



Royal Commission
into Institutional Responses
to Child Sexual Abuse

REPORT OF CASE STUDY NO. 8

Mr John Ellis's experience
of the Towards Healing
process and civil litigation

JANUARY 2015

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January 2015

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Preface

The Royal Commission

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

In carrying out this task the Royal Commission is directed to focus its inquiries and recommendations on systemic issues but also recognise that its work will be informed by an understanding of individual cases. The Royal Commission must make findings and recommendations to better protect children against sexual abuse and alleviate the impact of abuse on children when it occurs.

A copy of the Letters Patent is at Appendix A to this report.

Public hearings

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

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

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

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

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

detailed explanation of the rules and conduct of public hearings is available in the Practice Notes published on the Royal Commission's website at www.childabuseroyalcommission.gov.au. Public hearings are streamed live over the internet.

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

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

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

Private sessions

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

A private session is conducted by one or two Commissioners and is an opportunity for a person to tell their story of abuse in a protected and supportive environment. As at 30 November 2014, the Royal Commission has held 2,724 private sessions with a further 1,000 people waiting to attend one. Many accounts given in a private session will be reported in a de-identified form in later reports of the Royal Commission.

Research program

In addition to public hearings and private sessions the Royal Commission has an extensive research program. Apart from information gained in public hearings and private sessions, the research program will draw upon research undertaken by consultants to the Royal Commission together with the original work of its own staff. Significant issues will be considered in issues papers and discussed at roundtables.

This case study

This is the report of the public hearing that examined the Catholic Church's response to a complaint of child sexual abuse by Mr John Ellis and the litigation he subsequently commenced. This was identified as appropriate for a case study for a number of reasons.

This case study highlights a number of issues that will be dealt with as part of the Royal Commission's examination of redress, including:

- the role an institution should play in assessing complaints of conduct by those associated with the institution
- the transparency of the process and possible outcomes
- the components of a review process
- the relationship between litigation and institution-based redress schemes
- the role of pastoral care
- the experience of civil litigation by a victim of child sexual abuse
- the response of an institution that had not adopted guidelines for responding to civil litigation.

The scope and purpose of the hearing was:

1. The response of the Catholic Church to:

the complaint of child sexual abuse made by John Ellis under *Towards Healing*
the review of the *Towards Healing* process in relation to John Ellis's complaint
the civil action commenced by John Ellis in relation to his complaint.

2. The experience of John Ellis in relation to:

- the *Towards Healing* process
- the review of the *Towards Healing* process in relation to his complaint
- the civil action commenced by him in relation to his complaint.

Executive summary

As a child, Mr John Ellis was sexually assaulted by Father Aidan Duggan from about 1974 to 1979. Mr Ellis was an altar boy and Father Duggan was an Assistant Priest at the Christ the King Catholic Church at Bass Hill in Sydney, New South Wales. Mr Ellis was aged between 13 and 17 years old and Father Duggan was aged between 54 and 59 years old.

Father Duggan continued to abuse Mr Ellis in his early adult years.

In 2001, Mr Ellis disclosed to his counsellors for the first time that he had suffered abuse as a teenager at the hands of Father Duggan. Mr Ellis found it very difficult to talk about the abuse. The memories were painful and frightening and they came with strong physical memories of the abuse. The memories made him feel ashamed and sick.

Towards Healing

Mr Ellis commenced his *Towards Healing* process in June 2002. *Towards Healing* is a set of principles and procedures introduced in 1997 and revised in 2000, 2003, 2008 and 2010.

In the introduction of each version of *Towards Healing*, it is stated that the document:

establishes public criteria according to which the community may judge the resolve of Church leaders to address issues of abuse within the Church. If we do not follow the principles and procedures of this document, we will have failed according to our own criteria.

In general terms, the stated intent of *Towards Healing* is to provide an opportunity to a person to tell his or her story to somebody in authority in the Church, receive an apology, be offered pastoral care and be offered reparation. It also provides one of several methods by which Church bodies assess risk regarding those still holding a position within the Church.

The principles of *Towards Healing* are striving for truth, humility, healing for victims, assistance to other persons affected, an effective response to those who are accused, an effective response to those who are guilty of abuse and prevention of abuse.

At the time Mr Ellis approached the Church, Cardinal Pell was the Archbishop of the Archdiocese of Sydney, and Dr Michael Casey was his Private Secretary. Mr John Davoren was the Director of the Professional Standards Office NSW/ACT.

Mr Ellis expected the following outcomes from the *Towards Healing* process:

- Father Duggan is not in active ministry.
- I will receive from the Church a personal acknowledgement of the wrong done to me.
- Father Duggan will be confronted with this complaint and will acknowledge the wrong done.

- The Church will provide assistance and support in addressing the effects of the abuse.

A central issue from the outset was whether Father Duggan was able to respond to Mr Ellis's complaint. Mr Ellis was told that 'Father Duggan ... has no capacity to understand the full implications of a decision'. Father Duggan had dementia.

The *Towards Healing* protocol gave clear guidance on this matter: where the accused was unavailable to give a response, the Director of Professional Standards should appoint one or two assessors. Mr Davoren did not appoint an assessor.

Following advice from Mr Davoren, on 23 December 2002 Archbishop Pell wrote a letter to Mr Ellis advising him that, as Father Duggan could not respond to the 'charges against him' and there were no other complaints against him, under the 'circumstances I do not see that there is anything the Archdiocese can do' to resolve the complaint.

Mr Ellis received this letter on Christmas Eve, 2002.

Cardinal Pell told us that he accepted Mr Davoren's advice. Cardinal Pell said:

I did not understand Mr Davoren to be suggesting, and I did not myself have any wish, that the *Towards Healing* process be brought to an end ... It was not my intention to convey to Mr Ellis that there was nothing the Archdiocese could do about resolving his complaint overall.

Not surprisingly, Mr Ellis construed the letter to be a 'clear statement that the Archbishop considered the matter to be at an end, despite there having been no formal assessment of my complaint'.

- ▶ **Finding 1:** Cardinal Pell relied upon Mr Davoren to properly apply the procedures in *Towards Healing*. He then followed Mr Davoren's advice, assuming that such procedures had been followed. After receiving a copy of Mr Eccleston's report (see below), Cardinal Pell became aware that such reliance was misplaced.
- ▶ **Finding 2:** Cardinal Pell's letter to Mr Ellis dated 23 December 2002 was contrary to the procedures in *Towards Healing* (2000), as an assessor should have been appointed under clauses 38.7, 39.3 and 40 of the protocol, regardless of the inability of Father Duggan to respond.

On 21 March 2003, Mr Ellis wrote to Mr Davoren expressing dissatisfaction with the *Towards Healing* process, which had begun some nine months before. He referred to the *Towards Healing* protocol, which he had just obtained from the internet, and requested that the procedure provided for by the protocol be followed. It was not followed while Mr Davoren was Director.

Cardinal Pell agreed that Mr Ellis was not treated consistently with the requirements of justice and compassion during the *Towards Healing* process. He accepted that the *Towards Healing* process in Mr Ellis's case was flawed, which left Mr Ellis confused and mistrusting that process. He said 'by any criteria, there was a substantial failing'.

We are satisfied that the Director of Professional Standards, Mr Davoren, failed Mr Ellis in the handling of his complaint. Mr Ellis's *Towards Healing* process only progressed to an assessment and facilitation due to Mr Ellis's own persistence.

► **Finding 3:** Between June 2002 and April 2003, Mr Davoren as Director of the Professional Standards Office NSW/ACT did not comply with the procedures in *Towards Healing* (2000) in the handling of Mr Ellis's complaint by:

- not appointing a Contact Person to act as a support person for Mr Ellis after assisting with making the initial complaint (clause 35.4)
- not referring the complaint to an assessor (clauses 38.7, 39.3 and 40)
- poor case management, including not undertaking the process as quickly as possible, and poorly managing the question of Father Duggan's lucidity (clauses 35.3.1 and 40.13).

► **Finding 4:** In not complying with these procedures, Mr Davoren did not make a compassionate response his first priority, as required by the principles of *Towards Healing* (2000) (clause 17).

In April 2003, Monsignor Brian Rayner was appointed to the positions of Vicar General and Chancellor of the Catholic Archdiocese of Sydney, and Moderator of the Curia. In April or May 2003, Mr Michael Salmon replaced Mr Davoren as Director of the Professional Standards Office NSW/ACT. From this time on, Mr Ellis's complaint progressed in accordance with the procedures of *Towards Healing*.

In July or August 2003, Mr Ellis met with Father Duggan at the nursing home in the company of his wife, Nicola, and Monsignor Rayner. Monsignor Rayner said he had never doubted that Mr Ellis was telling the truth about being sexually abused by Father Duggan.

However, Monsignor Rayner did express reservations about whether Mr Ellis's claims could be proved and about Mr Michael Eccleston's report (see below) because of a lack of corroboration of Mr Ellis's complaint.

► **Finding 5:** Monsignor Rayner did not doubt that Mr Ellis was telling the truth and shortly after his meeting with Mr Ellis and Father Duggan - that is July or August 2003 - he advised at least Mr Salmon and Cardinal Pell of his belief.

Mr Eccleston was appointed assessor of Mr Ellis's complaint and submitted his assessment report to the Archdiocese on 24 November 2003. He said in part:

Father Duggan is not able and not capable of providing a response to the allegations. The allegations are very serious being criminal in nature and as such require a proof close to or approaching 'beyond reasonable doubt'. The level of proof in this matter relies upon Mr Ellis's statement and corroboration of his disclosure about the sexual assaults made to counsellors some 23 years later. The counsellors' reports indicate that the symptoms displayed by Mr Ellis are consistent with the adult trauma of child

sexual assault. Based upon the available evidence it is more likely than not that the allegations as alleged occurred.

Mr Salmon told Mr Ellis in late December 2003 that his complaint was going to facilitation and that Mr Raymond Brazil had been appointed as Facilitator. Contrary to the provisions of *Towards Healing* (2000), Mr Ellis was not consulted as to whether he wanted Mr Brazil to be the Facilitator, nor was he given a list of people who could act as Facilitator from which he could make a choice.

- ▶ **Finding 6:** Mr Salmon acted inconsistently with *Towards Healing* (2000) (clause 41.3) by not seeking Mr Ellis's consent to the appointment of Mr Brazil as Facilitator.
- ▶ **Finding 7:** In other respects, Mr Salmon actively and properly managed Mr Ellis's complaint in that he assisted in the organisation of the medical assessment of Father Duggan; the appointment of an assessor; the appointment of a Contact Person, namely Mr Bill Johnson; arranged counselling for Mr Ellis; and appointed a Facilitator.

Towards Healing (2000) provided that reparation, if paid, would be in response to the needs of individual complainants (clause 41.1).

There was a general understanding, including among Mr Salmon, Mr Brazil and Monsignor Rayner, that reparation payments to complainants were normally \$50,000 or under.

Mr Brazil asked Mr Ellis to indicate how much would be appropriate as a financial gesture. Mr Ellis calculated an amount of between \$125,000 and \$160,000. Mindful of the informal cap of \$50,000 on payments to victims, Mr Ellis asked for \$100,000 because the abuse had affected his wife, as well as himself.

On 20 May 2004, Mr Brazil informed Mr Ellis that he had been authorised to make a gesture of \$25,000 on behalf of the Archdiocese. At around that time, Mr Ellis was requested to resign from his position as a partner at a major law firm.

- ▶ **Finding 8:** The determination of the figure of \$25,000 had no reference to the needs of Mr Ellis as required by clause 41.1. Accordingly, the process by which it was determined was not consistent with *Towards Healing* (2000).

The facilitation took place on 20 July 2004. Mr and Mrs Ellis attended with Mr Brazil and Monsignor Rayner. That was more than two years after Mr Ellis first made his complaint.

Monsignor Rayner formally offered Mr Ellis \$30,000 during the facilitation, and told him that a deed of release was required. Mr Ellis was told that the figure of \$25,000 was increased by \$5,000 because his employment had been terminated. Mr and Mrs Ellis were told that once a person accepts a financial gesture, a meeting is arranged with the Cardinal so that an apology can be given.

Cardinal Pell agreed that neither the \$25,000 nor the \$30,000 was determined according to Mr Ellis's needs at the time. Further, Cardinal Pell said that the initial offer of \$25,000 was 'mean,' that the \$25,000 and \$30,000 offered were 'not appropriate in any sense', that 'the suggestion that after a man has lost his job of \$300,000 a year, I would agree to offer him

\$5,000 extra by way of compensation I regard as grotesque', and that he would 'never subscribe to that logic'.

Mr Ellis told the facilitation that he had legal advice that he should not sign the deed of release and that he may have a substantial claim. His solicitor advised him that he could not defer legal action any longer because of the *Limitation Act 1969 (NSW)* and that the time limit for requesting an extension of time could not itself be extended. Mr Ellis's preference remained to reach a negotiated resolution of the claim and he instructed his lawyer to do this.

During the facilitation, Monsignor Rayner agreed to make arrangements for the appointment of a spiritual director for Mr Ellis.

In late August 2004, Mr Ellis commenced legal action against the Archdiocese and others. Mr Salmon told him that this action effectively terminated the *Towards Healing* process.

Mr Ellis heard nothing further about his request for a spiritual director. He was never given one and was never told why he was not given one.

We can see no reason why either *Towards Healing* or litigation should have prevented Mr Ellis from having his spiritual needs attended to by the appointment of a spiritual director.

- ▶ **Finding 9:** We accept Cardinal Pell's evidence that having 'reflected on the course of the litigation', several steps taken in the course of the litigation now cause him 'some concern' as a priest. One of those steps was that the Archdiocese should have responded positively to Mr Ellis's request for assistance in finding a spiritual director.

Mr Ellis had sought an apology and a meeting with the Cardinal. After the facilitation Mr Salmon advised Monsignor Rayner that it was not the normal practice of the Archdiocese to give an apology and that it would not be appropriate for him to meet with the Archbishop given the legal action.

An apology was not given and no meeting with the Cardinal was arranged at that time.

- ▶ **Finding 10:** Cardinal Pell was involved in the following significant steps during Mr Ellis's *Towards Healing* process. Cardinal Pell:
 - read Mr Ellis's complaint on 7 June 2002
 - formed the view that it was a plainly serious complaint
 - discussed Mr Ellis's *Towards Healing* complaint with Mr Davoren
 - approved of a meeting between Father Duggan and Mr Ellis if Father Duggan could participate
 - sought Mr Davoren's advice on Mr Ellis wanting to meet with Father Duggan despite his dementia

- included Mr Ellis's complaint as part of the agenda for a bishop's meeting
 - discussed the complaint at the bishop's meeting, which Cardinal Pell agreed was not the usual course in a *Towards Healing* matter
 - sought a briefing from Mr Davoren in relation to a facilitation
 - received and considered the advice from Mr Davoren regarding Mr Ellis's case in December 2002
 - formed his own view as to the status of the complaint in December 2002
 - wrote a letter to Mr Ellis on 23 December 2002 stating that nothing further could be done for him by the Archdiocese of Sydney
 - met with others to discuss the process when Mr Ellis was disappointed with the December 2002 letter
 - considered and approved the medical assessment of Father Duggan
 - was aware of the medical assessment of Father Duggan which confirmed that Father Duggan lacked capacity
 - considered and approved a meeting between Mr Ellis and Father Duggan notwithstanding that Father Duggan had dementia
 - was aware that a meeting had taken place between Father Duggan and Mr Ellis
 - approved the appointment of Mr Eccleston as the assessor
 - read Mr Eccleston's report
 - appointed Mr Brazil as the Facilitator
 - appointed Monsignor Rayner to represent the Church Authority during the facilitation and was aware that he subsequently did so
 - knew that Monsignor Rayner believed that Mr Ellis had been abused by Father Duggan
 - knew that the facilitation had occurred.
- ▶ **Finding 11:** We are not satisfied that Cardinal Pell approved the amounts offered to Mr Ellis.
- ▶ **Finding 12:** We are satisfied that Cardinal Pell was told of the amounts offered and the \$100,000 proposed by Mr Ellis by 17 September 2004 at the latest. We accept that Cardinal Pell does not have a current recollection of those matters.

► **Finding 13:** The Archdiocese of Sydney fundamentally failed Mr Ellis in its conduct of the *Towards Healing* process by not complying with clause 19 of *Towards Healing* (2000) and not giving him such assistance as was demanded by justice and compassion, including:

- not sufficiently referring to or responding to his needs in determining the amount of reparation (clause 41.1 of *Towards Healing* (2000))
- not providing Mr Ellis with a spiritual director, when that was plainly one of his needs.

