

**ROYAL COMMISSION INTO INSTITUTIONAL  
RESPONSES TO CHILD SEXUAL ABUSE**

**Public Hearing - Case Study 11  
(Day WA17)**

Level 18, Industrial Relations Commission  
111 St Georges Terrace, Perth

On Friday, 2 May 2014 at 9.30am

Before The Chair: Justice Peter McClellan AM  
Before Commissioners: Mr Robert Atkinson AO APM  
Professor Helen Milroy

Counsel Assisting: Ms Gail Furness SC

1 <HOWARD GERARD HARRISON, on former oath: [9.30am]

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<EXAMINATION BY MS FURNESS CONTINUING:

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MS FURNESS: Q. Mr Harrison, you had tab C to take away with you overnight. Did you have an opportunity to read it?

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A. Yes.

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Q. They are the minutes of a meeting held on 7 December between the Provincials of the Christian Brothers and legal advisers, including yourself. At the beginning of the meeting there was a discussion in relation to suppression orders. Have you read that?

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A. I have.

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Q. Was the concern as you recall, with your memory refreshed by these minutes, about the suppression of individual victims' names or the suppression of details in respect of the Order?

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A. I think the issue at that time was that there was some angst in the community around situations of sexual abuse and prosecution of some brothers where the matters were dealt with in the Local Court. There may be - there was not media exposure, there may have been suppression orders made in relation to the identity of the victim and/or the brother, possibly, and that that was one of a number of issues which was problematic in the sense of people not seeing some public response. This would have been at a time when there would be very little being done about contact or support of victims and suchlike. So I think that was the context in which that conversation occurred, which resulted in this note being made.

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Q. If we can turn to page 3, which is 0007, there is reference in the third paragraph to you referring to the whole event as being a headache from the point of view of potential criminal processes, as well as the obvious Slater & Gordon-driven compensation or civil aspect. What were the potential criminal processes that you were concerned about at the time?

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A. Whatever was said now that's captured in the minutes, I think the sense was that we were moving into a period of significant legal activity potentially, both in the criminal and civil arena.

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Q. Mr Harrison, just turning to that paragraph I asked

1 you a question about, the next sentence is:  
2 *Decisive and successful action, if that is*  
3 *available, will hopefully kill off the*  
4 *problem to a great extent as regards civil*  
5 *compensation and the financial cost that*  
6 *would impose on the Brothers, cost and*  
7 *paymentwise with the insurance uncertainty.*  
8

9 Can I suggest to you that the tone of this meeting, as  
10 referred to in these minutes, and particularly that  
11 sentence, suggests that there was not a focus on settling  
12 the matter?

13 A. I accept that.  
14

15 THE CHAIR: Q. There also seems to be concentration on  
16 the cost to the Brothers. There is no sentiment there  
17 recognising the suffering of the survivors, is there?

18 A. I accept that, your Honour. It was a wrong-footed  
19 approach.  
20

21 MS FURNESS: Q. The final two paragraphs on page 6,  
22 0010, refer to Brother Faulkner having "bent over backwards  
23 to meet each person who has been affected in WA", with  
24 reference to "more recent cases in Victoria who have  
25 responded to pastoral help and are not looking for monetary  
26 gain"; do you see that?

27 A. Yes.  
28

29 Q. The suggestion in these minutes seems to be that by  
30 seeking compensation through the civil courts, the victims  
31 are seen as somehow less worthy than those who are happy to  
32 have pastoral help.

33 A. Look, I think there was an apprehension - I think the  
34 Brothers were grappling with the issue of compensation and  
35 money and there may have been an ill-informed  
36 categorisation around people seeking compensation in the  
37 civil courts as being somehow not deserving - a misplaced  
38 prejudice.  
39

40 Q. Feeling affronted by the fact that they would take  
41 action of such a nature against the church?

42 A. Could have been.  
43

44 Q. Can we turn to tab N --  
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46 THE CHAIR: Just before we leave that, can we go back to  
47 page 3 again.

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Q. Do you see you are reported to have said:

*... it would be of great benefit to the Order if this type of problem could be dealt with now.*

We understand the context of that:

*It would also be of benefit to individual Brothers in question, who may have spent a lifetime ... but have failed at one time or another, perhaps at a time when there was much less understanding of weaknesses and vulnerabilities.*

Then further down the page, the third-last line:

*Even in the case of relatively minor inappropriate contact, imprisonment is a potential.*

You know I've talked about already, in the course of the Commission, people not appreciating the consequences of what might be thought to have been minor abuse for the individuals who suffer it. Do you think that misapprehension was present at that time in these discussions?

A. Certainly, your Honour. Look, as I look back, your Honour, clearly, a complete misunderstanding of the grave effects on a young person, and the difficulties victims have coming forward and being coherent and accurate, and just how hard that is, and, secondly, a complete misunderstanding of the complexity of offender behaviour and evasiveness. We know much more now, your Honour, than we knew at that time, let alone years before that time.

MS FURNESS: Q. Turning then to tab M - I took you to this yesterday, Mr Harrison - this is one of the earlier reports by junior counsel after having reviewed various documents. Do you recall that?

A. Yes.

Q. Then if we can turn to what is in the tender bundle, which has been tendered, tab 36 - if we can have that on the screen. You don't have that in that folder,

1 Mr Harrison, but it will come up on the screen for you.  
2 This particular document is undated, but you can tell from  
3 its heading, I suggest, Mr Harrison, what it is - further  
4 documents that were inspected. It is in similar format and  
5 font to the document I took you to earlier. We can assume  
6 that it was something that was prepared by counsel or  
7 solicitors to assist in the defence of the litigation?

8 A. Yes.

9  
10 Q. In relation to this document, can I take you to 0068.  
11 It refers there that the last report in the council minutes  
12 was in 1959 and there were approximately 150 pages left in  
13 the volume, in which there was no mention of any report of  
14 abuse of children or immorality involving children. That  
15 suggested to the author that those cases were no longer  
16 reported in council minutes and there may well have been  
17 some decision made in the late 1950s not to record those  
18 matters. Do you see that?

19 A. I do.

20  
21 Q. Did you learn of anything to the contrary to that  
22 during the course of your preparation for the litigation?

23 A. No.

24  
25 Q. So the assumption can be fairly made that, in fact,  
26 for one reason or another, these matters were no longer  
27 recorded in the minutes from the late 1950s.

28 A. I think that's reasonable, yes.

29  
30 Q. Page 0073 of this same document - if we can have that  
31 up - and if we can just scroll down so that the first full  
32 paragraph is on the screen - Brother Keaney, you will  
33 recall, Mr Harrison, is a brother who was the subject of  
34 allegations by one or more of the men who have given  
35 evidence?

36 A. Yes.

37  
38 Q. The allegations are of both physical and sexual abuse;  
39 you recall that?

40 A. Yes.

41  
42 Q. There is reference here to Brother Keaney's "problems  
43 at Bindoon" and being transferred to Tasmania, and it  
44 mentions problems with some of the boys "upsetting him by  
45 not carrying out his instructions and Conlon's fears of  
46 some risk of undue punishment occurring"; do you see that?

47 A. Yes.

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Q. It is fair to read that as the physical assaults were a matter that was of sufficient concern, at whatever time is covered by this note, to transfer Brother Keaney?

A. Yes.

Q. Is your understanding from your preparation for the litigation that there was equal concern by the Brothers with the physical violence as well as with the sexual abuse?

A. I wouldn't think actual concern.

Q. Less concern with the physical violence?

A. Yes.

Q. Was that seen to have some moral underpinning, that is, it was a moral lapse or moral failure in relation to the physical assaults?

A. Look, I think that there was an awareness within the Brothers of the reputation that the Christian Brothers had of being a very muscular male Order in relation to physical punishment; that there would have been some awareness of, also, some brothers, and in some of these orphanages working 24/7, who would over punish and flog. But I don't know if that would have been looked at, certainly back there then, as a psychosexual issue, as opposed to misconduct in relation to the performance of professional services, certainly a lesser evil and perhaps not seen as something indicating psychological issues with the brother.

Q. But seen as a moral lapse, or just seen as part and parcel of life in the 1940s and 1950s?

A. I think seen as part and parcel of life in the 1940s and 1950s, which did include a sense of having to prepare children for what was anticipated to be a tough world and with, you know, what we would readily agree was an inappropriate and overly harsh autocratic male regime of physical punishment and, in some cases, behaviours on the part of some brothers which went well beyond what would even be regarded as being acceptable in that historic context.

Q. Do you know whether there was any particular facility in Tasmania that was available in the 1940s and 1950s for brothers to stay?

A. Not that I know of.

1 Q. So the transfer to Tasmania could have been another  
2 orphanage or institution containing children, as far as you  
3 know?  
4 A. Could have been.  
5  
6 Q. If I can then turn to tab 40 from the main tender  
7 bundle, this is another document that is undated, but it  
8 appears to have been prepared by lawyers for the purposes  
9 of the litigation - would you agree with that, Mr Harrison?  
10 A. Yes.  
11  
12 Q. Perhaps we can turn to tab 37, before tab 40. Tab 37  
13 fits the description I just gave, Mr Harrison, a document  
14 prepared by lawyers for the purposes of the litigation, and  
15 this is an executive summary of the documents in relation  
16 to Western Australia in particular.  
17 A. Yes.  
18  
19 Q. You would have seen this shortly after it was  
20 prepared?  
21 A. Yes.  
22  
23 Q. It refers to brothers particularly from the orphanages  
24 with which this case study is concerned.  
25 A. Yes.  
26  
27 Q. There is a conclusion on page 10, which is 0027, and  
28 it refers to the executive reaction to allegations of  
29 sexual impropriety at those four orphanages, and we see  
30 that one brother was dismissed; another was removed to  
31 Leura. Now, are we right in understanding that Leura was  
32 some sort of retirement facility for brothers?  
33 A. Presumably. Presumably Leura in New South Wales.  
34  
35 Q. You don't know one way or the other?  
36 A. No.  
37  
38 Q. And the next brother was transferred to Wakefield  
39 Street, Adelaide?  
40 A. Yes.  
41  
42 Q. Do you know whether that was a facility for brothers,  
43 or it may have been a facility in which children  
44 were resident?  
45 A. I think it is a school.  
46  
47 Q. A school? And then, number 5, another brother

1 transferred from Western Australia to Melbourne. There is  
2 nothing there to indicate whether it is at a Brothers'  
3 institution or an institution which looked after children?

4 A. No.

5  
6 Q. And then the final brother, number 9, sent to  
7 Moonee Ponds. Can you help us with what was at Moonee  
8 Ponds?

9 A. No, it sounds like Queensland.

10  
11 Q. No, Moonee Ponds in Victoria, I am assuming -  
12 a well-known suburb in Victoria.

13 A. It could have been a school, I don't know.

14  
15 Q. Thank you. Now can we have tab 40. At tab 40 is  
16 a memorandum of advice by junior counsel on 25 September  
17 1995. This advice was based upon the various documents  
18 which have been summarised in the documents to which I have  
19 already taken you, Mr Harrison. Is that the case?

20 A. Yes.

21  
22 Q. In this advice, the author considers all of those  
23 documents and considers what is revealed about them in  
24 respect of the knowledge of the order. That's right?

25 A. Yes.

26  
27 Q. The conclusion which is reached on page 31, or 0205 -  
28 she poses the question:

29  
30 *The key question to be considered is not*  
31 *whether there was actual abuse ... but*  
32 *whether the response of the Executive to*  
33 *the complaints and reports of sexual abuse*  
34 *was reasonable.*

35  
36 Do you see that?

37 A. Yes.

38  
39 Q. The following page refers to her opinion:

40  
41 *... while certain cases were documented,*  
42 *others were referred to only briefly and*  
43 *one cannot discount the possibility that*  
44 *some complaints were only dealt with*  
45 *orally.*

46  
47 Do you see that?



1 A. Yes.

2

3 Q. So one of her conclusions was that the documents alone  
4 can't tell you the entire story of abuse at those  
5 institutions, because one would expect, wouldn't one, that  
6 small children would not make complaints in writing.

7 A. Correct.

8

9 Q. If I can leave the question of the knowledge of the  
10 Order and move to the question of settlement, Mr Harrison,  
11 can I first refer you to your statement, paragraphs 41 and  
12 42. You refer there to from an early time and throughout  
13 the proceedings the Christian Brothers and you were in  
14 conversation about the possibility of trying to resolve the  
15 cases?

16 A. Yes.

17

18 Q. Can I take you to some correspondence in respect of  
19 that. Yesterday, I asked you about the evidence of  
20 Mr Stephens that the plaintiffs' lawyers had suggested an  
21 amount of \$18 million to \$20 million. Do you remember  
22 that?

23 A. Yes.

24

25 Q. And you hadn't recalled that correspondence. If I can  
26 ask you to turn to tab D in the black folder, do you see  
27 that letter from Slater & Gordon to you on 1 December 1994  
28 gives a suggestion that a lateral solution could be  
29 explored; do you see that?

30 A. Yes.

31

32 Q. Do you now remember whether that was the first  
33 overture by Slater & Gordon in writing to you about  
34 settling?

35 A. I believe so.

36

37 Q. And you hadn't made any overtures to Slater & Gordon  
38 prior to this time, had you?

39 A. No.

40

41 Q. Do you remember now what your response was to the  
42 \$18 million to \$20 million?

43 A. Look, I remember taking instructions and coming back  
44 to Mr Gordon at some stage to basically say that, given the  
45 state of the pleadings and the legal issues and the lack of  
46 information in relation to the particular complaints and,  
47 in particular, how many of the group were serious sexual

1 abuse cases and suchlike, that (a) this type of figure  
2 seemed very excessive; and, (b), it was unlikely that the  
3 Brothers would be able to move into a straight cash damages  
4 type of scenario. At some stage, Peter Gordon and  
5 I started talking about alternative approaches, but that's  
6 my recollection. So he - we just, I think around this  
7 time, handed over "Reaping the Whirlwind", which had  
8 enlivened the confidence of the plaintiffs, and the  
9 cross-vesting matters were being run in front of  
10 Mr Justice Levine, and Mr Justice Levine determined not to  
11 cross vest the cases, so that the matter rolled over into  
12 1995.

13  
14 Q. If we can then turn to tab E, this is a letter from  
15 you to your client, Brother McDonald, on 14 February 1995?  
16 A. Yes.

17  
18 Q. That letter on the front page sets out that the letter  
19 was going to provide an overview of the current position  
20 and also to review alternative strategies for dealing with  
21 the litigation. Was that your initiative - to review  
22 alternative strategies?

23 A. Yes.

24  
25 Q. Alternative to defending it in the way that you had to  
26 date?

27 A. Well, yes.

28  
29 Q. On page 2, there is a reference in the second-last  
30 paragraph to in April 1994 the Brothers, on advice - that  
31 is, advice from you, "resolved to adopt a pro-active  
32 defensive strategy"; do you see that?

33 A. Yes.

34  
35 Q. And:

36  
37 *At the same time, counselling and similar*  
38 *pastoral assistance would remain open to*  
39 *any ex-student wishing to avail himself of*  
40 *such help ...*

41  
42 Do you see that?

43 A. Yes.

44  
45 Q. So, to your knowledge, that other assistance was  
46 provided parallel to the litigation?

47 A. Correct.

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Q. Do you know whether any of the plaintiffs in the litigation took the Christian Brothers up on those offers during the litigation?

A. I believe so.

Q. If we can then turn to page 6, do you see at paragraph (f) at the top of the page which is on the screen that you are advising the client of your ongoing examination of the documents?

A. Yes.

Q. Then if we can turn to the next page, towards the bottom of the page, there is reference to alternative strategies.

A. Yes.

Q. And over the page, the paragraph beginning "It is to be acknowledged", and there is reference there to:

*... tension between the legalistic defensive posture necessarily adopted in relation to these old claims and the pastoral philosophy of the Brothers as a caring religious institute which in a perfect world without resource limitations might enable a more charitable position to be taken in relation to the complainants.*

Do you see that?

A. Yes.

Q. It is not the case that the legalistic defensive posture was one that was necessarily adopted, was it; it was chosen?

A. I think I could try and defend the decision and the legitimacy of the decision at the time at that era in this legalistic battleground which had been selected by the victims, but, with the benefit of hindsight, I would say that, knowing what we now know - this is certainly not the position which would now be taken.

