



Royal Commission
into Institutional Responses
to Child Sexual Abuse

REPORT OF CASE STUDY NO. 16

The Melbourne Response

JULY 2015

ISBN 978-1-925289-29-9

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Report of Case Study No. 16

The Melbourne Response

July 2015

CHAIR

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COMMISSIONERS

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Preface

The Royal Commission

The Letters Patent provided to the Royal Commission require that it ‘inquire into institutional responses to allegations and incidents of child sexual abuse and related matters’.

In carrying out this task, we are directed to focus on systemic issues but be informed by an understanding of individual cases. The Royal Commission must make findings and recommendations to better protect children against sexual abuse and alleviate the impact of abuse on children when it occurs.

For a copy of the Letters Patent, see Appendix A.

Public hearings

A Royal Commission commonly does its work through public hearings. A public hearing follows intensive investigation, research and preparation by Royal Commission staff and Counsel Assisting the Royal Commission. Although it may only occupy a limited number of days of hearing time, the preparatory work required to be undertaken by Royal Commission staff and by parties with an interest in the public hearing can be very significant.

The Royal Commission is aware that sexual abuse of children has occurred in many institutions, all of which could be investigated in a public hearing. However, if the Royal Commission were to attempt that task, a great many resources would need to be applied over an indeterminate, but lengthy, period of time. For this reason the Commissioners have accepted criteria by which Senior Counsel Assisting will identify appropriate matters for a public hearing and bring them forward as individual ‘case studies’.

The decision to conduct a case study will be informed by whether or not the hearing will advance an understanding of systemic issues and provide an opportunity to learn from previous mistakes, so that any findings and recommendations for future change that the Royal Commission makes will have a secure foundation. In some cases the relevance of the lessons to be learned will be confined to the institution the subject of the hearing. In other cases they will have relevance to many similar institutions in different parts of Australia.

Public hearings will also be held to assist in understanding the extent of abuse that may have occurred in particular institutions or types of institutions. This will enable the Royal Commission to understand the way in which various institutions were managed and how they responded to allegations of child sexual abuse. Where our investigations identify a significant concentration of abuse in one institution, it is likely that the matter will be brought forward to a public hearing.

Public hearings will also be held to tell the story of some individuals which will assist in a public understanding of the nature of sexual abuse, the circumstances in which it may occur and, most importantly, the devastating impact that it can have on some people’s lives.

A detailed explanation of the rules and conduct of public hearings is available in the Practice Notes published on the Royal Commission's website at:

www.childabuseroyalcommission.gov.au

Public hearings are streamed live over the internet.

In reaching findings, the Royal Commission will apply the civil standard of proof which requires its 'reasonable satisfaction' as to the particular fact in question in accordance with the principles discussed by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336:

it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal...the nature of the issue necessarily affects the process by which reasonable satisfaction is attained.

In other words, the more serious the allegation, the higher the degree of probability that is required before the Royal Commission can be reasonably satisfied as to the truth of that allegation.

Private sessions

When the Royal Commission was appointed, it was apparent to the Australian Government that many people (possibly thousands) would wish to tell us about their personal history of child sexual abuse in an institutional setting. As a result, the Commonwealth Parliament amended the *Royal Commissions Act 1902* to create a process called a 'private session'.

A private session is conducted by one or two Commissioners and is an opportunity for a person to tell their story of abuse in a protected and supportive environment. As at 19 June 2015, the Royal Commission has held 3,638 private sessions, with 1,531 people waiting to attend one. Many accounts from these sessions will be recounted in a de-identified form in later Royal Commission reports.

Research program

The Royal Commission also has an extensive research program. Apart from the information we gain in public hearings and private sessions, the program will draw on research by consultants and the original work of our own staff. Significant issues will be considered in issues papers and discussed at roundtables.

This case study

The scope and purpose of the public hearing was to inquire into:

- The principles, practices and procedures of the Melbourne Response adopted by the Catholic Archdiocese of Melbourne and their application in responding to:
 - victims of child sexual abuse
 - allegations of child sexual abuse against personnel of the Catholic Archdiocese of Melbourne.
- The experience of people who have engaged in the Melbourne Response process or have otherwise sought redress from the Catholic Archdiocese of Melbourne.
- Any other related matters.

Executive summary

The Melbourne Response is the process that the Catholic Archdiocese of Melbourne (the Archdiocese) uses to respond to those who have been sexually abused by priests, religious and lay persons under the control of the Catholic Archdiocese of Melbourne.¹

Development of responses in the 1980s and 1990s

Australian Catholic Archbishops Conference

Between 1989 and 1996, the Australian Catholic Bishops Conference (the Bishops Conference) developed its protocol for dealing with allegations of criminal behaviour.

At the Bishops Conference meeting in April 1996, the Church's Special Issues Committee presented a complete draft of the *Towards Healing: Principles and procedures in responding to complaints of abuse against personnel of the Catholic Church in Australia* protocol (Towards Healing), which was intended to provide the process by which the Church would respond to allegations of sexual abuse by Australian priests and religious.²

Archdiocese of Melbourne

Cardinal George Pell was appointed Archbishop of Melbourne in 1996. He had been an Auxiliary Bishop of the Archdiocese of Melbourne since 1987.³ At the hearing he gave evidence that, during his time as an Auxiliary Bishop, he did not have any direct responsibility for handling issues relating to child sexual abuse.⁴

Cardinal Pell told us that at that time of his appointment there was a growing awareness of the issue of child sexual abuse and the fact that such offences had been committed by clergy and Church personnel. At that time the then Governor of Victoria and retired judge, the Hon. Richard McGarvie, and then Premier of Victoria, the Hon. Jeff Kennett MP, raised this issue with Archbishop Pell; they expressed strong views that the Church should act quickly to address the issue and introduce some changes to its approach.⁵

In July 1996 Archbishop Pell instructed Corrs Chambers Westgarth (Corrs), solicitors for the Archdiocese of Melbourne, to put together a new scheme for responding to claims of child sexual abuse within the Archdiocese.⁶

On 30 October 1996, 11 days after the Melbourne Forum (discussed below), Archbishop Pell announced the Melbourne Response.⁷ A pamphlet was also issued, which described each of the components of the Melbourne Response and set out contact details.⁸ It included a general apology.

The Melbourne Forum

The Melbourne Forum – a public meeting to address the issue of abuse by Catholic clergy in the Archdiocese – took place on 19 October 1996.⁹

Mrs Christine Foster, whose daughters Emma and Katie were abused by Father Kevin O’Donnell when they were pupils at the Sacred Heart Catholic Primary School at Oakleigh in the late 1980s or early 1990s, gave evidence that at the Melbourne Forum Archbishop Pell and a number of other Catholic Church leaders were seated on a stage.¹⁰ She said that during the forum it was announced that the Melbourne Response would be formed, although not much detail was given.¹¹

Mrs Foster said that the Catholic Church leadership did not engage with the audience during the forum and that they did not appear to want to listen to parents’ descriptions of their experiences.¹² Mrs and Mr Foster believed that the real purpose of the Church in holding the forum was to announce the Melbourne Response.¹³

Mrs Foster said she had written a letter for the Melbourne Forum, which she asked someone else to read out on her behalf.¹⁴ She said that while her letter was being read out, the Catholic Church leadership stood up, walked off the stage and did not return.¹⁵

However, we also received evidence that suggests that not everyone was dissatisfied with the outcome of the forum.

Ms Helen Last, who worked at the Pastoral Response Office, reported to Archbishop Pell that she had received positive feedback from the victims and others about the forum.¹⁶

Cardinal Pell said that he does not recall the forum as being ‘an unpleasant or rowdy meeting’ and that he has no recollection of anyone walking out of the forum while someone was speaking.¹⁷

Archbishop Denis Hart gave evidence that he does not recall this forum ending in any incident or controversy. He said that he has no recollection of anyone from the Church walking out before it had ended.¹⁸

Notwithstanding these differing accounts, we accept Mrs Foster’s recollection of the events. Given the circumstances of the public meeting and her personal interest in the reading of the letter, she is less likely to recall the events incorrectly. The impression the meeting left on the senior members of the Church is different, but no doubt both Cardinal Pell and Archbishop Hart have attended multiple meetings and recollections of the impact of the events on the audience may not be as clear for them as for Mrs Foster.

It is clear that the Melbourne Forum did not allay concerns that the Fosters and others had about the issues it was to address.

Towards Healing is adopted

In November 1996, less than one month after the Melbourne Response was announced, the Bishops Conference approved the Towards Healing protocol, which was to come into operation on 31 March 1997.¹⁹ Catholic Religious Australia also approved this document in principle.²⁰ Catholic Religious Australia is the public name of the Australian Conference of Leaders of Religious Institutes. It is the peak body for leaders of religious institutes and societies of apostolic life resident in Australia.²¹

Cardinal Pell accepted that introducing the Melbourne Response when he did had the effect that Towards Healing, which was approved a few weeks later, was not a national response.²²

A consequence of this is that like complaints may not be treated in a like manner and consistency of outcome would not be achieved. Because Towards Healing did not cap the financial payment, it may have and has resulted in more generous payments to survivors than the Melbourne Response, which was initially capped at \$50,000.

The Melbourne Response

The key features of the Melbourne Response are:

- the appointment of Independent Commissioners to inquire into allegations of sexual abuse, determine their credibility and make recommendations about action to be taken against those accused of abuse
- a free counselling and professional support service, known as Carelink
- the establishment of a Compensation Panel, which gives the Archdiocese recommendations on the making of ex gratia payments to victims.²³

Mr Peter O'Callaghan QC was appointed the first Independent Commissioner in October 1996. He remains in this position. From the beginning of the Melbourne Response until 31 March 2014, he has investigated 351 complaints of abuse that fall within the Terms of Reference of the Royal Commission.²⁴ He said that he has upheld 97 per cent of those complaints.²⁵

Mr Jeffery Gleeson QC was appointed an Independent Commissioner in 2012.²⁶ He has considered 16 complaints of child sexual abuse as Independent Commissioner. He has upheld five complaints, declined one and has not yet made a determination on 10.²⁷

When the Melbourne Response was established, ex gratia payments were capped at \$50,000. This amount increased to \$55,000 in 2000 and was again increased in 2008 to its present cap of \$75,000.²⁸

Mr David Curtain QC, the current Chair of the Compensation Panel, suggested that the Archdiocese increase the cap in 2008. He did that because he became aware that the Victims of Crime Compensation cap, on which the Melbourne Response compensation cap was based, had increased.²⁹

Review

To date there has been no formal review of the Melbourne Response.³⁰ However, on 4 April 2014, Archbishop Hart announced that he intended to hold a consultation process to review the Melbourne Response.³¹

Operation

Solicitors

Corrs have been the solicitors for the Archdiocese of Melbourne for more than 50 years. Mr Richard Leder, first as a solicitor and then as a partner, began acting on behalf of the Archdiocese in about 1992.³² As well as being the solicitor for the Archdiocese of Melbourne, the Melbourne office of Corrs:

- is the instructing solicitor and provides administrative assistance to the Independent Commissioners³³
- provides legal advice to Carelink – a free counselling and professional support service³⁴
- provides administrative support to the Compensation Panel.³⁵

Independent Commissioners

The terms and conditions are that the Independent Commissioners shall:

- forthwith enquire into any complaint of sexual abuse by a Church person made or referred to them
- refer the complainant to Carelink
- consult with and advise the Compensation Panel
- make recommendations to the Archbishop about action to be taken in relation to Church personnel against whom a complaint has been made³⁶
- immediately inform the complainant that he or she has an unfettered and continuing right to take their complaint to the police
- appropriately encourage the exercise of that right
- not act so as to prevent any police action in respect of allegations of sexual abuse by Church personnel.³⁷

The Independent Commissioners have no documented rules and procedures and have not published details of their procedures or provided them to the Church authorities or other relevant persons.³⁸

Mr O’Callaghan QC’s and Mr Gleeson QC’s procedures are that they:³⁹

- conduct an interview with the complainant, which is transcribed and forwarded to the complainant inviting amendments and additions
- inform the complainant of their continuing and unfettered right to report to police
- inform the accused of the complaint (if the accused is alive)
- if the accused denies the complaint, invite the complainant and the accused to participate in a contested hearing
- make recommendations about the ministry of the accused.⁴⁰

If an Independent Commissioner makes a finding that a complainant is a victim of child sexual abuse, he writes a report for the Compensation Panel and refers the complainant to Carelink.⁴¹

Mr O’Callaghan QC and Mr Gleeson QC meet complainants in their chambers. No doubt following this public hearing, Mr O’Callaghan QC and Mr Gleeson QC will reflect on whether their chambers are the most appropriate place to interview complainants. For many people the general environment of chambers may be threatening, if not overwhelming, and a barrister’s room is unlikely to provide a sense of confidence and security for a survivor.

A contested hearing will be held if an accused denies, or substantially denies, a complaint.⁴²

Mr O’Callaghan QC said that nothing was provided in writing to the parties before a contested hearing that indicated to the parties that the Archdiocese would meet the costs of legal representation.⁴³

He said that the costs of legal representation would be paid if the legal representatives requested funding.⁴⁴ If no request was made, the costs of representation were not met by the Archdiocese.⁴⁵

In our opinion, if the Archdiocese is prepared to meet the cost of lawyers, as it obviously should, both a complainant and the respondent should be made aware of the position at the commencement of the process.

In our opinion, Mr Gleeson QC follows an appropriate procedure. He told us that, in his view, the parties are entitled to have legal representation and to have that funded by the Archdiocese.⁴⁶ If a complainant is not legally represented, he informs them that they are entitled to be legally represented. He also explains the role played by counsel assisting and that counsel assisting is not a lawyer for the complainant.⁴⁷

The Church parties, in their submissions, accepted that there would be merit in a standardised approach by the Independent Commissioners on giving advice about legal representation. They suggested that an information sheet be prepared.⁴⁸ In our opinion, this should be done.

The practices of the Independent Commissioners also vary on the advice they give to complainants about seeking legal advice on their right to sue in the courts. Mr Gleeson QC did not consider that to be part of his role, while Mr O’Callaghan QC has given such advice.

This may lead to inconsistencies in the handling of particular complaints.

The Church parties accepted in their submissions that the procedures adopted by the Independent Commissioners allow more flexibility than is desirable on what is said to people about bringing a lawyer or support person to the initial interview or seeking legal advice in certain circumstances.⁴⁹

We agree. A settled procedure that is applied in each case should be adopted.

Mr O’Callaghan QC told us that in a limited number of cases he advises complainants about what would happen if they took their complaint to the police.⁵⁰ He considers that he is subject to a duty or obligation to inform complainants about his view on what might happen if they went to the police, although it was not based on anything in the terms of his appointment or on discussions he has had with the police.⁵¹

Mr Gleeson QC gave evidence that he does not give advice to complainants about his opinion on what will happen if they take their complaint to the police.⁵²

There has been a recent change in the law in Victoria on the obligation to report knowledge of sexual assault of children to the police.

The Church parties submitted that, in light of these changes, the Archdiocese should review the terms of appointment for the Independent Commissioners to further clarify the expectations of the Archdiocese concerning the rights of victims and the reporting of abuse.⁵³

We agree. The issue is important. A failure to report may have consequences for other children who may become victims of an alleged offender.

Carelink

Carelink is an organisation provided for and funded by the Archdiocese.

Carelink’s role is:

- to coordinate and fund treatment, counselling, medication and other support for victims of abuse
- to prepare psychiatric medical reports for victims who apply for compensation.⁵⁴

When Carelink needs legal advice about Carelink issues, Corrs, the Archdiocese’s solicitor, is consulted.

Carelink was set up as an independent body with a promise of confidentiality to survivors.

Mr Leder of Corrs agreed that he could be put in a difficult position if the Archdiocese asked him for advice on an issue and he knew information from Carelink that he could not share with the Archdiocese. However, he said that he could not think of a circumstance where that had happened.⁵⁵

On 18 October 1996, Monsignor Hart (as he then was) told Professor Richard Ball, a psychiatrist, that the Archbishop wished to appoint him to act as the 'Support Professional' in the Melbourne Response.⁵⁶ One of Professor Ball's responsibilities would be to act as 'the "public face" for clinical services provided to victims of Church abuse in the Archdiocese'.⁵⁷

The Archdiocese appointed Professor Ball as the public face for clinical services provided to victims of Church abuse in the Archdiocese. It did so knowing that Professor Ball:

- had provided treatment to priests of the Archdiocese
- had been engaged by lawyers to give expert evidence in criminal proceedings of priests who been charged with child sex abuse offences.

On 2 August 1995, at the request of Father O'Donnell, Professor Ball had given evidence as an expert witness at Father O'Donnell's trial for sexual offences against children.

Mrs Foster said:

Anthony and I were profoundly shocked that Professor Ball was responsible for the counselling arm of the Melbourne Response. I felt that this was not fair to victims. To me, it demonstrated a lack of understanding of how victims might feel and the need for a separate, independent and safe place for victims to go for help. It is for these reasons that I was too horrified to deal with Professor Ball and we declined to do so for quite some time.⁵⁸

Professor Ball was excused from giving evidence before the Royal Commission on medical grounds. However, he made a statement in which he said that he did provide an opinion as an expert witness in relation to a number of Catholic priests in the 1990s.⁵⁹

Archbishop Hart said that he would not today suggest that the person who is to become the public face of a counselling or medical component of the redress scheme be a person who had treated offenders or provided expert reports on them.⁶⁰

Notwithstanding Professor Ball's qualifications and expertise, it is almost inevitable that a survivor would experience concern at his appointment.

A major issue for survivors is the breach of trust by a priest or religious. The Church authorities should have realised that, regardless of Professor Ball's integrity (which we do not doubt), appointing him as the public face of clinical services, when he had given evidence at the request of Catholic clergy offenders, could seriously challenge a survivor's trust in the Church process. In this area, as in many other activities where there is a power imbalance, perceptions matter a great deal.

The Compensation Panel

The Special Issues Four Part Plan – 14 August 1996, which was announced by Archbishop Pell on 30 October 1996, stated:

Complainants remain free to use the normal court processes if they do not wish to avail themselves of the compensation panel process. In that event they should expect that the proceedings will continue to be strenuously defended. Any claimant coming before the panel will be informed of their right to refuse the ex gratia payment being offered and to pursue their claim in the civil courts. They will also be informed that the Archbishop and the Archdiocese will continue to defend claims in the courts on all bases.⁶¹

Mr Leder disagreed that the purpose of the compensation aspect of the Melbourne Response was to discourage civil suits against the Church.⁶²

However, faced with the statement that court proceedings would be ‘strenuously defended’, it is inevitable that many people would be dissuaded from going to court. Even if the Archdiocese successfully defended those proceedings, its legal costs would be significant and their recovery uncertain.

The Melbourne Response brochure states that ‘the Panel, like the Independent Commissioner, operates independently from the Archbishop and the Archdiocese’.⁶³

Mr Curtain QC told us:

As the chair of the Compensation Panel I have very limited documentation regarding its activities. I confirm there are no printed guidelines, protocols, policies or procedures in relation to its activities under my chairmanship.⁶⁴

Mr Curtain QC told us that the purpose of the Compensation Panel is to hear from victims, consider supporting material and give the Archdiocese a recommendation on an amount of ex gratia compensation up to the cap, which is currently \$75,000.⁶⁵

The Compensation Panel must accept the findings of the Independent Commissioner.⁶⁶

Mr Curtain QC tells applicants that, if they wish to accept an offer, they will be asked to sign a deed of release.⁶⁷ He said that the deed of release has recently been modified because the Church is considering changing the limit of compensation and possibly backdating the increase.⁶⁸

The question of whether a deed of release should be a condition of receiving an ex gratia redress payment is being considered in our work on redress. It is complex. Some people suggest that it is not appropriate to require a person to forego their common law rights as a condition of receiving a modest ex gratia sum. We will consider the issue in our final report on redress.

After meeting the complainant, Mr Curtain QC writes to Archbishop Hart via Mr Leder and recommends an amount be offered to each applicant and any special instructions.⁶⁹

The Compensation Panel does not provide applicants with reasons for its decisions about the ex gratia payment to be offered.

Mr Leder carries out legal and administrative tasks to assist the Panel.⁷⁰

Mr Leder also receives the Independent Commissioner's report and any associated medical and psychological reports and assessments.⁷¹ Mr Leder gave evidence that the medical and psychological reports are disclosed to him 'on a confidential and without prejudice basis' in his capacity as the instructing solicitor for the Chair of the Compensation Panel.⁷²

However, at the same time Mr Leder is also the solicitor for the Archbishop.

The independence of those involved in the decision-making process of a redress scheme will be further considered by the Royal Commission in later reports on redress.

Mr Leder said that, given Carelink would cover ongoing medical and counselling expenses, it was believed that the Church was taking a more generous approach than other statutory schemes by initially adopting a cap of \$50,000.⁷³

Mr Curtain QC told us that he readily agrees that the capped payments of the Melbourne Response do not reflect full compensation.⁷⁴ Similarly, Mr Leder agreed that, if a complainant was able to establish liability and causation in a civil proceeding, the compensation they would be entitled to would be significantly higher.⁷⁵

Mr Leder said that initially it was contemplated that the Compensation Panel would keep a record of each offer it made in order to ensure fairness in the sense of comparability between offers made to different applicants.⁷⁶

Mr David Habersberger QC told us that he did keep such a record during the time he was Chair of the Compensation Panel.⁷⁷

However, subsequent chairs of the Compensation Panel did not adopt this practice.⁷⁸

When asked whether he is satisfied that the system ensures there is a proper parity with payments to the extent possible, Mr Curtain QC said:

I'm sure that we could set down protocols and record these things in detail. I'm not sure it would achieve any better outcome or any – I suppose you could say there would be more patency.

Victims' experiences of the Melbourne Response

Emma and Katie Foster

The story of the Foster family is one of profound personal and family tragedy. Beyond that tragedy, their story brings forward the complex question of the responsibility of an institution for the criminal acts of one of its members when that act results in significant injury to a child who has been entrusted by his or her parents to the care of the institution.

Mrs Christine Foster and Mr Anthony Foster are the parents of three girls: Emma, born in November 1981; Katie, born in July 1983; and Aimee, born in March 1985.⁸⁰ Emma and Katie were sexually abused by Father O'Donnell, the parish priest, who often visited the primary school and the playgrounds.⁸¹

On 1 March 1996, Mrs and Mr Foster met with Mr Shane Wall, their psychologist.⁸² Mr Wall had a private practice that from time to time received referrals from Catholic bodies.⁸³ After this meeting, the Archdiocese of Melbourne began paying for counselling for the Foster family.⁸⁴ Mrs and Mr Foster took this to mean that the Catholic Church had accepted responsibility for the abuse.⁸⁵

The following day, Mrs and Mr Foster rang Father Ted Teal, their parish priest, and asked him to visit their house and talk about Emma.⁸⁶ Mrs Foster said they told Father Teal of Emma's disclosure of abuse by Father O'Donnell. Mrs Foster gave evidence that Father Teal was sympathetic but that, as he was leaving their home, he said, 'Don't tell anyone'.⁸⁷

Father Teal provided a letter to the Royal Commission in which he said that he had no recollection of saying those words and is sure he would not have done so. He said he later organised a public meeting, known as the Oakleigh Forum, which is discussed below.⁸⁸

Notwithstanding these differing accounts, we accept Mrs Foster's recollection of the events. Given her personal interest in the meeting, we are satisfied that she is less likely to recall the events incorrectly. Father Teal's memory of the meeting is different, but no doubt he has attended numerous meetings with parishioners; recollections of this meeting may not be as clear for him as they are for Mrs Foster.

On 17 February 1997, Mrs and Mr Foster met with Archbishop Pell.⁸⁹ Mrs Foster gave evidence that, during this meeting, Mr Foster told Archbishop Pell that they viewed the Melbourne Response as a cost-saving measure by the Catholic Church to the detriment of victims and that this was partly due to the cap and its restrictions.⁹⁰

Mrs Foster said that Archbishop Pell responded, 'if you don't like what we're doing, take us to court'.⁹¹

Cardinal Pell gave the following evidence:

I do not recall exactly what was said during my private meeting with Mr and Mrs Foster on 18 February 1997, but I do remember clearly that it was one of the most difficult meetings I have ever been involved in. I had no reason to doubt that O'Donnell had abused Emma Foster, and in meeting with Mr and Mrs Foster my only intention was to listen to their story and to try to help. It is clear that I did not succeed in this. I am sorry for anything I did to upset them at this meeting.⁹²

After the private meeting, both Archbishop Pell and Mrs and Mr Foster joined a larger group meeting, discussed below.⁹³ The meeting was not helpful to the Fosters and many others who attended. They were left with the impression that their concerns, which were obviously well founded, were not being appropriately dealt with by the Church.

Mrs Foster said that during this meeting a question was asked about known paedophiles still serving in parishes in Melbourne and that Archbishop Pell responded, 'It's all gossip until it's proven in court and I don't listen to gossip'.⁹⁴

Cardinal Pell accepted that he may well have used the word 'gossip', because 'it was and is my view that while every complaint about abuse should be properly investigated, and appropriate action taken, it is not appropriate to ask priests to stand aside from their ministry simply because someone names them, for example, at a public meeting'.⁹⁵

We are satisfied that the Cardinal made the comments attributed to him and did not tell the gathering what he told the Royal Commission, as set out above – that is, his position in relation to allegations.

In March 1997 the Fosters decided to go through the Melbourne Response to seek help for Emma.⁹⁶

Emma was offered \$50,000 in compensation and received the following letter of offer:

The compensation offer, together with the services that remain available through Carelink, are offered to Emma by the Archbishop in the hope that they will assist her recovery and provide a realistic alternative to litigation that will otherwise be strenuously defended.⁹⁷

In relation to the use of the phrase 'strenuously defended' in the letter to Emma, Cardinal Pell said:

It's an unfortunate phrase, but I believe that some phrase would need to be there in a non-offensive way stating that, if the matters were taken to court, the Church would certainly consider using the defences available to every citizen and organisation in Australia.⁹⁸

Mr Leder said the use of the phrase 'strenuously defended' reflected the Archdiocese's position that 'a victim such as Emma Foster would be unlikely to prove that anyone other than O'Donnell (who, by then, had died) was legally liable for the abuse that she suffered'⁹⁹

This is at odds with other evidence he gave.

On 19 November 1998, Emma Foster accepted the offer of \$50,000 compensation.¹⁰⁰

On 6 May 1999, Mr O'Callaghan QC visited the Fosters' house to discuss Katie's application to the Melbourne Response.¹⁰¹ He told the Fosters that he considered that Katie had been abused by Father O'Donnell.¹⁰²

On 28 May 1999, Katie was crossing a road while she was under the influence of alcohol. She was hit by a car and badly injured. The impact stopped her heart and caused a number of bleeds and swelling to her brain.¹⁰³ Tragically, the accident left her with permanent brain damage. Katie will require 24-hour care for the rest of her life.¹⁰⁴

On 23 February 2000, almost a year after he visited the Fosters' home, Mr O'Callaghan QC sent a letter to Mr Leder, which enclosed a draft letter to the Fosters' solicitors. He wrote:

I would like your views as to whether it is appropriate to in effect try to 'flush out' the real intentions of the Fosters. A reading of the correspondence only re-enforces the possibility that they may have another agenda, and my oblique reference to other information is reflective of that.

On the other hand if they write back and say they insist upon my making a finding in relation to the complaint which has been lodged, I would feel obliged to do so.¹⁰⁵

Mr O'Callaghan QC was not going to make a finding if it was not 'for the purposes of my role as an Independent Commissioner'.¹⁰⁶ Mr O'Callaghan QC agreed that at that time he did not know whether the Fosters had decided to pursue civil proceedings.¹⁰⁷

On 22 June 2001, Bishop Hart was appointed Archbishop of Melbourne following Archbishop Pell's appointment as Archbishop of Sydney. Archbishop Hart was installed as Archbishop on 1 August 2001. On 2 August 2001, Archbishop Hart appointed Monsignor Christopher Prowse as Vicar General of the Archdiocese.¹⁰⁸

Meanwhile, Emma's situation continued to worsen. On 2 April 2003, Mrs and Mr Foster wrote to the Vicar General, Monsignor Prowse, that they were no longer able to care for Emma in the family home because of her 'long history of depression, self harm and substance abuse'.¹⁰⁹ They asked whether the Archdiocese could help to provide somewhere for Emma to live.¹¹⁰

Ms Nicky Maheras, a family therapist, wrote to Monsignor Prowse the following day in support of Mrs and Mr Foster's letter.¹¹¹ In this letter, Ms Maheras set out Emma's symptoms, including anorexia, substance abuse, self-harming and suicidality. Ms Maheras wrote that these symptoms are present in nearly all cases of survivors of prolonged sexual abuse and that they were a direct effect of the 'violent abuse she was subjected to as a child'.¹¹² She said that leaving home had also been an important transition for Emma in regard to maintaining the normal life stage developments of independence and autonomy.¹¹³

The letter concluded:

Given that this housing crisis results directly from the ongoing emotional, psychological, physical, mental and social effects of abuse, responsibility for providing suitable, accessible and supportive accommodation for Emma clearly rests in your hands.¹¹⁴

Archbishop Hart was of the view that the Archdiocese should not cover these costs in addition to the financial support that had already been provided to Emma because her homelessness did not appear to be directly related to her abuse.¹¹⁵

Mr Leder's advice was sought. He advised:

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

The basis of the request made of you appears to be that her homelessness is related to the sexual abuse. Objectively, that argument cannot be sustained.¹¹⁶

Mr Leder accepted that perhaps it was not right for him to offer the view he did at that time. Mr Leder also agreed that this passage was not a fair characterisation of the situation and he apologised for using that language.¹¹⁷

That apology was appropriate. His characterisation of the family circumstances at the time was unfair. Given the suffering of all members of the family, this was an unfair characterisation of the reason that Emma needed accommodation outside of the family home.

Archbishop Hart gave evidence that the Fosters' letter of 2 April 2003 clearly expressed the desperate nature of Emma Foster's situation and that their request was reasonable.¹¹⁸ He said, 'I would certainly say now we could have been more generous', and that if he had his time again he certainly would have granted this request.¹¹⁹

Role of the Independent Commissioner in the Fosters' matter

It is readily apparent from the history of Mr O'Callaghan QC's dealings with the Fosters that his role as Independent Commissioner was not well defined at that time. If the Melbourne Response was to operate as three separate stages – the three stages being the Independent Commissioners, Carelink and the Compensation Panel – this was not the reality. Independent Commissioner Mr O'Callaghan QC involved himself in Carelink issues in relation to Medicare, counselling and other payments. Although his role was intended to be complete after making his findings, he continued to have involvement with Emma Foster's matter after he had made a finding that she was a victim of child sexual abuse.

Furthermore, his task was to make a decision on whether the girls had been abused. That decision could have no relevance to any possible common law proceedings and should have been made without any concern over whether the Archdiocese may be sued. Even if we were to accept Mr O’Callaghan QC’s opinion that he would be in contempt of court if he continued to investigate facts that were to be considered by a court, this could not extend to an obligation upon him to actively ‘flush out’ whether civil proceedings were being considered.¹²⁰

The Fosters bring civil proceedings

In 2002, Mrs and Mr Foster instructed their solicitors to commence five separate legal proceedings in the Supreme Court of Victoria on behalf of Emma, Katie, Aimee and Mrs and Mr Foster.¹²¹

Mr Leder gave evidence that the particulars of the allegations of abuse were so vague that ‘in a legal sense, in the context of a pleading and with the precision required of a pleading, it was and is my view that it was not possible to’ admit that the abuse occurred.

The Fosters were shocked that the defendants did not admit that Father O’Donnell had abused Emma and Katie and that they denied that Emma and Katie had suffered shock, personal injury, loss and damage as a consequence of a breach of their respective duties.¹²²

Mr Leder accepted that, on reflection, a different approach should have been taken. He said that, if this issue arose in the future, he would ring the plaintiff’s solicitors, discuss contested issues and be guided by them as to the most appropriate way of obtaining whatever information needed to be obtained.¹²³ He said, ‘I would like to think that I understand the difficulties and the sensitivities of this and that I’d act appropriately’.¹²⁴

Prior knowledge of Father O’Donnell’s behaviour

The statements of claim for the proceedings in the Supreme Court of Victoria alleged that the Church had prior knowledge of Father O’Donnell’s behaviour on a number of grounds. As it happens, there was significant force in the allegations:

- In 1958 complaints were made to Monsignor Lawrence Moran, then Chief Administrator for the Diocese of Melbourne, about Father O’Donnell interfering with a young boy (the 1958 complaints).
- In 1958 Father Anthony Guelen observed Father O’Donnell engaging in inappropriate behaviour with a young boy whilst Father O’Donnell was in the Diocese of Melbourne.
- In early 1992, Father Salvano complained to Bishop Hilton Deakin, former Vicar General (the fifth defendant in the proceedings) about the inappropriate behaviour of Father O’Donnell with young children (the Salvano complaint).¹²⁵

Mr Leder, as solicitor for the defendants, investigated the factual basis of these allegations.

Mr Leder agreed that the record of interview from Father Guelen indicates that a senior figure in the Archdiocese had information in 1958 that, properly handled, might have led to Father O'Donnell being exposed and subsequent abuse being avoided.¹²⁷

In their submissions, the Church parties agreed that the 1958 report should have been passed on for appropriate action.¹²⁸

Father Guelen was unable to give evidence to the Royal Commission on medical grounds, but he instructed his solicitors that he has consistently denied, and continues to deny, that he saw anyone with Father O'Donnell in his room in 1958.¹²⁹

The final allegation that the Church had prior knowledge of Father O'Donnell's offending was based on a complaint by Father Salvano.

On 23 June 2005, Mr Leder spoke to Father Salvano, who confirmed that he had complained to Bishop Deakin in early 1992 about Father O'Donnell's bullying behaviour and that he had concerns about how Father O'Donnell seemed to surround himself with children, particularly boys. However, he had not witnessed anything criminal.¹³⁰

Father O'Donnell retired in August 1992.¹³¹

Confidentiality and potential conflict

In the Fosters' case, Mr Leder exchanged information with the persons involved in each component of the Melbourne Response in relation to the proceedings. At the same time, Mr Leder was acting on behalf of, and advising, the Archdiocese about the process.

Corrs' position as lawyers responsible for the Melbourne Response, as well as solicitors for the Archdiocese, raises a clear potential for conflict. It also raises difficulties with confidentiality.

Mr Leder as instructing solicitor for the Archdiocese asked the Independent Commissioner for information obtained in his role as Independent Commissioner for the purposes of defending a civil claim against the Archdiocese.

As Archbishop Pell said, the structure of the Melbourne Response is based on each component part – that is, the Independent Commissioners, Carelink and the Compensation Panel – being independent from each other and, importantly, from the Archdiocese.

However, the Fosters' case highlights the inevitable difficulties that arise when an Independent Commissioner has an instructing solicitor who is also instructing solicitor for the Archdiocese.

The Melbourne Response was promoted as independent of the Archdiocese and each arm was intended to be independent from the others. That could never be achieved when the lawyer for the Archdiocese was a common and key element and was involved in all major steps of the process.

For this reason we consider that, where there are lawyers responsible for administering a redress scheme, they should not be the same lawyers as those acting for the relevant institution. The potential for conflict, and the difficulty of maintaining confidentiality, are obvious.

Mediation

A mediation took place on 7 November 2005.¹³² After some negotiation, the Fosters said they would accept \$750,000 plus payment of their legal costs and an indemnity in respect of any payments to the Health Insurance Commission. This offer did not include ongoing entitlement to Carelink.¹³³ The Archdiocese accepted this offer.

Outcome

Mrs Foster said of the family's experience in the litigation:

The civil litigation process took our family almost 10 years to complete. It required countless hours of effort at a significant personal cost and the help of our dedicated legal team. We are of the view that we settled for an amount of money that was far less than what our children were entitled to. Even so, it was a far better result than we could have hoped for from the Melbourne Response. With the settlement funds Emma was able to purchase a house. Katie was able to move into her own home which was specially designed to take into account her disabilities. Very few victims, however, are afforded the support our children had to be able to achieve such a result.¹³⁴

As we have indicated, the ultimate difficulty in the Fosters' proceedings was in identifying an appropriate defendant. This issue was considered in the Royal Commission hearing that looked at Mr Ellis's court proceedings (see case study 8) and was the subject of recommendations by the Victorian Parliament in its 2013 report *Betrayal of trust: Inquiry into the handling of child abuse by religious and other non-government organisations*.

Archbishop Hart said that he is of the view that the Catholic Church in Australia should provide victims of child sexual abuse with an entity to sue – a view that he said he formed in 2012 or 2013.¹³⁵ He said that the Archdiocese of Melbourne has made this recommendation.¹³⁶

Archbishop Hart also said that, if civil proceedings were brought against the Archdiocese in the future, he would make sure there was an entity to sue.¹³⁷ This will also be considered in the Royal Commission's work on redress and civil litigation.

Mr Leder gave evidence that Catholic Church Insurances only indemnifies 50 per cent of claims made by victims of Father O'Donnell. It adopts this position because of the allegation that the Church had knowledge of Father O'Donnell's offending in 1958 and should have acted at this time.¹³⁸

Mrs Foster gave evidence that, despite all of the professional help Emma received and despite their love for her, Emma never recovered from the sexual abuse she suffered. Mrs Foster said that Emma's life continued to spiral out of control and, in January 2008, she took her own life.¹⁴⁰

Mrs Foster told us that Katie has never recovered from being hit by a car while binge drinking to escape the memories of her sexual assault and that she will always require 24-hour care.¹⁴¹

Mr Paul Hersbach and Mr AFA

In this case study, we also considered the experiences of Mr Paul Hersbach and Mr AFA, who went through the Melbourne Response in 2006 and 2011 respectively.

Mr Paul Hersbach

Mr Paul Hersbach's father, Mr Tony Hersbach, was an altar boy in the 1960s. He attended school at St Mary's in Altona in Melbourne, Victoria, where Father Victor Gabriel Rubeo was a priest.¹⁴²

Both Tony Hersbach and his twin brother were groomed and sexually abused by Father Rubeo.¹⁴³ Mr Tony Hersbach was abused over a period of about eight years, from the age of 10 until he was about 18 years old.¹⁴⁴

Father Rubeo formed a close relationship with Mr Tony Hersbach's family.

Mr Paul Hersbach said that Father Rubeo also abused him while the family was living with Father Rubeo in the presbytery at East Preston in Melbourne, Victoria.¹⁴⁵

Mr Tony Hersbach went through the Melbourne Response in 1997.¹⁴⁶ He was found to be a victim of child sexual abuse, received counselling through Carelink and received \$35,000 in compensation.¹⁴⁷

Mr Paul Hersbach started receiving counselling through Carelink as a secondary victim, because of his father's abuse, when he was in his early twenties.¹⁴⁸ He has received counselling services 'on and off' since then.

On 9 March 2006, Mr Paul Hersbach went to Independent Commissioner Mr O'Callaghan QC's chambers for an interview.¹⁴⁹

Mr O'Callaghan QC provided some advice as to whether Mr Hersbach should take his complaint to the police.

On 2 November 2006, the Compensation Panel recommended to the Archbishop that 'Mr Hersbach be offered ex gratia compensation of \$17,500'.¹⁵⁰

Mr Paul Hersbach gave evidence that he was not given any indication of how his offer of compensation was calculated.¹⁵¹ He said that he did not sign the deed of release for more than a year because he did not want his decision to go through the Melbourne Response to be about the money.¹⁵²

Mr Hersbach accepted the offer and signed the deed of release on 25 October 2007.¹⁵³

Mr AFA

Mr AFA met Father Michael Glennon at a karate school he had just opened at St Gabriel's Catholic Parish in Reservoir, Melbourne.¹⁵⁴ Mr AFA was 14 at the time.

Mr AFA gave evidence that Father Glennon sexually abused him three times over a period of about 18 months from when he was about 15.¹⁵⁵

Mr AFA met with Independent Commissioner Mr O'Callaghan QC on 18 February 2011 and was interviewed about Father Glennon's abuse.¹⁵⁶ During this interview, Mr O'Callaghan QC and Mr AFA discussed whether he would take his complaint to the police. Mr AFA decided not to take his complaint to the police but instead to proceed with the Melbourne Response.

On 1 June 2011, the Chair of the Compensation Panel, Mr Curtain QC, recommended to Archbishop Hart that Mr AFA be offered ex gratia compensation of \$50,000.¹⁵⁷

Mr AFA gave evidence that he was not given any explanation as to how the offer of \$50,000 was calculated.¹⁵⁸

On 28 June 2011 Mr AFA rejected the offer.

Mr AFA took legal advice and eventually accepted the offer of \$50,000.¹⁵⁹ Mr AFA gave evidence that at that time he did so he was not functioning very well and that he wanted to get this over and done with.¹⁶⁰ He said:

I felt pressure to go through the Melbourne Response because I had followed John Ellis' case against the church in New South Wales about his own child sexual abuse, and I thought the church would rely on this defence if I tried to take them to court. I did not think I had any other options for seeking compensation.¹⁶¹

Catholic Church Insurances reimbursed the Archdiocese of Melbourne the sum of \$66,841.20 for Mr AFA's claim.¹⁶²

In a Catholic Church Insurances claim summary of AFA's claim, dated 16 January 2012, Mr Laurie Rolls of Catholic Church Insurances wrote:

Having regard for the nature of the abusive conduct and the uncertainty about the extent to which the medical problems presented can be attributed to the abuse, this would seem a not unreasonable sum.¹⁶³

He also wrote:

The complainant was a parishioner of the Reservoir Parish and there was a pastoral relationship with the priest. At the time of the events, the priest was acting in the course of the 'business' of the Archdiocese. We would then regard him as a person for whose conduct the Archdiocese was responsible. In my view the policy should respond and reimbursement of the compensation paid to the claimant should be made.¹⁶⁴

This reflects an acceptance of legal responsibility that may be inconsistent with the decision of the New South Wales Court of Appeal in *Trustees of the Roman Catholic Church v Ellis & Anor* [2007] NSWCA 117. However, in our view there is no doubt that it reflects an appropriate moral approach and accords with the expectation many people have of the legal responsibility that the Catholic Church and other churches and institutions should accept.

Reporting to the police

Mr O'Callaghan QC, as Independent Commissioner, gave both Mr Hersbach and Mr AFA advice about the police process, as set out below.

Following his initial meeting with Mr Hersbach, Mr O'Callaghan QC said:

In your case however with respect to the unsurprising haziness of your memory there would not appear to be much point in your taking the matter to the police. However that is a matter for you and if you did intend to exercise that right I would not take any further steps until the results of the police investigation and any charges emanating therefrom were completed.

Assuming that you are not going to take the matter to the police I advise you that I am satisfied that you were the victim of sexual abuse in that the conduct of Father Rubeo in commencing to masturbate in your presence constitutes conduct which in my view amounts to sexual abuse.¹⁶⁵

Mr Hersbach gave evidence that he regarded Mr O'Callaghan QC as a senior authority who was probably qualified to give him advice on the police process. He said that he did not question what Mr O'Callaghan QC said.¹⁶⁶

Mr Hersbach accepted Mr O'Callaghan QC's advice and did not take his complaint to the police.¹⁶⁷

Mr O'Callaghan QC was the first person in a position of authority that Mr AFA told of his abuse. During his initial meeting with Mr AFA, Mr O'Callaghan QC raised the issue of whether Mr AFA had taken his complaint to the police. There was a lengthy exchange, which is set out later in this report.

In light of Mr O'Callaghan's position as a QC and the advice he gave to Mr AFA, we accept Mr AFA's evidence that he felt discouraged from going to the police at the time he approached the Melbourne Response.

We are satisfied that Mr O'Callaghan QC provided advice about the police process to Mr Hersbach and Mr AFA that discouraged them from going to the police. Having regard to Mr O'Callaghan QC's defined role, this advice was not appropriate. Advice about the approach that the police might take to any prosecution, and the likely outcome, should have been left to the police. They were the body with all of the relevant information.

We note the current view of the Victoria Police is that:

it is our view that victims should be afforded the opportunity to speak with a specialist police investigator to discuss the options fully and answer any queries that may arise.¹⁶⁹

Mr AFA's experience with the police after he had been through the Melbourne Response illustrates why Victoria Police suggest that they are best placed to advise victims on the prospects of criminal action.

In about June 2011, after the Compensation Panel process had finished, Mr AFA reported his abuse to the Fawkner Police Station in Melbourne.¹⁷⁰

The Office of Public Prosecutions did lay charges against Mr Glennon and the trial of Mr AFA's case was set down for June 2014.¹⁷¹ However, Mr Glennon died in prison on New Year's Day in 2014.¹⁷²

Administrators or decision makers in a redress scheme should never give advice to applicants about likely outcomes of a report to police, even if they are independent from the relevant institution. Giving such advice will always be inconsistent with their function and potentially confusing for applicants who, understandably, see them as being in a position of authority.

Letters of apology

Archbishop Hart told us that the letters of apology are prepared in the Vicar General's Office for him to sign and that he reads them carefully.¹⁷³

Archbishop Hart agreed that the letters of apology he sends are very similar and that some may be identical.¹⁷⁴

The Royal Commission's report on redress and civil litigation will consider the issue of apologies. However, as set out above, we consider that a scheme that is heavily dominated by lawyers and traditional legal process is unlikely to provide the most supportive environment for complainants.

Actions taken against Church personnel and priests

Archbishop Hart said there are no documented policies, procedures or guidelines governing the Archdiocese's response to allegations against Church personnel and priests who are still in active ministry.¹⁷⁵

He is guided by the recommendations of the Independent Commissioners and will remove any cleric from ministry if the Independent Commissioners make that recommendation.¹⁷⁶

We are troubled that, although Father Glennon had been convicted of child sexual abuse offences in 1978, the Congregation for the Clergy refused to dismiss him from the priesthood on two separate occasions – in 1990 and 1994. However, in 1998 the Congregation for the Clergy accepted Cardinal Pell's petition to remove Father Glennon from the priesthood. It is not clear to us why Cardinal Pell's petition in 1998 was successful but the two previous petitions by Archbishop Frank Little were not.

It took eight years from the time of the Archdiocese's first petition, and 20 years from his first conviction, for Father Glennon to be dismissed from the priesthood. We are concerned that the application of canon law by members of the relevant dicasteries of the Holy See operated to obfuscate the removal of priest who had been convicted of child sexual abuse from the clerical state.

There is a lack of clarity as to the application of canon law in response to each of the three petitions regarding Father Glennon. The role of canon law will be reviewed further in Royal Commission hearings.

As set out above, an allegation included in the Fosters' statements of claim was that in 1958 Monsignor Moran was informed of a complaint by a young boy that Father O'Donnell had interfered with him.

In November 1992 the Archdiocese received a complaint that Father O'Donnell had sexually abused a child in the late 1950s to early 1960s.¹⁷⁷ His faculties were removed in July 1993.¹⁷⁸

In May 1994, Father O'Donnell was charged with indecent assaults relating to another male victim between 1971 and 1974.¹⁷⁹ Charges in respect of further victims were subsequently added.¹⁸⁰ In 1995, Father O'Donnell was convicted of 11 counts of indecent assault against 10 boys and two girls between 1954 and 1972.¹⁸¹

Father O'Donnell died on 11 March 1997.¹⁸² He died a pastor emeritus, having been given that title when he retired by Archbishop Little.¹⁸³

Archbishop Hart gave evidence that this is a customary title and has no effect, but that he understands what it says to people and apologised for this.¹⁸⁴ Archbishop Hart gave evidence that, since becoming Archbishop, he has not given a priest the title of pastor emeritus if that priest has had a complaint made against him.¹⁸⁵

Mr Hersbach gave evidence that in August 1994 his father made an official complaint about Father Rubeo to Monsignor Gerald Cudmore, the Vicar General at the time.¹⁸⁶ Father Rubeo continued as parish priest of Boronia in Melbourne.¹⁸⁷

Father Rubeo was not removed from ministry in 1994, at the time of this complaint, but Archbishop Hart said he should have been.¹⁸⁸

In 1996, Father Rubeo pleaded guilty to two counts of indecent assault upon Mr Tony Hersbach and his brother.¹⁸⁹ Father Rubeo was given a good behaviour bond and no conviction was recorded.¹⁹⁰ His faculties were removed.

