      victims of crime and the Melbourne Response is far from  
32      perfect; do you accept that?

33      A.    Could I say a couple of things on that?

34  
35      Q.    Certainly?

36      A.    You are ...

37  
38      THE CHAIR:     Cardinal, I regret to tell you that we have  
39      lost your voice again.

40  
41      MS FURNESS:     Is there any prospect of audio alone? Is  
42      that simpler?

43  
44      THE CHAIR:     No, I don't think so. I'm told that the  
45      problem - Cardinal, we can now see you again. Can you hear  
46      us?

47

1 THE WITNESS: I can hear you and I can see you,  
2 Your Honour.

3

4 THE CHAIR: Ms Furness - I'm afraid, Cardinal, again, we  
5 got nothing of your answer here. So Ms Furness will just  
6 remind everyone the subject of the question and then back  
7 to you for the answer.

8

9 MS FURNESS: Q. Cardinal, you were answering a question  
10 in respect of the analogy that could properly be drawn  
11 between the Melbourne Response and a State-sponsored  
12 victims of crime compensation scheme?

13 A. That is correct.

14

15 Q. Perhaps you would repeat your answer. We didn't  
16 receive any of it here, Cardinal?

17 A. Very good. I agree with you that it is not a perfect  
18 parallel at all. One of the difficulties for us in those  
19 days was there were few, if any, other and similar schemes  
20 to ours in existence. To some extent the Church situation  
21 does resemble that of the government. Let me give a  
22 non-controversial example. If there is a series, for  
23 example, of trucks carrying merchandise around the country,  
24 if in fact these are improperly serviced or the drivers are  
25 pushed to work for too long, obviously there is a  
26 culpability somewhere in the authority chain.

27

28 If in fact the driver of such a truck picks up some  
29 lady and then molests her, I don't think it's appropriate,  
30 because it is contrary to the policy, for the ownership,  
31 the leadership of that company to be held responsible.  
32 Similarly with the Church and the head of any other  
33 organisation. If there has been - every precaution has  
34 been taken, no warning has been given, it's I think not  
35 appropriate for legal culpability to be foisted upon the  
36 authority figure. If in fact the authority figure has been  
37 remiss through bad preparation, bad procedures or had been  
38 warned and done nothing or insufficient, then certainly the  
39 Church official would be responsible.

40

41 So I agree with your basic point that the comparison  
42 with the crimes compensation is not entirely appropriate,  
43 but I'm not too sure what other models we had at that stage  
44 to compare with, and I might say that the amount we paid  
45 then, 18 years ago, compares similarly, at least in  
46 absolute terms, not value - and once again it's not a  
47 perfect parallel - with the victims of harassment and

1 molestation in the armed forces, with that of the  
2 compensation paid in the last few years.

3

4 THE CHAIR: Q. Cardinal, when you first established the  
5 Melbourne Response, did you know yourself of the potential  
6 damage that abuse might cause to a child and their  
7 development and their life story?

8 A. This is 18 years ago. Obviously my understanding has  
9 deepened with the years. But I did understand then  
10 something significantly about the level of suffering, and  
11 for that reason the access to counselling was uncapped from  
12 our point of view.

13

14 Q. When you say your knowledge has deepened, do you mean  
15 that you have come to a greater appreciation of the  
16 consequences for some people?

17 A. Your Honour, I have been wrestling with this problem  
18 for 18 years. I have met many victims who have suffered  
19 enormously. Some - few are very hostile. I have heard the  
20 stories of terrible sufferings in some cases. The Fosters'  
21 girls is one such case. Of course, if you deal with this  
22 thing regularly and over a long period you come to  
23 understand better and better the suffering that is caused.

24

25 MS FURNESS: Q. Cardinal, can I ask you to turn to tab 4  
26 in the bundle in front of you?

27 A. Yes.

28

29 Q. Cardinal, this is a document you refer to in paragraph  
30 73 of your statement, and you refer there to the  
31 appointment of Professor Ball as responsible for  
32 administering the provision of professional support  
33 services, that is treatment, counselling and support to  
34 victims. Your understanding as set out in paragraph 73 is  
35 that these are the terms which were accepted by Professor  
36 Ball; that's correct?

37 A. I believe so.

38

39 Q. If I can turn your attention to page 2 of that letter?

40 A. Yes.

41

42 Q. There are a number of dot points, Cardinal. Can I ask  
43 you to look at the second dot point, and that reads:

44

45 To advise the archdiocese on strategic  
46 responses to sexual abuse.

47

1 A. What page is that?  
2  
3 Q. It's page 2, Cardinal, and it's the second last dot  
4 point?  
5 A. Second last dot point, yes.  
6  
7 Q. Do you see that:  
8  
9 To advise the Archdiocese on strategic  
10 responses to sexual abuse.  
11  
12 A. I do.  
13  
14 Q. Do you recall now what advice that you received from  
15 1996 until 2001 from Professor Ball that fits the  
16 description of "strategic responses to sexual abuse"?  
17 A. No, I don't remember any such advice, except perhaps  
18 better ways to help victims.  
19  
20 Q. Can you help us now with what it was you were  
21 contemplating at the time that Professor Ball was engaged?  
22 A. Precisely that.  
23  
24 Q. Better ways to help victims?  
25 A. Yes.  
26  
27 Q. And the use of the --  
28 A. Through --  
29  
30 Q. I'm sorry, Cardinal. What was that?  
31 A. Through counselling services, through medical help.  
32  
33 Q. And the use of the word "strategic", what does that  
34 mean in that context?  
35 A. It means that we would be part of an overall plan, not  
36 something that was ad hoc and made up on the run.  
37  
38 Q. Turning then to the third page of this letter, if  
39 I can draw your attention to the second last paragraph?  
40 A. Yes.  
41  
42 Q. This is from then Monsignor Hart, saying to Professor  
43 Ball:  
44  
45 It is noted that from time to time you  
46 provide treatment to priests of the  
47 Archdiocese. Obviously, you will not have

1 direct contact with persons who claim to be  
2 victims of such priests, but with that  
3 proviso no conflict of interest is  
4 perceived with your role as the support  
5 professional.  
6

7 Now, is that a view that you shared with Monsignor Hart at  
8 the time of Professor Ball's appointment?

9 A. It is.

10  
11 Q. Did you consider that the issue was one of perception  
12 in respect of Professor Ball's appointment rather than a  
13 technical issue of conflict of interest?