Q. When you say "selected by the victims", what the victims were after was compensation for the harm that they had suffered at the hands of the Christian Brothers; isn't that right?

A. Yes, but they had chosen a legal approach of bringing

1 proceedings on the other side of the country in concert  
2 with the media in a class action structure and we felt that  
3 we needed to - we couldn't roll over at that time; that we  
4 did not have particulars in relation to - so I would prefer  
5 the word "management" rather than "defensive", but no  
6 matter which way you cut it, it was an approach taken very  
7 much from a legal prism and not an approach which would be  
8 adopted now.

9  
10 Q. None of the matters you have referred to - that is,  
11 the forum they chose, whether the media was involved and  
12 the nature of the class action - precluded the  
13 Christian Brothers, on your advice, seeking to mediate or  
14 negotiate?

15 A. No.

16  
17 Q. It might have affected the manner in which you did it,  
18 but it didn't preclude you doing so?

19 A. I think mediation - and his Honour will probably have  
20 a better recollection than me, but I don't think this was  
21 an era in which there was case evaluation, and I think  
22 mediation was in its infancy and --

23  
24 THE CHAIR: Mediation had been around for a while.

25  
26 MS FURNESS: Q. He does of a better recollection than  
27 you, Mr Harrison.

28  
29 THE CHAIR: Yes. Absolutely. It wasn't long after this  
30 that I was made a judge, so I have a clear recollection.  
31 Neutral evaluation has grown in the last 15 years, you are  
32 right about that. But mediation was really driven when  
33 Laurence Street retired, and that's well before this.

34  
35 MS FURNESS: Q. Indeed, in the next paragraph you refer  
36 to:

37  
38 *In these circumstances, alternative*  
39 *"softer" strategies involving mediation or*  
40 *settlement obviously warrant careful*  
41 *consideration.*

42  
43 So by this time, February 1995, a year and a half after the  
44 class action was instituted, you were turning your mind,  
45 and that of your client, to settlement?

46 A. Yes.

47

1 Q. Towards the end of the page, you say:

2  
3 *Quite clearly it would be open to the*  
4 *Brothers to seek to settle these cases now*  
5 *by undertaking discussions ... and/or*  
6 *involving a mediator. Mr Gordon has*  
7 *indicated a settlement figure and stated*  
8 *that were a fund established to pay out all*  
9 *current actions ...*

10  
11 And then some details about that fund.

12  
13 Do you recall whether that offer was the \$18 million  
14 to \$20 million I took you to earlier, which was made two or  
15 three months earlier, or whether there had been some  
16 advancement in the settlement negotiations?

17 A. Look, my recollection is the first figure that was put  
18 orally was something like \$30 million, that then in writing  
19 it was \$18 million to \$20 million, and eventually it came  
20 down to 9.5 and then 7.5. But I thought Peter Gordon were  
21 sort of agreed that we weren't going to be able to settle  
22 these cases at this time until there had been some more  
23 determination around jurisdictions. I'm not aware of any  
24 other concrete number having been either bandied about or  
25 formally put at that time. And any offer put to me was on  
26 the basis that he did not have formal instructions and it  
27 remained to be seen whether his advice would be accepted.

28  
29 Q. At page 9, the first full paragraph, your advice is  
30 that consideration could be given to the possibility of  
31 filing offers of settlement in relation to the six clearly  
32 seriously injured plaintiffs of, say, \$100,000, inclusive  
33 of costs. So that's an offer of \$600,000 inclusive of  
34 costs, knowing that Slater & Gordon would have spent in  
35 excess of \$600,000 by that time.

36 A. Well, what I had in mind was in relation to the six  
37 lead plaintiffs, that we would file specific offers on each  
38 case. So it's not an offer for the whole action.

39  
40 Q. I understand that.

41 A. In terms of getting some traction around --

42  
43 Q. What does "traction" mean?

44 A. Engaging in some shape or form around the issue of  
45 compensation.

46  
47 Q. Were you given instructions to put that?

1 A. I don't believe so.  
2  
3 Q. What was the first offer you made to them - to Slater  
4 & Gordon?  
5 A. I think it was 1996, about \$3 million plus \$750,000  
6 for costs.  
7  
8 Q. There was no offer prior to that orally?  
9 A. I don't - no, I don't think so.  
10  
11 Q. Did you make an offer at any time orally that the  
12 first position of the defendants was that the plaintiffs  
13 pay your costs?  
14 A. I don't believe so.  
15  
16 Q. No?  
17 A. No.  
18  
19 Q. When you say you don't believe so, is it possible that  
20 that occurred and you have now forgotten it?  
21 A. Possible. There - possible, but I don't believe so.  
22 And all the conversations about settlement were between  
23 Peter Gordon and myself. I would not have spoken to  
24 Hayden, who was then a junior lawyer, about settlement -  
25 behind Peter Gordon's back.  
26  
27 Q. I understand that. Your conclusion was to recommend  
28 the continuation of the current defensive strategy?  
29 A. Yes.  
30  
31 Q. Why was that, given the matters that you had referred  
32 to, including the tension between the pastoral and  
33 philosophical approach of the Christian Brothers?  
34 A. Look, rightly or wrongly, I felt at that stage that we  
35 had to continue to tough it out as a part of trying to  
36 manage these matters to some kind of reasonable end point.  
37  
38 Q. They took your advice?  
39 A. I believe so.  
40  
41 Q. If we can then turn to tab G, this is a letter from  
42 you to your clients on 1 February 1996. So that is about  
43 a year later. You advised them as to the current position,  
44 assessments as to the prospects of successfully defending  
45 the cases, and then, over on page 3, you posit the  
46 question: to settle or not to settle? You refer there in  
47 the second paragraph that:

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*It would seem that the readiness of the Christian Brothers to adopt a defensive position ...*

Let me stop there. That was your advice, which they accepted, wasn't it - to adopt a defensive position?

A. Yes.

Q.

*... in connection with the Slater & Gordon cases has discouraged other potential litigants as regards to [not only] the Christian Brothers but other Orders".*

Do you see that?

A. Yes.

Q. Was that a factor in your advice to the Christian Brothers, to adopt that strategy - that it would have broader positive implications for the church as a whole?

A. I don't know if "positive" is a word that I would now - but that was a consideration, a broader strategic approach to the use of courts and class actions and group actions as the vehicle to deal with resolution of these matters - was a part of the dilemma in terms of to settle or not to settle.

Q. If we can turn to page 4, you refer about halfway down there to:

*Accordingly at the moment at least, sexual abuse cases are capable of settlement usually for figures which on Australian damages criteria are quite moderate - \$20,000 to \$40,000 inclusive of costs.*

Do you see that?

A. Yes.

Q. They are cases which are settled by negotiation after complaint without recourse to litigation; isn't that right?

A. Yes.

Q. Had you experience, on behalf of one or more Order or any diocese, with settling claims for that amount of money

1 by this time, through the means I have suggested? You  
2 personally?

3 A. Yes.

4

5 Q. You?

6 A. Yes.

7

8 Q. This is pre-Towards Healing, of course. Were those  
9 cases generated by victims, either personally or through  
10 solicitors writing to the Order, seeking compensation?

11 A. Correct. The ones we were involved in would normally  
12 be through solicitors.

13

14 Q. And the amount of \$20,000 to \$40,000, that was an  
15 amount that you advised the Christian Brothers they could,  
16 and should, settle for in those cases, without going into  
17 the details of each case?

18 A. As an average, as a broad range, yes.

19

20 Q. Knowing that had, probably, any of those sexual abuse  
21 cases been successful on the civil arena, they would have  
22 attracted an amount significantly in excess of that?

23 A. Yes.

24

25 Q. Then you go down to say, if indeed the plaintiff has  
26 success in this type of litigation before the court, they  
27 could expect to receive something in the range of \$130,000  
28 to \$230,000, if we turn over the page. Do you see that?

29 A. Yes.

30

31 Q. That was your assessment of how a civil court would  
32 assess a typical historic sexual abuse claim in 1996?

33 A. Yes.

34

35 Q. So by offering, and succeeding, in settling for  
36 \$20,000 to \$40,000, the Brothers were getting away with it  
37 very cheaply, on your account?

38 A. Yes, by reference to what a case could be worth if  
39 liability was established in court.

40

41 Q. Yes. But when you pay \$20,000 to \$40,000, regardless  
42 of whether you do so with an admission of liability, you  
43 obviously accept the claim, Mr Harrison, don't you?

44 A. Yes.

45

46 Q. You are not going to pay it to someone who you don't  
47 believe was sexually abused by someone associated with the



1 Order?  
2 A. No.  
3  
4 THE CHAIR: Q. The diminished earning capacity of \$30,000  
5 to \$130,000, that's an annual figure, is it?  
6 A. That's a buffer, your Honour.  
7  
8 Q. You talk about diminished earning capacity, career  
9 interference, 30 to 130. Is that a reference to what such  
10 a person might have earned --  
11 A. Your Honour, from a practical viewpoint --  
12  
13 Q. -- in a year?  
14 A. -- it would be an allowance a court might make if it  
15 was not possible to come down to a particular weekly loss  
16 which would then be calculated out as a - so, quite often,  
17 you might have an argument about whether someone would have  
18 done better in the HSC and what might have happened,  
19 et cetera. I think, your Honour, quite often that is  
20 resolved by making a lump-sum allowance.  
21  
22 Q. You do the best you can, but I am just interested in  
23 what you were saying. You say "which could be contrasted  
24 adversely with, say, average earnings over that period,  
25 \$30,000 to \$130,000". That's average annual earnings?  
26 A. Right.  
27  
28 Q. Isn't it?  
29 A. Yes.  
30  
31 Q. So, in fact, in that paragraph, if someone was able to  
32 prove a very long period of diminished capacity, it could  
33 be a very large sum of money.  
34 A. Could, your Honour, but most cases tended, in my  
35 experience, at that time, to be resolved on the economic  
36 loss issue in terms of some kind of compromised lump-sum  
37 buffer, I think is the expression that I --  
38  
39 Q. Well, they tended to be resolved with a sum plus  
40 a buffer. If you could work out the sum, you got the sum.  
41 And then a buffer which allowed for contingencies was what  
42 was done - still done today. Anyway, that paragraph masks  
43 the potential for a very large sum of money, in some  
44 people?  
45 A. In some cases, yes. It was meant to be, your Honour,  
46 a broad brush.  
47

1 Q. I understand that, but that paragraph could mask, in  
2 some cases, millions of dollars.

3

4 MS FURNESS: Q. Further down on that page, which is  
5 page 5, you refer to, again, adopting a simple defensive  
6 posture is not necessarily a response to the litigation  
7 problem or the plight of genuinely injured individuals,  
8 particularly in keeping with the philosophical  
9 underpinnings of the Order. Was it the Order that was  
10 continually reminding you of their philosophical  
11 underpinnings, or were you reminding them.

12 A. Oh, look, I think a bit of both. As a lawyer, I was  
13 reluctant to be giving moral advice to my client, but it  
14 was something which I felt should be kept in the papers.

15

16 Q. And the response you received from the Order to your  
17 correspondence didn't suggest that you should stop  
18 referring to such matters?

19 A. No.

20

21 Q. That they were matters that were properly on the table  
22 to be considered in this litigation?

23 A. Correct. And as a lawyer, dealing with a legal issue  
24 and a legal battleground, I felt that I should put that on  
25 paper, which I did, and that was not in any way rejected by  
26 the client.

27

28 Q. You then come, on page 7, to "Settlement structures  
29 and possible options". I take it by this stage, which  
30 is February 1996, you had had many discussions with Peter  
31 Gordon about the way in which a settlement might be  
32 structured, leaving aside the precise dollar figures?

33 A. Not that many.

34

35 Q. So these settlement structures or possible options  
36 were from your thinking rather than a combination of you  
37 and Mr Gordon having discussions.

38 A. Oh, no, look, they reflected my conversations,  
39 I think, with a number of people, particularly Peter  
40 Gordon.

41

42 Q. You then set out on the next page what a settlement  
43 scenario would include. You note in the point (b) that it  
44 may be that a cost figure in the order of \$1 million would  
45 have to be contemplated - that's Slater & Gordon's costs?

46 A. Yes.

47

1 Q. By this stage, had you advised the Christian Brothers  
2 as to your costs, or you'd been sending, I take it, regular  
3 bills?  
4 A. Yes.  
5  
6 Q. So you would have known how much it was costing the  
7 Christian Brothers at this stage?  
8 A. Yes.  
9  
10 Q. Was that a matter of discussion between you and them -  
11 how much it had cost and how much it might cost going into  
12 the future if it didn't settle?  
13 A. Oh, yes.  
14  
15 Q. Was that a factor in to settle or not to settle?  
16 A. Yes.  
17  
18 Q. In the normal commercial way, it would be, wouldn't  
19 it?  
20 A. Yes.  
21  
22 Q. Then in (c) you talk about a pastorally orientated  
23 assistance scheme?  
24 A. Yes.  
25  
26 Q. And various other matters. And then over on page 9,  
27 in the first full paragraph, some mutually acceptable  
28 independent administration board set up?  
29 A. Yes.  
30  
31 Q. It seems your thinking had become quite developed at  
32 this stage, Mr Harrison, as to what the structure might  
33 look like.  
34 A. Yes.  
35  
36 Q. There doesn't seem to be any reference in this  
37 document - that is, this letter - to an amount of money  
38 that you are suggesting that your clients might put  
39 forward. Had you been having discussions with them about  
40 how much they might need to put in to this structure?  
41 A. I don't think so at that time. And we really were  
42 still labouring with - I was only able to make progress  
43 with Peter Gordon once we started talking about settlement,  
44 about really and truly how many of - how much of this group  
45 was about sexual abuse and how much was about other things.  
46 So we didn't really bite the bullet on a figure, I think,  
47 until some time after this letter.

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Q. Let's look at the next correspondence --

THE CHAIR: Q. Stop for a moment. Page 10. There is a discussion there about the CCI policy, and you probably know, Mr Harrison, that I had a discussion with Cardinal Pell about insurance in this area - a discussion that has been a little bit misunderstood. What has got me intrigued, though, is that there was an expectation that the CCI policy would respond on behalf of the Order, I assume, to the criminal act of a brother; is that right?

A. Not to that, your Honour, but to the alleged administrative negligence on the part of the Order.

Q. So in this discussion here, is this framed upon an assumption that the managers of the order, the congregation, I think we put it yesterday, were negligent?  
A. Correct.

Q. Now, CCI, I gather, ultimately paid a significant sum - \$2.5 million.  
A. Correct.

Q. Was that upon the basis that they accepted liability under the policy for the negligence of the congregational leaders?

MS FURNESS: I don't think there was a policy at that stage, your Honour.

Q. Was there in Western Australia?

A. There was no insurance in Western Australia. The brothers on the East Coast had special issues cover, which was a claims-made policy on foot from 1992 to 1995, for matters reported during that period, of which you did not have prior knowledge. So we lodged a - we notified CCI of these claims. CCI weren't that enthusiastic, because they hadn't insured the Brothers in Western Australia. But as we zeroed down to a settlement involving the New South Wales trustees, for administrative negligence at Strathfield, warranting a settlement, there was no insurance cover for criminal activity of an individual brother, but that was the basis upon which we progressed.

So I got approval from CCI, acting as a prudent uninsured, to make offers and we generally kept CCI aware and after the settlement of the Slater & Gordon cases, we

1 did resolve our insurance claim on a compromised basis.

2

3 THE CHAIR: Q. But the assumption behind it was  
4 a liability for the negligence of the congregational  
5 leaders.

6 A. Correct. Alleged or proven.

7

8 Q. Nevertheless, that's what CCI was prepared to pay  
9 \$2.5 million for. Of course, if vicarious liability was  
10 extended, then you would have to write a new policy - that  
11 would no doubt extend to the vicarious liability --

12 A. I think the premium of the structure would change,  
13 your Honour, but basically if the law is that managers and  
14 leaders are liable through vicarious liability or  
15 otherwise, their insurers --

16

17 Q. The policy would match it, yes. I see. That is  
18 helpful, thank you.

19

20 MS FURNESS: Q. So, turning now to tab H, which is  
21 a letter from you to your clients dated 15 April 1996,  
22 again setting out where the proceedings were, and then on  
23 page 3, at the bottom of that page, referring to  
24 "Settlement". Now, it seems by this stage, Mr Harrison,  
25 that Mr Gordon had foreshadowed a settlement package of  
26 \$9.5 million. Do you see that?