In 2010, police charged Father Rubeo with an additional 30 counts of indecent assault against Mr Tony Hersbach and his brother.¹⁹¹

On 31 August 2011, Archbishop Hart forwarded a petition to the Congregation for the Doctrine of the Faith seeking Father Rubeo's dismissal.¹⁹²

On 16 December 2011, the day he was due in court for the committal hearing, Father Rubeo died.¹⁹³ Archbishop Hart gave evidence that Father Rubeo died before the Congregation for the Doctrine of the Faith had determined the petition.¹⁹⁴

Costs of the Melbourne Response scheme

The average payment of compensation to a victim of child sexual abuse under the Melbourne Response between 1996 and 31 March 2014 was approximately \$32,000.¹⁹⁵ The total average expenditure for each claim of child sexual abuse, including the direct and indirect costs of providing counselling and medical support through Carelink, was approximately \$100,000.¹⁹⁶

In 2013, the Archdiocese spent \$2,987,674 on the Melbourne Response.¹⁹⁷

The Archdiocese of Melbourne's Roman Catholic Trusts Corporation, established under the *Roman Catholic Trusts Act 1907* (Vic) specifically for the Archdiocese of Melbourne,¹⁹⁸ held net assets of \$222,447,751 as at 31 December 2013.¹⁹⁹

The Archdiocese's Catholic Development Fund receives deposits from parishes, schools, diocesan agencies and other Catholic agencies, which it pools and loans to fund the activities of the Archdiocese, parishes and schools.²⁰⁰ The fund's net assets for the 2012–13 financial year were \$106,410,364.

The Executive Director of administration for the Archdiocese, Mr Francis Moore, gave evidence that the Archdiocese is currently running 'a reasonable surplus, having regard to the scale of the Archdiocese' and accepted that this surplus was 'in the millions'.²⁰¹

Report on redress

The Royal Commission has published a consultation paper that discusses redress and civil litigation. We will publish a report with recommendations in mid-2015. Many of the issues raised in this case study are relevant to redress and will be dealt with in the final report.

1 Establishing the Melbourne Response

This section discusses the creation and administration of the Melbourne Response.

The Melbourne Response is the Archdiocese's process for responding to those who have been sexually abused by priests, religious and lay persons within the Archdiocese of Melbourne.²⁰²

As will become apparent, the adoption and implementation of the Melbourne Response have not been without controversy. One significant element of the controversy comes from the fact that, although the Church authorities acknowledge and accept moral responsibility for abuse, the monetary payments available under the Melbourne Response are below what some victims would receive if they were paid common law damages for their suffering.

Archbishop Pell established the Melbourne Response in 1996 and Archbishop Hart continued the scheme after he became Archbishop of Melbourne in June 2001.²⁰³ This section sets out the events leading up to the adoption of this process.

1.1 The work of the Australian Catholic Bishops Conference

By the 1980s, the issue of clergy and religious sexual abuse of children was being openly discussed. The issue was of concern through Australia. The Catholic Church began to realise that a response was required.

The issue was discussed at a Bishops Conference meeting in late 1987 and again in 1988.²⁰⁴ At the November 1988 Bishops Conference meeting, the bishops established a Special Issues Committee. The committee's Terms of Reference specified that it was to establish a protocol to be observed by bishops and major superiors if an accusation of abuse was made against a priest or religious.²⁰⁵

In 1989, the Special Issues Committee developed a first draft of the Protocol for Dealing with Allegations of Criminal Behaviour. It was presented to the Bishops Conference in November.²⁰⁶ The Bishops Conference approved the protocol in principle in May 1990. It was later approved by Catholic Religious Australia.²⁰⁷

In 1992, the Special Issues Committee formally adopted an amended protocol that applied to all dioceses, orders and congregations across the country.²⁰⁸ However, the protocol remained a confidential document.²⁰⁹

In December 1992 and July 1993, the Bishops Conference and Catholic Religious Australia issued statements entitled A Pastoral Statement on Child Protection and Child Sexual Abuse and Sexual Offences and the Church.²¹⁰

In April 1994, the Bishops Conference established the Bishops Committee for Professional Standards (the Bishops Committee), chaired by Bishop Geoffrey Robinson.²¹¹

On the recommendation of the Bishops Committee, in April 1996 the Bishops Conference adopted a Nine Point Plan for responding to child sexual abuse within the Church.²¹² On 26 April 1996, the Bishops Conference released this plan as a Pastoral Letter to the Catholic People of Australia on Sexual Abuse.²¹³

At the Bishops Conference meeting in April 1996, the Bishops Committee presented a complete draft of the Towards Healing procedure, which was intended to provide the process by which the Church would respond to allegations of sexual abuse by Australian priests and religious.²¹⁴

1.2 Archdiocese of Melbourne process for complaints of child sexual abuse before 1996

Cardinal Pell was appointed as Archbishop of Melbourne in 1996. However, since 1987 he had held a position as an Auxiliary Bishop of the Archdiocese of Melbourne.²¹⁵ At the hearing he gave evidence that, during his time as an Auxiliary Bishop, he did not have any direct responsibility for handling issues relating to child sexual abuse.²¹⁶

Cardinal Pell told us that Archbishop Little, who was Archbishop of Melbourne from 1974 until 1996, dealt with allegations of child sexual abuse by clergy or lay people associated with the Archdiocese. He was assisted by his vicars general.²¹⁷

When Monsignor Cudmore was appointed Vicar General in 1993, his duties included receiving complaints of abuse, offering victims counselling and other support and dealing appropriately with offenders.²¹⁸

Cardinal Pell told us that Monsignor Cudmore was assisted by the Pastoral Response Office, which was established by the Archdiocese to engage with and assist victims of sexual abuse by clergy. This office operated under the direction of Monsignor Cudmore and was coordinated by Ms Last.²¹⁹

By the end of the 1980s and increasingly in the 1990s, concerns about sexual abuse by priests and religious continued to emerge. Those concerns were being expressed to leaders of the Church and the general public was becoming more aware of them. The individual stories are often tragic and, as they became known, they required a response from the Church. There is some controversy as to the appropriateness of that response.

1.3 The Oakleigh Forum

The story of the Foster family is now widely known. Mrs Foster gave a moving account of it, published in her book, *Hell on the Way to Heaven*.

Mrs Foster gave evidence that two of her daughters, Emma and Katie, were abused by Father O'Donnell when they were pupils at Sacred Heart Catholic Primary School at Oakleigh. Oakleigh parish is in the Archdiocese of Melbourne. The girls were abused in the late 1980s or early 1990s.

Emma Foster was the first of the girls to disclose her abuse. Mrs Foster and her husband first met with someone from the Church to discuss Emma's abuse on 1 March 1996. As a result of this meeting, the Church began paying for counselling.²²⁰

It became apparent that Father O'Donnell had committed multiple offences. In May 1996, Mrs Foster and other parents of children who had attended Sacred Heart while Father O'Donnell was the parish priest petitioned Father Teal, who by then was the parish priest, seeking a meeting with the Church.²²¹

At about the same time, Monsignor Cudmore, who remained the Vicar General of the Archdiocese, met with Mr Foster.²²² Shortly after the meeting, Monsignor Cudmore wrote to the Fosters' psychologist, 'I am most anxious to provide assistance in whatever form may be necessary to the child, her family, other families and to the parish as a whole who may have suffered abuse'.²²³

The school community was by this time seriously concerned about this issue. The parents of Oakleigh sought a meeting with the Church, which was held on 29 July 1996. About 250 people attended the meeting, which became known as the Oakleigh Forum.²²⁴

1.4 George Pell is appointed Archbishop of Melbourne

Bishop Pell was appointed Archbishop of Melbourne on 16 June 1996 and installed on 16 August 1996.²²⁵ The current Archbishop, Denis Hart, became Vicar General to Archbishop Pell on 1 September 1996.²²⁶

This report refers to Cardinal Pell and Archbishop Hart using the titles of the positions they held at relevant times.²²⁷

Cardinal Pell told us that at that time of his appointment:

- there was a growing awareness of the issue of child sexual abuse and the fact that such offences had been committed by clergy and Church personnel
- there was understandable attention being paid to this issue in the media and in public debate
- in his opinion, the Archdiocese was struggling to respond effectively to the complaints being received and the legal proceedings being commenced and, given the Vicar General's other responsibilities, it was not sustainable for him to continue to be solely responsible for managing these issues
- victims were entering into legal processes that were likely to mean not only long delays but also uncertain or adverse outcomes for them

- there were increased concerns in relation to this issue on the part of civic leaders
- the then Governor of Victoria and retired judge, the Hon. Richard McGarvie, and then Premier of Victoria, the Hon. Jeff Kennett MP, raised this issue with Archbishop Pell and expressed strong views that the Church should act quickly to address the issue and introduce some changes in the Church's approach.²²⁸

Cardinal Pell told us that, because of these issues and his concerns, upon his appointment as Archbishop and notwithstanding the initiative of the Bishops Conference in developing Towards Healing, he took immediate steps to develop a new process that he believed would better assist victims. It was designed as a process that operated independently of the Archdiocese.²²⁹

To implement this proposal, in July 1996 Archbishop Pell instructed Corrs, solicitors for the Archdiocese of Melbourne, to put together a new scheme for responding to claims of child sexual abuse within the Archdiocese.²³⁰

Cardinal Pell told us that, by August 1996, the framework of the proposal was clear. It was set out in the document entitled Special Issues Four Part Plan – 14 August 1996,²³¹ which continued to evolve.²³²

By mid-October 1996 the proposal was in close to final form.²³³

1.5 The Melbourne Forum

In 1996 a public meeting was proposed to address the issue of abuse by Catholic clergy in the Archdiocese.

During September 1996, Mrs Foster was invited to become part of the Victim's Advisory Group, which was created to assist with a public discussion of the sexual abuse issues at the proposed public meeting.

The public meeting became known as the Melbourne Forum.²³⁴ Mrs Foster understood that the Melbourne Forum was an initiative of the Pastoral Response Office and was intended to address Catholic clergy abuse in the Archdiocese.²³⁵

The Melbourne Forum took place on 19 October 1996.²³⁶ Mrs Foster gave evidence that Archbishop Pell and a number of other Catholic Church leaders were seated on a stage.²³⁷ She said that during the forum it was announced that the Melbourne Response would be formed, although not much detail was given.²³⁸

Mrs Foster said that the Catholic Church leadership did not engage with the audience during the forum and that they did not appear to want to listen to parents' descriptions of their experiences.²³⁹ Mrs and Mr Foster believed that the real purpose of the Church in holding the forum was to announce the Melbourne Response.²⁴⁰

Mrs Foster said she had written a letter for the Melbourne Forum, which she asked someone else to read out on her behalf.²⁴¹ She said that while her letter was being read out the Catholic Church leadership stood up, walked off the stage and did not return.²⁴²

However, we also received evidence that suggests that not everyone was dissatisfied by the outcome of the forum.

Ms Last, who worked at the Pastoral Response Office, reported to Archbishop Pell that she had received positive feedback from the victims and others about the forum.²⁴³

Cardinal Pell said that he does not recall the forum as being ‘an unpleasant or rowdy meeting’ and that he has no recollection of anyone walking out of the forum while someone was speaking.²⁴⁴

Archbishop Hart gave evidence that he does not recall this forum ending in any incident or controversy. He said that he has no recollection of anyone from the Church walking out before it had ended.²⁴⁵

Notwithstanding these differing accounts, we accept Mrs Foster’s recollection of the events. Given the circumstances of the public meeting and her personal interest in the reading of the letter, she is less likely to recall the events incorrectly. The impression the meeting left on the senior members of the Church is different, but no doubt both Cardinal Pell and Archbishop Hart have attended multiple meetings and recollections as to the impact of the events on the audience may not be as clear for them as for Mrs Foster.

It is clear that the Melbourne Forum did not allay concerns that the Fosters and others had about the issues it was to address.

1.6 The Melbourne Response is announced

On 30 October 1996, 11 days after the Melbourne Forum, Archbishop Pell announced the Melbourne Response.²⁴⁶ A pamphlet was also issued, which described each of the components of the Melbourne Response and set out contact details.²⁴⁷ It included a general apology. The elements of the response are considered in more detail in the sections that follow.

The Melbourne Response identified a maximum financial payment of \$50,000. Mrs Foster’s immediate reaction to reading the details of the Melbourne Response was outrage. She said, ‘Anthony and I considered \$50,000 to be an entirely inadequate amount to compensate Emma for the lifelong damages caused by the sexual abuse’.²⁴⁸

1.7 Towards Healing is adopted

In November 1996, less than one month after the Melbourne Response was announced, the Bishops Conference approved the Towards Healing protocol, which was to come into operation on 31 March 1997.²⁴⁹ Catholic Religious Australia also approved this document in principle.²⁵⁰

The Bishops Conference also carried a motion replacing the Bishops Committee with the National Committee for Professional Standards, which was established as a joint committee of the Bishops Conference and Catholic Religious Australia.²⁵¹

At the November meeting, the Bishops Conference amended the proposed text of Towards Healing to take into account the fact that the Archdiocese of Melbourne had already implemented the Melbourne Response.²⁵²

Cardinal Pell told us that, while he was developing the Melbourne Response, he was aware that work was also being undertaken to develop Towards Healing through the Bishops Conference and the National Committee for Professional Standards.²⁵³ Of course, when he became Archbishop, the Bishops Conference had not yet accepted the Towards Healing procedures.²⁵⁴ However, he must have been aware of the substantial progress that had been made in their preparation.

In the course of giving evidence in case study 8, Cardinal Pell explained his position:

I in no sense ever regarded a single response as being a high priority. I thought what was necessary was to deal with the suffering of the victims in an effective way and of course by acting the way we did, we were able to put into practice a system, which began three or four or five months before the national system began.²⁵⁵

Cardinal Pell accepted that introducing the Melbourne Response when he did had the effect that Towards Healing, which was approved a few weeks later, was not a national response.²⁵⁶

A consequence of this is that like complaints may not be treated in a like manner and consistency of outcome would not be achieved. Because Towards Healing did not cap the financial payment, it could be and has resulted in a more generous payment to survivors than the Melbourne Response, which was initially capped at \$50,000.

1.8 Overview of the Melbourne Response

The Melbourne Response adopted the goals set out in a 1996 Pastoral Letter from the Bishops Conference addressing the issue of sexual abuse by priests and religious.²⁵⁷ Those goals are truth, humility, healing for the victims, assistance to other persons affected, an adequate response to those accused and to offenders and the prevention of any such offences in the future.²⁵⁸

These are also the principles that underpinned the Towards Healing protocol. Earlier case studies have considered the Towards Healing protocol.²⁵⁹

The key features of the Melbourne Response are:

- the appointment of Independent Commissioners who inquire into allegations of sexual abuse, determine their credibility and make recommendations about action to be taken against those accused of abuse
- a free counselling and professional support service, known as Carelink
- the establishment of a Compensation Panel that gives the Archdiocese recommendations as to the making of ex gratia payments to victims.²⁶⁰

Mr O’Callaghan QC was appointed the first Independent Commissioner in October 1996. He remains in this position. From the beginning of the Melbourne Response until 31 March 2014, he has investigated 351 complaints of abuse that fall within the Terms of Reference of the Royal Commission.²⁶¹ He said that he has upheld 97 per cent of those complaints.²⁶²

Mr Gleeson QC was appointed an Independent Commissioner in 2012.²⁶³ He has considered 16 complaints of child sexual abuse as Independent Commissioner. He has upheld five complaints, declined one and has not yet made a determination on 10.²⁶⁴

When the Melbourne Response was established, ex gratia payments were capped at \$50,000. This amount increased to \$55,000 in 2000 and was again increased in 2008 to its present cap of \$75,000.²⁶⁵

Mr Curtain QC, the current Chair of the Compensation Panel, suggested that the Archdiocese increase the cap in 2008. He did that because he became aware that the Victims of Crime Compensation cap, on which the Melbourne Response compensation cap was based, had increased.²⁶⁶

1.9 Review of the Melbourne Response

There has been no formal review of the Melbourne Response. On 4 April 2014, Archbishop Hart announced that he intended to hold a consultation process to review the Melbourne Response.²⁶⁸

Before the public hearing for this case study, Archbishop Hart told us that he was concerned that an archdiocesan consultation process could be perceived as conflicting with or impacting upon the work of the Royal Commission. He sought advice as to whether the Archdiocese should defer any consultation process until the Royal Commission has received and considered submissions made in response to its *Issues paper 6: Redress schemes*.²⁶⁹

The Chair of the Royal Commission responded:

I appreciate your concern to avoid any perception of conflict with the work of the Royal Commission. I can assure you, however, that the Royal Commission does not seek to delay any institution's reconsideration of previous compensation or other redress arrangements it has made, or any consultation processes an institution wishes to undertake as part of that process.²⁷⁰

While giving evidence in this public hearing, Archbishop Hart announced that the Hon. Donald Ryan QC, a former Federal Court judge, had been appointed to consult and provide a report on compensation payments under the Melbourne Response.²⁷¹ The matters to be considered include:

- whether the current cap of \$75,000 should be increased or removed
- how the amount of compensation paid to complainants should be determined
- whether past cases in which compensation has been paid should be reviewed and the procedures that should apply to such a review
- any changes to the structure or practices and procedures of the Melbourne Response.²⁷²

Consultation will include victims of clergy child sexual abuse, their advocates and legal representatives, the Independent Commissioners, current and former members of the Compensation Panel, Carelink and the Truth, Justice and Healing Council.²⁷³

The Royal Commission has published a consultation paper that discusses redress and civil litigation. It will publish a report with recommendations by mid-2015. Many of the issues raised in this case study are relevant to redress and will be dealt with in the final report.

2 Operation of the Melbourne Response

This section discusses the operation of the Melbourne Response at the time of the Royal Commission's public hearing in August 2014.

2.1 Archdiocese of Melbourne

Archbishop Hart has overall responsibility for the operation of the Melbourne Response.²⁷⁴ However, for individual claims, his role is 'limited to acting on the recommendations of the Independent Commissioner and the Compensation Panel, providing apologies to the victims and authorising payments to victims in accordance with the Panel's recommendations'.²⁷⁵

Archbishop Hart told us that he has always acted upon the recommendations of the Independent Commissioners and the Compensation Panel.²⁷⁶ He said that the Archdiocese provides information, files and access to personnel within the Archdiocese if an Independent Commissioner requests them.²⁷⁷

Corrs has been the solicitor for the Archdiocese of Melbourne for more than 50 years. Mr Leder, first as a solicitor and then as a partner, began acting on behalf of the Archdiocese in about 1992.²⁷⁸ In more recent times he has become the Archdiocese's principal solicitor in relation to sex abuse and various other matters.²⁷⁹

As well as being the solicitor for the Archdiocese of Melbourne, the Melbourne office of Corrs:

- is the instructing solicitor and provides administrative assistance to the Independent Commissioners²⁸⁰
- provides legal advice to Carelink – a free counselling and professional support service²⁸¹
- provides administrative support to the Compensation Panel.²⁸²

2.2 The Independent Commissioners

Mr O'Callaghan QC's initial retainer was for six months. 'It was anticipated that things would be really attended to in a very short space of time.'²⁸³ This proved to be a significant misjudgment. Mr O'Callaghan QC told us that 'whilst there was a spate of earlier applications, there's never been a diminishing in a flow of applications'.²⁸⁴

Mr O'Callaghan QC's appointment was confirmed in 2001, when Archbishop Hart was installed as Archbishop.²⁸⁵ There was no change to the terms of his appointment at that time.²⁸⁶ Mr Gleeson QC was engaged as counsel assisting Mr O'Callaghan QC on 2 June 1997.²⁸⁷

Since Mr Gleeson QC's appointment as Independent Commissioner, complaints have been allocated on a rotational basis between him and Mr O'Callaghan QC.²⁸⁸

Mr O'Callaghan QC told us that the Archdiocese has never imposed any time limits on the handling of complaints, any budgetary restrictions or any constraints other than the requirements of procedural fairness and Canon 1717 of the Code of Canon Law 1983.²⁸⁹ He said:

I believe I have been independent in all respects. This is not to say I don't consult with people, but I – so far as I'm concerned and ever have been, I make the decisions without fear or favour and without any influence from other persons.

As noted above, Corrs is Mr O'Callaghan QC's instructing solicitor and he primarily deals with Mr Leder of that firm.²⁹¹ As we have noted, Mr Leder is also the solicitor for the Archdiocese. This creates some potential difficulties, which we discuss later in this report.

Terms and conditions

The terms and conditions of Mr O'Callaghan QC's and Mr Gleeson QC's appointments are the 'primary sources of procedures to be followed in the investigation of complaints of child sexual abuse'.²⁹²

Those terms and conditions are that the Independent Commissioners shall:

- forthwith enquire into any complaint of sexual abuse by a church person made or referred to them
- refer the complainant to Carelink
- consult with and advise the Compensation Panel
- make recommendations to the Archbishop about action to be taken in relation to Church personnel against whom a complaint has been made²⁹³
- immediately inform the complainant that he or she has an unfettered and continuing right to take their complaint to the police
- appropriately encourage the exercise of that right
- not act so as to prevent any police action in respect of allegations of sexual abuse by church personnel.²⁹⁴

The Independent Commissioners can require any priest, religious or other person under the jurisdiction of the Archbishop to attend upon them, produce documents and answer questions, unless they tend to incriminate that person.²⁹⁵

Mr O'Callaghan QC told us that Canon 1717 empowered the Independent Commissioners to require the attendance of priests and the production of documents, unless the priests objected on the grounds of self-incrimination.²⁹⁶ He said, 'whilst I am nominally an investigator under Canon 1717, I always took it as being for the limited purpose of giving me compulsive powers over priests which I would not otherwise have'.²⁹⁷

Independent Commissioners also conduct hearings at which the complainant and the accused, and their legal representatives if desired, may be present.²⁹⁸ These are known as ‘contested hearings’. They are considered in more detail below.

On 30 July 2002, the Independent Commissioner’s terms and conditions of appointment were extended to cover allegations of physical and emotional abuse.²⁹⁹ In February 2011, they were again amended following discussions with representatives of Victoria Police.³⁰⁰ These new changes meant that, if a complainant decided to go to the police after the Independent Commissioner had informed the alleged offender of the complaint, the Independent Commissioner would not inform the alleged offender of this for at least four weeks or such further period as agreed with the police. Formerly, the Independent Commissioner would immediately inform solicitors of the alleged offender that, because the complaint had been referred to the police, he would take no further steps until this process was completed.

The Independent Commissioners’ dealings with the police are considered further below.

Procedures

Both Cardinal Pell and Archbishop Hart said that the determination of the processes and procedures of the Independent Commissioner was left to Mr O’Callaghan QC.³⁰¹

The terms and conditions of appointment provide:

The Commissioner shall determine the procedure to be followed in respect of enquiries and hearings and may publish to the Church authorities and other relevant persons details of such procedures.³⁰²

The Commissioner will formulate procedures for dealing with and recording complaints of sexual and other abuse and other matters.³⁰³

The Independent Commissioners have no documented rules and procedures and have not published details of their procedures or provided them to the Church authorities or other relevant persons.³⁰⁴

Mr O’Callaghan QC said that in almost all cases he explains the procedures to the victim.³⁰⁵ Those procedures are that he:

- conducts an interview with the complainant, which is transcribed and forwarded to the complainant inviting amendments and additions
- informs the complainant of their continuing and unfettered right to report to police
- informs the accused of the complaint (if the accused is alive)
- invites the complainant and the accused to participate in a contested hearing if the accused denies the complaint
- makes recommendations about the ministry of the accused.³⁰⁶

If an Independent Commissioner makes a finding that a complainant is a victim of child sexual abuse, he writes a report for the Compensation Panel and refers the complainant to Carelink.³⁰⁷

On occasion, Mr O’Callaghan QC has referred complainants to Carelink before making a finding. He has done this because of their distress or concern, although he was not sure whether he was ‘precisely empowered’ to do so.³⁰⁸ We are satisfied that he is empowered to do so.³⁰⁹

Mr Gleeson QC has adopted the processes that Mr O’Callaghan QC follows.³¹⁰

Interviews with complainants

Initially the Archdiocese paid for Mr O’Callaghan QC to rent rooms in Optus House in Collins Street, Melbourne, which was not archdiocesan premises, to meet with complainants. He continued there for two or three years.³¹¹

When asked why this arrangement changed, Mr O’Callaghan QC said:

I think I said, ‘This is becoming too cumbersome. It’s much more convenient to meet with people in my chambers’, because what was happening was that I would go down to Optus House to interview a person and deal with the files there and then go back to Chambers.³¹²

Mr Paul Hersbach, a survivor whose experience with the Melbourne Response is set out later in this report, told us:

I will never forget Mr O’Callaghan’s chambers. It was a massive room – monstrous – it seemed to me to be the domain of an experienced legal professional. There were papers and books strewn everywhere. Mr O’Callaghan looked very comfortable but I was not.³¹³

Mr O’Callaghan QC rejected that Mr Hersbach felt this way and referred to parts of an interview between Mr Hersbach and Carelink staff.³¹⁴

The transcript of that interview records Mr Hersbach as saying:

I was more concerned that I didn’t understand the process and I was very much a [inaudible] type of person and I like to know the purpose of things. I really felt that I didn’t know that and I spoke to O’Callaghan about it and he explained to me the situation and it is little but the reverse – the process – and it is now that I am here I am a little more comfortable because as far as I am concerned I have come to Carelink to be referred to services and there is no burden of proof on myself anymore and I felt that there was that burden of proof and that has been difficult to cope with so I went and saw O’Callaghan and a very interesting gentleman, extremely talented, and I quite liked his style and his approach – that was affecting my career and he was able to answer my questions and I understood his position as well so yes I really waited to hear a response from him as well before I did anything else.³¹⁵

Mr O’Callaghan QC rejected the suggestion that a complainant might feel overwhelmed or uncomfortable telling their story in a QC’s chambers. He said, ‘If I felt that my chambers were not amenable to providing comfort and assistance to victims, I would do something about it’. When asked whether complainants might not raise the issue with him, Mr O’Callaghan QC replied: ‘Well, I can understand that. But I have been around the block a few times and I think people don’t find it difficult to talk to me.’³¹⁷ He also said he endeavours to treat people with courtesy.

No doubt following this public hearing, Mr O’Callaghan QC will reflect on whether his chambers are the most appropriate place to interview complainants. Given the care with which we considered this issue when developing the Royal Commission’s practice, and the vulnerabilities of many survivors, we doubt whether it is appropriate to conduct the interviews in a barrister’s chambers. For many people the general environment of chambers may be threatening, if not overwhelming, and a barrister’s room is unlikely to provide a sense of confidence and security for a survivor.

Mr Gleeson QC also meets with complainants at his chambers.³¹⁸ He said that he has thought carefully about the best place to meet with complainants. He was not convinced that a serviced office would be better and he thought that it would be inappropriate for him to go to the complainant’s house.³¹⁹ No doubt Mr Gleeson QC will also review his position in light of the evidence given at the public hearing.

Investigation of complaints

After speaking to a complainant, Mr O’Callaghan QC and Mr Gleeson QC usually obtain the archdiocesan file of the accused priest.³²⁰ Mr O’Callaghan QC said that in a number of cases an accused also had a ‘red file’, which contained complaints of sexual abuse or sexual improprieties.³²¹

In most cases Mr O’Callaghan QC obtained the relevant file to verify details of the complainant’s account, such as where the priest was located at the time of the alleged abuse.³²² If an accused had been convicted of similar offences, he considered this to be relevant to the assessment of the likelihood of the later complaint being true.³²³

Mr O’Callaghan QC did not separately and independently seek documents from the accused and did not seek more documents from the complainant than they initially provided.³²⁴

Standard of proof

Mr Leder gave evidence that, at the time the Melbourne Response was established, no consideration had been given to the standard of proof that might be applied by the Independent Commissioner when making a decision. This issue was left to the Independent Commissioner.³²⁵

The terms of appointment of the Independent Commissioner do not set out a test or standard of proof.³²⁶

Mr O’Callaghan QC and Mr Gleeson QC told us that, when determining to accept an allegation of abuse, they require satisfaction to a standard of satisfaction on the balance of probabilities, mindful of the matters mentioned in *Briginshaw v Briginshaw* (1938) 60 CLR 336 (discussed in the Preface to this report).³²⁷

If an accused has been the subject of other complaints and the present complainant is plausible, Mr Gleeson QC will uphold the complaint, although he is mindful of the fact that he is making a serious finding.³²⁸

He explained that plausibility is a ‘minimum requirement’ and that it involves ‘someone who presents as being genuine, there is no apparent inconsistencies in their story, they seem to be rational, not delusional, when they recount the abuse they appear to be – and this is typically the case, they appear to be reliving the moment’.³²⁹

Mr Gleeson QC is of the view that the Independent Commissioners’ process allows complainants to avoid difficulties they might face in a civil action, including the statutes of limitations. He rejected the suggestions that the Independent Commissioners apply a lower standard of proof than would be applied in a civil action.³³⁰

Engaging with the accused

Mr O’Callaghan QC’s practice is to take a transcribed statement from the complainant and then ask the complainant whether they wish to make any changes and whether they agree to him submitting the transcript to the offending priest. He said that complainants almost always agree.³³²

Mr O’Callaghan QC writes to the accused, enclosing the transcript of his interview with the complainant. He said, ‘I would make it quite clear that, “I have made no decision as to the validity or otherwise of the complaint and will not do so until you have had a full opportunity to respond”’.³³³

Mr O’Callaghan QC said he may not write to an accused if they were in prison or had already been convicted.³³⁴ However, he cannot recall ever writing to a priest in jail.³³⁵ Mr O’Callaghan QC agreed that this probably meant that accused priests who were in jail were effectively excluded from the process.³³⁶

Mr Gleeson QC said that, if the accused is alive, he extracts the complainant’s allegations of abuse from the transcript and puts them in a draft letter to the accused seeking a response to the allegations.³³⁷ He gave evidence that he will first send this draft to the complainant to ‘ensure that they are comfortable with the contents of the letter that is to be forwarded’.³³⁸

Mr Gleeson QC invites the accused to meet with him to discuss the allegations and indicate whether they admit them, partially admit or deny them, or deny them entirely.³³⁹

Contested hearings

A contested hearing will be held if an accused denies, or substantially denies, a complaint.³⁴⁰

Mr Gleeson QC said that he ceases further active investigation of the complaint once he has notified the complainant and the accused of the need for a contested hearing. He does so 'in order to preserve impartiality'.³⁴¹ An experienced barrister is engaged as counsel assisting the Independent Commissioner.³⁴²

Mr Gleeson QC told us that it is the role of counsel assisting to contact the complainant and the accused and explain the process of a contested hearing.³⁴³ Counsel assisting will also provide the accused with particulars of the allegation, which are based on the information provided by the complainant to the Independent Commissioner.³⁴⁴ The accused is not required to provide a statement in reply.³⁴⁵

Mr Gleeson QC said that, if the complainant and/or the accused wish to rely on evidence of other people at the hearing, witness statements are exchanged before the hearing.³⁴⁶

He told us that the role of counsel assisting is to ensure that all relevant evidence is brought before the Independent Commissioner at the hearing in a balanced way.³⁴⁷ Counsel assisting is neither a prosecutor nor a defender and their role is flexible.³⁴⁸ This may mean that, where one side is unrepresented and the other is represented, counsel assisting will be more inclined to explore the weaknesses and inconsistencies in the evidence of the represented party.³⁴⁹

The procedures at the hearing are generally as follows:

- Complainants are required to give evidence.
- If a complainant is represented, this evidence will be led by their lawyer; otherwise, it is led by counsel assisting.³⁵⁰
- An accused can elect whether to give evidence.³⁵¹
- Both the complainant and the accused have the opportunity to cross-examine each other's witnesses.³⁵²
- At the conclusion of the evidence, the Independent Commissioner may request written submissions from the complainant and the accused.³⁵³
- The Independent Commissioner will hand down a determination regarding the alleged abuse with reasons.³⁵⁴
- If the Independent Commissioner finds in favour of the complainant, he provides a copy of the reasons for the decision to the Compensation Panel.³⁵⁵

Arrangements can be, and have been, made to enable the complainant to give evidence and watch proceedings from a separate room.³⁵⁶ The presiding Independent Commissioner ‘will not allow cross examination that ridicules or abuses the witness or is otherwise inappropriate’.³⁵⁷

Mr O’Callaghan QC said that in contested hearings he applies the rules of evidence. However, he did not think he specifically tells the parties this.³⁵⁸

Mr Gleeson QC was engaged as counsel assisting the Independent Commissioner in 13 contested hearings concerning 17 contested complaints.³⁵⁹ He has presided over one contested hearing since being appointed Independent Commissioner.³⁶⁰

When asked whether he considered other ways of determining a contested complaint, Mr O’Callaghan QC said, ‘No, I consider that the process of examination and cross-examination is by far the most satisfactory and true method of determining the validity’ of the complaint.³⁶¹

Mr Gleeson QC said a contested hearing is necessary because, if the accused denies the allegations, ‘the complainant’s allegations must be tested and natural justice must be provided to a respondent’.³⁶² He said:

I think it would be, if not impossible, very, very difficult in a case of a contested complaint of paedophilia to make a finding of the *Briginshaw* standard that a person had engaged in paedophilic activity by reading some papers. I can’t conceive of that being a fair or just approach.³⁶³

His experience was that most victims felt empowered by the process.³⁶⁴

Legal representation in contested hearings

Mr Gleeson QC told us that both the complainant and the respondent are entitled to independent legal representation and that:

- of the 18 complaints that have been the subject of a contested hearing, seven complainants were legally represented
- of the 14 accused whose conduct has been the subject of a contested hearing, 11 were legally represented.³⁶⁵

Mr O’Callaghan QC said that nothing was provided in writing to the parties before a contested hearing that indicated to the parties that the Archdiocese would meet the costs of legal representation.³⁶⁶

He said that the costs of legal representation would be paid if the legal representatives requested funding.³⁶⁷ If no request was made, the costs of representation were not met by the Archdiocese.³⁶⁸ When asked whether he thought this was a practice that should be formalised and applied more consistently, Mr O’Callaghan QC responded:

No, I don’t think I did. There have been 20-plus contested hearings, I think, over the period of 18 years. So I didn’t contemplate that.³⁶⁹

In our opinion, if the Archdiocese is prepared to meet the cost of lawyers, as it obviously should, both a complainant and the respondent should be made aware of the position at the commencement of the process.

In our opinion, Mr Gleeson QC follows an appropriate procedure. He told us that, in his view, the parties are entitled to have legal representation and to have that funded by the Archdiocese.³⁷⁰ If a complainant is not legally represented, he will inform them that they are entitled to be legally represented. He explains the role played by counsel assisting and that counsel assisting is not a lawyer for the complainant.³⁷¹

Mr Gleeson QC said that when he was counsel assisting he became well acquainted with the complainant and the respondent early on in the process and would typically have a discussion about whether they needed a lawyer.³⁷²

The Church parties, in their submissions, accepted that there would be merit in a standardised approach by the Independent Commissioners to the giving of advice concerning legal representation. They suggested the preparation of an information sheet.³⁷³ In our opinion, this should be done.

Legal advice

In an earlier draft of the Independent Commissioner’s terms of appointment, there was a reference to the funding of legal representation.³⁷⁴ However, Mr O’Callaghan QC said that, other than contested hearings, there were no circumstances to his knowledge in which the Archdiocese paid the legal fees of either the accused or the complainant concerning their dealings with the Independent Commissioner.³⁷⁵

Mr O’Callaghan QC told us that, when a complainant first contacts him, legal advice is not mentioned.³⁷⁶ He also said that, if a complainant does not have legal representation at the initial interview, he would not advise them to obtain it, because he did not consider it necessary.³⁷⁷

However, in a small number of cases he advised a complainant to seek independent legal advice about their right to sue in the courts because it was apparent that the abuse took place after the Archdiocese was aware of previous abuse by that priest.³⁷⁸

Mr O’Callaghan QC gave this advice in one instance because he was satisfied that the then Archbishop, the late Sir Frank Little, had prior knowledge about the behaviour of the priest and had done nothing except transfer the priest.³⁷⁹ He advised this complainant to seek independent legal advice because:

I thought he would have much more success, and I think he did. I don’t recall the details of it, but typically, of course, if you can mount a case at common law, you will recover much more than the ex gratia compensation.³⁸⁰

He said he relied upon his recollection when considering whether there is prior knowledge in relation to a complaint. He did not review the accused priest’s ‘red file’, which contains complaints of sexual abuse or sexual improprieties in relation to that priest, for this purpose.³⁸¹

Mr Gleeson QC told us that, when he initially speaks to a complainant, he makes it clear that they are ‘entitled to be accompanied by someone, for example a friend, relative, lawyer or all of the above’.³⁸² He said that most complainants attend the initial meeting with a lawyer or a support person or both, although sometimes the complainant comes alone.³⁸³

If a complainant is not legally represented at the first meeting, where the accused is deceased and the complaint appears to be valid Mr Gleeson QC does not generally raise the issue of legal representation with the complainant.³⁸⁴

He said that, if an accused is alive, he has advised the complainant of their right to seek legal advice or representation.³⁸⁵

Mr Gleeson QC has not had occasion to consider whether a complainant has any prospects of taking civil action on their complaint. He told us that he does not consider that to be part of his role.³⁸⁶

From this evidence it would seem that there is a variability of practice between the Commissioners, which may lead to inconsistencies in the handling of particular complaints.

The Church parties accepted in their submissions that the procedures that Independent Commissioners have adopted allow more flexibility than is desirable on what is said to people about bringing a lawyer or support person to the initial interview or seeking legal advice in certain circumstances.³⁸⁷

We agree. A settled procedure that is applied in each case should be adopted.

Complainants under the age of 18

The terms and conditions of appointment of the Independent Commissioner include the following:

The Commissioner shall interview a child or conduct a hearing at which a child is present, only with the written authority of the parent or guardian of such a child, and whom the Commissioner shall request be present at such interview or hearing.³⁸⁸

Only three minors, including Emma and Katie Foster, have gone through the Melbourne Response scheme.³⁸⁹ Mr O'Callaghan QC interviewed Emma Foster with her parents present and interviewed Katie Foster in the presence of her parents and psychologist, Ms Tania Smith.³⁹⁰

Mr Leder said that, if a complaint was made by, or on behalf of, a child in the future, he would advise that it may be best to have a trained person talk to, and receive, the account of abuse from the child.³⁹¹ He said that this would ultimately be a decision for the Independent Commissioners.³⁹²

Mr Gleeson QC has never had a complainant under the age of 18.³⁹³ He said he would expect that there should be a child psychologist engaged to assist but that he would be guided by the parent or guardian when deciding what was appropriate in the circumstances and respect their wishes.³⁹⁴

2.3 Reporting to the police

Consultation with Victoria Police

In 1996 the Victoria Police were consulted on the then draft terms of appointment of the Independent Commissioner.³⁹⁵ We were told that Assistant Commissioner Gavin Brown recommended that there be an express requirement that the Independent Commissioner encourage complainants to report to the police.³⁹⁶

Archbishop Hart gave evidence that in early 2010 the Independent Commissioner, the Archdiocese and Mr Leder engaged in a further dialogue with the Victoria Police as to the possibility of adopting a protocol with the police concerning reporting.³⁹⁷

Although this protocol did not eventuate, the terms of appointment of the Independent Commissioner were amended to include additional matters relating to police issues. The amendments included:

- that the Independent Commissioner will endeavour to meet regularly with the squad manager of the Sexual Crime Squad, or their delegate (Liaison Officer), to discuss issues of mutual interest and concern
- that, if a complainant informs the Independent Commissioner that they wish to take their complaint to the police, the Commissioner will refer the complainant to the Liaison Officer

- that the Independent Commissioner will ask the complainant to provide written acknowledgment that the Independent Commissioner has encouraged them to report to the police and that they do not wish to, unless the offender is dead or the complainant has previously reported to the police.³⁹⁸

The terms and conditions of appointment also state that, if an Independent Commissioner refers a complainant to the police and if the complainant so wishes, the Independent Commissioner may refer the complainant to Carelink for free counselling and psychological support.³⁹⁹ Archbishop Hart gave evidence that the police approved these changes.⁴⁰⁰

There were further discussions with police and the Independent Commissioners in 2012. However, no further changes were made to the terms of appointment.⁴⁰¹

In August 2014, as part of its ongoing development of its process for investigation and prosecution, the police provided brochures to Monsignor Bennett, the Vicar General of the Archdiocese, which set out options for victims going through the Melbourne Response process. These options include:

- making a formal police report, which will initiate an investigation
- telling your story and deferring any decision to proceed
or
- making a statement with a clear decision not to proceed formally.⁴⁰²

In the covering letter, Rod Jouning, the Detective Superintendent, said:

In line with our ongoing reforms, in responding to reports of adult sexual abuse, we recognise and acknowledge the victim's right to decide the course of action they wish to take. Fundamental to this decision making is a sound understanding of the various options available, together with information on what each of these pathways may entail.⁴⁰³

I would also like to reiterate that the information contained in this material is brief and it is our view that victims should be afforded the opportunity to speak with a specialist police investigator to discuss the options fully and answer any queries that may arise.⁴⁰⁴

The approach of the Independent Commissioners to reporting to the police

Mr Gleeson QC said that at the initial meeting with the complainant he informs the complainant of their right to report their allegations of sexual abuse to the police and encourages them to do so, even if they know their abuser is dead.⁴⁰⁵

Mr Gleeson QC recommends that complainants go to the police first. This is because, if they go through the Melbourne Response and then go to the police, lawyers for the accused can subpoena the Independent Commissioner's files to compare what the complainant told the Independent Commissioner with what they have told the police.⁴⁰⁶

Mr Gleeson QC said that, if complainants do not want to make a report to the police, his terms of appointment prevent him from reporting the alleged abuse to the police unless required to do so by law.⁴⁰⁷

Mr O'Callaghan QC told us he only reported complaints to the police if the victim wanted to go to the police.⁴⁰⁸ He said that, unless the victim consented to him reporting the complaint or the name of the offender to the police, he was bound by confidentiality.⁴⁰⁹

Mr O'Callaghan QC also said he encourages complainants to go to the police. However, he tells them that the Melbourne Response process comes to an end if they go to the police.⁴¹⁰ Mr O'Callaghan QC said that this was because it would be quite inappropriate for him to be conducting a concurrent investigation with the police.⁴¹¹ He told us that he does not believe that this acts as a disincentive to complainants going to the police.⁴¹²

Mr O'Callaghan QC told us that in a limited number of cases he advised complainants about what would happen if they took their complaint to the police.⁴¹³ He considers that he is subject to a duty or obligation to inform complainants about his view on what might happen if they go to the police, although it is not based on anything in the terms of his appointment or on discussions he has had with the police.⁴¹⁴ He said:

If a victim came before me pursuant to the terms and conditions of appointment, I have in my apprehension a duty to act in a responsible and careful way and not negligently. For instance, if I failed to bring to the attention of a victim what might or might not happen, he could well or she could well complain that I had an obligation to do so.⁴¹⁵

Mr O'Callaghan QC agreed that his role was to encourage complainants to go to the police, but he said, 'if I was or held a reasonable opinion that they may have difficulty in sustaining that approach to the police I thought it appropriate to indicate so'.⁴¹⁶

Mr O'Callaghan QC agreed that it is the role of the police to talk to complainants about what is likely to happen. He agreed that, if a complainant is told that the police are best placed to tell them what is likely to happen, they might be more likely to go to the police.⁴¹⁷

Mr O'Callaghan QC's advice to Mr Paul Hersbach and Mr AFA about reporting to the police is considered later in this report. As we discuss there, we have some concerns about the fact that this advice was given and about the content of this advice.⁴¹⁸

Mr Gleeson QC gave evidence that he does not give advice to complainants about his opinion on what will happen if they take their complaint to the police.

He said that, if the accused is deceased, he may explain to the complainant that the Victoria Police have stated publicly that they would like complainants to make reports to the police about dead offenders. He also explains that his understanding is that the police will record the complaint and may take a brief statement.⁴¹⁹

The Victorian legislation

There has been a recent change in the law in Victoria on the obligation to report knowledge of sexual assault of children to the police.

The *Crimes Amendment (Protection of Children) Act 2014* (Vic) came into force on 27 October 2014. Section 327(2) of that Act provides:

Subject to subsections (5) and (7), a person of or over the age of 18 years (whether in Victoria or elsewhere) who has information that leads the person to form a reasonable belief that a sexual offence has been committed in Victoria against a child under the age of 16 years by another person of or over the age of 18 years must disclose that information to a member of the police force of Victoria as soon as it is practicable to do so, unless the person has a reasonable excuse for not doing so.

Penalty: 3 years imprisonment

There is no obligation of disclosure in circumstances where a victim has reached 16 years of age and does not want the information disclosed. Section 327(5) of the Act provides:

A person does not contravene subsection (2) if -

- (a) the information forming the basis of the person's belief that a sexual offence has been committed came from the victim of the alleged offence, whether directly or indirectly; and
- (b) the victim was of or over the age of 16 years at the time of providing the information to any person; and
- (c) the victim requested that the information not be disclosed.

The Church parties submitted that, in light of these changes, the Archdiocese should review the terms of appointment for the Independent Commissioners to further clarify the expectations of the Archdiocese concerning the rights of victims and the reporting of abuse.⁴²¹

We agree. The issue is important. A failure to report may have consequences for other children who may become victims of the alleged offender.

2.4 Carelink

Overview

Carelink is an organisation provided for and funded by the Archdiocese. It provides important services for survivors of sexual abuse.

Carelink's role is

- to coordinate and fund treatment, counselling, medication and other support for victims of abuse
- to prepare psychiatric medical reports for victims who apply for compensation.⁴²²

Carelink does not provide in-house counselling; it is a referral and funding service.⁴²³

Carelink refers clients to a variety of counsellors, psychiatrists, psychologists and other external health service providers. Those providers are either chosen by the client or suggested by Carelink.⁴²⁴ There is no limit to the amount of counselling that Carelink clients can receive.⁴²⁵

Carelink will fund the provision of services if satisfied that there is a causal link between the abuse and the client's health issue.⁴²⁶ The services might include drug and alcohol detoxification; relationship counselling; providing social workers and financial planners; and dental treatment if clients have eating disorders.⁴²⁷ The question of causation is often a medical issue and is dealt with in the psychiatric assessment.⁴²⁸

Carelink is also able to provide limited financial assistance to clients in certain circumstances.⁴²⁹ This includes food vouchers and assistance with other costs that clients are unable to fund in the short term, such as payment of utilities.⁴³⁰ In addition, it can offer clients up to \$300 in financial assistance each year.⁴³¹

If a client does not have private health insurance but has a history of psychiatric hospital in-stays or may require such treatment in the future, Carelink will enter the client into a private health insurance plan to ensure that private hospitalisation, including access to alcohol or drug rehabilitation, is available for clients who are unwell.⁴³²

Carelink coordinates the provision and funding of counselling and other services for secondary victims as well as primary victims.⁴³³ The need for this assistance is assessed on a case-by-case basis.⁴³⁴

Structure

Professor Ball was appointed Director of Carelink in 1996 and remained in that position until 2006.⁴³⁵ His role was to undertake psychiatric assessments of clients to determine the treatment they required.⁴³⁶ Professor Ball's role, and the controversy relating to his appointment, is discussed later in this report.