14 A. I never regarded it in any sense as a technical issue.  
15 It was a professional issue. I discussed it informally  
16 with a number of people, I certainly discussed it with  
17 Professor Ball, and eventually I believe there was a  
18 clearer distinction, but at that stage, given that his role  
19 was oversight and supervision, and given that no person was  
20 obliged to go to him for counselling, that I thought his  
21 role as leader of this service was appropriate, given his  
22 distinguished record, given his high level of competence  
23 and high level of appointment.  
24

25 Q. You didn't consider that from the perspective of a  
26 victim or complainant that to have as the public face, as  
27 you refer to in this letter, of the service provider for  
28 victims a person known as providing treatment to priests  
29 and giving evidence in respect of priests?

30 A. Yes, that was certainly very carefully considered.  
31

32 Q. And was it considered with the benefit of advice from  
33 victims?

34 A. Certainly that advice was tendered, for example, by  
35 the Fosters, by families of victims.  
36

37 Q. And those families of victims conveyed to you their  
38 concern, didn't they, that the public face of clinical  
39 services provided to victims was a man who gave evidence in  
40 courts in respect of priests charged with sexual offences  
41 against minors and provided treatment to priests?

42 A. It was one of his many, many duties. We did not feel  
43 that it compromised his professional integrity, and we  
44 moved of course to assuage, not completely, these concerns  
45 by repeating that nobody had to go to Professor Ball.  
46

47 Q. Well, it wasn't a question of his professional

1 integrity, was it? It was a question of how victims  
2 perceived his position as the public face of clinical  
3 services being provided to victims of Church abuse in the  
4 Archdiocese? It's not about him; it's about them?  
5 A. And we considered their argumentation, their point of  
6 view very, very carefully, took advice, but at that stage  
7 we did not share it, did not share their views.  
8  
9 Q. So how did you take their views into account?  
10 A. By listening to them, by asking advice on their views,  
11 by discussing the matter with Professor Ball, by asking  
12 what were the comparable professional standards in this  
13 area, was what he was doing unique or was it something that  
14 was not uncommon in the psychology profession.  
15  
16 Q. You didn't understand, Cardinal, that it wasn't about  
17 Professor Ball and his views; it was actually about the  
18 victims and their views?  
19 A. I think that is an overstatement and somewhat  
20 misleading. It every much also concerned Professor Ball  
21 because there was an implicit criticism of his integrity.  
22  
23 Q. So you saw it in terms of Professor Ball's integrity  
24 rather than the perceptions of victims; is that right?  
25 A. Could I repeat that that is exactly what I have not  
26 said. I have said that the considerations - the point of  
27 view of the victims was very carefully considered, as well  
28 as the position of Dr Ball.  
29  
30 Q. And ultimately the victims' concerns were rejected?  
31 A. And the views of the victims' advocates on the  
32 suitability of Professor Ball for this role, we stated we  
33 did not share them.  
34  
35 Q. Can I ask you to turn to tab 87. That's in the second  
36 volume, Cardinal. We have been so far dealing with the  
37 first volume. Do you have that?  
38 A. I have opened it now.  
39  
40 Q. Do you see that's a memo to you from Helen Last, who  
41 at that stage was part of the Pastoral Response Office?  
42 A. Yes.  
43  
44 Q. And if you can turn to the second page of that memo,  
45 the third paragraph refers to Mr Foster having had issues  
46 arising from a recent meeting with Professor Ball; do you  
47 see that?

1 A. Yes. Yes.

2

3 Q. Wasn't it the intention, knowing Professor Ball's  
4 other work, that he would not meet with somebody who, in  
5 the language of Monsignor Hart, claimed to be or in this  
6 case a father of a victim of a person he had dealt with  
7 professionally?

8 A. Could you repeat the question?

9

10 Q. Certainly. I will read to you the paragraph I have  
11 just taken you to from a document in tab 4. That document,  
12 which was addressed to Professor Ball from Monsignor Hart,  
13 said, and I quote:

14

15 It is noted that from time to time you  
16 provide treatment to priests of the  
17 Archdiocese. Obviously you will not have  
18 direct contact with persons who claim to be  
19 victims of such priests.

20

21 That was a document I just took you to?

22

23 A. That's right.

24

25 Q. Coming back to the document at tab 87, the third  
26 paragraph on the second page refers to a meeting that  
27 Mr Foster had with Professor Ball; do you see that?

28

29 A. I do see that.

30

31 Q. Is it not the case from what Monsignor Hart had said  
32 that obviously, as he said, it was not expected that  
33 Professor Ball would have direct contact with someone like  
34 Mr Foster?

35

36 A. I don't know whether he said exactly that or with the  
37 victims. One, I wasn't really aware of this meeting. But  
38 I presume it could only have occurred with the consent of  
39 Mr Foster.

40

41 Q. Monsignor Hart was referring to those who received  
42 treatment from - treated priests in relation to the  
43 Archdiocese, and indeed, as we know, Professor Ball didn't  
44 treat O'Donnell. He met with him for the purposes of  
45 providing a report to the court; you understand that?

46

47 A. I do.

48

49 Q. But, nevertheless, it was the intention, wasn't it,  
50 based on what Monsignor Hart said, that Professor Ball  
51 would indicate if he had had a professional relationship

52

1 with a priest in order not to meet with or be involved with  
2 a person who was either a victim or in this case the father  
3 of a victim; do you accept that was the intention?

4 A. No, with due respect, I don't because what Monsignor  
5 Hart said, "Obviously you will not have direct contact with  
6 persons who claim to be victims of such priests."  
7

8 Q. You don't accept that the intention was that he would  
9 not have contact with those who were in this case the  
10 father of a victim in circumstances where he had a  
11 professional dealing with the priest the subject of the  
12 allegation?