27 A. Yes.

28

29 Q. That is with paying some 50 plaintiffs and the payment  
30 of legal costs to Slater & Gordon. Now, at that stage, had  
31 he broken down that \$9.5 million into component parts or  
32 not?

33 A. Yes, I think - the cost component I think at that  
34 stage was 2.5.

35

36 Q. Which left 7 for the trust fund?

37 A. Correct.

38

39 Q. Your advice was that settlement of this level would  
40 amount to an inappropriate capitulation on behalf of the  
41 Christian Brothers?

42 A. Was it?

43

44 Q. I'm reading your words, if we can scroll down to the  
45 next paragraph. Do you see that?

46 A. There are many words I've used over the years that  
47 I would frame differently, but my advice was that we should

1 now try to settle and that we needed to make decisions  
2 about a figure which would achieve that. The conversation  
3 I had had with Peter Gordon was around a trust which  
4 incorporated some allowance for cash.

5  
6 Q. By "cash" you mean a cash payment to some plaintiffs?

7 A. A cash payment, as one of a series of payments. So -  
8 and our conversation was a bit around whether there was 25,  
9 30, 40 or 50 serious cases, and ultimately, the philosophy  
10 was that there would, I think from memory, be 30 cases  
11 where an amount of \$25,000 would be a part of an award. So  
12 that, apart from that cash, every person in the trust could  
13 come forward for a request for either reimbursement or  
14 advance payment for education, travelling expenses, family  
15 reunification, emergency. So in cases which met the  
16 criteria, it might be \$25,000.

17  
18 Q. But you hadn't reached that stage as of April 1996,  
19 had you?

20 A. We were moving in our conversations down that track  
21 pretty quickly.

22  
23 Q. So by April 1996, when you advised the  
24 Christian Brothers that it would be an inappropriate  
25 capitulation, you were thinking that there were some 50  
26 plaintiffs involved, 50 plaintiffs who had suffered  
27 seriously, in the language ultimately used in the trust,  
28 who would receive a payment of some tens of thousands of  
29 dollars?

30 A. Look, the sense I had was it was closer to 25.

31  
32 Q. 25,000?

33 A. 25 --

34  
35 Q. People?

36 A. -- serious plaintiffs.

37  
38 Q. Who would receive about 30,000 each?

39 A. Well, 25 for cash and then cash reimbursement or  
40 allowance for their particular needs as judged by  
41 independent trustees, including Jack Rush and people who  
42 knew the real story and the real needs.

43  
44 Q. And you rejected that in your advice to the  
45 Christian Brothers in April 1996 - that amount of money?

46 A. We - I advised the brothers that Peter Gordon was  
47 putting that as a figure which might do it, but not putting

1 that to me as a final position.  
2  
3 Q. Well, he had come down from 30 million initially -  
4 that's right?  
5 A. Yes.  
6  
7 Q. \$18 million to \$20 million?  
8 A. Yes.  
9  
10 Q. Now he was down at nine and a half million. You had  
11 not put one cent on the table yet, had you?  
12 A. No.  
13  
14 Q. And you didn't accept the \$9.5 million, and that was  
15 the advice you gave to your client?  
16 A. Correct.  
17  
18 Q. If we can then turn to tab I, which is 30 April 1996,  
19 a couple of weeks later, the second page, the first full  
20 paragraph, reiterates the \$9.5 million. Do you see that?  
21 A. Yes.  
22  
23 Q. And that includes a trust fund of \$4.5 million, Slater  
24 & Gordon's costs of \$2.5 million, and an additional  
25 \$2.5 million to be paid out in cash to individual claimants  
26 being cases of significant and serious alleged injury. Do  
27 you see that?  
28 A. Yes.  
29  
30 Q. So that fourth diamond, \$2.5 million, how many  
31 individual claimants did you consider at this stage may fit  
32 that criteria of "significant and serious alleged injury"?  
33 A. I can't recall.  
34  
35 Q. 50, 30?  
36 A. More 30 than 50.  
37  
38 Q. 30. So if we do the sums of 30 into 2.5 million, what  
39 do we get? I'm just trying to understand, Mr Harrison,  
40 what you understood to be the amount that those most  
41 significantly and seriously injured would get from the  
42 \$9.5 million that Slater & Gordon offered?  
43 A. In terms of the cash component?  
44  
45 Q. Yes, in terms of the cash component. About \$83,000.  
46 And you thought that was too high?  
47 A. We still had no particulars.

1  
2 Q. You were engaged in negotiations. The particulars and  
3 the lack of them had passed by this stage, hadn't they,  
4 Mr Harrison. You thought that \$83,000 for those most  
5 significantly and seriously injured was too much, as a cash  
6 payment, and that's the advice you gave, isn't it?  
7 A. Where we ended up was a settlement which involved  
8 a lesser cash figure but the capacity for that cash figure  
9 to be topped up by reference to the particular needs of the  
10 particular plaintiffs on an individualistic, independently  
11 determined basis.  
12  
13 Q. And that was what Mr Stephens referred to as those  
14 victims being required to go cap in hand to the  
15 Christian Brothers.  
16 A. To Mr Rush QC and Hayden and Peter Gordon, who were  
17 the trustees of the trust?  
18  
19 Q. To get money from the Christian Brothers?  
20 A. To get money from the trust which had been capitalised  
21 by the Christian Brothers.  
22  
23 Q. In their minds the Christian Brothers were paying that  
24 money - isn't that right?  
25 A. Yes.  
26  
27 Q. So you advised your client to reject that  
28 offer - that's right?  
29 A. That proposed settlement position. It wasn't a formal  
30 offer.  
31  
32 Q. I accept that. Then you say at the bottom of that  
33 page that an overall settlement of \$5 million involving the  
34 dropping of the cases and the provision of non-financial  
35 needs-based help would be a very good outcome for the  
36 Order. So that was the advice you gave them?  
37 A. Yes.  
38  
39 Q. And ultimately, you put that position to Slater &  
40 Gordon?  
41 A. Yes.  
42  
43 Q. And did they respond with an amount between the  
44 \$5 million and the \$9.5 million they put?  
45 A. I think so.  
46  
47 Q. You maintained the position of \$5 million?



1 A. Yes.  
2  
3 Q. So it is the case that throughout these settlement  
4 negotiations, the plaintiffs had dropped from \$30 million  
5 to \$5 million; you had started at \$5 million and didn't  
6 budge?  
7 A. I think we started at \$3 million.  
8  
9 Q. Did you put \$3 million to Slater & Gordon?  
10 A. I think we did. \$3 million plus \$750,000.  
11  
12 Q. So you moved from \$3,750,000 to \$5 million?  
13 A. Yes.  
14  
15 Q. Can I come back to your statement? At paragraph 46  
16 you refer there to the beginning discussions with  
17 Mr Gordon. Then in paragraph 47 you refer to a finite  
18 number of serious sexual abuse cases. Do you see that -  
19 paragraph 47 on your statement.  
20 A. Yes.  
21  
22 Q. So was it the case that your advice to your client was  
23 that the structure should include limiting the number of  
24 people who would meet the criteria for the largest payment?  
25 A. I was looking, in my discussions with Peter, for  
26 a real feel as to how many plaintiffs there were which met  
27 the criteria of serious sexual abuse and serious  
28 consequences to come to a figure in relation to what cash  
29 should be potentially available to those in addition to  
30 their other needs, which were to be rolled in to the  
31 calculation which would be carried out by - not by the  
32 Christian Brothers or me. And, ultimately, I felt that  
33 there was a meeting of minds with Peter Gordon about the  
34 number of those cases and the other categories of  
35 assistance and a quantum in the trust which would be  
36 sufficient. I think, ultimately, there was a surplus in  
37 the trust and, as I understand it, the trust was  
38 administered - and, of course, Barry MacKinnon was the  
39 independent chairman - without too much complaint.  
40  
41 Q. Well, the number of people to be compensated at that  
42 upper end would have to be limited by reference to the  
43 amount available - wasn't that the right? You couldn't  
44 create a fund, could you, Mr Harrison, of \$3.5 million, if  
45 there were 130 men who were seriously injured, in terms of  
46 your criteria, and pay them and the others, both cash and  
47 on a needs basis, could you?

1 A. No, but as I say, my recollection of the discussions  
2 with Peter Gordon was around, inter alia, getting a handle  
3 on the actual number and building something around the  
4 reality of that number, not --

5  
6 Q. You don't accept that that number was artificially  
7 limited by the constraints imposed by the amount of money  
8 you were prepared to put forward on behalf of your clients.

9 A. Look, I might accept that now, and I'm not saying this  
10 was all - with the benefit of hindsight - perfectly  
11 negotiated and perfectly fair. But my thinking at the time  
12 was what are the actual number within that 241 of serious  
13 cases and how do we build something around meeting their  
14 needs, including a cash component, but no capped components  
15 for calculating care needs around those who had actually  
16 been seriously hurt and who were still affected.

17  
18 Q. Well, if we go back to tab I, which I just took you  
19 to, this is your advice to your clients on 30 April. You  
20 are referring to the components of the settlement of  
21 \$5 million, if we can go to the next page. You say there  
22 in (iv):

23  
24 *If a cash element is to be allowed for it*  
25 *must be kept as the smallest possible*  
26 *component so that the overall outcome is*  
27 *a non legal non-damages constructive result*  
28 *which does not sanction the use of the*  
29 *Court system or reflect adversely on the*  
30 *reputation of the Order more than is*  
31 *absolutely necessary.*

32  
33 Do you see that?

34 A. Yes.

35  
36 Q. The reason there was a surplus was because the men  
37 were generally reluctant to go, as Mr Stephens said, cap in  
38 hand back to the Christian Brothers via the trust mechanism  
39 to have their individual needs assessed and met or not met.  
40 Isn't that right?

41 A. I don't know. I wasn't involved in the administration  
42 of the trust. But I - my idea was that Slater & Gordon,  
43 Hayden and the others who had worked with the men, would  
44 know who needed what and, hopefully, help the expeditious  
45 calculation of what was required and allowed for under the  
46 trust in an equitable and cost-effective way.

47

1 Q. They, of course, weren't trustees, were they,  
2 Mr Gordon or Mr Rush?  
3 A. Yes.  
4  
5 Q. No, they weren't trustees.  
6 A. Oh, weren't they?  
7  
8 Q. No. Certainly Mr Stephens was a trustee.  
9 A. I think Mr Rush was a trustee at one stage.  
10  
11 Q. Well, the documents will --  
12  
13 THE CHAIR: I think he might have been the adviser to the  
14 trustees.  
15  
16 MS FURNESS: Q. He was a decision-maker under the trust  
17 but not a trustee.  
18 A. I stand to be corrected.  
19  
20 Q. Peter McGowan was of course a trustee.  
21 A. Yes.  
22  
23 Q. He was representing the Christian Brothers' interests  
24 on the trust?  
25 A. Yes.  
26  
27 Q. You understand that?  
28 A. Yes, I do.  
29  
30 Q. Just coming to paragraph 78 of your statement --  
31  
32 THE CHAIR: Q. Mr Harrison, who was the insured under  
33 the CCI policy?  
34 A. I think the Trustees of the Christian Brothers, a body  
35 corporate pursuant to the 1942 Act, and the congregational  
36 leader and servants or agents.  
37  
38 Q. It does make the debate in the Court of Appeal  
39 somewhat ironic, doesn't it? Because there the Brothers  
40 were saying, "No, there is nothing you can sue", yet there  
41 was an entity that was insured.  
42 A. Now, your Honour, I can't remember whether the  
43 Brothers were saying that or whether the Archbishop of  
44 Perth was saying that. I always felt we were slow to go  
45 down the Ellis v Pell road, but I, your Honour, can't  
46 remember.  
47

1 MS FURNESS: Q. When you say "slow to", you did, didn't  
2 you?

3 A. I don't think we pleaded it or --  
4

5 Q. No, but it was clearly one of the two challenges in  
6 the litigation for the plaintiffs because of the issue of  
7 who the proper defendant was. Isn't that right?

8 A. Yes.  
9

10 Q. You might have been slow, but you got there in the  
11 end, didn't you, Mr Harrison, by using that argument to  
12 affect the plaintiffs' chance of success.

13 A. Yes.  
14

15 THE CHAIR: Q. It is a bit ironic, then, isn't it, that  
16 you can recover \$2.5 million --

17 A. No, your Honour, in 1986 the Roman Catholic Church Act  
18 was amended by Terry Sheahan to give that entity a capacity  
19 to be involved in operational responsibility for schools,  
20 so that - I'm talking about policies written after the 1986  
21 changes, after which *Ellis v Pell* is academic. These,  
22 your Honour, are all issues to do with old cases and lack  
23 of incorporated entities which is, your Honour, a common  
24 problem in personal injury litigation elsewhere - finding  
25 the management committee to sue decades after the event.  
26

27 Q. But the \$2.5 million wasn't just for management  
28 failure after the amendment to the Act, was it?

29 A. No, but it was a claims-made cover for an entity now  
30 in respect of alleged historic responsibility.  
31

32 Q. Negligence that took place in the past?

33 A. Correct.  
34

35 Q. So a vehicle for the movement of insurance money came  
36 into existence, but the Order were saying "No, there is  
37 nothing you can sue"?

38 A. I'm just a bit resistant, your Honour, to completely  
39 agree with that latter proposition. But I don't cavil with  
40 your Honour.  
41

42 THE CHAIR: No, all right.  
43

44 MS FURNESS: Q. Just turning to paragraph 78 of your  
45 statement, this is in relation to costs, Mr Harrison. You  
46 say there that the defendants' costs and disbursements  
47 would obviously have been significant and you estimate at

1 no less than \$1.5 million. Surely you found out for the  
2 purposes of these proceedings, Mr Harrison, haven't you?  
3 A. Ms Furness, I haven't been able to. Look, there were  
4 counsel, senior counsel in Melbourne. The short answer is,  
5 I have to make further inquiries and write to the  
6 Commission about that.

7

8 Q. Would you do that?

9 A. Yes.

10

11 Q. As you sit there now, your costs were far in excess of  
12 \$1.5 million, weren't they?

13 A. Let me check.

14

15 Q. Certainly. I would appreciate if you would  
16 communicate that, Mr Harrison. Thank you. I have nothing  
17 further.

18

19 MR O'SULLIVAN: I have nothing, your Honour.

20

21 <EXAMINATION BY MS NEEDHAM:

22

23 MS NEEDHAM: Q. Mr Harrison, you have been asked some  
24 questions and given some answers about the difficulties  
25 faced by Carroll & O'Dea in responding at an early stage to  
26 the way in which these proceedings were commenced. In your  
27 statement you provide a reference to an affidavit which you  
28 swore at the time. Perhaps I can show the witness  
29 a document. Mr Harrison, is that a copy of your affidavit  
30 of 25 March 1994?

31 A. Yes.

32

33 Q. Did you swear this in relation to the New South Wales  
34 proceedings?

35 A. Yes.

36

37 Q. Do you recall what the purpose of this affidavit was?

38 A. I think there was an issue before Mr Justice Levine in  
39 which we were trying to put evidence before his Honour of  
40 the efforts made to obtain some particulars and access to  
41 pleadings in the proceedings to that point in time.

42

43 Q. When you say "particulars", are you using that term in  
44 the formal adjunct to pleadings sense, or are you referring  
45 to a broader picture of knowing what these claims were  
46 about?