In 2009, Dr Susan Brann was appointed Consulting Psychiatrist to Carelink.⁴³⁷ The Consulting Psychiatrist has overall responsibility for conducting an assessment of the client's condition, making referrals and writing reports for the Compensation Panel.⁴³⁸

Dr Brann undertakes psychiatric assessments of clients but works from her private consulting rooms instead of the Carelink offices.⁴³⁹

Ms Susan Sharkey was employed as Coordinator of Carelink between 1996 and 2001.⁴⁴⁰ In 2003 she returned to Carelink as Coordinator.⁴⁴¹

Ms Sharkey's role is to coordinate the administration and provision of counselling, medical treatment and other professional support to clients by health professionals.⁴⁴² She does not provide treatment or counselling to clients.⁴⁴³

Since its introduction, Carelink has engaged a professional supervisor for the Coordinator. This role has been filled by Dr Hacker AO during the past four years.⁴⁴⁴ The supervisor:

- reviews the transcript of interviews with, and reports from, Dr Brann and discusses issues of referral for new clients
- considers psychological and psychiatric management for clients; whether private health insurance is required; and referrals and medication issues
- provides advice about clients who request funding for conditions that occurred after the abuse.⁴⁴⁵

Process

When clients are first referred to Carelink by the Independent Commissioner, they attend an initial meeting with Ms Sharkey at Carelink,⁴⁴⁶ are given information about Carelink and the Melbourne Response process and asked to sign the following forms:

- Carelink Overview Document
- Initial Client Contact form
- Carelink Privacy Information sheet
- Confidential Release of Information form.⁴⁴⁷

Ms Sharkey does not ask clients to recount the details of their abuse at this meeting. She told us that Carelink ensures that clients never have to discuss the details of their abuse after meeting with the Independent Commissioner.⁴⁴⁸ She said she also tells clients that the Compensation Panel will not require them to speak about their abuse unless they would like to.⁴⁴⁹

At this initial meeting, Ms Sharkey makes an appointment for the client to be assessed by Dr Brann.⁴⁵⁰ Ms Sharkey always makes a recording of interviews with clients, with their consent.⁴⁵¹

In relation to assessment, the Carelink brochure states:

Clients are interviewed by the Carelink clinician, a psychiatrist, to determine whether they could benefit from professional help to assist in assessing what service(s) is required. This assessment, undertaken by a Consultant Psychiatrist or other mental health professional, is quite comprehensive, occurring over one extensive lengthy session or two or more sessions of 1½ – 2 hours duration each.⁴⁵²

When Ms Sharkey receives the draft of Dr Brann's report, she organises a meeting with the client so that she can read the report with them.⁴⁵³ She said that this gives the client the opportunity to amend or add facts.⁴⁵⁴

Once this report has been finalised, it is sent to the Independent Commissioner and, if the client has applied, the Chair of the Compensation Panel.⁴⁵⁵

After the assessment with Dr Brann, Carelink:

- sources treatment for the client or funds treatment already in place
- arranges any treatment or other recommendations made by Dr Brann or Dr Hacker
- reviews treatment arrangements periodically.⁴⁵⁶

Carelink continues to meet the relevant out-of-pocket abuse-related medical, psychological and psychiatric treatment costs and related medication expenses for 'as long as considered necessary'.⁴⁵⁷

Relationship between Corrs and Carelink

The Archdiocese pays for the operation of Carelink. Ms Sharkey told us that all accounts for expenses associated with particular victims that are sent to the Archdiocese are de-identified.⁴⁵⁸

When Ms Sharkey needs legal advice about Carelink issues, she asks Corrs as the Archdiocese's solicitors. Ms Sharkey said that, when she does so, she always maintains client confidentiality, unless the client has consented to their name and situation becoming known to the Archdiocese.⁴⁵⁹

Mr Leder gave evidence that there is no consent process that enables Carelink to pass confidential information to Corrs, as the solicitor of the Archdiocese, and that it did not occur.⁴⁶⁰ He subsequently said that the exception to this is 'if Carelink or the staff of Carelink were seeking professional advice or legal advice about a particular issue, then I can envisage in that circumstance that they might provide some information'.⁴⁶¹ Mr Leder gave evidence that such exchanges are invariably on an anonymous basis and are the exception.⁴⁶²

It was put to Mr Leder that Carelink was set up as an independent body with a promise of confidentiality and that, if it shares confidential information with the lawyers for the Archdiocese and Archbishop in order to seek legal advice, this may be seen as a breach of Carelink's promise of confidentiality.⁴⁶³ Mr Leder responded that he could see the issue. He said, 'I would understand that I have a professional obligation of confidentiality to Carelink and I would very clearly understand that I was not to disclose that information to the Archdiocese'.⁴⁶⁴

Mr Leder agreed that he could be placed in a difficult position if he was asked for advice by the Archdiocese on an issue and he knew information from Carelink that he could not share with the Archdiocese. However, he said that he could not think of a circumstance where that had happened.⁴⁶⁵

Controversy surrounding the appointment of Professor Ball

On 19 July 1995, Father O'Donnell, who had been charged with child sexual offences, had his lawyer request a report from Professor Ball on the effect that imprisonment would have on Father O'Donnell given his age and medical condition.⁴⁶⁶

On 2 August 1995, Professor Ball provided a letter in which he set out his opinion as to the effect of incarceration on Father O'Donnell. He stated that Father O'Donnell 'has little or no libido and there are no inclinations, much less opportunity, to offend again'.⁴⁶⁷

On 18 October 1996, Monsignor Hart (as he then was) wrote to Professor Ball that the Archbishop wished to appoint him as 'support professional' in the Melbourne Response.⁴⁶⁸ One of Professor Ball's responsibilities would be to act as 'the "public face" for clinical services provided to victims of Church abuse in the Archdiocese'.⁴⁶⁹

Monsignor Hart said:

It is noted that from time to time you provide treatment to priests of the Archdiocese. Obviously, you will not have direct contact with persons who claim to be victims of such priests, but with that proviso no conflict of interest is perceived with your role as support professional.⁴⁷⁰

Mrs Foster said that, shortly after the Melbourne Response was announced, she and Mr Foster became aware that Professor Ball had been appointed to run the Carelink component of the Melbourne Response and that he was therefore in charge of responding to, and looking after, victims of Catholic clergy sexual abuse.⁴⁷¹

Mrs Foster said that a Victoria Police liaison officer had previously told her that Professor Ball gave expert evidence on behalf of the defence in the criminal case against Father O'Donnell. The officer also said that Professor Ball had provided reports to defence lawyers acting for priests and brothers who had been charged with child sexual abuse offences, including Father Gerald Ridsdale, Father Glennon, Father Gannon and Brother Best.⁴⁷²

Mrs Foster said:

Anthony and I were profoundly shocked that Professor Ball was responsible for the counselling arm of the Melbourne Response. I felt that this was not fair to victims. To me, it demonstrated a lack of understanding of how victims might feel and the need for a separate, independent and safe place for victims to go for help. It is for these reasons that I was too horrified to deal with Professor Ball and we declined to do so for quite some time.⁴⁷³

Professor Ball was excused from giving evidence before the Royal Commission on medical grounds. However, he made a statement in which he said that he did provide an opinion as an expert witness in reference to a number of Catholic priests in the 1990s.⁴⁷⁴ He said:

Given I am trained in forensic psychiatry, it was a common occurrence for me to be asked to provide an opinion in criminal matters before the Courts. In those matters, I was not acting for the defendant, rather I was engaged as an independent expert providing a medical opinion about the accused.

... My task as an expert witness was to psychiatrically assess an accused individual and provide an expert report for possible use in criminal matters. I was not the individual's treating practitioner.

... My role involved attempting to understand what may have led to an individual acting in a particular way and to make that known to the Court.⁴⁷⁵

Professor Ball said in the late 1990s he was preparing up to 10 reports per year in various criminal matters.⁴⁷⁶ He recalled giving evidence in proceedings in relation to Father Ridsdale but did not recall assessing or giving expert evidence in relation to Father O'Donnell or Brother Best.⁴⁷⁷

Cardinal Pell told us he thought it was appropriate for Professor Ball to lead Carelink because his role was oversight and supervision, no person was obliged to go to him for counselling and he had a distinguished record.⁴⁷⁸

When asked whether he considered the perspective of victims, Cardinal Pell replied that this was carefully considered but that at that stage he did not share their views.⁴⁷⁹

Archbishop Hart said that he knew Professor Ball had done forensic interviews for offenders for court purposes.⁴⁸⁰ He told us he did not appoint Professor Ball and did not oppose this appointment because Professor Ball was seen to be the most experienced and best qualified.⁴⁸¹

Archbishop Hart said that, with the benefit of hindsight, he would have considered such an appointment more carefully.⁴⁸²

Mr Leder also knew that Professor Ball had been involved in the treatment of sex offenders. He said that this experience 'was seen as being relevant and beneficial to the role that it was proposed he hold'.⁴⁸³ He also said that, at the time Professor Ball was appointed, it was recognised that some victims might have been concerned about dealing with Professor Ball and that 'it was contemplated that alternative arrangements would be made'.⁴⁸⁴

Archbishop Hart and Mr Leder agreed that this system relied entirely upon Professor Ball's recollection of whether he had previously engaged with someone who had offended against a victim who had come to Carelink.⁴⁸⁵ Archbishop Hart said, 'I would have expected, as a member of the medical profession, that he would recall these things'.⁴⁸⁶

It is clear that this was not the case, as Professor Ball said he did not remember Father O'Donnell or Brother Best.

On 13 March 1997, Professor Ball told Mr Leder of a national program that had been established for the treatment of priests, including those who had sexual difficulties, and that he was the Melbourne Director.⁴⁸⁷ This treatment centre became known as Encompass Australasia.⁴⁸⁸

Mr O'Callaghan QC was aware that Professor Ball conducted the Encompass program.⁴⁸⁹ Mr Leder said Professor Ball's position in this program did not raise concerns for him.⁴⁹⁰

The Church parties, in their submission, acknowledged and endorsed the evidence of Archbishop Hart that, from the point of view of perception, he would not today suggest that the person who was to become the public face of a counselling or medical component of the redress scheme be a person who had treated offenders or provided expert reports on them.⁴⁹¹

The Archdiocese appointed Professor Ball as the public face for clinical services provided to victims of Church abuse in the Archdiocese. It did so knowing that Professor Ball:

- had provided treatment to priests of the Archdiocese
- had been engaged by lawyers to give expert evidence in criminal proceedings for priests who been charged with child sex abuse offences.

Notwithstanding Professor Ball's qualifications and expertise, it is almost inevitable that a survivor would experience concern at his appointment.

In our opinion, Archbishop Hart's view is clearly correct. A major issue for survivors is the breach of trust by a priest or religious. The Church authorities should realise that, regardless of Professor Ball's integrity (which we do not doubt), by appointing him as the public face of clinical services when he had given evidence at the request of Catholic clergy offenders, they could seriously challenge a survivor's trust in the Church process. In this area, as in many other activities where there is a power imbalance, perceptions matter a great deal.

2.5 Compensation Panel

Function

On 28 October 1996, Corrs advised Archbishop Pell about the proposed Compensation Panel:

The function of the panel is to provide complainants with an alternative to the pursuit of legal proceedings against the Archbishop or the Archdiocese. It is expected that the panel will provide an informal rather than legalistic approach and a forum for a fair, just and speedy settlement of claims. ...

The establishment of the panel and the payment or offer to pay compensation is not an admission of legal liability. The Archbishop, the Archdiocese and the Church do not accept that they have any legal obligation to make payments to complainants. The Archbishop also recognises that there is strong opposition from some quarters to the making of any compensation payments. The compensation scheme takes these factors into account and strives to achieve a fair and reasonable compromise.⁴⁹²

The Four Part Plan announced by Archbishop Pell on 30 October 1996 is set out in a document that was the culmination of different drafts prepared by Corrs and approved by Archbishop Pell.⁴⁹³ It states:

Complainants remain free to use the normal court processes if they do not wish to avail themselves of the compensation panel process. In that event they should expect that the proceedings will continue to be strenuously defended. Any claimant coming before the panel will be informed of their right to refuse the ex gratia payment being offered and to pursue their claim in the civil courts. They will also be informed that the Archbishop and the Archdiocese will continue to defend claims in the courts on all bases.⁴⁹⁴

Mr Leder told us that the Melbourne Response was established in light of the substantial legal defences available generally to organisations, including the Church, in defending civil action by plaintiffs.⁴⁹⁵ He said that no-one in the Church considered that relying on these defences, and preventing plaintiffs from being able to sue, was the wrong thing to do.⁴⁹⁶

From its inception, the Melbourne Response's compensation component was seen as an alternative to civil litigation.⁴⁹⁷ Mr Leder said:

What we contemplated was that victims could go through the Compensation Panel process, see what the outcome was without otherwise compromising their rights, and if they were not – if they didn't want to accept the offer, they could then continue with or pursue legal proceedings. But I don't think we contemplated the option of both.⁴⁹⁸

Mr Leder disagreed that the purpose of the compensation aspect of the Melbourne Response was to discourage civil suits against the Church.⁴⁹⁹

However, faced with the statement that court proceedings would be 'strenuously defended', it is inevitable that many people would be dissuaded from going to court.

Process

The Compensation Panel commenced operating in the first half of 1997.⁵⁰⁰ It has four members: a solicitor, a community representative, a psychiatrist and a Chair.⁵⁰¹ Other than the Chair, the current members have held their appointments since 1997.⁵⁰²

The position of Chair has previously been held by His Excellency the Hon. Alex Chernov AC QC (between 1996 and 1997), the Hon. David Habersberger QC (between 1997 and 2001) and the Hon. Justice Susan Crennan AC (between 2001 and 2004). The current Chair, Mr Curtain QC, was appointed in February 2004.⁵⁰³

The Melbourne Response brochure states that 'the Panel, like the Independent Commissioner, operates independently from the Archbishop and the Archdiocese'.⁵⁰⁴

Mr Curtain QC told us:

As the chair of the Compensation Panel I have very limited documentation regarding its activities. I confirm there are no printed guidelines, protocols, policies or procedures in relation to its activities under my chairmanship.⁵⁰⁵

Mr Curtain QC told us that the purpose of the Compensation Panel is to hear from victims, consider supporting material and give the Archdiocese a recommendation on an amount of ex gratia compensation up to the cap, which is currently \$75,000.⁵⁰⁶

Mr Curtain QC said the role of the Chair of the Compensation Panel is to:

- receive findings from the Independent Commissioner
- invite applicants to attend a hearing
- convene the Compensation Panel and circulate supporting material

- conduct hearings
- provide recommendations to the Archdiocese on ex gratia compensation.⁵⁰⁷

When an Independent Commissioner advises a complainant that he is satisfied that they have been a victim of sexual abuse, he provides them with the Application for Compensation form. A person applies to the Compensation Panel by completing this form.⁵⁰⁸

The Compensation Panel must accept the findings of the Independent Commissioner.⁵⁰⁹

The Compensation Panel meets in the house occupied by Carelink.⁵¹⁰ While Mr Curtain QC has been Chair, the panel has given thought to the location of its meetings and has tried three different locations.⁵¹¹ Ms Sharkey gave evidence that Carelink's building is believed to be suitable; and to protect people's confidentiality it does not have any obvious signage.⁵¹²

Panel members may ask the applicant questions. Mr Curtain QC told us that these are not asked in a challenging way. Questions are generally directed towards the present status or life circumstances of the applicant.⁵¹³

Mr Curtain QC tells applicants that, if they wish to accept an offer, they will be asked to sign a deed of release.⁵¹⁴ He said that the deed of release has recently been modified because the Church is considering changing the limit of compensation and possibly backdating the increase.⁵¹⁵

After meeting the complainant, Mr Curtain QC writes to Archbishop Hart through Mr Leder, recommends that an amount be offered to each applicant and includes any special instructions.⁵¹⁶

Mr Leder told us that his involvement with the Compensation Panel is typically as follows:

- Several weeks before the Compensation Panel hearing is scheduled, Mr Curtain QC's secretary forwards the relevant file to him and he arranges for it to be copied and distributed to other members of the panel.
- Once the panel has met, Mr Curtain QC prepares a letter of recommendation addressed to the Archbishop and sends it to Mr Leder along with the file.
- Mr Leder sends the letter of recommendation to the Vicar General and asks for arrangements to be made for the Archbishop to sign a letter of apology to the victim.
- When Mr Leder receives the letter of apology, he prepares a letter of offer, which he sends to the complainant along with a deed of release, the apology and the letter of recommendation.
- If the offer is accepted, Mr Leder advises the Archdiocese and requests the transfer of the settlement funds.⁵¹⁷

Mr Leder of Corrs also receives the Independent Commissioner's report and any associated medical and psychological reports and assessments.⁵¹⁸ Mr Leder gave evidence that the medical and psychological reports are disclosed to him 'on a confidential and without prejudice basis' in his capacity as the instructing solicitor for the Chair of the Compensation Panel.⁵¹⁹

At the same time, however, Mr Leder is also the solicitor for the Archbishop.

It was put to Mr Leder that the standard confidentiality release for Carelink releases Carelink from its obligation of confidentiality in order to forward documents to the Compensation Panel, but that confidentiality release does not enable Carelink to forward material to the Archdiocese, the Archbishop or their lawyers.⁵²⁰

Mr Leder responded:

Well, it's not forwarded to the Archbishop. It's forwarded – I understand the point you are asking me about, and it's forwarded to me in my capacity, I believe, as the instructing solicitor for the chair of the panel. I do absolutely recognise the confidentiality of the documents and while I concede that they are available for me to have regard to where I'm minded to, what I say to you, Your Honour, is that I don't.⁵²¹

Mr Leder agreed that it might be better if he was not in this loop.⁵²² He said, 'Your Honour, in the course of reflecting on these matters to prepare for the Royal Commission, yes, I have formed that view'.⁵²³

The Royal Commission will further consider the independence of those involved in the decision-making process of a redress scheme in later reports on redress.

Compensation or ex gratia?

On 7 November 1996, Mr Chernov QC, then Chair of the Compensation Panel, wrote a memorandum containing his preliminary views about the panel.⁵²⁴ In relation to payments, he said:

its approach should not be one whereby it seeks to compensate the applicant for economic loss, pain and suffering as may be done in the workers' compensation or personal injury contexts. Rather, the Tribunal may see its role as doing no more than deciding the appropriate amount that should be paid to the applicant by way of ex gratia payment in recognition of the physical, mental and spiritual sufferings experienced as a result of the relevant wrongful conduct.⁵²⁵

Mr Leder adopted this suggestion.⁵²⁶ Mr Leder told us that the compensation payments are 'a recognition in monetary terms of the wrong done and the harm caused, but it is not general damages or special damages in the way that one would receive, that a plaintiff would receive in legal proceedings'.⁵²⁷

Mr Leder agreed that 'compensation' may not be the right word to describe payments made under the Melbourne Response and that 'ex gratia payment' might be the least misleading description.⁵²⁸

Similarly, Cardinal Pell gave evidence that:

In retrospect, at this stage whether ‘compensation’ is the best phrase, I’m quite uncertain. It might have been better headed ‘Ex gratia payments’.⁵²⁹

Cap on compensation payments

Mr O’Callaghan QC said that, while there was widespread support for the appointment of an Independent Commissioner, the payment of compensation was more controversial. He said that he was informed ‘that other people were urging the Archbishop and Mr Exell that parishioners did not “put money in the plate” each Sunday in order to pay for the criminal acts of priests’.⁵³⁰

Mr Leder said that Archbishop Pell did not think much of this view but that it nevertheless was one of the justifications for the approach that was taken to compensation in the Melbourne Response.⁵³¹ He said that the inclusion of a cap on the compensation payable was controversial.⁵³² However:

an uncapped liability was, to some extent, inconsistent with the absence of legal liability. Further, if there was no cap on the panel then such claims would have to be subjected to critical examination to determine if the claim was justified. Inevitably, this would increase the adversarial nature of the process, increase the involvement of lawyers and bring the process closer to the type of damages assessment that occurs in courts with competing medical records, cross examination of victims and challenges to matters of causation and the extent of damages.⁵³³

Mr Leder accepted that the absence of legal liability influenced the amount that was set for compensation payments.⁵³⁴ He also gave evidence⁵³⁵ that the affordability of the Melbourne Response scheme was not a consideration in arriving at the cap of \$50,000.⁵³⁵

Mr Leder said that given Carelink would cover ongoing medical and counselling expenses it was seen that, by adopting the \$50,000 limit of the Victorian Victims of Crimes Assistance Tribunal, the Church was taking a more generous approach than other statutory schemes.⁵³⁶

Mr Curtain QC told us that he readily agrees that the capped payments of the Melbourne Response do not reflect full compensation.⁵³⁷ Similarly, Mr Leder agreed that, if a complainant was able to establish liability and causation in a civil proceeding, the compensation they would be entitled to would be significantly higher.⁵³⁸

However, there is a recognition by the Archdiocese that the cap may need to be reviewed. Mr Leder gave the following evidence:

as things stand today it is clear that for some victims the ability to receive only up to \$75,000 in lump sum compensation indicates that, that the compensation component of the Melbourne Response is not achieving the objective that was set out – it was set out

to achieve in terms of delivering a recognition – a financial recognition of the harm, and I’m absolutely supportive of the commitments that the Archbishop has made to review those matters.⁵³⁹

Calculation of payments

The document entitled *Sexual Abuse – Seeking Compensation*, which contains an application for compensation form and consent forms for Carelink and the Independent Commissioner, states:

the Panel will not be bound by the compensation principles that apply in court. ... Essentially it will have regard to the physical, mental and spiritual effects of the assault on the applicant.⁵⁴⁰

In arriving at a recommendation on compensation, the Compensation Panel considers both the severity of the abuse and the ongoing effect that the abuse has had on the victim’s life.⁵⁴¹ He said that the Compensation Panel examines the effect of the abuse on the applicant with the assistance of psychiatric reports.⁵⁴²

If there has been penetrative abuse, the Compensation Panel’s ‘default position’ is to award the maximum.⁵⁴³ He said:

The maximum recommendation is not reserved for the absolute worst cases of abuse. It is for people who are significantly abused, and we do not award any more than that.⁵⁴⁴

Mr Curtain QC said the Compensation Panel treats an instance of abuse more seriously if there are indications a victim is experiencing ongoing suffering as a result of the abuse.⁵⁴⁵ He said that, if an applicant had suffered catastrophic consequences as a result of relatively low-level abuse, they would also be awarded the maximum.⁵⁴⁶

Mr Curtain QC said that he reminds the Compensation Panel that it is sufficient if the abuse is a cause, even if it is not the only cause, of the applicant’s condition.⁵⁴⁷

Parity of payments

Mr Leder said that initially it was contemplated that the Compensation Panel would keep a record of each offer it made to ensure fairness in the sense of comparability between offers made to different applicants.⁵⁴⁸

Subsequent chairs of the Compensation Panel did not adopt this practice; they sent the documents back to him after the application had been decided.⁵⁴⁹

Mr Habersberger QC told us that he did keep those records during the time he was Chair of the Compensation Panel.⁵⁵⁰ He said:

The record, which was constantly updated, was a table that listed the name of each applicant, the name of the offender, the amount which the Panel recommended should be offered to the applicant and whether or not that offer had been accepted.

I took the current version of the table to each meeting of the Panel that I chaired. From time to time it was referred to, particularly when the members of the Panel thought that there was some similarity between the current application and an earlier application and we wanted to refresh our memory of what the earlier applicant had been offered.

The question of fairness and parity between different applicants was one of many important considerations influencing the Panel's decisions.⁵⁵¹

When asked whether the current Compensation Panel has developed reference points with an endeavour to provide consistency amongst recommendations, Mr Curtain QC responded: 'Yes, we do. They are not written down, but we know each other pretty well.'⁵⁵²

Mr Curtain QC said the Compensation Panel does not record its meetings with applicants or make notes of the proceedings.⁵⁵³ He does not keep records of the amounts recommended and the circumstances of applicants to ensure some sort of fairness or equity between payments.⁵⁵⁴ He said:

I have never seen the need to do it. We treat each victim on the merits of the case and, as I have said before, our default position in relation to penetrative sex or serious consequences is the maximum or close to it, and we can work within those parameters effectively, all being reasonably experienced, without writing things down.⁵⁵⁵

When asked whether he is satisfied that the system ensures there is a proper parity with payments to the extent possible, Mr Curtain QC said:

I'm sure that we could set down protocols and record these things in detail. I'm not sure it would achieve any better outcome or any – I suppose you could say there would be more patency.⁵⁵⁶

Deed of release

Cardinal Pell told us:

I do not recall any specific discussions about deeds of release during the planning of the Melbourne Response. I do have a recollection in general terms that deeds of release were seen to be a standard or necessary part of such a process, but I cannot now recall what advice I received on that issue or the extent to which it was considered at the time.⁵⁵⁷

On 11 November 1996, Mr Leder suggested that at the outset of the process the applicant should be given an invitation/encouragement ‘to seek independent advice before settling, a clear warning that settlement involves giving up legal rights that the applicant may otherwise have’.⁵⁵⁸

This was reflected in the Archdiocese’s guide to seeking compensation, which states: ‘Completion of the form will affect the applicant’s legal rights, and applicants are encouraged to seek independent legal advice before completing the application.’⁵⁵⁹

Mr Curtain QC told us that he has never advised an applicant that they should obtain legal advice before they sign the deed of release or that legal advice is unnecessary.⁵⁶⁰

Mr Curtain QC said that he can understand the argument that it is reasonable to expect the Church to pay for legal advice and that he understands that:

- many people in the community seek the comfort of a lawyer to help them through processes such as this
- many people would be daunted by a legal document, such as a deed of release, presented to them and would like to have their lawyer assist them with advice.⁵⁶¹

Mr Curtain QC could not think of an applicant who has come before the Compensation Panel that he thought would be able to bring a successful claim against the Church.⁵⁶² He said that the principal reason for this is that in each case there was no evidence of prior knowledge by the Archdiocese in respect of the offender. He said there would also be difficulty in identifying a proper defendant.⁵⁶³

Mr Leder told us that he sends applicants to the Compensation Panel a deed of release along with the letter of offer.⁵⁶⁴

When it was put to Mr Leder that it may be inferred that the Melbourne Response was aimed at purchasing freedom from legal processes at a low price, he responded:

the Church’s view and my view is that the claims being settled through this process were claims that had no significant prospect of success and therefore in that sense that what the victims give up when they sign the release is a legal claim that’s unlikely to succeed.⁵⁶⁵

Mr Curtain QC agreed that, if an applicant has no common law rights, the deed of release is not releasing anything.⁵⁶⁶ He said:

a release is likely to dissuade the victim from embarking upon what might be futile litigation. So there is a benefit to both the victim and the proposed defendant, that that expense and angst isn’t undertaken.⁵⁶⁷

Mr Curtain QC said that he was aware that the Archdiocese of Sydney does not seek a deed of release as a condition of settlement with victims of child sexual abuse.⁵⁶⁸

Cardinal Pell gave evidence that the Archdiocese of Sydney stopped requiring deeds of release because:

I couldn't imagine – myself, at any rate, as a Church authority – pursuing somebody who – or objecting forcefully if somebody did not respect the terms of the deed of release.⁵⁶⁹

The question of whether a deed of release should be a condition of receiving an ex gratia redress payment is being considered in our work on redress. It is complex. Some people suggest that it is not appropriate to require a person to forego their common law rights as a condition of receiving a modest ex gratia sum. We will consider the issue in our final report on redress.

Reasons

The Compensation Panel does not provide applicants with reasons for its decisions about the ex gratia payment to be offered.

Mrs Foster told us that she felt that the Compensation Panel's process was not transparent because they were not given any information about the criteria that were applied to Emma's application and because there was no appeal process.⁵⁷⁰

Mr Curtain QC said he did not consider that it would be desirable to provide applicants with reasons because 'I think it would inevitably cause further angst to the victim'.⁵⁷¹ He said:

if you accept that this system is not intended to be full compensation but a financial recognition, then to give long reasons or to give detailed reasons would be counterproductive.⁵⁷²

Confidentiality

The Application for Compensation form that applicants are required to sign contains the following provision:

neither I nor any person acting on my behalf, or any member of the Panel, or the Archbishop or any person acting on behalf of the Archbishop or the Archdiocese, will (save as required by law)

- a) disclose to any person,
- b) rely or seek to rely in any arbitral or judicial proceeding (whether or not such proceeding relates to the subject matter of this application) on

any communication, statement or information, whether oral or documentary, made or provided in the course of or in relation to the Panel's deliberations.⁵⁷³

Mr Leder gave evidence that this obligation was imposed so that, if the offer was not accepted, neither party could use the offer to argue that the Church was liable in court.⁵⁷⁴ He said that, in this way, the panel process is a conventional 'without prejudice attempt to resolve a claim that's being made on a basis that if it is unsuccessful both parties are in the same position as they would have been ... had that process not happened'.⁵⁷⁵

Mr Leder said that, if the offer is accepted, this confidentiality obligation no longer applies.⁵⁷⁶ Mr Leder accepted that this is not the effect of the provisions in the Application for Compensation form, which continue to apply.⁵⁷⁷

Notwithstanding, Mr Leder told us the Melbourne Response never required complainants to keep the details of their abuse confidential.⁵⁷⁸ The pro forma letter of offer that is sent to complainants was amended in 2002 to 'spell out more clearly that there are no confidentiality restrictions in respect of the abuse'.⁵⁷⁹

Mr Leder believed that the amended letter of offer, in its improved form, clarifies the position and would release applicants from the ongoing obligation of confidentiality if the offer is accepted.⁵⁸⁰

Mr Leder agreed that the Application for Compensation form is ambiguous – it could be read as imposing broad undertakings of confidentiality upon victims on their own medical reports – and that several provisions should be reviewed.⁵⁸¹

Mr Curtain QC gave evidence that, during the meeting before the Compensation Panel, he advises applicants that:

- the hearing is confidential in the sense that the panel will keep anything that is said during the hearing confidential
- this confidentiality is not imposed on the applicant.⁵⁸²

Mr Curtain QC agreed that the Application for Compensation form could be read as imposing confidentiality on the application in relation to their meeting with the Compensation Panel.⁵⁸³ He said, 'if it's suggesting that the victim has to keep it confidential, I go to some trouble to make it clear to the victim that that's not the case'.⁵⁸⁴

Mr Curtain QC agreed that the provisions of the Application for Compensation form are at odds with the intention of the Compensation Panel and what the complainant should be able to say after its deliberations. He said, 'I think it's long overdue for revision'.⁵⁸⁵ We agree with this view.

2.6 Independence

Cardinal Pell and Archbishop Hart both gave evidence that the three components of the Melbourne Response – that is, the Independent Commissioners, Carelink and the Compensation Panel – ‘operate independently of the Archdiocese and of each other’.⁵⁸⁶

Cardinal Pell said that he intended that the Independent Commissioner would be independent of the Archdiocese and of the other elements of the Melbourne Response in that ‘he was not to interfere in their decision making, or vice versa’.⁵⁸⁷

Cardinal Pell also gave evidence that the independence of the three components from the Archdiocese was of fundamental importance. He agreed that, if in practice this independence was not achieved, the system would be less effective than he had intended.⁵⁸⁸

Mr Leder did not agree that the Melbourne Response is promoted on the basis that each of its elements operates independently of the Church and of each other.⁵⁸⁹ He said:

I think if we look at the application for compensation form the consents to the exchange of information indicate that the three processes don’t operate completely independently of each other. If those consents aren’t given, then clearly they must operate more independently of each other and they will operate less effectively from a victim’s point of view.⁵⁹⁰

Mr Leder also gave the following evidence:

The various elements are independent of the Church and they are independent of each other to some extent. But in some respects – the independence is different because plainly the intent of the Melbourne Response is to provide a comprehensive response to a victim in terms of the investigation and the counselling and treatment and the compensation, and that comprehensive response can’t be sensibly or effectively provided if the Independent Commissioner operates in one silo with no interaction with Carelink and with no interaction with the Panel. So I don’t agree that the three elements operate independently of each other in the way that they together operate independently of the Church.⁵⁹¹

The Commissioners are satisfied that the Melbourne Response is not sufficiently independent of the Archdiocese of Melbourne in its operation.

3 Emma and Katie Foster

3.1 Emma Foster discloses her abuse

The story of the Foster family is one of profound personal and family tragedy. Beyond that tragedy, their story brings forward the complex question of the responsibility of an institution for the criminal acts of one of its members when that act results in significant injury to a child who has been entrusted by his or her parents to the care of the institution.

Christine and Anthony Foster are the parents of three girls: Emma, born in November 1981; Katie, born in July 1983; and Aimee, born in March 1985.⁵⁹²

Each of their daughters attended the Sacred Heart Catholic Primary School in Oakleigh in Melbourne, Victoria. Emma began in preparatory year in 1987, Katie in 1989 and Aimee in 1990.⁵⁹³ Beside the school was the Sacred Heart church. Across the road was the presbytery where Father O'Donnell lived.⁵⁹⁴ Mrs Foster told us that Father O'Donnell often visited the primary school and the playgrounds.⁵⁹⁵

After finishing primary school, Emma, Katie and Aimee went to Sacred Heart Girls' College, also in Oakleigh.⁵⁹⁶ Mrs Foster told us that as young children her daughters were healthy and that the family was happy.⁵⁹⁷

In March 1995, when Emma was 13 years old, an article about Father O'Donnell appeared in their local newspaper stating that Father O'Donnell was facing 49 charges in relation to sexually abusing boys over a 30-year period.⁵⁹⁸

Mrs Foster asked Emma whether Father O'Donnell had ever touched her. Emma did not immediately answer, but finally answered 'no' after Mrs Foster asked her three times.⁵⁹⁹

Later, one of Emma's teachers told her mother that Emma was not eating her lunch and that some of her friends were worried about her.⁶⁰⁰ In June 1995, Emma was diagnosed with anorexia.⁶⁰¹

On 5 August 1995, another article appeared about Father O'Donnell, this time on the front page of the *Herald Sun* newspaper. The article reported that Father O'Donnell had pleaded guilty to charges of indecent assault between 1946 and 1977 against 10 boys and two girls and had been remanded in custody.⁶⁰²

This was the first time Mrs Foster learnt that Father O'Donnell had abused girls as well as boys.⁶⁰³ She said that this article raised the possibility in her mind that Emma may have been a victim of Father O'Donnell, despite Emma's previous denial.⁶⁰⁴

In early September 1995, Emma told her GP that she had been having suicidal thoughts.⁶⁰⁵ Emma was referred to an emergency psychiatric appointment. She told the psychiatrist that she had previously attempted suicide with an overdose of painkillers.⁶⁰⁶

On 25 September 1995, Emma was admitted to the adolescent psychiatric unit for anorexia, depression and the earlier suicide attempt.⁶⁰⁷ Emma continued to struggle during her time at the unit. The family attended many counselling sessions as a family and individually.⁶⁰⁸ After two months at the unit, Emma was expelled following another suicide attempt.⁶⁰⁹

On the morning of 21 December 1995, Mr and Mrs Foster woke to discover that Emma had taken an overdose of painkillers.⁶¹⁰ Emma was hospitalised for two days as a result.⁶¹¹

Soon after, Mrs and Mr Foster took their daughters on a holiday. Mrs Foster gave evidence that, by the end of this trip, Emma's outlook had changed and she seemed happier.⁶¹² However, she said that this improvement was short lived.

In early 1996, Emma overdosed on painkillers twice and was eventually readmitted to the adolescent psychiatric unit.⁶¹³ Emma's psychiatrist told Mr Foster that Emma was displaying all the symptoms of someone who had been sexually abused.⁶¹⁴

The Fosters told this to their own psychologist, who said:

I concur with his opinion. I would say that Emma isn't just showing signs of someone who was sexually abused. I would say she was sexually abused. In fact, her behaviour suggests it happened repeatedly.⁶¹⁵

They discussed the likelihood that Father O'Donnell was responsible. Mrs Foster was not yet convinced.⁶¹⁶ She said that initially she could not imagine how this could have happened or when Father O'Donnell would have had time alone with Emma.⁶¹⁷

Mrs Foster later realised that Father O'Donnell would have had unfettered access to Emma at school and could have taken her from class, or from the school grounds, without anyone seeking Mrs Foster's consent.⁶¹⁸

In about February 1996, Emma told her mother, 'Coke used to make me drunk but now it doesn't'.⁶¹⁹ Mrs Foster recalled that some years earlier she had overheard a conversation between Emma and Katie. Katie had offered Emma a drink of Coca-Cola. Emma had said that she did not like the taste of it. Katie insisted and Emma relented and took a sip. She said to Katie: 'It tastes different. It's OK.'⁶²⁰ Mrs Foster said she came to the realisation that Father O'Donnell may well have laced Coca-Cola and given it to Emma to drink.⁶²¹

Mrs Foster asked Emma the next morning: 'What sort of drunk did the Coke make you feel?' She said that Emma considered her answer and replied, 'Very drunk and dizzy and it made a loud noise in my ears'. She told Mrs Foster that it had happened in the school hall.⁶²²

Not long after this, Mr Foster telephoned a police liaison officer familiar with the case against Father O'Donnell. The officer told him that Father O'Donnell used to drug kids and that it was part of his modus operandi.⁶²³

On 1 March 1996, Mrs and Mr Foster met with psychologist Mr Wall. Mr Wall had a private practice that from time to time received referrals from Catholic bodies.⁶²⁴ After this meeting, the Archdiocese of Melbourne began paying for counselling for their family.⁶²⁵ Mrs and Mr Foster took this to mean that the Catholic Church had accepted responsibility for the abuse.⁶²⁶

On 27 March 1996, about one month after Emma's second admission to the psychiatric unit, Mrs and Mr Foster received a telephone call from the unit. They were told that Emma had cut herself and that she had disclosed to a nurse that she had been sexually abused by Father O'Donnell.⁶²⁷

The next day, Mrs and Mr Foster attended a meeting with Emma and her psychologist. The psychologist asked Emma's permission to repeat her disclosure to them. Emma sat in a ball on a chair nodding as the psychologist repeated Emma's account of sexual abuse by Father O'Donnell.⁶²⁸

Emma told them she remembered a door with a sign 'Shower' on it beside the stage in the Sacred Heart parish hall. Emma also told them that Father O'Donnell took her through the door and into the room, that they were alone and that Father O'Donnell sat her on his knee and did awful things to her.⁶²⁹

3.2 The Fosters meet with their parish priest

The following day, Mrs and Mr Foster rang Father Teal, their parish priest, and asked him to visit their house and talk about Emma.⁶³⁰ Mrs Foster said they told Father Teal about Emma's disclosure of abuse by Father O'Donnell. Mrs Foster gave evidence that Father Teal was sympathetic but that, as he was leaving their home, he said, 'Don't tell anyone'.⁶³¹

The Royal Commission contacted Father Teal by letter before the hearing and Mrs Foster's recollection, as set out above, was drawn to his attention. The letter stated that the Royal Commission did not require him to give evidence at a public hearing but invited him to lodge a written application for leave to appear if he wished to appear in the public hearing. No application for leave was made.

After submissions were made by Senior Counsel Assisting, Father Teal provided a letter to the Royal Commission in which he said that he had no recollection of saying those words and is sure he would not have done so. He said he later organised a public meeting – the Oakleigh Forum, which is discussed below.⁶³²

Notwithstanding these differing accounts, we accept Mrs Foster's recollection of the events. Given her personal interest in the meeting, we are satisfied that she is less likely to recall the events incorrectly. Father Teal's memory of the meeting is different, but no doubt he has attended numerous meetings with parishioners and recollections of this meeting may not be as clear for him as they are for Mrs Foster.

3.3 The Fosters meet with Archbishop Pell

As set out above, Mrs and Mr Foster were involved in the Oakleigh and Melbourne forums that preceded Archbishop Pell's announcement of the Melbourne Response on 30 October 1996.

On 8 November 1996, less than a week after Archbishop Pell announced the Melbourne Response, Ms Hunter from the Pastoral Response Office sent him a memo:

I have been approached by Chris and Anthony Foster with a request to seek a meeting with yourself. The nature of this meeting would be purely pastoral with the intent to contribute significantly to the healing process of this family. Their young daughter, Emma, may attend.⁶³³

Ms Hunter asked Archbishop Pell to give this matter his earliest consideration and to indicate his availability.⁶³⁴

Monsignor Hart wrote to Corrs and asked whether Archbishop Pell should agree to see the Fosters, noting that he was quite prepared to do so.⁶³⁵

Corrs responded on 15 November 1996 with the following advice:

There is no reason why His Grace should not meet with the Fosters if that is what he wants to do. However he should realise that agreeing to such a meeting creates a precedent. If he agrees to meet with some victims then he will be under continuing pressure to meet with others. This may or may not trouble him.

To keep some control over this, it might be wise for him to first seek a briefing from Ms Last as to the specifics of the Fosters' case. We are not aware of the Fosters' case. He can then decide whether the circumstances justify the use of his time.⁶³⁶

On 18 November 1996, Archbishop Pell sent a letter to Ms Last:

If I interview the Foster family I will have to interview others. My time is severely limited. Why are they different from other cases?

If you wish me to consider whether I will see them then I would need a written document from you establishing why their case is special and outlining the particular facts of the case to guide me should I consent to an interview.⁶³⁷

Ms Last responded to Archbishop Pell on 20 November 1996, setting out the circumstances of Emma Foster's abuse as well as Mr Foster's concerns about Professor Ball.⁶³⁸ In particular, Ms Last wrote that Mr Foster was concerned that Professor Ball had provided an expert opinion in criminal proceedings against Father O'Donnell and that Professor Ball did not tell them about his involvement in this case.⁶³⁹

The following day, Monsignor Hart wrote to Corrs and said that Archbishop Pell was prepared to meet with Mrs and Mr Foster and their daughter Emma. He also asked Corrs for suggestions that Archbishop Pell should make in relation to Professor Ball when he met the Fosters.⁶⁴⁰

Corrs responded on the same day with suggestions of how Archbishop Pell should respond to the Fosters in relation to Professor Ball. Corrs wrote a draft letter from Archbishop Pell in response to Ms Last's memo.⁶⁴¹

On 30 January 1997, Ms Sharkey and Monsignor Hart discussed how long Carelink should continue to pay the Fosters' accounts without an assessment.⁶⁴² A file note of their conversation records that Professor Ball's professional belief was that 'at the appropriate time, assessment should be made of the family situation as well as of the girl to see how much of the girl's condition is a result of the offence'.⁶⁴³

This file note also records that Monsignor Hart told Carelink to continue paying and to think of an alternative person who might be delegated to carry out the assessment 'seeing the Fosters seem to be uneasy with Professor Ball'.⁶⁴⁴

On 17 February 1997, Mrs and Mr Foster met with Archbishop Pell.⁶⁴⁵ Mrs Foster gave evidence that, during this meeting, Mr Foster told Archbishop Pell that they viewed the Melbourne Response as a cost-saving measure by the Catholic Church to the detriment of victims and that this was partly due to the cap and its restrictions.⁶⁴⁶

Mrs Foster said that Archbishop Pell responded, 'if you don't like what we're doing, take us to court'.⁶⁴⁷

Cardinal Pell gave the following evidence:

I do not recall exactly what was said during my private meeting with Mr and Mrs Foster on 18 February 1997, but I do remember clearly that it was one of the most difficult meetings I have ever been involved in. I had no reason to doubt that O'Donnell had abused Emma Foster, and in meeting with Mr and Mrs Foster my only intention was to listen to their story and to try to help. It is clear that I did not succeed in this. I am sorry for anything I did to upset them at this meeting.⁶⁴⁸

After the private meeting, both Archbishop Pell and Mrs and Mr Foster joined a larger group meeting, discussed below.⁶⁴⁹ The meeting was not helpful to the Fosters and many others who attended. They were left with the impression that their concerns, which obviously were well founded, were not being appropriately dealt with by the Church.

Mrs Foster said that during this meeting a question was asked about known paedophiles still serving in parishes in Melbourne and that Archbishop Pell responded, 'It's all gossip until it's proven in court and I don't listen to gossip'.⁶⁵⁰

Cardinal Pell accepted that he may well have used the word ‘gossip’, because ‘it was and is my view that while every complaint about abuse should be properly investigated, and appropriate action taken, it is not appropriate to ask priests to stand aside from their ministry simply because someone names them, for example, at a public meeting’.⁶⁵¹

We are satisfied that the Cardinal made the comments attributed to him and did not tell the gathering what he told the Royal Commission was his position on allegations.

3.4 Emma Foster and the Independent Commissioner

Mr O’Callaghan QC first spoke to Mr Foster in December 1996.⁶⁵² On 19 December 1996, Mr O’Callaghan QC sent Mr Foster a letter enclosing a copy of the terms and conditions of his appointment and confirmed his undertaking that any discussions would remain confidential.⁶⁵³

In March 1997 the Fosters decided to go through the Melbourne Response to seek help for Emma.⁶⁵⁴

Mr O’Callaghan QC told us that his essential role with Emma Foster’s complaint was to investigate and determine whether or not the complaint was established.⁶⁵⁵ On 7 March 1997, Mr O’Callaghan QC spoke with Mr Leder, who was effectively his instructing solicitor, and told him that he had arranged to meet with Mrs and Mr Foster.⁶⁵⁶

When asked why he involved Mr Leder, Mr O’Callaghan QC said he thought it was ‘because of discussions which had taken place between Leder and others and the Fosters in relation to the payment of counselling fees or medical expenses at Carelink but that was all background to me’.⁶⁵⁷

Mr Leder then wrote to Mr O’Callaghan QC about his upcoming meeting with the Fosters.⁶⁵⁸ He set out the Fosters’ concerns about Professor Ball, that the position of the Vicar General and Corrs is that these concerns are ‘misplaced’ and that the Fosters had also raised concerns about being required to claim on Medicare for experts’ treatment because of the actions of Father O’Donnell. Mr Leder also said that the Fosters’ concerns about Professor Ball needed to be respected and that they were entitled to deal with doctors of their choice.⁶⁵⁹ Ultimately, Emma did not meet with Professor Ball.

On 17 March 1997, Emma and Mrs and Mr Foster met with Mr O’Callaghan QC, who interviewed Emma.⁶⁶⁰ Emma was 15 years old.⁶⁶¹ Emma declined to speak in any detail about the abuse she had suffered at this meeting but said she might do so at a later time.⁶⁶² Mr O’Callaghan QC asked Emma if what she had told the psychologists and others about the abuse was true and she confirmed that it was.⁶⁶³

On 20 March 1997, Mr O’Callaghan QC wrote to Emma Foster and proposed that she and her parents authorise him to obtain reports from, and discuss Emma’s condition with, her psychologist.⁶⁶⁴ He wrote, ‘because you have already told me that what you have told the psychologist is true, I would be able to be appropriately informed and satisfied’.⁶⁶⁵

Mr O’Callaghan QC later wrote to Dr Stephen Lapin, Emma Foster’s GP, requesting a report on Emma’s medical condition and enclosing an authority signed by Emma and Mrs Foster.⁶⁶⁶

On 2 April 1997, Ms Sharkey advised Mr Leder that Mr Foster had asked whether the Archdiocese would pay outstanding medical bills for Emma.⁶⁶⁷ Mr Leder discussed this issue with Ms Sharkey and Monsignor Hart.⁶⁶⁸

On 3 April 1997, Monsignor Hart sent a letter to Mr Foster proposing that Emma Foster be assessed by a practitioner other than Professor Ball, with the costs to be covered by Carelink.⁶⁶⁹ This letter was based on a draft written by Corrs that had been circulated to Ms Sharkey and Mr O’Callaghan QC for their comments.⁶⁷⁰

On 30 April 1997, Mrs Foster rang Mr O’Callaghan QC.⁶⁷¹ A file note written by Mr O’Callaghan QC records:

Superimposed over all this is the real question mark as to whether in fact Emma was abused by O’Donnell. Palpably, the parents are convinced of it. But there is [sic] some elements of ‘we protest too much’. On the other hand I think the Corr [sic] drafted letter has had the effect of having them appreciate that it may be the tap for moneys for support might be turned off. As Professor Ball said to me yesterday there is no provision in the arrangements for turning off the tap.

He went so far as to say a girl like Emma could cost millions.⁶⁷²

The file note also recorded that, having asked how Emma was, Mr O’Callaghan QC was told that she was a great deal better.