13 A. Well, you would have to ask Monsignor Hart, but what  
14 he was talking about was victims of such priests. They  
15 were his exact words.  
16

17 Q. It was indeed. In your view, Cardinal, in setting up  
18 this scheme with Professor Ball in the role that he was,  
19 surely it would have been your intention not to cause any  
20 additional stress to any complainant or complainant's  
21 family by putting them in touch with Professor Ball in  
22 circumstances where he had had a professional dealing with  
23 the priest the subject of an allegation?

24 A. I would certainly not have done anything to increase  
25 distress. I would have been open to any suggestion that a  
26 responsible person felt might ease or help the situation.  
27

28 Q. So, coming back to tab 87, Ms Last is raising with you  
29 what Mr Foster had raised with her, that is his lack of  
30 faith in Professor Ball because he had - he was from the  
31 forensic psychiatry area and had provided a report in  
32 respect of O'Donnell; do you see that?

33 A. I do see that. He had provided a report on O'Donnell  
34 on the effects of a gaol sentence on him as an older man.  
35

36 Q. And, secondly, that Professor Ball did not tell the  
37 Fosters of his involvement in that case; do you see that?

38 A. I'm not really sure whether that was the case or not,  
39 but I have no reason to dispute it.  
40

41 Q. You would expect, would you not, Professor Ball to  
42 have disclosed and indeed made enquiries in order to  
43 disclose whether he had been involved in a matter that he  
44 was dealing with the victim or in this case the family of  
45 the victim?

46 A. Well, I'm not a psychiatrist and I don't know what the  
47 appropriate professional procedures would have been in that



1 case. But I have and had great confidence in Professor  
2 Ball. But I wasn't aware of the particular meeting.

3

4 Q. You don't need to be a psychiatrist, do you, Cardinal,  
5 to understand that a person in Professor Ball's position  
6 would be expected to disclose or make sufficient enquiries  
7 to be able to disclose his professional dealings in respect  
8 of the offender concerning the family of the victim before  
9 him?

10 A. I don't know whether you would need to be a  
11 psychiatrist. You might need to be a lawyer. I'm not well  
12 versed on this. I would ask Professor Ball and other  
13 appropriate authorities. If it was inappropriate, it was  
14 inappropriate. I was unaware --

15

16 Q. I beg your pardon, Cardinal?

17 A. I was unaware that beforehand and I think at any stage  
18 that this meeting had happened. I was unaware then.

19

20 Q. Professor Ball has provided a statement, Cardinal, for  
21 your information, in which he says that he did not recall  
22 having had that professional dealing with O'Donnell?

23 A. That he did not recall having that professional  
24 dealing with O'Donnell?

25

26 Q. Yes.

27 A. I don't recall such a letter, but it would be  
28 inaccurate if he did say that. Is that the document  
29 I have?

30

31 Q. No, it isn't, Cardinal. I'm telling you, to be fair  
32 to you, that Professor Ball has provided a statement in  
33 which he has dealt with this issue and indicated that he  
34 did not recall having had the dealing with O'Donnell, that  
35 is having met with him on one occasion and then provided a  
36 report?

37 A. Well, that certainly seems to be inaccurate.

38

39 Q. Well, it is Professor Ball's statement, Cardinal?

40 A. I haven't read Professor Ball's statement. I have  
41 read a document which states that he gave advice in a court  
42 case about the effects of gaol on O'Donnell. I believe  
43 that no-one has suggested that's inaccurate, and therefore  
44 someone's recollection is at fault.

45

46 Q. Perhaps if I can ask you to turn to tab 88. This is a  
47 memorandum from Monsignor Hart, as he then was, to

1 Mr O'Callaghan, who was a partner at Corrs, in respect of  
2 this issue?

3 A. Yes.

4  
5 Q. And there he, that is Monsignor Hart, records what  
6 Professor Ball had said to him and then --

7 A. What Professor Ball is reported by Monsignor Hart as  
8 saying is that he does not remember Father O'Donnell except  
9 for the consultation and it was quite an objective one.

10  
11 Q. That's right; and then he says, "I suspect that the  
12 Fosters are overreacting, although understandably"?

13 A. That is correct.

14  
15 Q. Now, is that a view that you now share?

16 A. With the virtue of hindsight, I would not share that  
17 view now.

18  
19 Q. Turning to the next tab, if you would, tab 89, do you  
20 have that?

21 A. I do.

22  
23 Q. And this is a letter from the Archdiocese's lawyers to  
24 Monsignor Hart in relation to the memorandum that I have  
25 just taken you to?

26 A. Yes.

27  
28 Q. In the second paragraph the lawyers say that:

29  
30 When Professor Ball was appointed we knew  
31 that he had been previously involved in the  
32 treatment of priests. It was recognised  
33 that where there had been such contact in a  
34 specific case, he would not be personally  
35 involved ... which is not to say that he  
36 cannot meet with a victim to form initial  
37 views.

38  
39 That is not personally involved in the treatment. The  
40 lawyers then suggest that, "It should be made clear to the  
41 Fosters that, as Professor Ball had had previous contact  
42 with O'Donnell, they will be referred to another person for  
43 treatment"; do you see that?

44 A. I do.

45  
46 Q. And you would agree that that was an approach that  
47 should have been taken by the Archdiocese; that is, in the

1 circumstances of Professor Ball's professional dealing with  
2 O'Donnell, the Fosters should be referred to another  
3 person?

4 A. My understanding is that that was what the Archdiocese  
5 did; that is, that there was no suggestion that the  
6 Fosters' girls would be obliged to go to Ball.

7  
8 Q. Not just the Fosters' girls. It would be Mr and  
9 Mrs Foster as well; isn't that the case?

10 A. Well, that wasn't said in Monsignor Hart's letter.  
11 Here it mentions he cannot meet with a victim, except to  
12 form initial views. I'm not sure that the Foster family is  
13 explicitly included in the suggested prohibition.

14  
15 Q. So do you see that paragraph I just took you to, that  
16 clearly is a reference to the Fosters as a family, is it  
17 not, not just the Foster girls?

18 A. The third paragraph on the first page; is that the one  
19 you are referring to?

20  
21 Q. That is, Cardinal.