47 A. Correct, a broader picture.

1  
2 Q. This was sworn some six months after the proceedings  
3 were commenced?  
4 A. Yes.  
5  
6 Q. Looking through that affidavit, you say in paragraph 2  
7 that you became aware of press reports which alerted you to  
8 the filing of the proceedings. Do you see that?  
9 A. Yes.  
10  
11 Q. Is that consistent with your evidence given to this  
12 Commission, that that's how you found out about these  
13 proceedings?  
14 A. Yes.  
15  
16 Q. And then you sought, in paragraph 5, some information  
17 from Mr Gordon by telephone. Do you remember that  
18 conversation, now having refreshed your memory from this  
19 affidavit?  
20 A. Not very clearly.  
21  
22 Q. But do you see there Mr Gordon said, when you  
23 requested copies of the pleadings, firstly, to see who the  
24 defendants are, as one matter. He said that he could not  
25 provide that information at that stage?  
26 A. Yes.  
27  
28 Q. And in October, paragraph 8, you had a further  
29 conversation with a solicitor acting on behalf of the  
30 plaintiffs, and you sought a sample of the summons or  
31 statement of claim. Do you see that in paragraph 8?  
32 A. Yes.  
33  
34 Q. Having read that affidavit, does that refresh your  
35 memory of that conversation?  
36 A. Yes.  
37  
38 Q. Do you remember Ms Farrell's reply?  
39 A. Yes.  
40  
41 Q. She said, "We cannot let you have the copies of these  
42 documents now but we are writing to you."  
43 A. Yes.  
44  
45 Q. You were asked some questions yesterday about  
46 Mr Stephens' evidence that he asked, prior to the  
47 proceedings commencing, for details of who should be sued.

1 A. Yes.  
2  
3 Q. I think you gave evidence that you weren't able to  
4 remember any such request. Having read the letter which is  
5 attached at annexure B dated 15 October 1993, which has the  
6 Ringtail reference 0124, do you now have a recollection of  
7 being asked about the status of the defendant?  
8 A. Yes, I do.  
9  
10 Q. And do you wish to correct your evidence to the  
11 Royal Commission or give some context to the evidence you  
12 gave to the Royal Commission in relation to that letter?  
13 A. Yes. No, I would like to confirm that we did receive  
14 this request, which I did not recall yesterday, and we  
15 acknowledged receipt, but I cannot recall and do not  
16 believe there was ever any substantive response from our  
17 end.  
18  
19 Q. That was after the filing of the 240 claims in  
20 New South Wales.  
21 A. Yes.  
22  
23 Q. But before the filing of the Victorian proceedings; is  
24 that right?  
25 A. Yes.  
26  
27 Q. You will see from paragraph 11 of your affidavit that  
28 the first time you received an unsealed draft of the  
29 summons was on 4 November?  
30 A. Yes.  
31  
32 Q. Was that the only document which you had received at  
33 that point?  
34 A. Yes.  
35  
36 Q. And did that assist you with the details of the  
37 brothers against whom allegations were made?  
38 A. Not particularly.  
39  
40 Q. Or did it assist you with the kinds of sexual or other  
41 abuse which had been suffered by the particular plaintiffs?  
42 A. No.  
43  
44 Q. And did it assist you with the numbers of persons who  
45 had claimed sexual or physical, or claimed a combination of  
46 those abuses?  
47 A. No.

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Q. You were able, in November 1993, looking at paragraph 16, to examine the Slater & Gordon documents by permission of a registrar of the Supreme Court; is that correct?

A. Yes.

Q. Again, did that assist you with anything more than the names of the plaintiffs?

A. No.

Q. In paragraph 19 do you see that the summonses were formally served on you on 18 February?

A. Yes.

Q. And again, they contained no further detail as to the allegations made against the brothers at that point?

A. Yes.

Q. But that service of those summonses did assist you with the names of the plaintiffs?

A. Yes.

Q. And taking you to annexure L, which has the extension 0158 at the end of it, you will see there there is a letter from Slater & Gordon to you, naming some of the plaintiffs, they being, I think, referred to as the lead plaintiffs.

A. Yes.

Q. And it says:

*We enclose master statement of claim in relation to the above matter .*

Do you see that?

A. Yes, what date is that?

Q. And again on 28 February you received a further letter --

A. Yes.

Q. It says, about two-thirds of the way down the page:

*We enclose the following documentation for your attention: copy of master statement of claim.*



1 Do you see that?

2 A. Yes.

3

4 Q. It appears that those two letters were in response to  
5 the letter which appears at 0160, which is a letter from  
6 your firm to Slater & Gordon seeking a copy of the master  
7 statement of claim, seeking annexures of summonses setting  
8 out the full list of defendants; do you see that?

9 A. Yes.

10

11 Q. And the medical reports in support of the plaintiffs'  
12 allegations. Now, just pausing there, did you ever receive  
13 any medical reports which were not sought in the context of  
14 the cross-vesting application before Justice Levine?

15 A. I don't believe - no. I think there were medical  
16 reports in relation to the cross-vesting matters in  
17 Victoria and medical reports in relation to the six lead  
18 plaintiff cases, and I think that was - they were the only  
19 medical - they were the only cases in which medical  
20 material was provided.

21

22 Q. So by the time you settled the proceedings, you still  
23 weren't aware of the full extent of the medical or  
24 psychiatric issues suffered by the plaintiffs?

25 A. No.

26

27 Q. You will see from the references in those three  
28 letters to which I have taken you, to the master statement  
29 of claim, if you turn to page 0162, which appears to be  
30 annexure N, I think - do you see that's the master  
31 statement of claim?

32 A. Yes.

33

34 Q. And given that that is attached to an affidavit sworn  
35 on 25 March 1994, is that likely the master statement of  
36 claim which you received at that time?

37 A. Yes.

38

39 Q. To your understanding, and looking at that document,  
40 was that document ever filed to your notice, as at 25 March  
41 1994?

42 A. Look, I don't think so. I don't think the Supreme  
43 Court registry accepts master statements of claim. I'm  
44 not - I have no memory of ever seeing a statement of claim  
45 with a stamp on it. But I don't - anything's possible.

46

47 Q. And, again, did that statement of claim assist you in

1 relation to the particulars of any person's claim other  
2 than a person referred to in that master statement of claim  
3 as "AL"?

4 A. No.

5  
6 MS NEEDHAM: I will seek to tender that affidavit,  
7 your Honour, through my learned friend.

8  
9 THE CHAIR: Yes, we will mark it as exhibit 11-23.

10  
11 **EXHIBIT #11-23 AFFIDAVIT OF HOWARD HARRISON**  
12 **SWORN 25/03/1994**

13  
14 MS NEEDHAM: Q. You were asked some questions about the  
15 position relating to Brother Coldrey yesterday, and you  
16 recall that you were shown a document which demonstrated  
17 that Brother Coldrey was appointed by Carroll & O'Dea to  
18 undertake research for that firm. Do you recall that  
19 document?

20 A. Yes.

21  
22 Q. Can you assist the Royal Commission with the purpose  
23 of the research for which Brother Coldrey was appointed?

24 A. Brother Coldrey was appointed to assist us in  
25 researching documents, identifying where documents were and  
26 generally, I think, informing us or assisting us to try to  
27 understand what these claims were all about.

28  
29 Q. And you had undertaken or were to undertake some other  
30 investigations through junior counsel --

31 A. Correct.

32  
33 Q. -- inspecting documents?

34 A. Correct.

35  
36 Q. And I think you have given an outline of the kind of  
37 steps that were taken for investigation of the records of  
38 the Brothers in your statement?

39 A. Yes.

40  
41 Q. In answer to my learned friend Ms Furness about the  
42 purpose of Brother Coldrey's appointment, you were asked  
43 whether that was so as to protect the work done by  
44 Brother Coldrey by means of legal professional privilege.  
45 Now, firstly, in your understanding, even if that was so,  
46 would it protect the source documents themselves?

47 A. No.

1  
2 Q. Did it protect, in a sense, the work done by  
3 Brother Coldrey for the Brothers?  
4 A. No.  
5  
6 Q. You gave evidence that your recollection was you  
7 received "Reaping the Whirlwind" after that appointment of  
8 Brother Coldrey?  
9 A. Yes.  
10  
11 Q. Do you have a recollection as to whether that document  
12 was created pursuant to the appointment to Carroll & O'Dea?  
13 A. No, it wasn't.  
14  
15 Q. How did it come into your possession?  
16 A. It just arrived on my desk.  
17  
18 Q. Did you regard that document as being legally  
19 professionally privileged?  
20 A. No.  
21  
22 Q. When you received a subpoena - and perhaps I can hand  
23 up a copy of that subpoena --  
24  
25 THE CHAIR: Ms Needham, is the point that it was provided,  
26 although perhaps it need not have been? Is that the point?  
27  
28 MS NEEDHAM: The point is that it was provided, there was  
29 no point of privilege taken.  
30  
31 THE CHAIR: I think we know that, and I think it could be  
32 said that not every lawyer would have taken that position,  
33 without debate.  
34  
35 MS NEEDHAM: Indeed, your Honour.  
36  
37 THE CHAIR: If that is the point, we understand.  
38  
39 MS NEEDHAM: Thank you, your Honour. I would be happy, in  
40 the interests of the questions that were asked, for that  
41 subpoena to be tendered into evidence, if that were  
42 possible  
43  
44 MS FURNESS: There is no issue that the document arrived  
45 on Mr Harrison's desk and he produced it in accordance with  
46 the subpoena. There is no issue about that at all.  
47

1 THE CHAIR: When I say not every lawyer would have taken  
2 that position, some would have debated it, but they would  
3 have lost the debate. I think you were legally right.  
4 But, nevertheless, some would have argued about it.

5  
6 MS NEEDHAM: Thank you, your Honour.

7  
8 THE WITNESS: The Brothers might be pleased to hear that  
9 from your Honour.

10  
11 MS NEEDHAM: There was some discussion about whether the  
12 receipt of the document was before or after 26 April when  
13 Brother Coldrey was appointed. If that's also not  
14 contested or not an issue, then I am happy to have the  
15 matter stand there.

16  
17 THE CHAIR: Ms Furness?

18  
19 MS FURNESS: Does the document that my friend is seeking  
20 to tender go to whether or not the discussion with  
21 Brother Coldrey was before 26 April?

22  
23 MS NEEDHAM: No, it is the production of the document  
24 after 26 April.

25  
26 THE CHAIR: It is produced to Mr Harrison after the 26th  
27 but not pursuant to his request; is that what it amounts  
28 to?

29  
30 MS NEEDHAM: Yes

31  
32 MS FURNESS: I am happy with that, your Honour.

33  
34 MS NEEDHAM: Thank you.

35  
36 THE CHAIR: I don't think we need the document.

37  
38 MS NEEDHAM: Thank you, your Honour. The less paper the  
39 better, I think.

40  
41 Q. You were asked some questions also about the mediation  
42 of these claims, and your suggestion in December 1994 to  
43 your client that mediation would be a possibility. You  
44 also mentioned some difficulties in the way of reaching  
45 that point as at that time. If I could put a number of  
46 things to you, and if you could comment on whether these  
47 were matters which affected your understanding as at late

1 1994 of the ability of the Brothers to enter into  
2 a meaningful mediation of these claims. Now, the first was  
3 the fact that you were dealing with insurers?

4 A. Yes.

5

6 Q. Was there an issue about accepting or not accepting  
7 liability in relation to those insurers?

8 A. Yes.

9

10 Q. Were there the factors that I've taken you to in your  
11 affidavit as to the particular knowledge, leaving aside the  
12 general knowledge you had of the conduct of the brothers at  
13 these four institutions, of the Brothers in relation to  
14 these particular plaintiffs at the time?

15 A. Yes.

16

17 Q. Was there also an issue as to the fact that there were  
18 other defendants to these claims?

19 A. Yes.

20

21 Q. Were they represented by you?

22 A. No.

23

24 Q. And some of those other represented defendants were in  
25 fact not members of the Catholic Church bodies?

26 A. Correct. And the settlement was funded completely by  
27 the Christian Brothers. I was unable to get contribution  
28 from any other party.

29

30 Q. And again, at December 1994, as was the case in March  
31 1994, you still had not received any medical reports  
32 which --

33 A. Correct.

34

35 Q. -- demonstrated the effect. I think you have also  
36 mentioned to his Honour the development in understanding  
37 that you, as somebody working in this area, have had since  
38 the early 1990s as to the devastating effect of sexual  
39 abuse upon people who have been abused.

40 A. Correct.

41

42 Q. Is it the case that if you were faced with these  
43 matters now, that you would be more willing to move to  
44 a mediated outcome rather than advising the matters that  
45 you did to the brothers?

46 A. Correct. I think his Honour's suggestion about  
47 engaging a former senior judge into the process early on

1 would be something which I would certainly embrace.

2

3 THE CHAIR: Q. The learning from this, isn't it, is that  
4 the essence of the allegations are true - many, many people  
5 were horribly treated in these institutions. That's the  
6 starting point.

7 A. (Witness nods).

8

9 Q. The learning also tells us that that abuse has had  
10 lifelong impacts for many people and compromised their  
11 health and compromised their employment, compromised their  
12 families and every aspect of their lives can be affected by  
13 this.

14 A. (Witness nods).

15

16 Q. And it teaches us that whatever be the corporate  
17 structure of the organisation that was responsible for  
18 managing the facilities, there is an overriding moral  
19 response that is required from those institutions. We  
20 learn all that, don't we?

21 A. We did, your Honour, and we learnt a lot during those  
22 years.

23

24 Q. I understand that, but that is where we have come to.  
25 And a common law response that you went through - this is  
26 not said critically at this stage - is just not an adequate  
27 way --

28 A. The legal solution was no solution.

29

30 Q. No. And we have to find a different way of dealing  
31 with the problems.

32 A. Yes.

33

34 MS NEEDHAM: Q. Perhaps I will move now to take up that  
35 point. Do you still act for the Christian Brothers?

36 A. On the East Coast.

37

38 Q. So Victoria, New South Wales, Queensland?

39 A. Correct.

40

41 Q. Tasmania?

42 A. No, unfortunately.

43

44 Q. Over the last, say, decade, has there been a change in  
45 the attitude of the way in which these claims are treated?

46 A. Yes.

47

1 Q. Since this civil litigation was settled, Towards  
2 Healing has come into operation?  
3 A. Yes.  
4  
5 Q. Are you, as a representative of the Eastern Seaboard  
6 Christian Brothers, involved in the Towards Healing  
7 application?  
8 A. Not normally.  
9  
10 Q. Do you receive approaches from people - I understand  
11 this is not in the context of these WA institutions but  
12 generally people who have been the subject of abuse at the  
13 hands of the Christian Brothers --  
14 A. Yes.  
15  
16 Q. -- do those approaches come directly, or through  
17 lawyers, or both?  
18 A. Usually through lawyers.  
19  
20 Q. Is there a way in which you approach, on your  
21 instructions, these claims which differs from the outcome  
22 which was reached in 1993?  
23 A. Very much.  
24  
25 MS FURNESS: 1993?  
26  
27 MS NEEDHAM: Q. 1993 to 1996?  
28 A. Yes.  
29  
30 Q. Firstly, if you are approached by someone directly,  
31 what is your reaction to that person in relation to legal  
32 representation?  
33 A. Christian Brothers' reaction or my reaction?  
34  
35 Q. Yours, on the instructions from the  
36 Christian Brothers?  
37 A. Look, fundamentally, firstly, to encourage the victim  
38 to get legal representation; secondly, to allow the victim  
39 to choose the space that they are comfortable with to deal  
40 with the matter - that is, the courts, unlitigated, Towards  
41 Healing, community centre - to operate and to seek to deal  
42 with the matter in the space that they choose.  
43  
44 Q. Just stepping back a little bit, dealing with the  
45 lawyers, do you, as the Christian Brothers' lawyer, assist  
46 a person who is unrepresented in finding legal  
47 representation?

1 A. Look, we are cautious about nominating lawyers, but we  
2 often will identify a number of lawyers who have experience  
3 in the clerical abuse arena, and the Brothers will fund  
4 that representation. Quite often I need to speak to the  
5 lawyer to just get some agreement about the nature of the  
6 funding, but the idea is that the victim should be  
7 represented for advocacy purposes and otherwise, and that  
8 that should be funded by the Brothers, which it is.

9  
10 Q. Is that the case if they choose someone from lawyers  
11 suggested to them, or whether they go outside those  
12 suggested?

13 A. Wherever they go.

14  
15 Q. So the Brothers will pay for legal representation for  
16 victims?

17 A. Correct. Subject to the issue of reasonableness.

18  
19 Q. Are you aware of the Brothers' approach to apologies  
20 in this context?