During this conversation, Mrs Foster told Mr O’Callaghan QC that Emma had gone to the police and made a statement and that she would authorise the police to make that statement available to Mr O’Callaghan QC.⁶⁷³

Mr O’Callaghan QC later spoke to Senior Constable Mark Domchi of Victoria Police about the details Emma Foster had given the police.⁶⁷⁴ After setting out what Emma had told the police, the file note of this conversation records, ‘I will have to chase up further details from Domchi because he tells me that the whole family Emma, her two sisters, and the mother and father applied for Crimes Compensation’.⁶⁷⁵

On the same day, Mr O’Callaghan QC wrote a memorandum to counsel assisting, Mr Gleeson QC, authorising him to look at the file of Emma Foster and asking him to find out the details of the Fosters’ applications to the Crimes Compensation Body.⁶⁷⁶

3.5 Dealings with Carelink

In late 1996 and 1997, Mr Leder met with Ms Sharkey and Professor Ball to discuss how Carelink was operating.⁶⁷⁷ Ms Sharkey and Professor Ball expressed the following concerns:

- Carelink was paying medical and counselling bills for Emma Foster despite the fact that Carelink did not have a file for her
- the Pastoral Response Office had such a file, but the Fosters refused to consent to it being provided to Carelink because of their view that Professor Ball had a conflict of interest
- Mrs and Mr Foster also refused to consent to Carelink receiving an assessment report from Emma Foster's treating practitioner
- Emma Foster had not been accepted by the Independent Commissioner to be a victim of abuse.⁶⁷⁸

At this time, Carelink was paying for medical treatment but did not have details about the abuse or the appropriateness of the treatment that Emma was receiving. Ms Sharkey said, 'without that information, we were also unable to assess whether Emma required any additional treatment(s)'.⁶⁸⁰

Ms Sharkey said the Foster family's case was unusual because Carelink had very little direct involvement with them and, in particular, with Emma and Katie.⁶⁸¹ She said, 'this made it difficult for us to assess the adequacy and effectiveness of the treatment being provided to Emma and Katie and to determine whether Carelink should fund that treatment'.⁶⁸²

Ms Sharkey gave evidence that clients are asked to claim on Medicare for psychiatric and medical costs that are related to the abuse and that Carelink will cover the gap between the Medicare rebate and the cost of the service.⁶⁸³

Carelink's policy in relation to private health insurance claims is:

if a client already has private health insurance, they should claim all private health expenses (e.g. hospital bills) which are able to be claimed in accordance with their cover. Any 'gap' between the health insurance rebate and the actual cost of the service will be covered by Carelink.⁶⁸⁴

Mrs Foster thought it was inappropriate that Medicare and/or private health insurance should be relied on to pay Emma's outstanding medical accounts.⁶⁸⁵ She said:

It seemed to me that the Catholic Church wanted to transfer responsibility for Emma's medical expenses from itself and onto tax payers (through Medicare) and onto our private health insurer. This did not feel right to me.⁶⁸⁶

On 24 June 1997, Corrs wrote to Monsignor Hart proposing that Carelink pay all of the Fosters' outstanding medical bills in full and that, if the Health Insurance Commission confirmed that it was appropriate for Carelink clients to claim expenses on Medicare, the Fosters be asked to claim the accounts on Medicare and reimburse Carelink.⁶⁸⁷

The letter also stated that, if Mr Foster refused to do this, further funding from Carelink could be withheld. Corrs enclosed a draft letter to the Fosters from Monsignor Hart.⁶⁸⁸

On the same day, Monsignor Hart wrote to the Fosters with this proposal. He stated:

In the long term, continued funding and support from Carelink remains subject to regular independent assessments and to the Independent Commissioner concluding his enquires and making appropriate findings.⁶⁸⁹

On 12 July 1997, Ms Sharkey visited the Foster family.⁶⁹⁰ Ms Sharkey did not usually visit Carelink clients at their homes; however, Mrs Foster had asked her to come.⁶⁹¹

Ms Sharkey's file note of the visit records that, having spoken with Mrs and Mr Foster and met with Emma, 'it would appear that Emma's claims to having been abused by Kevin O'Donnell are true' and that 'Emma's presenting psychological and psychiatric behaviours are consistent with serious abuse'.⁶⁹²

The file note also records:

Because of Emma's age it may be many years before the real story is known, however, I think we probably have a responsibility for her care and I discussed this with Richard Leder and I will follow it through with Professor Ball tomorrow. I don't believe that Emma should have to go through intensive psychiatric assessment at the stage ...⁶⁹³

On 16 July 1997, Mr Foster telephoned Ms Sharkey and said Emma was being admitted to hospital that day for an alcohol problem.⁶⁹⁴ Ms Sharkey told us:

I told Mr Foster that Carelink would take responsibility at this stage for the fees and that he should forward the accounts to Carelink. During the telephone conversation, Mr Foster agreed to meet with Professor Ball to discuss the issue of payment and what steps needed to be taken.⁶⁹⁵

On 18 July 1997, Ms Sharkey wrote a letter to Monsignor Hart about her discussions with Mrs and Mr Foster. She said she was told that Monsignor Cudmore had told the family that all medical costs associated with Emma's abuse would be paid by the Church, although this had never been put in writing.⁶⁹⁶ She also sent this letter to Mr Leder.⁶⁹⁷

On 22 July 1997, Mr Leder wrote to Monsignor Hart and said that he was not previously aware of Monsignor Cudmore's comments.⁶⁹⁸ He wrote that in his opinion the Archdiocese could continue to maintain the position that Carelink will ensure that the Fosters are not out of pocket and that the Fosters should still claim Medicare where it is available.⁶⁹⁹

Mr Leder spoke to Monsignor Hart on 23 July 1997. Monsignor Hart told him that, while he was comfortable with a bit of generosity for expenses incurred in the past, in the future 'everyone should "go by the book"'.⁷⁰⁰

Around this time, Carelink had been contacting the Fosters frequently, seeking to set up a meeting with Professor Ball.⁷⁰¹ Mrs Foster said that she felt pressured and that, despite her objection to his role, she relented.⁷⁰²

On 29 July 1997, Mrs and Mr Foster met with Professor Ball.⁷⁰³

The issue of whether Carelink was intended to fund the full amount of the payment of treatment from medical practitioners, or only the gap between the Medicare rebate and the actual cost, was resolved by seeking a ruling from the Health Insurance Commission.⁷⁰⁴

On 29 August 1997, the Health Insurance Commission confirmed that payments made by Carelink were not subject to the provisions of the *Health & Other Services (Compensation) Act 1995 (Cth)*.⁷⁰⁵

Mr Leder then wrote to Professor Ball telling him of the Health Insurance Commission's letter. He confirmed the Archdiocese's instructions that:

- patients who receive medical treatment from service providers external to Carelink should make a claim for those services on Medicare
- where there is a gap between the Medicare rebate and the actual cost of the service, that gap will be met or refunded by Carelink.⁷⁰⁶

Monsignor Hart later wrote to Mrs and Mr Foster about the Health Insurance Commission's advice.⁷⁰⁷ Monsignor Hart requested that they complete Medicare claim forms for the invoices that Carelink had paid and forward any Medicare rebate to Carelink.⁷⁰⁸

He also told them that, for the duration of the operation of Carelink, it would continue to provide care subject to Carelink's ordinary requirements. He said that, if Carelink is disbanded in the future, 'appropriate alternative arrangements will be made'.⁷⁰⁹

3.6 The Independent Commissioner finds that Emma Foster was a victim of abuse

On 3 October 1997, Mr O’Callaghan QC wrote to Mrs and Mr Foster advising them that he proposed to make a formal finding that he was satisfied that Emma was the victim of sexual abuse by Father O’Donnell.⁷¹⁰ Emma was therefore entitled to be referred to the Compensation Panel and to continue receiving treatment from Carelink.⁷¹¹ Mr O’Callaghan QC wrote:

Whilst it may not advance the position at all, it may be useful for me to visit you and Emma at your home and see whether Emma is prepared to expand on what she has said in the past. I stress that in no way would I seek to press her in this regard, but it may be that in the future it will be to her benefit if she can make a fuller account of what she suffered from the abuse by O’Donnell dec’d.⁷¹²

He continued that such a meeting would enable him to advise Emma of his findings and ‘discuss with her, the best way to pursue an application for compensation’.⁷¹³

When asked why he needed to visit the Fosters if he was already satisfied that Emma had been abused, Mr O’Callaghan QC said that it was ‘to enable my report to be more cogent and more persuasive or more enhancing of her entitlement to compensation’.⁷¹⁴ He also said, ‘the more relevant facts that the panel had before it, the more equipped they would be to make such a determination’.⁷¹⁵

Mr O’Callaghan QC visited Mrs and Mr Foster’s home on 16 October 1997.⁷¹⁶ His file note of the visit records that he told the Fosters that the purpose of his visit was to assist and ‘to smooth the path for the application for compensation and in particular to obtain some real evidence for the Compensation Panel as to the circumstances of the abuse. This would then allow the Panel to better assess compensation’.⁷¹⁷

During this meeting, Mr O’Callaghan QC asked Emma in the presence of her parents whether she would like to chat about Father O’Donnell. She said she might but did not.⁷¹⁸

Mr O’Callaghan QC also professed not to know anything about their application for crimes compensation. The Fosters agreed that he could contact their solicitors to discuss what was happening with this application.⁷¹⁹

On 29 October 1997, Mr O’Callaghan QC met with Mrs and Mr Foster at Sacred Heart Catholic Primary School and presbytery. They showed him the room marked ‘Shower’.⁷²⁰

3.7 Katie Foster reveals that she was abused

As it turned out, the tragedy for the Foster family was not confined to Emma's abuse.

In November 1997, Mrs and Mr Foster learned that their daughter Katie had also been sexually abused by Father O'Donnell.⁷²¹ Mrs Foster said:

I discovered a suicide note Katie had written. The note said that her sister had been abused by O'Donnell and that she had been abused by O'Donnell too. We made an appointment for Katie to see a psychologist. From that point onwards, Katie saw a psychologist weekly.⁷²²

Carelink funded these sessions.⁷²³

Mr O'Callaghan QC first spoke to Mrs and Mr Foster about Katie's abuse on 1 December 1997.⁷²⁴

On 30 July 1998, he met with Katie, Mrs and Mr Foster and Katie's psychologist, Ms Smith, to talk to Katie about her abuse by Father O'Donnell.⁷²⁵

Shortly after the conference started, it was agreed that Mrs and Mr Foster would wait outside.⁷²⁶

Katie said she did not want to talk about the abuse and that what she had told Ms Smith was true. She then left the room while Mr O'Callaghan QC spoke to Ms Smith.

3.8 Emma Foster's application to the Compensation Panel

On 12 March 1998, Professor Ball and Ms Sharkey again met with Mrs and Mr Foster.⁷²⁸ Mr Foster told them that Emma had started using heroin. They discussed the assistance Carelink could provide and whether this might include funding for Emma's education.⁷²⁹

On the same day, Ms Sharkey wrote to Mr O'Callaghan QC, enclosing a release of information form signed by Mrs and Mr Foster and asking him to forward any information concerning Emma and Katie Foster 'which will enable Professor Ball to write his report'.⁷³⁰

On 28 April 1998, Mr O'Callaghan QC wrote to Mrs and Mr Foster enclosing a copy of his proposed report to the Compensation Panel and inviting their comments.⁷³¹ On the same day, Mr O'Callaghan QC forwarded Ms Sharkey the documents requested.⁷³²

On 5 May 1998, Professor Ball wrote to Bishop Hart stating that Mr O'Callaghan QC was convinced that Emma Foster had been abused by Father O'Donnell. The letter set out Emma's medical condition and noted that this had had consequences for her schooling and had resulted in hospitalisation. It also said that Emma may require detoxification admission.⁷³³ He wrote:

The costs are likely to be major, and we are unclear whether these should be a direct charge to Carelink, or whether they should be handled in some other way. If they are not

strictly medical or psychological, and also if and when Carelink no longer exists, should special arrangements be made for the situation?⁷³⁴

On 8 June 1998, Mrs Foster provided some corrections to Professor Ball's report to the Compensation Panel and enclosed an Application for Compensation form signed by Emma.⁷³⁵ Mr O'Callaghan QC sent his report to the Compensation Panel on 10 June 1998 and forwarded a copy of this letter to Mrs and Mr Foster.⁷³⁶

Mr O'Callaghan QC gave evidence that, having provided his report to the Compensation Panel and, given Emma had already been referred to Carelink, he was *functus officio*⁷³⁷ – that is, he had discharged his duty.

On 25 June 1998, Bishop Hart responded to Professor Ball's letter of 5 May 1998 about Emma Foster. He wrote, 'We are happy that all appropriate costs be charged against Carelink'.⁷³⁸

Compensation Panel meeting

On 8 July 1998, the Chair of the Compensation Panel, Mr Habersberger QC, wrote to Mrs and Mr Foster proposing that the panel meet to discuss Emma's application on 11 August 1998.⁷³⁹ He wrote:

there is no requirement for you or Emma to attend. It is entirely a matter for you. I can assure you that whatever course you adopt, Emma's application will not be prejudiced.⁷⁴⁰

Mr Habersberger QC also asked Mr Leder to distribute copies of his file on Emma Foster to the other members of the Compensation Panel, which he did.⁷⁴¹

Mr Leder had several discussions with Mr Habersberger QC, including on 16 July 1998, about the fact that Emma Foster was a minor and therefore unable to provide an effective deed of release.⁷⁴² During these discussions he told Mr Habersberger QC that Mrs and Mr Foster had made some requests for funding which, in his opinion, fell outside of the remit of Carelink.⁷⁴³ He asked Mr Habersberger QC, if those requests were raised during the panel meeting, to indicate to Mrs and Mr Foster that these issues could be raised directly with Mr Leder.⁷⁴⁴

On 7 August 1998, Mr Leder sent a letter to Mrs and Mr Foster in which he outlined some of the issues that arose because Emma was under the age of 18.⁷⁴⁵

On 11 August 1998, Mrs and Mr Foster attended the Compensation Panel meeting.⁷⁴⁶ Mr Foster told the panel:

You have the reports of what has happened to Emma, I do not want to upset myself further by talking about it now. I believe you should pay Emma the full compensation amount of \$50,000.⁷⁴⁷

Mrs Foster said that Mr Habersberger QC, the Chair of the Compensation Panel, agreed that they did not need to go over Emma's suffering and that they were grateful for his kindness.⁷⁴⁸

The next day, Mr Habersberger QC recommended to Bishop Hart that Emma Foster be offered ex gratia compensation of \$50,000.⁷⁴⁹ He wrote:

I also advise that at the meeting the issues raised by Mr and Mrs Foster with Carelink on 12 March 1998 were raised again by them with the panel. In accordance with what Mr Leder asked me to do, I informed Mr and Mrs Foster that if they had any specific request for reimbursement of expenses, not covered by Carelink or by the above ex gratia compensation, they should approach Mr Leder directly.

Mr Leder's letter of 14 August 1998

On 14 August 1998, Mr Leder wrote to Bishop Hart about Mr Habersberger QC's recommendation that Emma Foster be offered \$50,000.⁷⁵¹ Mr Leder summarised the Fosters' dealings with the Archdiocese of Melbourne. He wrote:

Despite the volume of medical material, details of the abuse itself are sketchy. It is known that Emma remembers O'Donnell taking her to a room in a school hall marked 'shower', and that 'O'Donnell would sit her on his knee and hug her and that awful things used to happen in there'. It is suggested that O'Donnell may have drugged Emma with Coca Cola laced with alcohol. In a conversation with a policeman, subsequently conveyed to Peter O'Callaghan, Emma suggested that she had been fondled, but not penetrated.⁷⁵²

Later in the letter, Mr Leder wrote that in his view there should be some flexibility in terms of what can be paid to the Fosters through Carelink. He wrote:

For example, if urgent detoxification is required at Warburton, that would be an appropriate medical expense unless Professor Ball advised otherwise. On the one hand, the link between what appears to be relatively minor abuse and treatment for a heroin addiction might be thought tenuous. On the other hand, and for the reasons set out in this letter, there are compelling reasons to do whatever we can for Emma.⁷⁵³

Mr Leder gave evidence that his view, set out above, that the link between Emma's abuse and her heroin addiction was tenuous was not appropriate. He said that he understood much less about these issues at the time.⁷⁵⁴ He said:

I think to the extent that I was perhaps sceptical of some of those matters then, if I had known then what I know now I would have been less sceptical.⁷⁵⁵

In relation to his comment that Emma Foster’s abuse was ‘relatively minor’, Mr Leder agreed that:

- he was aware that the details of Emma’s abuse emerged in pieces over a period of time
- he was aware that it would not be in any way out of the ordinary for a young person to disclose the details in stages
- it is quite typical that a person who was sexually abused as a child may never reach the point of being able to disclose the details of their abuse
- the fact that Emma said ‘awful things’ happened to her when Father O’Donnell took her into the room marked ‘Shower’ suggested that there was still a lot to learn about what happened to her.⁷⁵⁶

In his letter to Bishop Hart, Mr Leder also wrote that, before the Compensation Panel met, Mr Habersberger QC had spoken to Mr O’Callaghan QC at Mr Leder’s suggestion to determine whether there was any prospect of Mrs and Mr Foster seeking compensation from the panel. He wrote that Mr O’Callaghan QC indicated that, in his view, they were not primary victims.⁷⁵⁷

Mr Leder concluded the letter with a series of recommendations. He said that he was inclined to send it to Mr O’Callaghan QC, Mr Habersberger QC and Carelink.⁷⁵⁸ He also wrote:

While the level of compensation recommended by the Compensation Panel is of course a matter for it, I venture to say that in this case, I entirely concur with their recommendation. This is plainly a situation where special efforts are needed to try and solve a horrendous problem.⁷⁵⁹

On 19 August 1998, Mr Leder spoke with Bishop Hart about these recommendations.⁷⁶⁰ Bishop Hart suggested that Carelink consider making a specific offer of assistance to Mrs and Mr Foster and other members of their family.⁷⁶¹

Letter of offer

On 21 August 1998, Mr Leder forwarded Mr Habersberger’s letter of recommendation to Bishop Hart and asked him to prepare a letter of apology on behalf of Archbishop Pell.⁷⁶²

On 31 August 1998, Mr Leder offered Emma \$50,000 in compensation. He wrote:

The compensation offer, together with the services that remain available through Carelink, are offered to Emma by the Archbishop in the hope that they will assist her recovery and provide a realistic alternative to litigation that will otherwise be strenuously defended.⁷⁶³

In that letter, Mr Leder also indicated that, if Mrs and Mr Foster had any specific requests that were not covered by Carelink or the compensation payment, they should approach him.⁷⁶⁴ Enclosed with this letter was:

- a letter from Archbishop Pell to Emma Foster, which offered her a personal apology for the wrongs and hurt she suffered at the hands of Father O'Donnell⁷⁶⁵
- the letter of recommendation from Mr Habersberger QC to Bishop Hart dated 12 August 1998.⁷⁶⁶

In relation to the use of the phrase 'strenuously defended' in the letter to Emma, Cardinal Pell said:

It's an unfortunate phrase, but I believe that some phrase would need to be there in a non-offensive way stating that, if the matters were taken to court, the Church would certainly consider using the defences available to every citizen and organisation in Australia.⁷⁶⁷

Mr Leder said the use of the phrase 'strenuously defended' reflected the Archdiocese's position that 'a victim such as Emma Foster would be unlikely to prove that anyone other than O'Donnell (who, by then, had died) was legally liable for the abuse that she suffered'.⁷⁶⁸ He said:

I was seeking to make the point that, in considering whether to accept the offer or to pursue litigation, it should be understood that if litigation was pursued, it would be defended on the basis that the defence was legally very strong and that accepting the offer being made might be considered to be a better outcome than not accepting the offer and running, and losing, litigation.⁷⁶⁹

This is at odds with other parts of his evidence.

Mr Leder agreed that this statement would frighten the average person. However, he said that it was aimed at one lawyer who was representing a large number of plaintiffs at the time.⁷⁷⁰ Mr Leder agreed that, in the case of the Fosters, this letter was not written to a solicitor.⁷⁷¹

Mr Leder said that the words 'strenuously defended' were used in letters to complainants to reflect 'that every point that is open to a defendant to take will be taken'.⁷⁷² They stopped being used when it was the subject of criticism by Mrs and Mr Foster in 2002 on the television program *60 Minutes*.⁷⁷³ He said, 'I think their complaint was well made and I think the language was inappropriate'.⁷⁷⁴

Mr Leder said that he, the Archdiocese and Ms Crennan QC (then Chair of the Compensation Panel) 'all recognised that, in the context of making an offer to a victim, and seeking to bring some healing between the victim and the Church, that part of the letter could have been phrased more sensitively. In letters sent to other victims subsequently, it was'.⁷⁷⁵

Mrs Foster told us:

Neither Anthony nor I ever had any sense about how the amounts of compensation were decided by the Compensation Panel. We were provided no information in relation to any criteria that was applied to Emma's application by the Compensation Panel and no appeal process was offered. Nothing about this process was transparent.⁷⁷⁶

On 19 November 1998, Emma Foster accepted the offer of \$50,000 in compensation.⁷⁷⁷

On 8 February 1999, Mr Leder sent Emma Foster the draft trust deed, asking her to nominate a trustee and indicating that she may wish to seek independent legal advice.⁷⁷⁸

3.9 Mrs Christine Foster and Mr Anthony Foster apply for compensation

On 8 September 1998, Mr Leder told Mr O'Callaghan QC that Mr Foster had asked about compensation for the other members of the family and that Mr Leder had informed him that compensation was only available for so-called 'primary victims'. Mr O'Callaghan QC's view was that they were not victims.⁷⁷⁹

On 13 September 1998, Mrs and Mr Foster made an application for compensation.⁷⁸⁰ In the months that followed:

- Mr Habersberger QC advised Mr Leder that Mrs and Mr Foster had applied directly to him for compensation⁷⁸¹
- Mr O'Callaghan QC wrote to Mr Habersberger QC that in his view Mrs and Mr Foster were not competent to make applications because in his view they were not victims of sexual abuse⁷⁸²
- Mr O'Callaghan QC sent Mr Habersberger QC a draft of a letter he proposed to send Mrs and Mr Foster in relation to their compensation application and asked for his comments⁷⁸³
- Mr O'Callaghan QC wrote to Mrs and Mr Foster informing them that they were not victims of child sexual abuse within the meaning of his terms and conditions and that, accordingly, the Compensation Panel would not receive a finding from him that they were entitled to be treated as victims.⁷⁸⁴

Mr O'Callaghan QC was of the view that a victim is a person who is actually abused or who is in such proximity in time and space as to observe or to be immediately affected by the abuse of another (thereby suffering nervous shock).⁷⁸⁵ Mr O'Callaghan QC gave evidence that he was applying the common law in his reasoning. He thought this was appropriate.⁷⁸⁶

Mr Leder did not turn his mind to the question of whether Mrs and Mr Foster qualified as victims under the Melbourne Response. He said that it fell to Mr O'Callaghan QC to make that decision.⁷⁸⁷

Mr Leder agreed that the terms and conditions of appointment of the Independent Commissioner were wide enough to permit applications for compensation by secondary victims such as Mrs and Mr Foster.⁷⁸⁸

However, he said:

the intention when the Melbourne Response was established was that compensation be available only to primary victims. So the view that Mr O’Callaghan formed was one that I felt reflected the intention.⁷⁸⁹

3.10 Katie Foster and the Independent Commissioner

On 1 February 1999 Ms Smith, Katie’s psychologist, rang Mr O’Callaghan QC about Katie’s application.⁷⁹⁰ Mr O’Callaghan QC told Ms Smith that the position ‘remained as it was after I’d had the meeting with her last year at which meeting Katie was not prepared to be forthcoming at all about the alleged abuse’.⁷⁹¹

Mr O’Callaghan QC also told Ms Smith that he had to guard against the obvious suspicion that suggestibility brought about by Emma’s plight was the cause of Katie’s.⁷⁹² The note records that Ms Smith was firm that this was not the case.⁷⁹³

About three months later, in May 1999, Mr O’Callaghan QC rang Ms Smith and asked whether Katie Foster had become more forthcoming.⁷⁹⁴ According to Mr O’Callaghan QC’s file note, Ms Smith told him they were concerned with looking forward and that she did not take Katie back to those situations.⁷⁹⁵

Mr O’Callaghan QC told Ms Smith of ‘the necessity to formalise the matter as far as Carelink was concerned’.⁷⁹⁶ During this conversation, Ms Smith also told Mr O’Callaghan QC that Mrs and Mr Foster had arranged for an expert in post-traumatic stress to interview both Emma and Katie.⁷⁹⁷

Mr O’Callaghan QC visits the Fosters’ home

On 6 May 1999 Mr Leder, at Mr O’Callaghan QC’s request, sent him ‘copies of relevant correspondence relating to Emma Foster’ in preparation for his meeting with the Fosters.⁷⁹⁸

When asked why he requested these documents, Mr O’Callaghan QC told us:

Well, just to have a background because I knew that I would be interested in knowing what Emma’s position was as a matter of compassionate and natural interest, and that I simply wanted to be – well, I was provided with this information as to the background situation.⁷⁹⁹

On the same day, Mr O’Callaghan QC visited the Fosters’ house to discuss Katie’s application to the Melbourne Response.⁸⁰⁰ He told the Fosters that he considered Katie had been abused by Father O’Donnell.⁸⁰¹

Mrs Foster gave evidence that Mr O’Callaghan QC also asked to speak privately with Emma during this visit and that they did not allow this.⁸⁰² Mr O’Callaghan QC denied this.⁸⁰³

Mr O’Callaghan QC’s file note of the meeting records that he discussed with Mrs and Mr Foster the fact that, although Emma had been offered compensation, the terms of the Trust Deed had not been settled.⁸⁰⁴ It also records that he said:

it’s obviously necessary to do something about it and to do that fairly quickly because Emma will be 18 in November and I presume that the Trust Deed would be drawn so as to terminate at that date. I then pointed out the desirability of someone being appointed a guardian of Emma so as to control the investment.⁸⁰⁵

Mr O’Callaghan QC also asked Mrs and Mr Foster whether Emma and Katie had been to a post-traumatic stress specialist in recent times and that Ms Smith had told him this.⁸⁰⁶ Mr O’Callaghan QC’s file note records, ‘They appeared confused about this and eventually said it may have been in connection with the Crimes Compensation Application’.⁸⁰⁷

Later that month, Mr O’Callaghan QC wrote to Ms Smith again, asking about her opinion as to whether Katie Foster had been abused, whether Katie had provided more details about the abuse and what her opinion on Katie’s prognosis was.⁸⁰⁸

On 28 May 1999, Katie was crossing a road while she was under the influence of alcohol. She was hit by a car and badly injured. The impact stopped her heart and caused a number of bleeds and swelling to her brain.⁸⁰⁹

Katie was in a comatose state for about four months and remained in hospital for almost one year. Tragically, the accident left her with permanent brain damage. Katie will require 24-hour care for the rest of her life.⁸¹⁰

On 2 August 1999, Ms Smith responded to Mr O’Callaghan QC that she maintained her professional clinical opinion that Katie was the victim of sexual abuse by Father O’Donnell and that, tragically, Katie’s prognosis had been altered by the head injuries she sustained.⁸¹¹

In late September, Mrs Foster asked Mr O’Callaghan QC when he was going to make a finding in respect of Katie.⁸¹² Mr O’Callaghan QC told Mrs Foster that he would write to her before the end of the week. He said that he ended the conversation by saying:

well I am very happy to do all that I said I would do, but if I am being set up, and I used those words, such that you were bringing actions in the Supreme Court and is that so – she said no.⁸¹³

Although the Fosters had consulted their solicitors by April 1997 and had discussed possible common law actions with them by February 1999, we do not criticise Mrs Foster for answering as she did.

The Fosters' solicitors write to Mr O'Callaghan QC

Over four months after this conversation, on 9 February 2000, solicitors Williams, Winter and Higgs wrote to Mr O'Callaghan QC advising that they acted for Katie Foster at the instructions of her parents.⁸¹⁴

They said they were instructed that Mr O'Callaghan QC had informed Mrs and Mr Foster at the meeting on 6 May 1999 that a finding would be made that Katie had been a victim of Father O'Donnell.⁸¹⁵ The letter noted that Mrs and Mr Foster had not yet received details of the finding. It requested that the details be provided within 14 days.⁸¹⁶

Mr O'Callaghan QC gave evidence that after meeting with Katie he was satisfied that she had been the victim of sexual abuse by Father O'Donnell and that he had intended to make a formal finding and prepare a report for the Compensation Panel.⁸¹⁷ Mr O'Callaghan QC agreed that he expressly or impliedly conveyed this to Mrs and Mr Foster.⁸¹⁸

On 23 February 2000, Mr O'Callaghan QC sent a letter to Mr Leder enclosing a draft letter in reply to the Fosters' solicitors. He wrote:

I would like your views as to whether it is appropriate to in effect try to 'flush out' the real intentions of the Fosters. A reading of the correspondence only re-enforces the possibility that they may have another agenda, and my oblique reference to other information is reflective of that.

On the other hand if they write back and say they insist upon my making a finding in relation to the complaint which has been lodged, I would feel obliged to do so.⁸¹⁹

On 23 February 2000, Mr O'Callaghan QC responded to the letter from the Fosters' solicitors.⁸²⁰ He wrote that he had made no formal findings on the fact of the abuse but confirmed that he advised Mrs and Mr Foster that a finding would be made.⁸²¹

Mr O'Callaghan QC also wrote that one matter that concerned him in the context of Katie's application for compensation was the fact that Emma had been awarded compensation in 1998 and had not yet formally accepted it.⁸²² He noted that he had spoken to Mrs and Mr Foster about this in May 1999. He wrote:

In the light of the above and also because of other information I have received, my query is whether Emma proposes to reject the offer and (presumably) pursue other remedies. Let me hasten to say that whether or not this occurs is not a matter which concerns me in my

capacity as Independent Commissioner. I do not, as I cannot, discourage or encourage any course of action decided upon by Emma and her advisers.

However if that is the position with Emma, I assume the same procedure will be followed by Katie. In that event, it would appear that my finding is being sought for purposes other than what is contemplated by the Terms and Conditions of my appointment.⁸²³

Mr O'Callaghan QC agreed in evidence that whether Emma Foster proposed to pursue other remedies did not concern him in his capacity as Independent Commissioner.⁸²⁴

Mr O'Callaghan QC said in relation to the delay in making a formal finding that Katie Foster was a victim of abuse:

first my delay in making such a finding was in just not getting round to it, but then with the delay in Emma's accepting the compensation offer, I inferred that the Foster family had or were going to take common law proceedings.⁸²⁵

Mr O'Callaghan QC was not going to make a finding if it was not 'for the purposes of my role as an Independent Commissioner'.⁸²⁶ Mr O'Callaghan QC agreed that at that time he did not know whether the Fosters had decided to pursue civil proceedings.⁸²⁷

Mr O'Callaghan QC was asked whether his function was to complete what he had commenced in relation to Katie Foster, regardless of whether civil proceedings were being considered.⁸²⁸ He responded, 'not if there was then extant mooted or actual civil proceedings'.⁸²⁹

However, Mr O'Callaghan QC agreed that, even if he had made formal findings that Katie was a victim of abuse, these could not have been used in any civil proceedings the Fosters might bring.⁸³⁰

On 24 February 2000, Mr O'Callaghan QC wrote to Mr Leder asking for his comments on a letter he proposed to send to Mrs and Mr Foster.⁸³¹ This letter set out the reasons for his conclusion that they were not compensable within the terms and conditions of his appointment.⁸³² Mr O'Callaghan QC then sent this letter to Mrs and Mr Foster.⁸³³

On 22 September 2000, Williams, Winter and Higgs responded to Mr O'Callaghan QC that Emma Foster was considering the offer made to her and requested again that he confirm in writing his verbal advice about the finding concerning Katie Foster.⁸³⁴

Mr O'Callaghan QC gave evidence that, because this letter made no reference to his request for information in February 2000, it strengthened his belief in the probability that common law proceedings were being, or were to be, taken.⁸³⁵

3.11 Request for additional funding from Carelink

Request for assistance with Emma Foster's education

On 1 February 2000, Mr Foster telephoned Ms Sharkey to ask whether Carelink would provide funding for Emma to undertake a State Enrolled Nurse training program.⁸³⁶

Ms Sharkey spoke to Mr Leder on 7 February 2000. Mr Leder told Ms Sharkey that he was happy for her to tell Mr Foster that Emma's education could not be funded because she had applied for compensation.⁸³⁷ Ms Sharkey then relayed this to Mr Foster⁸³⁸ and sent a memorandum of her conversations with Mr Foster and Mr Leder to Mr O'Callaghan QC.⁸³⁹

Ms Sharkey gave evidence that both she and Professor Ball agreed that Emma should be provided with assistance for her education but that it was out of their boundaries to make that decision.⁸⁴⁰

Request for assistance with Emma Foster's accommodation

On 22 June 2001, Bishop Hart was appointed Archbishop of Melbourne following Archbishop Pell's appointment as Archbishop of Sydney. Archbishop Hart was installed as Archbishop on 1 August 2001. On 2 August 2001, Archbishop Hart appointed Monsignor Prowse as Vicar General of the Archdiocese.⁸⁴¹

Emma's situation continued to worsen. On 2 April 2003, Mrs and Mr Foster wrote to the Vicar General Monsignor Prowse that they were no longer able to care for Emma in the family home because of her 'long history of depression, self harm and substance abuse'.⁸⁴² They asked whether the Archdiocese could help to provide somewhere for Emma to live.⁸⁴³

Ms Maheras, a family therapist, wrote to Monsignor Prowse the following day in support of Mrs and Mr Foster's letter.⁸⁴⁴ In this letter, Ms Maheras set out Emma's symptoms, including anorexia, substance abuse, self-harming and suicidality. Ms Maheras wrote that these symptoms are present in nearly all cases of survivors of prolonged sexual abuse and that they were a direct effect of the 'violent abuse she was subjected to as a child'.⁸⁴⁵

About Emma Foster's housing situation, Ms Maheras wrote:

- Emma has not been able to maintain her accommodation within the family home because of her symptoms and their impact on family relationships.
- To preserve these family relationships and ensure that Emma does not become cut off and socially isolated from vital support networks, it has been necessary for her to leave home.
- Emma's parents continue to provide emotional and practical support in a way that can be more useful to Emma from the position of living away.

- Leaving home had also been an important transition for Emma in regard to maintaining the normal life stage developments of independence and autonomy.⁸⁴⁶

Ms Maheras wrote that, because of Emma's age, psychiatric issues and substance abuse, she did not qualify for youth services; mainstream drug and alcohol services that provide accommodation; psychiatric services accommodation; or generalist accommodation services.⁸⁴⁷ The letter concluded:

Given that this housing crisis results directly from the ongoing emotional, psychological, physical, mental and social effects of abuse, responsibility for providing suitable, accessible and supportive accommodation for Emma clearly rests in your hands.⁸⁴⁸

Archbishop Hart considered Mrs and Mr Foster's request with Monsignor Prowse and came to the view that the Archdiocese should not cover these costs in addition to the financial support that had already been provided to Emma because it did not appear to be directly related to her abuse.⁸⁴⁹

On 11 April 2003, Monsignor Prowse wrote to Mr Leder about the Fosters' request and attached the letter from Ms Maheras.⁸⁵⁰ He wrote that he had discussed the matter with the Archbishop, who was aware that the Archdiocese had already assisted the Fosters, and said that 'such assistance may be said to be more than reasonable and generous given our parameters'.⁸⁵¹

He also wrote that the Archbishop was keen to tell the Fosters that the compensation pay-out and counselling services that had already been provided had reached their limit.⁸⁵²

On 15 April 2003, Mr Leder responded to Monsignor Prowse that Carelink could cover Emma's accommodation needs if they were therapeutic and part of a program of treatment that was finite in time.⁸⁵³ He also wrote:

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

The basis of the request made of you appears to be that her homelessness is related to the sexual abuse. Objectively, that argument cannot be sustained.⁸⁵⁴

Mr Leder also proposed a response to Mrs and Mr Foster, which stated that the compensation offer remains open to Emma and that it 'would quite clearly address the issues' raised in their letter.⁸⁵⁵ Monsignor Prowse adopted this draft and sent it to Mrs and Mr Foster that day.⁸⁵⁶

Mr Leder gave evidence that in his letter of 15 April 2003, quoted above, he was giving his opinion that the link between Emma Foster's abuse and her homelessness was too remote. However, Mr Leder agreed that:

- the only evidence he had about the connection between Emma's abuse and her homelessness came from Ms Maheras

- Ms Maheras’s professional opinion was contrary to Mr Leder’s conclusion
- remoteness is a question of fact.

Mr Leder accepted that perhaps it was not right for him to offer the view he did at that time. Mr Leder also agreed that this passage was not a fair characterisation of the situation and apologised for using that language.⁸⁵⁷

That apology was appropriate. His characterisation of the family circumstances at the time was unfair. Given the suffering of all members of the family, this was an unfair characterisation of the reason that Emma needed accommodation outside of the family home.

Archbishop Hart gave evidence that the Fosters’ letter of 2 April 2003 clearly expressed the desperate nature of Emma Foster’s situation and that their request was reasonable.⁸⁵⁸ He said, ‘I would certainly say now we could have been more generous’ and that, if he had his time again, he certainly would have granted this request.⁸⁵⁹

3.12 Role of the Independent Commissioner in the Fosters’ matter

It is readily apparent from the history of Mr O’Callaghan QC’s dealings with the Fosters that his role as Independent Commissioner was not well defined at that time. If the Melbourne Response was to operate as three separate stages, this was not the reality. Mr O’Callaghan QC involved himself in Carelink issues in relation to Medicare, counselling and other payments. He continued to have involvement with Emma Foster’s matter after he had made a finding that she was a victim of child sexual abuse.

Furthermore, his task was to make a decision on whether the girls had been abused. That decision could have no relevance to any possible common law proceedings and should have been made without any concern as to whether the Archdiocese may be sued. Even if we were to accept Mr O’Callaghan QC’s opinion that he would be in contempt of court if he continued to investigate facts that were to be considered by a court, this could not extend to an obligation upon him to actively ‘flush out’ whether civil proceedings were being considered.⁸⁶⁰

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4 The Fosters bring civil proceedings

On 24 April 1997, the Fosters consulted solicitors Williams, Winter and Higgs because ‘We had felt quite powerless in our dealings with the Catholic Church thus far and decided to redress this imbalance by seeking independent legal advice’.⁸⁶¹

Their solicitor’s advice was that it would be very difficult to sue the Catholic Church. They suggested that the Fosters initially seek assistance through the Victims of Crime Assistance Tribunal as an alternative to the Melbourne Response.⁸⁶²

The Fosters lodged applications with the Victims of Crime Assistance Tribunal in May 1997 but then put them on hold because Mrs Foster felt that, from an ethical perspective, the Catholic Church should be the entity that provides assistance.⁸⁶³

Between 1997 and 1999 the Fosters spoke to their lawyers about their options for seeking compensation.⁸⁶⁴ On 26 February 1999 they met with barrister Mr Tim Secull and decided that they wanted to pursue civil legal action against the Catholic Church rather than continuing with the Melbourne Response.⁸⁶⁵

4.1 The proceedings

In 2002, Mrs and Mr Foster instructed their solicitors to commence five separate legal proceedings in the Supreme Court of Victoria on behalf of Emma, Katie, Aimee and Mrs and Mr Foster.⁸⁶⁶ The following defendants were named in each proceeding:

- Ms Noreen Harrison, the former principal of Sacred Heart Catholic Primary School (first defendant)
- Sir Frank Little, Emeritus Archbishop for the Diocese of Melbourne (second defendant)
- Archbishop Hart (third defendant)
- Roman Catholic Trusts Corporation for the Diocese of Melbourne (fourth defendant)
- Bishop Hilton Deakin, former Vicar General (fifth defendant)
- Father Guelen, who served with Father O’Donnell at Dandenong (sixth defendant).

Mrs and Mr Foster’s proceedings were issued on 22 March 2002. Emma’s, Katie’s and Aimee’s proceedings were issued on 28 October 2002. They were served on the defendants in 2003.⁸⁶⁷

Emma’s and Katie’s proceedings made a claim for damages for injuries sustained as a result of the sexual assaults by Father O’Donnell while in attendance at Sacred Heart Catholic Primary School.⁸⁶⁸

The proceedings alleged that the sexual assaults occurred in premises owned and operated by the first to fourth defendants while Emma, Katie and Father O’Donnell were under the care and control of the first to sixth defendants.⁸⁶⁹

It was also alleged that the sexual assaults occurred at a time after the first to sixth defendants became aware of Father O'Donnell's propensity to behave dangerously and inappropriately with young children.⁸⁷⁰

The claim for damages was made on the basis that Emma and Katie suffered injuries as a consequence of the sexual assaults by Father O'Donnell and/or the negligence and breach of duties of the first to sixth defendants.⁸⁷¹

Mrs and Mr Foster's and Aimee Foster's proceeding were for damages on the basis that they suffered injury by way of nervous shock as a consequence of the sexual assaults by Father O'Donnell perpetrated against Emma and Katie and/or the negligence and breach of duties of the first to sixth defendants.⁸⁷²

On 28 July 2003, Mr Leder confirmed that Corrs would accept service of the proceedings on behalf of Archbishop Little, Archbishop Hart, the Roman Catholic Trusts Corporation and Bishop Deakin.⁸⁷³ Corrs filed an appearance for the other two defendants, Father Guelen and Ms Harrison.⁸⁷⁴

Between December 2003 and October 2004, statements of claim, defences and amendments to each were filed in the proceedings.⁸⁷⁵

4.2 The Archdiocese's response

Instructions

On 29 July 2003, Mr Leder told Catholic Church Insurances about the claims.⁸⁷⁶ Catholic Church Insurances played no role in the defence and settlement and Mr Leder did not receive instructions from them.⁸⁷⁷

Archbishop Hart gave evidence that he placed the management of the litigation in the care of Mr Leder, both to act on his behalf as a named defendant and more generally 'to protect the interests of the Melbourne Archdiocese'.⁸⁷⁸

Mr Leder's instructions came from Mr Edward Exell, the Archdiocese's business manager, although these were subject to oversight by Archbishop Hart.⁸⁷⁹ He spoke directly to Archbishop Hart about the litigation on a very small number of occasions and did not speak to Cardinal Pell at all.⁸⁸⁰

In his statement, Archbishop Hart said:

My strong preference from the time I became aware that the Fosters had started court proceedings was that their claims be resolved without delay, pastorally and in a non-adversarial way if that were possible.⁸⁸¹

Mr Exell gave evidence that his strong recollection was that Archbishop Hart told him that he wanted this case resolved at the earliest opportunity and that this basic direction did not change in any way.⁸⁸²

Mr Leder gave evidence that, at about the time the statements of claim were served, he spoke to Archbishop Hart.⁸⁸³ Mr Leder's file note says, 'take the defences', and 'medical exams early'.⁸⁸⁴

Mr Leder gave evidence that he cannot specifically recall the conversation but that he believes they would have discussed the various defences that were available to the defendants.⁸⁸⁵ Mr Leder said:

I doubt that we would have had a detailed discussion about the decision to take the relevant defences as this had been the position of the Archdiocese for the previous twenty years, and there had been no relevant changes to the law since then. It would certainly have come as no surprise to me that Archbishop Hart instructed me to take the relevant defences, and would have been consistent with my advice to him, or that he had agreed with any recommendation I made that he take the defences.⁸⁸⁶

Archbishop Hart agreed that he effectively gave Mr Leder instructions to take all defences that were open to the Church in defending this matter.⁸⁸⁷ He said that he was dependent on his legal advisers; however, his lay reading was that it did not seem right to him that he and the Roman Catholic Trusts Corporation were legally liable for the crimes committed by Father O'Donnell.⁸⁸⁸

Why did the defendants 'not admit' the abuse of Emma and Katie Foster?

On 26 March 2004, Mr Leder wrote a memorandum to counsel:

Counsel should note that the Independent Commissioner was satisfied that Emma Foster was a victim of the late father Kevin O'Donnell. Emma has led an extremely troubled life, and has had major difficulties with drug addiction. She has attempted suicide on many occasions.

The Commissioner has made no findings in relation to Katherine.

Counsel may recall that the Foster family participated in the 60 minutes program in mid 2003, that was violently critical of Cardinal Pell.⁸⁸⁹

Mr Leder gave evidence that the allegations of abuse in the statement of claim were 'extremely vague'.⁸⁹⁰ He said:

- they did not provide any details of the alleged abuse other than to assert that it 'included genital contact'
- it was unclear whether the physical and/or psychological abuse was in addition to what might be expected to be associated with the sexual abuse itself

- the particulars of when and where the abuse allegedly took place were very vague
- the dates of the abuse simply covered the period from when Emma and Katie commenced school to the date Father O'Donnell retired.⁸⁹¹

On 5 May 2004, counsel for the defendants sent Mr Leder a draft of the defences, which did not admit that the plaintiff was subject to abuse and denied all the allegations of abuse.⁸⁹²

Mr Leder said:

I would have been completely unsurprised by this paragraph of the defence given the vagueness of paragraph 11 of the statement of claim. That is not to suggest that it was intended to dispute the allegations of abuse, but until the allegations of abuse were properly particularised, it was simply not possible to admit those allegations. In that context I did see a real difference between not admitting the abuse but taking the more active step of positively denying the remaining allegations in paragraph 11.⁸⁹³

Mr Leder gave evidence that the particulars of the allegation of abuse were so vague that 'in a legal sense, in the context of a pleading and with the precision required of a pleading, it was and is my view that it was not possible to make that admission'.⁸⁹⁴

Mr Exell told us he does not recall being involved in any discussions about this aspect of the defence and that it did not occur to him that the defence as drafted might be read as denying that the abuse had occurred.⁸⁹⁵

The Fosters were shocked that the defendants did not admit that Father O'Donnell had abused Emma and Katie and that they denied that Emma and Katie had suffered shock, personal injury, loss and damage as a consequence of a breach of their respective duties.⁸⁹⁶

Mr Leder said that at no stage during the litigation did the Fosters' lawyers raise the issue of the non-admission of Emma's and Katie's abuse.⁸⁹⁷ He also said, 'I cannot conceive for one minute that, had these claims gone to trial, they would have gone to trial with a dispute as to the – what had actually happened'.⁸⁹⁸

Mr Leder accepted that, on reflection, a different approach should have been taken. He said that, if this issue arose in the future, he would ring the plaintiff's solicitors, discuss contested issues and be guided by them as to the most appropriate way of obtaining whatever information needed to be obtained. He said, 'I would like to think that I understand the difficulties and the sensitivities of this and that I'd act appropriately'.⁹⁰⁰

On 18 April 2013, Mr Leder wrote to the Archdiocese's in-house solicitor, Ms Jennifer Cook, about a *60 Minutes* interview with Cardinal Pell.⁹⁰¹ He wrote:

I would note in particular that one virulent criticism made by the Fosters is that although the Independent Commissioner upheld the abuse, we did not admit it in the defence when

they sued. There is a very good reason for this. The statement of claim alleged that she was raped and the Fosters now say this repeatedly, but according to the Commissioner's report, when Emma spoke to the police (before going to the Commissioner), she denied she had been raped and complained only of relatively minor abuse.⁹⁰²

Mr Leder gave evidence that this explanation about why Emma's and Katie's abuse was not admitted in the defences was incorrect. He said, 'I had confused in my mind the details as pleaded in the statement of claim and the details as provided at the mediation'.

Provision of Carelink services during the proceedings

Mr Leder said that he spoke to Mr O'Callaghan QC to seek his views on whether the medical accounts for Emma and Katie should continue to be paid in light of the proceedings. They agreed that they should.⁹⁰⁵

On 7 April 2004, Mr O'Callaghan QC wrote to Ms Elizabeth Harding of Carelink:⁹⁰⁶

Since speaking to you this morning, I have spoken with Richard Leder, who coincidentally tells me that he has today received Statements of Claim for Emma, Katie and the younger sister, and also for each of the parents.

Having discussed the matter with Richard, I confirm my advice that in the circumstances you should continue to pay, on the normal basis, the accounts rendered in respect of the treatment of Emma and Katie.⁹⁰⁷

On 10 November 2004, Ms Harding told Mr O'Callaghan QC that Mrs and Mr Foster had received 10 counselling sessions and asked whether he could authorise for them to receive more.⁹⁰⁸

Mrs Foster said that, in November 2004, Ms Maheras advised her that she had received two phone calls from Ms Harding, who said that Mr O'Callaghan QC had not approved the payment of their counselling expenses and that he had 'hit the roof' about it.⁹⁰⁹ Mrs Foster said that Ms Maheras also told her that Carelink immediately stopped paying the accounts for their counselling.⁹¹⁰

Mr O'Callaghan QC responded on 15 November 2004 that Carelink was not authorised to pay for treatment for Mrs and Mr Foster 'other than for treatment which is essentially related to the treatment of Emma and Katie'.⁹¹¹

Mr O'Callaghan QC gave the following evidence:

I have no recollection of 'hitting the roof'. I am unaware of counselling or payments being stopped. The position so far as I am aware was referred to in my letters to Elizabeth Harding of 15 November 2004.⁹¹²

When asked why the Independent Commissioner made this decision, Mr O’Callaghan QC said this was because Carelink had raised the issue and he simply explained his view of the position.⁹¹³

Mr O’Callaghan QC said, ‘I did not consider it inappropriate for me to respond to a request for advice from Carelink’.⁹¹⁴

4.3 Allegations of prior knowledge of Church personnel about Father O’Donnell’s offending

The statements of claim alleged that the Church had prior knowledge of Father O’Donnell’s behaviour on a number of grounds. As it happens, there was significant force in the allegations:

- In 1958 complaints were made to Monsignor Moran, then Chief Administrator for the Diocese of Melbourne, about Father O’Donnell’s interference with a young boy (the 1958 complaints).
- Also in 1958, Father Guelen observed Father O’Donnell engaging in inappropriate behaviour with a young boy whilst in the Diocese of Melbourne.
- In early 1992, Father Salvano complained to Bishop Deakin, former Vicar General (the fifth defendant in the proceedings) about the inappropriate behaviour of Father O’Donnell with young children (the Salvano complaint).⁹¹⁵

Mr Leder, as solicitor for the defendants, investigated the factual basis of these allegations.⁹¹⁶

The 1958 complaints

The investigation revealed that the Archdiocese did have knowledge of complaints about the conduct of Father O’Donnell at least by 1958.⁹¹⁷

On 31 October 1994, Father Guelen wrote to Monsignor Cudmore about an interview he had with a man, referred to in the hearing as ‘A’, on 13 September 1994.⁹¹⁸ He wrote:

As far as he recalls, a young fellow [B] 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 Lawrence Moran, the administrator of the Cathedral. He received them well, was kind and listened to their story (complaint). From that day onwards he [Mr A] was out of the case.⁹¹⁹

On 30 November 2004, Mr Leder wrote to counsel for the defendants indicating that this complaint first surfaced in 1994 and that Monsignor Moran was dead by that time.⁹²⁰ Mr Leder also wrote that:

- Bishop Fox was interviewed by a lawyer from Corrs and was adamant that there was no knowledge of any complaint about Father O'Donnell.⁹²¹
- Archbishop Little, who became Archbishop in 1974, denied any knowledge of the 1958 complaint.⁹²²

Mr Leder agreed that the record of interview from Father Guelen indicates that a senior figure in the Archdiocese had information in 1958 that, properly handled, might have led to Father O'Donnell being exposed and subsequent abuse being avoided.⁹²³

Mr Leder agreed that, in light of this evidence, the real impediment to the Fosters establishing a successful civil claim was the legal structure of the Church.⁹²⁴ There was no identifiable defendant with any assets. However, he said that, at least in his mind, there was a question as to the distinction between Monsignor Moran's knowledge and the Church's knowledge.⁹²⁵ This distinction is not apparent to us.