22 A. Yes, that's correct.

23  
24 Q. Can I turn to another topic. Cardinal, you are aware,  
25 aren't you, that the Royal Commission has sought documents  
26 from the Vatican concerning allegations of sexual abuse of  
27 a minor and the decision-making process undertaken by the  
28 Vatican in respect of those matters?

29 A. I am.

30  
31 Q. The Royal Commission wrote to the Secretary of State,  
32 Vatican City State, on 24 April 2014 saying, among other  
33 matters, that if the Royal Commission is to fulfil the  
34 terms of reference provided to it by the Australian and  
35 State governments it is essential that the Royal Commission  
36 understands the nature and extent of communications between  
37 those congregations and the Holy See in relation to child  
38 sexual abuse complaints about Australian clerics. You  
39 understood that, Cardinal?

40 A. I understood there was some such request.

41  
42 Q. Have you seen the letter of request, Cardinal?

43 A. I believe I have.

44  
45 Q. It continues on to indicate the Royal Commission's  
46 understanding based on the guide to understanding the basic  
47 CDF, that is Congregation for the Doctrine of Faith,

1 procedures concerning sexual abuse allegations, that is  
2 that a local Bishop is to refer an allegation of sexual  
3 abuse of a minor occurring within his diocese to the  
4 congregation, referring all necessary information, and then  
5 the CDF may authorise the local Bishop to conduct judicial  
6 or administrative penal processes, canonical penalties for  
7 a cleric judged guilty include dismissal from the clerical  
8 state, and also refer grave cases directly to the Holy  
9 Father. You understand that that's the basic procedures in  
10 relation to the requirement to refer such matters to the  
11 CDF?

12 A. I believe that that is the case since about 2001 and  
13 2002, but that does not preclude the local churches from  
14 dealing with this matter in, for example, an administrative  
15 way in other ways. I'm no canon lawyer, but that's my  
16 understanding; that the local church is expected to deal  
17 justly and expeditiously with these complaints.

18  
19 Q. So it's the case, isn't it, that the local church or  
20 diocese or Archdiocese can place a priest on administrative  
21 leave without having regard to the Holy See?

22 A. Exactly.

23  
24 Q. But in order to have a priest laicised against his  
25 wishes it is a matter that needs to go to the Holy See?

26 A. That is correct.

27  
28 Q. The basic CDF procedures as set out in this document  
29 refer to the requirement to refer allegations to the CDF,  
30 and the CDF can then authorise a local Bishop to do  
31 something in respect of it; that's right?

32 A. These are post-2001 regulations.

33  
34 Q. Yes, they came into effect in about April 2001, didn't  
35 they, Cardinal?

36 A. If - yes, I didn't know it was April. I didn't recall  
37 it. I'm happy to accept that.

38  
39 Q. The stated purpose of the Royal Commission in  
40 requesting documents from the Vatican was to enable the  
41 Commissioners to "develop an understanding about the extent  
42 to which Australian clerics accused of child sexual abuse  
43 have been referred to the Holy See (in particular, the CDF)  
44 and the action taken in each case". In making the request,  
45 the Royal Commission was mindful that it might be necessary  
46 to examine the archives of the Holy See to identify those  
47 files referred to the CDF and the documents recording the

1 CDF's deliberations and responses.

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1 A. I did. I suppose in retrospect there would be some  
2 discussion over what "any document" meant. I would  
3 certainly - it was never spelt out - have understood that  
4 as specific requests, perhaps a big number of specific  
5 requests, rather than some ambit claim.

6

7 Q. Yes, and I won't go into the detail, but the letter  
8 that was exchanged does deal with the particulars. But are  
9 you able to tell us who gave you that assurance?

10 A. The initial assurance?

11

12 Q. Yes.

13 A. It was the assessor, Monsignor Peter Wells.

14

15 Q. And does he still have that same position in the  
16 Vatican?

17 A. He still is of a view exactly as I have explained it,  
18 and that is the view of his superiors and the Prefect of  
19 the Congregation for the Doctrine of the Faith. An added  
20 relevant point is that overwhelmingly every document that  
21 is held in Rome exists here in the archives of religious  
22 orders or dioceses. Every letter they have sent to Rome,  
23 every response from Rome, nearly every - I'm not aware of  
24 exceptions - overwhelmingly they are available in  
25 Australia.

26

27 Q. So do I understand that when you were assured earlier  
28 that a request from the Royal Commission would be met, any  
29 request would be met, there was not a discussion about  
30 documents which related to the decision-making processes in  
31 Rome; is that right?

32 A. Yes, that would have - I'm not quite clear whether  
33 I addressed that particular point at all.

34

35 Q. No, but you can understand that an assurance in  
36 general terms would, on its face anyway, extend to  
37 documents which reveal the decision-making process?

38 A. No, I wouldn't make that - draw that conclusion, but  
39 I didn't consider such a precise issue at that time.

40

41 MS FURNESS: Your Honour, I tender the letter dated  
42 24 April 2014.

43

44 EXHIBIT #16-10 LETTER DATED 24/4/2014

45

46 MS FURNESS: There is a reference in that letter to two  
47 priests, one of which has been redacted.

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THE CHAIR: Yes, very well.

MS FURNESS: Q. The letter in reply, Cardinal, was dated 1 July 2014. Did you have any role in compiling that response?

A. No. I did - I have reported I did have a meeting, but I had no role whatsoever in the preparation of that reply.

Q. But you did have --

A. In my discussions with the Roman authorities I was generally and strongly supportive of the request from the Royal Commission.

Q. Were you strongly and generally supportive of the request for particular documents, or generally and strongly supportive of the entirety of the request?

A. I was generally and strongly in support in the terms in which I have described it for specific documents, not for internal working documents and, another point which I hadn't mentioned, obviously cases which are still going forward, if there are any, in Rome.

MS FURNESS: Your Honour, I tender the response from the Vatican dated 1 July 2014.

EXHIBIT #16-1 VATICAN RESPONSE DATED 1/7/2014

MS FURNESS: Thank you, Cardinal. I have no further questions.

THE CHAIR: Q. Cardinal, before I ask counsel whether they have any questions, there are just two matters that I want to take up with you. You appreciate that the Royal Commission has the very difficult task of considering what, if anything, might be done about a general redress scheme; you understand that?