21 A. Well, when the victim is ready - and you can only  
22 settle cases when the victim is ready - then we will  
23 consult with the lawyers on the other side about the nature  
24 of some form of mediation process, where it should be,  
25 where it shouldn't be, mediator, male or female, and  
26 whether or not having a senior member of the Brothers there  
27 would be of assistance. Generally it is, and generally,  
28 even in the most contentious, litigious matters a meeting  
29 involving Brother Julian or Brother Brian or another senior  
30 representative with the victim to validate their complaint  
31 and to let them know that they don't have to prove  
32 anything, and to apologise as a part of that process.

33  
34 Sometimes, the victim will want something in writing;  
35 sometimes they don't. Sometimes they will not want to see  
36 a brother. But that is on the table as a part of the  
37 process, and quite often, a very positive outcome is  
38 achieved.

39  
40 Q. And is the victim, through their lawyers or otherwise,  
41 consulted in the kind of approach that is taken as to  
42 whether a brother apologises to them personally or not?

43 A. The whole way you have to be guided by the victim and  
44 the victim's lawyers as to what you do and how you do it  
45 and when you do it.

46  
47 Q. And you say that the Brothers, and through them you,



1 let the victim choose their space. Can you give more  
2 details about that?

3 A. There may be situations, for example, where lawyers,  
4 particularly these days, would want to seek information  
5 about who the defendant is and file a pleading, pursue  
6 a case through a court. Fine. It might be a situation  
7 where the victim really wants to deal with this matter next  
8 week, very quickly, so that we try to behave in accordance  
9 with the philosophy and principles of Towards Healing, in  
10 terms of patience, wisdom, compassion and generosity, in  
11 whatever space the victim chooses. It doesn't always  
12 resolve first time around. That doesn't mean that there is  
13 not some argy-bargy on the way through, but that's the way  
14 we do it, and most of the time we get there.

15

16 Q. And you're a solicitor, I think you've told the  
17 Commission, of some 30 years' experience in common law  
18 matters.

19 A. Yes.

20

21 Q. And you act for plaintiffs as well as defendants?

22 A. Yes.

23

24 Q. Your firm has a significant personal injury practice,  
25 doesn't it?

26 A. Yes.

27

28 Q. In your experience, have there been lessons learned  
29 from the 1996 approach to civil litigation which is now  
30 reflected in the current practice?

31 A. Oh, yes.

32

33 Q. Is one of those lessons that you have learned the  
34 importance of more significant payments to victims?

35 A. Yes. I do support the common law system, your Honour,  
36 of case-by-case analysis of what has occurred, and impact  
37 and need, and so the damages paid, the reparations paid,  
38 the compensation paid varies substantially, depending on  
39 the reality of what you are dealing with and a part of that  
40 is a collegial cooperative approach and access to  
41 information in a cost-effective, non-intrusive way early  
42 on, which is why I made a point about the difficulties of  
43 this class action kind of structure and the barriers that  
44 make it hard to work out what is the right thing to do,  
45 which is really what the Brothers want to do - the right  
46 thing.

47

1 Q. In 1993, when you first received an indication through  
2 the paper of this class action, were you aware that the  
3 Brothers were, at that point, investigating responses to  
4 victims of child sexual abuse in these four particular  
5 institutions?

6 A. Possibly not. I was aware of the ISERV process.  
7 I was aware - I was aware that Brother Faulkner was on to  
8 this, and had been for some time, and was consulting with  
9 people at universities, engaging with former residents, and  
10 did ultimately write a very substantial report on his  
11 reflections on child abuse and he and a number of other  
12 brothers would not have been particularly enthusiastic  
13 about the legal process that occurred and the way it was  
14 managed, and were much happier to see the case ultimately  
15 settled, even if perhaps, with the benefit of hindsight, it  
16 was a somewhat harsh settlement.

17  
18 Q. You were aware of CBERS?

19 A. Yes.  
20

21 Q. Are you aware of how many of the plaintiffs eventually  
22 contacted CBERS?

23 A. Well, there is - I recall in the bundle there is  
24 a letter from Slater & Gordon. An important part of the  
25 settlement with the trust was that there would be no  
26 barrier to continuing with CBERS, and there is reference  
27 made to the fact that 74 - only 74 plaintiffs are actually  
28 working with CBERS, don't worry too much about CBERS. So  
29 there is something there which evidences, as at the time of  
30 the settlement, at least 74 of the Slater & Gordon group  
31 being a part of the CBERS thing, which wouldn't surprise  
32 me.  
33

34 Q. Did you see, or did you become aware of the letter of  
35 27 May 1996 from Slater & Gordon to you, signed by  
36 Mr Stephens, which is now the second letter in  
37 exhibit 11-21, where Slater & Gordon suggested a number of  
38 amendments to the settlement structure, including point 7  
39 in that letter, which was that in entering into the  
40 settlement the Christian Brothers should, in effect,  
41 undertake no offers of settlement to any other claimants  
42 and no gratuities beyond pre-existing schemes, for example,  
43 CBERS, for some three years. Do you recall receiving that  
44 letter?

45 A. Yes.  
46

47 Q. What was your reaction to that paragraph?

1 A. That the Brothers couldn't do that and wouldn't do it.  
2 They would not agree to that. They had to be free to deal  
3 with other people who came forward unrestricted by such  
4 a request.

5

6 Q. Did you hear Mr Stephens' evidence that there was  
7 a conversation involving a fear, an alleged fear, on the  
8 part of Slater & Gordon, that their clients would be  
9 punished in some way by the Christian Brothers, and that  
10 was the purpose of this proposed clause?

11 A. Yes. I don't know where Hayden was coming from on  
12 that one.

13

14 Q. Is that something that you would have remembered, if  
15 you had had that conversation?

16 A. I have no memory.

17

18 Q. In the end, that clause did not find its way into the  
19 trust settlement?

20 A. No.

21

22 MS NEEDHAM: Thank you. There are no further questions,  
23 your Honour.

24

25 MS FURNESS: Your Honour, I tender the folder that  
26 I provided to the witness and others yesterday.

27

28 THE CHAIR: We will make that folder of correspondence and  
29 other documents exhibit 11-24.

30

31 MS FURNESS: For convenience, we might call it tender  
32 bundle volume 3

33

34 **EXHIBIT #11-24 TENDER BUNDLE VOLUME 3**

35

36 MS FURNESS: I have no further questions of the witness.

37

38 THE CHAIR: Q. Mr Harrison, we don't have, but we might  
39 ask for, the financial understanding of the  
40 Christian Brothers. But I take it, through all of this,  
41 there was no suggestion made to you that the Brothers  
42 couldn't afford to make a proper financial response to  
43 anyone's claim?

44 A. No, your Honour.

45

46 Q. And that there would be substantial assets and  
47 capacity to pay?

1 A. I would expect so, your Honour.  
2  
3 THE CHAIR: Thank you.  
4  
5 MS FURNESS: Thank you, your Honour. Thank you,  
6 Mr Harrison.  
7  
8 THE CHAIR: Thank you, Mr Harrison. You are excused.  
9  
10 **<THE WITNESS WITHDREW**  
11  
12 MS FURNESS: Your Honour, it might be convenient to take  
13 the morning tea adjournment before the next witness.  
14  
15 THE CHAIR: Shortly.  
16  
17 MS FURNESS: A short morning tea adjournment before the  
18 next witness. Perhaps 25 past, your Honour.  
19  
20 THE CHAIR: Yes, thank you.  
21  
22 **SHORT ADJOURNMENT**  
23  
24 MS FURNESS: Your Honour, I call Narrell Lethorn, who is  
25 in the witness box.  
26  
27 **<NARRELL DONNA LETHORN, affirmed: [11.29am]**  
28  
29 **<EXAMINATION BY MS FURNESS:**  
30  
31 MS FURNESS: Q. Would you tell the Royal Commission your  
32 full name and occupation?  
33 A. Sure. Narrell Donna Lethorn. I work as director at  
34 the Department of Local Government and Communities.  
35  
36 Q. Ms Lethorn, if you need to take a break for any  
37 reason, just indicate.  
38 A. Thank you.  
39  
40 Q. You have provided a statement to assist the  
41 Royal Commission?  
42 A. Yes.  
43  
44 Q. Are the contents of that statement true and correct?  
45 A. Yes, they are.  
46  
47 MS FURNESS: I tender that statement.

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THE CHAIR: Exhibit 11-25.

**EXHIBIT #11-25 STATEMENT OF NARRELL DONNA LETHORN**

MS FURNESS: Ms Lethorn's statement is behind tab 15 in volume 4 of your Honour's and volume 2 of the Commissioners' folders, and there is a separate folder with the annexures.

Q. Ms Lethorn, your current position is director of the office of the director-general of the Department of Local Government and Communities?

A. Correct.

Q. You have been in the department since February 2011?

A. I've been in that position, because we are a new department that has come together, since about last July.

Q. You had some personal involvement in a professional capacity with Redress WA?

A. Yes, that's correct.

Q. What was that personal or professional involvement?

A. Sure. So when I first commenced at the former Department for Communities I was given, I guess, a bit of a briefing from the executive director at the time of Redress in anticipation that obviously Redress was coming to a close and that I would be involved in the sort of, I guess, wind-up process from an administrative point of view and would take carriage of that going forward once the scheme had closed.

Q. And in order to prepare the statement, you have accessed documents that indicate how the scheme operated before your involvement?

A. That's right. So that's gleaned from the documents that I have obviously provided and also from, obviously, the briefings I've had from the various staff that worked on Redress.

Q. And those briefings were for the purpose of preparing your statement?

A. Those briefings were to put me in a place to take over. I haven't had a chance to speak to anybody from Redress to put this together. I've just gleaned that from what I've had, those previous briefings.

1  
2 Q. I will come later to the detail of it, but in  
3 September 2012 you became director of the Country High  
4 School Hostels Ex-Gratia Scheme - that's right?  
5 A. That's right, yes.  
6  
7 Q. That arose out of the Katanning inquiry?  
8 A. That's right, yes.  
9  
10 Q. Can we deal with Redress WA and then I want to take  
11 you to some information about that scheme as well.  
12 A. Sure.  
13  
14 Q. If we can refer to paragraph 21 of your statement -  
15 and it will be on the screen in front of you, Ms Lethorn.  
16 You say there that in 2004, following a senate inquiry  
17 known as the Forgotten Australians report, there was  
18 a recommendation that there be a national reparations fund?  
19 A. Yes.  
20  
21 Q. Is that right?  
22 A. Yes.  
23  
24 Q. There were earlier national inquiries that made  
25 similar recommendations for some form of monetary redress,  
26 the provision of an apology and/or memorial or counselling  
27 and support services for victims of historic child abuse?  
28 A. Yes.  
29  
30 Q. And they included the Bringing Them Home report, the  
31 2001 report of the Senate Community Affairs Reference  
32 Committee known as the "Lost Innocents"?  
33 A. Yes that's correct.  
34  
35 Q. The Western Australian Government's response to those  
36 recommendations was to establish Redress WA?  
37 A. That's right, yes.  
38  
39 Q. Those recommendations and those reports were the only  
40 basis upon which the government decided to establish  
41 Redress WA?  
42 A. That's my understanding, yes.  
43  
44 Q. You have set out in paragraph 26 the broad objectives  
45 of the scheme, and that was, firstly, to make ex gratia  
46 payments?  
47 A. Mmm-hmm.

1  
2 Q. Secondly, to acknowledge the experience of applicants  
3 through an apology?  
4 A. Mmm-hmm, yes.  
5  
6 Q. And the erection of a memorial, and to provide support  
7 and counselling services, as well as to report alleged  
8 perpetrators to the police.  
9 A. Yes, that's correct.  
10  
11 Q. In terms of the erection of a memorial, has that  
12 happened?  
13 A. Yes, it has.  
14  
15 Q. What form did the memorial take?  
16 A. It is in Northbridge and it is - I'm not sure what you  
17 would call it, but it is when children make the paper  
18 things that you use in your hand to choose a number and  
19 then you choose your destiny, I guess, so to speak, and it  
20 gives some sort of what you may expect, I guess, in the  
21 future. That's what has been erected for the care leavers  
22 in Northbridge.  
23  
24 Q. Was the decision to use that particular story one that  
25 was arrived at after consultation with --  
26 A. Indeed, yes, my understanding is that they did consult  
27 with a number of care leavers to get an idea of what would  
28 be most appropriate and that was what was chosen.  
29  
30 Q. In 2007/2008, when Redress WA was being established,  
31 were there other models available to those working on it to  
32 assist in developing the structure of the scheme?  
33 A. My understanding is that they did quite a bit of  
34 research to see what other models were around, so both  
35 within Australia and internationally, to come up with an  
36 idea of what might best work for Western Australia.  
37  
38 Q. And can you help us with whether or not they adopted  
39 completely another model, or put together a system that was  
40 unique to the Western Australian Redress scheme?  
41 A. I think they probably put one together that was unique  
42 to Western Australia, but of course they would have pulled  
43 on and adopted various points from the other redress-type  
44 schemes.  
45  
46 Q. In December 2007, when it was announced, a budget of  
47 \$114 million was allocated to the scheme.

1 A. That's correct.  
2  
3 Q. Did the department have any input into deciding the  
4 amount, or was it a political decision?  
5 A. My understanding is that they would have put together  
6 some idea of what they would have anticipated in terms of  
7 applications, to give an idea of what might be required to  
8 administer the scheme.  
9  
10 Q. So that reflected some understanding of the numbers  
11 who might come forward.  
12 A. That's what I understand it to be, yes.  
13  
14 Q. Do you know where they gleaned that information about  
15 potential numbers from?  
16 A. Honestly, no, I couldn't say.  
17  
18 Q. The announcement - and I'm at paragraph 33 of your  
19 statement - was that people who experienced abuse or  
20 neglect may receive an ex gratia payment of up to \$10,000,  
21 or, where they could demonstrate that they had experienced  
22 abuse or neglect that resulted in physical or psychological  
23 harm, up to \$80,000. Can you help us with how those  
24 amounts were determined?  
25 A. Yes. Again, my understanding is that they had looked  
26 at other schemes and the other schemes that they had looked  
27 at had a two-level scheme set-up, and so they had  
28 determined, and I understand that may be reflective of  
29 other States where they had 10 and then 80 as the maximum.  
30  
31 Q. Those who were covered by the scheme are set out in  
32 paragraph 34 of your statement. The scheme was open to  
33 anyone who, as a child, had been abused in State care prior  
34 to 1 March 2006. Now, that included child migrants, such  
35 as the men who we have been concerned with?  
36 A. Yes, it did, yes.  
37  
38 Q. As well as the Stolen Generation children?  
39 A. Yes.  
40  
41 Q. Is it also the case that it included what we would now  
42 describe as children in foster care?  
43 A. Yes. Yes, it did.  
44  
45 Q. Indeed, it was put that it wasn't limited to children  
46 who had been wards of the State but those who had been  
47 under the protection of the State.



1 A. Indeed, that's right.  
2  
3 Q. So that included those institutions who were funded or  
4 subsidised in some way by the State which attracted some  
5 monitoring process.  
6 A. That's right. So, in essence, those country high  
7 school hostels were included under Redress.  
8  
9 Q. Was it clear that those country hostel high schools  
10 were under Redress  
11 A. Yes, they did have that in the guidelines, yes.  
12  
13 Q. The scheme was intended to operate so that  
14 applications could be submitted for a period of  
15 12 months, May to May, 2008 to 2009?  
16 A. Yes.  
17  
18 Q. And that all claims were expected to be resolved  
19 by December 2010?  
20 A. That's right.  
21  
22 Q. Again, was that timetable based on experience  
23 elsewhere?  
24 A. I think it was, yes, an indicative time frame that was  
25 put together based on experience elsewhere.  
26  
27 Q. Ultimately, it took an awful lot longer?  
28 A. Indeed, it did, yes.  
29  
30 Q. We will come to the detail of that. In paragraph 38  
31 you set out how the budget was managed. So some  
32 \$24 million was set up for administrative costs?  
33 A. Yes.  
34  
35 Q. And then the remaining 90 was allocated to payments to  
36 eligible applicants. But then, on 29 August, you received  
37 extra funding of \$30 million?  
38 A. Yes, that's right.  
39  
40 Q. And that extra funding, presumably, came from  
41 a recommendation by those administering the scheme that  
42 they needed more money?  
43 A. That's right.  
44  
45 Q. Do you know now whether they sought more than the  
46 \$30 million?  
47 A. No, that's what - that's what they sought.