In their submissions, the Church parties agreed that the 1958 report should have been passed on for appropriate action.⁹²⁶

Father Guelen

On 14 May 1994 a man, whose name was redacted by the Royal Commission, made a statement to police that set out his allegation that Father O'Donnell had abused him.⁹²⁷ This statement was later used in civil proceedings by another person in 1999 in proceedings against Father O'Donnell and Archbishop Little.⁹²⁸ One of the allegations contained in the statement was that:

During the later part of 1962 I can recall that O'Donnell was supposedly sick in bed. He had asked me to come and see him. I went into the bedroom and I went over to the side of the bed. He pulled back the blankets back [sic] and I could see he was wearing pyjamas. He then grabbed me and pulled me onto the bed. Just at this time another priest, Father GUELEN, came to the bedroom door. O'Donnell then just pushed me off the bed. The other priest just appeared to walk away. I can remember thinking that maybe everything would stop because the other priest had seen what was happening.⁹²⁹

Father Guelen was unable to give evidence to the Royal Commission on medical grounds but instructed his solicitors that he has consistently denied, and continues to deny, that he saw anyone with Father O'Donnell in his room.⁹³⁰

Complaint by Father Salvano

The final allegation that the Church had prior knowledge of Father O'Donnell's offending was based on a complaint by Father Salvano.

Mr Leder spoke to Father Salvano on 23 June 2005, who confirmed that he had complained to Bishop Deakin in early 1992 about Father O'Donnell's bullying behaviour. Father Salvano said that he had concerns about how Father O'Donnell seemed to surround himself with children, particularly boys, but that he had not witnessed anything criminal.⁹³¹

Father O'Donnell retired in August 1992.⁹³²

4.4 Role of the Archdiocese's instructing solicitors

In the Fosters' case, Mr Leder exchanged information with the persons involved in each component of the Melbourne Response in relation to the proceedings. At the same time, Mr Leder was acting on behalf of, and advising, the Archdiocese about the process.

Mr Leder gave evidence that Emma Foster's claim was unusual and difficult for several reasons, including:

- her complaint came to light while she was still a minor
- because the complaint was made to the Melbourne Response soon after it commenced operation, some procedures of the Melbourne Response had not yet been determined.⁹³³

Regardless of this, Corrs' position as lawyers responsible for the Melbourne Response, as well as solicitors for the Archdiocese, raises a clear potential for conflict. It also raises difficulties with confidentiality.

Information about Father Guelen

The difficulties with confidentiality referred to above are illustrated by Mr O'Callaghan QC's provision of information to Mr Leder about the allegations involving Father Guelen.

On 24 November 2004, after the Fosters had filed statements of claim, counsel for Father O'Donnell and Archbishop Little asked Mr Leder to seek further instructions about the Father Guelen allegations. Father Guelen was named as the sixth defendant in the proceedings.⁹³⁴

Mr Leder rang Mr O’Callaghan QC to ask whether he could provide any information about this.⁹³⁵ After that discussion, Mr Leder told counsel for Father O’Donnell and Archbishop Little that:

- Father Guelen is a priest in good standing.
- According to the police statement of a victim of Father O’Donnell, in 1962 Father O’Donnell called a boy into his bedroom. Father O’Donnell was in bed, and pulled back the covers. He was wearing pyjamas and he pulled the boy into the bed on top of him. The door opened and Father Guelen walked in. Father O’Donnell pushed the boy away. Father Guelen left.⁹³⁶

Mr Leder also told him, ‘I am informed of the foregoing by Peter O’Callaghan’.⁹³⁷

Mr O’Callaghan QC agreed that he was aware that this information was relevant to the defence of the civil proceedings brought by the Fosters.⁹³⁸ He told us:

- he had obtained at least part of this information in the course of his investigations of a complaint made by another victim of Father O’Donnell⁹³⁹
- he had no record of seeking consent from this victim before providing this information to Mr Leder
- in accordance with the terms of his appointment he was required to keep all matters confidential and to consider them confidential and privileged
- consistently with the terms of his appointment, he should not have provided this information to Mr Leder.⁹⁴⁰

Mr O’Callaghan QC said he had no explanation as to why he provided this information to Mr Leder.⁹⁴¹

Mr Leder said in his statement, ‘I telephoned Peter O’Callaghan to see whether he could provide any information about what Father Guelen had seen or not seen’.⁹⁴²

In this statement, Mr Leder also stated, ‘initially I did not know details of the history or relationship between O’Donnell and Father Guelen or that he denied the allegation that he had witnessed O’Donnell abusing a child’.⁹⁴³

When he gave oral evidence after Mr O’Callaghan QC had given evidence, Mr Leder corrected this part of his statement so that it read, ‘initially I did not recall the details of ...’.⁹⁴⁴

Mr Leder then gave evidence that in the late 1990s he had been acting for various defendants associated with the Church in proceedings issued by victims of Father O’Donnell.⁹⁴⁵ In one case brought by a victim given the pseudonym [ID], similar allegations were made that Father Guelen had seen a boy in Father O’Donnell’s room.⁹⁴⁶

Mr Leder gave evidence that he phoned Mr O’Callaghan QC for assistance because:

I had a recollection of having seen that allegation before, and I had a recollection also that the plaintiff, whose name is redacted, was one of the complainants in the criminal

prosecution of O'Donnell. I can't be sure whether I recollected that then, but I now know that to be the case. I think I recollected that then as well.⁹⁴⁷

Mr Leder told us that he did not recollect this at the time of making his statement.⁹⁴⁸

Mr Leder said that, from the proceedings involving [ID], he had a copy of the police statement of the victim of Father O'Donnell who made the allegations against Father Guelen.⁹⁴⁹ Mr Leder said that he had clearly forgotten about this when he spoke to Mr O'Callaghan QC.⁹⁵⁰

Mr Leder said that his conversation with Mr O'Callaghan QC ultimately allowed him to go back to his file on [ID] and find the police statement.⁹⁵¹ He also said:

I can say with some confidence that I must have had the police statement in front of me when I drafted that fax because the fax contains details that aren't recorded in my diary note with Mr O'Callaghan. I believe in any event that I would not have prepared a fax to counsel giving instructions about those details without referring to some document.⁹⁵²

Mr Leder later told us:

I don't believe that I was informed of all the matters in that paragraph by Mr O'Callaghan specifically. I believe that I was – I must have been informed by Mr O'Callaghan that Guelen was a priest in good standing and I believe the source of my information for the rest of the paragraph was the police statement which I already had but which I had been unable to locate until Mr O'Callaghan was able to, as best as I recall, give me some information that allowed me to go to which file to look for it on.⁹⁵³

Mr Leder agreed that:

- this was his present reconstruction of what he thinks occurred at the time
- he did not recall this at the time he prepared his statement
- he wrote the facsimile of 30 November 2004 on the same day he spoke to Mr O'Callaghan QC
- Mr O'Callaghan QC has a good memory for detail.⁹⁵⁴

After the hearing had finished, Mr O'Callaghan QC provided an affidavit in which he swore that he was aware of the information that he provided to Mr Leder from 'non-confidential' sources. While he did not provide any documents to us, he swore that he knew of the Father Guelen allegation through interviews with a 'Father BN' in relation to 'non-confidential' matters and an interview with Father Guelen.⁹⁵⁵

We note that these interviews seem to have been conducted as part of Mr O'Callaghan QC's role as Independent Commissioner. We are unable to determine whether or not they were conducted confidentially.

Even if Mr O’Callaghan QC did obtain this information from a non-confidential source, we are troubled that the instructing solicitor for the Archdiocese was in a position where he could ask the Independent Commissioner for information obtained in his role as Independent Commissioner for the purposes of defending a civil claim against the Archdiocese.

As Archbishop Pell said, the structure of the Melbourne Response is based on the independence of each component part from each other and, importantly, from the Archdiocese.

However, these events highlight the inevitable difficulties that arise when an Independent Commissioner has an instructing solicitor who is also instructing solicitor for the Archdiocese.

Whether this arrangement compromised the outcome is not known. The real issue is perception. The Melbourne Response was promoted as independent of the Archdiocese, and each arm – the arms being the Independent Commissioners, Carelink and the Compensation Panel – was intended to be independent from the others. That could never be achieved when the lawyer for the Archdiocese was a common and key element and was involved in all major steps of the process.

For this reason we consider that, where there are lawyers responsible for administering a redress scheme, they should not be the same lawyers as those acting for the relevant institution. The potential for conflict, and the difficulty of maintaining confidentiality, are obvious.

4.5 Settlement meetings

On 6 August 2004, Mr Seccull telephoned Mr Leder to ask whether his clients would be interested in discussing settlement.⁹⁵⁶ There were discussions between the Fosters’ lawyers and Mr Leder later in August and in September that year.

Without prejudice meeting

On 2 March 2005, Corrs advised Mr Michael Jorgensen of Williams Winter Solicitors (formerly Williams, Winter & Higgs) that they had instructions to proceed with an application to strike out the various statements of claim⁹⁵⁷ and had received instructions to attend a without prejudice meeting with the Fosters’ lawyers before proceeding with this application.⁹⁵⁸

On 22 June 2005, Mr Leder prepared a position paper stating that, on the facts, the claims against each of the defendants would fail.⁹⁵⁹ He suggested that Emma and Katie be offered \$55,000 (the maximum amount of compensation payable under the Melbourne Response at that time) and that Aimee and Mrs and Mr Foster be offered a lesser amount. He queried whether the Archdiocese should pay legal costs as well.⁹⁶⁰

Mrs Foster gave evidence that, due to the unavailability of various people, the without prejudice settlement meeting did not take place until 24 June 2005.⁹⁶¹

Mr Leder and Mr Exell gave evidence that the conference concluded without settlement because Mr Seccull did not have instructions to negotiate from the figures he had put forward.⁹⁶² For Emma and Katie, Mr Seccull sought general damages of \$250,000 each. For Emma he sought a further \$250,000 for economic loss and for Katie \$50,000. For Aimee he sought \$75,000 general damages and \$75,000 damages for loss of chance. For Mrs and Mr Foster he sought \$100,000 each in general damages.⁹⁶³

Archbishop Hart told us that he was informed that, although the claims were not resolved at this meeting, the discussions were constructive and the parties would continue settlement discussions.⁹⁶⁴

Mediation

On 28 July 2005, Mr Jorgensen wrote to Corrs to indicate that Mrs and Mr Foster had instructed them to resume discussions by way of mediation.⁹⁶⁵

Before the mediation, Mr Leder said that Archbishop Hart and Mr Exell instructed him that every effort should be made to settle the litigation and that the Archbishop did not want the case to go to court.⁹⁶⁶

Mr Leder said that there was concern that settlement for a substantial sum could detract from the effectiveness of the Melbourne Response in that it might encourage others to litigate.⁹⁶⁷

However, Mr Leder said it was also recognised that if the matter did go to trial it would involve significant legal costs. He said that it seemed unlikely that the Archdiocese would ever seek to recover these costs from the Fosters if it won the litigation.⁹⁶⁸ Mr Leder said there was also the consideration that, while a verdict was expected to deliver a legal victory for the Archdiocese, 'it was not a victory that it would enjoy nor was it one that would be positively portrayed or received in the public'.⁹⁶⁹

The mediation took place on 7 November 2005.⁹⁷⁰ After some negotiation, the Fosters said they would accept \$750,000, plus payment of their legal costs and an indemnity in respect of any payments to the Health Insurance Commission. This offer did not include ongoing entitlement to Carelink.⁹⁷¹ The Archdiocese accepted this offer.

The Fosters decided to allocate the settlement sum as follows:

- Emma – \$450,000
- Katie – \$220,000
- Aimee – \$30,000
- Mr Foster – \$25,000
- Mrs Foster – \$25,000.⁹⁷²

On 11 January 2006, Mr Leder wrote to Williams Winter to inform them that Mrs and Mr Foster had submitted further accounts to Carelink for payment. He told Williams Winter that he had advised Carelink that these accounts should not be paid, as one of the terms of the settlement was that the Fosters had no further entitlement to funding through Carelink.⁹⁷³

Archbishop Hart gave evidence that he was satisfied that an agreement had been reached and that the settlement amount did not cause him to think about the cap that had been placed on the Melbourne Response.⁹⁷⁴

On 3 March 2006 the terms of settlement were agreed and executed.⁹⁷⁵ The terms of settlement included the following:

- a release of the defendants from any claims arising out of the proceedings or the assaults by Father O'Donnell on Emma and Katie
- a provision that the Fosters would not make any further claim for expenses or compensation for these assaults, including assistance provided through Carelink
- a provision that the parties would keep the terms of the settlement confidential and not disclose them other than as required by law.⁹⁷⁶

Mrs Foster said of the family's experience in the litigation:

The civil litigation process took our family almost 10 years to complete. It required countless hours of effort at a significant personal cost and the help of our dedicated legal team. We are of the view that we settled for an amount of money that was far less than what our children were entitled to. Even so, it was a far better result than we could have hoped for from the Melbourne Response. With the settlement funds Emma was able to purchase a house. Katie was able to move into her own home which was specially designed to take into account her disabilities. Very few victims, however, are afforded the support our children had to be able to achieve such a result.⁹⁷⁷

The chronology of the civil litigation is set out above. The writs on behalf of the Foster family were apparently issued by October 2002 and served in July 2003. After some interlocutory procedures, the first settlement conference was in June 2005. An agreement was reached in November of that year. Terms of settlement were signed in March 2006.

This means that, after the Fosters filed the statements of claim, the cases were settled in just over a year and finalised within two years. However, the reality for the Fosters is that they had been endeavouring to seek a financial response from the Archdiocese since the commencement of the Melbourne Response process in 1997. The first offer of \$50,000 was the maximum amount provided under the Melbourne Response at that time. Ultimately, the Fosters did not believe this sum would provide a just outcome and commenced proceedings. No doubt Mrs Foster and her family see the steps taken under the Melbourne Response and in the courts as part of the same process.

As we have indicated, the ultimate difficulty in the Fosters' proceedings was in identifying an appropriate defendant. This issue was considered in the hearing that looked at Mr Ellis's court proceedings (see case study 8) and was the subject of recommendations by the Victorian Parliament in its 2013 report *Betrayal of trust: Inquiry into the handling of child abuse by religious and other non-government organisations*.

Archbishop Hart said that he is of the view that the Catholic Church in Australia should provide victims of child sexual abuse with an entity to sue. He said that he formed this view in 2012 or 2013.⁹⁷⁸ He said that the Archdiocese of Melbourne has made this recommendation to the Victorian Government and also to the Royal Commission in the submission by the Truth, Justice and Healing Council.⁹⁷⁹

Archbishop Hart also said that, if civil proceedings were brought against the Archdiocese in the future, he would make sure there was an entity to sue.⁹⁸⁰ This will also be considered in our work on redress and civil litigation.

Catholic Church Insurances

Catholic Church Insurances paid 50 per cent of the settlement amount in the Fosters' case, the legal costs incurred by the Fosters and the Archdiocese and payments made by Carelink to Mrs Foster.⁹⁸¹

Mr Bucci of Catholic Church Insurances told Mr Exell in March 2007 that this was because of a 'joint agreement regarding the O'Donnell claims post 1958'.⁹⁸²

Mr Leder gave evidence that Catholic Church Insurances only indemnifies 50 per cent of claims made by victims of Father O'Donnell. It adopts this position because of the allegation that the Church had knowledge of Father O'Donnell's offending in 1958 and should have acted at this time.⁹⁸³

On 21 December 2007, Mr Leder sent an email to Mr Moore, Executive Director of administration for the Archdiocese,⁹⁸⁴ in which he said:

In respect of claims for victims of O'Donnell, CCI reduce all of the above amounts by 50% because as we discussed on Monday, there is an allegation of prior knowledge on the part of the Archdiocese, which allegation we hotly dispute. 50% is therefore an agreed compromise.⁹⁸⁵

4.6 The continuing tragedy and the response of Bishop Fisher

Mrs Foster gave evidence that, despite all of the professional help Emma received and despite their love for her, Emma never recovered from the sexual abuse she suffered.⁹⁸⁶ Mrs Foster said that Emma's life continued to spiral out of control and, in January 2008, she took her own life.⁹⁸⁷

Mrs Foster told us that Katie has never recovered from being hit by a car while binge drinking to escape the memories of her sexual assault and that she will always require 24-hour care.⁹⁸⁸

On 15 July 2008, during the Catholic youth festival World Youth Day, held in Sydney, Mr Foster was interviewed on the ABC's *Lateline* program.⁹⁸⁹

Mrs Foster gave evidence that on 16 July 2008, in response to this interview, Bishop Anthony Fisher referred to the Fosters as 'dwelling crankily ... on old wounds'.⁹⁹⁰ She said:

Emma had died only six months earlier. We lived with the pain of our wounds daily, and still do. We found these comments to be very hurtful.⁹⁹¹

We completely understand her response and that she would inevitably have understood Bishop Fisher's comments to be directed to her and her family.

In a letter dated 15 August 2014 to the Chair of the Royal Commission, Bishop Fisher wrote:

I sincerely regret that my comment on 16 July 2008 was taken as a criticism of victims of clergy sexual abuse and I unreservedly apologise for any offence caused. ...

I understand how some people interpreted my comments in 2008. At the press conference and in subsequent statements I explained that my remarks were aimed at some journalists and their hostile approach to World Youth Day, not to victims of child sexual abuse or their families.⁹⁹²

The Fosters met with Cardinal Pell in March 2014 and with Archbishop Hart in April 2014. They told Archbishop Hart that they wanted the Melbourne Response compensation cap removed and all previous and future cases to be reassessed in line with civil limits.⁹⁹³

Mrs Foster said that Archbishop Hart agreed to review the situation and invited them to be part of the consultation.⁹⁹⁴

5 The Melbourne Response experiences of Mr Paul Hersbach and Mr AFA

In this case study, we also considered the experience of Mr Paul Hersbach and Mr AFA, who went through the Melbourne Response in 2006 and 2011 respectively.

5.1 Mr Paul Hersbach

Mr Paul Hersbach's father, Mr Tony Hersbach, grew up on a housing commission estate in Laverton in western Melbourne.⁹⁹⁵ Mr Tony Hersbach was an altar boy in the 1960s and attended school at St Mary's in Altona in Melbourne, where Father Rubeo was a priest.⁹⁹⁶

Both Tony and his twin brother were groomed and sexually abused by Father Rubeo.⁹⁹⁷ Mr Tony Hersbach was abused over a period of about eight years, from the age of 10 until he was about 18 years old.⁹⁹⁸

Father Rubeo formed a close relationship with Mr Tony Hersbach's family. He officiated at Tony Hersbach's wedding when Mr Hersbach was 19,⁹⁹⁹ was present at every family event, officiated at christenings and went on holidays with the family.¹⁰⁰⁰ Mr Paul Hersbach said that Father Rubeo effectively 'took over the running of the family and behaved like he was in charge' and that he and his siblings would call Father Rubeo 'Gramps'.¹⁰⁰¹

At the beginning of 1984, Father Rubeo was moved to St Finbar's, a parish in East Brighton in Melbourne.¹⁰⁰² Mr Hersbach said that Father Rubeo arranged for a block of land in the Dandenongs in Victoria to be purchased for Mr Hersbach's family. Father Rubeo decided that the family should move into the presbytery in East Brighton with him while the new house was built.¹⁰⁰³ The family lived in the presbytery with Father Rubeo for six months in the second half of 1984, when Mr Paul Hersbach was seven, his brother was nine and his sisters were four and one.¹⁰⁰⁴

Mr Paul Hersbach gave evidence that his family moved with Father Rubeo to the Holy Name Parish in East Preston in Melbourne when he became parish priest there in 1985.¹⁰⁰⁵ The family lived there for a year.¹⁰⁰⁶ Mr Hersbach said he lived in one section of the presbytery with his brother; his parents lived in another section with his sisters; and Father Rubeo lived in a third section.¹⁰⁰⁷

Mr Paul Hersbach said he was sexually abused by Father Rubeo while living in the presbytery at East Preston.¹⁰⁰⁸ Mr Hersbach said Father Rubeo would come into his bedroom at night and sit on his bed and enter the bathroom while he and his brother were naked; and that they saw him naked and playing with himself.¹⁰⁰⁹

Mr Hersbach said that at the beginning of 1986, when he was nine, his family moved to the Dandenongs.¹⁰¹⁰ He said that Father Rubeo continued to visit the family and that he would sleep in his own room in the house.¹⁰¹¹ Mr Hersbach said that Father Rubeo continued his pattern of sexual behaviour towards him.¹⁰¹²

In 1988, when Mr Hersbach was 11, Father Rubeo took him and his brother on a trip to Adelaide in South Australia.¹⁰¹³ He said that this was the last time he could recall Father Rubeo acting sexually or inappropriately around him.¹⁰¹⁴

In mid-1993, Mr Tony Hersbach told his wife about his abuse for the first time.¹⁰¹⁵ Mr Hersbach said that Father Rubeo had moved to Boronia parish in Melbourne by this time.¹⁰¹⁶

At the end of 1993, Father Rubeo took Mr Paul Hersbach, his brother and another 18-year-old male to Africa for eight weeks over Christmas.¹⁰¹⁷ A few months after they returned, Mr Tony Hersbach told his children, including Paul, that he had been sexually abused by Father Rubeo when he was a child.¹⁰¹⁸ Mr Hersbach said:

I remember feeling numb at the time. I struggled for many years to understand why Father Rubeo had been able to continue to be a part of our lives, and why my father was unable to say no to him. I grieved for the loss of Father Rubeo from our lives. At the time I did not identify myself as a victim.¹⁰¹⁹

Mr Paul Hersbach also gave evidence that ‘For all the things that Father Rubeo did to me, the worst by far was robbing a young boy of his father’.¹⁰²⁰

Mr Tony Hersbach went through the Melbourne Response in 1997.¹⁰²¹ He was found to be a victim of child sexual abuse, received counselling through Carelink and was paid \$35,000 in compensation.¹⁰²²

Carelink

Mr Paul Hersbach gave evidence that he started receiving counselling through Carelink as a secondary victim because of his father’s abuse when he was in his early twenties.¹⁰²³ He has received counselling services ‘on and off’ since then.

On 1 March 2006, he met with Ms Sharkey and Professor Ball at Carelink and told them that Father Rubeo had abused him.¹⁰²⁴ Mr Hersbach gave evidence that this was the first time he had told anyone about the specifics of his abuse and its impact on him.¹⁰²⁵

Mr Hersbach said:

the process that Carelink took us through, sitting in a room with a psychiatrist and having someone there listening in when they’re asking you intimate personal questions about your sex life, about things that you have done, about what your thoughts are, this is confronting for a victim with a psychologist. It can often take years for a victim to get to the point with their own psychiatrist or help to talk about these issues, and what happened with Carelink ... I found extremely confronting.¹⁰²⁶

Mr Hersbach gave evidence that Ms Sharkey and Professor Ball asked him questions about the abuse for about an hour, that the conversation was recorded and that he found it extremely confronting to be interviewed by two people.¹⁰²⁷

Ms Sharkey responded to these comments by saying, 'if Mr Hersbach had not wanted me there, he could have said so, because there's always an option'.¹⁰²⁸

Ms Sharkey gave evidence that she attends these assessments to 'observe and take notes and so that I am a familiar face in the room for the client', and because as Coordinator she arranges any treatment and other recommendations made by Dr Brann.¹⁰²⁹

Ms Sharkey gave evidence that consideration has been given to whether it might be less confronting for clients to be interviewed by only one person at the assessment.¹⁰³⁰ She said:

Dr Brann would prefer that there were two people there, and the following through the outcome of the report or the outcome of that meeting with Dr Brann is immediate rather than having to wait for her report, which might be two weeks or so in coming.¹⁰³¹

Mr Hersbach said that during this meeting Ms Sharkey and Professor Ball told him he needed to see Independent Commissioner Mr O'Callaghan QC, who would assess whether he was a primary victim.¹⁰³²

Independent Commissioner

Mr Hersbach rang Mr O'Callaghan QC and, on 9 March 2006, Mr Hersbach went to Mr O'Callaghan QC's chambers for an interview.¹⁰³³

At the end of the interview, Mr O'Callaghan QC asked for and received Mr Hersbach's consent to Mr O'Callaghan QC obtaining transcripts of his interview with Ms Sharkey and Professor Ball.¹⁰³⁴

On 20 April 2006, Mr O'Callaghan QC wrote to Mr Hersbach enclosing a copy of the transcript of his interview with Mr Hersbach and the terms of his appointment.¹⁰³⁵ Mr O'Callaghan QC also provided some advice as to whether Mr Hersbach should take his complaint to the police.

On 24 April 2006, Mr Hersbach signed various consent forms and an application for compensation. He also had an interview with Professor Ball and Ms Sharkey on that date.

On 21 June 2006, Mr O'Callaghan QC wrote to Mr Hersbach's psychologist asking for relevant transcripts.¹⁰³⁶ He also wrote to Mr Curtain QC informing him that he was satisfied that Mr Hersbach was the victim of sexual abuse by Father Rubeo. With this letter he enclosed a copy of his transcript of interview with Mr Hersbach and an Application for Compensation form. He also wrote, 'No doubt Carelink will report in due course as to the impact which the sexual abuse has had upon Mr Hersbach'.¹⁰³⁷

Compensation Panel

On 6 September 2006, Mr Curtain QC, Chair of the Compensation Panel, wrote to Mr Hersbach proposing that he meet the panel to discuss his application on 31 October 2006. He wrote:

The Panel offers each applicant the opportunity to meet with it as part of its consideration of the applicant. To date the Panel has found these informal meetings very helpful in its deliberations and believes that applicants have also found them to be useful and not as traumatic as they may have feared. Because the Panel acts on the finding of sexual abuse by Mr O’Callaghan, there is no need for the applicant to repeat the events of the past on which that finding has been based.¹⁰³⁸

Mr Curtain QC also encouraged Mr Hersbach to bring a relative, friend or counsellor with him to the meeting and listed the documents provided to the Compensation Panel.¹⁰³⁹

On 25 October 2006, Carelink sent a copy of Professor Ball’s report on Mr Hersbach to Mr Curtain QC.¹⁰⁴⁰

Mr Hersbach said that, at the meeting with the Compensation Panel, the panel took the time to put him at ease and explained in a meaningful way who they were and what they did.¹⁰⁴¹

On 2 November 2006, the Compensation Panel recommended to the Archbishop that ‘Mr Hersbach be offered ex gratia compensation of \$17,500’.¹⁰⁴²

On 3 November 2006, Mr Leder wrote to Monsignor Les Tomlinson asking him to prepare letters of apology from Archbishop Hart to three applicants, including Mr Hersbach.¹⁰⁴³ He wrote, ‘Upon receipt of the letters we will forward the offers to the applicants’.¹⁰⁴⁴

On 13 November 2006, Mr Leder sent Mr Hersbach a letter offering \$17,500.¹⁰⁴⁵

If you wish to accept it, you will need to sign the **enclosed** document which releases the Archbishop from all further claims arising out of the sexual abuse or any other sexual abuse by a priest, religious or lay person under the control of the Archbishop of Melbourne. We note, however, that you will remain able to receive treatment and counselling through Carelink.¹⁰⁴⁶

Mr Leder also wrote that the deed of release contained no confidentiality provisions and that ‘the only matters that you are asked to keep confidential are the details of your application to the Panel and this “without prejudice” offer’.¹⁰⁴⁷

This letter enclosed a letter of apology signed by Archbishop Hart on 10 November 2006.¹⁰⁴⁸ This is considered further below.

Mr Hersbach gave evidence that he was not given any indication of how his offer of compensation was calculated.¹⁰⁴⁹ He said that he did not sign the deed of release for more than a year because he did not want his decision to go through the Melbourne Response to be about the money.¹⁰⁵⁰

Mr Hersbach accepted the offer and signed the deed of release on 25 October 2007.¹⁰⁵¹

It seems that Catholic Church Insurances was not entirely agreeable to this outcome. On 30 March 2008, Mr Rolls from Catholic Church Insurances wrote a claim summary on Mr Hersbach's claim.¹⁰⁵² Mr Rolls wrote, 'The Panel awarded \$17,500. Were it a cent more I would recommend we reject the amount paid as excessive' and 'Were it not that the amount of claim is comparatively low, I would be inclined to investigate the whole matter more thoroughly'.¹⁰⁵³ He also wrote:

I believe this matter highlights a difficulty we face with the 'Melbourne Scheme'. There are very seldom independent medical reports and we rely upon Carelink who appear more than ready to attribute the ailments with which the claimant presents to the alleged abuse.

Further, unless the police have been involved, there is no investigation other than the pitiful interviews conducted by the Independent Commissioner which are seldom more than an account of the events as given by the claimant, accompanied by anecdotal irrelevancies offered by the Commissioner himself that are designed to support the story being told. I would like to find that following these typical interviews the Commissioner engaged in some form of investigative activity but I do not believe this is the case. Certainly there are no reports in the files of Corr's to support that suggestion.¹⁰⁵⁴

Finally, Mr Rolls wrote:

The earliest event occurred in 1982, at a time when a Public Liability Policy in favour of the Archdiocese was in force. We are content that the client first had knowledge of Father Rubeo's conduct in 1992. The victim was at the time 6 or 7 years old, therefore younger than the age of consent. It would appear that indemnity should be granted and reimbursement in the amount of \$17,500 paid to the Archdiocese.¹⁰⁵⁵

The Church parties submitted, and we accept, that Mr Rolls' comments do not reflect the views of the Archdiocese.

Mr Hersbach told us that his feelings towards the deed of release have changed significantly in the past five years.¹⁰⁵⁶ He said:

Signing it helped me emotionally at the time, but now causes me angst. The Catholic Church has taken so much from me over the years. I feel like the church has exerted complete and total control over my life. I find it ironic that at the point where I finally wrested that control back, I signed a document giving up my rights and putting myself again under its control.¹⁰⁵⁷

He said:

I want the church to acknowledge that the deeds of release signed by victims through the Melbourne Response may add to a victim's burden and exacerbate the very problem they were designed to alleviate. For those victims that so desire, I want the church to demonstrate its compassionate intent by releasing those victims from their obligations under the deeds.¹⁰⁵⁸

5.2 Mr AFA

Mr AFA met Father Glennon at a karate school he had just opened at St Gabriel's Catholic Parish in Reservoir in Melbourne.¹⁰⁵⁹ Mr AFA was 14 at the time. Father Glennon ran the Peaceful Hand Youth Foundation, which he had founded.¹⁰⁶⁰

Mr AFA went to the karate school about once a week. He would also go to the presbytery and 'hang out' with Father Glennon. He said, 'We would hang out with a cup of coffee and play pool. I saw him as a father figure'.¹⁰⁶¹

Mr AFA gave evidence that Father Glennon sexually abused him three times over a period of about 18 months from when he was about 15.¹⁰⁶² The first time it happened, Father Glennon and Mr AFA were going to St Monica's Parish at Moonee Ponds, where Father Glennon was opening a new karate school.¹⁰⁶³ While they were in the car together, Father Glennon told Mr AFA that he was bisexual.¹⁰⁶⁴ After the karate demonstration, Father Glennon drove Mr AFA back to the church.¹⁰⁶⁵ Mr AFA said that Father Glennon fondled and molested Mr AFA in his car in the car park at the back of St Gabriel's presbytery.¹⁰⁶⁶

Father Glennon also took Mr AFA camping at Lancefield in Victoria one night, where the karate school had a camp. Mr AFA said that he slept in a two-man tent with Father Glennon. Mr AFA told us that Father Glennon abused him that night as well.¹⁰⁶⁷

A few months after this, Father Glennon again took Mr AFA to stay overnight at Lancefield.¹⁰⁶⁸ Mr AFA gave evidence that the Peaceful Hand Youth Foundation had built a hall on the Lancefield camp by that stage, which had a private bedroom for Father Glennon.¹⁰⁶⁹ Mr AFA said that he slept in Father Glennon's double bed with him that night and that Father Glennon fondled him again.¹⁰⁷⁰

Mr AFA said Father Glennon's abuse affected his self-worth and his schooling and that he has suffered from psychological problems, including anxiety and depression.¹⁰⁷¹ Mr AFA said that about one year after the abuse occurred he told a friend of his about what had happened. He said that he did not tell anyone else until he was about 40 years old.¹⁰⁷² He said he felt that he could not tell his family at the time, as he felt it was his fault.¹⁰⁷³

Mr AFA gave evidence that, when he was in his early forties, he was very depressed and could not work for about three years.¹⁰⁷⁴ He sought psychiatric help and eventually told his counsellor about the abuse.¹⁰⁷⁵

In 2011, Mr AFA was feeling on top of his depression.¹⁰⁷⁶ He said:

I looked back on my life and thought the next step, if I was going to get well, was to face up to what had happened to me. I had also followed Father Glennon's trials in the media. I knew that he was in prison, and that he would get out of prison in around 2016. I wanted to keep him in prison because I thought that he would reoffend, and I did not want this happening to other kids.¹⁰⁷⁷

Mr AFA said that he saw a pamphlet for the Melbourne Response in his local church.¹⁰⁷⁸ On 14 February 2011, Mr AFA rang Independent Commissioner Mr O'Callaghan QC to report the sexual abuse he had experienced.¹⁰⁷⁹ Mr O'Callaghan QC arranged for Mr AFA to come and see him at his chambers.¹⁰⁸⁰

Independent Commissioner

Mr AFA met with Mr O'Callaghan QC on 18 February 2011 and was interviewed about Father Glennon's abuse.¹⁰⁸¹ During this interview, Mr O'Callaghan QC and Mr AFA discussed whether he would take his complaint to the police. Mr AFA decided not to take his complaint to the police but instead to proceed with the Melbourne Response. This aspect is considered in more detail later in this report.

Mr O'Callaghan QC told us that he did not advise Mr AFA to seek independent legal advice because, to his knowledge, no actions had been brought against Mr Glennon alleging that the Archdiocese had prior knowledge of the conduct of Mr Glennon.¹⁰⁸² He also told us:

- if he thought there were some prospects that Mr AFA could establish prior knowledge, he would have recommended that he seek independent legal advice¹⁰⁸³
- he did not make enquiries of the Archdiocese or their solicitors as to whether any cases had been brought against Mr Glennon¹⁰⁸⁴
- he assumed he would have been told about any civil proceedings against the Archdiocese in relation to Mr Glennon.¹⁰⁸⁵

On 21 February 2011, Mr O'Callaghan QC formally advised Mr AFA that he was satisfied that he was the victim of sexual abuse by Mr Glennon substantially in the circumstances described by him in the transcript of interview.¹⁰⁸⁶

On 28 February 2011, Mr AFA signed the Application for Compensation form and various consent forms.¹⁰⁸⁷ Mr O'Callaghan QC then sought reports from Mr AFA's practitioners, gave the relevant documents to the Compensation Panel and told Ms Sharkey that he was satisfied Mr AFA the victim of sexual abuse by Mr Glennon.

Mr AFA met with Ms Sharkey at Carelink, who referred him to Dr Brann for a psychiatric assessment.¹⁰⁸⁸ On 15 April 2011, Mr AFA met with Dr Brann and Ms Sharkey at Dr Brann's office.¹⁰⁸⁹ Mr AFA gave evidence that he found this meeting pretty confronting and that he had to again revisit Father Glennon's abuse and the impact this had on his life.¹⁰⁹⁰

Mr AFA has continued to forward Carelink receipts for his ongoing costs, for which he has been reimbursed.¹⁰⁹¹

Compensation Panel

The meeting with the Compensation Panel occurred on 30 May 2011.¹⁰⁹² Mr AFA said about that meeting:

There were four panel members. I did not take a support person with me. The panel introduced themselves and explained what they were going to do in the meeting. I found it pretty daunting to go into a room with a QC and a panel of other people.¹⁰⁹³

On 1 June 2011, Mr Curtain QC recommended to Archbishop Hart that Mr AFA be offered ex gratia compensation of \$50,000.¹⁰⁹⁴ Mr Leder arranged for a letter of apology from Archbishop Hart to Mr AFA to be prepared.¹⁰⁹⁵

Archbishop Hart signed a letter of apology to Mr AFA,¹⁰⁹⁶ which was forwarded to Mr AFA by Mr Leder together with a letter offering Mr AFA \$50,000 in compensation.¹⁰⁹⁷ This letter also enclosed a deed of release. It stated that, if Mr AFA wished to accept the offer, he would need to 'sign the enclosed document which releases the Archbishop from all further claims arising out of the Independent Commissioner's findings', although he would still be able to receive treatment and counselling through Carelink.¹⁰⁹⁸

Mr AFA gave evidence that he was not given any explanation as to how the offer of \$50,000 was calculated.¹⁰⁹⁹

On 28 June 2011 Mr AFA rejected the offer. He said, 'I regret that I have to reject the offer of compensation as inadequate, given the impact that sexual abuse by Catholic clergy has had on my life'.¹¹⁰⁰ He also wrote:

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

While it is not my preference to commence legal proceedings that will involve the Archdiocese of Melbourne and the Catholic Archdiocese the lack of a satisfactory offer of compensation now makes legal action probable.

Please advise if a revised offer of compensation will be forthcoming or if the Archbishop and Archdiocese prefer the matter to be settled in court.¹¹⁰¹

Mr Leder's advised Mr Moore, the Archdiocese's business manager,¹¹⁰² that Mr AFA's abuse happened before Mr Glennon's arrest and that 'The threatened legal action should be viewed in that light'.¹¹⁰³ He wrote:

My sense is that if the matter proceeded to verdict, he would recover significant damages and that the \$250,000 claim for lost wage is quite possibly in a realistic ballpark.

However, there is nothing in the material before the compensation panel to indicate that there is any prospect of a legal action by Mr AFA succeeding. There is no suggestion of knowledge and failure to act.¹¹⁰⁴

Mr Leder's proposed response to Mr AFA was approved by Mr Moore. It was sent to Mr AFA on 30 June 2011.¹¹⁰⁵ The response read in part as follows:

I regret that you do not wish to accept the offer of compensation. I wish to emphasise that the offer has been made on the recommendation of the compensation panel, which forms part of the Archdiocese's Melbourne Response. The Archbishop has committed himself to follow the recommendation of the compensation panel and the offer made is therefore put on the basis that it can be accepted or rejected. However it is not a starting point for negotiations.

You have every right to pursue legal action if you wish.

Despite you having rejected the offer, it remains on the table and is open for acceptance, but I am not in a position to make any higher offer.¹¹⁰⁶

Mr AFA took legal advice. He accepted the offer of \$50,000.¹¹⁰⁷ Mr AFA gave evidence that at that time he was not functioning very well and that he wanted to get this over and done with.¹¹⁰⁸

I felt pressure to go through the Melbourne Response because I had followed John Ellis' case against the church in New South Wales about his own child sexual abuse, and I thought the church would rely on this defence if I tried to take them to court. I did not think I had any other options for seeking compensation.¹¹⁰⁹

Catholic Church Insurances reimbursed the Archdiocese of Melbourne the sum of \$66,841.20 for Mr AFA's claim.¹¹¹⁰

In a Catholic Church Insurances claim summary of AFA's claim, dated 16 January 2012, Mr Rolls wrote, 'Having regard for the nature of the abusive conduct and the uncertainty about the extent to which the medical problems presented can be attributed to the abuse, this would seem a not unreasonable sum'.¹¹¹¹ He also wrote:

The complainant was a parishioner of the Reservoir Parish and there was a pastoral relationship with the priest. At the time of the events, the priest was acting in the course of the 'business' of the Archdiocese. We would then regard him as a person for whose conduct the Archdiocese was responsible. In my view the policy should respond and reimbursement of the compensation paid to the claimant should be made.¹¹¹²

This reflects an acceptance of legal responsibility, which may be inconsistent with the decision of the New South Wales Court of Appeal in *Ellis*. However, in our view there is no doubt that it reflects an appropriate moral approach and accords with the expectation that many people have about the legal responsibility that the Catholic Church and other churches and institutions should accept.

5.3 Advice to Mr Hersbach and Mr AFA about the police process

Mr O'Callaghan QC, as Independent Commissioner, gave both Mr Hersbach and Mr AFA advice about the police process, as set out below.

Mr Paul Hersbach

Following his initial meeting with Mr Hersbach, Mr O'Callaghan QC wrote to him enclosing a copy of the transcript of his interview with Mr Hersbach and the terms of his appointment.¹¹¹³

In this letter, Mr O'Callaghan QC noted that he advises 'persons who complain of sexual abuse, if that conduct may constitute criminal conduct, they have a continuing and unfettered right to report the matter to the police' and that he encourages the exercise of that right.¹¹¹⁴

In your case however with respect to the unsurprising haziness of your memory there would not appear to be much point in your taking the matter to the police. However that is a matter for you and if you did intend to exercise that right I would not take any further steps until the results of the police investigation and any charges emanating therefrom were completed.

Assuming that you are not going to take the matter to the police I advise you that I am satisfied that you were the victim of sexual abuse in that the conduct of Father Rubeo in commencing to masturbate in your presence constitutes conduct which in my view amounts to sexual abuse.¹¹¹⁵

Mr Hersbach gave evidence that he regarded Mr O’Callaghan QC as a senior authority who was probably qualified to give him advice on the police process and that he did not question what he said.¹¹¹⁶

Mr O’Callaghan QC submitted that the context of his comment that ‘there would not appear to be much point in your taking the matter to the police’ should be considered. In particular, he submitted that he had already explained to Mr Hersbach that he had a ‘continuing and unfettered right’ to report the matter to the police and wrote ‘I encourage the exercise of that right’.

Mr O’Callaghan QC also submitted that he was not given the same details of abuse that Mr Hersbach gave to the Royal Commission. He said that, if Mr Hersbach felt discouraged, that was not his intention.¹¹¹⁷

Mr Hersbach accepted Mr O’Callaghan QC’s advice and did not take his complaint to the police.¹¹¹⁸ He said:

In retrospect I consider it inappropriate that Mr O’Callaghan gave me his opinion about going to the police and what would happen if I did go to them. I believe that Mr O’Callaghan could and should have given me the names of independent lawyers and encouraged me to seek independent legal advice at this point.¹¹¹⁹

Mr O’Callaghan QC said in his statement that:

I made it clear in my letter of 20 April 2006 ... that his decision as to whether he should go to the police was for him to make. Mr Hersbach was an intelligent and well qualified man, and well capable of making a decision.¹¹²⁰

Mr AFA

Mr O’Callaghan QC was the first person in a position of authority that Mr AFA told of his abuse.¹¹²¹ During his initial meeting with Mr AFA, Mr O’Callaghan QC raised the issue of whether Mr AFA had taken his complaint to the police. The transcript of that interview reads in part:

POC: Have you been to the police with this one

AFA: No I haven’t

POC: Yes I see

AFA: and he’s out in a couple of years I think

POC: yes now do you want to go to the police

AFA: Well if there's any chance of putting him back in prison I think I would go to the police because I just know that he'll reoffend

POC: Yeah thank you. If you if you go to the police I would immediately do nothing

AFA: Right

POC: Because its my inflexible practice that if the matter goes to the police then I can't be seen as a substitute for the police force or running an enquiry coincidentally with them

AFA: Yep

POC: so let's have a think um he's I think he is out in about 2 years is he yeah

AFA: About two

POC: And when did the matters of which you complain occur what year

AFA: 1975 and 1976 it occurred [...]

POC: Well AFA the thing is that let me um as I say I encourage people to go to the police but let's just look at this in balance that if you went to the police and they charged Glennon with what he did to you that would be I suspect very similar to what a lot of other people had happen to them and for which he's been convicted.

AFA: That's right that's right

POC: Now there's a real prospect that even for such a notorious fellow such as Glennon that the Court would say oh well he's

AFA: done his time

POC: he's done his time for this class of offence

AFA: right right [...]

POC: And if you go to the police it would take a year or two years

AFA: Well the thing is there's no there's no guarantee that he'd be convicted either

POC: No there isn't [...]

POC: And on the other hand and that's what I say I'm doing this very carefully on the other hand if you satisfy me which you won't have much difficulty in doing that you have been a victim of Glennon then I can refer you if you wish to Carelink which provides free counselling and psychological support. [...]

POC: And further you would be entitled to apply for compensation up to which the compensation was a limit up to \$75,000. Now if you go to the police that will all be postponed [...]

POC: So I'm not trying to make you

AFA: No no I know but its basically my word against his if this is

POC: Oh that wouldn't be much trouble I don't think

AFA: Yeah

POC: That that would be accepted but I think that I think the likelihood would be the police mightn't themselves

AFA: Umm

POC: Say oh look we've

AFA: We've dealt with him

POC: we've dealt with him and the I think that if they did

AFA: Umm

POC: I'd be surprised if he didn't get convicted but I think then the sentence might be wholly suspended or something like that

AFA: Because I know he was put in jail once

POC: yes

AFA: Got out and then he was put in again

POC: I'm just we've had a discussion and what we're going to do is to have a chat about what in fact occurred and its probable that AFA won't go to the police but he after he's I've taken this statement from him he can give it some consideration and make a final decision on that aspect. The um I've now got new forms new procedures [...]

POC: Which I'll send it out to you when people don't go to the police I've got to get from them and when I say I've got to get from them I endeavour to get from them their acknowledgment that I've told them that the police are better at getting people I can't convict them

AFA: You can't convict them yes I understand. So when he gets out is he gonna be very closely supervised

POC: Well [...]

AFA: I know he'll reoffend he's your classic sociopath

POC: One other an offending priest he was a priest in my parish at one stage but he told somebody else that Glennon prays every day that O'Callaghan will die. Anyhow he might be right very shortly but look the answer to your question though is that is he certainly will be a registered sex offender.

AFA: Right

POC: And they will keep close tabs on him [...]

POC: but that's it but he will certainly be the subject I would suspect great publicity upon his release [...]¹⁰²²

When it was suggested to Mr O'Callaghan QC that he did not provide any reasons to encourage Mr AFA to go to the police in this exchange, he responded 'I was telling him what my opinion was as to what had happened and what is likely to happen'.¹¹²³

On 21 February 2011, Mr O'Callaghan QC sent Mr AFA two letters, one of which enclosed a transcript of Mr O'Callaghan QC's interview with Mr AFA.¹¹²⁴ In this letter, Mr O'Callaghan QC wrote, 'you have stated to me that it is probably the case that you will not go to the police', and set out, for Mr AFA's consideration, matters that he 'might consider relevant' to the question of whether he should go to the police.¹¹²⁵

These considerations were as follows:

- Mr AFA was under no obligation to go to the police and, indeed, many complainants do not do so.
- In response to Mr AFA's stated concern that Mr Glennon would reoffend upon being released, and that this possibility would be removed if he was convicted for a further term of imprisonment, Mr O'Callaghan QC noted:
 - it cannot be assumed that Mr Glennon would be convicted on Mr AFA's evidence because it would be his word against Mr AFA's

- he would consider it likely that Mr Glennon would be convicted on Mr AFA's evidence but that, in relation to the sentence he might receive, Mr O'Callaghan QC noted that:
 - Mr Glennon had been convicted of offences in relation to a nine-year time period ranging from 1973 and 1986
 - many of these offences were similar to Mr AFA's complaint
 - it would be pointed out on behalf of Mr Glennon that he had done very substantial time for offences similar to Mr AFA's complaint
 - it was accordingly likely that the court would perhaps not imprison him, or alternatively, might imprison him for a relatively short period.
- Mr Glennon would be a registered sex offender when he was released in October 2013, that he would probably be a registered sex offender for life and that he would have to report annually after initially providing personal details.
- If Mr AFA went to the police, they would take a detailed statement from him and there would be a 'real possibility' that the police would decline to charge Mr Glennon in relation to Mr AFA's complaint if they considered Mr Glennon would not be imprisoned for a significant period.
- If Mr Glennon was charged, he would almost certainly deny the charges and there would therefore be a committal hearing and a trial; that process would take at least two years.
- If Mr AFA did go to the police, Mr O'Callaghan QC would take no further action until the completion of proceedings.¹¹²⁶

Mr O'Callaghan QC wrote that, on the assumption that Mr AFA would decide not to go to the police, he had also forwarded Mr AFA a letter that set out the processes of the Melbourne Response.¹¹²⁷

Mr O'Callaghan QC told us that his opinion as to the possible sentence Mr Glennon would receive was 'a reflection of my having observed in the particular case that the judge suspended the sentence in respect of the notorious Des Gannon'.¹¹²⁸

When Mr AFA read this letter, his initial impression was that it would be a waste of time going to the police and that Mr Glennon would not get any more time in prison.¹¹²⁹

Mr AFA felt that Mr O'Callaghan QC was trying to discourage him from going to the police and that he did not go to the police at that time.¹¹³⁰ He told us:

I also think that that police should have been involved straight away, and that it is important that allegations of criminal behaviour be investigated by an outside independent organisation. I do not think institutions should investigate themselves.¹¹³¹

In his statement to the Royal Commission, Mr O'Callaghan QC said:

I am concerned that Mr AFA thought I was trying to discourage him from going to the Police. What I was endeavouring to do was to provide him with the relevant criteria he could consider in deciding that question. If he interpreted that as discouragement that was certainly not my intention and with respect, I do not think could be reasonably construed to be so.¹¹³²

Mr O’Callaghan QC did not accept that that he discouraged Mr AFA from going to the police. He said:

I would say that if you look at the transaction as a whole, the whole of the transcripts, the letters I wrote to him, that he was given the facts such as would encourage him to go to the police. He knew all of the parameters if he did.¹¹³³

When it was suggested that he did not encourage Mr AFA to go to the police, Mr O’Callaghan QC responded, ‘I disagree with that in the sense that I consider that, reasonably construed, I gave satisfactory advice, if you can call it that, to Mr [AFA] so that he could make the decision which was his to make’.¹¹³⁴

In light of Mr O’Callaghan’s position as a QC and the advice he gave to Mr AFA, we accept Mr AFA’s evidence that he felt discouraged from going to the police at the time he approached the Melbourne Response.