Mr Ellis requested a review of the *Towards Healing* process and the National Committee for Professional Standards engaged Mr David Landa, a former New South Wales Ombudsman, to conduct the review. Mr Landa reported that there had been ‘a failure to observe the required process’ under *Towards Healing*.

► **Finding 14:** All failures identified by Mr Landa were serious and substantial failures, including:

The failure to ‘case manage’ the complaint in relation to:

- the failure to appoint a Contact Person in the terms required by *Towards Healing* (2000) (clause 36)
- the failure to provide Mr Ellis with a copy of the protocol at an appropriate or timely date
- the failure to appoint an assessor for 12 months
- the poor management of the issues surrounding Father Duggan’s lucidity

The extensive delay in concluding the complaint and all of the matters above.

In March 2005, the National Committee for Professional Standards commissioned an Interim National Review Panel to provide a report on Mr Ellis’s *Towards Healing* complaint and consider the review of the process and Mr Landa’s recommendations.

► **Finding 15:** We agree with the Interim National Review Panel’s recommendations in relation to Mr Landa’s report, including:

- Mr Landa was justified in his findings as to the failure to observe the required processes under *Towards Healing*. Fundamental to the processes under *Towards Healing* are justice and compassion for victims, and transparency and expedition in the required processes. There was a manifest absence of transparency through the failure to refer the matter to a Contact Person and the consequent absence of an explanation to Mr Ellis of the processes for addressing the complaint. There was also an absence of justice for Mr Ellis through the extensive delays in undertaking the required process.

- Mr Landa was justified in finding that the issue of Father Duggan’s lucidity was poorly managed. A medical assessment of Father Duggan should have occurred once it became clear that his mental state was impaired, which, in this case should have been readily apparent shortly after the receipt of the complaint.
- It was necessary for the review by Mr Landa to consider whether the outcome was vitiated by the failures of process. Mr Landa was justified in finding that the earlier failures of processes created in Mr Ellis a mistrust of the process of the facilitation. In these circumstances the Panel could not be confident that the facilitation, while having had an appropriate process, was not vitiated by the earlier failures of process.
- The Panel agreed with the recommendation of Mr Landa that the complaint should have been case managed. Case management would have helped to ensure that there were no unreasonable delays in the implementation of the process.

The litigation

On 31 August 2004 Mr Ellis commenced legal proceedings in the Supreme Court of New South Wales against Cardinal Pell as the first defendant, the Trustees of the Roman Catholic Church for the Archdiocese of Sydney (the Trustees) as the second defendant and Father Duggan as the third defendant. He pleaded causes of action in tort and breach of fiduciary duty arising from allegations of sexual abuse by Father Duggan between 1974 and his 18th birthday on 14 March 1979.

Father Duggan died soon after proceedings commenced and Mr Ellis decided not to pursue the claim against his estate. The proceedings remained on foot against Cardinal Pell and the Trustees only.

Mr Ellis’s solicitor was Mr David Begg of David Begg & Associates.

Cardinal Pell requested that Corrs Chambers Westgarth (Corrs) be asked to assist with the litigation. Cardinal Pell explicitly endorsed the major strategies of the defence, which he said were:

- to defend the proposition that the trustees were not liable
 - that, if an offence had been admitted by the Archdiocese, the Archdiocese could not later deny that it took place
 - to appoint competent lawyers and substantially leave them to run the case or advise the Archdiocese on how the case should be run.
- **Finding 16:** Cardinal Pell accepted the advice of Corrs Chambers Westgarth to vigorously defend the claim brought by Mr Ellis.
- **Finding 17:** A major part of Cardinal Pell’s decision to accept the advice of Corrs Chambers Westgarth to vigorously defend the claim brought by Mr Ellis was his conviction that Mr Ellis was seeking ‘exorbitant damages’ of millions of dollars.

- ▶ **Finding 18:** Another reason Cardinal Pell decided to accept the advice of Corrs Chambers Westgarth to vigorously defend the claim brought by Mr Ellis was to encourage other prospective plaintiffs not to litigate claims of child sexual abuse against the Church.

The issue of whether the Archdiocese would mediate with Mr Ellis then arose.

- ▶ **Finding 19:** Cardinal Pell accepted the advice of Corrs Chambers Westgarth at the outset of the litigation in September 2004 that mediation was no longer a viable option and that an approach from Mr Ellis's lawyers to mediate should be rejected.
- ▶ **Finding 20:** Cardinal Pell accepted the advice of Corrs Chambers Westgarth to reject the offer of compromise put forward by Mr Ellis in December 2004 and not make a counteroffer.
- ▶ **Finding 21:** We agree with Cardinal Pell's ultimate opinion that neither the decision of Mr Ellis and his legal advisers to sue the Trustees and Cardinal Pell, nor their decision to appeal the decision of the New South Wales Court of Appeal to the High Court, was unreasonable or lacked judgment.

In the litigation, the solicitors for the Archdiocese and Cardinal Pell disputed that Father Duggan had sexually abused Mr Ellis. There was an issue as to whether the solicitors sought the instructions of Archdiocese and Cardinal Pell before advising of the dispute.

- ▶ **Finding 22:** Whether or not specific instructions were sought before the Notice Disputing Facts was served, the dispute of the fact of Mr Ellis's abuse was consistent with the general instructions of the Trustees and the Archbishop to defend the case vigorously.
- ▶ **Finding 23:** Instead of disputing that Mr Ellis had been abused, it was open to the Trustees and the Archbishop to admit the fact of Mr Ellis's abuse and defend the case on other grounds.

On 24 June 2005, some seven months after the fact of Mr Ellis' abuse had first been put in dispute, the Archdiocese, on behalf of the Trustees and the Archbishop, sought to put itself in a position where it could maintain a non-admission of Mr Ellis's abuse because this was in the interests of the Church in the litigation.

We are satisfied that the Archdiocese was advised that it was in the Church's interests in the litigation to maintain a non-admission of the fact of Mr Ellis's abuse. This could only have been for the purpose of supporting a submission that, by reason of Father Duggan's death, the defendants were prejudiced in defending Mr Ellis's claim that he was abused.

We are satisfied that the Archdiocese contrived an outcome that would allow them to maintain the non-admission of Mr Ellis's abuse.

- ▶ **Finding 24:** Cardinal Pell accepted the advice of Corrs Chambers Westgarth in June 2005 to continue to dispute the fact that Mr Ellis had been abused.

- ▶ **Finding 25:** The Archdiocese wrongly concluded that it had never accepted that Father Duggan had abused Mr Ellis, either at law or under *Towards Healing*, and that this would have been made clear to Mr Ellis at his facilitation.

This conclusion allowed Cardinal Pell to instruct Corrs Chambers Westgarth to maintain the non-admission of Mr Ellis's abuse, which Corrs Chambers Westgarth had advised was in the Church's interests in the litigation.

We are satisfied that the Archdiocese contrived this outcome by relying solely on its understanding of Mr Salmon's comments, in circumstances where:

- the Archdiocese was aware that the Church-appointed assessor had found, on the balance of probabilities, that Mr Ellis had been abused as alleged
 - under *Towards Healing* a complaint will only proceed to facilitation if the Church Authority has accepted that the abuse occurred
 - Mr Salmon had not attended Mr Ellis's facilitation and was not part of the Archdiocese
 - Monsignor Rayner and Mr Brazil, who had attended Mr Ellis's facilitation, had not been consulted.
- ▶ **Finding 26:** The Facilitator of Mr Ellis's *Towards Healing* facilitation took notes which were available to the Archdiocese and which made it clear that Monsignor Rayner, who represented the Archdiocese at the facilitation, had accepted that Father Duggan had abused Mr Ellis.

As a result of this non-admission, Mr Ellis was cross-examined as to whether he was abused. Before the Royal Commission, the lawyers for the Archdiocese accepted that it was not necessary to cross-examine Mr Ellis about whether he was abused.

This is plainly correct. The issues relevant to the limitation application could have been thoroughly explored in the interlocutory application without the fact of Mr Ellis's abuse by Father Duggan being put in issue.

Cardinal Pell accepted that the instructions he gave resulted in Mr Ellis being cross-examined and challenged as to whether the abuse occurred, in circumstances which were harmful and painful to him.

The Church parties accepted, with the benefit of hindsight, that the decisions to maintain the non-admission of Mr Ellis's abuse did not have sufficient regard to the likely effects of those decisions on Mr Ellis. The Church parties also accepted, with regret and apology, that the decision to maintain the non-admission resulted in Mr Ellis being cross-examined for longer than was necessary, in circumstances which were hurtful and painful to him.

We accept this submission.

During the the application in the Supreme Court to extend time, the Trustees and the Archbishop raised the question of whether they were the proper defendants to Mr Ellis's action.

On 29 January 2004, Corrs advised against identifying the Trustees for the Roman Catholic Archdiocese of Sydney (the Trustees) as the defendant for the Archdiocese of Sydney in any legal proceedings.

- ▶ **Finding 27:** Cardinal Pell was aware of, and generally agreed with, the advice of Corrs Chambers Westgarth that the Church's lawyers should not help Mr Ellis identify a suitable defendant.

On 20 July 2005, Dr Michael Casey sent an email to the Professional Standards Office NSW/ACT and Monsignor John Usher attaching a list of questions and answers that Corrs had prepared.

One of the proposed answers read: 'Before Mr Ellis decided to take legal action, as is his right, the Archdiocese was working with him through the independent *Towards Healing* process to resolve the matter in a supportive and pastoral setting.' Dr Michael Casey gave evidence that this 'completely mischaracterises Mr Ellis's experience of *Towards Healing*', and that 'it was certainly not true in his case'. We accept this evidence.

- ▶ **Finding 28:** The Archdiocese prepared questions and answers about Mr Ellis's litigation, which were provided to a spokesperson for the Archdiocese and which included an answer that completely mischaracterised Mr Ellis's experience of *Towards Healing*.

Throughout the litigation the Trustees and the Archbishop continued to dispute that the abuse had occurred, despite the fact that during the hearing another complainant – 'SA', who claimed he had been abused by Father Duggan in 1980 – came forward.

- ▶ **Finding 29:** Cardinal Pell's view, which was shared by everyone he spoke to, was that the evidence of SA significantly strengthened Mr Ellis's legal case. However, during the litigation neither he nor anyone else in the Archdiocese reconsidered whether to dispute the fact of Mr Ellis's abuse.

In the meantime, another prospective witness, Mrs Judith Penton, had come to Corrs' attention. Mrs Penton had witnessed Mr Ellis kissing Father Duggan. Corrs did not depose an affidavit from her and did not bring her evidence to the attention of either the Court or Mr Ellis.

The Trustees and the Archbishop continued to dispute that Mr Ellis had been abused. Cardinal Pell gave the following evidence:

I think that certainly once the affidavit of SA and the account given by Mrs Penton were available, and in the light of what Msgr Rayner said to Mr Ellis at the facilitation, the non-admission of the allegation of abuse should not have been maintained.

On 16 December 2005, Mr Peter Rush of Catholic Church Insurances (CCI) sent a letter to Mr Daniel Casey in which he said, 'Catholic Church Insurances has serious reservations about the level of fees which have been incurred thus far by the Archdiocese in the various matters being run by Corrs'.

Cardinal Pell gave evidence that he does not recall this letter coming to his attention during the course of the litigation. He gave evidence that he would have expected Mr Daniel Casey to inform him of 'a substantial difference in a matter of principle, if that's the word, between CCI and what we were doing'.

Acting Justice Patten published his decision in February 2006. His Honour held that there was an arguable case that the Trustees were legally responsible for the acts and omissions of the Archbishop and his subordinates.

His Honour held that the death of Father Duggan was not a matter of significance because the evidence of SA, which Mr Ellis put before the Court, indicated that the Church and hence the Trustees had the opportunity as early as 1983 to investigate the alleged sexual misconduct of Father Duggan and that the Church apparently did not do so.

His Honour also held that although the Trustees and the Archbishop would be prejudiced if time was extended, the evidence established that there could be a fair trial of the action. That was because, although some evidence may be lost because of the passage of time, there would nevertheless be people who could attest to Mr Ellis's service as an altar boy some 30 years before and to the systems, if any, in place at Bass Hill and elsewhere to protect persons such as altar boys from the sort of conduct alleged against Father Duggan.

Acting Justice Patten stated: 'In my assessment, the Plaintiff [Mr Ellis] was an honest witness who did his best to assist the court. In general terms, I accept his evidence as reliable.'

Cardinal Pell was informed about the outcome, although he does not recall whether these comments were brought to his attention. He gave evidence that they added nothing to his understanding, as he already considered Mr Ellis to be an honest and reliable witness.

- ▶ **Finding 30:** Cardinal Pell accepted the advice of Corrs Chambers Westgarth to refuse a further offer by Mr Ellis to mediate after Acting Justice Patten's decision was handed down in February 2006.

The Archdiocese continued to dispute that the abuse occurred.

Mr Ellis appealed Acting Justice Patten's decision in relation to Cardinal Pell's liability to the New South Wales Court of Appeal. The Trustees cross-appealed the decision to extend the limitation period against the Trustees.

In May 2007, the Court of Appeal upheld the Trustees' appeal against the judgment of Acting Justice Patten and ordered Mr Ellis to pay the legal costs of Cardinal Pell and the Trustees.

The Court of Appeal held that even if Mr Ellis established his factual claims, Cardinal Pell could not be liable for Mr Ellis's abuse, which occurred before he was appointed Archbishop. The Court said that Cardinal Pell, as Archbishop, could not be sued as a representative of all

members of the Archdiocese of Sydney or as a corporation sole. The Court left open the question of whether the Archbishop at the time of abuse could be held liable for that abuse.

The Court also held that the Trustees could not be liable because they were given no role in appointing, managing or removing priests, and the evidence showed that they in fact played no such role. Consequently, the Court found that Mr Ellis's claims against both Cardinal Pell and the Trustees would fail because neither Cardinal Pell nor the Trustees were proper defendants to the proceedings.

Following the Court of Appeal's decision, Corrs told Mr Ellis that their costs were likely to be up to \$550,000 after assessment. On Cardinal Pell's instructions, Corrs conveyed an offer to forgo these costs if Mr Ellis agreed not to apply for special leave to appeal to the High Court. It was made clear that, if this offer was accepted, there would be no possibility of a monetary settlement, although the counselling and pastoral aspects of *Towards Healing* would be made available.

Despite this offer, Mr Ellis sought special leave to appeal to the High Court. Mr Ellis's application for special leave to appeal to the High Court was refused in November 2007.

On 23 November 2007 Corrs prepared a memorandum on the Court of Appeal's decision and its implications. It stated:

the decision places a number of significant obstacles that will need to be addressed by any claimant seeking to resolve claims litigiously rather than through *Towards Healing*. Refocusing the resolution of these claims through *Towards Healing* has alone been a significant and favourable outcome of this litigation at the very least.

Finally, as this decision has provided significant protection to the Cardinal and the Trustees, this in turn will give rise to a significant reduction in damages exposure and therefore the risks that are presently insured against.

The memorandum continued:

The alleged perpetrator died in October 2004 after a long period of dementia. It was therefore not possible to interview the only party who could contradict the plaintiff's allegations. For this reason, the factual allegations in this case were never challenged and, indeed for the purposes of the proceedings, it was conceded that the plaintiff had been exposed to the abuse as alleged.

Mr McCann, Dr Michael Casey and Cardinal Pell agreed that this passage is plainly wrong. Mr McCann could not explain how this occurred. Dr Michael Casey read this memorandum when he received it. Cardinal Pell stated that he might have seen this memorandum but that in any case he was aware of its basic content. He stated, 'I hadn't adverted to the mistake'.

- ▶ **Finding 31:** On Cardinal Pell's instructions, Monsignor Usher forwarded a memorandum prepared by Corrs Chambers Westgarth after the Court of Appeal's decision to Metropolitan Archbishops of Australia and the Bishops of NSW and the ACT.

That memorandum stated that ‘the factual allegations in this case were never challenged and, indeed for the purposes of the proceedings, it was conceded that the plaintiff had been exposed to the abuse as alleged’ in circumstances where the factual allegations were challenged and the defendants did not concede that Mr Ellis had been abused for the purpose of the proceedings.

On 18 February 2009, the Ellises met with Cardinal Pell and Monsignor Usher. During this meeting, Cardinal Pell said that he believed Mr Ellis’s claim was for multi-millions of dollars and that he had no idea that Mr Ellis had asked for an ex gratia payment of \$100,000.

- ▶ **Finding 32:** Cardinal Pell had decided not to pursue costs against Mr Ellis by May 2008. Monsignor Usher told Mr Ellis that costs would not be pursued against him in August 2008; however this was not confirmed in writing until August 2009.