1  
2 Q. So they got what they asked for?  
3 A. Indeed, yes.  
4  
5 Q. Part of establishing the scheme was a communications  
6 strategy?  
7 A. Yes.  
8  
9 Q. And you set that out in paragraph 40. The  
10 communication strategy was designed to reach as many people  
11 as possible who might fall within the scheme?  
12 A. Yes.  
13  
14 Q. In order to, in the period available, have as many  
15 people come forward as possible.  
16 A. That's correct.  
17  
18 Q. You, I think, chose a strategy that had particular  
19 care to meet with and obtain applications from Aboriginal  
20 people?  
21 A. Yes, that's right, yes. So I understand some of the  
22 Redress officers, I guess, did a bit of a roadshow, in  
23 terms of actually going out to those remote communities and  
24 explaining what Redress was about and how they could apply.  
25  
26 Q. Did you form any view as to whether the numbers of  
27 Aboriginal people who applied were reflective of those who  
28 were eligible?  
29 A. I think so. I mean, I think there was - I think it  
30 ended up being around 50 per cent, close to 50 per cent of  
31 Redress applicants were Aboriginal.  
32  
33 Q. And did that reflect your understanding of their  
34 representation in care?  
35 A. Look, my understanding is, from what I have seen, yes.  
36  
37 Q. You also took care to attract those people who may be  
38 inmates in prisons?  
39 A. Correct, yes.  
40  
41 Q. Were you able to form a view as to how successful or  
42 otherwise you were in those people making applications?  
43 A. Again, from what I've seen, in terms of the breakdown  
44 of applications, I would say it was reasonably successful.  
45  
46 Q. You also had a website and a help desk set up?  
47 A. Yes.

1  
2 Q. Ultimately, 10,000 people expressed an interest in the  
3 scheme?  
4 A. That's correct.  
5  
6 Q. Was that consistent with your expectation?  
7 A. Again, I don't think that it was - they really knew  
8 what to expect, and then what resulted was, whilst 10,000  
9 expressed an interest, there were only 5,917 that actually  
10 applied for Redress.  
11  
12 Q. So shortly over half of those who expressed an  
13 interest?  
14 A. That's right.  
15  
16 Q. And I take it the reasons for the others not  
17 continuing may have been first that they weren't eligible?  
18 A. Eligible, indeed, yes.  
19  
20 Q. And, secondly, they may have, for whatever other  
21 reason, not decided to pursue it?  
22 A. That's right.  
23  
24 Q. Was there any work done with those who rang, but  
25 didn't complete an application, to understand why they  
26 didn't follow through?  
27 A. I understand that they were contacted to ask if they  
28 would be putting in an application. As you said, it was  
29 open for a period of 12 months, yet they did extend that  
30 period as well to allow people more time to put in their  
31 application. So they took all measures they possibly could  
32 to encourage people to apply.  
33  
34 Q. So looking back now, the way in which you communicated  
35 the availability of the scheme to those who might be  
36 applicants was considered to be well done?  
37 A. I think it was reasonably comprehensive, yes.  
38  
39 Q. Any lessons to be learned from the way in which you  
40 set up the communication strategy?  
41 A. I think there is always room for improvement. I think  
42 it is just being clear what is available and actually  
43 keeping potential applicants informed of what is there and  
44 what they need to do and what the deadlines might be.  
45  
46 Q. Did you use social media at all?  
47 A. Not to - no, not that I understand, we didn't, no.

1  
2 Q. That's obviously an area that could be used now to --  
3 A. I think so, yes.  
4  
5 Q. You sent out regular newsletters during the time the  
6 application period was open?  
7 A. That's right, yes.  
8  
9 Q. And you also engaged with external service providers  
10 to bring Redress WA to the attention of potential  
11 applicants. How did you do that? What external service  
12 providers did you use in that regard?  
13 A. Sure. So I understand there was a process whereby the  
14 department at the time, obviously put out, I guess, an  
15 expression of interest for service providers to come  
16 forward, to assist, and there was a bit of a tendering  
17 process around that. And then they were put in place to  
18 then help with promoting the Redress scheme.  
19  
20 Q. What sort of people did you use to help promote the  
21 scheme?  
22 A. To be honest, I couldn't say for sure.  
23  
24 Q. You engaged service providers to provide psychological  
25 counselling if requested by applicants?  
26 A. Yes.  
27  
28 Q. Was that counselling to assist them in the application  
29 process, or to assist them in some other regard?  
30 A. I think just to assist them I think holistically, so  
31 of course coming forward, we didn't want to re-traumatise  
32 the people, the applicants, and so, therefore, they were  
33 offered counselling.  
34  
35 Q. In relation to the process of applying and the  
36 consideration, or more generally?  
37 A. More generally, I would say.  
38  
39 Q. So there wasn't a time limit on the counselling that  
40 was offered in association with Redress WA?  
41 A. No, not that I understand, no.  
42  
43 Q. That could become very expensive, Ms Lethorn.  
44 A. Look, I'm sure it could. I understand that it was  
45 offered - there was about three hours counselling that was  
46 offered and then, should applicants wish to have further,  
47 then they could, by just obviously making an application

1 for that.  
2  
3 Q. So the initial offer was for three hours?  
4 A. That's right, yes.  
5  
6 Q. Then there needed to be some further application  
7 process if they wanted more counselling and it was paid for  
8 by the State?  
9 A. That's my understanding, yes, yes.  
10  
11 Q. You say in paragraph 60 that at the close of the  
12 scheme 75 per cent of applicants had received either  
13 support with their application or counselling services. So  
14 the support with their application was through other than  
15 counsellors; is that right?  
16 A. Yes, that's correct, yes.  
17  
18 Q. And the total spending on those services was  
19 \$3.7 million?  
20 A. Yes.  
21  
22 Q. Those services are counselling but also the  
23 administrative support with helping people make an  
24 application?  
25 A. That's correct, yes.  
26  
27 Q. Did those helping people with application making have  
28 any particular considerations or experience to carry out  
29 that task?  
30 A. I couldn't say for sure, because I didn't know them,  
31 but I suspect that they would have been, yes.  
32  
33 Q. They would have been chosen specifically for the task?  
34 A. That was my understanding, yes.  
35  
36 Q. In paragraph 65 you say that the applications opened  
37 on 1 May, and ultimately when it closed was extended to  
38 30 June 2009?  
39 A. Yes.  
40  
41 Q. And that was because of increased interest?  
42 A. I think it was just to allow applicants more time,  
43 should they need it. My understanding is that there were  
44 a number of calls made to the help desk at that time, just  
45 indicating that they wanted to put an application in but  
46 they just felt it was a bit rushed with that.  
47

1 Q. We will come to the detail, but the process of putting  
2 in an application was actually somewhat lengthy, wasn't it?  
3 It wasn't simply writing an account? Documents had to be  
4 obtained and the like?

5 A. They essentially had an application form to fill out  
6 and then a statement around what their experience had been,  
7 which was laid out reasonably well in the form. And - they  
8 didn't have to have any psychological reports, but if they  
9 chose to attach them, that was up to them.

10

11 Q. You say that 5,917 applications were received and  
12 assessed and 5,325 offers of payment were made?

13 A. Yes.

14

15 Q. Is it the case that the 500-odd who didn't receive an  
16 offer of payment were not eligible?

17 A. Correct, yes.

18

19 Q. You developed guidelines initially, and as time went  
20 on revised those guidelines?

21 A. Yes.

22

23 Q. And the key revisions were made in February 2010?

24 A. Yes.

25

26 Q. And if we can look at paragraph 73, you note the major  
27 changes were to restructure the assessment process and the  
28 decision to reduce the maximum payment due to the greater  
29 than expected number of applications relating to severe  
30 abuse and neglect. So just dealing firstly with  
31 restructuring the assessment process, how was that  
32 restructured?

33 A. So my understanding is that, as you indicated before,  
34 there were obviously the two levels of payment, that 10,000  
35 and 80,000, and then once it became clear that there were  
36 applications there, that there was quite a number that were  
37 quite severe, it obviously needed to be looked at in terms  
38 of what would be, I guess - because obviously that amount  
39 was not sustainable, I guess, across the scheme.

40

41 Q. Sorry, let me stop you --

42

43 THE CHAIR: Q. Ms Lethorn, I'm not sure I'm  
44 understanding.

45 A. Okay.

46

47 Q. You say in paragraph 33 that the original decision

1 provided for an ex gratia payment up to \$10,000, or, where  
2 they could demonstrate that they experienced abuse or  
3 neglect that resulted in physical or psychological harm,  
4 then a payment of up to \$80,000.

5 A. Yes.

6  
7 Q. That suggests somewhere between \$10,000 and \$80,000.  
8 It doesn't suggest \$80,000 necessarily.

9 A. No, it doesn't, no.

10  
11 Q. So is that right - the expectation was that there  
12 would be a gradation, depending upon the individual  
13 circumstances, which may be a sum between \$10,000 and  
14 \$80,000, to those who could demonstrate physical or  
15 psychological harm?

16 A. So, yes. I mean, I would suspect that it could be  
17 that.

18  
19 Q. That's what the words seem to say.

20 A. Yes, yes.

21  
22 Q. That doesn't mean there are only two levels of  
23 payment. It means there is an infinite variation between  
24 \$10,000 and \$80,000; is that right?

25 A. You are right, yes.

26  
27 Q. Then I'm having trouble with what you say at  
28 paragraph 118, if we go to that, because you say there that  
29 the revision meant that some people would have got more  
30 than they may have got under the original arrangements.  
31 Now, I have to say to you at the moment that doesn't make  
32 sense to me either, because if there was a scale of between  
33 \$10,000 and \$80,000, along which the damage would be  
34 assessed, the rigidity of the stepped arrangement seems to  
35 me, ultimately, when it is capped at \$45,000, to inevitably  
36 mean that people are getting less money. Is that not  
37 right?

38 A. Again, this is, you know, what I've gleaned from what  
39 I've been told.

40  
41 Q. I appreciate that, but it doesn't make sense, does it?  
42 If you have an infinite scale from \$10,000 to \$80,000, with  
43 a variation along that scale, and you replace it with four  
44 stepped amounts that stop at \$45,000, and have rigid steps  
45 in between, firstly, you are not adjusting to accommodate  
46 to the particular circumstances --

47 A. Yes.

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Q. -- but, secondly, it is very hard to see how you would get more under the revised scheme, ever, than you might have got under the original scheme?

A. I guess where I am coming from with that is looking at should an applicant have got \$10,000 under that former scheme, under the scheme that was then put in place, there were levels there where they could have got a lot higher amounts, I think - at level 2 and 3 for redress.

Q. But they had to prove damage to get the higher amounts, didn't they - psychological or physical damage?

A. All the applications were assessed based on four different areas, so psychological, physical, sexual and neglect, yes.

Q. So to get above the \$10,000, on either scheme, you had to prove or satisfy the assessment process that you had suffered that damage, and then, under the original one, you would be assessed as an amount of money on a scale up to \$80,000. The revised one fixed the maximum as \$45,000 --

A. Yes.

Q. -- and then put in rigid steps along the way.

A. Yes, no, I understand, yes.

Q. It seems impossible to believe that anyone would have got more money under the revised scheme than they would have got under the original one. Isn't that right?

A. I can understand what you are saying, yes. Yes.

Q. I appreciate you may have been told things, but --

A. Yes.

Q. -- can I suggest to you paragraph 118, if you were told that, just doesn't make sense. Do you understand what I mean?

A. Yes, no, I do understand, yes.

MS FURNESS: Q. Was it the case in practice that the payments were made not on a graded sense, but if you fit one or the other criteria, you got \$10,000 or you got \$80,000, or as it was reduced, you got \$45,000; is that right?

A. That's my understanding.

Q. So, in fact, the most serious payments were not



1 determined between 10 and 80, you got 80 or you got 45?  
2 A. Yes, that's correct.  
3  
4 THE CHAIR: Q. That's not what the words of paragraph 33  
5 say.  
6 A. I understand, yes.  
7  
8 MS FURNESS: Q. But the practice differed from the  
9 words?  
10 A. You are right, yes.  
11  
12 Q. Because certainly the application form refers to again  
13 ex gratia payments of up to \$10,000 and up to \$80,000, but  
14 the way it was administered was, if you met the criteria,  
15 you got the large amount, not anything less?  
16 A. That's right, yes.  
17  
18 THE CHAIR: Q. Is that what ran it into an expectation  
19 of financial trouble, because it wasn't being administered  
20 in accordance with its original intention?  
21 A. Look, I honestly couldn't say for sure.  
22  
23 MS FURNESS: Q. So the restructuring of the assessment  
24 process was part of the decision to reduce the amount; is  
25 that right? The two went hand in hand?  
26 A. Sorry?  
27  
28 Q. The restructuring of the assessment process went  
29 together with the decision to reduce the amount?  
30 A. Yes, that's right, yes.  
31  
32 Q. The amount of the maximum payment?  
33 A. That's right, yes, yes.  
34  
35 Q. The decision to reduce the amount was a bureaucratic  
36 decision or bureaucratic recommendation, or a political  
37 decision?  
38 A. Look, I would say that, you know, obviously it wasn't  
39 an easy decision to make. It would be - they would have  
40 looked at it and seen that the allocated budget couldn't  
41 sustain that potential \$80,000 payment, so it was  
42 a government policy decision.  
43  
44 Q. So it was a recommendation by those within the  
45 department administering the scheme that went up the chain  
46 of command to the minister; is that right?  
47 A. That would be my understanding, yes.

1  
2 THE CHAIR: Q. Well, the impression I get from your  
3 statement, though, is that it worked slightly the other  
4 way. It was realised that the amount allocated wouldn't be  
5 enough.  
6 A. Yes.  
7  
8 Q. And then the politicians or the minister said to the  
9 bureaucrats, "You rework it so that it will be enough" --  
10 A. Yes.  
11  
12 Q. -- "but we're not going to increase the amount of  
13 money"?  
14 A. Yes, so they did ask them to re-look at that. Yes,  
15 the direction came from there for them to restructure the  
16 program --  
17  
18 Q. But stay within the original allocated --  
19 A. Within the original budget, yes.  
20  
21 MS FURNESS: Q. So is it the case that those  
22 administering it told their political masters that they  
23 were going to run out of money if the scheme was structured  
24 as it was initially - is that how it worked?  
25 A. I think they did some sort of assessment and it became  
26 clear that that amount of \$80,000 would be unsustainable.  
27  
28 Q. There are two ways of looking at it. One is it is not  
29 unsustainable if you increase the fund?  
30 A. Indeed, no, you're right, yes.  
31  
32 Q. So that you had a choice of increasing the size of the  
33 fund or reducing the payment and the decision was made to  
34 reduce the payment in order to stay within the original  
35 allocation of the fund?  
36 A. That's my understanding.  
37  
38 Q. Leaving aside the extra \$30 million that was given?  
39 A. Yes.  
40  
41 Q. So was the assessment process restructuring, as you  
42 have described in paragraph 73, to reduce the maximum  
43 payment from \$80,000 to \$45,000?  
44 A. Well, that was part of the restructuring, yes. Yes.  
45  
46 Q. In addition to that, you have set out in paragraph 74  
47 that there was a new division inserted providing for

1 payments in respect of eligible applicants who died during  
2 the application process.  
3 A. Yes.  
4  
5 Q. So after they had put their application in?  
6 A. That's correct, yes.  
7  
8 Q. Because you were dealing with very much an ageing  
9 population?  
10 A. Indeed, yes.  
11  
12 Q. And then in paragraph 75 you indicate that there were  
13 a number of levels assigned - moderate, serious, severe and  
14 very severe. Do you see that?  
15 A. Yes.  
16  
17 Q. Before that change, was it just that there were the  
18 two tiers, those eligible for \$10,000 and those eligible  
19 for \$80,000?  
20 A. That's my understanding, yes, yes.  
21  
22 Q. You say that levels 1 and 2 - that is, moderate and  
23 serious - were assessed by senior Redress officers and  
24 approved by team leaders - that's administrative staff?  
25 A. Correct, yes.  
26  
27 Q. Administrative staff with qualifications?  
28 A. Indeed, yes, they were, yes, yes.  
29  
30 Q. Psychological --  
31 A. Psychological --  
32  
33 Q. -- or social?  
34 A. Indeed, yes.  
35  
36 Q. Just let me finish, because this is being taken down  
37 and we can't speak over each other. So the staff had  
38 either psychological or social work type qualifications to  
39 enable them to make the assessment required?  
40 A. Yes, that's correct. Yes.  
41  
42 Q. And then levels 3 and 4 were assessed by internal  
43 members and approved by the independent review panel.  
44 A. Yes, that's correct.  
45  
46 Q. What do you mean by "internal members"?  
47 A. Internal members - they had some legal representation,

1 so they were lawyers employed within the Redress scheme.