Appropriately encouraging complainants to make a complaint to the police

The terms and conditions of appointment of the Independent Commissioner provide that he shall ‘inform the complainant that he or she has an unfettered and continuing right to make that complaint to the police’ and ‘appropriately encourage the exercise of that right’.¹¹³⁵ Senior Counsel Assisting submitted that the Independent Commissioner is not acting consistently with those terms and conditions if he provides advice to a complainant about:

- whether the police are likely to charge an alleged offender
- whether their complaint is likely to proceed to trial
- whether their complaint is likely to result in a conviction
or
- the likely sentence the offender would receive if convicted.

The terms of his appointment required Mr O’Callaghan QC to appropriately encourage Mr AFA to take his complaint to the police. What is ‘appropriate’ is determined by the circumstances. In Mr AFA’s matter, Mr O’Callaghan QC:

- did not give any reasons to encourage Mr AFA to go to the police
- gave a number of reasons that it would be futile for Mr AFA to do so
- informed Mr AFA that if he did not go to the police:
 - Mr O’Callaghan QC would find that he was a victim of child sexual abuse
 - Mr O’Callaghan QC would refer him to Carelink and the Compensation Panel
- informed Mr AFA that, if he did go to the police, Mr O’Callaghan QC would take no further action until the end of the proceedings
- did not inform Mr AFA that Mr O’Callaghan QC could refer him to Carelink for free counselling and psychological support during the police process.

In Mr Hersbach's matter, Mr O'Callaghan QC told him that, due to the 'unsurprising haziness' of his memory, there would not appear to be much point in him taking his matter to the police.¹¹³⁶

Mr O'Callaghan QC submitted that his discussions with Mr Hersbach and Mr AFA regarding police reporting were consistent with the terms and conditions of his appointment and constituted 'appropriate' encouragement.¹¹³⁷ He also submitted that he engaged in discussions in which he attempted to assist Mr Hersbach and Mr AFA in deciding whether to exercise their right to report their complaints to the police.¹¹³⁸

The Church parties did not express a view as to whether the findings set out as available by Counsel Assisting were in fact available.¹¹³⁹ However, they did note that the recent publication of a brochure by Victoria Police will assist in standardising the information a victim receives about whether to take their complaint to the police.¹¹⁴⁰

We are satisfied that Mr O'Callaghan QC provided advice about the police process to Mr Hersbach and Mr AFA that discouraged them from going to the police. Having regard to Mr O'Callaghan QC's defined role, this advice was not appropriate. Advice on the approach that the police might take to any prosecution, and the likely outcome, should have been left to the police. They were the body with all of the relevant information.

We note the current view of the Victoria Police, set out above, that:

it is our view that victims should be afforded the opportunity to speak with a specialist police investigator to discuss the options fully and answer any queries that may arise.¹¹⁴¹

Mr AFA's experience with the police after he had been through the Melbourne Response, set out below, illustrates why the Victoria Police suggest that they are best placed to advise victims on the prospects of criminal action.

Administrators or decision makers in a redress scheme should never give advice to applicants about likely outcomes of a report to police, even if they are independent from the relevant institution.

Giving such advice will always be inconsistent with their function and potentially confusing for applicants who, understandably, see them as being in a position of authority.

Mr AFA goes to the police

In about June 2011, after the Compensation Panel process had finished, Mr AFA reported his abuse to the Fawkner Police Station in Melbourne.¹¹⁴² He said that he changed his mind because he felt he had taken the initial step towards healing but that he had to see it through.¹¹⁴³ He said, 'I wanted to eyeball the person that had done the abuse to me in a court and get a conviction against him'.¹¹⁴⁴

Mr AFA said:

The police were fantastic. They were very empathetic, and told me they were very keen to progress the matter. The police reassured me that I was preyed on, and that the abuse was not my fault at all.¹¹⁴⁵

Mr O'Callaghan QC said that, sometime before 2 August 2012, Mr AFA rang him to say that he intended to report his complaint to the police. Mr AFA asked for Mr O'Callaghan QC's consent to give the police a copy of the transcript of his interview with Mr O'Callaghan QC.¹¹⁴⁶ Mr O'Callaghan QC said that, to the best of his recollection, he replied 'that he did not need my consent but in any event he had it'.¹¹⁴⁷

On 2 August 2012, Mr O'Callaghan QC rang Mr AFA and said, 'I was just ringing to see what happened with you, you went to the police I believe did you', and asked what was happening.¹¹⁴⁸ Mr AFA told Mr O'Callaghan QC that he made a statement, that the police were going to interview Mr Glennon and that 'he had quite a few other people as well who had come forward and I think they were going to interview him not just about me but a number of other people'.¹¹⁴⁹ Mr O'Callaghan QC said he wanted to know what happened 'for the record'.¹¹⁵⁰

Mr O'Callaghan QC rang Mr AFA again on 6 February 2013 and asked what was happening. Mr AFA responded that Mr Glennon was probably going to be charged.¹¹⁵¹ Mr O'Callaghan QC gave evidence that:

my reason for making those two phone calls was because I was concerned to know the result of the complaint being reported to the Police, for the purpose of referring to such information in the Submission I was preparing for the Victorian Parliamentary Inquiry into the handling of child abuse by religious and other organisations.¹¹⁵²

The Office of Public Prosecutions did lay charges against Mr Glennon and the trial of Mr AFA's case was set down for June 2014.¹¹⁵³ However, Mr Glennon died in prison on New Year's Day in 2014.¹¹⁵⁴

5.4 Apologies

Archbishop Hart is of the view that one of the strengths of Towards Healing is that the Church has a pastoral involvement with the person who has suffered and is able to work with that person in a caring and pastoral way.¹¹⁵⁵

Archbishop Hart told us that the letters of apology are prepared in the Vicar General's Office for him to sign and that he reads them carefully.¹¹⁵⁶

Archbishop Hart agreed that the letters of apology he sends are very similar and that some may be identical.¹¹⁵⁷ He agreed that the letter that was sent to Mrs and Mr Foster in 1998 was in the same terms as that sent to Mr Hersbach in November 2006 and that sent to Mr AFA in June 2011.¹¹⁵⁸

Archbishop Hart said that the reason for their similarity is that the Compensation Panel and the Independent Commissioners are bound by confidentiality and his knowledge of the details of any victim's abuse is therefore limited to the recommendations from the Independent Commissioner and the Compensation Panel.¹¹⁵⁹

In the last 12 months Archbishop Hart has sought to address this issue by obtaining minimal information about the complainant and their situation, which would not be a breach of confidence but which would allow a more personal apology to be sent.¹¹⁶⁰ He said, 'my apology letter to a victim now acknowledges the circumstances of their abuse'.¹¹⁶¹

He said that the letters are still prepared in the Vicar General's office but that Mr Leder gives him some information as to 'what might be able to be said'.¹¹⁶² He said that his lawyers 'help with the letter. But I make the letter my own'.¹¹⁶³ When asked whether he had altered any draft letter of apology provided to him, Archbishop Hart replied 'Not as far as I remember'.¹¹⁶⁴

Mr Hersbach gave evidence that he does not need or want a personal apology.¹¹⁶⁵ He said:

All I want is someone from the Catholic Church to show compassion and give me a call one day and say, 'Hi Paul. How are you doing these days? How are you and your family getting along? Can I do anything to help?'¹¹⁶⁶

Mr Hersbach also gave evidence that he believed Archbishop Hart should have offered to meet with him and convey the apology personally.¹¹⁶⁷ He said, 'that would have made a huge difference to me'.¹¹⁶⁸

Mr AFA gave the following evidence:

I think this should have been a personal apology in a face-to-face meeting. No member of the clergy has ever attempted to contact me or to apologise about the abuse of Father Glennon.¹¹⁶⁹

Mr Curtain QC said that, if an applicant has expressed a wish to meet the Archbishop, he does his best to facilitate that.¹¹⁷⁰

Archbishop Hart has met with victims who seek a pastoral meeting with him and he has apologised personally for the abuse they suffered.¹¹⁷¹ He said that, although he is open to meeting with complainants once the Melbourne Response process is concluded, this does not routinely happen.¹¹⁷²

Archbishop Hart agreed that the current process relies upon the individual indicating at some stage that they would like to meet with him. He acknowledged that it would be better to offer, but not impose, a meeting with someone from the Church.¹¹⁷³

The Royal Commission's report on redress and civil litigation will consider the issue of apologies. However, as set out above, we consider that a scheme that is heavily dominated by lawyers and traditional legal process is unlikely to provide the most supportive environment for complainants.

6 Responding to allegations against Church personnel and priests

6.1 Recommendations of the Independent Commissioner

Mr O’Callaghan QC said that, if he receives a complaint against a priest in active ministry, he recommends to the Archbishop that they be placed on administrative leave, depending on the seriousness of the allegation and the potential for risk to other people.¹¹⁷⁴ The Independent Commissioners do not recommend disciplinary action other than administrative leave.¹¹⁷⁵

He said that, in each case where he has been satisfied that a complaint has been established against a priest or religious who was still in active ministry, the Archdiocese had acted upon his recommendation that that person be placed on administrative leave.¹¹⁷⁶

Mr Gleeson QC told us that in one case that came before him allegations were made against a priest who was in active ministry and that he immediately recommended to the Archbishop that the priest be placed on administrative leave.¹¹⁷⁷ He said that he made this recommendation before deciding whether to uphold the complaint and that he notified both the accused and the complainant that he had taken this step.¹¹⁷⁸

6.2 The role of the Archbishop

Archbishop Hart said there are no documented policies, procedures or guidelines governing the Archdiocese’s response to allegations against Church personnel and priests who are still in active ministry.¹¹⁷⁹

He is guided by the recommendations of the Independent Commissioners and will remove from ministry any cleric in respect of whom such a recommendation is made.¹¹⁸⁰

Archbishop Hart gave evidence that, although the Independent Commissioner can receive complaints about a member of a religious order who has had a parish appointment, the head of the relevant order is responsible for their discipline.¹¹⁸¹

The Archbishop can pursue two forms of measures against priests accused of child sexual abuse: measures that prohibit public ministry as a priest; and ecclesiastical penalties, including dismissal.¹¹⁸² Specifically, the measures that can be taken to remove a priest or religious from public ministry or from the priesthood/religious life are:

- administrative leave
- withdrawal of faculties
- laicisation of a priest or dispensation of a religious from vows
- dismissal of a priest from the clerical state or dismissal of a religious from the congregation.

In addition, a bishop or archbishop has the power to impose a penal precept. Archbishop Hart told us that in some cases:

I have referred the matter to Rome and they have said to me, ‘Look, you are to impose a penal precept,’ and the typical penal precept that I impose is at all times I have to know where the person is living. Secondly, they are not to be in the presence of children without someone else in loco parentis. Thirdly, if they travel or go on holidays at any time, we are to know where they are and what they are doing so that we can notify the relevant Bishop of their status and of where they are travelling. They are the main sorts of things.¹¹⁸³

Administrative leave

A priest who is on administrative leave is not permitted to say mass publicly or celebrate ceremonies, such as weddings or funerals, but can say mass privately. Administrative leave equates to being stood down on full pay.¹¹⁸⁵

Administrative leave can be temporary or permanent.¹¹⁸⁶

Archbishop Hart gave evidence that in about 2011 he began to prevent priests on administrative leave from wearing clerical dress.¹¹⁸⁷

Withdrawal of faculties

A bishop can revoke the faculties that he himself, or one of his predecessors, has granted. Faculties include preaching, hearing confessions and celebrating marriages. No priest can exercise public ministry without the authorisation or ‘faculties’ of the local bishop.¹¹⁸⁸ However, a priest who has had some or all of his faculties revoked nevertheless remains a member of the ‘clerical state’.¹¹⁸⁹

Archbishop Hart said that, if a priest’s faculties are withdrawn, the only thing that a priest can do is to absolve and anoint someone in danger of death.¹¹⁹⁰

The withdrawal of faculties is a permanent measure that is imposed after a finding of wrongdoing, including a decision of the Independent Commissioner.¹¹⁹¹ Archbishop Hart told us that every priest against whom an Independent Commissioner has made a finding has had their faculties removed.¹¹⁹²

Archbishop Hart said that, as well as withdrawing a priest’s faculties, he is able to impose conditions, including prohibiting that priest from being in the presence of children without another adult and imposing a reporting obligation on that priest in relation to their living arrangements.¹¹⁹³

Laicisation

At the request or with the consent of a priest, a dispensation from the obligations of the clerical state can be given. This is also referred to as ‘laicisation’, because in law the cleric is now a lay person.¹¹⁹⁴ Similarly, a member of a religious institute may apply for a dispensation from vows, which is also a voluntary procedure.¹¹⁹⁵

Dismissal

If a priest does not agree to laicisation, in some cases a bishop or archbishop can petition for the dismissal of that priest from the clerical state.¹¹⁹⁶ Both laicisation and dismissal can only be made by the Pope.

A priest can only be dismissed after the Pope is satisfied that a formal investigation has taken place and the outcome of that investigation reflects the need for dismissal.¹¹⁹⁷

Archbishop Hart told us that, if someone is found to have committed sexual abuse either by an Independent Commissioner or by a court of law, he recommends that they be returned to the lay state.¹¹⁹⁸

He said the cases of every living priest who has been convicted of sexual misconduct, providing there are no civil proceedings pending, had been referred to Rome with a recommendation that they be returned to the lay state.¹¹⁹⁹

The role of Rome

Before 2001, petitions for dismissal or laicisation were sent to the Congregation for the Clergy, which looked after disciplinary matters for the clergy.¹²⁰⁰ Archbishop Hart told us that the Congregation for the Clergy ‘were very conscious of the rights of individual priests and very conscious therefore of the relevant procedure’.¹²⁰¹ He said, ‘If every “I” wasn’t dotted and “T” crossed in the way that they wanted, then there was a leaning in favour of a priest who might have been accused of something’.¹²⁰²

Although an archbishop could in limited circumstances make a petition for dismissal, it was rarely given and it was extremely difficult to have a priest dismissed against his will.¹²⁰³ Archbishop Hart told us that he found this from ‘bitter experience’.¹²⁰⁴

Indeed, the story of the Archdiocese’s attempts to have Father Glennon dismissed, set out in the following section, illustrates these difficulties.

The Archdiocese provided us with data that indicated that before 2001 only two priests from the Archdiocese, including Father Glennon, had been returned to the lay state for reasons relating to child sexual abuse.¹²⁰⁵

In 2001 Pope John Paul II promulgated a *Motu Proprio* that included the sexual abuse of a minor under 16 years of age in the list of grave crimes reserved for the Congregation for the Doctrine of the Faith.¹²⁰⁶

This meant that petitions for dismissal or laicisation were now sent to the Congregation for the Doctrine of the Faith. Archbishop Hart told us that this change was to ‘emphasise the seriousness of this matter’ and to ‘emphasise that now I as Archbishop could be the petitioner and if I brought the evidence it would be regarded very seriously’.¹²⁰⁷ He said:

This was the first time, as I understood it, within the ordinary practice of the Church that the particular Bishop was able to write to the Holy See or to write to the Congregation for the Doctrine of the Faith to say, ‘This is a heinous crime’, which it is, ‘this is a heinous crime and it demands a serious, serious responsibility. We want you to offer it to – hand it on to the Holy Father and my recommendation is that the man be reduced to the lay state as a penalty’.¹²⁰⁸

Other changes to canon law since 2001 include:

- in 2002 the definition of a minor in canon law was changed from 16 to 18 years of age
- in 2002 the limitation period for prosecuting a priest was increased from five to 10 years
- in 2003 Cardinal Joseph Ratzinger obtained authority to deal with grave crimes through a canon law administrative procedure, when previously a lengthy canon law trial was required
- in 2010 the limitation period was set at 20 years calculated from the 18th birthday of the victim; in individual cases this can be extended by the Congregation for the Doctrine of the Faith.¹²⁰⁹

Archbishop Hart told us that, when the Archdiocese seeks to have a priest dismissed, it sends a petition to the Congregation for the Doctrine of the Faith, which reviews the materials sent.¹²¹⁰ Archbishop Hart gave evidence that it often takes six months to receive a reply.¹²¹¹

6.3 Response of Archdiocese to priests against whom complaints have been made

The following sections set out the response of the Archdiocese to the priests accused of child sexual abuse in the case studies considered in this public hearing – namely, Mr Glennon, Father O’Donnell and Father Rubeo.

Michael Glennon

On 15 April 1978, Father Glennon was first charged with indecent assault.¹²¹² Archbishop Hart gave evidence that he was placed on administrative leave from this time.¹²¹³ Catholic Church Insurances documents record that Catholic Church Insurances has previously accepted that the Archdiocese of Melbourne was unaware of the offending of Father Glennon until he was first charged by the police in April 1978.¹²¹⁴

On 29 June 1978, Father Glennon pleaded guilty and was sentenced to two years' imprisonment. He was released on parole in January 1979.¹²¹⁵

Archbishop Hart gave evidence that Father Glennon had his faculties removed at about this time.¹²¹⁶ He agreed that this is not reflected in any documents before the Royal Commission or in his statement. He said his knowledge came from working to present Father Glennon's case for laicisation.¹²¹⁷

On 14 March 1984, Father Glennon tendered his resignation as a priest and wrote, 'I wish to apply formally for laicisation processes to commence'.¹²¹⁸

Monsignor Peter Connors, the Vicar General of the Archdiocese, responded on 16 March 1984, acknowledging Father Glennon's resignation and suggesting he make an appointment to discuss the process required for laicisation.¹²¹⁹ Archbishop Hart said that Father Glennon subsequently refused to apply for laicisation.¹²²⁰

On 30 March 1984, the then Archbishop of Melbourne wrote to Father Glennon in relation to his letter of 14 March 1984:

Because of this explicit statement of your resignation, I hereby withdraw your faculties to exercise the Priesthood in any manner whatsoever, including the celebration of Mass privately. However, this does not deprive you of the provision of Canon 976 of the Code of Canon Law. I also wish to inform you that your authorisation to act as a marriage celebrant will also be withdrawn.¹²²¹

Archbishop Hart gave evidence that, although Father Glennon's faculties had already been withdrawn in about 1978, this withdrawal of faculties was a 'more formal thing' and to 'indicate very clearly that they were permanently withdrawn'.¹²²²

Archbishop Hart gave evidence that in November 1990 the then Archbishop submitted a petition for a decree of dismissal to the Congregation for the Clergy in Rome, which was unsuccessful.¹²²³ We understand that the Archdiocese petitioned for a decree of dismissal because Father Glennon had withdrawn his consent for laicisation. Accordingly, dismissal was the only other option for having him defrocked and permanently removed from the priesthood.

Archbishop Hart told us that the Holy See at that time was 'concerned with some of the ways in which it [the petition] was presented and they declined to act'.¹²²⁴ He told us that he thought the reason the Holy See declined the petition was that Father Glennon had refused to 'petition himself'. He said, 'the attitude of the Congregation for the Clergy at that time was ... very much to be sensitive to the particular priest rather than what the Bishop was trying to do'.¹²²⁵

Archbishop Hart told us that the reason that the petition for Father Glennon's dismissal was submitted some six years after his faculties were formally withdrawn was that Father Glennon

refused to apply for laicisation. Therefore, the Archdiocese had to obtain advice on whether it was possible for the bishop to be a petitioner.¹²²⁶

In September 1994, Archbishop Little renewed the petition for dismissal, with further argument in support.¹²²⁷

On 6 December 1994, Archbishop Little responded to a request for clarification from the Congregation for the Clergy as to whether Father Glennon had become a 'schismatic priest'.¹²²⁸ He wrote that there was abundant evidence of Father Glennon baptising into the Christian Church, administering the sacrament of confirmation to adult converts, celebrating mass publicly and hearing sacramental confessions despite the fact that all of his priestly faculties had been removed.¹²²⁹

This letter also referred to Father Glennon's 'paedophilic condition' and the recent civil cases that had been brought by his victims. Archbishop Little wrote, 'The fact that he is still a priest incardinated in the Archdiocese of Melbourne is very difficult for me to explain to the enemies of the Church, and to the general public'.¹²³⁰

However, this second petition was also unsuccessful.¹²³¹ In a letter dated 10 January 1995, the Congregation for the Clergy responded to this petition as follows:

Having studied the information provided, it would seem that Canon 1364, regarding 'an apostate from the faith, a heretic or a schismatic,' would apply to Father Glennon. Accordingly, his situation could be best resolved by a diocesan tribunal established according to the norms of Canon 1425, §1, 2° and following the processes outlined in Canons 1717–1728, realizing that in this instance the extra-judicial procedure is not an option for this tribunal if the penalty of dismissal from the clerical state is to be considered.¹²³²

Archbishop Hart told us that he thought the Congregation for the Clergy wanted a diocesan tribunal set up to try Father Glennon, with three judges with doctorates in canon law and with all the procedures that were required to hold a formal trial. He said, 'one of the problems that we have had for a long time in this country is the scarcity of sufficiently qualified people who had doctorates'.¹²³³

On 22 May 1998 Archbishop Pell made a further application, this time to the Congregation for the Doctrine of the Faith.¹²³⁴ On 17 May 1999 Pope John Paul II issued a decree that Father Glennon was dismissed.¹²³⁵

Archbishop Hart told us he thought this petition was successful because the request had been transferred to the Congregation for the Doctrine of the Faith.¹²³⁶ He said that, although this Congregation was not an appeal process, they 'consider very carefully those doctrinal issues such as ... performing as a priest without faculties, but also grave matters which have doctrinal and other implications which affect the life of the Church'.¹²³⁷ Cardinal Pell was a member of this Congregation from 1990 until 2000.¹²³⁸

We are troubled that, although Father Glennon had been convicted of child sexual abuse offences in

1978, the Congregation for the Clergy refused to dismiss him from the priesthood on two separate occasions – in 1990 and 1994. However, in 1998 the Congregation for the Doctrine of the Faith accepted Cardinal Pell’s petition to remove Father Glennon from the priesthood. It is not clear to us why Cardinal Pell’s petition in 1998 was successful but the two previous petitions by Archbishop Little were not.

It took eight years from the time of the Archdiocese’s first petition, and 20 years from his first conviction, for Father Glennon to be dismissed from the priesthood. We are concerned that the application of canon law by members of the relevant dicasteries of the Holy See operated to obfuscate the removal of priest who had been convicted of child sexual abuse from the clerical state.

There is a lack of clarity as to the application of canon law in response to each of the three petitions regarding Father Glennon. The role of canon law will be reviewed further in Royal Commission hearings.

Kevin O’Donnell

As discussed above, an allegation included in the Fosters’ statements of claim was that in 1958 Monsignor Moran was informed of a complaint by a young boy that Father O’Donnell had interfered with him.

Monsignor Moran was administrator of St Patrick’s Cathedral, Melbourne, at the time of the 1958 complaint.¹²³⁹ He became Vicar General in around 1958 and a bishop in India in 1964.¹²⁴⁰

As set out earlier, Mr Leder agreed that this was evidence that a senior figure in the Archdiocese had information in 1958 that, properly handled, might have led to Father O’Donnell being identified as an abuser and subsequent abuse being avoided.¹²⁴¹

Archbishop Hart gave evidence that in November 1992 the Archdiocese received a complaint that Father O’Donnell had sexually abused a child in the late 1950s to early 1960s.¹²⁴²

On 28 July 1993, the then Vicar General of the Archdiocese of Melbourne wrote to Father O’Donnell informing him that he no longer had any faculties or priestly ministry in the Archdiocese of Melbourne at this time.¹²⁴³

He also wrote:

You may celebrate Mass privately in circumstances which could not lead anyone to conclude that you have any current priestly appointment.

You are to advise any clergy who may request supply assistance that you are not available for any priestly activities.¹²⁴⁴

In May 1994, Father O'Donnell was charged with indecent assaults relating to another male victim between 1971 and 1974.¹²⁴⁵ Charges in respect of further victims were subsequently added.¹²⁴⁶

In 1995, Father O'Donnell appeared in the County Court of Victoria and was convicted of 11 counts of indecent assault against 10 boys and two girls that occurred between 1954 and 1972.¹²⁴⁷

In August 1995 Father O'Donnell was sentenced to 39 months' imprisonment with a non-parole period of 15 months.¹²⁴⁸ He was released on parole on 2 November 1996.¹²⁴⁹

Mrs Foster gave evidence that, in about November 1996, she and Mr Foster approached Father Teal to request that Father O'Donnell be stripped of his clerical status.¹²⁵⁰ An appointment was made for the Fosters to speak with Father Ross McKenney, a canon lawyer from a neighbouring parish. Mrs Foster said:

The meeting did not go well. Anthony and I told him that we wanted the Catholic Church to laicise O'Donnell as his crimes against children made him unfit for the title. Father McKenney scoffed in response and said 'We can't do that'.¹²⁵¹

Father O'Donnell died on 11 March 1997.¹²⁵² He died a pastor emeritus, having been given that title when he retired.¹²⁵³

Archbishop Hart gave evidence that this title has no effect, but he understands what it says to people and apologised for this.¹²⁵⁴ Archbishop Hart gave evidence that, since he has become Archbishop, if a priest has had a complaint made against him he is not given the title of pastor emeritus when he retires.¹²⁵⁵

Victor Rubeo

Mr Hersbach gave evidence that in August 1994 his father made an official complaint about Father Rubeo to Monsignor Cudmore, the Vicar General at the time. Father Rubeo continued as parish priest of Boronia in Melbourne.¹²⁵⁷

Archbishop Hart gave evidence that Father Rubeo was not removed from ministry in 1994, at the time of this complaint, but that he should have been.¹²⁵⁸

In 1996, in an interview with Victoria Police about an unrelated matter, Father Rubeo admitted to sexually abusing Mr Tony Hersbach and his brother.¹²⁵⁹ The police pressed charges and Father Rubeo pleaded guilty to two counts of indecent assault upon Mr Tony Hersbach and his brother.¹²⁶⁰ Father Rubeo was given a good behaviour bond and no conviction was recorded.¹²⁶¹

On 26 August 1996, Father Ian Waters, then acting Vicar General of the Archdiocese of Melbourne, wrote to Father Rubeo:

I regret that I have to inform you that you do not have any faculties or priestly ministry in the Archdiocese of Melbourne at the present time.

You may celebrate Mass privately in circumstances which could not lead anyone to conclude that you have any current priestly appointment.¹²⁶²

When asked why Father Rubeo was permitted to celebrate mass privately but Mr Glennon was not, Archbishop Hart responded:

I think the view of the Archbishop of the time would have been, and I surmise, that with regard to Glennon there was always a tendency to gather groups of people around him and the Archbishop was concerned that really he would always push the boundaries, and I think that was the point.¹²⁶³

On 14 November 1996, Monsignor Hart, then the Vicar General, wrote a memorandum to Mr O'Callaghan QC enclosing a recent letter from Father Rubeo to Archbishop Pell. Monsignor Hart wrote:

Archbishop Pell has asked me to forward to you a copy of the file and would be grateful for advice as to whether it is appropriate for him to have faculties to be available for supply work in the Archdiocese. He envisages short-term weekend supply or holiday supply or emergency supply and, where possible, he would mean to return to his own residence each night while on supply assignment. It is proposed that he live in private accommodation with the provisions made for retired priests in the Archdiocese. Do this proposal meet with your approval?¹²⁶⁴

Mr O'Callaghan QC responded by letter on 21 March 1997.¹²⁶⁵ In this letter he noted that Father Rubeo had been convicted of two counts of indecent assault against Tony and Will Hersbach and that two females had made complaints against Father Rubeo.¹²⁶⁶

Mr O'Callaghan QC wrote that he had referred Father Rubeo to Professor Ball for assessment and that he understood that 'Professor Ball takes a negative view'.¹²⁶⁷ He wrote:

I report to the Archdiocese that I consider in all the circumstances, it would not be appropriate to return Father Rubeo even to a limited ministry.

However, I am now advised that Father Rubeo wishes to retire, and I am asked as to whether such retirement would impinge upon my investigations or findings. It would not. I consider that there is utility in accepting Father Rubeo's retirement, but subject to his resigning from all other offices (if any) held by him at this time.¹²⁶⁸

Archbishop Hart gave evidence that he referred this matter to the Independent Commissioner because that was the procedure and that he was not surprised by Mr O'Callaghan QC's response.¹²⁶⁹

On 2 April 1997, Father Rubeo wrote to Archbishop Pell offering his resignation from any canonical office he may still have held.¹²⁷⁰

On 14 April 2010, Archbishop Hart wrote to Father Rubeo advising him that he proposed to apply to the Congregation for the Doctrine of the Faith for recommendation to the Holy Father that a dispensation from the obligations of the clerical state be granted to Father Rubeo.¹²⁷¹ Archbishop Hart was effectively asking Father Rubeo to consent to laicisation. He wrote, 'I do this solely based on the time you have been away from the priesthood, and wishing peace of mind and spirit to you and all concerned'.¹²⁷²

Father Rubeo responded to Archbishop Hart by letter on 19 April 2010.¹²⁷³ He wrote:

As I have already, with God's help, obtained that interior peace, I am quite content living as I have been for the past 14 years. However, I am open to any suggestion you may have to assist me in living out the remaining years I may have.¹²⁷⁴

Archbishop Hart gave evidence that, at the time of his letter to Father Rubeo, he was reviewing the situation of a number of priests and he felt it was important to refer Father Rubeo's matter to Rome to ensure they were aware of his convictions.¹²⁷⁵ He said that he sent copies of the court decisions involving Father Rubeo to Rome.¹²⁷⁶

In 2010, police charged Father Rubeo with an additional 30 counts of indecent assault against Mr Tony Hersbach and his brother.¹²⁷⁷

On 31 August 2011, Archbishop Hart forwarded a petition to the Congregation for the Doctrine of the Faith seeking Father Rubeo's dismissal.¹²⁷⁸

On 16 December 2011, the day he was due in court for the committal hearing, Father Rubeo died. Archbishop Hart gave evidence that Father Rubeo died before the Congregation for the Doctrine of the Faith had determined the petition.¹²⁸⁰

7 Costs of the Melbourne Response scheme

The Archdiocese provided the Royal Commission with information about the annual costs of running the Melbourne Response scheme and the annual amounts that had been paid to victims of child sexual abuse through the scheme.¹²⁸¹

The table below contains the following information:

- **Compensation payments:** this only includes payments for child sexual abuse and does not therefore include payments for physical abuse or adult boundary violations.¹²⁸² This amount does not include payments made pursuant to settlements reached outside of the Melbourne Response.¹²⁸³
- **Carelink medical consultation, counselling and treatment costs:** this covers the payment of medical consultations, counselling and treatment made through Carelink. It includes payments in relation to victims of physical abuse or adult boundary violations and the professional fees paid to the Carelink Director or Coordinator.¹²⁸⁴ It does not include Carelink's employee and administration costs.¹²⁸⁵
- **Other medical consultation, counselling and treatment costs:** this covers the payment of medical consultations, counselling and treatment by the Archdiocese otherwise than through Carelink. It includes payments in relation to victims of physical abuse or adult boundary violations.¹²⁸⁶ These payments were wound down when Carelink was established, with the exception of one matter in 2013, where the cost of a school camp was funded.¹²⁸⁷
- **Other expenditures:** this includes legal fees and the costs of the Independent Commissioners, counsel assisting, Compensation Panel and employee and administrative costs, including those of Carelink.¹²⁸⁸

The Melbourne Response: costs	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Compensation payments	\$0	\$851,700	\$517,500	\$488,500	\$651,600	\$189,750	\$496,250	\$928,950	\$360,100	\$649,000
Carelink medical consultation, counselling and treatment costs	\$0	\$99,467	\$136,939	\$133,185	\$88,724	\$107,670	\$134,026	\$187,649	\$196,807	\$325,267
Other medical consultation, counselling and treatment costs	\$0	\$68,099	\$27,490	\$28,635	\$10,554	\$6,945	\$7,075	\$340	\$0	\$0
Other expenditures	\$5,979	\$1,162,653	\$860,878	\$559,150	\$1,213,006	\$438,770	\$747,096	\$635,407	\$561,914	\$1,510,659
Total expenditures	\$5,979	\$2,181,918	\$1,542,806	\$1,209,469	\$1,963,884	\$743,135	\$1,384,447	\$1,752,346	\$1,118,821	\$2,484,926

The Melbourne Response: costs	2006	2007	2008	2009	2010	2011	2012	2013	2014 (1 Jan – 31 Mar)	Total
Compensation payments	\$465,000	\$274,700	\$537,520	\$647,500	\$758,000	\$752,500	\$582,500	\$472,500	\$100,000	\$9,723,570
Carelink medical consultation, counselling and treatment costs	\$418,899	\$425,658	\$418,411	\$538,949	\$613,951	\$831,961	\$980,397	\$1,166,952	\$580,563	\$7,385,474
Other medical consultation, counselling and treatment costs	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,290	\$0	\$150,428
Other expenditures	\$499,446	\$968,434	\$2,990,667	\$267,434	\$673,840	\$729,661	\$1,336,284	\$1,346,932	\$509,315	\$17,011,545
Total expenditures	\$1,383,345	\$1,668,792	\$3,946,598	\$1,453,883	\$2,045,791	\$2,314,122	\$2,899,181	\$2,987,674	\$1,189,878	\$34,271,017

Mr Moore, the Executive Director of administration in the Archdiocese, gave evidence that the figure under 'Other expenditures' was higher in 2008 because around that time the Independent Commissioner rendered invoices for certain previous years for which he had not yet rendered invoices.¹²⁸⁹

Mr Moore gave evidence that the cost of compensation payments and medical consultation, counselling and treatment payments were about the same as the costs of running the scheme, including the costs of Melbourne Response personnel and legal fees.¹²⁹⁰ He gave evidence that 'I think the view of the Archbishop and the Archdiocese has been that it's an area that needs the best professional expertise that we can gain, and that does come at a cost'.¹²⁹¹

Mr Moore gave evidence that the average payment of compensation to a victim of child sexual abuse under the Melbourne Response between 1996 and 31 March 2014 was approximately \$32,000.¹²⁹² The total average expenditure for each claim of child sexual abuse, including the direct and indirect costs of providing counselling and medical support through Carelink, was approximately \$100,000.¹²⁹³

The table below shows the breakdown of costs incurred by the Carelink.¹²⁹⁴ It does not take into account Carelink's rental costs.¹²⁹⁵

In this table, the item 'Carelink medical consultation, counselling and treatment costs' in the previous table has been broken down into:

- Carelink director and coordinator costs
- external Carelink medical consultation, counselling and treatment costs.

Mr Moore said that Carelink directors and coordinators spend most of their time 'actually working with victims. So, their role is much more directed to victim support than it is to administration of Carelink'.¹²⁹⁶

Carelink costs: breakdown	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Carelink employee costs	\$0	\$145,870	\$141,958	\$195,165	\$102,960	\$189,750	\$109,539	\$218,922	\$248,299	\$191,718
Carelink administration costs	\$0	\$110,700	\$79,966	\$116,407	\$170,903	\$107,670	\$89,334	\$96,133	\$46,967	\$68,518
Carelink director and coordinator costs	\$0	\$54,523	\$45,052	\$91,180	\$62,928	\$6,945	\$82,588	\$110,021	\$99,326	\$93,245
External Carelink medical consultation, counselling and treatment costs	\$0	\$44,944	\$91,887	\$42,005	\$25,796	\$438,770	\$25,082	\$24,005	\$88,323	\$103,562
Total	\$0	\$356,037	\$358,863	\$444,756	\$362,587	\$743,135	\$306,544	\$449,081	\$482,914	\$457,043

Carelink costs: breakdown	2006	2007	2008	2009	2010	2011	2012	2013	2014 (1 Jan – 31 Mar)	Total
Carelink employee costs	\$102,033	\$79,472	\$83,530	\$47,737	\$44,339	\$59,247	\$86,659	\$110,853	\$56,552	\$2,198,837
Carelink administration costs	\$74,628	\$75,457	\$81,552	\$79,897	\$60,935	\$71,966	\$77,931	\$132,588	\$54,745	\$1,567,450
Carelink director and coordinator costs	\$209,482	\$199,535	\$231,876	\$165,068	\$215,975	\$312,140	\$409,383	\$475,816	\$105,815	\$3,147,376
External Carelink medical consultation, counselling and treatment costs	\$209,417	\$226,123	\$186,535	\$373,881	\$397,976	\$519,821	\$571,014	\$691,136	\$474,748	\$4,238,098
Total	\$595,559	\$580,587	\$583,493	\$666,583	\$719,225	\$963,174	\$1,144,987	\$1,410,393	\$691,860	\$11,151,760

8 Financial position of the Archdiocese of Melbourne

The Royal Commission was also provided with financial statements from the Archdiocese of Melbourne that set out the financial positions of the Roman Catholic Trusts Corporation and the Catholic Development Fund for the years 2012 and 2013.

8.1 Roman Catholic Trusts Corporation

The Roman Catholic Trusts Corporation is a corporation established under the *Roman Catholic Trusts Act 1907* (Vic) specifically for the Archdiocese of Melbourne.¹²⁹⁷ Its key financial data for the calendar years 2012 and 2013 is set out in the table below.¹²⁹⁸

Archdiocese of Melbourne Roman Catholic Trusts Corporation	2012	2013
Income	\$45,279,617	\$52,793,346
Expenditure	\$44,069,094	\$48,492,228
Operating surplus	\$1,210,523	\$4,301,118
Assets	\$307,457,079	\$309,834,202
Liabilities	\$89,310,446	\$87,386,451
Net assets/equity	\$218,146,633	\$222,447,751
Cash held at 31 December	\$5,320,325	\$5,591,703

Mr Moore gave evidence that the operating surplus income each year ‘basically reflects the state of the stock market, I would say, from year to year. If you get good years in the stock market, the surplus will go up. If the stock market has downturns, then that gets reflected in the final outcome’.¹²⁹⁹

Of the Roman Catholic Trusts Corporation’s assets, \$106,548,805 in 2012 and \$109,197,758 in 2013 constituted the value of property, as assessed according to acquisition cost.¹³⁰⁰ Mr Moore agreed that the contemporary value could be ‘quite different’, although some of the properties would be ‘very difficult to value’ and not ‘easily realisable, but everything is potentially and ultimately realisable’.¹³⁰¹

8.2 Catholic Development Fund

The Catholic Development Fund receives deposits from parishes, schools, diocesan agencies and other Catholic agencies, which it pools and loans to fund the activities of the Archdiocese, parishes and schools.¹³⁰² Its major assets are loans.¹³⁰³

Mr Moore gave evidence that this fund operates by taking money as a deposit, paying interest on those deposits, lending the funds it receives on deposit and receiving interest from those loans, thereby obtaining a profit.¹³⁰⁴ He agreed that the fund ‘is operating in effect as a treasury’.¹³⁰⁵

The fund is under the control and authority of the Archdiocese and Archbishop of Melbourne. The Archbishop can call on the fund's reserves or surplus assets.¹³⁰⁶

The fund also distributes 50 per cent of its annual net profit to the Archdiocese or Archbishop, although this profit is often deposited back into the fund.¹³⁰⁷ The remaining net profit becomes part of the fund's reserves.¹³⁰⁸

The fund's key financial data for the financial years 2011–12 and 2012–13 is set out in the table below.¹³⁰⁹

Archdiocese of Melbourne Roman Catholic Trusts Corporation	2011–12	2012–13
Revenue	\$59,257,873	\$56,487,633
Expenses	\$43,093,661	\$37,939,515
Net profit¹³¹⁰	\$16,164,212	\$18,548,118
Assets	\$889,596,938	\$965,818,491
Liabilities	\$793,853,418	\$859,408,127
Net assets/equity	\$95,743,520	\$106,410,364
Cash held at 30 June	\$215,230,792	\$240,976,785

8.3 Capacity of the Archdiocese to increase child sexual abuse payments under the Melbourne Response

When asked whether doubling or tripling compensation payments under the Melbourne Response would be 'within the affordability of the Archdiocese' or if it would put the Archdiocese 'in financial stress', Mr Moore said:

I think it would certainly require some adjustments to the way that the Archdiocese operated, and whether the Archdiocese could continue all of the programs that it currently provides. Could it be managed? Yes, I suspect it could, but not without impacts elsewhere.¹³¹¹

When asked about these impacts, Mr Moore said:

the payments either have to come from income, and if the income is not sufficient then they would have to come from accumulated assets. Depending upon what the increase was, it might be more than the accumulated income can cover, in which case there would be a need to go to the reserves of the Archdiocese.¹³¹²

He gave evidence that the Archdiocese was currently running 'a reasonable surplus, having regard to the scale of the Archdiocese', and accepted that this surplus was 'in the millions'.¹³¹³

As indicated earlier, the funding of a redress scheme will be addressed in the Royal Commission's report on redress, which it expects to publish in mid-2015.

9 General conclusions on redress

As noted above, the Royal Commission has published the *Consultation paper: Redress and civil litigation*. This paper raises a number of issues, including:

- the structure of a redress scheme
- the independence of those who make decisions about whether redress will be offered – and, if so, in what amount – from the institution where the abuse occurred
- the process by which entitlement to redress is determined
- reporting to police and other authorities
- funding and provision of counselling and other support services
- whether a cap should be imposed
- the method by which compensation is determined
- involvement of lawyers
- deeds of release
- the funding of a redress scheme.

The Royal Commission expects to publish a report containing its findings and recommendations about redress in mid-2015.

The Royal Commission will also further consider the way in which institutions deal with the accused.

Although the Royal Commission is considering the broad issues of redress, there are some matters arising in this case study about which comment can be made now:

1. Neither the Independent Commissioners nor the Compensation Panel have written procedures. It is clear that the Independent Commissioners adopted different processes in relation to several matters, including giving advice about the prospects of a civil claim, the prospects of criminal action and the availability of legal advice and legal representation. There is an obvious need for any redress scheme to have written procedures that are published and consistently followed.
2. Administrators and decision makers in a redress scheme should never give advice to applicants about prospects of civil action or criminal charges. They will rarely have all of the necessary information. Giving such advice will always be inconsistent with their function and potentially confusing for applicants, who rightly see them in a position of authority. Such advice, if needed, should be available elsewhere.
3. A scheme that is heavily dominated by lawyers and traditional legal process is unlikely to provide the most supportive environment for complainants.
4. The lawyers responsible for administering the scheme should not be the same as those acting for the relevant institution. The potential for conflict and the difficulties in maintaining confidentiality are obvious. This is illustrated earlier in this report.
5. The method by which payments are determined should be known to all and consistently followed.

10 Systemic issues

The following systemic issues arise from this case study:

- the role of the institution in a redress scheme
- the standard of proof for validating a claim
- the locations at which victims will be interviewed for the purposes of the redress scheme
- whether a 'secondary victim' should be included in a redress scheme
- the process to determine whether abuse occurred when it is denied by the accused
- whether there should be two decision makers: one for whether the abuse occurred and the other for the amount that is offered
- the process of determining what payment should be made
- the role of discipline in a redress scheme
- the issuing of apologies
- the requirement for a deed of release
- the provision of and funding for counselling and psychological care for survivors
- the relationship between those delivering or coordinating counselling and psychological care and those making decisions about the abuse and compensation

These issues will be considered by the Royal Commission as part of its civil justice and redress projects.

Appendix A: Terms of Reference

Letters Patent

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO

The Honourable Justice Peter David McClellan AM,
Mr Robert Atkinson,
The Honourable Justice Jennifer Ann Coate,
Mr Robert William Fitzgerald AM,
Dr Helen Mary Milroy, and
Mr Andrew James Marshall Murray

GREETING

WHEREAS all children deserve a safe and happy childhood.

AND Australia has undertaken international obligations to take all appropriate legislative, administrative, social and educational measures to protect children from sexual abuse and other forms of abuse, including measures for the prevention, identification, reporting, referral, investigation, treatment and follow up of incidents of child abuse.

AND all forms of child sexual abuse are a gross violation of a child's right to this protection and a crime under Australian law and may be accompanied by other unlawful or improper treatment of children, including physical assault, exploitation, deprivation and neglect.

AND child sexual abuse and other related unlawful or improper treatment of children have a long-term cost to individuals, the economy and society.

AND public and private institutions, including child-care, cultural, educational, religious, sporting and other institutions, provide important services and support for children and their families that are beneficial to children's development.

AND it is important that claims of systemic failures by institutions in relation to allegations and incidents of child sexual abuse and any related unlawful or improper treatment of children be fully explored, and that best practice is identified so that it may be followed in the future both to protect against the occurrence of child sexual abuse and to respond appropriately when any allegations and incidents of child sexual abuse occur, including holding perpetrators to account and providing justice to victims.

AND it is important that those sexually abused as a child in an Australian institution can share their experiences to assist with healing and to inform the development of strategies and reforms that your inquiry will seek to identify.

AND noting that, without diminishing its criminality or seriousness, your inquiry will not specifically examine the issue of child sexual abuse and related matters outside institutional contexts, but that any recommendations you make are likely to improve the response to all forms of child sexual abuse in all contexts.

AND all Australian Governments have expressed their support for, and undertaken to cooperate with, your inquiry.

NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and under the Constitution of the Commonwealth of Australia, the *Royal Commissions Act 1902* and every other enabling power, appoint you to be a Commission of inquiry, and require and authorise you, to inquire into institutional responses to allegations and incidents of child sexual abuse and related matters, and in particular, without limiting the scope of your inquiry, the following matters:

- a. what institutions and governments should do to better protect children against child sexual abuse and related matters in institutional contexts in the future;
- b. what institutions and governments should do to achieve best practice in encouraging the reporting of, and responding to reports or information about, allegations, incidents or risks of child sexual abuse and related matters in institutional contexts;
- c. what should be done to eliminate or reduce impediments that currently exist for responding appropriately to child sexual abuse and related matters in institutional contexts, including addressing failures in, and impediments to, reporting, investigating and responding to allegations and incidents of abuse;
- d. what institutions and governments should do to address, or alleviate the impact of, past and future child sexual abuse and related matters in institutional contexts, including, in particular, in ensuring justice for victims through the provision of redress by institutions, processes for referral for investigation and prosecution and support services.

AND We direct you to make any recommendations arising out of your inquiry that you consider appropriate, including recommendations about any policy, legislative, administrative or structural reforms.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to have regard to the following matters:

- e. the experience of people directly or indirectly affected by child sexual abuse and related matters in institutional contexts, and the provision of opportunities for them

to share their experiences in appropriate ways while recognising that many of them will be severely traumatised or will have special support needs;

- f. the need to focus your inquiry and recommendations on systemic issues, recognising nevertheless that you will be informed by individual cases and may need to make referrals to appropriate authorities in individual cases;
- g. the adequacy and appropriateness of the responses by institutions, and their officials, to reports and information about allegations, incidents or risks of child sexual abuse and related matters in institutional contexts;
- h. changes to laws, policies, practices and systems that have improved over time the ability of institutions and governments to better protect against and respond to child sexual abuse and related matters in institutional contexts.

AND We further declare that you are not required by these Our Letters Patent to inquire, or to continue to inquire, into a particular matter to the extent that you are satisfied that the matter has been, is being, or will be, sufficiently and appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to consider the following matters, and We authorise you to take (or refrain from taking) any action that you consider appropriate arising out of your consideration:

- i. the need to establish mechanisms to facilitate the timely communication of information, or the furnishing of evidence, documents or things, in accordance with section 6P of the Royal Commissions Act 1902 or any other relevant law, including, for example, for the purpose of enabling the timely investigation and prosecution of offences;
- j. the need to establish investigation units to support your inquiry;
- k. the need to ensure that evidence that may be received by you that identifies particular individuals as having been involved in child sexual abuse or related matters is dealt with in a way that does not prejudice current or future criminal or civil proceedings or other contemporaneous inquiries;
- l. the need to establish appropriate arrangements in relation to current and previous inquiries, in Australia and elsewhere, for evidence and information to be shared with you in ways consistent with relevant obligations so that the work of those inquiries, including, with any necessary consents, the testimony of witnesses, can be taken into account by you in a way that avoids unnecessary duplication, improves efficiency and

avoids unnecessary trauma to witnesses;

- m. the need to ensure that institutions and other parties are given a sufficient opportunity to respond to requests and requirements for information, documents and things, including, for example, having regard to any need to obtain archived material.