The length of time taken to resolve the costs issue had an adverse effect on Mr Ellis’s health.

The Archdiocese of Sydney has never adopted any obligations to guide its response to litigation by victims of child sexual abuse. As set out earlier, from 1996 it had adopted detailed principles and procedures to guide its dealings with complainants who had suffered sexual abuse as a child within the Archdiocese: *Towards Healing*. However, these principles and procedures, which include a compassionate response, cease upon the commencement of litigation, although they may be subsequently revived.

- ▶ **Finding 33:** We agree with Cardinal Pell’s evidence that ‘we’, which we take to be the Archdiocese, the Trustees and he as Archbishop, did not act fairly from a Christian point of view in the conduct of the litigation against Mr Ellis.
- ▶ **Finding 34:** The Archdiocese failed to conduct the litigation with Mr Ellis in a manner that adequately took account of his pastoral and other needs as a victim of sexual abuse by:
 - (a) rejecting the first offer of mediation
 - (b) not making a counteroffer after receiving a written offer from Mr Ellis
 - (c) wrongly concluding that the Archdiocese had never accepted that Mr Ellis had been abused by Father Duggan, either at law or under *Towards Healing*, and that this would have been made clear to Mr Ellis at his facilitation
 - (d) instructing its lawyers in June 2005 to continue not to admit the fact of Mr Ellis’s abuse because of legal advice that this suited its interests in the litigation, in circumstances where:
 - i. these instructions allowed Mr Ellis to be cross-examined and challenged as to whether the abuse occurred, in circumstances which were harmful and painful to him
 - ii. it was not necessary to dispute the fact of Mr Ellis’s abuse in order to properly test whether an extension of the limitation period should be granted or whether the Trustees were liable for Mr Ellis’s abuse

- (e) not instructing its lawyers that Cardinal Pell thought SA's affidavit strengthened Mr Ellis's case and that the Archdiocese should reconsider whether to continue its non-admission of the fact of Mr Ellis's abuse
- (f) maintaining the non-admission of the allegation of Mr Ellis's abuse after the affidavit of SA and the account given by Mrs Penton were available
- (g) rejecting an offer to mediate after Acting Justice Patten's decision in February 2006
- (h) taking too long to resolve the issue of recovery of costs from Mr Ellis
- (i) employing the measures set out in subparagraphs (a) to (h) above, which were disproportionate to the objective and psychological state of Mr Ellis.

The Archdiocese of Sydney's records show that, between the 1980s and 28 February 2014, the Archdiocese paid a total of \$8,977,266 as 'special issues payments'. Of this figure, \$4,669,000 related to child sexual abuse and \$746,000 related to boundary violations of adults within the Archdiocese.

The Archdiocese made payments of \$570,365 to Mr Ellis, which consisted of:

- counselling costs of \$10,424 to a period before October 2012
- \$6,944 for Medicare gap payments and surgery
- about \$474,464 for repairs and renovations to Mr Ellis's house, which was affected by storm damage
- \$28,533 for a holiday to New York
- a final lump sum payment of \$50,000.

The way forward

Cardinal Pell agreed that the Church has a moral responsibility for child sexual abuse that occurs within the Church.

Cardinal Pell gave evidence that he would like to see an independent body set up to investigate complaints of child sexual abuse, which would recommend compensation but not damages.

Cardinal Pell also said that the proper moral response would be to revisit the amounts paid under *Towards Healing*.

Cardinal Pell gave evidence that in his view the Church should be able to be sued in cases of child sexual abuse. He suggested that the Church set up a corporation sole that would have perpetuity and would appoint and supervise people 'so that the successors, if God forbid there were any after Mr Ellis, would have somebody to sue'.

However, he also stated that this corporation sole should only be liable for future abuse. For past abuse, Cardinal Pell said that the Church should only be held liable if liability could be established on legal principles in place at the time.

The scope of this hearing was confined to the Archdiocese's response to Mr Ellis's case. Accordingly, we did not consider any evidence of changes made to the Archdiocese's approach to civil litigation since that time. We note, however, that since Mr Ellis's case the Archdiocese has employed an in-house lawyer to oversee the conduct of litigation.

The Royal Commission will consider civil litigation further as part of its redress project.

1 Sexual abuse

As a child, from about 1974 to 1979, Mr John Ellis was sexually assaulted by Father Aidan Duggan. Mr Ellis was an altar boy and Father Duggan was an Assistant Priest at the Christ the King Catholic Church at Bass Hill in Sydney, New South Wales.¹ At this time, Mr Ellis was aged between 13 and 17 years old and Father Duggan was aged between 54 and 59 years old.²

Father Duggan was a Benedictine monk on leave from the Abbey of St Benedict of Fort Augustus in Scotland when the abuse took place. Father Duggan had moved from Australia to Scotland in 1942. He was ordained as a priest in 1950. Father Duggan's leave from the Fort Augustus Abbey continued until he was incardinated into the Archdiocese of Sydney in 1990.

Father Duggan began by touching, hugging and fondling Mr Ellis. The physical contact graduated to kissing, masturbation, oral sex and anal penetration. The sexual abuse happened regularly and frequently in Father Duggan's bedroom and sitting room at the presbytery of the Christ the King Catholic Church. On at least two occasions, the sexual abuse also occurred away from the presbytery, when Father Duggan was on vacation with Mr Ellis.³

When he matriculated from high school in 1978, Mr Ellis intended to become a priest and began studying to do so in 1979.⁴

Meanwhile, Father Duggan was transferred from Bass Hill Parish to Gympie Parish, then to St Mary's Cathedral,⁵ and later to Camperdown Parish. All of these parishes are in New South Wales.⁶

Father Duggan continued to abuse Mr Ellis in his early adult years. After Mr Ellis turned 18 in 1979,⁷ he maintained contact with Father Duggan.⁸ Each time they saw each other between 1979 and 1987, Father Duggan initiated sexual contact. The only other non-sexual contacts Mr Ellis could recall were when Father Duggan officiated Mr Ellis's wedding to his first wife in 1986 and when he baptised Mr Ellis's first child in 1987.⁹ Mr Ellis could not recall any further sexual contact with Father Duggan beyond 1987, by which time he was 26 years of age.¹⁰

Father Duggan's conduct was unwelcomed by Mr Ellis at all times. However, he found it difficult to stop submitting to his sexual advances. He felt that Father Duggan had been kind and generous to him and did not want to hurt his feelings by rejecting him. Mr Ellis felt that the only way he could control the situation was by minimising the number of occasions on which he saw Father Duggan.¹¹ From 1987 to 1994, apart from occasional telephone calls, he had no further contact with Father Duggan. Mr Ellis did not see Father Duggan again until about 14 months before he died in 2004.¹²

From the mid-1980s, Mr Ellis started studying economics and law,¹³ graduating in 1990 and 1992.¹⁴ He then worked as a solicitor.¹⁵ At about the same time, his relationship with his first wife broke down.¹⁶ The couple divorced in January 1994.¹⁷

In about March 1995, Mr Ellis participated in a number of 'Beginning Experience' encounter weekends for people who had been divorced, separated or widowed.¹⁸ While he was sharing a number of aspects of his own life experience with other course participants, he recognised that he had been the victim of child sexual abuse by Father Duggan.¹⁹ Mr Ellis felt strongly that Father Duggan's conduct towards him had been wrong. He felt deeply ashamed and embarrassed about the abuse.²⁰ He was not then able to explore the impact of the abuse.²¹ That process began a number of years later, in about 2001.²²

In July 2000, Mr Ellis married his current wife.²³ Within several months, he began to experience emotional difficulties and sought counselling.²⁴ On about 5 August 2001, he disclosed to his counsellor for the first time that he had suffered abuse as a teenager at the hands of Father Duggan.²⁵ In about September 2001, he disclosed the abuse to another counsellor.²⁶ Mr Ellis found it very difficult to talk about the abuse. The memories were painful and frightening and they came with strong physical memories of the abuse. The memories made him feel ashamed and sick.²⁷ His emotional wellbeing began to decline.

Each disclosure of further details about the abuse exacerbated Mr Ellis's physical and emotional symptoms. He became withdrawn and depressed and experienced uncontrollable anger and violent rages. He found it difficult to manage his emotions and cope with the demands of day-to-day working and family life.²⁸

In October 2001, a time that coincided with Mr Ellis's disclosure of the sexual abuse and his beginning to deal with its effects, Mr Ellis and his wife decided to live separately. They remained living in separate households until early 2007.²⁹ In late 2001, Mr Ellis also began receiving complaints about his leadership skills and methods of communication from members of his staff and colleagues at Baker & McKenzie, where he worked as a salaried partner.³⁰ He received a negative annual performance review in March 2003. Mr Ellis was given a report about his performance at work in September 2003. The report included severe criticism about his communication skills, leadership and treatment of subordinates.³¹

Mr Ellis began seeing a psychiatrist due to the considerable stress and increased difficulty he was experiencing in his personal and work relationships. The stress impacted on his physical wellbeing and he began taking anti-depressant medication.³² In December 2003, he ceased full-time work due to feelings of stress, depression and severe fatigue.³³ After resuming work on a part-time basis in January 2004,³⁴ his position at Baker & McKenzie was terminated in April 2004 due to the performance issues identified in his March 2003 performance review.³⁵

A psychiatrist who saw Mr Ellis gave the following opinion:

It is important to recognise that on the balance of probabilities Mr Ellis had been an intelligent, sensitive and impressionable adolescent at about the time when Father Duggan began to make sexual contact with him. [He] was an altar boy in the local parish and Father Duggan was perceived as a rather exotic priest. There was a substantial difference in power between the parties, this setting the scene for the damaging actions of the priest.

Also of importance is the careful planning undertaken by Father Duggan, initially to establish after school contact with Mr Ellis and in the progressive steps to achieve substantive sexual contact including anal penetration ...³⁶

2 *Towards Healing*: principles and procedures

The *Towards Healing* protocol is a set of principles and procedures established by the Australian Catholic Bishops' Conference and the Australian Conference of Leaders of Religious Institutes for a person who wishes to complain of having been, relevantly for this Royal Commission, sexually abused by a priest, religious or other Catholic Church personnel. It was introduced in 1997 and revised in 2000, 2003, 2008 and 2010.

In the introduction of each of the versions of *Towards Healing*, including *Towards Healing* (2000), it is stated that the document:

establishes public criteria according to which the community may judge the resolve of Church leaders to address issues of abuse within the Church. If we do not follow the principles and procedures of this document, we will have failed according to our own criteria.³⁷

In general terms, the stated intent of *Towards Healing* is to give victims an opportunity to tell their story to somebody in authority in the Church, receive an apology, be offered pastoral care and be offered reparation. It also provides one of several methods by which Church bodies assess risk regarding those still holding a position within the Church. It is intended to apply to complaints received everywhere in Australia except for complaints about accused persons who were priests, religious or laypersons holding an appointment from the Archbishop of Melbourne at the time of the alleged abuse. These complaints are dealt with under a different scheme known as the Melbourne Response.³⁸

The procedures outlined in the original and revised versions of *Towards Healing* differ in terms of structure and procedure. However, the principles have remained unchanged. They are stated as striving for truth, humility, healing for victims, assistance to other persons affected, an effective response to those who are accused, an effective response to those who are guilty of abuse and prevention of abuse.

Mr Ellis commenced his *Towards Healing* process in June 2002.³⁹ *Towards Healing* (2000), published in December 2000, as amended in May–June 2003, was the version that applied to his complaint at the relevant times.⁴⁰

The principles that applied to the handling of Mr Ellis's complaint included the following:

- Any form of sexual behaviour with a minor, whether child or adolescent, is always sexual abuse. It is both immoral and criminal.⁴¹
- Victims of abuse can experience fear, shame, confusion and the violation of their person. They can feel guilty, blame themselves and take responsibility for what has happened.⁴²
- Victims can go through a long period of silence, denial and repression. Other people can refuse to believe them, reinforcing their sense of guilt and shame.⁴³

- The intensity of the effects of abuse on victims will vary. Some of the factors involved are the age and personality of the victim, the relationship with the offender, the duration and frequency of the abuse, the particular form of the abuse, the degree of force used, the threats used to compel secrecy, the degree of violation of trust and abuse of power involved and the reaction of those in whom the victim confides.⁴⁴
- We express regret and sorrow for the hurt caused whenever the response [of the Church Authority] denies or minimises the pain that victims have experienced.⁴⁵
- A compassionate response to the complainant must be the first priority in all cases of abuse. This attitude must be present even at a time when it is not yet certain that the allegations are accurate.⁴⁶
- At the first interview complainants should be assured that, if the facts are truly as stated, abuse must be named for what it is and victims assisted to move the blame from themselves to the offender ... They should be offered whatever assistance is appropriate.⁴⁷
- Whenever it is established, either by admission or by proof, that abuse did in fact take place, the Church Authority shall listen to victims concerning their needs and ensure they are given such assistance as is demanded by justice and compassion.⁴⁸
- We shall also strive to assist in the psychological and spiritual healing of those persons who, as well as the victims, have been seriously affected by incidents of abuse.⁴⁹

Towards Healing (2000) required a Professional Standards Resource Group to be established and maintained in each State and the Northern Territory (with New South Wales combined with the Australian Capital Territory (ACT)). The Professional Standards Resource Group is appointed by the bishops and leaders of religious institutes to advise on matters of professional standards.⁵⁰

The following procedures applied to the handling of Mr Ellis's complaint.

A Director of Professional Standards was appointed in each State and the Northern Territory with responsibility for managing the process.⁵¹ Mr John Davoren was the Director of Professional Standards Office NSW/ACT when Mr Ellis made his complaint and Mr Michael Salmon became the Director in April–May 2003.

The process was intended to begin when a complaint of abuse came to the notice of any Church personnel and the complainant wished to invoke the *Towards Healing* procedure. Church personnel were to refer the complaint to a Contact Person as soon as possible.⁵²

After the initial complaint was received, the Contact Person could act as a support person for the complainant and assist with communication between the complainant, Church Authority and assessors.⁵³ The Contact Person was to explain the procedures and ensure that the complainant consented to proceeding with *Towards Healing*.⁵⁴

The Contact Person was to promptly pass the complaint to the Director of Professional Standards.⁵⁵ The Director was then to forward the complaint to the relevant Church Authority by.⁵⁶ The Director could make recommendations concerning the funding of counselling or other such assistance for the complainant pending the outcome of the investigation.⁵⁷ The Church Authority was to inform the accused of the nature of the complaint if it was possible to do so.⁵⁸

The Church Authority (or his or her delegate) was to seek a response from the accused to determine whether the facts of the case were significantly disputed.⁵⁹

Where there was a significant dispute about the facts, or the accused was unavailable to give a response, the matter was to be investigated in accordance with the procedures.⁶⁰ Where facts of the case were in dispute, the Director of Professional Standards was to act in accordance with clause 40.⁶¹

Clause 40 of the procedures provided that the Director of Professional Standards should appoint two assessors unless the Director considers that one is sufficient.⁶² The assessors were to be independent of the complainant, the Church Authority and the accused.⁶³

The procedures section of *Towards Healing* acknowledged that the assessment process can be a difficult and trying time for all concerned, particularly for the complainant and accused. Accordingly, it should be undertaken and concluded as quickly as possible. The Director of Professional Standards was to seek to ensure that all parties adhered to this principle.⁶⁴

The purpose of an assessment was to investigate the facts of the case where there was a significant dispute as to the facts or where there was a need for further information concerning the complaint.⁶⁵

The assessor was to arrange an interview with the complainant⁶⁶ and the accused if he or she was available and willing to speak.⁶⁷ If the accused did not wish to cooperate with the assessment, the assessment was to still proceed and the assessor should endeavour to reach a conclusion concerning the truth of the matter so that the Church Authority could make an appropriate response to the complainant.⁶⁸

After the assessment was completed, the assessors were to provide a written report to the Church Authority and Director of Professional Standards. The assessors were to review all the evidence and examine the areas of dispute. They could advise the Church Authority whether they considered the complaint to be true.⁶⁹

The Church Authority was to discuss the findings and recommendations of the report with the Director of Professional Standards as quickly as possible.⁷⁰ If the assessors considered the complaint to be true then the Church Authority was under an obligation to consider what action needed to be taken regarding outcomes relating to the victim and the accused.⁷¹ If the Church Authority decided to reject the complaint then it was obliged to provide reasons for its decision to the complainant.⁷²

If the Church Authority was satisfied of the truth of the complaint, whether through admission of the offender, a finding of a court, a canon law process or a Church assessment,

the Church Authority was to respond to the needs of the victim 'in such ways as are demanded by justice and compassion.'⁷³ Responses could include:

- the provision of an apology on behalf of the Church
- the provision of counselling services
- the payment of counselling costs.