A. I do, Your Honour.

Q. And let me assure you it's not an easy task.

A. Your Honour, I was very much involved in putting together the Melbourne Response, all arms of it. I was involved in putting together the Compensation Panel. I have some limited understanding of the difficulties and political constraints in which you are working. I would be delighted if the Royal Commission could provide to the government - before governments before the end of the year

1 such a scheme so as to quickly address the sufferings of  
2 people.

3

4 Q. I regret to say it won't be before the end of this  
5 year, but we are doing what we can to do it or complete the  
6 task as quickly as possible. But when one considers a  
7 redress scheme, as we must do, one also has to look at the  
8 question of the rules in relation to civil liability. You  
9 and I had some discussion about these in Sydney when you  
10 gave evidence; you may recall?

11 A. I do recall it well, Your Honour, and not being a  
12 lawyer it's not my favourite ground.

13

14 Q. No. I just wanted to just give you the chance of  
15 responding to my thoughts in relation to your comment  
16 earlier this afternoon when you spoke of the truck driver;  
17 do you remember?

18 A. I do.

19

20 Q. Of course the truck driver that you contemplated was a  
21 driver who may have picked up a passenger in the course of  
22 carrying out their duty as the truck driver, wasn't it?

23 A. Well --

24

25 Q. They are driving a truck and they pick up a bystander  
26 who they offer a lift to?

27 A. Yes, well, that would have nothing to do with his  
28 general work, and I don't know whether there would or would  
29 not have been regulations about whether he should or  
30 shouldn't have done that.

31

32 Q. Quite. And it would not have anything to do with his  
33 normal work. But, when a priest through the activities of  
34 the parish or in any other way gains access to a child who  
35 comes to the Church with the parents' consent, the  
36 relationship between the priest and the child is quite  
37 different to that between the truck driver and the casual  
38 passenger, isn't it?

39 A. Yes, I would certainly concede that. It is similar to  
40 the position of an official in any other group - it is  
41 similar, not necessarily quite the same, an official in any  
42 group to which parents consign children or allow the  
43 children to attend.

44

45 Q. That's right. I have expressed it previously as the  
46 invitation is offered by the organisation, be it a  
47 religious organisation or a sporting club or whatever, to



1 the parents to trust their child to that organisation for  
2 whatever purpose; you understand that?

3 A. Yes.

4  
5 Q. And what we are grappling with of course is whether  
6 that creates a different relationship in law or which  
7 should be reflected in the law, rather than the truck  
8 driver picking up the casual passenger; you understand  
9 that?

10 A. I do. I think it's an important issue, and in both  
11 cases; and especially for the Church what is important is  
12 what their rules and doctrines and standards and  
13 regulations are and the extent to which malefactions, if  
14 that's the word, are effectively deterred, discouraged and  
15 there is proper vigilance. But, yes, I understand your  
16 general position.

17  
18 Q. And I assume you understand that the common law,  
19 amongst other things, has been seen as a vehicle by which  
20 society imposes a discipline on the actions of individuals,  
21 corporations or organisations by reason of the fact that  
22 liability, financial liability, may follow from a misdeed;  
23 do you understand that?

24 A. I have a great admiration for the common law. It has  
25 been developed and in place for hundreds of years as an  
26 adversarial way of establishing the truth, with the  
27 protections it provides to defendants and accusers.  
28 I think to a lay - from my lay perspective I have a great  
29 respect for the provisions of the common law.

30  
31 Q. I don't expect an answer - this is not the place for  
32 us to have this detailed discussion; it will happen with  
33 Church people in Australia, and they may consult you of  
34 course - but I should just let you understand that the  
35 Commission is looking at the question of redress in  
36 conjunction with any rules of civil liability. It may be  
37 that if you change the rules in one limb or provide a  
38 different redress arrangement under the redress limb you  
39 have to look at what the common law rules should be going  
40 forward; do you understand that?

41 A. I do, and again the other additional point is that  
42 I have a strong view that all organisations - similar  
43 organisations should be treated similarly.

44  
45 Q. I understand that. A separate matter is this. When  
46 you set up the Melbourne Response I understand that by that  
47 time criminal allegations, if not convictions, had surfaced

1 in relation to some priests; is that right?

2 A. That is correct.

3

4 Q. Before you became aware of those allegations by reason  
5 of the press or information brought to you that a priest  
6 had been arrested or charged, were you aware of any  
7 allegations against priests or religious in the diocese?

8 A. Any allegations that came to my knowledge were  
9 reported to the authorities and I had no knowledge of any  
10 criminal behaviour that was not being dealt with.

11

12 Q. So that you had no knowledge of allegations that  
13 weren't forwarded to the police, just so I understand  
14 clearly; is that right?

15 A. I'm not even sure to what - well, that's certainly  
16 correct. I'm not even sure to what extent I would have  
17 been privy to matters that might have been criminal but  
18 were being dealt with by the Vicar General --

19

20 Q. So --

21 A. -- who had the authority.

22

23 Q. So is it possible that the Vicar General was aware of  
24 allegations that you weren't aware of?

25 A. Well, certainly. It's certainly possible. I'm not  
26 saying - certainly possible. You see, I wasn't in the  
27 direct line of authority before I was Archbishop. I was an  
28 Auxiliary Bishop with no responsibility in this area. The  
29 few years before I took over Monsignor Cudmore as Vicar  
30 General I think did a sterling job and he reported directly  
31 to the Archbishop.

32

33 Q. But once you became Archbishop were you informed of  
34 any allegation against any priest in the diocese?

35 A. No, I don't think I was in any particular way before  
36 we put the Independent Commissioner into place, and I don't  
37 recall any such information, but I would have expected and  
38 I anticipate it would - that any matters that were being  
39 dealt with by the Vicar General's Office would have  
40 continued to be dealt with --

41

42 Q. So, in relation to any allegation previously brought  
43 to the Vicar General or any allegation which subsequently  
44 surfaced, they would all be dealt with by the Vicar General  
45 and you as Archbishop may not know about them; is that  
46 right?