AND We appoint you, the Honourable Justice Peter David McClellan AM, to be the Chair of the Commission.

AND We declare that you are a relevant Commission for the purposes of sections 4 and 5 of the *Royal Commissions Act 1902*.

AND We declare that you are authorised to conduct your inquiry into any matter under these Our Letters Patent in combination with any inquiry into the same matter, or a matter related to that matter, that you are directed or authorised to conduct by any Commission, or under any order or appointment, made by any of Our Governors of the States or by the Government of any of Our Territories.

AND We declare that in these Our Letters Patent:

child means a child within the meaning of the Convention on the Rights of the Child of 20 November 1989.

government means the Government of the Commonwealth or of a State or Territory, and includes any non-government institution that undertakes, or has undertaken, activities on behalf of a government.

institution means any public or private body, agency, association, club, institution, organisation or other entity or group of entities of any kind (whether incorporated or unincorporated), and however described, and:

- i. includes, for example, an entity or group of entities (including an entity or group of entities that no longer exists) that provides, or has at any time provided, activities, facilities, programs or services of any kind that provide the means through which adults have contact with children, including through their families; and
- ii. does not include the family.

institutional context: child sexual abuse happens in an institutional context if, for example:

- i. it happens on premises of an institution, where activities of an institution take place, or in connection with the activities of an institution; or

- ii. it is engaged in by an official of an institution in circumstances (including circumstances involving settings not directly controlled by the institution) where you consider that the institution has, or its activities have, created, facilitated, increased, or in any way contributed to, (whether by act or omission) the risk of child sexual abuse or the circumstances or conditions giving rise to that risk; or
- iii. it happens in any other circumstances where you consider that an institution is, or should be treated as being, responsible for adults having contact with children.

law means a law of the Commonwealth or of a State or Territory.

official, of an institution, includes:

- i. any representative (however described) of the institution or a related entity; and
- ii. any member, officer, employee, associate, contractor or volunteer (however described) of the institution or a related entity; and
- iii. any person, or any member, officer, employee, associate, contractor or volunteer (however described) of a body or other entity, who provides services to, or for, the institution or a related entity; and
- iv. any other person who you consider is, or should be treated as if the person were, an official of the institution.

related matters means any unlawful or improper treatment of children that is, either generally or in any particular instance, connected or associated with child sexual abuse.

AND We:

- n. require you to begin your inquiry as soon as practicable, and
- o. require you to make your inquiry as expeditiously as possible; and
- p. require you to submit to Our Governor-General:
 - i. first and as soon as possible, and in any event not later than 30 June 2014 (or such later date as Our Prime Minister may, by notice in the *Gazette*, fix on your recommendation), an initial report of the results of your inquiry, the recommendations for early consideration you may consider appropriate to make in this initial report, and your recommendation for the date, not later than 31 December 2015, to be fixed for the submission of your final report; and
 - ii. then and as soon as possible, and in any event not later than the date Our Prime

Minister may, by notice in the *Gazette*, fix on your recommendation, your final report of the results of your inquiry and your recommendations; and

- q. authorise you to submit to Our Governor-General any additional interim reports that you consider appropriate.

IN WITNESS, We have caused these Our Letters to be made Patent.

WITNESS Quentin Bryce, Governor-General of the Commonwealth of Australia.

Dated 11th January 2013

Governor-General

By Her Excellency's Command

Prime Minister

Letters Patent dated 13 November 2014

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO

The Honourable Justice Peter David McClellan AM,
Mr Robert Atkinson,
The Honourable Justice Jennifer Ann Coate,
Mr Robert William Fitzgerald AM,
Dr Helen Mary Milroy, and
Mr Andrew James Marshall Murray

GREETING

WHEREAS We, by Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia, appointed you to be a Commission of inquiry, required and authorised you to inquire into certain matters, and required you to submit to Our Governor-General a report of the results of your inquiry, and your recommendations, not later than 31 December 2015.

AND it is desired to amend Our Letters Patent to require you to submit to Our Governor-General a report of the results of your inquiry, and your recommendations, not later than 15 December 2017.

NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and under the Constitution of the Commonwealth of Australia, the *Royal Commissions Act 1902* and every other enabling power, amend the Letters Patent issued to you by omitting from subparagraph (p)(i) of the Letters Patent “31 December 2015” and substituting “15 December 2017”.

IN WITNESS, We have caused these Our Letters to be made Patent.

WITNESS General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia.

Dated 13th November 2014
Governor-General
By Her Excellency's Command
Prime Minister

Appendix B: Public hearing

The Royal Commission	Justice Peter McClellan AM (Chair) Justice Jennifer Coate Mr Bob Atkinson AO APM Mr Robert Fitzgerald AM Professor Helen Milroy Mr Andrew Murray
Commissioners who presided	Justice Peter McClellan AM (Chair) Professor Helen Milroy Mr Andrew Murray
Date of hearing	18–22, 25 and 26 August 2014
Legislation	<i>Royal Commissions Act 1902 (Cth)</i>
Leave to appear	Peter O’Callaghan QC David Curtain QC Susan Sharkey Jeffery Gleeson QC Corrs Chambers Westgarth Richard Leder Paul Hersbach Christine Foster Anthony Foster Emma Foster Katie Foster Aimee Foster Catholic Archdiocese of Melbourne Truth, Justice and Healing Council

Legal representation	<p>G Furness SC with A Stewart, Counsel Assisting the Royal Commission.</p> <p>A Myers AO QC with A Woods instructed by Corrs Chambers Westgarth appearing for Mr Gleeson, Mr O’Callaghan, Mr Curtain and Ms Sharkey.</p> <p>J Ruskin QC with M Hoyne instructed by Corrs Chambers Westgarth appearing for Mr Leder.</p> <p>P Gray QC with P Laurie instructed by K Harrison, Gilbert & Tobin appearing for the Truth Justice and Healing Council and the Archdiocese of Melbourne.</p> <p>T Seccul instructed by V Waller, Waller Legal appearing for the Foster family.</p> <p>S Cash instructed by C O’Brien, Doogue O’Brien George appearing for Mr Hersbach.</p>
Pages of transcript	684 pages
Notices to Produce issued under <i>Royal Commissions Act 1923 (NSW)</i> and documents produced:	15 notices to produce issued producing 525 documents
Summons to Produce Documents under the <i>Evidence (Miscellaneous Provisions) Act 1958 (Vic)</i> and documents produced:	31 summons to attend issued producing 6,533 documents
Number of exhibits	40 exhibits consisting of 386 documents tendered at the hearing
Witnesses	<p>Christine Foster Mother of victims, participated in Melbourne Response, withdrew and commenced litigation</p> <p>Paul Hersbach Victim, participated in Melbourne Response</p> <p>AFA Victim, participated in Melbourne Response</p> <p>Peter O’Callaghan QC Independent Commissioner of the Melbourne Response since 1996</p>

Richard Leder

Partner, Corrs Chambers Westgarth, solicitors for the Archdiocese of Melbourne

Cardinal George Pell

Archbishop of Melbourne from August 1996 to March 2001

Jeffery Gleeson QC

Independent Commissioner of Melbourne Response since in 2012 (previously Counsel Assisting the Independent Commissioner)

David Curtain QC

Chair of the Compensation Panel since February 2004

Susan Sharkey

Coordinator, Carelink

Francis Moore

Business Manager, Catholic Archdiocese of Melbourne

Archbishop Denis Hart

Archbishop of Melbourne since 2001

Endnotes

- 1 Exhibit 16-0003, (Tabs 52 and 19) CTJH.221.04004.0013 at .0014; COM.1001.0001.0017 at .0017.
 2 Truth, Justice and Healing Council, Submissions to the Royal Commission into Institutional Responses to Child
 Sexual Abuse, *Issues paper 2: Towards Healing*, 30 September 2013, p 80 [63].
 3 Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [29].
 4 Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [29].
 5 Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [37]–[41].
 6 Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [47]. See Exhibit 16-0007, Statement of R Leder,
 STAT.0317.001.0001_R at [10]–[33].
 7 Exhibit 16-0003 (Tabs 13, 19 and 14) COM.1001.0001.0009, COM.1001.0001.0017, CTJH.221.04015.0018;
 Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [24], [81].
 8 Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [82].
 9 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [31].
 10 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [31].
 11 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [31].
 12 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [33].
 13 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [33].
 14 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [32].
 15 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [32].
 16 Exhibit 16-0035, CTJH.221.04014.0038.
 17 Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [106].
 18 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [137].
 19 Truth, Justice and Healing Council, Submissions to the Royal Commission into Institutional Responses to Child
 Sexual Abuse, *Issues paper 2: Towards Healing*, 30 September 2013, p 80 [65].
 20 Truth, Justice and Healing Council, Submissions to the Royal Commission into Institutional Responses to Child
 Sexual Abuse, *Issues paper 2: Towards Healing*, 30 September 2013, p 80 [65].
 21 Truth, Justice and Healing Council, Submissions to the Royal Commission into Institutional Responses to Child
 Sexual Abuse, *Issues paper 2: Towards Healing*, 30 September 2013, p 8. See footnote 1.
 22 Transcript of G Pell, C6268:41–44 (Day 60) [Case study 8].
 23 Exhibit 16-0003 (Tabs 19 and 52) COM.1001.0001.0017 at .0018, CTJH.221.04004.0013.
 24 Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at .0003_R.
 25 Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at .0003_R.
 26 Exhibit 16-0003 (Tabs 50, 50A) CTJH.221.04004.0143, COM.1002.0001.0017.
 27 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [3].
 28 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [67].
 29 Transcript of D Curtain, C4592:10–21 (Day C42).
 30 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [122].
 31 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [123].
 32 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [3].
 33 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [70]–[71]; Exhibit 16-0007, Statement of R
 Leder, STAT.0317.001.0001_R at [47]; Transcript of P O’Callaghan, C4193:29–39; C4240:33–41 (Day C39).
 34 Transcript of S Sharkey, C4620:7–11 (Day C40).
 35 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [70]–[71].
 36 Exhibit 16-0003 (Tabs 11, 13, 52) COM.1001.0003.0001, COM.1001.0001.0009 at .0011, CTJH.221.04004.0013
 at .0015. See also Transcript of P O’Callaghan, C4189:41–C4190:28 (Day C39).
 37 Exhibit 16-0003 (Tabs 13, 11) COM.1001.0001.0009 at .0011, COM.1001.0003.0001.
 38 Transcript of P O’Callaghan, C4196:21–42 (Day C39); Exhibit 16-0005, Statement of P O’Callaghan,
 STAT.0320.001.0001_R at .0002_R.
 39 Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at .0002_R.
 40 Exhibit 16-0003 (Tab 41) COM.1001.0001.0028.
 41 Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at .0016_R; Exhibit 16-0012, Statement of
 J Gleeson, STAT.0323.001.0001_R at [49]; Transcript of P O’Callaghan, C4225:32–40 (Day C39).
 42 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [59].
 43 Transcript of P O’Callaghan, C4192:20–23 (Day C39).
 44 Transcript of P O’Callaghan, C4192:3–44 (Day C39).

- 45 Transcript of P O’Callaghan, C4192:3–44 (Day C39).
- 46 Transcript of J Gleeson, C4544:45–C4545:4 (Day C42).
- 47 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [92].
- 48 Submissions in Response to Submissions of Counsel Assisting – Case Study 16 from the Truth, Justice and Healing Council [195].
- 49 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Case study 16: The Melbourne Response*, 30 September 2014 at [190].
- 50 Transcript of P O’Callaghan, C4306:16–23 (Day C40).
- 51 Transcript of P O’Callaghan, C4293:36–47 (Day C40).
- 52 Transcript of J Gleeson, C4555:8–11 (Day C42).
- 53 Submissions in Response to Submissions of Counsel Assisting – Case Study 16 from the Truth, Justice and Healing Council [178].
- 54 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [27]; Exhibit 16-0003 (Tab 64) CAR.0048.0009.0112.
- 55 Transcript of R Leder, C4369:43–C4370:1 (Day C40).
- 56 Exhibit 16-0003 (Tab 4) CAR.0048.0011.0024.
- 57 Exhibit 16-0003 (Tab 4) CAR.0048.0011.0024 at .0025.
- 58 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [39].
- 59 Exhibit 16-0022, Statement of R Ball, STAT.0322.001.0001_R at [30].
- 60 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Case study 16: The Melbourne Response*, 30 September 2014 at [224].
- 61 Exhibit 16-0003 (Tab 13) COM.1001.0001.0009 at .0014.
- 62 Transcript of R Leder, C4382:30–C4383:11 (Day C40).
- 63 Exhibit 16-0003 (Tab 52) CTJH.221.04004.0013 at .0016.
- 64 Exhibit 16-0003 (Tab 60) PAN.1001.0001.0002.
- 65 Exhibit 16-0016, Statement of D Curtain, STAT.0318.001.0001_R at [16].
- 66 Transcript of D Curtain, C4582:12–19 (Day C42).
- 67 Exhibit 16-0016, Statement of D Curtain, STAT.0318.001.0001_R at [39(g)].
- 68 Exhibit 16-0016, Statement of D Curtain, STAT.0318.001.0001_R at [39(g)].
- 69 Exhibit 16-0016, Statement of D Curtain, STAT.0318.001.0001_R at [50].
- 70 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [58]–[60].
- 71 Transcript of R Leder, C4387:19–47 (Day C40).
- 72 Transcript of R Leder, C4388:2–47 (Day C40).
- 73 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [26].
- 74 Transcript of D Curtain, C4591:13–24 (Day C42).
- 75 Transcript of R Leder, C4346:36–45 (Day C40).
- 76 Transcript of R Leder, C4404:41–C4405:6 (Day C41).
- 77 Exhibit 16-0037, Statement of D Habersberger, STAT.0321.002.0001 at [3].
- 78 Transcript of R Leder, C4405:8–46 (Day C41).
- 79 Transcript of D Curtain, C4597:43–C4598:17 (Day C42).
- 80 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [5].
- 81 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [6].
- 82 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [17].
- 83 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Case study 16: The Melbourne Response*, 30 September 2014 at [53].
- 84 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [17].
- 85 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [17].
- 86 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [23].
- 87 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [23].
- 88 Exhibit 16-0042, EXH.016.042.0001.
- 89 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [43].
- 90 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [43].
- 91 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [43].
- 92 Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [111].

- 93 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [44].
- 94 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [44].
- 95 Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [112].
- 96 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [45].
- 97 Exhibit 16-0003 (Tab 138) IND.0049.001.0191_R.
- 98 Transcript of G Pell, C4499:43–C4500:17 (Day C41).
- 99 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [91].
- 100 Exhibit 16-0003 (Tab 145) PAN.0075.0001.0085_R.
- 101 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [76]; Exhibit 16-0003 (Tab 151) COM.0048.0001.0058_R.
- 102 Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at 0086_R.
- 103 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [68].
- 104 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [68].
- 105 Exhibit 16-0003 (Tab 157) COM.0050.0001.0029.
- 106 Transcript of P O’Callaghan, C4275:30–40 (Day C39).
- 107 Transcript of P O’Callaghan, C4269:3–43 (Day C39).
- 108 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [161].
- 109 Exhibit 16-0003 (Tab 166) CTJH.221.04001.0128_R.
- 110 Exhibit 16-0003 (Tab 166) CTJH.221.04001.0128_R.
- 111 Exhibit 16-0008, IND.0049.002.0238_R.
- 112 Exhibit 16-0008, IND.0049.002.0238_R.
- 113 Exhibit 16-0008, IND.0049.002.0238_R.
- 114 Exhibit 16-0008, IND.0049.002.0238_R.
- 115 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [163].
- 116 Exhibit 16-0003 (Tab 168) COR.0002.0001.0194.
- 117 Transcript of R Leder, C4439:10–24 (Day C41).
- 118 Transcript of D Hart, C4761:31–35 (Day C44).
- 119 Transcript of D Hart, C4764:19–C4765:37 (Day C44).
- 120 Transcript of P O’Callaghan, C4269:3–4272:3 (Day C39).
- 121 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [77].
- 122 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [84].
- 123 Transcript of R Leder, C4489:10–27 (Day C41).
- 124 Transcript of R Leder, C4489:10–27 (Day C41).
- 125 See Exhibit 16-0003, (Tab 182) CTJH.221.04001.0431_R at .0448 – .0449.
- 126 Transcript of R Leder, C4445:27–30 (Day C41).
- 127 Transcript of R Leder, C4460:18–22 (Day C41).
- 128 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Case study 16: The Melbourne Response*, 30 September 2014 at [90].
- 129 Exhibit 16-0026, CTJH.9999.006.0001.
- 130 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [152]; Transcript of R Leder, C4464:28–C4465:6 (Day C41).
- 131 Exhibit 16-0003, (Tab 197) COR.0001.0004.0016_R; Transcript of R Leder, C4465:8–10 (Day C41).
- 132 Exhibit 16-0003 (Tab 202) COR.0001.0002.0061; COR.0001.0002.006_T_R.
- 133 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [89].
- 134 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [104].
- 135 Transcript of D Hart, C4717:38–C4718:16 (Day C43).
- 136 Transcript of D Hart, C4716:43–C4717:17 (Day C43).
- 137 Transcript of D Hart, C4717:38–47 (Day C43).
- 138 Transcript of R Leder, C4460:18–C4461:13 (Day C41).
- 139 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [97].
- 140 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [97].
- 141 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [98].
- 142 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [4].
- 143 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [4].

- 144 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [4].
- 145 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [11].
- 146 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [23].
- 147 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [23].
- 148 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [26]–[28].
- 149 Exhibit 16-0003, (Tab 236) COM.0056.0002.0078_R; Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at .0102_R.
- 150 Exhibit 16-0003 (Tab 248) CTJH.221.04009.0015.
- 151 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [49].
- 152 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [52].
- 153 Exhibit 16-0003 (Tab 253) CTJH.221.04009.0017_R.
- 154 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [5]; Exhibit 16-0003 (Tab 268) COM.0033.0003.0038_R at 0041_R.
- 155 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [7].
- 156 Exhibit 16-0003 (Tab 268) COM.0033.0003.0038_R.
- 157 Exhibit 16-0003 (Tab 282) CTJH.221.04008.0037_R.
- 158 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [24].
- 159 Exhibit 16-0003 (Tab 287) CTJH.221.04008.0005_R.
- 160 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [27].
- 161 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [34]
- 162 Exhibit 16-0003 (Tab 292) CCI.0001.00287.0058_R.
- 163 Exhibit 16-0003 (Tab 293) CCI.0001.00287.0035_R at 0036_R.
- 164 Exhibit 16-0003 (Tab 293) CCI.0001.00287.0035_R at 0037_R.
- 165 Exhibit 16-0003 (Tab 238) COM.0056.0002.0094_R.
- 166 Transcript of P Hersbach, C4153:3–38 (Day C38).
- 167 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [39].
- 168 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [16].
- 169 Exhibit 16-0014, EXH.016.014.0001.
- 170 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [29].
- 171 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [30].
- 172 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [30].
- 173 Transcript of D Hart, C4741:26–35 (Day C44).
- 174 Transcript of D Hart, C4741:20–24 (Day C44).
- 175 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [89].
- 176 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [90].
- 177 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [180].
- 178 Exhibit 16-0003 (Tab 76) CTJH.221.04013.0615.
- 179 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [181].
- 180 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [181].
- 181 Exhibit 16-0003 (Tab 77) COM.0048.0001.0346; Exhibit 16-0003, (Tab 80) IND.0049.001.0007.
- 182 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [182].
- 183 Transcript of D Hart, C4729:27–44 (Day C44).
- 184 Transcript of D Hart, C4729:27–44 (Day C44).
- 185 Transcript of D Hart, C4729:27–44 (Day C44).
- 186 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [20].
- 187 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [20].
- 188 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [201]; Transcript of D Hart, C4737:46–C4738:8 (Day C44).
- 189 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [22].
- 190 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [22].
- 191 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [24].
- 192 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [203].
- 193 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [24]–[25].
- 194 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [203].

195 Transcript of F Moore, C4656:25–27 (Day C43).

196 Transcript of F Moore, C4656:3–10 (Day C43).

197 Exhibit 16-0018, CTJH.221.04017.0001.

198 Transcript of F Moore, C4657:47–C4658:8 (Day C43).

199 Exhibit 16-0003, (Tab 63) CTJH.221.04010.0154 at .0157 – .0160.

200 Transcript of F Moore, C4662:27–33 (Day C43).

201 Transcript of F Moore, C4667:8–17 (Day C43).

202 Exhibit 16-0003 (Tabs 52 and 19) CTJH.221.04004.0013 at .0014, COM.1001.0001.0017 at .0017.

203 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [24].

204 Truth, Justice and Healing Council, Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper 2: Towards Healing*, 30 September 2013, p 72 [22].

205 Truth, Justice and Healing Council, Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper 2: Towards Healing*, 30 September 2013, pp 72–73 [24]–[25].

206 Truth, Justice and Healing Council, Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper 2: Towards Healing*, 30 September 2013, p 73 [28].

207 Truth, Justice and Healing Council, Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper 2: Towards Healing*, 30 September 2013, p 73 [29]–[30].

208 Truth, Justice and Healing Council, Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper 2: Towards Healing*, 30 September 2013, p 75 [40]–[42].

209 Truth, Justice and Healing Council, Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper 2: Towards Healing*, 30 September 2013, p 75 [44].

210 Truth, Justice and Healing Council, Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper 2: Towards Healing*, 30 September 2013, pp 76–77 [47]–[48].

211 Truth, Justice and Healing Council, Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper 2: Towards Healing*, 30 September 2013, p 78 [53].

212 Truth, Justice and Healing Council, Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper 2: Towards Healing*, 30 September 2013, p 79 [61].

213 Truth, Justice and Healing Council, Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper 2: Towards Healing*, 30 September 2013, p 79 [61].

214 Truth, Justice and Healing Council, Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper 2: Towards Healing*, 30 September 2013, p 80 [63].

215 Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [29].

216 Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [29].

217 Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [32].

218 Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [33].

219 Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [33].

220 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [17].

221 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [24].

222 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [134].

223 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [25].

224 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [27].

225 Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [12], [34].

226 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [17].

227 Bishop Pell was installed as the Archbishop of Sydney on 10 May 2001. He was elevated to the Sacred College of Cardinals by announcement of Pope John Paul II on 28 September 2003. He was appointed to his current position as the Prefect for the Secretariat for the Economy of the Holy See by Pope Francis on 24 February 2014. Monsignor Hart was named an Auxiliary Bishop of the Archdiocese of Melbourne on 10 November 1997 and was consecrated as a Bishop on 9 December 1997. On 22 June 2001, Archbishop Hart was appointed Archbishop of Melbourne. In May 2012, he was elected to the position of President of the Australian Catholic Bishops Conference and will hold that position until May 2016.

228 Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [37]–[41].

229 Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [37]–[44].

230 Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [47]. See Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [10]–[33].

- 231 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [17].
- 232 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [18]–[19].
- 233 Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [61].
- 234 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [30].
- 235 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [30].
- 236 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [31].
- 237 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [31].
- 238 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [31].
- 239 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [33].
- 240 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [33].
- 241 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [32].
- 242 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [32].
- 243 Exhibit 16-0035, CTJH.221.04014.0038.
- 244 Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [106].
- 245 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [137].
- 246 Exhibit 16-0003 (Tabs 13, 19 and 14) COM.1001.0001.0009, COM.1001.0001.0017, CTJH.221.04015.0018;
Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [24].
- 247 Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [82].
- 248 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [36].
- 249 Truth, Justice and Healing Council, Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper 2: Towards Healing*, 30 September 2013, p 80 [65].
- 250 Truth, Justice and Healing Council, Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper 2: Towards Healing*, 30 September 2013, p 80 [65].
- 251 Truth, Justice and Healing Council, Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper 2: Towards Healing*, 30 September 2013, p 80 [66].
- 252 Truth, Justice and Healing Council, Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper 2: Towards Healing*, 30 September 2013, p 81 [71].
- 253 Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [52].
- 254 Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [52].
- 255 Transcript of G Pell, C6265:41–46 (Day 60) [Case Study 8].
- 256 Transcript of G Pell, C6268:41–44 (Day 60) [Case Study 8].
- 257 Exhibit 16-0003 (Tabs 13 and 14) COM.1001.0001.0009, CTJH.221.04015.0018 at .0019.
- 258 Exhibit 16-0003 (Tabs 19 and 14) COM.1001.0001.0017, CTJH.221.04015.0018 at .0019; Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [25].
- 259 Case study 4 – The experiences of four survivors with the Towards Healing process; and case study 8 – Mr John Ellis’s experience of the Towards Healing process and civil litigation.
- 260 Exhibit 16-0003 (Tabs 19 and 52) COM.1001.0001.0017 at .0018, CTJH.221.04004.0013.
- 261 Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at .0003_R.
- 262 Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at .0003_R.
- 263 Exhibit 16-0003 (Tabs 50, 50A) CTJH.221.04004.0143, COM.1002.0001.0017.
- 264 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [3].
- 265 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [67].
- 266 Transcript of D Curtain, C4592:10–21 (Day C42).
- 267 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [122].
- 268 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [123].
- 269 Exhibit 16-0003 (Tab 58) CTJH.221.04014.0037.
- 270 Exhibit 16-0003 (Tab 59) CTJH.221.04014.0045.
- 271 Transcript of D Hart, C4704:31–C4705:26 (Day C43).
- 272 Transcript of D Hart, C4704:31–C4705:8 (Day C43). See also Transcript of D Hart, C4724:30–C4725:23 (Day C44).
- 273 Transcript of D Hart, C4705:1–8 (Day C43).
- 274 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [28].
- 275 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [28].
- 276 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [51], [92]–[93].

277 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [42].
 278 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [3].
 279 Transcript of R Leder, C4334:15–17; C4337:4–8 (Day C40).
 280 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [70]–[71]; Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [47]; Transcript of P O’Callaghan, C4240:33–41 (Day C39).
 281 Transcript of S Sharkey, C4620:7–11 (Day 43).
 282 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [70]–[71].
 283 Transcript of P O’Callaghan, C4197:25–33 (Day C39).
 284 Transcript of P O’Callaghan, C4197:25–33 (Day C39).
 285 Transcript of P O’Callaghan, C4202:14–27 (Day C39).
 286 Transcript of P O’Callaghan, C4202:14–27 (Day C39).
 287 Exhibit 16-0003 (Tab 26) COM.1002.0001.0001; Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [2a].
 288 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [11].
 289 Transcript of P O’Callaghan, C4200:14–33 (Day C39). Canon 1717 of the Code of Canon Law 1983 governs how a preliminary investigation of an offence is to be carried out and by whom.
 290 Transcript of P O’Callaghan, C4202:45–C4203:16 (Day C39).
 291 Transcript of P O’Callaghan, C4198:29–35 (Day C39).
 292 Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at .0002.
 293 Exhibit 16-0003 (Tabs 11, 13, 52) COM.1001.0003.0001, COM.1001.0001.0009 at .0011, CTJH.221.04004.0013 at .0015. See also Transcript of P O’Callaghan, C4189:41–C4190:28 (Day C39).
 294 Exhibit 16-0003 (Tabs 13, 11) COM.1001.0001.0009 at .0011, COM.1001.0003.0001 at .0003.
 295 Exhibit 16-0003 (Tab 11) COM.1001.0003.0001 at .0003.
 296 Transcript of P O’Callaghan, C4185:23–29; C4186:14–34 (Day C39).
 297 Transcript of P O’Callaghan, C4185: 23-29 (Day C39).
 298 Exhibit 16-0003 (Tab 11) COM.1001.0003.0001 at .0004.
 299 Exhibit 16-0003 (Tabs 35, 36) COM.1001.0001.0021, CTJH.221.04004.0128.
 300 Exhibit 16-0003 (Tabs 43, 44, 45 and 47) CTJH.221.04005.0003, COM.1001.0001.0025, CTJH.221.04004.0126 and CTJH.221.04005.0001.
 301 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [40]; Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [85].
 302 Exhibit 16-0003 (Tab 45) CTJH.221.04004.0126 at .0127.
 303 Exhibit 16-0003 (Tab 45) CTJH.221.04004.0126 at .0127.
 304 Transcript of P O’Callaghan, C4196:21–42 (Day C39); Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at .0002_R.
 305 Transcript of P O’Callaghan, C4196:21–42; C4197:1–9 (Day C39).
 306 Exhibit 16-0003 (Tab 41) COM.1001.0001.0028.
 307 Exhibit 16-0003 (Tab 52) CTJH.221.04004.0013 at .0015; Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at .0016_R; Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [49]; Transcript of P O’Callaghan, C4225:32–40 (Day C39).
 308 Transcript of P O’Callaghan, C4176:14–18; C4228:13–27 (Day C39).
 309 Exhibit 16-0003 (Tab 11) COM.1001.0003.0001 at .0005 [(1)(xv)].
 310 Transcript of J Gleeson, C4539:42–47 (Day C42).
 311 Transcript of P O’Callaghan, C4205:11–31 (Day C39).
 312 Transcript of P O’Callaghan, C4205:33–38 (Day C39).
 313 Exhibit 16-0002, Statement of P Hersbach, STAT.031.001.0001_R at [38].
 314 Submissions on behalf of Peter O’Callaghan QC, Independent Commissioner, the *Melbourne Response* [108].
 315 Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at .0108_R.
 316 Transcript of P O’Callaghan, C4206:23–44 (Day C39).
 317 Transcript of P O’Callaghan, C4206:46–C4207:2 (Day C39).
 318 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [22].
 319 Transcript of J Gleeson, C4569:1–37 (Day C42).
 320 Transcript of P O’Callaghan, C4215:16–33; C4216:36–45 (Day C39); Transcript of J Gleeson, C4541:35–42 (Day C42).

- 321 Transcript of P O'Callaghan, C4215:42–C4216:34 (Day C39).
- 322 Transcript of P O'Callaghan, C4217:28–35; C4218:32–C4219:1 (Day C39).
- 323 Transcript of P O'Callaghan, C4219:37–C4220:3 (Day C39).
- 324 Transcript of P O'Callaghan, C4219:19–29 (Day C39).
- 325 Transcript of R Leder, C4353:1–11 (Day C40).
- 326 Transcript of P O'Callaghan, C4174:1–8 (Day C39).
- 327 Transcript of P O'Callaghan, C4174:1–15 (Day C39); Transcript of J Gleeson, C4573:30–C4574:7 (Day C42).
- 328 Transcript of J Gleeson, C4542:6–39 (Day C42).
- 329 Transcript of J Gleeson, C4542:6–23 (Day C42).
- 330 Transcript of J Gleeson, C4573:1–C4574:41 (Day C42).
- 331 Transcript of P O'Callaghan, C4184:45–C4185:14; C4220:5–14 (Day C39).
- 332 Transcript of P O'Callaghan, C4184:45–C4185:14 (Day C39).
- 333 Transcript of P O'Callaghan, C4220:5–14 (Day C39).
- 334 Transcript of P O'Callaghan, C4184:35–43 (Day C39).
- 335 Transcript of P O'Callaghan, C4226:3–9 (Day C39).
- 336 Transcript of P O'Callaghan, C4226:11–22 (Day C39).
- 337 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [51].
- 338 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [52].
- 339 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [53].
- 340 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [59].
- 341 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [61].
- 342 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [63].
- 343 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [62].
- 344 Transcript of P O'Callaghan, C4221:32–41 (Day C39); Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [63].
- 345 Transcript of P O'Callaghan, C4222:2–13 (Day C39).
- 346 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [63].
- 347 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [62], [75].
- 348 Transcript of J Gleeson, C4577:19–C4578:19 (Day C42); Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [75].
- 349 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [75].
- 350 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [63].
- 351 Transcript of P O'Callaghan, C4222:15–21 (Day C39); Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [63].
- 352 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [63].
- 353 Transcript of P O'Callaghan, C4225:21–27 (Day C39).
- 354 Transcript of P O'Callaghan, C4225:21–27 (Day C39); Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [63].
- 355 Transcript of P O'Callaghan, C4225:7–11 (Day C39).
- 356 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [83]; Transcript of J Gleeson, C4549:27–C4550:1 (Day C42).
- 357 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [63(i)]; Transcript of J Gleeson, C4549:23–32 (Day C42).
- 358 Transcript of P O'Callaghan, C4221:21–30 (Day C39).
- 359 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [4].
- 360 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [67].
- 361 Transcript of P O'Callaghan, C4220:16–C4221:10 (Day C39).
- 362 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [59]–[60].
- 363 Transcript of J Gleeson, C4546:38–C4547:29 (Day C42).
- 364 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [79], [86].
- 365 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [71], [72].
- 366 Transcript of P O'Callaghan, C4192:20–23 (Day C39).
- 367 Transcript of P O'Callaghan, C4192:3–44 (Day C39).
- 368 Transcript of P O'Callaghan, C4192:3–44 (Day C39).

369 Transcript of P O'Callaghan, C4193:5–11 (Day C39).
370 Transcript of J Gleeson, C4544:45–C4545:4 (Day C42).
371 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [92].
372 Transcript of J Gleeson, C4545:18–35 (Day C42).
373 Submissions in Response to Submissions of Counsel Assisting – Case Study 16 from the Truth, Justice and Healing Council [195].
374 Transcript of P O'Callaghan, C4190:40–C4191:11 (Day C39).
375 Transcript of P O'Callaghan, C4193:12–16 (Day C39).
376 Transcript of P O'Callaghan, C4204:27–C4205:4 (Day C39).
377 Transcript of P O'Callaghan, C4207:10–31 (Day C39); Exhibit 16-0005, Statement of P O'Callaghan STAT.0320.001.0001_R at .0011_R.
378 Transcript of P O'Callaghan, C4207:36–47 (Day C39); Exhibit 16-0005, Statement of P O'Callaghan STAT.0320.001.0001_R at .0011_R.
379 Transcript of P O'Callaghan, C4210:45–C4211:27 (Day C39).
380 Transcript of P O'Callaghan, C4211:21–27 (Day C39).
381 Transcript of P O'Callaghan, C4218:8–39 (Day C39).
382 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [12], [14], [89]–[90].
383 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [16].
384 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [91]; Transcript of J Gleeson, C4564:2–26 (Day C42).
385 Transcript of J Gleeson, C4563:35–C4565:1 (Day C42).
386 Transcript of J Gleeson, C4565:12–18 (Day C42).
387 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Case study 16: The Melbourne Response*, 30 September 2014 at [190].
388 Exhibit 16-0003 (Tab 45) CTJH.221.04004.0126.
389 Transcript of S Sharkey, C4628:19–34 (Day C43).
390 Exhibit 16-0005, Statement of P O'Callaghan, STAT.0320.001.0001_R at [41].
391 Transcript of R Leder, C4428:2–C4429:1 (Day C41).
392 Transcript of R Leder, C4428:2–C4429:1 (Day C41).
393 Transcript of J Gleeson, C4550:28–33 (Day C42).
394 Transcript of J Gleeson, C4550:35–C4551:2 (Day C42).
395 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [20].
396 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [20]; Exhibit 16-0003 (Tabs 3, 6) COR.0007.0002.0087, COR.0007.0002.0135.
397 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [101]; Transcript of D Hart, C4702:35–C4703:1 (Day C43). See also Transcript of P O'Callaghan, C4236:7–17 (Day C39).
398 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [101]; Exhibit 16-0003 (Tab 45) CTJH.221.04004.0126 at .0127
399 Exhibit 16-0003 (Tab 45) CTJH.221.04004.0126 at .0127.
400 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [101].
401 Exhibit 16-0003 (Tab 52A) COM.1002.0004.0056.
402 Exhibit 16-0014, EXH.016.014.0002.
403 Exhibit 16-0014, EXH.016.014.0001.
404 Exhibit 16-0014, EXH.016.014.0001.
405 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [28].
406 Transcript of J Gleeson, C4554:29–C4555:6 (Day C42).
407 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [29].
408 Transcript of P O'Callaghan, C4181:18–44 (Day C39).
409 Transcript of P O'Callaghan, C4181:39–C4182:27 (Day C39).
410 Transcript of P O'Callaghan, C4183:10–40 (Day C39).
411 Transcript of P O'Callaghan, C4183:32–40 (Day C39).
412 Transcript of P O'Callaghan, C4183:47–C4184:4 (Day C39).
413 Transcript of P O'Callaghan, C4306:16–23 (Day C40).
414 Transcript of P O'Callaghan, C4293:36–47 (Day C40).
415 Transcript of P O'Callaghan, C4294:8–16 (Day C40).

- 416 Transcript of P O’Callaghan, C4293:19–34 (Day C40).
- 417 Transcript of P O’Callaghan, C4295:37–47 (Day C40).
- 418 Transcript of J Gleeson, C4555:8–11 (Day C42).
- 419 Transcript of J Gleeson, C4555:39-C4556:8 (Day C42).
- 420 Submissions in Response to Submissions of Counsel Assisting – Case Study 16 from the Truth, Justice and Healing Council [173].
- 421 Submissions in Response to Submissions of Counsel Assisting – Case Study 16 from the Truth, Justice and Healing Council [178].
- 422 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [27]; Exhibit 16-0003 (Tab 64) CAR.0048.0009.0112.
- 423 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [33].
- 424 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [35].
- 425 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [37].
- 426 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [113].
- 427 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [109]–[112]; Transcript of S Sharkey, C4639:30–46 (Day C43).
- 428 Transcript of S Sharkey, C4631:30–40 (Day C43).
- 429 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [148].
- 430 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [148].
- 431 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [149]–[150].
- 432 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [168].
- 433 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [172]–[177].
- 434 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [172]–[177]; Transcript of S Sharkey, C4638:18–37 (Day C43).
- 435 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [41].
- 436 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [41].
- 437 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [43].
- 438 Exhibit 16-0003 (Tab 68) CAR.0048.0010.0028.
- 439 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [43].
- 440 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [16]–[19]; Exhibit 16-0003 (Tab 39) CTJH.221.04004.0109.
- 441 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [16]–[19]; Exhibit 16-0003 (Tab 39) CTJH.221.04004.0109.
- 442 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [44].
- 443 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [45].
- 444 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [49]–[52].
- 445 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [54]; Transcript of S Sharkey, C4629:17–36 (Day C43).
- 446 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [61]. See also Transcript of S Sharkey, C4631:41–C4632:13 (Day C43).
- 447 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [67].
- 448 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [75]; Transcript of S Sharkey, C4632:15–28 (Day C43).
- 449 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [95].
- 450 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [78].
- 451 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [70]–[71].
- 452 Exhibit 16-0003 (Tab 64) CAR.0048.0009.0112 at .0113.
- 453 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [101].
- 454 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [101]–[103].
- 455 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [104].
- 456 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [120]–[147].
- 457 Exhibit 16-0003 (Tab 64) CAR.0048.0009.0112 at .0114.
- 458 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [158].
- 459 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [118], [152].

460 Transcript of R Leder, C4368:43–46 (Day C40).

461 Transcript of R Leder, C4369:1–15 (Day C40).

462 Transcript of R Leder, C4369:1–30 (Day C40).

463 Transcript of R Leder, C4369:17–30 (Day C40).

464 Transcript of R Leder, C4369:17–41 (Day C40).

465 Transcript of R Leder, C4369:43–C4370:1 (Day C40).

466 Exhibit 16-0003 (Tab 77) COM.0048.001.0346.

467 Exhibit 16-0003 (Tab 79) COM.0048.0001.0349.

468 Exhibit 16-0003 (Tab 4) CAR.0048.0011.0024.

469 Exhibit 16-0003 (Tab 4) CAR.0048.0011.0024 at .0025.

470 Exhibit 16-0003 (Tab 4) CAR.0048.0011.0024 at .0026.

471 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [38].

472 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [38].

473 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [39].

474 Exhibit 16-0022, Statement of R Ball, STAT.0322.001.0001_R at [30].

475 Exhibit 16-0022, Statement of R Ball, STAT.0322.001.0001_R at [31]–[33].

476 Exhibit 16-0022, Statement of R Ball, STAT.0322.001.0001_R at [32].

477 Exhibit 16-0022, Statement of R Ball, STAT.0322.001.0001_R at [34].

478 Transcript of G Pell, C4512:11–23 (Day C41).

479 Transcript of G Pell, C4512:25–C4513:33 (Day C41).

480 Transcript of D Hart, C4710:45–C4711:10 (Day C43).

481 Transcript of D Hart, C4713:9–20 (Day C43).

482 Transcript of D Hart, C4713:9–36 (Day C43).

483 Transcript of R Leder, C4340:30–46 (Day C40).

484 Transcript of R Leder, C4342:7–32 (Day 30).

485 Transcript of D Hart, C4712:32–38 (Day C43).

486 Transcript of D Hart, C4712:32–44 (Day C43).

487 Exhibit 16-0003 (Tab 98) CTJH.221.04001.0119 at CTJH.221.04001.0121. See also Transcript of R Leder, C4411:5–15 (Day C41).

488 Transcript of R Leder, C4410:16–31 (Day C41).

489 Transcript of P O’Callaghan, C4247:20–45 (Day C39).

490 Transcript of R Leder, C4411:17–36 (Day C41).

491 Submissions in Response to Submissions of Counsel Assisting – Case Study 16 from the Truth, Justice and Healing Council [224].

492 Exhibit 16-0003 (Tab 7), COR.0007.0002.0165 at .0169 – .0170.

493 Transcript of R Leder, C4350:38–42 (Day C40); Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [32].

494 Exhibit 16-0003 (Tab 13) COM.1001.0001.0009 at .0014.

495 Transcript of R Leder, C4378:34–C4379:6 (Day C40).

496 Transcript of R Leder, C4378:34–C4379:6 (Day C40).

497 Transcript of R Leder, C4370:20–22 (Day C40).

498 Transcript of R Leder, C4370:20–43 (Day C40).

499 Transcript of R Leder, C4382:30–C4383:11 (Day C40).

500 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [44].

501 Exhibit 16-0003 (Tab 14) CTJH.221.04015.0018 at .0019.

502 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [48]; Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [70]. Note: one member commenced in August 1997, replacing Dr Ruth Vine, who commenced in March 1997.

503 Exhibit 16-0016, Statement of D Curtain, STAT.0318.001.0001_R at [14], [25].

504 Exhibit 16-0003 (Tab 52) CTJH.221.04004.0013 at .0016.

505 Exhibit 16-0003 (Tab 60) PAN.1001.0001.0002.

506 Exhibit 16-0016, Statement of D Curtain, STAT.0318.001.0001_R at [16].

507 Exhibit 16-0016, Statement of D Curtain, STAT.0318.001.0001_R at [24].

508 Exhibit 16-0016, Statement of D Curtain, STAT.0318.001.0001_R at [31].

509 Transcript of D Curtain, C4582:12–19 (Day C42).
510 Transcript of D Curtain, C4584:9–18 (Day C42).
511 Transcript of D Curtain, C4584:9–30 (Day C42).
512 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [61].
513 Exhibit 16-0016, Statement of D Curtain, STAT.0318.001.0001_R at [39(k)].
514 Exhibit 16-0016, Statement of D Curtain, STAT.0318.001.0001_R at [39(g)].
515 Exhibit 16-0016, Statement of D Curtain, STAT.0318.001.0001_R at [39(g)].
516 Exhibit 16-0016, Statement of D Curtain, STAT.0318.001.0001_R at [50].
517 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [58]–[60].
518 Transcript of R Leder, C4387:19–47 (Day C40).
519 Transcript of R Leder, C4388:2–47 (Day C40).
520 Transcript of R Leder, C4388:26–47 (Day C40).
521 Transcript of R Leder, C4388:26–47 (Day C40).
522 Transcript of R Leder, C4389:2–22 (Day C40).
523 Transcript of R Leder, C4389:2–30 (Day C40).
524 Exhibit 16-0003 (Tab 16) COR.0007.0005.0002.
525 Exhibit 16-0003 (Tab 16) COR.0007.0005.0002 at .0003.
526 Transcript of R Leder, C4385: 44 – C6387: 10 (Day C40); Exhibit 16-0003 (Tab 20) COR.0007.0006.0082.
527 Transcript of R Leder, C4366:28–C4367:1 (Day C40).
528 Transcript of R Leder, C4367:3–35 (Day C40).
529 Transcript of G Pell, C4496:17–23 (Day C41).
530 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [22].
531 Transcript of R Leder, C4340:8–28; C4374:45–C4375:32 (Day C40).
532 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [25].
533 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [25].
534 Transcript of R Leder, C4347:35–C4348:20 (Day C40).
535 Transcript of R Leder, C4350:12–36 (Day C40).
536 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [26].
537 Transcript of D Curtain, C4591:13–24 (Day C42).
538 Transcript of R Leder, C4346:36–45 (Day C40).
539 Transcript of R Leder, C4347:20–33 (Day C40).
540 Exhibit 16-0003 (Tab 39) CTJH.221.04004.0007 at .0008.
541 Exhibit 16-0016, Statement of D Curtain, STAT.0318.001.0001_R at [43].
542 Exhibit 16-0016, Statement of D Curtain, STAT.0318.001.0001_R at [47].
543 Exhibit 16-0016, Statement of D Curtain, STAT.0318.001.0001_R at [44].
544 Exhibit 16-0016, Statement of D Curtain, STAT.0318.001.0001_R at [44].
545 Exhibit 16-0016, Statement of D Curtain, STAT.0318.001.0001_R at [47].
546 Transcript of D Curtain, C4593:20–26 (Day C42).
547 Transcript of D Curtain, C4593:3–6 (Day C42).
548 Transcript of R Leder, C4404:41–C4405:6 (Day C41).
549 Transcript of R Leder, C4405:8–46 (Day C41).
550 Exhibit 16-0037, Statement of D Habersberger, STAT.0321.002.0001 at [3].
551 Exhibit 16-0037, Statement of D Habersberger, STAT.0321.002.0001 at [4]–[6].
552 Transcript of D Curtain, C4592:37–47 (Day C42).
553 Transcript of D Curtain, C4595:20–26 (Day C42).
554 Transcript of D Curtain, C4596:16–30 (Day C42).
555 Transcript of D Curtain, C4596:16–30 (Day C42).
556 Transcript of D Curtain, C4597:43–C4598:18 (Day C42).
557 Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [89].
558 Exhibit 16-0003 (Tab 17) COR.0007.0004.0054 at .0055.
559 Exhibit 16-0003 (Tab 39) CTJH.221.04004.0007 at .0008.
560 Exhibit 16-0016, Statement of D Curtain, STAT.0318.001.0001_R at [39(h)]; Transcript of D Curtain, C4604:27–30 (Day C42).
561 Transcript of D Curtain, C4605:11–40 (Day C42).

562 Transcript of D Curtain, C4587:15–21 (Day C42).
 563 Transcript of D Curtain, C4587:15–C4588:27 (Day C42).
 564 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [60].
 565 Transcript of R Leder, C4372:17–28 (Day C40).
 566 Transcript of D Curtain, C4605:42–C4606:11 (Day C42).
 567 Transcript of D Curtain, C4605:42–C4606:11 (Day C42).
 568 Transcript of D Curtain, C4606:30–32 (Day C42).
 569 Transcript of G Pell, C4505:1–11 (Day C41).
 570 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [60].
 571 Transcript of D Curtain, C4598:35–47 (Day C42).
 572 Transcript of D Curtain, C4599:5–8 (Day C42).
 573 Exhibit 16-0003, (Tab 39) CTJH.221.04004.0007 at .0009.
 574 Transcript of R Leder, C4401:35–C4402:34 (Day C41).
 575 Transcript of R Leder, C4401:26–45 (Day C41).
 576 Transcript of R Leder, C4402:36–39 (Day C41).
 577 Transcript of R Leder, C4402:36–C4404:39 (Day C41).
 578 Transcript of R Leder, C4391:44–47 (Day C40).
 579 Transcript of R Leder, C4397:5–C4398:38 (Day C41).
 580 Transcript of R Leder, C4402:36–C4404:39 (Day C41).
 581 Transcript of R Leder, C4393:29–C4395:1 (Day C40); C4404:30–39 (Day C41).
 582 Exhibit 16-0016, Statement of D Curtain, STAT.0318.001.0001_R at [39(b)] and [39(c)].
 583 Transcript of D Curtain, C4600:16–C4602:6 (Day C42).
 584 Transcript of D Curtain, C4600:16–45 (Day C42).
 585 Transcript of D Curtain, C4602:8–19 (Day C42).
 586 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [29]; Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [25].
 587 Transcript of G Pell, C4493:16–44 (Day C41).
 588 Transcript of G Pell, C4494:17–34 (Day C41).
 589 Transcript of R Leder, C4419:23–34 (Day C41).
 590 Transcript of R Leder, C4419:23–34 (Day C41).
 591 Transcript of R Leder, C4419:3–21 (Day C41).
 592 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [5].
 593 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [6].
 594 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [6].
 595 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [6].
 596 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [7].
 597 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [5].
 598 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [8].
 599 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [8].
 600 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [9].
 601 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [9].
 602 Exhibit 16-0003 (Tab 81) IND.0049.001.0008.
 603 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [10].
 604 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [10].
 605 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [10].
 606 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [11].
 607 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [12].
 608 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [12].
 609 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [12].
 610 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [13].
 611 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [13].
 612 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [13].
 613 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [14].
 614 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [14].