Financial assistance or reparation could also be paid to victims of a criminal offence or civil wrong, even though the Church is not legally liable.⁷⁴

From mid-2003, the procedures directed a bishop or leader to seek the advice of the consultative panel in determining how to respond to the complainant.⁷⁵

The next stage of the process was usually a facilitation. The complainant and the Church Authority should have mutually agreed on a person to conduct the facilitation (the 'Facilitator') from an approved panel.⁷⁶ The Facilitator's role was to understand the ongoing needs of the complainant and the Church Authority's response to those needs.⁷⁷

The Facilitator was to arrange and moderate a process for communication between the victim and Church Authority. This may have involved a meeting under the direction of the Facilitator in which apologies could be offered and unresolved issues addressed.⁷⁸

Issues concerning reparation could be dealt with in a facilitation, addressed through a compensation panel or dealt with through some other process in order to reach a resolution.⁷⁹ The Facilitator was to seek to identify any outstanding issues where the victim was not satisfied with the response received and was to explore with the parties the best means of dealing with those issues.⁸⁰ The Church Authority was to bear all ordinary and reasonable expenses of the process of facilitation.⁸¹

If the victim remained of the view that the Church Authority's response was unsatisfactory, the victim was to be informed about access to a review process.⁸² The complainant or an accused who has participated in the *Towards Healing* process could seek a review.⁸³ The review of process was an independent evaluation, not only of whether the procedures set out in *Towards Healing* (2000) were properly observed but also whether the principles had been adhered to.⁸⁴ That review would not consider the outcome of the *Towards Healing* process, unless the Church Authority requested that the review consider that aspect of the matter.⁸⁵

At the end of the review, the Reviewer was to provide a written report with recommendations to the Special Issues Resource Group. If the Reviewer considered that there had been a failure to observe the required processes, he or she should have indicated whether the decided outcomes ought to be called into question.⁸⁶ The Director was to provide a copy of the report to the person requesting the review and the Church Authority. As soon as convenient, the Director was to discuss the implementation of the recommendations with all parties.⁸⁷

3 Structure of the Sydney Archdiocesan Office

At the time of Mr Ellis's *Towards Healing* process, the Sydney Archdiocesan Office consisted of two separate areas: the Chancery Office and the Archbishop's Office.⁸⁸

3.1 The Chancery Office

The Chancery Office provided administrative and accounting support to the Archbishop, who was at that time Cardinal Pell, and to the parishes and agencies of the Archdiocese.⁸⁹

Archbishop Pell was installed as the Archbishop of Sydney on 10 May 2001. He was elevated to the Sacred College of Cardinals as the Cardinal Priest of the Church of Saint Maria Domenica Mazzarello, Rome, by announcement of Pope John Paul II on 28 September 2003.⁹⁰ He was appointed to his current position as the Prefect for the Secretariat for the Economy of the Holy See by Pope Francis on 24 February 2014.⁹¹ This report refers to the Cardinal by reference to the position he held at the relevant time.

The members of the Chancery Office included the Chancellor, currently Monsignor John Usher and previously Monsignor Brian Rayner; the Business Manager, who at the time of the hearing was Mr Daniel Casey; and the Financial Controller, currently Mr Michael Moore.⁹²

When Cardinal Pell was Archbishop, the Business Manager and Chancellor had delegated or specific standing authority within their areas of responsibility and particular duties assigned to them under the Church's Code of Canon Law.⁹³ The Business Manager was responsible for all financial matters and held the canonical position of the Diocesan Financial Administrator.⁹⁴ The Chancellor and Business Manager reported directly to Cardinal Pell.⁹⁵ The Financial Controller reported to Cardinal Pell through the Business Manager.⁹⁶ Cardinal Pell had ultimate control of the finances with guidance from the Business Manager.⁹⁷

Monsignor Rayner commenced as Chancellor in April 2003. He succeeded Father John Doherty, who had been acting Chancellor since about May 2002.⁹⁸

Mr Dominic Cudmore was appointed as Assistant to the Chancellor in May 2002 and was in that role until December 2004.⁹⁹ Monsignor Usher was appointed Chancellor on 25 May 2005 and remains in that position.¹⁰⁰

Monsignor Rayner was also the Vicar General and the Moderator of the Curia.¹⁰¹ One of the Chancellor's tasks was to deal on behalf of the Archdiocese of Sydney with *Towards Healing* complaints made about clergy or employees of the Archdiocese.¹⁰² As Vicar General he was one 'who acts in the diocese as a particular delegate for the bishop or archbishop and he should act in a spirit that would reflect the will of the archbishop or bishop' with the delegations contained in the Code of Canon Law.¹⁰³

3.2 The Archbishop's Office

The Archbishop's Office comprised two senior personal assistants who reported to Dr Michael Casey, Cardinal Pell's Private Secretary from the commencement of his position as Archbishop of the Archdiocese of Sydney in March 2001.¹⁰⁴

Since 2004, the Chancery and the Archbishop's Office have been located on the same floor at the Polding Centre in Liverpool Street, Sydney.¹⁰⁵ The Professional Standards Office NSW/ACT was in the same building as the Chancery but on a different floor.¹⁰⁶

As Private Secretary to Cardinal Pell, Dr Michael Casey's primary role was to ensure the smooth running of the Archbishop's Office.¹⁰⁷ He reported directly to Cardinal Pell.¹⁰⁸

Dr Michael Casey was one of the main means of conveying information to the Cardinal,¹⁰⁹ although Cardinal Pell sought advice not only from members of his staff, senior priests and heads of archdiocesan agencies but also from people outside the Archdiocese's offices.¹¹⁰

Dr Michael Casey told us that communications between individuals within the Chancery occurred at both an informal and formal level. People frequently consulted with each other informally to discuss issues arising, and formal meetings were also held.¹¹¹ This informal approach extended to meetings with Cardinal Pell. Dr Michael Casey gave the example that 'if the Cardinal is in his office the Chancellor may ask to see him without a prior appointment'.¹¹²

4 Mr Ellis's *Towards Healing* process

Mr Ellis's *Towards Healing* process began in May 2002 when he telephoned the Professional Standards Office NSW/ACT and advised the telephone operator that he was 'sexually abused 25 years ago by a priest in the Sydney area'.¹¹³

Mr Ellis met with Brother Laurie Needham on 3 June 2002 so that Brother Needham could assist him in making his written *Towards Healing* complaint.¹¹⁴ Mr Ellis found Brother Needham both supportive and encouraging.¹¹⁵ At this time, Brother Needham was Deputy Province Leader of the Christian Brothers in New South Wales.

4.1 Mr Ellis's complaint

On 3 June 2002, Mr Ellis made a formal Statement of Complaint alleging that he was sexually abused by Father Aidan Duggan while he was an altar boy and Father Duggan was an Assistant Priest at Christ the King Catholic Church at Bass Hill.¹¹⁶

Mr Ellis expected the following outcomes from the *Towards Healing* process:

- Father Duggan is not in active ministry.
- I will receive from the Church a personal acknowledgement of the wrong done to me.
- Father Duggan will be confronted with this complaint and will acknowledge the wrong done.
- The Church will provide assistance and support in addressing the effects of the abuse.¹¹⁷

Mr Davoren was the Director of the Professional Standards Office NSW/ACT at the time and had been in that position since 1997.¹¹⁸ He had qualifications as a social worker.¹¹⁹ He was also a former priest.¹²⁰ He gave evidence that he was aware of and familiar with the impact of child sexual abuse and the needs of survivors when he began his position with the Professional Standards Office NSW/ACT.¹²¹

Mr Davoren did not follow the *Towards Healing* protocol from the outset. He did not personally appoint Brother Needham as the Contact Person for Mr Ellis. Rather, Brother Needham was appointed through another procedure, which was that those with responsibility for answering the Professional Standards Office complaint telephone number were required to refer the matter to a suitable Contact Person as soon as possible. The evidence establishes that this stage in the process was followed.

Brother Needham met Mr Ellis following Mr Ellis's telephone call.¹²²

Brother Needham took down Mr Ellis's complaint, which was one of the tasks of a Contact Person. He did not carry out any other tasks given to a Contact Person under the *Towards Healing* procedures. Mr Davoren did not at any time speak to Brother Needham about his preparedness to act as a Contact Person.¹²³

Brother Needham had no further contact with Mr Ellis after taking his complaint. He did not act as a support person for Mr Ellis or assist him with communication between the Church Authority and assessor/s. These latter roles were contemplated as part of the role of Contact Person under *Towards Healing* (2000).¹²⁴

The *Towards Healing* protocol required that victims be given a copy of the protocol. However, Mr Ellis was not given the protocol at any stage while Mr Davoren was the Director of the Professional Standards Office NSW/ACT.¹²⁵

Mr Ellis obtained a copy of *Towards Healing* (2000) from a website in March 2003,¹²⁶ some nine months after he had made his initial *Towards Healing* complaint.

An email from Father Doherty to Mr Davoren on 7 June 2002 recommended that Mr Ellis be asked if he wished to have some immediate counselling.¹²⁷ However, Mr Ellis was not offered counselling at any time during the period that Mr Davoren was Director of Professional Standards.¹²⁸ Mr Ellis was ultimately offered counselling 18 months after he commenced his *Towards Healing* process.¹²⁹

4.2 Father Duggan's mental state

An issue that was central from the outset was whether Father Duggan was able to respond to Mr Ellis's complaint. The protocol gave clear guidance on this matter, but Mr Davoren did not follow the protocol.

The issue first arose on 5 June 2002, when Mr Davoren wrote to Archbishop Pell (as he then was) enclosing a copy of Mr Ellis's complaint. Archbishop Pell read it on 7 June 2002.¹³⁰ Six weeks later, Mr Davoren told Mr Ellis that he had discussed Mr Ellis's complaint with the Archbishop and that:

Father Duggan's mental state has deteriorated seriously. His memory is variable, he cannot make a mature decision and has no capacity to understand the full implications of a decision.¹³¹

Mr Davoren's letter then stated:

The next step is usually to appoint an assessor to interview both parties. I would like to discuss with you what we might do now that it appears to be pointless to have Father Duggan interviewed.¹³²

By June 2002, either Brother Needham or Mr Davoren told Mr Ellis that Father Duggan was in a nursing home.¹³³

Two days after the Professional Standards Office NSW/ACT had received Mr Ellis's Statement of Complaint, Mr Davoren emailed Father Doherty, then the Acting Chancellor, and Dr Michael Casey, the Archbishop's private secretary, setting out a number of relevant provisions of *Towards Healing* (2000). He wrote:

These provisions depend on the state of health of the accused and I suggest that we need to discuss this before any action is taken.¹³⁴

On 27 June 2002, Mr Davoren told Mr Ellis that his complaint had been sent to Archbishop Pell (as noted in Mr Davoren's earlier letter dated 5 June 2002) and that he was 'presently trying to find out if the priest is in a fit state of health to be assessed'.¹³⁵

Just under two months later, Mr Ellis followed up on the progress of his complaint. He wanted to know 'whether an interview with Fr Duggan is to be arranged and whether an assessor has yet been appointed'.¹³⁶ Mr Davoren agreed that by the time of his letter dated 21 August 2002, it was plain that Mr Ellis was not accepting that Father Duggan could not be interviewed.¹³⁷

In late August or early September 2002, Bishop David Cremin, who was then an Auxiliary Bishop of the Archdiocese of Sydney, met with Father Duggan at his nursing home. He was told by nursing staff that Father Duggan was suffering from senile dementia.¹³⁸

On 13 September 2002, Mr Davoren wrote to Mr Ellis that he was 'at long last able to report some progress'. This was that Bishop Cremin had sat with Father Duggan for some time and said that 'he is not with it at all and is unable to engage in normal conversation'. Bishop Cremin had also been told by the Director of Nursing at the home that Father Duggan was suffering from senile dementia and that it was gradually worsening. He also said that when Bishop Cremin mentioned names, including Mr Ellis's, there was no response.¹³⁹

Mr Ellis later told Mr Davoren that his mother and another parishioner from Bass Hill had visited Father Duggan and that he was cogent and recognised them.¹⁴⁰ Mr Ellis prompted Mr Davoren to 'reconsider whether to try to speak to [Father Duggan] about [Mr Ellis's] complaint'.¹⁴¹

Meanwhile, in October 2002, Mr Michael Salmon had been engaged by Mr Davoren to help 'facilitate' Mr Ellis's complaint.¹⁴² Mr Salmon is the current Director of the Professional Standards Office NSW/ACT. It became clear that the intention was that Mr Salmon would assist the process rather than facilitate it, in the terms defined in the protocol.

Some five months passed after Mr Davoren had contacted Mr Ellis. On 3 February 2003, Mr Ellis received a telephone call from Mr Salmon, who said that Mr Davoren was going to organise an assessment of Father Duggan's mental capacity.¹⁴³ This was the first indication that an assessment would be arranged when Father Duggan's lucidity had been an issue since at least September 2002.

The assessment of Father Duggan's mental capacity was again delayed the following month. On 19 March 2003, Mr Ellis received an email from Mr Davoren that he had 'a legal opinion that under the various bits of privacy legislation we cannot ask for an assessment of Duggan's mental health' and that he was following it up but had nothing else to report.¹⁴⁴

By this stage, nine months had passed since Mr Ellis initially made his *Towards Healing* complaint with Brother Needham in June 2002. Mr Ellis emailed Mr Davoren on 21 March 2003 requesting that:

a further visit to Fr Duggan [be] arranged as soon as possible to ascertain whether he can provide any information regarding my complaint. Given the varying reports about his condition, this matter was urgent when I first made my request. This step

should be taken in the context of the process outlined in the *Towards Healing* document ...¹⁴⁵

Mr Ellis also requested a copy of the legal advice the Church had received about the difficulty of obtaining an assessment of Father Duggan's mental capacity.¹⁴⁶ Mr Ellis expressed disappointment at Mr Davoren's suggestion that he would stop the process if Mr Ellis sought legal advice on the assessment of Father Duggan.¹⁴⁷ Mr Ellis gave evidence that 'it just didn't ring true to me that there was some impediment to Father Duggan being medically assessed'.¹⁴⁸

On 28 March 2003, Mr Davoren responded to Mr Ellis and once again said that the issue of Father Duggan's capacity was a matter that needed to be addressed before the complaint could progress any further. He wrote, 'obviously the matter of Fr Duggan's capacity to respond to the charges is central to the case, and that is the issue that must be addressed first'.¹⁴⁹ He also said that Mr Ellis's request for a copy of the legal advice had gone back to the lawyers for their advice.¹⁵⁰

Mr Ellis did not agree with Mr Davoren. He responded to Mr Davoren by email on the same day:

I agree that Fr Duggan's capacity to respond is an important issue in moving towards a resolution of the complaint. What I do not necessarily accept is that it is a 'central' issue, in the sense of being something that dictates the outcome or progress of the process. I also find it unhelpful that your language has shifted to a language of 'charges' and 'case', rather than language more appropriate to a compassionate healing process.¹⁵¹

Three days later, Mr Davoren again advised Mr Ellis that the matter of whether Father Duggan was 'fit to plead' had been referred back to the Archdiocesan solicitors and 'this office can take no action in the meantime':

I can only repeat what has been indicated to you previously, that the process can go no further if Fr Duggan is not able to be interviewed, and on the nursing home's advice he is in effect 'not fit to plead'. What would be required for it to be established that he is fit to plead has been referred back to the Archdiocese's solicitors and this office can take no action in the meantime.¹⁵²

4.3 'Nothing the Archdiocese can do'

On 10 December 2002, Mr Davoren wrote to Archbishop Pell stating:

It is now clear the facts of this case can never be satisfactorily clarified. It does not appear that Mr Ellis can corroborate his version of events in such a way that it would be possible to conclude on the balance of probabilities that the situation that he described did in fact take place ...

One plan that has been discussed as the next step was a meeting under supervision with Fr Duggan as a pastoral response that might be of assistance to Mr Ellis. There

are some potential problems with this approach, and I recommend that such a meeting not take place. Rather, I suggest that if Mr Ellis wishes to meet with Fr Duggan he seek to arrange that through the hospital, and that it be left to the hospital to decide whether or not and how such a visit should be arranged.

I suggest that if you agree with this advice, it would be better if this message were communicated to Mr Ellis in a letter from you. I attach a draft that you might like to consider.¹⁵³

On 23 December 2002, Archbishop Pell wrote a letter to Mr Ellis.¹⁵⁴ However, he made significant changes to Mr Davoren's draft.¹⁵⁵ Archbishop Pell's letter appears below with the changes made by him marked.