47 A. No, no, certainly if I was Archbishop I think I would

1 have been informed - I would have been informed. But there  
2 was only a brief time when I was working with the Vicar  
3 General in this area, because we moved to a different  
4 system.

5

6 Q. Before you became Archbishop had you ever observed any  
7 behaviour by a priest or religious which you believed may  
8 have indicated some sexual difficulty in the behaviour of  
9 that person?

10 A. No, I don't believe I have.

11

12 THE CHAIR: Very well. Now --

13

14 MR CASH: I do have some questions on behalf of Paul  
15 Hersbach, Your Honour; only brief ones.

16

17 THE CHAIR: Can you hear that, Cardinal Pell?

18

A. I can.

19

20 MR CASH: It might be best if I go to the lectern.

21

22 THE CHAIR: I think it might be best if you go to the  
23 centre and we can make sure you are on the camera.

24

25 <EXAMINATION BY MR CASH:

26

27 MR CASH: Q. Can you see me, Cardinal?

28

A. Yes.

29

30 Q. My name is Cash, and I appear on behalf of Paul  
31 Hersbach. You no doubt would have viewed his evidence that  
32 he gave in these proceedings; is that the case, Cardinal?

33

A. I'm aware generally of his evidence.

34

35 Q. That wasn't the question. The question was: did you  
36 view his evidence, Cardinal?

37

A. No, I didn't. I have a job here in Rome.

38

39 Q. Looking after its finances; is that right?

40

A. That's one of my - that's my main task.

41

42 Q. And that was your primary objective when you sought to  
43 preclude, I suggest, as many common law claims as possible  
44 arising out of sexual abuse at the hands of your priests;  
45 is that right?

46

A. No, as a matter of fact it's completely wrong.

47

1 Q. I may not go to --

2 A. I have --

3

4 Q. But I suggest you're being disingenuous, Cardinal --

5 A. I would --

6

7 Q. If you would just listen to this. I suggest you're  
8 being disingenuous, Cardinal, when you say your primary  
9 objective was to help the victims; what do you say about  
10 that?

11 A. Could I be allowed a chance to speak?

12

13 THE CHAIR: Yes, you certainly may, Cardinal. You respond  
14 as you wish?

15 A. I have addressed this matter earlier in this hearing.  
16 The fact that I did not view the evidence of your client -  
17 I was aware of the transcripts in general terms - was  
18 because this happened before my time on the watch. I have  
19 already stated and I repeat that my primary concern was not  
20 financial, and I'm also well aware that through the  
21 Melbourne Response in its non-adversarial, private and  
22 expeditious treatment of these matters that money could be  
23 provided to people who would have got nothing or very  
24 little through the courts; not to mention the public ordeal  
25 they would have to go through to obtain that money or to be  
26 refused.

27

28 MR CASH: Q. Sir, during the course of your evidence  
29 what you told the Royal Commission was that in making the  
30 payments to victims under the Melbourne Response you did so  
31 because - or the Catholic Church did so because it accepted  
32 a moral responsibility for the acts; you told us that,  
33 didn't you?

34 A. Yes.

35

36 Q. As the leader of the Catholic Church in Melbourne,  
37 this was not a trucking company, was it, sir? This was an  
38 organisation of the highest integrity, one which you would  
39 expect would conduct itself in keeping with the teachings  
40 of Jesus Christ; that's right?

41 A. Unfortunately many actions have shown that members of  
42 the Church have not always acted with the highest  
43 integrity. Certainly we should act according to the  
44 teachings of Jesus Christ, and that was exactly what I was  
45 trying to do when I set up the Melbourne Response.

46

47 Q. And so you agree with me that this is an organisation

1 of the highest integrity; that is, unfortunately not all  
2 trucking companies conduct themselves in keeping with the  
3 teachings of Jesus Christ, do they? This is completely  
4 different, isn't it, your organisation?

5 A. I have just explained to you that the Church is not  
6 always of the highest integrity, but it is - it existed for  
7 2,000 years and there is a long history of sin and crime  
8 within the Church, and one of the functions of the  
9 leadership of the Church is to control and eradicate this.

10

11 Q. But your response, and you would expect this of the  
12 Catholic Archdiocese, wouldn't you, would be to take on  
13 board your moral obligation and, as distinct from a  
14 trucking company, a trucking company might not be so  
15 concerned with moral obligations as might the Catholic  
16 Archdiocese of Melbourne; that's fair, isn't it, to say,  
17 you might think?

18 A. We strove to meet our moral obligations by instituting  
19 the first comprehensive scheme here in Australia with four  
20 arms to it: a judicial decision, counselling, compensation,  
21 and pastoral support out in the parishes. We were among  
22 the frontrunners in Melbourne in addressing these scandals  
23 and I would suggest to you that that is entirely consistent  
24 with Catholic tradition and the teachings of Christ.

25

26 Q. In accepting, as you did, the moral responsibility for  
27 the conduct in question, leaving aside what a trucking  
28 company might do, the Catholic Archdiocese of Melbourne,  
29 would it not then have had as a matter of decency an  
30 obligation to place no impediment in the way of a victim to  
31 receiving complete and fair compensation?

32 A. Let me say a couple of things on that. There are  
33 quite different levels of responsibility. If there is  
34 negligence, improper - inadequate preparation and the  
35 authority is remiss then there is a higher level of  
36 responsibility than there might be when there are good  
37 procedures but mistakes were still happening, crimes were  
38 still committed. I am in favour of the general  
39 prescriptions of the common law, and if they are followed  
40 I would - because they are very conducive to establishing  
41 the truth of particular situations, and so I would not be  
42 recommending a wholesale abandonment of those common law  
43 protections.

44

45 Q. Perhaps I'm making it too obtuse, but can we reduce it  
46 to simplistic language, please, sir. I'm simply putting to  
47 you that your organisation is the Catholic Church, an

1 institution of the highest integrity. In those  
2 circumstances, don't you accept that if you recognise a  
3 moral obligation here that you shouldn't be standing in the  
4 way of full and fair compensation for victims of sexual  
5 abuse by priests of your organisation? Is that not an  
6 unreasonable suggestion?

7 A. It is a reasonable suggestion that there is full and  
8 fair compensation related of course to the gravity of the  
9 offence and the suffering of the victim.