- 615 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [15].
- 616 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [16].
- 617 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [16].
- 618 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [16].
- 619 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [18].
- 620 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [18].
- 621 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [18].
- 622 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [19].
- 623 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [20].
- 624 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Case study 16: The Melbourne Response*, 30 September 2014 at [53].
- 625 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [17].
- 626 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [17].
- 627 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [21].
- 628 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [21].
- 629 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [21].
- 630 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [23].
- 631 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [23].
- 632 Exhibit 16-0042, EXH.016.042.0001.
- 633 Exhibit 16-0003 (Tab 84) CAR.0001.0002.0024.
- 634 Exhibit 16-0003 (Tab 84) CAR.0001.0002.0024.
- 635 Exhibit 16-0003 (Tab 85) COR.0002.0001.0002.
- 636 Exhibit 16-0003 (Tab 86) COR.0002.0001.0005.
- 637 Exhibit 16-0003 (Tab 86A) CTJH.221.04016.0035.
- 638 Exhibit 16-0003 (Tab 87) CTJH.221.04001.0282.
- 639 Exhibit 16-0003 (Tab 87) CTJH.221.04001.0282.
- 640 Exhibit 16-0003 (Tab 88) CTJH.221.04001.0146.
- 641 Exhibit 16-0003 (Tab 89) COR.0002.0001.0013.
- 642 Exhibit 16-0003 (Tab 96) CTJH.221.04001.0924.
- 643 Exhibit 16-0003 (Tab 96) CTJH.221.04001.0924.
- 644 Exhibit 16-0003 (Tab 96) CTJH.221.04001.0924.
- 645 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [43].
- 646 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [43].
- 647 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [43].
- 648 Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [111].
- 649 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [44].
- 650 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [44].
- 651 Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [112].
- 652 Transcript of P O'Callaghan, C4238:5–30 (Day C39).
- 653 Exhibit 16-0003 (Tab 94) COM.0048.0001.0351_R.
- 654 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [45].
- 655 Exhibit 16-0005, Statement of P O'Callaghan, STAT.0320.001.0001_R at .0022_R.
- 656 Transcript of P O'Callaghan, C4240:33–41 (Day C39).
- 657 Transcript of P O'Callaghan, C4240:33–C4241: 2 (Day C39).
- 658 Exhibit 16-0003 (Tab 97) COM.0048.0001.0342.
- 659 Exhibit 16-0003 (Tab 97) COM.0048.0001.0342.
- 660 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [45]; Exhibit 16-0005, Statement of P O'Callaghan, STAT.0320.001.0001_R at .0033_R.
- 661 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [45].
- 662 Exhibit 16-0005, Statement of P O'Callaghan, STAT.0320.001.0001_R at .0022_R.
- 663 Exhibit 16-0005, Statement of P O'Callaghan, STAT.0320.001.0001_R at .0022_R.
- 664 Exhibit 16-0003 (Tab 100) COM.0048.0001.0279 at COM.0048.0001.0280_R.
- 665 Exhibit 16-0003 (Tab 100) COM.0048.0001.0279 at COM.0048.0001.0280_R.
- 666 Exhibit 16-0003 (Tab 104) COM.0048.0001.0269_R.

667 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [77].
668 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [77].
669 Exhibit 16-0003 (Tab 103) COM.0048.0001.0313_R.
670 Exhibit 16-0003 (Tab 102) CAR.0001.0006.0054_R.
671 Exhibit 16-0003 (Tab 105) COM.0048.0001.0301.
672 Exhibit 16-0003 (Tab 105) COM.0048.0001.0301.
673 Exhibit 16-0003 (Tab 105) COM.0048.0001.0301.
674 Exhibit 16-0003 (Tab 113) COM.0048.0001.0278.
675 Exhibit 16-0003 (Tab 113) COM.0048.0001.0278.
676 Exhibit 16-0003 (Tab 112) COM.0048.0001.0294.
677 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [74].
678 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [74]–[75].
679 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [199].
680 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [199].
681 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [191].
682 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [191].
683 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [164]; Transcript of S Sharkey, C4614:19–43 (Day C43).
684 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [167].
685 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [48].
686 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [48].
687 Exhibit 16-0003 (Tab 110) CTJH.221.04001.0252.
688 Exhibit 16-0003 (Tab 110) CTJH.221.04001.0252.
689 Exhibit 16-0003 (Tab 111) IND.0049.001.0100_R.
690 Exhibit 16-0003 (Tab 114) COM.0048.0001.0281.
691 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [201].
692 Exhibit 16-0003 (Tab 114) COM.0048.0001.0281.
693 Exhibit 16-0003 (Tab 114) COM.0048.0001.0281.
694 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [204].
695 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [204].
696 Exhibit 16-0003 (Tab 116) CTJH.221.04001.0249.
697 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [205].
698 Exhibit 16-0003 (Tab 117) COR.0002.0001.0095.
699 Exhibit 16-0003 (Tab 117) COR.0002.0001.0095.
700 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [79].
701 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [49].
702 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [49].
703 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [49].
704 Transcript of R Leder, C4389:32–C4390:13 (Day C40).
705 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [80].
706 Exhibit 16-0003 (Tab 118) COR.0002.0001.0122.
707 Exhibit 16-0003 (Tab 120) CAR.0001.0007.0091_R.
708 Exhibit 16-0003 (Tab 120) CAR.0001.0007.0091_R.
709 Exhibit 16-0003 (Tab 120) CAR.0001.0007.0091_R at CAR.0001.0007.0092_R.
710 Exhibit 16-0003 (Tab 119) IND.0049.001.0172_R.
711 Exhibit 16-0003 (Tab 119) IND.0049.001.0172_R.
712 Exhibit 16-0003 (Tab 119) IND.0049.001.0172_R at IND.0049.001.0173_R.
713 Exhibit 16-0003 (Tab 119) IND.0049.001.0172_R at IND.0049.001.0173_R.
714 Transcript of P O’Callaghan, C4254:23–43 (Day C39).
715 Transcript of P O’Callaghan, C4254:34–C4255:47 (Day C39).
716 Exhibit 16-0003 (Tab 121) COM.0048.0001.0248.
717 Exhibit 16-0003 (Tab 121) COM.0048.0001.0248 at .0249.
718 Exhibit 16-0003 (Tab 121) COM.0048.0001.0248.
719 Exhibit 16-0003 (Tab 121) COM.0048.0001.0248.

- 720 Exhibit 16-0003 (Tab 122) COM.0048.0001.0228. See Exhibit 16-0005, Statement of P O'Callaghan, STAT.0320.001.0001_R at .0025_R.
- 721 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [64].
- 722 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [64].
- 723 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [208].
- 724 Exhibit 16-0005, Statement of P O'Callaghan, STAT.0320.001.0001_R at .0065_R.
- 725 Exhibit 16-0005, Statement of P O'Callaghan, STAT.0320.001.0001_R at 0069_R
- 726 Exhibit 16-0005, Statement of P O'Callaghan, STAT.0320.001.0001_R at .0069-.0073_R
- 727 Exhibit 16-0005, Statement of P O'Callaghan, STAT.0320.001.0001_R at .0069-.0073_R
- 728 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [210].
- 729 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [210].
- 730 Exhibit 16-0003 (Tab 123) COM.0048.0001.0096.
- 731 Exhibit 16-0003 (Tab 125) IND.0049.001.0174_R.
- 732 Exhibit 16-0003 (Tab 126) COM.0049.0001.0058.
- 733 Exhibit 16-0003 (Tab 127) CTJH.221.04001.0232.
- 734 Exhibit 16-0003 (Tab 127) CTJH.221.04001.0232 at .0233.
- 735 Exhibit 16-0003 (Tab 128) COM.0049.0001.0056_R.
- 736 Exhibit 16-0003 (Tabs 129, 130) CAR.0001.0005.0043, IND.0049.001.0185_R.
- 737 Exhibit 16-0005, Statement of P O'Callaghan, STAT.0320.001.0001_R at 0052 – 0053.
- 738 Exhibit 16-0003 (Tab 131) CAR.0001.0005.0040.
- 739 Exhibit 16-0003 (Tab 132) IND.0048.001.0187_R.
- 740 Exhibit 16-0003 (Tab 132) IND.0048.001.0187_R.
- 741 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [81].
- 742 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [83]; Transcript of R Leder, C4220:37–C4421:10 (Day C41).
- 743 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [84].
- 744 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [84].
- 745 Exhibit 16-0003 (Tab 134) IND.0049.001.0189_R.
- 746 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [55].
- 747 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [55].
- 748 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [56].
- 749 Exhibit 16-0003 (Tab 135) IND.0049.001.0196.
- 750 Exhibit 16-0003 (Tab 135) IND.0049.001.0196; Exhibit 16-0021, Statement of D Habersberger, STAT.0321.001.0001 at [4].
- 751 Exhibit 16-0003 (Tab 136) CTJH.221.04001.0903.
- 752 Exhibit 16-0003 (Tab 136) CTJH.221.04001.0903 at .0905.
- 753 Exhibit 16-0003 (Tab 136) CTJH.221.04001.0903 at .0912.
- 754 Transcript of R Leder, C4426:9–39 (Day C41).
- 755 Transcript of R Leder, C4429:12–C4430:7 (Day C41).
- 756 Transcript of R Leder, C4422:20–C4425:14 (Day C41).
- 757 Exhibit 16-0003 (Tab 136) CTJH.221.04001.0903 at .0911.
- 758 Exhibit 16-0003 (Tab 136) CTJH.221.04001.0903 at .0913.
- 759 Exhibit 16-0003 (Tab 136) CTJH.221.04001.0903 at .0904.
- 760 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [88].
- 761 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [88].
- 762 Exhibit 16-0003 (Tab 137) CTJH.221.04001.0915_R.
- 763 Exhibit 16-0003 (Tab 138) IND.0049.001.0191_R.
- 764 Exhibit 16-0003 (Tab 138) IND.0049.001.0191_R at .0192_R.
- 765 Exhibit 16-0003 (Tab 138) IND.0049.001.0194_R.
- 766 Exhibit 16-0003 (Tab 135) IND.0049.001.0196; Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [59].
- 767 Transcript of G Pell, C4499:43–C4500:17 (Day C41).
- 768 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [91].
- 769 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [91].

770 Transcript of R Leder, C4381:45–C4382:28 (Day C40).
 771 Transcript of R Leder, C4485:11–27 (Day C41).
 772 Transcript of R Leder, C4381:15–43 (Day C40).
 773 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [92].
 774 Transcript of R Leder, C4382:23–28 (Day C40).
 775 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [92]; Transcript of R Leder, C4485:11–C4486:3
 (Day C41).
 776 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [60].
 777 Exhibit 16-0003 (Tab 145) PAN.0075.0001.0085_R.
 778 Exhibit 16-0003 (Tab 148) IND.0049.001.0198_R.
 779 Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at 0056_R.
 780 Exhibit 16-0003 (Tabs 141, 142) IND.0049.001.0228_R, IND.0049.001.0234_R.
 781 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [101].
 782 Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at 0056_R – 0057_R.
 783 Exhibit 16-0003 (Tab 143) COM.0049.0001.0001.
 784 Exhibit 16-0003 (Tab 144) IND.0049.001.0244.
 785 Transcript of P O’Callaghan, C4261:3–30 (Day C39).
 786 Transcript of P O’Callaghan, C4261:23–C4263:12 (Day C39).
 787 Transcript of R Leder, C4430:31–C4434:19 (Day C41).
 788 Transcript of R Leder, C4431:30–C4434:8 (Day C41).
 789 Transcript of R Leder, C4433:22–32 (Day C41).
 790 Exhibit 16-0003 (Tab 147) COM.0049.0003.0004.
 791 Exhibit 16-0003 (Tab 147) COM.0049.0003.0004.
 792 Exhibit 16-0003 (Tab 147) COM.0049.0003.0004.
 793 Exhibit 16-0003 (Tab 147) COM.0049.0003.0004.
 794 Exhibit 16-0003 (Tab 149) COM.0049.0003.0003.
 795 Exhibit 16-0003 (Tab 149) COM.0049.0003.0003.
 796 Exhibit 16-0003 (Tab 149) COM.0049.0003.0003.
 797 Exhibit 16-0003 (Tab 149) COM.0049.0003.0003.
 798 Exhibit 16-0003 (Tab 150) COM.0048.0001.0074.
 799 Transcript of P O’Callaghan, C4264:18–C4265:43 (Day C39).
 800 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [76]; Exhibit 16-0003 (Tab 151)
 COM.0048.0001.0058_R.
 801 Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at 0086_R.
 802 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [76].
 803 Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at 0086_R.
 804 Exhibit 16-0003 (Tab 151) COM.0048.0001.0058_R.
 805 Exhibit 16-0003 (Tab 151) COM.0048.0001.0058_R.
 806 Exhibit 16-0003 (Tab 151) COM.0048.0001.0058_R.
 807 Exhibit 16-0003 (Tab 151) COM.0048.0001.0058_R.
 808 Exhibit 16-0003 (Tab 152) COM.0049.0004.0001.
 809 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [68].
 810 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [68].
 811 Exhibit 16-0003 (Tab 153) COM.0048.0001.0054.
 812 Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at 0091_R-.0092_R.
 813 Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at 0091_R-.0092_R.
 814 Exhibit 16-0003 (Tab 154) COM.0048.0001.0065_R.
 815 Exhibit 16-0003 (Tab 154) COM.0048.0001.0065_R.
 816 Exhibit 16-0003 (Tab 154) COM.0048.0001.0065_R.
 817 Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at 0078_R.
 818 Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at 0084_R and 0098_R.
 819 Exhibit 16-0003 (Tab 157) COM.0050.0001.0029.
 820 Exhibit 16-0003 (Tab 156) COM.0050.0001.0287.
 821 Exhibit 16-0003 (Tab 156) COM.0050.0001.0287.

- 822 Exhibit 16-0003 (Tab 156) COM.0050.0001.0287.
823 Exhibit 16-0003 (Tab 156) COM.0050.0001.0287 at .0288.
824 Transcript of P O'Callaghan, C4273:2–27 (Day C39).
825 Exhibit 16-0005, Statement of P O'Callaghan, STAT.0320.001.0001_R at 0078_R; Transcript of P O'Callaghan, C4268:34–C4269:1 (Day C39).
826 Transcript of P O'Callaghan, C4275:30–40 (Day C39).
827 Transcript of P O'Callaghan, C4269:3–43 (Day C39).
828 Transcript of P O'Callaghan, C4269:3–9 (Day C39).
829 Transcript of P O'Callaghan, C4269:3–9 (Day C39).
830 Transcript of P O'Callaghan, C4276:43–4277:14 (Day C39).
831 Exhibit 16-0003 (Tab 159) COR.0002.0001.0178.
832 Exhibit 16-0003 (Tab 160) CAR.0048.0003.0076_R; Exhibit 16-0005, Statement of P O'Callaghan, STAT.0320.001.0001_R at 0059_R – 0064_R; Transcript of P O'Callaghan, C4281:35–C4282:21 (Day C39).
833 Exhibit 16-0003 (Tab 160) CAR.0048.0003.0076_R; Exhibit 16-0005, Statement of P O'Callaghan, STAT.0320.001.0001_R at 0059_R; Transcript of P O'Callaghan, C4281:35–C4282:21 (Day C39).
834 Exhibit 16-0003 (Tab 161) COM.0050.0003.0001_R.
835 Exhibit 16-0005, Statement of P O'Callaghan, STAT.0320.001.0001_R at [49].
836 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [219]; Exhibit 16-0003 (Tab 155) COM.0048.0001.0063.
837 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [219]; Exhibit 16-0003 (Tab 155) COM.0048.0001.0063 at .0064.
838 Exhibit 16-0003 (Tab 155) COM.0048.0001.0063 at .0064.
839 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [219]; Exhibit 16-0003 (Tab 155) COM.0048.0001.0063.
840 Transcript of S Sharkey, C4642:34–C4643:38 (Day C43).
841 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [161].
842 Exhibit 16-0003 (Tab 166) CTJH.221.04001.0128_R.
843 Exhibit 16-0003 (Tab 166) CTJH.221.04001.0128_R.
844 Exhibit 16-0008, IND.0049.002.0238.
845 Exhibit 16-0008, IND.0049.002.0238.
846 Exhibit 16-0008, IND.0049.002.0238.
847 Exhibit 16-0008, IND.0049.002.0238.
848 Exhibit 16-0008, IND.0049.002.0238.
849 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [163].
850 Exhibit 16-0003 (Tab 167) CTJH.221.04001.0127.
851 Exhibit 16-0003 (Tab 167) CTJH.221.04001.0127.
852 Exhibit 16-0003 (Tab 167) CTJH.221.04001.0127.
853 Exhibit 16-0003 (Tab 168) COR.0002.0001.0194.
854 Exhibit 16-0003 (Tab 168) COR.0002.0001.0194.
855 Exhibit 16-0003 (Tabs 168, 169) COR.0002.0001.0194, CTJH.221.04001.0123_R.
856 Exhibit 16-0003 (Tabs 168, 169) COR.0002.0001.0194, CTJH.221.04001.0123_R.
857 Transcript of R Leder, C4439:10–24 (Day C41).
858 Transcript of D Hart, C4761:31–35 (Day C44).
859 Transcript of D Hart, C4764:19–C4765:37 (Day C44).
860 Transcript of P O'Callaghan, C4269:3–4275:3 (Day C39).
861 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [46].
862 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [46].
863 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [47].
864 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [72].
865 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [73].
866 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [77].
867 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [78]; Exhibit 16-0003 (Tab 172) COR.0001.0002.0520.
868 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [79].

869 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [79].
870 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [79].
871 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [82].
872 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [83].
873 Exhibit 16-0003 (Tab 170, 171) CTJH.221.04001.0844, COR.0001.0002.0522.
874 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [112]; Exhibit 16-0003 (Tab 176)
COR.0001.0001.0162.
875 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [114], [123]; Exhibit 16-0001,
Statement of C Foster, STAT.0313.001.0001_R at [84], [85]; Exhibit 16-0003 (Tabs 183, 184, 185,
186, 187) CTJH.221.04001.0431, COR.0001.0004.0227, COR.0001.0004.0231, COR.0001.0004.0235,
COR.0001.0004.0239.
876 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [110].
877 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [110].
878 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [165].
879 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [110].
880 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [110].
881 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [169].
882 Exhibit 16-0024, Statement of E Exell, CTJH.500.46001.0001_R at [36].
883 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [118].
884 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [118].
885 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [119]; Transcript of R Leder, C4441:36–
C4442:14 (Day C41).
886 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [119].
887 Transcript of D Hart, C4714:23–C4715:22 (Day C43).
888 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [167]; Transcript of D Hart C4715:44–
C4716:22 (Day C43).
889 Exhibit 16-0003 (Tab 176) COR.0001.0001.0162.
890 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [117].
891 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [117].
892 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [127].
893 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [128].
894 Transcript of R Leder, C4466:41–C4467:7 (Day C41).
895 Exhibit 16-0024, Statement of E Exell, CTJH.500.46001.0001_R at [35].
896 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [84].
897 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [130].
898 Transcript of R Leder, C4467:40–C4468:36 (Day C41).
899 Transcript of R Leder, C4489:10–27 (Day C41).
900 Transcript of R Leder, C4489:10–27 (Day C41).
901 Exhibit 16-0003 (Tab 228) MEA.100.022.0714_R.
902 Exhibit 16-0003 (Tab 228) MEA.100.022.0714_R.
903 Transcript of R Leder, C4471:32–C4472:5 (Day C41).
904 Transcript of R Leder, C4471:32–C4472:5 (Day C41).
905 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [124].
906 Exhibit 16-0003 (Tab 177) COM.0050.0001.0294.
907 Exhibit 16-0003 (Tab 177) COM.0050.0001.0294.
908 Exhibit 16-0003 (Tab 188) COM.0050.0001.0279; Exhibit 16-0005, Statement of P O’Callaghan,
STAT.0320.001.0001_R at 0053_R – 0054_R.
909 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [96].
910 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [96].
911 Exhibit 16-0003 (Tab 188) COM.0050.0001.0279 at .0280.
912 Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at 0092_R – 0093_R.
913 Transcript of P O’Callaghan, C4282:23–47 (Day C39).
914 Transcript of P O’Callaghan, C4282:23–C4283:11 (Day C39).
915 See Exhibit 16-0003 (Tab 182) CTJH.221.04001.0431 at .0448 – .0449.

- 916 Transcript of R Leder, C4445:27–30 (Day C41).
917 Transcript of R Leder, C4460:18–22 (Day C41).
918 Exhibit 16-0003 (Tab 190) COR.0001.0002.0329_R.
919 Exhibit 16-0003 (Tab 190) COR.0001.0002.0329_R. The names have been redacted; they were referred to as ‘A’ and ‘B’ in the hearing. See Transcript of R Leder, C4458:23–C4460:6 (Day C41).
920 Exhibit 16-0003 (Tab 190) COR.0001.0002.0327_R.
921 Exhibit 16-0003 (Tab 190) COR.0001.0002.0327_R at .0328_R.
922 Exhibit 16-0003 (Tab 190) COR.0001.0002.0327_R at .0328_R; Transcript of R Leder, C4450:2–47 (Day C41).
923 Transcript of R Leder, C4460:18–22 (Day C41).
924 Transcript of R Leder, C4461:4–46 (Day C41).
925 Transcript of R Leder, C4461:15–C4462:22 (Day C41).
926 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, Case study 16: The Melbourne Response, 30 September 2014 at [90].
927 Exhibit 16-0027, TEN.0010.001.0004_R.
928 Exhibit 16-0027, TEN.0010.001.0004_R.
929 Exhibit 16-0027, TEN.0010.001.0004_R.
930 Exhibit 16-0026, CTJH.9999.006.0001.
931 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [152]; Transcript of R Leder, C4464:28–C4465:6 (Day C41).
932 Exhibit 16-0003 (Tab 197) COR.0001.0004.0016_R; Transcript of R Leder, C4465:8–10 (Day C41).
933 Exhibit 16-007, Statement of R Leder, STAT.0317.001.0001_R at [66].
934 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [144]; Exhibit 16-0003 (Tab 189) COR.0001.0002.0331_R.
935 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [144].
936 Exhibit 16-0003 (Tab 190) COR.0001.0002.0327.
937 Exhibit 16-0003 (Tab 190) COR.0001.0002.0327_R; Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [144].
938 Transcript of P O’Callaghan, C4284:18–36 (Day C39).
939 Transcript of P O’Callaghan, C4283:13–C4284:20 (Day C39).
940 Transcript of P O’Callaghan, C4288:21–C4289:43 (Day C39).
941 Transcript of P O’Callaghan, C4289:19–46 (Day C39).
942 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [144].
943 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [115].
944 Transcript of R Leder, C4333:5–10 (Day C40).
945 Transcript of R Leder, C4446:18–C4448:22 (Day C41).
946 Transcript of R Leder, C4446:18–C4448:22 (Day C41).
947 Transcript of R Leder, C4446:18–C4448:22 (Day C41).
948 Transcript of R Leder, C4446:18–C4448:22 (Day C41).
949 Transcript of R Leder, C4453:13–C4456:35 (Day C41).
950 Transcript of R Leder, C4453:13–C4456:35 (Day C41).
951 Transcript of R Leder, C4453:13–C4456:35 (Day C41).
952 Transcript of R Leder, C4453:13–C4456:35 (Day C41).
953 Transcript of R Leder, C4453:13–C4456:35 (Day C41).
954 Transcript of R Leder, C4453:13–C4456:35 (Day C41).
955 Exhibit 16-0041, STAT.0320.003.001.
956 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [137].
957 Exhibit 16-0003 (Tab 194) COR.0001.0002.0278.
958 Exhibit 16-0003 (Tab 194) COR.0001.0002.0278.
959 Exhibit 16-0003 (Tab 197) COR.0001.0004.0016_R.
960 Exhibit 16-0003 (Tab 197) COR.0001.0004.0016_R.
961 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [86]; Exhibit 16-0003 (Tab 199) COR.0001.0002.0143.
962 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [156]; Exhibit 16-0024, Statement of E Exell, CTJH.500.46001.0001_R at [38].

963 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [155].
 964 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [172].
 965 Exhibit 16-0003 (Tab 200) COR.0001.0002.0168.
 966 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [160].
 967 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [161].
 968 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [161].
 969 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [161].
 970 Exhibit 16-0003 (Tab 202) COR.0001.0002.0061.
 971 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [89].
 972 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [89].
 973 Exhibit 16-0003 (Tab 203) COR.0001.0003.0176.
 974 Transcript of D Hart, C4723:3–17 (Day C43).
 975 Exhibit 16-0003 (Tab 204) CCI.0001.00218.0041_R; Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [90].
 976 Exhibit 16-0003 (Tab 204) CCI.0001.00218.0041_R; Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [90]–[92].
 977 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [104].
 978 Transcript of D Hart, C4717:38–C4718:16 (Day C43).
 979 Transcript of D Hart, C4716:43–C4717:17 (Day C43).
 980 Transcript of D Hart, C4717:38–47 (Day C43).
 981 Exhibit 16-0003 (Tabs 212, 217, 221, 222) CTJH.221.04001.0693, CTJH.221.04001.0650, CCI.0001.00214.0500_R, CCI.0001.00216.0118_R.
 982 Exhibit 16-0003 (Tab 220) COR.0001.0004.0324.
 983 Transcript of R Leder, C4460:18–C4461:13 (Day C41).
 984 Transcript of F Moore, C4646:4–13 (Day C43).
 985 Exhibit 16-00039 CTJH.221.04022.0033.
 986 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [97].
 987 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [97].
 988 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [98].
 989 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [100].
 990 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [101].
 991 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [101].
 992 Exhibit 16-0025, CTJH.9999.005.0002.
 993 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [107].
 994 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [107].
 995 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [4].
 996 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [4].
 997 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [4].
 998 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [4].
 999 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [5].
 1000 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [5]–[6].
 1001 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [7].
 1002 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [9].
 1003 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [9].
 1004 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [9].
 1005 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [10].
 1006 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [10].
 1007 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [10].
 1008 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [11].
 1009 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [12].
 1010 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [13].
 1011 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [13].
 1012 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [13].
 1013 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [15].

- 1014 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [15].
- 1015 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [16].
- 1016 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [16].
- 1017 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [17].
- 1018 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [19].
- 1019 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [19].
- 1020 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [54].
- 1021 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [23].
- 1022 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [23].
- 1023 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [26]–[28].
- 1024 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [33]–[35].
- 1025 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [34].
- 1026 Transcript of P Hersbach, C4152:21–31 (Day C38).
- 1027 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [33]–[34].
- 1028 Transcript of S Sharkey, C4644:26–31 (Day C43).
- 1029 Exhibit 16-0017, Statement of S Sharkey, STAT.0319.001.0001_R at [88]. See also Transcript of S Sharkey, C4633:3–21 (Day C43).
- 1030 Transcript of S Sharkey, C4633:23–30 (Day C43).
- 1031 Transcript of S Sharkey, C4633:23–30 (Day C43).
- 1032 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [36].
- 1033 Exhibit 16-0003 (Tab 236) COM.0056.0002.0078_R; Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at .0102_R.
- 1034 Exhibit 16-0003 (Tab 236) COM.0056.0002.0078_R at 0093_R.
- 1035 Exhibit 16-0003 (Tab 238) COM.0056.0002.0094_R.
- 1036 Exhibit 16-0003 (Tab 242) CAR.0050.00010057.
- 1037 Exhibit 16-0003 (Tab 243) CCI.0001.00229.0021_R.
- 1038 Exhibit 16-0003 (Tab 244) IND.0050.001.0027_R.
- 1039 Exhibit 16-0003 (Tab 244) IND.0050.001.0027_R at 0028_R.
- 1040 Exhibit 16-0003 (Tabs 246, 247) COM.0056.0002.0028_R, CCI.0001.00229.0040.
- 1041 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [47].
- 1042 Exhibit 16-0003 (Tab 248) CTJH.221.04009.0015.
- 1043 Exhibit 16-0003 (Tab 249) CTJH.221.04009.0014_R.
- 1044 Exhibit 16-0003 (Tab 249) CTJH.221.04009.0014_R.
- 1045 Exhibit 16-0003 (Tab 251) IND.0050.001.0031_R.
- 1046 Exhibit 16-0003 (Tab 251) IND.0050.001.0031_R.
- 1047 Exhibit 16-0003 (Tab 251) IND.0050.001.0031_R at 0032_R.
- 1048 Exhibit 16-0003 (Tab 250) IND.0050.001.0006_R.
- 1049 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [49].
- 1050 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [52].
- 1051 Exhibit 16-0003 (Tab 253) CTJH.221.04009.0017_R.
- 1052 Exhibit 16-0003 (Tab 258) CCI.0001.00229.0063_R.
- 1053 Exhibit 16-0003 (Tab 258) CCI.0001.00229.0063_R.
- 1054 Exhibit 16-0003 (Tab 258) CCI.0001.00229.0063_R at 0064_R.
- 1055 Exhibit 16-0003 (Tab 258) CCI.0001.00229.0063_R at 0064_R.
- 1056 Exhibit 16-0002, Statement of P Hersbach, STAT.031.001.0001_R at [53].
- 1057 Exhibit 16-0002, Statement of P Hersbach, STAT.031.001.0001_R at [53].
- 1058 Exhibit 16-0002, Statement of P Hersbach, STAT.031.001.0001_R at [59]; Transcript of P Hersbach, C4157:3–19 (Day C38).
- 1059 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [5]; Exhibit 16-0003 (Tab 268) COM.0033.0003.0074_R at 0041_R.
- 1060 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [5].
- 1061 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [6].
- 1062 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [7].
- 1063 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [8].

1064 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [8].
 1065 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [8].
 1066 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [8].
 1067 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [9].
 1068 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [10].
 1069 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [10].
 1070 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [10].
 1071 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [11].
 1072 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [12].
 1073 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [12].
 1074 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [13].
 1075 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [13].
 1076 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [14].
 1077 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [14].
 1078 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [15].
 1079 Exhibit 16-0003 (Tab 266) COM.0033.0003.0074_R.
 1080 Exhibit 16-0003 (Tab 266) COM.0033.0003.0074_R.
 1081 Exhibit 16-0003 (Tab 268) COM.0033.0003.0038_R.
 1082 Transcript of P O'Callaghan, C4307:9–29 (Day C40); Exhibit 16-0005, Statement of P O'Callaghan, STAT.0320.001.0001_R at .0101 – .0102_R.
 1083 Transcript of P O'Callaghan, C4307:9–18 (Day C40).
 1084 Transcript of P O'Callaghan, C4307:34–C4308:9 (Day C40).
 1085 Transcript of P O'Callaghan, C4307:34–C4308:9 (Day C40).
 1086 Exhibit 16-0003 (Tab 270) IND.0048.001.0090_R.
 1087 Exhibit 16-0003 (Tab 271) PAN.0257.0001.0037_R; Exhibit 6-0003 (Tabs 272, 273) COM.0033.0003.0036_R, COM.0033.0003.0037_R.
 1088 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [21].
 1089 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [21].
 1090 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [21].
 1091 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [21].
 1092 Exhibit 16-0003 (Tab 281) IND.0048.001.0093_R.
 1093 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [23].
 1094 Exhibit 16-0003 (Tab 282) CTJH.221.04008.0037_R.
 1095 Exhibit 16-0003 (Tab 283) PAN.0257.0001.0071_R.
 1096 Exhibit 16-0003 (Tab 284) IND.0048.001.0104_R.
 1097 Exhibit 16-0003 (Tab 285) IND.0048.001.0096_R.
 1098 Exhibit 16-0003 (Tab 285) IND.0048001.0096_R.
 1099 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [24].
 1100 Exhibit 16-0003 (Tab 286) CTJH.221.04008.0001_R at 0002_R.
 1101 Exhibit 16-0003 (Tab 286) CTJH.221.04008.0001_R at 0002_R.
 1102 Exhibit 16-0003 (Tab 286) CTJH.221.04008.0001_R.
 1103 Exhibit 16-0003 (Tab 286) CTJH.221.04008.0001_R.
 1104 Exhibit 16-0003 (Tab 286) CTJH.221.04008.0001_R.
 1105 Exhibit 16-0007, Statement of R Leder, STAT.0317.001.0001_R at [183].
 1106 Exhibit 16-0003 (Tab 287) CTJH.221.04008.0005_R.
 1107 Exhibit 16-0003 (Tab 287) CTJH.221.04008.0005_R.
 1108 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [27].
 1109 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [34]
 1110 Exhibit 16-0003 (Tab 292) CCI.0001.00287.0058_R.
 1111 Exhibit 16-0003 (Tab 293) CCI.0001.00287.0035_R at 0036_R.
 1112 Exhibit 16-0003 (Tab 293) CCI.0001.00287.0035_R at 0037_R.
 1113 Exhibit 16-0003 (Tab 238) COM.0056.0002.0094_R.
 1114 Exhibit 16-0003 (Tab 238) COM.0056.0002.0094_R at 0094_R.
 1115 Exhibit 16-0003 (Tab 238) COM.0056.0002.0094_R.

- 1116 Transcript of P Hersbach, C4153:3–38 (Day C38).
- 1117 Submissions on behalf of Peter O’Callaghan QC, Independent Commissioner, Melbourne Response [23]–[27].
- 1118 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [39].
- 1119 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [40].
- 1120 Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at .0110_R.
- 1121 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [16].
- 1122 Exhibit 16-0003 (Tab 268) COM.0033.0003.0038_R at 0039_R – 0046_R.
- 1123 Transcript of P O’Callaghan, C4300:42–C4301:8 (Day C40).
- 1124 Exhibit 16-0003 (Tab 269) IND.0048.001.0087_R.
- 1125 Exhibit 16-0003 (Tab 269) IND.0048.001.0087_R.
- 1126 Exhibit 16-0003 (Tab 269) IND.0048.001.0087_R at .0089_R.
- 1127 Exhibit 16-0003 (Tab 269) IND.0048.001.0087_R at .0089_R.
- 1128 Transcript of P O’Callaghan, C4302:25–45 (Day C40).
- 1129 Transcript of AFA, C4166:40–C4167:1 (Day C38).
- 1130 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [18].
- 1131 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [36].
- 1132 Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at .0097_R.
- 1133 Transcript of P O’Callaghan, C4301:10–28 (Day C40).
- 1134 Transcript of P O’Callaghan, C4303:41–C4304:8 (Day C40).
- 1135 Exhibit 16-0003 (Tab 45) CTJH.221.04004.0126.
- 1136 Exhibit 16-0003 (Tab 238) COM.0056.0002.0094_R.
- 1137 Submissions on behalf of Peter O’Callaghan QC, Independent Commissioner, Melbourne Response [22].
- 1138 Submissions on behalf of Peter O’Callaghan QC, Independent Commissioner, Melbourne Response [16].
- 1139 Submissions of the Truth, Justice and Healing Council in case study 16 [171].
- 1140 Submissions of the Truth, Justice and Healing Council in case study 16 [180].
- 1141 Exhibit 16-0014, EXH.016.014.0001.
- 1142 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [29].
- 1143 Transcript of AFA, C4167:3–13 (Day C38).
- 1144 Transcript of AFA, C4167:6–13 (Day C38).
- 1145 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [29].
- 1146 Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at .0095_R; Transcript of P O’Callaghan, C4304:39–47 (Day C40).
- 1147 Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at .0059_R; Transcript of P O’Callaghan, C4304:39–47 (Day C40).
- 1148 Exhibit 16-0003 (Tab 295) COM.0033.0003.0078_R.
- 1149 Exhibit 16-0003 (Tab 295) COM.0033.0003.0078_R.
- 1150 Exhibit 16-0003 (Tab 295) COM.0033.0003.0078_R at 0079_R.
- 1151 Exhibit 16-0003 (Tab 296) COM.0033.000.0076_R.
- 1152 Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at .0095_R – .0096_R; Transcript of P O’Callaghan, C4304:39–C4305:9 (Day C40).
- 1153 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [30].
- 1154 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [30].
- 1155 Transcript of D Hart, C4696:30–44 (Day C43).
- 1156 Transcript of D Hart, C4741:26–35 (Day C44).
- 1157 Transcript of D Hart, C4741:20–24 (Day C44).
- 1158 Transcript of D Hart, C4742:19–45 (Day C44).
- 1159 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [55]; Transcript of D Hart, C4740:39–C4741:18 (Day C44).
- 1160 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [56]; Transcript of D Hart, C4741:37–45 (Day C44).
- 1161 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [56].
- 1162 Transcript of D Hart, C4743:4–27 (Day C44).
- 1163 Transcript of D Hart, C4743:4–27 (Day C44).
- 1164 Transcript of D Hart, C4743:4–27 (Day C44).

- 1165 Exhibit 16-0002, Statement of P Hersbach, STAT.031.001.0001_R at [62].
- 1166 Exhibit 16-0002, Statement of P Hersbach, STAT.031.001.0001_R at [62].
- 1167 Transcript of P Hersbach, C4155:24–37 (Day C38).
- 1168 Transcript of P Hersbach, C4155:24–37 (Day C38).
- 1169 Exhibit 16-0004, Statement of AFA, STAT.0214.001.0001_R at [28].
- 1170 Exhibit 16-0016, Statement of D Curtain, STAT.0318.001.0001_R at [39(i)].
- 1171 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [57].
- 1172 Transcript of D Hart, C4697:8–27 (Day C43).
- 1173 Transcript of D Hart, C4697:29–C4698:4 (Day C43).
- 1174 Exhibit 16-0005, Statement of P O’Callaghan, STAT.0320.001.0001_R at .0012_R.
- 1175 Transcript of P O’Callaghan, C4227:6–10 (Day C39).
- 1176 Transcript of P O’Callaghan, C4175:1–2; C4176:32–C4177:36 (Day C39).
- 1177 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [42].
- 1178 Exhibit 16-0012, Statement of J Gleeson, STAT.0323.001.0001_R at [42]–[43].
- 1179 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [89].
- 1180 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [90].
- 1181 Transcript of D Hart, C4692:33–41 (Day C43).
- 1182 Transcript of D Hart, C4683:4–8 (Day C43).
- 1183 Transcript of D Hart, C4688:5–19 (Day C43).
- 1184 Transcript of D Hart, C4685:10–14 (Day C43).
- 1185 Transcript of D Hart, C4689:36–40 (Day C43).
- 1186 Transcript of D Hart, C4683:15–37 (Day C43).
- 1187 Transcript of D Hart, C4685:16–C4686:1 (Day C43).
- 1188 Submission from the Truth, Justice and Healing Council in relation to *Issues Paper No 2, Towards Healing*, pp 136–137.
- 1189 Submission from the Truth, Justice and Healing Council in relation to *Issues Paper No 2, Towards Healing*, pp 136–137.
- 1190 Transcript of D Hart, C4686:3–16 (Day C43).
- 1191 Transcript of D Hart, C4686:3–34 (Day C43).
- 1192 Transcript of D Hart, C4692:11–19 (Day C43).
- 1193 Transcript of D Hart, C4687:45–C4689:1 (Day C43).
- 1194 Submission from the Truth, Justice and Healing Council in relation to *Issues Paper No 2, Towards Healing*, pp 136–137.
- 1195 Submission from the Truth, Justice and Healing Council in relation to *Issues Paper No 2, Towards Healing*, pp 136–137.
- 1196 Submission from the Truth, Justice and Healing Council in relation to *Issues Paper No 2, Towards Healing*, pp 136–137.
- 1197 Transcript of D Hart, C4689:3–13 (Day C43).
- 1198 Transcript of D Hart, C4689:15–25 (Day C43).
- 1199 Transcript of D Hart, C4690:43–C4691:1 (Day C43).
- 1200 Transcript of D Hart, C4680:43–C4681:8 (Day C43).
- 1201 Transcript of D Hart, C4677:40–45 (Day C43).
- 1202 Transcript of D Hart, C4679:26–37 (Day C43).
- 1203 Transcript of D Hart, C4677:4–17, C4678:38–C4679:22, C4681:1–14 (Day C43).
- 1204 Transcript of D Hart, C4677:13–17 (Day C43).
- 1205 Exhibit 16-00038 CTJH.221.04021.0020_R_M.
- 1206 Transcript of D Hart, C4677:19–C4685:8 (Day C43).
- 1207 Transcript of D Hart, C4680:26–C4681:14 (Day C43).
- 1208 Transcript of D Hart, C4679:2–11 (Day C43).
- 1209 Transcript of D Hart, C4681:16–C4685:8 (Day C43). See also Exhibit 16-0003 (Tab 53) CTJH.0001.001.0418 at .0456 – .0459.
- 1210 Transcript of D Hart, C4689:27–34 (Day C43).
- 1211 Transcript of D Hart, C4691:39–45 (Day C43).
- 1212 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [188].
- 1213 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [188].

- 1214 Exhibit 16-0003 (Tabs 292, 293) CCI.0001.00287.0058_R, CCI.0001.00287.0035_R at 0037_R.
- 1215 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [188].
- 1216 Transcript of D Hart, C4730:17–C4731:13 (Day C44).
- 1217 Transcript of D Hart, C4730:17–C4731:13 (Day C44).
- 1218 Exhibit 16-0003 (Tab 262) CTJH.221.04013.0316_E.
- 1219 Exhibit 16-0003 (Tab 263) CTJH.221.04013.0315_E.
- 1220 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [189].
- 1221 Exhibit 16-0003 (Tab 264) CTJH.221.04013.0314.
- 1222 Transcript of D Hart, C4730:17–C4731:13 (Day C44).
- 1223 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [190]–[191].
- 1224 Transcript of D Hart, C4677:26–38 (Day C43).
- 1225 Transcript of D Hart, C4732:41–C4733:6 (Day C44).
- 1226 Transcript of D Hart, C4732:8–20 (Day C44).
- 1227 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [191]; Transcript of D Hart, C4736:5–7 (Day C44).
- 1228 Exhibit 16-0020, CTJH.221.04013.0093.
- 1229 Exhibit 16-0020, CTJH.221.04013.0093.
- 1230 Exhibit 16-0020, CTJH.221.04013.0093.
- 1231 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [192]; Transcript of D Hart, C4736:5–7 (Day C44).
- 1232 Exhibit 16-0020, CTJH.221.04013.0055.
- 1233 Transcript of D Hart, C4736:29–45 (Day C44).
- 1234 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [193]; Transcript of D Hart, C4737:19–44 (Day C44).
- 1235 Exhibit 16-0003 (Tab 265) CTJH.21.04013.0201; Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [193].
- 1236 Transcript of D Hart, C4737:19–44 (Day C44).
- 1237 Transcript of D Hart, C4737:19–44 (Day C44).
- 1238 Transcript of D Hart, C4737:19–44 (Day C44); Exhibit 16-0009, Statement of G Pell, CTJH.500.44001.0001 at [19].
- 1239 Transcript of R Leder, C4458:16–C4462:22 (Day C41).
- 1240 Transcript of D Hart, C4726:10–36 (Day C44).
- 1241 Transcript of R Leder, C4460:18–22 (Day C41).
- 1242 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [180].
- 1243 Exhibit 16-0003 (Tab 76) CTJH.221.04013.0615.
- 1244 Exhibit 16-0003 (Tab 76) CTJH.221.04013.0615.
- 1245 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [181].
- 1246 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [181].
- 1247 Exhibit 16-0003 (Tab 77) COM.0048.0001.0346; Exhibit 16-0003 (Tab 80) IND.0049.001.0007.
- 1248 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [182].
- 1249 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [182].
- 1250 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [41].
- 1251 Exhibit 16-0001, Statement of C Foster, STAT.0313.001.0001_R at [41].
- 1252 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [182].
- 1253 Transcript of D Hart, C4729:27–44 (Day C44).
- 1254 Transcript of D Hart, C4729:27–44 (Day C44).
- 1255 Transcript of D Hart, C4729:27–44 (Day C44).
- 1256 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [20].
- 1257 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [20].
- 1258 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [201]; Transcript of D Hart, C4737:46–C4738:8 (Day C44).
- 1259 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [22].
- 1260 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [22].
- 1261 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [22].
- 1262 Exhibit 16-0003 (Tab 230) CTJH.221.04013.0780.
- 1263 Transcript of D Hart, C4738:23–30 (Day C44).

- 1264 Exhibit 16-0003 (Tab 231) CTJH.221.04013.0821.
- 1265 Exhibit 16-0003 (Tab 232) CTJH.221.04013.0797.
- 1266 Exhibit 16-0003 (Tab 232) CTJH.221.04013.0797.
- 1267 Exhibit 16-0003 (Tab 232) CTJH.221.04013.0797 at 0798.
- 1268 Exhibit 16-0003 (Tab 232) CTJH.221.04013.0797 at 0798.
- 1269 Transcript of D Hart, C4738:36–C4739:11 (Day C44).
- 1270 Exhibit 16-0003 (Tab 233) CTJH.221.04013.0801.
- 1271 Exhibit 16-0003 (Tab 234) CTJH.221.04013.0795.
- 1272 Exhibit 16-0003 (Tab 234) CTJH.221.04013.0795.
- 1273 Exhibit 16-0003 (Tab 235) CTJH.221.04013.0835.
- 1274 Exhibit 16-0003 (Tab 235) CTJH.221.04013.0835.
- 1275 Transcript of D Hart, C4739:17–25 (Day C44).
- 1276 Transcript of D Hart, C4739:17–25 (Day C44).
- 1277 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [24].
- 1278 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [203].
- 1279 Exhibit 16-0002, Statement of P Hersbach, STAT.0316.001.0001_R at [24]–[25].
- 1280 Exhibit 16-0019, Statement of D Hart, CTJH.500.45001.0001_R at [203].
- 1281 Exhibit 16-0018, CTJH.221.04017.0001.
- 1282 Transcript of F Moore, C4658:27–40 (Day C43).
- 1283 Transcript of F Moore, C4647:30–38 (Day C43).
- 1284 Exhibit 16-0018, CTJH.221.04017.0001; Exhibit 16-40, CTJH.221.04020.0001; Transcript of F Moore, C4647:6–18 (Day C43); Transcript of F Moore, C4654:17–22.
- 1285 Exhibit 16-0018, CTJH.221.04017.0001; Ex 16-40 CTJH.221.04020.0001.
- 1286 Transcript of F Moore, C4647:6–18; C4651:35–38 (Day C43).
- 1287 Transcript of F Moore, C4651:35–C4652:20 (Day C43).
- 1288 Exhibit 16-0018, CTJH.221.04017.0001; Transcript of F Moore, C4651:35–C4652:20; C4672:25–29 (Day C43).
- 1289 Transcript of F Moore, C4650:4–23 (Day C43).
- 1290 Transcript of F Moore, C4653:24–34 (Day C43).
- 1291 Transcript of F Moore, C4653:36–45 (Day C43).
- 1292 Transcript of F Moore, C4656:24–26 (Day C43).
- 1293 Transcript of F Moore, C4656:2–9 (Day C43).
- 1294 Ex 16-40 CTJH.221.04020.0001.
- 1295 Transcript of F Moore, C4652:31–C4653:16.
- 1296 Transcript of F Moore, C4654:42–C4655:3 (Day C43). It is assumed that the ‘Carelink consultants’ to which Mr Moore referred are identical to the ‘Carelink Directors & Coordinators’ referred to in Exhibit 16-40 CTJH.221.04020.0001, which was produced in response to Counsel Assisting’s inquiry for more data on this issue.
- 1297 Transcript of F Moore, C4657:46–C4658:7 (Day C43).
- 1298 Exhibit 16-0003 (Tab 63) CTJH.221.04010.0154 at .0157 – .0160.
- 1299 Transcript of F Moore, C4661:4–12 (Day C43).
- 1300 Exhibit 16-0003 (Tab 63) CTJH.221.04010.0154 at .0160, .0162; Transcript of F Moore, C4661:22–37 (Day C43).
- 1301 Transcript of F Moore, C4661:39–C4662:9 (Day C43).
- 1302 Transcript of F Moore, C4662:23–33 (Day C43).
- 1303 Transcript of F Moore, C4664:24–41 (Day C43).
- 1304 Transcript of F Moore, C4665:23–29 (Day C43).
- 1305 Transcript of F Moore, C4664:8–10 (Day C43).
- 1306 Transcript of F Moore, C4662:35–C4663:3 (Day C43).
- 1307 Transcript of F Moore, C4663:5–26 (Day C43).
- 1308 Transcript of F Moore, C4663:28–31 (Day C43).
- 1309 Exhibit 16-0003 (Tab 62) CTJH.221.04010.0037 at .0044 – .0047.
- 1310 In 2012, net profit was equal to total comprehensive income. In 2013, revaluation of land and building was not classified as profit or loss but still constituted income, thereby raising total comprehensive income in that year to \$19,366,844: Exhibit 16-0003 (Tab 62) CTJH.221.04010.0037 at .0044.
- 1311 Transcript of F Moore, C4666:33–42 (Day C43).
- 1312 Transcript of F Moore, C4666:44–C4667:5 (Day C43).
- 1313 Transcript of F Moore, C4667:7–16 (Day C43).



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ISBN: 978-1-925289-29-9
Published July 2015