Dear Mr. Ellis,

I have been kept aware of your complaint against Father Duggan and the difficulties faced in bringing this matter to some kind of resolution. It is ~~unfortunately~~ clear now that Father Duggan is in no state to respond to the charges against him and that the facts of the matter cannot be established ~~on the balance of probabilities.~~ On the one hand, there is your allegation, and on the other ~~As you are aware this is not to suggest that you are disbelieved, but that it has become a matter of one person's word against another.~~ Father Duggan cannot respond and we have no other record of complaints of this kind against him.

~~I know that to achieve some peace of mind~~ understand you would like to have a meeting with Father Duggan and it has been suggested that this might be done in a formal way with one of my Assistant Bishops being present during the meeting. ~~This plan was developed in response to your request for a meeting.~~ Given the state of Father Duggan's health, it is unclear that a formal meeting of this kind is necessary, and it seems to me that such a meeting does not require such formality and it would be better if you ~~still want such a meeting~~ would like to proceed with this request that you contact the ~~you should approach the~~ hospital ~~directly and ask them to arrange~~ authorities.

I ~~very much~~ regret ~~any hurt that you have experienced~~ that a clear resolution of this matter is not possible, but under these ~~se~~ circumstances I do not see that there is anything the Archdiocese can do ~~to help you bring this matter to some resolution~~ towards this end.

Yours sincerely

ARCHBISHOP OF SYDNEY

On Christmas Eve 2002, Mr Ellis received the letter from Cardinal Pell.¹⁵⁶

Cardinal Pell told us that he accepted the advice set out in Mr Davoren's letter of 10 December 2002 that Mr Ellis's complaint could not be established on the balance of probabilities.¹⁵⁷ He said that at the time he sent the letter of 23 December 2002, he believed

that the assessment of Mr Ellis's case, as required under the *Towards Healing* protocol, had been proceeding and that Mr Davoren was proposing a conclusion. He said he regretted his mistake on that matter.¹⁵⁸ Cardinal Pell agreed that before writing such a letter he should have made sure that it was right to reject the complaint, but his 'overwhelming presumption was that if I got advice from the Professional Standards Office, I followed it'.¹⁵⁹

Cardinal Pell said:

I did not understand Mr Davoren to be suggesting, and I did not myself have any wish, that the *Towards Healing* process be brought to an end ... It was not my intention to convey to Mr Ellis that there was nothing the Archdiocese could do about resolving his complaint overall. I expected that the PSO would continue to take whatever steps still needed to be taken under *Towards Healing* notwithstanding that there would be no formal meeting between Mr Ellis and Fr Duggan. I did not appreciate then that Mr Davoren's opinion did not constitute an assessment for the purposes of *Towards Healing* and that therefore no assessment had yet been carried out. In hindsight it seems to me that this paragraph of my letter could have been better expressed.¹⁶⁰

Cardinal Pell's evidence is at odds with our understanding of the letter. Whether or not Cardinal Pell had the wish or intention he refers to, on a plain reading of the letter Cardinal Pell was informing Mr Ellis that nothing more could be done. Our finding on this matter appears later in this section.

Not surprisingly, Mr Ellis construed the last sentence in the letter to be a 'clear statement that the Archbishop considered the matter to be at an end, despite there having been no formal assessment of my complaint'.¹⁶¹

Even Mr Cudmore, in a letter to Mr Richard d'Apice of Makinson d'Apice Solicitors dated 28 March 2003, stated that the letter of 23 December 2002 advised Mr Ellis 'the case can go no further'.¹⁶²

The Church parties also properly accepted that the last paragraph of the letter was capable of conveying and did convey to Mr Ellis the message that the Church Authority did not consider it could take any further steps under the *Towards Healing* process in relation to Mr Ellis's complaint.¹⁶³

Cardinal Pell told us, 'I always read letters which I sign and I am sure I did so with this one. Such a letter would be read closely by me'.¹⁶⁴ Cardinal Pell accepted responsibility for the changes made to Mr Davoren's draft.¹⁶⁵

The changes made by Cardinal Pell to Mr Davoren's draft letter removed Mr Davoren's reference to not suggesting that Mr Ellis was disbelieved.¹⁶⁶ Cardinal Pell gave evidence that 'I wasn't going to say in effect, that we believe Mr Ellis when the point of Mr Davoren's advice was that this couldn't be established'.¹⁶⁷ He subsequently gave evidence that he was quite mistaken in his belief that Mr Ellis's allegations could not be established simply because Father Duggan could not respond.¹⁶⁸ The latter was plainly correct.

The changes to the draft letter also removed the phrase ‘I very much regret any hurt that you have experienced’. Cardinal Pell said:

I also felt that that was quite illogical, because if hurt had been caused, that would indicate that the case was believed, that the case was established. I didn’t think the letter could have it both ways. If the case couldn’t be established, then the hurt couldn’t be established. That was my reasoning. I was attempting to be honest.¹⁶⁹

Mr Ellis’s response to the letter was that he ‘thought that the door was being slammed in my face’.¹⁷⁰ He said, ‘what I took [the proposition that because one party could not give an account therefore the facts could not be established] to mean was that my account was not to be believed and that the Archbishop did not believe what I was putting forward’.¹⁷¹

Cardinal Pell said:

I regret what I did. It was a mistake. To say that something could not be satisfactorily established is one form of rejection. It’s not a denial necessarily that it took place.¹⁷²

Cardinal Pell gave evidence that he believed at the time that Mr Davoren had himself conducted an assessment.¹⁷³ Cardinal Pell said that he misunderstood Mr Davoren’s role in the assessment process.¹⁷⁴ He accepted that he knew at the time that *Towards Healing* required someone other than Mr Davoren to do the assessment but that ‘the point was lost on me as we went ahead’.¹⁷⁵ He said that his understanding was ‘somewhat confused’¹⁷⁶ even though he knew he usually approved the appointment of an assessor and had not done so in this case.¹⁷⁷

On 26 June 2003, after Mr Salmon took up the position of Director of Professional Standards NSW/ACT, the Archdiocese engaged Mr Michael Eccleston to carry out an assessment of Mr Ellis’s complaint.¹⁷⁸ When Cardinal Pell received Mr Eccleston’s assessment report,¹⁷⁹ he was struck by how different it was from the various communications from Mr Davoren to him over the preceding period – June 2002 to May 2003. He gave evidence that ‘Mr Davoren’s recommendations were not adequate, not correct’.¹⁸⁰

Cardinal Pell agreed that Mr Davoren’s recommendation that ‘the facts of this case can never be satisfactorily clarified’ was plainly wrong ‘in the light of present information’. However, in relation to his view at the time, Cardinal Pell gave evidence that:

No, of course I didn’t believe it was plainly wrong. I wouldn’t have accepted it if I thought it was plainly wrong.¹⁸¹

Cardinal Pell was absent from the management of the Archdiocese during August to October 2002, when the assessment should have been carried out.¹⁸²

We accept that Cardinal Pell relied upon Mr Davoren to properly apply the procedures in *Towards Healing*.¹⁸³ He then followed Mr Davoren’s advice, assuming that those procedures had been followed.¹⁸⁴ After receiving a copy of Mr Eccleston’s report, Cardinal Pell became aware that this reliance was misplaced.¹⁸⁵

The Church parties properly accepted that the 23 December 2002 letter was contrary to the procedures in *Towards Healing* (2000), as an assessor should have been appointed under clauses 38.7, 39.3 and 40 of the protocol regardless of the inability of Father Duggan to respond.¹⁸⁶

- ▶ **Finding 1:** Cardinal Pell relied upon Mr Davoren to properly apply the procedures in *Towards Healing*. He then followed Mr Davoren's advice, assuming that such procedures had been followed. After receiving a copy of Mr Eccleston's report, Cardinal Pell became aware that such reliance was misplaced.
- ▶ **Finding 2:** Cardinal Pell's letter to Mr Ellis dated 23 December 2002 was contrary to the procedures in *Towards Healing* (2000), as an assessor should have been appointed under clauses 38.7, 39.3 and 40 of the protocol, regardless of the inability of Father Duggan to respond.

Cardinal Pell's and Mr Davoren's approach can be contrasted with that of Monsignor Usher:

If the complaint is about a priest who is deceased, or who has dementia or is otherwise unable to respond, it is not possible to hear the priest's side of the story. In such circumstances, my practice is that I tell the victim that they are believed. I offer to help them and I begin to explore their needs with them.¹⁸⁷

Monsignor Usher said that his practice was to meet a victim early on to enable him to form his own assessment of the victim, including their needs.¹⁸⁸ Monsignor Usher stated that in his meetings with victims he does:

everything I possibly can to listen to and empathise with the victim and to demonstrate that they are believed and that the Church wants to do whatever it can to assist them. This occurs even prior to the result of a police investigation or a *Towards Healing* assessment.¹⁸⁹

4.4 John Ellis persists

Despite the receipt of the letter, on 20 January 2003 Mr Ellis telephoned Brother Hill, who had become involved in Mr Ellis's matter while Mr Davoren recovered from heart surgery.¹⁹⁰ According to a note made by Brother Hill:

He talked about the shock of receiving the letter from the Archbishop on Christmas Eve. He sounded disappointed rather than angry. He said he understands that there is no point in trying to interview Duggan, but would still like to proceed with the TH process. What this amounts to is that he wants to go ahead with a facilitated meeting with the Archbishop (or his representative).¹⁹¹

On 21 March 2003, Mr Ellis wrote to Mr Davoren expressing dissatisfaction with the process, which had begun some nine months before. He referred to the *Towards Healing* protocol,

which he had just obtained from the internet,¹⁹² and requested that the procedure provided for by the protocol be followed – in particular:

- that two assessors be appointed to investigate his complaint
- that he be notified as to the identity of his Contact Person
- that appropriate steps be taken to establish whether Father Duggan could be interviewed or, in the alternative, that the assessor obtain other relevant information
- that the assessment process be undertaken in accordance with the guidelines
- that clarification be provided in relation to the role being performed by Mr Salmon
- that a Facilitator be appointed at the appropriate time and after consultation with Mr Ellis
- that the process be conducted from here on with justice and compassion.¹⁹³

On 28 March 2003, Mr Davoren wrote to Dr Michael Casey and Mr Cudmore, referring to correspondence with Mr Ellis. Mr Davoren's email stated:

Obviously Ellis does not appreciate or does not want to appreciate that the case cannot proceed without Duggan making admissions, and that as far as the Archdiocese and this office is concerned there is nowhere for this 'case' to go. His comments about *Towards Healing* are, I suggest disingenuous; it would seem that the only logical reason for pursuing his fairly aggressive line is to establish a case for compensation. An appointment of an assessor without clarifying Duggan's ability to plead is both unjust and likely to render null and void any conclusions that might be drawn from such an assessment; it is not the role of assessors to assess the mental fitness of an accused.¹⁹⁴

Mr Davoren initially corresponded with Mr Ellis and the Archbishop in terms consistent with the protocol in that he contemplated the early appointment of an assessor.¹⁹⁵

However, his view changed, and he agreed that he did not follow clause 38.7 of *Towards Healing* (2000).¹⁹⁶ That clause is as follows:

Where there is a significant dispute about the facts, or the accused is unavailable to give a response, the matter shall be investigated in accordance with the procedures set out in this document.¹⁹⁷

Those procedures included having the complaint assessed by one or two independent persons engaged for that purpose.¹⁹⁸

Mr Davoren gave a number of reasons for not appointing an assessor. First, 'I was more aware of the fact that Mr Ellis had not spoken to anyone else and that there were problems

about his memory'.¹⁹⁹ He referred to the possibility of Mr Ellis having had a repressed memory.²⁰⁰ Similarly, in his statement to the Royal Commission Mr Davoren said:

many years had elapsed since the alleged incidents, and Mr Ellis was suffering from a number of psychological complications which may or may not have been caused by the conduct of Duggan but which may have affected his memory.²⁰¹

Mr Davoren accepted that the responsible thing to do would have been to get someone properly qualified to make an assessment of the case and gave evidence that 'that certainly would be a sensible option'. Mr Davoren did not obtain such an assessment in Mr Ellis's case.²⁰²

Secondly, Mr Davoren considered that 'there were only two people who actually knew what happened'.²⁰³ He said, 'my basis for the delay was that we only had two witnesses, possible witnesses: the accused, who we couldn't get anything from; and the victim'.²⁰⁴ He also said it was relevant that 'there was apparently no other complaint against Fr Duggan in the 40 years or so he had been a priest'.²⁰⁵

Mr Davoren said, 'the facts of the case could never be clarified due to the absence of corroboration and the incapacity of Duggan' and that 'an assessment could not be carried out if Duggan was not able to be interviewed'.²⁰⁶ He said these were his views at the time and remain his views.²⁰⁷

Despite this, Mr Davoren did not seek any material in writing to support Mr Ellis's complaint.²⁰⁸ Mr Davoren knew that the Church Authority had determined that 'Mr Ellis had been in the parish and there wasn't any doubt about the fact that they had been friendly'.²⁰⁹ However, Mr Davoren did not accept that this supported Mr Ellis's complaint.²¹⁰

Equally, Mr Davoren did not accept that as part of his responsibilities he should have had an independent person assess the credibility of Mr Ellis's complaint.²¹¹

Mr Davoren did not accept that his not having appointed an assessor amounted to an absence of either justice or compassion for Mr Ellis.²¹²

Mr Davoren said he treated Mr Ellis's complaint in this way because:

I would suggest that it was because of the unusual circumstances: no other complaint against the priest, nothing that Mr Ellis was able to indicate that could point in that direction, so it's just a question of whether he was a credible witness or not ... But that is a very subjective assessment, and Mr Ellis may in fact have had some problem with his memory.²¹³

Mr Davoren agreed that, if a literal interpretation of the words of clause 38.7 of *Towards Healing* (2000) were adopted, he would have to admit that he failed Mr Ellis in the handling of his complaint. However, Mr Davoren did not agree that he failed Mr Ellis in the handling of his complaint.²¹⁴

Cardinal Pell said:

Mr Davoren was unwell; he had a bypass. Mr Davoren is a very good man. He worked hard to help the victims, but was a muddler and sometimes he wasn't logical. And also I think, if I could put a – I don't think it's a misleading brand – his approach to these matters was pre-1996. He didn't seem to have a scrupulous understanding or commitment to exactly following protocols.²¹⁵

Cardinal Pell gave evidence that 'any victim who has been abused by church personnel is invited to come to *Towards Healing* and should be treated with justice and compassion'.²¹⁶ He agreed that Mr Ellis was not treated consistently with the requirements of justice and compassion during the *Towards Healing* process.²¹⁷ He accepted that the *Towards Healing* process in Mr Ellis's case was flawed, which left Mr Ellis confused and mistrusting that process.²¹⁸

However, Cardinal Pell did not agree that the Archdiocese had fundamentally failed Mr Ellis in its handling of his complaint. He said:

It didn't completely fail him or fundamentally fail him, because his case inched forward, as we now know, at his urging. But by any criteria, there was a substantial failing.²¹⁹

However, the Cardinal agreed that the Archdiocese did fail to follow the *Towards Healing* protocol.²²⁰

Cardinal Pell agreed that Mr Ellis's complaint was dealt with over an extraordinarily lengthy period of time and that this was a failure.²²¹

Cardinal Pell later agreed that Mr Eccleston's assessment report showed that Mr Davoren had a fundamental misunderstanding of the process of *Towards Healing* and of how child sexual abuse affects people and affects when and to whom they report.²²²

We do not agree that Mr Davoren's conduct throughout Mr Ellis's *Towards Healing* process was mere 'muddling'.

We are satisfied that Mr Davoren did fail Mr Ellis in the handling of his complaint. Mr Ellis's *Towards Healing* process only progressed to an assessment and facilitation due to Mr Ellis's own persistence.

Mr Davoren took into account the following factors when deciding not to appoint an assessor:

- Mr Ellis had not discussed the complaint with anyone for most of 28 years.²²³
- Mr Ellis had gone through a change in attitude towards Father Duggan, giving rise in Mr Davoren's mind to the possibility of changes in his memory and of repressed memory.²²⁴
- It was pointless to have Father Duggan interviewed because of his deteriorated mental health.²²⁵

- It was Mr Ellis's voice alone and there were only two people who knew what had happened – namely, Mr Ellis and Father Duggan.²²⁶
- There was no other complaint against Father Duggan.²²⁷

None of these factors were relevant to whether Mr Ellis's complaint should have been assessed. The first and second factors are likely to be found in most cases. Complainants often come forward years after the abuse. They have often had a complex relationship with the abuser. Finally, sexual abuse frequently occurs in private.