10  
11 Q. You don't deny for a moment that someone like Paul  
12 Hersbach and his father, Tony, endured the most horrendous  
13 of obscene behaviour in their presence and were deserving  
14 of significantly more than they actually received, surely?

15 A. I don't know Mr Hersbach's case --

16  
17 Q. Oh, you don't?

18 A. -- beyond the general outline because it happened  
19 before my time as Archbishop. I have no evidence or  
20 inclination to deny what you are saying.

21  
22 Q. Sir, had you taken the time to even view a recording  
23 of the evidence that he gave in these significant  
24 proceedings you would have seen or heard Paul Hersbach  
25 describe how it is that, "Initially when I signed the deed  
26 of release I felt some relief, some better," but he feels  
27 that having signed it and having received some money he has  
28 come full circle; he is still within the control of the  
29 Church. He told us about how --

30 A. I am not --

31  
32 Q. He told us about how he felt that victims would -  
33 their healing process would be assisted if they were  
34 released from the restrictions that the deeds impose upon  
35 them, namely the prevention of suing the Church. With, as  
36 you say, your primary objective being to help the victims,  
37 sir, you would no doubt, in light of that evidence, suggest  
38 that fairness would dictate that they be released from  
39 those restrictions; is that fair to say?

40 A. I'm not in favour of requiring a deed of release.

41  
42 Q. Do I understand your evidence - can you explain that  
43 answer to me? I don't know if I understand it, with  
44 respect. Are we losing signal?

45  
46 THE CHAIR: I think, Mr Cash, the Cardinal really has made  
47 his position plain in relation to the deed of release, and

1 he spoke of the action he took in Sydney. I think we do  
2 understand what his position is in relation to it.

3

4 MR CASH: Thank you, Your Honour. No further questions,  
5 Cardinal.

6

7 THE CHAIR: Yes. Does anyone else have any questions?

8

9 MR SECCULL: Yes, Your Honour, I have some questions.

10

11 THE CHAIR: Cardinal, it may be convenient for all of us  
12 here if we took a five-minute break. Would that be  
13 suitable to you?

14

15 A. Certainly.

16

17 THE CHAIR: We will resume in about five minutes.

18

19 SHORT ADJOURNMENT

20

21 THE CHAIR: Yes, thank you, Cardinal. Is the line still  
22 there?

23

24 A. Yes, yes.

25

26 <EXAMINATION BY MR SECCULL:

27

28 MR SECCULL: Q. Cardinal Pell, my name is Seccull and  
29 I appear on behalf of the Foster family.

30

31 A. Very good, sir. Could you allow me, before you start,  
32 just to express again my sympathy for the sufferings of the  
33 Fosters' girls and the family and my regret that we don't  
34 seem to have been able to improve the situation a great  
35 deal.

36

37 Q. Thank you, Cardinal. Cardinal, if I can take you to  
38 tab 19, please, in the bundle before you?

39

40 A. Just a second, I'm getting it.

41

42 Q. Thank you.

43

44 A. Yes. That is the leaflet?

45

46 Q. Yes, that's the brochure that accompanied the  
47 announcement of the Melbourne Response in October 1996, is  
48 it not?

49

50 A. Yes, it is.

51

52 Q. If I can take you, please, to page 1 of that document,  
53 and you will recognise - it's either page 1 or 2, it is a

54

1 bit uncertain in the tab, but the page at which your  
2 photograph appears in the top left-hand corner, if I can  
3 take you to that page, please?

4 A. Yes.

5

6 Q. And in particular if I can read to you the paragraph  
7 that commences in that brochure as follows:

8

9 It is now time for me, on behalf of the  
10 Catholic Church, to apologise sincerely and  
11 unreservedly, first of all to the victims,  
12 and then to the people of the Melbourne  
13 Archdiocese for this betrayal of trust. In  
14 the words of the Catholic Bishops of  
15 Australia, in a pastoral letter issued  
16 early in 1996 ...

17

18 And you then quote:

19

20 We cannot change what has happened in the  
21 past, undo the wrongs that have been done,  
22 or banish the memories and the hurt. In  
23 seeking to do what is possible, our major  
24 goals must be: truth, humility, healing for  
25 the victims, assistance to other persons  
26 affected, an adequate response to those  
27 accused and to offenders, and prevention of  
28 any such offences in the future.

29

30 That endorsement, I take it, you have at all times  
31 subsequent attempted to adhere to?

32 A. That is correct.

33

34 Q. If I can take you, please, to paragraph 118 of your  
35 statement?

36 A. Yes.

37

38 Q. It reads as follows:

39

40 I am aware that in 2002 the Fosters  
41 commenced legal proceedings. To the best  
42 of my recollection, I learned of this  
43 action from Archbishop Hart or from someone  
44 in his office. I always accepted that the  
45 Foster family had every right to pursue  
46 legal action if they chose to do so.  
47 Participation in the Melbourne Response and



1 the making of an offer of compensation by  
2 the Archdiocese did not mean that a victim  
3 could not elect to pursue a civil claim.  
4

5 If I can just ask you, you use the word "right" halfway  
6 through that paragraph, "Foster family had every right".  
7 What do you understand by the term "right", Cardinal Pell?

8 A. That there is no legal or Church impediment.  
9

10 Q. And in fact that right is a right that was and remains  
11 confirmed of every citizen in the State of Victoria to  
12 bring proceedings at common law, is it not?

13 A. That is correct.  
14

15 Q. Cardinal Pell, were you aware of the evidence that has  
16 been given to the Commission by Ms Christine Foster;  
17 Mrs Foster?

18 A. Yes, yes.  
19

20 Q. Did you view that evidence?

21 A. No. Your events are taking place in the early hours  
22 of the morning for us. So I have examined transcripts, but  
23 I haven't - I didn't sit up during the night watching.  
24

25 Q. You would have been aware, having read the transcripts  
26 of Mrs Foster's evidence, that she gave evidence as to the  
27 time at which she and her family received three letters,  
28 including a letter of apology from you; do you recall that  
29 evidence?