2

3 Q. And who was the independent review panel?

4 A. The independent review panel was made up of various  
5 people with - obviously suitably qualified within child  
6 sexual abuse, so it could have been psychologists or  
7 lawyers or any others that were - that fit that criteria.

8

9 Q. You say that this restructure meant that the  
10 requirement for applicants to provide medical or  
11 psychological reports to be eligible for the maximum  
12 payment fell away. How does that work?

13 A. That was just, I understand, what was put forward when  
14 they came up with the levels, and they felt that that was  
15 something that wasn't necessarily required.

16

17 Q. How could they determine the extent of the impact  
18 without such reports, do you know?

19 A. I couldn't say.

20

21 Q. Turning then to the next paragraph, you say that as  
22 there was no requirement for evidence to be provided and  
23 evaluated, the initial process of conducting formal  
24 conferences was replaced by informal telephone conferences  
25 to finalise applications. Was that put in place, firstly,  
26 because there were more applicants than you expected,  
27 therefore the workload was greater?

28 A. That was always part of the process, so people put in  
29 an application, they would be assessed and then there would  
30 be a follow-up, like, phone calls to those people to give  
31 applicants the opportunity to sort of add any further  
32 details, or for the senior Redress officer to clarify any  
33 details.

34

35 Q. So it was the case that the levels 3 and 4 - that is,  
36 the severe and very severe - were determined by the  
37 internal members through a telephone discussion to form  
38 a view as to whether or not the person was suffering  
39 a severe or very severe --

40 A. That was the senior Redress officers that undertook  
41 those phone calls and they made the recommendation through  
42 to the internal members.

43

44 Q. So the internal members didn't themselves speak to the  
45 individuals?

46 A. Not that I'm aware of, no, no.

47

1 Q. So a recommendation was made by a senior Redress  
2 officer. That's not the way it reads in paragraph 75.  
3 Have a look at paragraph 75. So levels 1 and 2 - that is,  
4 moderate and serious - to be assessed by senior Redress  
5 officers and approved by team leaders; and levels 3 and 4  
6 to be assessed by internal members and approved by  
7 independent review panel.  
8 A. And I agree, it doesn't read as well as it perhaps  
9 could.  
10  
11 Q. So that's not right?  
12 A. So what I was meaning, from that, was that my  
13 understanding is that, yes, the senior Redress officers,  
14 you know, assessed them, and then, should they have come at  
15 that level - and obviously they have done the phone call as  
16 part of that process, then they put that forward to the  
17 internal members and that's where the internal members  
18 looked at it before it then went to the independent review  
19 panel.  
20  
21 Q. So the internal members looked at what the  
22 recommendation of the senior Redress officer was, but  
23 didn't themselves speak to the applicant?  
24 A. That's my understanding, yes, yes.  
25  
26 Q. Just coming to the issue of deed of release, there was  
27 initially a requirement for applicants to enter into a deed  
28 of settlement and release, saying that if they accepted the  
29 sum, they couldn't take action against the State in respect  
30 of the harm for which they accepted the sum?  
31 A. Yes.  
32  
33 Q. Is that right?  
34 A. Yes.  
35  
36 Q. Why was it removed in 2010, that requirement?  
37 A. Again, this is just my understanding, I understood  
38 that they didn't feel that it was necessary and they felt  
39 it was perhaps causing undue angst with applicants.  
40  
41 Q. Do you know whether any applicants have indeed pursued  
42 civil litigation since the requirement for the deed was  
43 removed in 2010?  
44 A. No, I'm not sure.  
45  
46 Q. You don't know one way or the other?  
47 A. No, no.

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Q. Did the deed of settlement and release contain any requirement of confidentiality by the applicant as to the amount received?

A. I have never seen it, so I don't know.

Q. You indicate also that the 2010 guidelines included provision for payments made to prisoners to be held on trust until their release. So prior to that, prisoners received their payments directly, if they were eligible.

A. Not that I was aware of, no. I think that they saw that this would be possibly something that needed to be considered, and that's why they put that in place. So I'm not sure that payments were made. It wasn't until they put that in place.

Q. So it wasn't the case that there was any difficulty with payments having been made to prisoners?

A. No.

Q. The preliminary assessment process is dealt with in paragraphs 82 and following. You say that the department didn't anticipate getting so many incomplete applications, so "incomplete" was not providing sufficient information for an assessment to be undertaken.

A. Yes. So it could have been any number of things. It could have been, you know, just even merely not including a certified copy of their identification, for example, or just missing some bits, so it couldn't - allow it to be processed through to assessment.

Q. Part of the assessment process by the workers was to verify that the applicant was at the institution?

A. That's correct.

Q. And there was a deal of research that would need to have been undertaken in that regard?

A. Indeed, there was, yes.

Q. And you had in place arrangements with church bodies and other State bodies in order to access records?

A. Sure, yes.

Q. It must have been the case that, in respect of at least some applicants, there just weren't records available?

A. Look, I understand that in some instances, obviously,

1 because it was quite historic, that there may well have  
2 been limited records, they may have been lost or  
3 incomplete. But I understand - they certainly did their  
4 best in terms of putting in place relevant memorandums of  
5 understanding with like child protection, for example, and  
6 others, to then actually access as much as they possibly  
7 could.

8  
9 Q. Do you know whether any applicant was successful where  
10 there were no records found in respect of their stay?

11 A. Not that I'm aware of, no.

12  
13 Q. So when you say not that you are aware of - that they  
14 weren't successful if it couldn't be proven that they had  
15 been a resident at whatever facility?

16 A. That's right. My understanding is that they were able  
17 to verify.

18  
19 Q. So people weren't rejected for the absence of  
20 records --

21 A. No, no.

22  
23 Q. -- in circumstances where there were just no records.

24 A. No.

25  
26 Q. In paragraph 89 you deal with applicants who thought  
27 they were in State care when they weren't, and that was in  
28 circumstances where they might be staying with somebody  
29 other than their family but it had been a private  
30 arrangement rather than a State-sanctioned --

31 A. Correct, that's right.

32  
33 Q. Do you know if many fell in that category?

34 A. I couldn't give you a number, but I am aware of some  
35 instances where that did occur, yes.

36  
37 Q. It wouldn't be surprising for children not to  
38 understand the legal framework in which they were living.

39 A. Indeed.

40  
41 Q. You refer in paragraph 95 to the four broad levels of  
42 abuse that we dealt with earlier. Was there any actuarial  
43 work done to assist in determining payments or eligibility?

44 A. I understand that there was an actuarial assessment  
45 done on a random sample, yes.

46  
47 Q. How did that help, can you help us with that?

1 A. I imagine it would have informed the process, but  
2 I couldn't say definitively how that did.

3

4 Q. In paragraphs 95 and 96 you talk about two stages to  
5 the process of final assessment: One, assessment by  
6 a senior officer followed by approval by a team leader; or  
7 by an internal member and internal review panel, and you  
8 are speaking there of offers of \$5,000 or \$13,000, or  
9 \$28,000 or \$45,000. So they were the four - each of those  
10 payments reflected one of the four tiers of payment; is  
11 that right?

12 A. Yes, that's correct, yes.

13

14 Q. So it wasn't graded, as his Honour suggested the  
15 wording suggested.

16 A. No.

17

18 Q. It was if you fit within the category you got \$5,000,  
19 \$13,000, \$28,000 or \$45,000?

20 A. Correct, yes.

21

22 THE CHAIR: I didn't suggest it was graded when revised,  
23 but if your words are right, it was intended to be graded  
24 initially.

25

26 MS FURNESS: And the words of the witness are the words of  
27 the application form.

28

29 THE WITNESS: Yes.

30

31 MS FURNESS: Q. You refer, then, to the qualifications  
32 of the senior Redress officers and the training that was  
33 provided to the Redress team to ensure that applicants  
34 weren't pressured or weren't, to the extent possible,  
35 re-traumatised by the process. Did you have counsellors on  
36 hand to deal with anyone who either rang in or arrived in  
37 person to make an application?

38 A. Because of people - we had a help line and then, of  
39 course, we had the senior Redress officers who were trained  
40 psychologists should anyone that called in be in need to  
41 speak to somebody, then they obviously had access to do so.  
42 Of course, we had counselling services that were offered to  
43 applicants as well.

44

45 Q. And that was the three hours you referred to earlier?

46 A. Correct, yes.

47



1 Q. You have given us a copy of the manual of internal  
2 standards for assessment, which is attached to your  
3 statement marked NL10, and this is at paragraph 101. Do  
4 you have a copy of that with you?

5 A. Yes.

6

7 Q. There are a couple of matters I want to take you to in  
8 that document. These are January 2010, so I take it these  
9 reflect the amended guidelines?

10 A. Yes.

11

12 Q. Is that right?

13 A. That's my understanding, yes.

14

15 Q. Do you see there the page number at the bottom of each  
16 page. Page 187 reflects the Commission's numbering; page 8  
17 reflects the non-Commission numbered. That's headed, "Core  
18 Assumptions. All eligible applicants will be deemed to be  
19 truthful unless otherwise proven by documentary evidence or  
20 other credible contradictory statements or reports by third  
21 parties."

22

23 Now, in the event that post 2010 the applicant needed  
24 to fill in the form but not provide any attached documents  
25 proving any aspect of it, what was the source of the  
26 documentary evidence or other credible contradictory  
27 statements or reports by third parties?

28 A. Look, honestly, I couldn't say. I mean, it sounds to  
29 me like it is quite open, but I am not aware of what other  
30 documents there might have been.

31

32 Q. So, clearly, the research was done to see if they were  
33 in the institutions?

34 A. Indeed, that's right, yes.

35

36 Q. And if there was any material in that research that  
37 was contradictory?

38 A. That's right, yes.

39

40 Q. The assumption that you would be deemed truthful  
41 unless otherwise proven - can you help us with what thought  
42 went in to that being the test?

43 A. Sure. I am not sure what thought went around that.  
44 You know, what I've been advised is that the applications  
45 were looked at and it was based on, I guess, the balance of  
46 probabilities that what they were writing in their  
47 application was indeed what had occurred.

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Q. You then at page 10 of your copy, and 189 of the Royal Commission's copy, deal with the civil standard for assessing abuse and neglect so that those assessing the application looked at the balance of probabilities as to whether or not it had occurred. How does that sit with the matter I just took you to under core assumptions that they will be deemed to be truthful unless there is evidence to the contrary - how do they sit together?

A. It is a good question. Because I wasn't involved directly with the assessment process, I couldn't provide comment, I think, on that, because this is just the manual that was in place and what I was aware of, but I certainly wasn't involved in doing the assessments.

THE CHAIR: Is there more to clause 8 than we see on the screen at the moment? Can we see that?

MS FURNESS: Yes, there is. It goes over the page.

Q. If we continue down to "The assessor will assess cases" - do you see that?

A. Yes.

Q. -- "to determine whether they are satisfied as to the reasonable likelihood that abuse and/or neglect occurred", and then that is described as similar to the civil standard, being on the balance of probabilities. Then there is a schedule which provides some assistance.

THE CHAIR: Q. The two statements are in conflict, it's as simple as that. Which one prevailed?

A. I would say what we have just read here.

Q. Rather than the assumption that they are telling the truth?

A. I'm just - well, what I've seen and what I understand, I would suggest that that's the one that prevailed.

MS FURNESS: Q. Of the 600-odd, I think, that didn't receive a payment, one ground would be that they weren't eligible because they weren't in State care. Do you know whether any were refused on the basis that they weren't believed?

A. No, no, not that I'm aware of, no.

Q. So you don't know, or to your understanding --

1 A. To my understanding.  
2  
3 Q. Let me just finish - is it the case that to your  
4 understanding no-one who was otherwise eligible because  
5 they were in State care - no-one did not receive a payment  
6 because they were not believed?  
7 A. That's my understanding, yes.  
8  
9 Q. Paragraph 106 tells us of the 5,325 offers of payment,  
10 the numbers that were made, and we can see from that that  
11 the highest number were for the level 2 or the \$13,000?  
12 A. Yes.  
13  
14 Q. Followed by level 3?  
15 A. Yes.  
16  
17 Q. With just over 1,100 for the \$45,000. That confirms,  
18 again, that there were just four set payments?  
19 A. Yes, it does.  
20  
21 Q. You say in paragraph 110 that the offer of payment  
22 also included an offer for financial counselling, if  
23 required?  
24 A. That's correct.  
25  
26 Q. How did that work?  
27 A. Again, I don't know the specifics of it, but  
28 I understand that, obviously, there was - they felt there  
29 was a need to be able to offer that, because obviously  
30 receiving a sum of money such as those levels, that some  
31 people may need that to perhaps I guess have some  
32 assistance around how they might manage receiving an  
33 ex gratia payment like that.  
34  
35 Q. You may not be able to help us with this, but was that  
36 a feature that was found in other models, or a feature that  
37 was unique to WA?  
38 A. My understanding is that it was in other models, but  
39 I couldn't say which ones they were, yes.  
40  
41 Q. Do you know whether many took up the offer?  
42 A. Again, I couldn't say how many.  
43  
44 Q. You then, in paragraph 112, say that part of the  
45 assessment process was checking to see whether the  
46 applicant had received any criminal injuries compensation  
47 from the State.

1 A. (Witness nods).  
2  
3 Q. And whether or not there was any money owed to the  
4 State for orders to pay criminal injuries compensation. If  
5 either of those circumstances applied, that was deducted  
6 from the payment.  
7 A. That's correct.  
8  
9 Q. Was that a matter that was set out in the guidelines,  
10 as far as you know?  
11 A. As far as I'm aware, yes. Yes.  
12  
13 Q. So in the event that applicants had received money  
14 through some other scheme, such as a church-based scheme  
15 like Towards Healing, was that amount taken into account in  
16 determining how much they got?  
17 A. No, it wasn't, no.  
18  
19 Q. If they had received any money in a civil settlement  
20 in respect of the same harm, was that taken into account to  
21 determine --  
22 A. Not that I'm aware of - sorry.  
23  
24 Q. -- how much they got?  
25 A. Not that I'm aware of, no.  
26  
27 Q. So the only deduction was for a State-based criminal  
28 injuries compensation scheme?  
29 A. Yes.  
30  
31 Q. In terms of the referral to the police, part of the  
32 scheme - indeed, one of the objectives - was that there  
33 would be referrals of alleged offenders to the police;  
34 that's right?  
35 A. That's correct, yes.  
36  
37 Q. Was that done only with the consent of the applicant  
38 or victim?  
39 A. Yes. So on the application form, I understand that,  
40 they ask them if they would like their matter to be  
41 referred to the police, and should they have indicated  
42 that, then that occurred.  
43  
44 Q. So you did it if they wanted you to do it?  
45 A. Yes.  
46  
47 Q. You didn't do it regardless of whether they wanted you

1 to do it or not?  
2 A. That's what my understanding is. But - yes.  
3 I suspect that, you know, they may have looked at some and  
4 thought they perhaps should have been and it may be that  
5 they could have spoken to the applicants about that when  
6 they did the phone call with them.  
7  
8 Q. So at the bottom of paragraph 113 on page 25 you say  
9 that Redress WA referred 2,233 --  
10 A. Yes.  
11  
12 Q. -- matters to the WA police.  
13 A. Yes.  
14  
15 Q. We can assume from that the remainder, which is about  
16 half, in rough terms, didn't want you to refer it to the  
17 police?  
18 A. Yes.  
19  
20 Q. Was there any follow-up by Redress WA as to what the  
21 police did or didn't do with those referrals?  
22 A. No, we just referred, and obviously we were there  
23 should the police have any further questions or need any  
24 further information, that's what we did.  
25  
26 Q. You don't know whether any resulted in any charge and  
27 conviction?  
28 A. I understand there may have been some, but I wouldn't  
29 know the specifics of it. Again, it's just what I've been  
30 sort of told from staff members.  
31  
32 Q. You may not be able to answer this, but do you know  
33 whether the Western Australian police created any  
34 particular strike force or task force to deal with  
35 referrals from Redress WA?  
36 A. I'm not sure.  
37  
38 THE CHAIR: Q. Is it right to think that no payments  
39 were made under the original guidelines - the up to \$80,000  
40 guidelines?  
41 A. That's correct.  
42  
43 Q. No-one ever got any money above \$45,000?  
44 A. No, no.  
45  
46 MS FURNESS: Q. But the change occurred after people had  
47 applied under the old guidelines with the expectation that

1 the upper amount was up to \$80,000?  
2 A. My understanding is, yes, that there would have been  
3 some, yes.  
4  
5 Q. You had a complaints process as well?  
6 A. Yes.  
7  
8 Q. Was the complaints process one that the applicant had  
9 access to an external administrative decisions-making type  
10 body?  
11 A. There was an officer within the Redress scheme who  
12 managed all the complaints.  
13  
14 Q. But was there an appeal mechanism that enabled  
15 a complaint to be made to some sort of administrative  
16 decision tribunal or something similar?  
17 A. My understanding is the complaints were directed to  
18 the person within Redress WA and it was just if it was an  
19 error of fact or process. Should they wish to, applicants  
20 could pursue it with the ombudsman as well.  
21  
22 Q. Did the complaints process extend to a complaint about  
23 the amount received, or was it just a process-type  
24 complaint?  
25 A. The complaints were to be on the grounds of process,  
26 but I imagine - and I am aware - that there were some  
27 complaints made around the quantum of the payment as well.  
28  
29 Q. Were those matters reassessed after the complaint was  
30 received?  
31 A. Once the assessment and the notice of decision was  
32 made, that was final.  
33  
34 Q. So that the complaint process didn't contemplate  
35 a reassessment as to the amount?  
36 A. No, it did not.  
37  
38 Q. On page 28, from paragraph 123 on, you deal with the  
39 effectiveness of the Redress WA scheme. Can you tell the  
40 Royal Commission from the work you have done to prepare  
41 your statement and give evidence today, what features of  
42 the scheme do you think worked well as components of  
43 a Redress scheme?  
44 A. I think the communications for the scheme were  
45 reasonably well done.  
46  
47 Q. So that's the communication strategy?