- ▶ **Finding 3:** Between June 2002 and April 2003, Mr Davoren as Director of the Professional Standards Office NSW/ACT did not comply with the procedures in *Towards Healing* (2000) in the handling of Mr Ellis's complaint by:
 - not appointing a Contact Person to act as a support person for Mr Ellis after assisting with making the initial complaint (clause 35.4)
 - not referring the complaint to an assessor (clauses 38.7, 39.3 and 40)
 - poor case management, including not undertaking the process as quickly as possible, and poorly managing the question of Father Duggan's lucidity (clauses 35.3.1 and 40.13)
- ▶ **Finding 4:** In not complying with these procedures, Mr Davoren did not make a compassionate response his first priority, as required by the principles of *Towards Healing* (2000) (clause 17).

4.5 Monsignor Rayner and Mr Salmon take over

In April 2003, Monsignor Rayner was appointed to the positions of Vicar General and Chancellor of the Catholic Archdiocese of Sydney, and Moderator of the Curia.²²⁸ In April–May 2003, Mr Salmon replaced Mr Davoren as Director of the Professional Standards Office NSW/ACT.²²⁹ From this time on, Mr Ellis's complaint progressed in accordance with the procedures of *Towards Healing*.

Mr Salmon made inquiries about the status of Father Duggan's mental health. A couple of weeks later, on 23 May 2003, Dr Robert Burns certified that Father Duggan was suffering from a combination of dementia and Alzheimer's disease and was incapable of managing his own affairs.²³⁰

On 23 June 2003, Mr Salmon told Mr Ellis of the report by Dr Burns.²³¹ Cardinal Pell was made aware of the medical assessment of Father Duggan at about that time.²³²

Mr Salmon wrongly told Mr Ellis that Dr Burns was a psychiatrist.²³³ He was not.²³⁴ This is evident from the letters after his name on the certificate. However, it is not suggested that Mr Salmon intended to mislead Mr Ellis.

He offered Mr Ellis the option of a formal assessment, which Mr Ellis ‘was keen to take up’.²³⁵ In June 2003 Mr Bill Johnson was appointed Contact Person. On 26 June 2003 the Archdiocese engaged Mr Eccleston to carry out an assessment of Mr Ellis’s complaint.²³⁶ That was more than a year after the complaint had been made.

On 2 July 2003, Mr Eccleston interviewed Mr Ellis. Mr Ellis gave him a detailed account of the abuse by Father Duggan and a number of documents that supported his contact with Father Duggan.²³⁷ These included a reference written by Father Duggan for Mr Ellis and an inscription from the front of a Bible given to Mr Ellis when he began as a postulate at the Marist Fathers Novitiate.²³⁸ Mr Eccleston obtained reports from Mr Ellis’s two counsellors, each of whom expressed opinions that Mr Ellis had been affected by Father Duggan’s sexual abuse.²³⁹

4.6 Meeting with Father Duggan

In July or August 2003, Mr Ellis met with Father Duggan at the nursing home in the company of his wife, Nicola, and Monsignor Rayner.²⁴⁰ Mr Ellis said:

When I entered Father Duggan’s room, I saw a flash of recognition on his face. However, as soon as Monsignor Rayner spoke to him, he assumed a blank expression and did not respond to anything said to him while we were there. I cannot recall if I said anything to Father Duggan. I do not think I did. It was a very emotional experience.²⁴¹

On leaving the nursing home Mr Ellis observed that Monsignor Rayner ‘appeared to be visibly moved and had tears welling in his eyes’.²⁴² Monsignor Rayner said:

I remember thinking at this time that the episode I had just observed confirmed in my mind that Mr Ellis’s allegations against Fr Duggan must have been genuine. At no subsequent time during my involvement with Mr Ellis’s case did this view change. I have never doubted that Mr Ellis was telling the truth about being sexually abused by Fr Duggan.²⁴³

Monsignor Rayner formed the view that Mr Ellis’s allegations against Father Duggan must have been genuine on the basis that:

I’d been a priest for about 30 years at that stage, and 20 of them had been in dealing with the military and I considered that in many ways I could judge a person’s truthfulness, especially having dealt with recruits particularly during six and a half years of a posting. I would consider that mostly I could assess whether a sailor was telling the truth or whether he was trying to have me on. And in this case, I considered Mr Ellis to be telling the truth.²⁴⁴

Monsignor Rayner said he would have told Mr Salmon, Mr Daniel Casey and the Archbishop that he considered Mr Ellis to be telling the truth after the meeting he attended with Mr Ellis and Father Duggan.²⁴⁵ Monsignor Rayner could not recall when he told Mr Salmon or Mr Daniel Casey that he believed Mr Ellis but gave evidence that ‘it would have been soon after the meeting’.²⁴⁶

Mr Daniel Casey could not recall a specific discussion in which Monsignor Rayner told him that he considered Mr Ellis to be telling the truth.²⁴⁷ He had an impression that ‘there was a doubt’ as to whether the allegations made should be believed; however, he also said that he ‘may have been completely incorrect in that’.²⁴⁸

In relation to when he told Archbishop Pell that he believed Mr Ellis, Monsignor Rayner said:

I would have told the Archbishop soon after the meeting. Whether it was that week or a week after, if – yes.²⁴⁹

When asked whether he now remembered telling the Archbishop, Monsignor Rayner’s response was: ‘I kept the Archbishop informed on every matter of importance, and this was important.’²⁵⁰ Monsignor Rayner did not particularly remember the Archbishop’s response:

The Archbishop does not get too emotional about matters. He just accepts or reserves his opinion, and he knew what my opinion was on the meeting.²⁵¹

Cardinal Pell did not dispute Monsignor Rayner’s evidence that he told him that he believed Mr Ellis’s account after the visit with Mr Ellis and Father Duggan:²⁵²

I can’t recall explicitly what Monsignor Rayner said when. I do know subsequently from the documents that he said a couple of things, but I don’t dispute if he claims that. I just don’t recall it.²⁵³

Mr Salmon agreed that Monsignor Rayner had never expressed any reservations about the fact that Mr Ellis had been abused by Father Duggan. He said that the most Monsignor Rayner might have said is that there did not appear to be any corroboration of Father Duggan’s abuse.²⁵⁴ Mr Salmon also gave evidence that the information he had was that the abuse of Mr Ellis had been accepted by Monsignor Rayner on behalf of the Archdiocese.²⁵⁵ Mr Salmon agreed that he would have told Dr Michael Casey that Monsignor Rayner accepted Mr Ellis’s account of the abuse.²⁵⁶

Mr Salmon gave evidence that he had attended a meeting with Monsignor Rayner before the facilitation, during which Monsignor Rayner had expressed reservations about the strength of the Eccleston assessment²⁵⁷ (rather than the fact that Mr Ellis had been abused by Father Duggan). These reservations related to ‘the fact that, at the end of the day, the accused person had never been able to respond to the allegations’ and that ‘there was no evidence that he had been an offender up until that point’.²⁵⁸

Mr Salmon’s recollection that Monsignor Rayner had expressed these reservations was confirmed in an email sent by Dr Michael Casey to Mr Paul McCann on 24 June 2005, in which Dr Casey stated that ‘Michael Salmon has advised me that there were reservations about the assessment, not least because of Fr Duggan’s incapacity to respond and the absence of any prior evidence of predatory behaviour’.²⁵⁹

On 24 August 2004, Monsignor Rayner also had a conversation with Mr Monahan in which he responded to Mr Monahan’s question about whether Mr Ellis should be believed with ‘There is no corroborative evidence because Fr Duggan is suffering from dementia’.²⁶⁰

We accept that Monsignor Rayner did express reservations about whether Mr Ellis's claims could be proved and about Mr Eccleston's report (see below) because of a lack of corroboration of Mr Ellis's complaint. These reservations were expressed to Mr Salmon and the lawyers for the Archdiocese.

► **Finding 5:** Monsignor Rayner did not doubt that Mr Ellis was telling the truth and shortly after his meeting with Mr Ellis and Father Duggan - that is July or August 2003 - he advised at least Mr Salmon and Cardinal Pell of his belief.

4.7 The Eccleston report

Mr Eccleston submitted his assessment report to the Archdiocese on 24 November 2003. He said in part:

Father Duggan is not able and not capable of providing a response to the allegations. The allegations are very serious being criminal in nature and as such require a proof close to or approaching 'beyond reasonable doubt'. The level of proof in this matter relies upon Mr Ellis's statement and corroboration of his disclosure about the sexual assaults made to counsellors some 23 years later. The counsellors' reports indicate that the symptoms displayed by Mr Ellis are consistent with the adult trauma of child sexual assault. Based upon the available evidence it is more likely than not that the allegations as alleged occurred.²⁶¹

He found that, based on the available evidence and the balance of probabilities:

- the allegations of improper sexual conduct by Father Duggan against Mr Ellis when he was an altar boy at Christ the King Church, Bass Hill, from age 14 to 17 years and continuing into his young adult years more likely than not occurred
- the impact of this sexual conduct has more likely than not adversely affected Mr Ellis with regard to his mental, emotional and physical health.²⁶²

On 15 December 2003, Mr Cudmore and Mr Salmon met. It was noted that 'the assessor had made a finding in favour of Ellis, therefore in such a situation the matter could be expected to go to facilitation' pending authority from the Church Authority.²⁶³

Mr Salmon told Mr Ellis in late December 2003 that his complaint was going to facilitation and that Mr Raymond Brazil had been appointed Facilitator.²⁶⁴ Mr Ellis had not been consulted as to whether he wanted Mr Brazil to be the Facilitator, nor was he given a series of names of people who might be a Facilitator from which he could make a choice.²⁶⁵

Towards Healing (2000) states at clause 41.3:

Facilitation shall be the normal means of addressing the needs of a victim. The Church Authority and the victim shall mutually agree on a Facilitator from the approved panel.²⁶⁶

Mr Salmon accepted that it was likely that he did not seek, in obvious terms, Mr Ellis's consent to the appointment of Mr Brazil as Facilitator. He agreed that this was inconsistent with *Towards Healing* (2000).²⁶⁷

However, in other respects Mr Salmon actively and properly managed Mr Ellis's complaint in that he assisted in arranging a medical assessment of Father Duggan and appointing a Contact Person, an assessor and ultimately a Facilitator. He also organised counselling for Mr Ellis.

- ▶ **Finding 6:** Mr Salmon acted inconsistently with *Towards Healing* (2000) (clause 41.3) by not seeking Mr Ellis's consent to the appointment of Mr Brazil as Facilitator.
- ▶ **Finding 7:** In other respects, Mr Salmon actively and properly managed Mr Ellis's complaint in that he assisted in the organisation of the medical assessment of Father Duggan; the appointment of an assessor; the appointment of a Contact Person, namely Bill Johnson; arranged counselling for Mr Ellis; and appointed a Facilitator.

4.8 Reparation

Towards Healing (2000) provided that reparation, if paid, would be in response to the needs of individual complainants (clause 41.1):

In the event that the Church Authority is satisfied of the truth of the complaint, whether through admission of the offender, a finding of a court, a canon law process or a Church assessment, the Church Authority shall respond to the needs of the victim in such ways as are demanded by justice and compassion. Responses may include the provision of an apology on behalf of the Church, the provision of counselling service or the payment of counselling costs. Financial assistance or reparation may also be paid to victims of a criminal offense or civil wrong, even though the Church is not legally liable.²⁶⁸

There was a general understanding, including among Mr Salmon, Mr Brazil and Monsignor Rayner, that reparation payments to complainants were normally \$50,000 or under.²⁶⁹

This general understanding was not communicated to the public in the *Towards Healing* (2000) protocol or in any other publicly available document. The Church parties accepted that this 'general understanding' existed but did not accept that there was a requirement to notify the public of this general understanding or that this general understanding was inconsistent with *Towards Healing* (2000).²⁷⁰ They cited Mr Salmon's evidence of his understanding that 'this was by no means an inflexible figure ... at the time ... there had been a number of payments above \$50,000 under *Towards Healing*'²⁷¹ and that, more recently, the Archdiocese of Sydney has made payments to victims under *Towards Healing* that have 'far exceeded' \$50,000.²⁷² The fact that some complainants received more than the \$50,000 does not detract from the proposition that transparency should be a goal in any redress scheme.

In the first week of April 2004, Mr Ellis and his wife, Nicola, attended a meeting with the appointed Facilitator, Mr Brazil.²⁷³ The meeting was intended to prepare for the later facilitation. Mr Brazil told them that there was an informal cap of \$50,000 on the amount that could be paid as a financial gesture.²⁷⁴

Mr Brazil asked Mr Ellis to indicate how much would be appropriate as a financial gesture.²⁷⁵ After taking into account the costs of psychological therapy and additional rental costs associated with a period of separation between him and Mrs Ellis, Mr Ellis calculated an amount of between \$125,000 and \$160,000. However, mindful of the informal cap of \$50,000 on payments to victims and that the abuse had affected his wife, as well as himself, Mr Ellis asked for \$100,000 based on the cap amount for him and his wife.²⁷⁶

On 29 April 2004, Mr Salmon, Mr Brazil and Monsignor Rayner met.²⁷⁷ The group discussed financial reparation for Mr Ellis. Mr Salmon's file note of the meeting recorded that the Church Authority was 'willing to pay approximately \$25K as an ex gratia offer for accommodation/counselling or whatever'.²⁷⁸ It was also decided that a date for the facilitation was not to be set until after Mr Brazil 'has had an opportunity to do further work with the couple', including 'to meet again with the Ellises to attempt to narrow down the payment issue' and 'to secure an agreed written agenda'.²⁷⁹

Mr Salmon understood that the \$100,000 that Mr Ellis put forward was a calculated amount based on the Ellises' understanding of their past, current and future needs.²⁸⁰

Monsignor Rayner recalled:

becoming aware from someone that Mr Ellis had indicated that he was seeking payment to him of \$100,000. I do not now specifically recall how I came to know this, but it may have been the meeting with Mr Salmon on 29 April.²⁸¹

It is clear that by 29 April 2004 Mr Brazil, Mr Salmon and Monsignor Rayner knew that Mr Ellis had put forward the amount of \$100,000 and that the Church Authority would offer \$25,000.²⁸²

On 20 May 2004, Mr Brazil informed Mr Ellis that he had been authorised to make a gesture of \$25,000.²⁸³ At around that time, Mr Ellis was requested to resign from his position as a partner at Baker & McKenzie lawyers.²⁸⁴

Mr Ellis was told that the offer of a financial gesture was increased to \$30,000 on 12 June 2004.²⁸⁵ The offer was increased on Monsignor Rayner's instructions to Mr Brazil after Mr Ellis's position was terminated and thus the need for increased counselling costs.²⁸⁶

Mr Ellis said he was told by Mr Brazil that Monsignor Rayner had told him that:

careful thought had been put into the amount of the gesture, considering the circumstances of my complaint and relayed to me several specific reasons (relating to the facts of my complaint) why the amount was reduced from the amount I had indicated would be an appropriate gesture.²⁸⁷

The reasons were:

- The impact of the abuse was considered by the Church Authority to have been reduced because the abuse continued after Mr Ellis reached the age of 18.²⁸⁸
- There was an issue of proof as to the facts because of Father Duggan’s mental state.²⁸⁹
- There was no allegation of physical ‘violence’ in relation to the abuse and so his complaint was considered not to be at the more serious end of instances of abuse reported to the Church Authority.²⁹⁰
- The Church Authority questioned the causal links between the issues he was facing and the abuse.²⁹¹

It is clear that the determination of the figure of \$25,000 had no reference to Mr Ellis’s needs as required by clause 41.1 of *Towards Healing* (2000). Accordingly, the process by which it was determined was not consistent with the protocol. Further, matters irrelevant to his needs were taken into account.

No-one suggested to Monsignor Rayner while he was Chancellor that he should acquire information on the impact and consequences of child sexual abuse on individuals to enable him to properly assess the needs of a victim and come up with an amount of money that constitutes a just and compassionate response to those needs.²⁹²

The increase of the figure from \$25,000 to \$30,000 based on Mr Ellis’s counselling needs is the only indication of any consideration of Mr Ellis’s needs.

► **Finding 8:** The determination of the figure of \$25,000 had no reference to the needs of Mr Ellis as required by clause 41.1. Accordingly, the process by which it was determined was not consistent with *Towards Healing* (2000).