30 A. I do. I recall those events.  
31

32 Q. In particular, she received as she describes in one  
33 envelope three letters, the first of which was your  
34 apology; do you recall that?

35 A. Yes.  
36

37 Q. And the second document that she received was a letter  
38 from your solicitors, that is a letter from Corrs Chambers  
39 Westgarth, dated 31 August 1998; do you recall that part of  
40 her evidence?

41 A. I do.  
42

43 Q. If I can take you, please, to tab 138 of the bundle of  
44 documents that you have before you, please?

45 A. Yes, I have 138.  
46

47 Q. Is that the letter dated 31 August 1998?

1 A. It is.

2

3 Q. For the sake of completeness, and you would be aware  
4 from having read the transcript of the evidence, the three  
5 letters that were contained in one envelope consisted of,  
6 firstly, the letter of apology from yourself?

7 A. Yes.

8

9 Q. And Mrs Foster gave evidence that in fact that was the  
10 very first document that appeared in the envelope, and she  
11 read that document?

12 A. Yes.

13

14 Q. She then gave evidence that the very next document  
15 that she read in that envelope was this letter bearing the  
16 date of 31 August 1998?

17 A. Yes.

18

19 Q. And in particular, if I can take you, please, to the  
20 third paragraph, and I will read as follows:

21

22 The compensation offer, together with the  
23 services that remain available through  
24 Carelink, are offered to Emma by the  
25 Archbishop in the hope that they will  
26 assist her recovery and provide a realistic  
27 alternative ... that will otherwise be  
28 strenuously defended.

29 A. Yes.

30

31 Q. In terms of the goals that you set out in the brochure  
32 that I mentioned earlier, I suggest to you that the use of  
33 the words "strenuously defended" was anathema to such  
34 notion. What do you say in respect of that?

35 A. I would say a couple of things. I would say that it  
36 is - it was inappropriate, and that's why it was  
37 discontinued in 2002. I would also say by way of partial  
38 mitigation that I gather this is a term that is often used  
39 in legal letters and continues to be often used. I agree  
40 with yourself that it is - it was inappropriate and that in  
41 fact the three letters together in the one envelope, that  
42 might have been - should have been done better.

43

44 Q. Yes. If I can just remind you of the words that you  
45 quoted with approval in your brochure, "Truth, humility and  
46 healing for the victims," neither of which was achieved,  
47 I suggest, by use of those terms?

1 A. Yes, but there's many other terms. There's two and a  
2 bit pages, and so we shouldn't focus exclusively on this  
3 error, unfortunate though it is, and disregard all the  
4 other matters that were said.

5

6 Q. Yes. When you say it was an error, was it something  
7 that you had intended should not be there?

8 A. No, I couldn't say that.

9

10 Q. I suggest to you that in fact it was a deliberate use;  
11 what do you say in respect of that?

12 A. Well, it's a legal letter, and I would presume that in  
13 a legal letter they wouldn't use unconsidered terminology.

14

15 Q. Putting your layman's hat rather than your lawyer hat  
16 on for a moment, if you, Cardinal Pell, as a layman  
17 received a letter expressed in those terms, that is, "Take  
18 the offer, otherwise the matter will be strenuously  
19 defended", what do you assume was the intent of such usage?

20 A. As a layman I would have read the whole of the letter  
21 and I would have read where it says:

22

23 However, you and Emma should consider the  
24 offer as a genuine attempt by the  
25 Archbishop to provide an alternative to  
26 litigation.

27

28 The compensation offer, together with the  
29 services that remain available through  
30 Carelink, are offered to Emma by the  
31 Archbishop in the hope that they will  
32 assist her recovery and provide a realistic  
33 alternative to litigation.

34

35 Up to that I have no problem with that, and I think in  
36 fairness to the author those words should be considered.

37

38 Q. What does the addition and use of the adverb  
39 "strenuously defended" add other than menace?

40 A. I wouldn't use the word "menace". It's an unfortunate  
41 use of the word. It is explaining that the Church will not  
42 abandon the defences available at common law.

43

44 Q. You might recall a few moments ago I took you to your  
45 statement, paragraph 18, and you agreed with the  
46 proposition that the Fosters, both Emma and more broadly  
47 her family, had a right to pursue legal action if they

1 chose to do so; is that right?

2 A. Absolutely.

3

4 Q. And the use of the term "strenuously defended",  
5 I suggest, is deliberately directed to the non-exercise of  
6 that very right; is that not reasonable?

7 A. No, it's not at all reasonable. In a society the  
8 Church has every right to defend itself, and what from a  
9 Christian point we might decide is inappropriate probably  
10 is totally appropriate in a legal sense and, as I repeat,  
11 I gather this term continues to be used widely. I don't  
12 approve it, but I don't suggest for a moment that it was  
13 trying to prevent them from going to law; it was pointing  
14 out that there are difficulties inherently present in such  
15 an approach.

16

17 Q. And why do you not approve of the term, the words, in  
18 that format?

19 A. Because from a Christian point of view they are an  
20 overstatement, they can be misconstrued, they could be  
21 upsetting to the person, and they were to those who  
22 received it, but the nature of litigation in our world is  
23 adversarial.

24

25 MR SECCULL: Thank you, Cardinal. I have no further  
26 questions, Your Honour.

27

28 THE CHAIR: Does anyone else have any questions for the  
29 Cardinal?

30

31 MR WOODS: No, Your Honour.

32

33 MR GRAY: I have no questions, Your Honour.

34

35 THE CHAIR: Ms Furness, do you have any questions?

36

37 MS FURNESS: Nothing further, Your Honour.

38

39 THE CHAIR: Thank you, Cardinal. Thank you for making  
40 yourself available. That brings this proceeding today to  
41 an end and we will now adjourn.

42

43 <THE WITNESS WITHDREW

44

45 AT 6.35PM THE COMMISSION ADJOURNED TO FRIDAY, 22 AUGUST  
46 2014 AT 10.00AM

47

| #                                  |                                    |                                 |                                |
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| \$27,000 <sup>[1]</sup> - 4477:36  | 13 <sup>[4]</sup> - 4408:9,        | 1969 <sup>[1]</sup> - 4462:47   | 4499:47, 4519:13,              |
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