1 A. Indeed, yes. So I think it's very important to keep  
2 applicants informed of how things are progressing and  
3 I think they did that well with the newsletters that they  
4 produced.  
5  
6 Q. Sorry, can I just interrupt you. Is that consistent  
7 with the feedback you received from those who participated?  
8 A. Yes, yes. I also think that it's helpful and useful  
9 to offer to provide some sort of counselling to applicants,  
10 and I think that was done well, as well. I think having  
11 the qualified staff members across - doing the assessments  
12 and also qualified people who could do - researchers who  
13 know what to look for and are able to get the information  
14 that's required to help support the applications.  
15  
16 Q. When you say "researchers", do you mean those who had  
17 access to the records of institutions to decide whether or  
18 not the person was there and whether there was perhaps any  
19 contradictory evidence?  
20 A. Yes, that's right, yes, yes.  
21  
22 Q. So they are the positive aspects. Are there any  
23 others?  
24 A. Probably also, I think - and I know I've spoken about  
25 communications, but I think in terms of acknowledging the  
26 people's - the applicants, when they have put in their  
27 application, actually letting them know that they had  
28 received that application and keeping them informed in  
29 terms of how it was progressing, I think, is important, and  
30 I think that helped.  
31  
32 Q. How was the apology part delivered?  
33 A. So that was a letter that was sent to all applicants  
34 from the Premier and the Minister for Community Services.  
35  
36 Q. So signed by each of those?  
37 A. Indeed, yes.  
38  
39 Q. And were they personalised letters?  
40 A. Yes, they were, yes.  
41  
42 Q. So they referred by name to the individual?  
43 A. Yes, they did, yes.  
44  
45 Q. But the content was the same?  
46 A. Yes, yes.  
47

1 Q. Any other positive aspects that you would like to draw  
2 the Royal Commission's attention to?  
3 A. I think ultimately the scheme itself gave applicants  
4 the opportunity to tell their story and to be believed, and  
5 I think that's probably really one of the most important  
6 aspects of doing such a scheme.  
7  
8 Q. Was there any formal process entered into, after the  
9 winding up - and we now come to your knowledge --  
10 A. Yes.  
11  
12 Q. -- to ascertain the views of those who participated?  
13 A. Some of the applicants actually did write in to the  
14 department to express gratitude and explain that they felt  
15 that the process was well done considering the nature of  
16 it, but we didn't go out and actually contact each  
17 applicant for feedback.  
18  
19 Q. What areas of the scheme would you alter if you were  
20 to do another?  
21 A. Sure. I think from the onset I would be clear about  
22 what the budget actually is in terms of the full amount  
23 allocated for ex gratia payments so as to not set up any  
24 expectations of what people may get.  
25  
26 Q. When you say what the budget was, wasn't the issue  
27 that the numbers of people making claims who fell within  
28 particularly the higher levels were greater than  
29 anticipated?  
30 A. And that's right. So they are probably linked, in  
31 terms, I think of also doing that research around trying to  
32 ascertain how many possible applicants you might actually  
33 have to such a scheme as well, would be really important,  
34 and useful --  
35  
36 THE CHAIR: Q. You started off with an assumption that  
37 there would be a gradation between \$10,000 and \$80,000, but  
38 you ended up administering it so that everybody who got  
39 above \$10,000 got \$80,000, you were bound to run into  
40 trouble, weren't you? Something seriously had gone wrong  
41 in the decision as to how to apply it?  
42 A. Yes.  
43  
44 MS FURNESS: Q. Any other areas that you would change if  
45 you were to do it again?  
46 A. Nothing that comes to mind at this point, no.  
47



1 Q. You, as part of your position, were involved in the  
2 follow-up from the Katanning inquiry?

3 A. Yes.

4

5 Q. We come back to paragraph 11 of your statement where  
6 you deal with that. The Katanning inquiry was a report  
7 into St Andrew's Hostel at Katanning, and the report was  
8 "St Andrew's Hostel Katanning: How the system and society  
9 failed our children". Was there a recommendation contained  
10 in that report that there be some sort of scheme?

11 A. No, there wasn't, that was a government decision.

12

13 Q. Why was it decided that there be an ex gratia scheme  
14 for country high school hostels?

15 A. My understanding, that came about because they  
16 realised that perhaps there were a number of people,  
17 particularly that came forward for the special inquiry,  
18 that perhaps didn't apply for Redress, because they didn't  
19 realise or identify that they could have been eligible  
20 under the Redress scheme.

21

22 Q. So that scheme was set up for those who attended only  
23 country high school hostels?

24 A. That's right, yes - administered under the Country  
25 High School Hostels Authority Act.

26

27 Q. What number of such hostels were there in Western  
28 Australia?

29 A. During the period of time we were looking at, there  
30 was approximately 12, from memory.

31

32 Q. So it would have been much easier to work out the  
33 potential number of applicants.

34 A. Indeed, it was, yes, yes.

35

36 Q. Did you operate that scheme differently from how the  
37 Redress WA scheme was operated, bearing in mind the  
38 different scale?

39 A. Different in some ways but similar in others.  
40 Obviously, looking at how Redress was administered,  
41 I pulled out some of the learnings from that that I applied  
42 to the country high schools scheme.

43

44 Q. So what were those learnings that you applied that you  
45 did differently?

46 A. So with this one, we were clear at the beginning in  
47 terms of what levels of payment were to be, so for the

1 country high schools scheme there were three levels of  
2 payment as opposed to the four from Redress.  
3  
4 Q. What were the three?  
5 A. They were \$5,000, \$20,000 and \$45,000.  
6  
7 Q. \$5,000?  
8 A. Yes.  
9  
10 Q. \$20,000?  
11 A. Yes.  
12  
13 Q. And \$45,000?  
14 A. Yes.  
15  
16 Q. Ranging in severity of abuse, or impact?  
17 A. Yes, ranging in severity of abuse, yes.  
18  
19 Q. Not the impact on the person but the abuse that was  
20 suffered?  
21 A. The abuse suffered.  
22  
23 Q. Was that the same with the Redress WA, it was abuse  
24 rather than impact?  
25 A. I think it was abuse and neglect with Redress.  
26  
27 Q. I am sorry, I wasn't clear. Was the severity based on  
28 the abuse that the child suffered, or was it the abuse and  
29 the impact on the individual child, which would necessarily  
30 differ between individuals?  
31 A. It was based on the abuse.  
32  
33 Q. And this was based on the abuse as well, not the  
34 impact?  
35 A. Yes.  
36  
37 Q. Did you administer this in the same way, with the same  
38 types of staff, with their qualifications, dealing with  
39 applicants?  
40 A. Yes, indeed. So I ensured that we had qualified  
41 psychologists and social workers, yes.  
42  
43 Q. How else was it different other than three rather than  
44 four tiers?  
45 A. I guess it was on a much smaller scale, because there  
46 were only approximately 100 applications anyway, so it was  
47 perhaps easier in some ways to be - to communicate with the

1 applicants and actually keep them informed as their  
2 applications were progressing.

3

4 Q. Anything else different from the other scheme other  
5 than scale?

6 A. Not that - nothing that comes to mind at this point,  
7 no.

8

9 Q. So just coming back, then, to the effectiveness of the  
10 Redress WA scheme, at paragraph 130 you refer to an officer  
11 with Redress WA drafting a document entitled "Overview of  
12 Redress WA: Key learnings". You say that the document  
13 hasn't been endorsed by the department. What do you mean?

14 A. I suppose what I mean by that is that it was  
15 a document that was pulled together just for internal use,  
16 so it wasn't one that we sought to put forward for  
17 approvals by or endorsement or noting by the minister.

18

19 Q. You have read that document?

20 A. Yes, I have.

21

22 Q. Are there any learnings in that document that you  
23 haven't expressed to us?

24 A. Oh, there are quite a number of different learnings.  
25 To be honest, it is quite comprehensive. I've expressed  
26 some of them, but it is quite a comprehensive and frank  
27 overview of how Redress was administered, and possible  
28 learnings from that.

29

30 Q. Can that document be provided to the Royal Commission?

31 A. Yes.

32

33 Q. Thank you. Redress is a significant component of the  
34 Royal Commission's terms of reference and it would be  
35 useful to understand an insider's view, understanding it  
36 hasn't been endorsed by the department. I am told we have  
37 got it. So, thank you.

38

39 Now, issues arising from witness statements, you deal  
40 at paragraph 133 with the difficulties of providing  
41 justice. Do you see that?

42 A. Yes.

43

44 Q. And that the scheme was about compassionate financial  
45 payments. Where did the compassion come into the financial  
46 payments?

47 A. How I see it is, you know, it was ultimately around

1 just being a compassionate scheme. It doesn't matter what  
2 amount of payment that is made, obviously, it's never going  
3 to be enough to compensate for somebody's experience they  
4 may have had.

5  
6 Q. I understand that. But I don't understand the  
7 reference to a "compassionate scheme". Where, in the  
8 structure or administration, was the compassion delivered?

9 A. I think in terms of, you know, being mindful not to  
10 re-traumatise the applicants through the process and being  
11 in a position to be able to offer them some type of  
12 counselling.

13  
14 Q. You deal with the fact that some applicants found the  
15 application process onerous. Is there any part of the  
16 process that, on reflection, and if there were to be a new  
17 scheme, you could make less onerous?

18 A. I think making the application form very clear and  
19 easy to understand and asking as much information in that  
20 form as you could, so that it could progress as quickly as  
21 possible.

22  
23 Q. Anything else?

24 A. I think having enough staff to be able to move through  
25 those applications as quickly as they can, keeping in  
26 mind - and I know that some of the applications, the  
27 process probably took a lot longer than they had  
28 anticipated.

29  
30 Q. Well, what you had anticipated, I would have thought;  
31 is that right?

32 A. Yes, that's right, yes.

33  
34 Q. If we deal with Mr Walsh, paragraph 143, his  
35 application was received on 24 February 2009, and it was  
36 acknowledged a couple of days later, and he was contacted  
37 by telephone on 19 October 2010 to provide further details.  
38 Do you see that?

39 A. Yes, I do.

40  
41 Q. Was it anticipated that that would be a period of some  
42 18 months before receipt and dealing with an application?

43 A. No, I don't imagine there would have been, no.

44  
45 Q. Was that a feature of the numbers of staff that you  
46 had to process the applications?

47 A. I think that was part of it, and possibly also, you

1 know, just the research, in terms of just determining that  
2 they were at the institutions that they were at, like  
3 researching those records, perhaps they didn't anticipate  
4 that it would be - take as long as what it did.

5  
6 Q. So were you satisfied, or those that were involved,  
7 were they to your knowledge satisfied that the arrangements  
8 that were in place with the relevant institutions were  
9 sufficient to give timely access to records?

10 A. I think they were sufficient. It was just about how  
11 the records were and in what state the records might have  
12 been, how complete they were or not, or what was available.

13  
14 Q. So is it the case that in the assessment process the  
15 element that took longest was the research as to whether  
16 the person was at the institution?

17 A. My understanding, that's how it was, yes.

18  
19 Q. Because in the event that there was no assessment as  
20 to impact, that was not part of the process, was it?

21 A. Not that I'm aware of, no.

22  
23 Q. Similarly, with Mr Grant, you deal with him at  
24 paragraph 144. His application was received in August 2008  
25 and over two years later, in November 2010, he got the  
26 payment?

27 A. Yes.

28  
29 Q. Again, that was a feature of the time spent with  
30 research?

31 A. Look, my understanding, yes.

32  
33 Q. As well as the numbers of staff available to process  
34 the applications?

35 A. That's right, yes.

36  
37 Q. Was an indication given in the guidelines as to when  
38 people might expect a response or a payment?

39 A. Not that I'm aware of, no. No.

40  
41 Q. Would it be useful to put some sort of realistic  
42 indication in guidelines in the future?

43 A. I think that would be helpful, yes, to help with  
44 expectations from applicants, yes.

45  
46 MS FURNESS: Thank you, Ms Lethorn. I have no further  
47 questions.

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**<EXAMINATION BY MR O'SULLIVAN:**

MR O'SULLIVAN: Q. Ms Lethorn, as you know, I represent the State of Western Australia. You have already indicated in your evidence that there were no payments made under the two-tier scheme as it was first initiated, so, in fact, none of the applicants were ever required to sign a deed?

A. That's right, yes.

Q. With respect to the two-tier scheme, to be eligible for the first tier, which is up to \$10,000, that was available to you if you had no medical evidence to support the fact that you had suffered harm; is that right?

A. That's my understanding, yes.

Q. And so if you wanted to access the second tier, you required medical evidence?

A. Yes.

Q. The shift to the four-tier scheme no longer required the production of medical evidence; is that right?

A. Yes, that's right.

Q. So, seemingly, someone who would have only got \$10,000 under the original scheme, even though they didn't have medical evidence under the four-tier scheme, could have got more than \$10,000?

A. Yes, that's correct.

MR O'SULLIVAN: Thank you. I have nothing further, your Honour.

MS NEEDHAM: No questions, your Honour.

MS FURNESS: Nothing further, thank you, your Honour.

THE CHAIR: Thank you, Ms Lethorn. Thank you for coming and telling us what happened. You are excused.

**<THE WITNESS WITHDREW**

MS FURNESS: Your Honour, they are the witnesses that those assisting the Royal Commission have to call today.

On Monday, we propose to hear from the Acting Director of Public Prosecutions for Western Australia, followed by

1 Brother Shanahan and Brother McDonald, each being a brother  
2 of the Christian Brothers Order.

3  
4 THE CHAIR: And how many days next week will be required?

5  
6 MS FURNESS: Well, certainly two. It's difficult to say  
7 whether it will be three. I certainly anticipate we will  
8 finish on Wednesday. Whether we finish on Tuesday, I don't  
9 know.

10  
11 THE CHAIR: Very well. 10 o'clock on Monday morning.

12  
13 **AT 12.35PM THE COMMISSION WAS ADJOURNED**  
14 **TO MONDAY, 5 MAY 2014 AT 10AM**

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