A number of witnesses, including Mr Salmon and Cardinal Pell, were critical of the amounts that the Archdiocese offered. Mr Salmon said:

I thought it was underdone. Given what I’d known of the Ellises’ situation, yes, I thought it was underdone ... I thought that if one accepts that \$50,000 was a solid figure in *Towards Healing* for the sake of *Towards Healing* – as in I’m not saying it’s capped, because it wasn’t capped, but a solid figure – then somewhere up around that, and half of what the Ellises were asking for was at least a way to go.²⁹³

Cardinal Pell agreed that neither the \$25,000 nor \$30,000 was determined according to Mr Ellis’s needs at the time.²⁹⁴ Further, Cardinal Pell said that the initial offer of \$25,000 was ‘mean’,²⁹⁵ that the \$25,000 and \$30,000 offered were ‘not appropriate in any sense’,²⁹⁶ and that ‘the suggestion that after a man has lost his job of \$300,000 a year, I would agree to offer him \$5,000 extra by way of compensation I regard as grotesque’,²⁹⁷ and that he would ‘never subscribe to that logic’.²⁹⁸

4.9 The facilitation

The facilitation took place on 20 July 2004. Mr and Mrs Ellis attended the facilitation with Mr Brazil and Monsignor Rayner. That was more than two years after the complaint had been made.

It had been earlier agreed between Mr Salmon, Monsignor Rayner and Mr Brazil that Mr Salmon would attend the facilitation.²⁹⁹ Clause 41.3.2 of *Towards Healing* (2000) provided that a Director of Professional Standards should not participate in the facilitation process.³⁰⁰

Mr Salmon said, 'I had a history of dealing with the matter which predated my involvement as Director of Professional Standards, and I thought that I would be able to assist the parties to achieve an outcome on that day'.³⁰¹

Mr Ellis's view was that:

Mr Salmon offered no explanation as to why he had proposed to participate in the meeting. I did not have an objection to his presence as such, but wanted the explanation, so I could decide whether I would agree to his attendance.³⁰²

After Mr Ellis questioned Mr Salmon's presence, Mr Salmon agreed not to participate in the facilitation.³⁰³

The Facilitator and Mrs Ellis took detailed notes of what was said at the facilitation.³⁰⁴ The offer of \$30,000 was formally made and it was stated that a deed of release was required.³⁰⁵ Mr Ellis was informed that the figure of \$25,000 was increased by \$5,000 on account of his termination of employment.³⁰⁶ Mr and Mrs Ellis were told that, once a person accepts a financial gesture, a meeting is arranged with the Cardinal so that an apology can be given.³⁰⁷

Monsignor Rayner represented the Archdiocese at the facilitation. He said he had not doubted Mr Ellis's account.³⁰⁸ Mr Ellis informed the meeting that he had obtained legal advice that he should not sign the deed of release and that he may have a substantial claim.³⁰⁹ At the conclusion of the facilitation meeting, a number of key issues concerning Mr Ellis's complaint remained unresolved.³¹⁰

Following the facilitation, Mr Ellis felt 'distressed and anxious' and 'did not wish to start legal proceedings unless there was no other option'.³¹¹ His solicitor, Mr Begg of David Begg & Associates, advised him that he could not defer legal action any longer because of the *Limitation Act 1969* (NSW) and that the time limit for requesting an extension of time could not itself be extended.³¹² His preference remained to reach a negotiated resolution of the claim and he instructed Mr Begg to do this.

4.10 Deed of release

A deed of release is a formal document in which a party agrees not to pursue legal proceedings against another party. In some deeds of release executed under the *Towards Healing* process, confidentiality provisions were included. The confidentiality agreements

required victims to keep confidential certain information such as the nature of allegations of sexual abuse or the amount of financial assistance paid.³¹³

In early July 2004, two years after making his complaint, Mr Brazil told Mr Ellis that the Archdiocese would require a deed of release to be signed as a condition of the payment of any financial gesture.³¹⁴ Mr Ellis recalls Mr Brazil telling him that the deed was a formality and would not be binding.³¹⁵ Mr Brazil denies that he said that.³¹⁶

Although it might be thought unlikely that Mr Brazil, an experienced lawyer and mediator, would have told Mr Ellis that the deed was only a formality and not binding, we accept that Mr Ellis believes he was told this. There is no doubt that a properly executed deed would be binding.

Monsignor Rayner agreed that, unless Mr Ellis was prepared to agree to forsake the litigation, the Church would only make a token offer. He gave evidence that 'that practice has now been removed because it was quite unsatisfactory in justice'.³¹⁷

Monsignor Usher did not believe that under *Towards Healing* there should be an end point to the provision of pastoral or other support and for that reason:

I do not ask victims to sign a deed of release. Victims should feel free to come back at any time to discuss their ongoing needs as a result of the abuse they suffered.³¹⁸

Monsignor Usher also gave evidence as to the problems that he had with deeds of release:

Your Honour, I had a few problems with deeds of release, one of them being confidentiality clauses, which I didn't think were just and fair for victims, that they couldn't tell anyone what they received sometimes, or the second thing was that it gave the impression that this was the end of the matter and they could never come back, and, thirdly, and probably my biggest problem was that *Towards Healing* was never, ever considered to be a legal process, and victims were required to get the advice of a lawyer before signing the deed of release. They were the main areas that I saw as problematic.³¹⁹

Similarly, Mr Ellis gave the following evidence about his attitude towards a financial gesture by the Church:

If you're making a gesture, you're going to make a gesture, and it's going to be whatever amount it is, and I don't get a say in that. That's your decision and your discretion. I have laid myself at your mercy, and you will treat me whatever way you decide ... until a couple of weeks before the meeting, I didn't think that I had to do anything in return for what the church was prepared to do for me, except what I had already done, which is to come forward and to tell them about what had happened to me and how I had been impacted.³²⁰

Deeds of release are no longer required in the Archdiocese of Sydney. The issue of whether, and, if so, under what terms releases should play a part in redress schemes will be examined further by the Royal Commission.

Monsignor Rayner provided a copy of the ‘standard form’ of deed of release to Mr Brazil, who then sent Mr Ellis a form of deed of release on 9 July 2004.³²¹

On 13 July 2004, Mr Ellis told Mr Brazil that he would like amendments to be made to the deed of release.³²² The next day, Mr Ellis wrote to Monsignor Rayner stating that he did not think that the deed of release was an appropriate starting point.³²³ Mr Ellis stated that his preferred course was to draft an alternative form of document. At the request of Mr Brazil, he also provided detailed comments on the deed of release.³²⁴

Following discussions with Mr Brazil, Mr Ellis set out his position in a further letter to Monsignor Rayner dated 15 July 2004. Mr Ellis said to Monsignor Rayner:

this means that I will have no option but to take legal advice on my potential alternative remedies prior to Tuesday’s [facilitation] meeting, in accordance with the confirmation and acknowledgement in Clause 13 of the proposed form of deed.³²⁵

He was referring to a clause in the deed of release that required him to confirm and acknowledge that he had obtained his own legal advice before signing the deed of release. Mr Ellis expressed disappointment about being placed into such a position.

On the same day, he spoke with and obtained legal advice from his solicitor, Mr Begg, about a potential claim for damages.³²⁶

4.11 Spiritual adviser?

During the facilitation, Monsignor Rayner agreed to make arrangements for the appointment of a spiritual director for Mr Ellis and to inquire into the possibility of a meeting between Mr Ellis and Cardinal Pell, irrespective of whether legal proceedings were commenced.³²⁷ Mr Ellis told us that he wanted a spiritual director because:

I wanted someone who would help me to reconcile within my head what had happened to me with an institution that I trusted and believed in and a faith that, up until then, had been the foundation of my life ... my spiritual life has been totally trashed by this, and that was one of the most important things that I wanted the church to help in, and that’s what I was talking to the church about this.³²⁸

On 4 August 2004, Mr Salmon advised Monsignor Rayner in relation to the appointment of a spiritual director:

It is my advice that in the spirit of *Towards Healing* it is appropriate for this offer to be followed up irrespective of the apparent breakdown of the *Towards Healing* process.³²⁹

Monsignor Rayner drafted two letters relating to the offer of a spiritual director for Mr Ellis – one dated 12 August 2004³³⁰ and the final draft dated 9 September 2004.³³¹ Neither of these letters was ever sent to Mr Ellis.

In late August 2004, Mr Ellis commenced legal action against the Archdiocese and others.³³²

On 3 September 2004 Mr Ellis received a letter from Mr Salmon advising him that:

given your decision to exercise your right to commence legal proceedings against the Church Authority I must advise that your action has effectively terminated the *Towards Healing* process.³³³

After Mr Ellis sought clarification on the matter,³³⁴ Mr Salmon advised that Monsignor Rayner would 'attempt to follow through' with providing assistance in the area of appointing a spiritual director.³³⁵

In a letter to Mr Salmon on 9 September 2004, Mr Ellis asked why his commencing litigation resulted in the termination of the *Towards Healing* process. He always understood that 'the spiritual and relationship issues could be dealt with within the *Towards Healing* process, even if financial aspects needed to be hived off to a more formal legal process'.³³⁶

Mr Ellis heard nothing further about the spiritual director, was never given one and was never told why he was not given one.³³⁷

In the meantime, the Archdiocese sought legal advice on the issue of whether a spiritual director could be appointed for Mr Ellis. Corrs recommended that 'the letter be put on hold pending the outcome of the Limitations Period Hearing in October'.³³⁸ Mr McCann, a partner with Corrs, said:

I said that it may give mixed messages because there was this litigation on foot and still the *Towards Healing* process was in play. On reflection, I think properly worded we could have accommodated that.³³⁹

Mr McCann agreed in retrospect that it was 'a little mean'.³⁴⁰

Dr Michael Casey agreed that it would have been appropriate to consider that advice in the context of the Church's pastoral role but could not recall why this did not happen.³⁴¹

Mr Salmon said the failure to appoint a spiritual director was inconsistent with *Towards Healing*:

I think that's inconsistent, and I think that that was not the right response, by any means, but I don't think that that necessarily leads to the proposition that there is just effectively the continuation of *Towards Healing* whilst legal action is on foot.³⁴²

Cardinal Pell said he had no recollection of being made aware that Mr Ellis was asking for arrangements to be made for a spiritual director:

My view then would have been, and my view is now, that Mr Ellis should certainly have been given help in terms of finding a suitable spiritual director.³⁴³

As to why he understood that *Towards Healing* would not continue once a legal avenue had been chosen, Cardinal Pell said:

The parallel that came to my mind – in hindsight, it might not be appropriate – was, say, if there is a *Towards Healing* investigation and the police become involved, you

immediately get out of it. And my feeling was that if the litigation commenced, the appropriate thing to do was to leave the *Towards Healing* to one side and let the litigation go ahead, and I received certainly some significant confirmation of that instinct of mine from our advisers ... In retrospect, I don't know whether my decision there was correct or not, but a number of advisers agreed with it.³⁴⁴

Cardinal Pell's evidence on the issue of whether Mr Ellis ought to have been provided with a spiritual director after the litigation commenced was:

Certainly, the counselling by other people, spiritual direction – that certainly should have been made available. I was frightened that if – my knowledge of the law is not expert – that if the dialogue kept going within the *Towards Healing* while the litigation was on, it risked grievous confusion. If a judge had ordered a mediation, that would have been entirely – or suggested, it would have been entirely different. In retrospect, I don't know whether my decision there was correct or not, but a number of advisers agreed with it.³⁴⁵

He subsequently stated, in his evidence, 'there was no Christian reason why not to [engage with a complainant in a pastoral way after litigation was on foot]' but that he 'thought it was not good legal practice'.³⁴⁶ When asked why the churchman did not come to the fore in these circumstances, he said:

Because it was a legal case. If it had been – when you go to court, you employ lawyers and you generally follow their advice, especially if you're inexperienced. If it's a matter of pastoral counselling or care, I'd have much more confidence in my ability to influence things.³⁴⁷

Where it was that Cardinal Pell derived this belief from was not made plain. It may be that legal advice was given and accepted without recognition of the appropriate Christian response to Mr Ellis's needs.

Monsignor Usher said that it 'was a real difficulty' for him that he was not permitted to talk to Mr Ellis while the legal matters were proceeding.³⁴⁸ He gave evidence that, in his opinion, 'even when these matters are moved from *Towards Healing* into the litigation, someone like [himself] should still be able to talk to the litigant, but that is still very difficult to this day'.³⁴⁹

We accept Cardinal Pell's evidence that he 'had reflected on the course of the litigation and there were several steps taken in the course of the litigation which, as a priest, now cause me some concern' and that one of those steps was that the Archdiocese should have responded positively to Mr Ellis's request for assistance in finding a spiritual director.³⁵⁰

We can see no reason why either *Towards Healing* or litigation processes should have prevented Mr Ellis from having his spiritual needs attended to by the appointment of a spiritual director.

► **Finding 9:** We accept Cardinal Pell’s evidence that having ‘reflected on the course of the litigation’, several steps taken in the course of the litigation now cause him ‘some concern’ as a priest. One of those steps was that the Archdiocese should have responded positively to Mr Ellis’s request for assistance in finding a spiritual director.

4.12 An apology?

After the facilitation, on 21 July 2004, Mr Salmon advised Monsignor Rayner that giving an apology was not the usual practice of the Archdiocese:

Cardinal typically meets with complainant when TH applications have been fully settled – this is not the case to change usual practice.³⁵¹

And:

There are many outstanding issues which have not been settled – it would appear to be inappropriate to place the Cardinal in the middle of a potentially vigorous negotiation context.³⁵²

It was suggested to Mr Salmon that he was concerned that in offering an apology there may have been a compromise of the Church’s capacity to defend the legal action. Mr Salmon disagreed:

I think – I believe I was just concerned that the cardinal not be caught up in a matter that was possibly escalating, and that was my general concern, and there was a pattern in place and I didn’t see a reason to change it.³⁵³

Mr Salmon further stated:

After a long facilitation process that had effectively started when Raymond Brazil had taken on the role, so the process had commenced in real terms well before the July 2004 facilitation, and it had still not resolved anything much and there were arguments about the deed and other aspects to it, I wasn’t confident that a meeting with the Cardinal would particularly take it anywhere.³⁵⁴

Monsignor Usher had a different view:

I formed the view that the Archdiocese should apologise to Mr Ellis for the abuse he had suffered and offer to provide him with financial and pastoral assistance. I did not see this as inconsistent with the continuing litigation ... I believed it was important to provide Mr Ellis with support regardless of the outcome of litigation.³⁵⁵

On 12 August 2004 Monsignor Rayner wrote to Mr Ellis and told him he had ‘sought advice’ on the matter of a possible meeting between Mr Ellis and the Archbishop. He advised that:

given the legal avenues which you are pursuing against the Archdiocese, it would not be appropriate for the Archbishop to meet with you as part of the *Towards Healing*

process as that is overtaken, at this stage, by your decision, to which you are entitled, to engage in legal action against the Archdiocese.³⁵⁶

Mr Ellis told Mr Salmon that he was 'gravely disappointed' that a meeting with the Archbishop and formal acknowledgement and apology was not achieved through *Towards Healing*, 'as from the outset that was my primary and foremost request in terms of tangible outcomes of the process'.³⁵⁷

On 17 September 2004 Mr Salmon responded to Mr Ellis's query about why the *Towards Healing* process stopped while litigation was ongoing.³⁵⁸ He said:

I simply make the comment that it is deemed to be prudent practice by the Church Authorities to not promote a process which in a worst case scenario has the distinct potential to cause mutually prejudicial conduct and miscommunication.

The position of the Church Authority in relation to this issue is predicated on the reality that *Towards Healing* is a Church auspiced pastoral regime with all the nuances implied, as against civil and criminal law actions which by definition demand other accountabilities to achieve necessarily different outcomes.³⁵⁹

Mr Ellis's said that, at that time, Mr Salmon's response was 'a bit of gobbledegook to me'.³⁶⁰ And so it is to us!

4.13 Who knew what about the offers?

Mr Brazil, the Facilitator, Monsignor Raynor, the Church Authority and Mr Salmon participated in the discussions leading up to the facilitation. They all knew that Mr Ellis had put forward \$100,000 and that Monsignor Rayner as the Church Authority had offered \$25,000, which was later increased to \$30,000. They knew this by July 2004, at the latest, when the facilitation took place.

Dr Michael Casey said:

At some point in time I became aware that as part of the facilitation process Mr Ellis had indicated he was seeking financial assistance of \$100,000. I also became aware that the Archdiocese had suggested financial assistance of \$25,000 to Mr Ellis which was later increased to \$30,000. I do not know when I became aware of these figures and it may have been some time after the facilitation occurred. Nor do I know how or by whom these figures were determined.³⁶¹

Dr Michael Casey was aware of the three amounts by 17 September 2004 at the latest, when he received an email from Mr John Dalzell, solicitor for the Archdiocese, attaching a copy of observations that were provided to counsel.³⁶² Those observations stated that there had been offers from the Archdiocese of \$25,000 and \$30,000 and that Mr Ellis had indicated \$100,000. This email was also copied to Mr Daniel Casey, Monsignor Rayner, Mr Dominic Cudmore, Mr Paul McCann and Ms Anna Ross.

Mr Daniel Casey recalled a conversation with Monsignor Rayner during the *Towards Healing* process where Monsignor Rayner informed him that he had offered Mr Ellis an ex gratia

payment of \$30,000. Monsignor Rayner informed him that Mr Ellis had sought \$100,000 but Monsignor Rayner thought that \$30,000 was the appropriate amount.³⁶³

It is clear that by 17 September 2004 the following people knew that \$25,000 and/or \$30,000 had been offered to Mr Ellis and \$100,000 had been put forward by Mr Ellis:

- Mr Brazil
- Mr Salmon
- Monsignor Rayner
- Mr Daniel Casey
- Dr Michael Casey
- the solicitors and counsel for the Archbishop and the Trustees of the Archdiocese.

The question of whether and, if so, when Cardinal Pell knew of the three amounts will be considered by reference to the decision making leading to the offers being put by Monsignor Rayner and thereafter.

Before the offers were put

Monsignor Rayner gave evidence that he would have sought and obtained the approval of Cardinal Pell to make a monetary offer to Mr Ellis and that he would have consulted Cardinal Pell on every proposed offer to be made. His evidence was that this was his usual practice and he followed this practice when handling Mr Ellis's complaint.³⁶⁴

This evidence is supported to some extent by Mr Davoren, although he had no role in making decisions about whether a complainant would receive compensation. Mr Davoren agreed that it was his understanding that, in every case involving the Archdiocese of Sydney, final decisions about whether a complainant should receive compensation were made by the Archbishop.³⁶⁵

Dr Michael Casey accepted that, given the extent of the Cardinal's involvement in Mr Ellis's complaint, he would have sought information about reparation discussions before the facilitation. He gave evidence that 'that information would normally be provided to him by the Chancellor and the Director of Professional Standards'.³⁶⁶ When asked whether the Chancellor would have provided this information to the Cardinal, Dr Michael Casey said:

That would be my expectation. I would have no direct knowledge of it necessarily, but that would be my expectation ... My expectation would be that the Chancellor would bring it to him.³⁶⁷

Dr Michael Casey agreed that he would have expected that the information about the amounts of money would be brought to the Cardinal so he could make a decision, as he expected the Cardinal would decide issues in relation to the payment of money.³⁶⁸

When asked whether the Chancellors, in this case Monsignors Rayner and Usher, had to get authorisation from the Archbishop before making payments, Dr Michael Casey said:

I would assume that would be the case, but I don't have – in both cases, I'm not quite sure of the arrangements that the archbishop made with them.³⁶⁹

However, there is evidence that is not consistent with Cardinal Pell approving the offers made to Mr Ellis. First, the notes of the facilitation kept by Mrs Ellis, as set out below, suggest that Monsignor Rayner determined those offers himself without regard to Cardinal Pell.

Mrs Ellis's notes record that, during the facilitation, Monsignor Rayner was asked how the Archdiocese came up with any figure for reparation, to which he is recorded as responding:

'How do we come up with any figure?' There are terrible degrees of abuse. Terrible physical violence requiring hospitalization. Gesture would be the maximum for that sort of person. Abuse over 3 to 8 years or more ... It is a personal decision that I make ... Is also relevant whether the abuse continued to an age when 'decision could have been made.' It is arbitrary, but trying to act in good faith. Culpability of Bishops who knew molester is different from that of Bishop who doesn't.³⁷⁰

The notes then record the following exchange between Mrs Ellis and Monsignor Rayner:

NE: When you are making these decisions, do you consult with any other Church agency where there are specialists in sexual abuse, for instance, Centacare? Are you informed by expertise re. nature/sequelae of sexual abuse?

BR: I don't consult with any other agencies. There is a Professional Standards Resource Group. There we discuss the response but not the gesture, and any actions being taken against a particular priest.³⁷¹

In his statement, Monsignor Rayner did not deny that during the facilitation he said in relation to calculation of the offers, 'it is a personal decision that I make'. He said that he could not recall whether or not he said those words and qualified that, if he did, they were not accurate. He reiterated that he did not have the authority to come up with a payment figure on his own and that any offer of payment to be made by the Archdiocese had to be approved by Cardinal Pell.³⁷²

In oral evidence, Monsignor Rayner did not 'necessarily accept'³⁷³ that he said those words but suggested that, if he did, 'it would have been to deflect the matter from the archbishop, and, even worse, it may have been to make myself look like someone of importance'. He continued to explain:

my practice in the navy was that you never appeal to higher authority for what you're undertaking, so to say – I would not imagine that I would say, 'The decision is made by the Archbishop. Blame him.' ... Mrs Ellis may say that I did, but those decisions were not made by me in any of the *Towards Healing* matters. I did not have authority to make a decision about amounts of money.³⁷⁴

Secondly, Mr Salmon gave evidence that his experience was that Monsignor Rayner would decide on the offers made.³⁷⁵

Finally, Cardinal Pell denied that he approved the offers made.³⁷⁶ In response to the evidence of Mr Davoren, Cardinal Pell said that Mr Davoren's understanding was not correct.³⁷⁷ In response to the evidence of Dr Michael Casey, Cardinal Pell said that Dr Casey is completely honest and reliable but there were some things that he did not know.³⁷⁸ In response to Monsignor Rayner's evidence that he obtained authorisation from the Cardinal before offers were made, he said, 'I certainly did not participate in any extended discussion on the matter, I certainly did not nominate any amount of money'.³⁷⁹

It was suggested to Cardinal Pell that it is possible he participated in a passing discussion in a corridor as he met Monsignor Rayner, in an ad hoc way.³⁸⁰ In response Cardinal Pell's evidence was:

Certainly it's got to be possible. I think what – I'm not saying I've got any recollection of it. What I think is important, though, is that Rayner wouldn't have been expected to report to me or ask for permission to give \$25,000 or \$30,000 or \$40,000. He had authority to do that. He probably did it regularly. He didn't consult me on a regular basis on that at all. That was within the authority of the Vicar General.³⁸¹

After the offers were put

The next issue is whether it is likely that Cardinal Pell knew of the offers that his Chancellor had made to Mr Ellis and the amount of \$100,000 that Mr Ellis put forward.

Mr Daniel Casey's evidence was that Monsignor Rayner told him of both the \$30,000 offered to Mr Ellis and the \$100,000 put forward by Mr Ellis.³⁸² Mr Daniel Casey said that he did not tell the Archbishop what Monsignor Rayner told him about the monetary offers and he did not discuss the offers to be made with anyone before Mr Ellis's facilitation.³⁸³

However, Mr Daniel Casey also gave evidence that, beyond his conversation with Monsignor Rayner, he could not recall any other involvement with Mr Ellis's *Towards Healing* process. In 2004, Mr Daniel Casey did not have any involvement in the Archdiocese's *Towards Healing* response to Mr Ellis or any other person.³⁸⁴ He said, 'These were not areas that I ... had any involvement in and I don't believe my involvement would have necessarily been welcomed'.³⁸⁵

When asked why he was sure that he did not tell the Cardinal about the offer of \$100,000, he said that 'it wasn't a matter that I would, in ordinary course at that time, have been involved in discussing with His Eminence ... if there was any dialogue, it would have been between Monsignor Rayner and His Eminence'.³⁸⁶

The evidence that supports that Cardinal Pell knew of the offers put by his Chancellor after they were made to Mr Ellis and the amount of \$100,000 that Mr Ellis put forward is Monsignor Rayner's evidence that he told the Archbishop the result of the facilitation and of the offer put by the Ellises of \$100,000.³⁸⁷

The notes taken by Mrs Ellis at the facilitation are not inconsistent with Cardinal Pell becoming aware after the offers had been made.

Mr Salmon gave evidence that he would have expected that the Archbishop would have had some knowledge of the figure of \$100,000.³⁸⁸

Dr Michael Casey agreed that he expected that the Chancellor would have conveyed the amount put forward by Mr Ellis and the amounts offered to the Archbishop and that the Archbishop would have been interested to know the outcome of the facilitation. He also agreed that Cardinal Pell would have learnt of the amounts offered at or about the same time as he did in July 2004.³⁸⁹

In his statement, Cardinal Pell said:

I have been shown material which indicates that in the lead up to the facilitation or in the facilitation itself, Mr Ellis put forward a figure of \$100,000 ... and that figures of \$25,000 and \$30,000 were successively offered to Mr Ellis on an ex gratia basis. To the best of my recollection, I was not made aware at the time of any of those figures or offers. I was not consulted, as best I recall, about what financial amount should be considered. Nor was I made aware of the other factors which appear to have been significant in the way the facilitation process developed, such as the complications which arose in relation to a deed of release and in relation to the timing of any apology ... I have no recollection of being informed of the result of the facilitation at the time, although it was possible that I was. I have no recollection of any discussions of \$25,000, \$30,000 or \$100,000 either before or after the facilitation.³⁹⁰

Cardinal Pell said that the *Towards Healing* payments were:

overwhelmingly ... \$20,000 or \$30,000 or \$40,000. I wasn't consulted, as a general rule, or I can't recall any particular case ... If anything had been unusual or much higher than that, I would have expected it to be reported to me.³⁹¹

He agreed that, if there had been a discussion about \$100,000, he would have expected that to be reported to him.³⁹² He also gave evidence that 'if there was a matter of \$100,000, I think, as distinct from smaller amounts, it was not unreasonable for them to surmise that I would have been told or asked about that'. He said that Mr Salmon:

was right in the assumption that if there was an amount of money beyond what is normal, I would have been told. He might even have thought that all the sums were cleared with me. They weren't.³⁹³

Cardinal Pell gave evidence that Mr Salmon's 'expectations' were not unreasonable, but in fact 'it didn't occur like that'.³⁹⁴

Cardinal Pell was aware that a facilitation ultimately occurred on 20 July 2004 and that Monsignor Rayner attended as the representative of the Church Authority.³⁹⁵ Cardinal Pell's evidence was to the effect that he had no recollection of being told of the result of the facilitation, although it was possible that he was.³⁹⁶

Cardinal Pell agreed that he would have known that in the facilitation process of *Towards Healing* amounts of money would have been discussed and that it happened in every case.³⁹⁷ He also gave evidence that:

I would have imagined the offer that would have been made would have been within that range of \$20,000 or \$30,000 or \$40,000. If anything had been unusual or much higher than that, I would have expected it to be reported to me.³⁹⁸

In relation to whether it occurred to Cardinal Pell to ask why the facilitation had failed and what had happened, his evidence was:

If I did, and I can't recall – it's a bit of a mystery to me that, if I was told anything about it, why I don't remember it, but I don't remember it, full stop ... It is remotely possible that somebody said to me 'He wanted to settle for \$100,000 but wouldn't give a release', and I would have said, 'Yes.' That's unexceptional, I can understand that, because we would have wanted a release. I have no recollection of that happening. It is possible that something like that was said and I put it into an 'expected' basket and forgot about it, but I have no recollection of \$25,000 or \$30,000 or \$100,000.³⁹⁹

Later in his evidence, when asked whether he asked his Chancellor about what happened at the facilitation following the commencement of litigation, Cardinal Pell said:

No, I didn't in any – no, I – well, I can't remember exactly what I did but I didn't seek any detailed explanation of why it had failed. My general feeling was that it was simply there was too much of a difference between the amounts of money.⁴⁰⁰

It was put to Cardinal Pell that, if he had a general feeling that there was too much of a difference between the amounts of money, it suggests that he had discussed the amounts with someone. Cardinal Pell said that he did not recall any such discussion.⁴⁰¹

When asked whether his evidence was that he might have had a discussion with Monsignor Rayner, Cardinal Pell said that this would have been a discussion 'only in a very limited sense, because if it had been in any sense something that was extensive, I would remember it'.⁴⁰²

It was suggested to Cardinal Pell that it was inconceivable that, having been involved in some significant steps during Mr Ellis's *Towards Healing* process, he was not made aware of the amount offered to, or put forward by, Mr Ellis and the responses of the Church Authority. In response, Cardinal Pell gave the following evidence:

Once again, it's not a question of what's conceivable or logically possible. The fact is that I wasn't. I wasn't informed about any of this. Now, my recollections have hardened a little bit on this beyond what is written there, and it's hardened by this thought and that is that I can't recall ever being consulted on deciding how much might be offered in a *Towards Healing* offer for reparation or compensation.⁴⁰³

Later, it was suggested to Cardinal Pell that it was certainly possible that he did not now recall it but that he did ask what Mr Ellis wanted at the facilitation and was told that Mr Ellis put forward the \$100,000. He said:

A very remote possibility. The only way in which that remote possibility might have come about is if he put forward \$100,000 and refused to give a release, I might have put that into only too normal a basket, but I've got no such recollection.⁴⁰⁴

Cardinal Pell agreed that he had 'some significant role' in the handling of Mr Ellis's complaint.⁴⁰⁵ Our finding, which appears later in this section, is that Cardinal Pell was involved in at least 20 significant steps in Mr Ellis's *Towards Healing* process.

Cardinal Pell also agreed that he had an acute concern that people who had survived abuse by clergy be justly dealt with. In relation to whether his concern extended to knowing about monetary negotiations for compensation and whether those monetary amounts were adequate to meet a just need, he gave the following evidence:

Until demonstrated otherwise, I had confidence in the person who was doing the job. In many cases, they weren't enormous amounts of money. And I'm not a micro-manager. It's quite impossible in an archdiocese the size of mine – or what mine was. I'm very confident that, for example, Monsignor Usher handled these matters justly, and I can scarcely remember a complaint about his work in this area.⁴⁰⁶

Mr Ellis gave evidence in relation to his meeting with Cardinal Pell in 2009 that:

Well, he looked me in the eye and he told me that he had no idea about the earlier offers that had been made and that he had no idea that we had offered to meet with the lawyers for the archdiocese before the proceedings got under way in any substantive sense and that we'd put on a written offer that was for an amount that was less than the amount of legal costs that the archdiocese had ultimately expended, and he told me that he had no idea about how much the legal costs were and that he had no idea that an offer, a written offer, had been made.⁴⁰⁷

4.14 Cardinal Pell's handling of Mr Ellis's complaint

Cardinal Pell was the Church Authority for the purposes of the *Towards Healing* process.⁴⁰⁸ His expectation was that:

the Professional Standards Office (PSO) would manage the response to the complaint and ensure compliance with the *Towards Healing* protocol. Thereafter, in general, my understanding was that the PSO was doing so, and I was not involved in the detail or day to day aspects of the handling of the complaint ...⁴⁰⁹

Further, Cardinal Pell said of his involvement with the handling of Mr Ellis's complaint within *Towards Healing* from June 2002 to July 2004: 'I had a very hands-off approach to that. I did not want to be accused of interfering in that assessment.'⁴¹⁰ Cardinal Pell relied on Mr Davoren to ensure compliance with *Towards Healing*:

Although I was familiar with *Towards Healing* in general terms, I was not familiar with the practical implementation of all of its procedures.⁴¹¹

We are satisfied that Cardinal Pell was involved in the following significant steps during Mr Ellis's *Towards Healing* process. Cardinal Pell:

- read Mr Ellis's complaint on 7 June 2002⁴¹²
- formed the view that it was a plainly serious complaint⁴¹³
- discussed Mr Ellis's *Towards Healing* complaint with Mr Davoren⁴¹⁴
- approved of a meeting between Father Duggan and Mr Ellis if Father Duggan could participate⁴¹⁵
- sought Mr Davoren's advice on Mr Ellis wanting to meet with Father Duggan despite his dementia⁴¹⁶
- included Mr Ellis's complaint as part of the agenda for a bishop's meeting⁴¹⁷
- discussed the complaint at the bishop's meeting,⁴¹⁸ which Cardinal Pell agreed was not the usual course in a *Towards Healing* matter⁴¹⁹
- sought a briefing from Mr Davoren in relation to a facilitation⁴²⁰
- received and considered the advice from Mr Davoren regarding Mr Ellis's case in December 2002⁴²¹
- formed his own view as to the status of the complaint in December 2002⁴²²
- wrote a letter to Mr Ellis on 23 December 2002 stating that nothing further could be done for him by the Archdiocese of Sydney⁴²³
- met with others to discuss the process when Mr Ellis was disappointed with the December 2002 letter⁴²⁴
- considered and approved the medical assessment of Father Duggan⁴²⁵
- was aware of the medical assessment of Father Duggan which confirmed Father Duggan lacked capacity⁴²⁶
- considered and approved a meeting between Mr Ellis and Father Duggan notwithstanding that Father Duggan had dementia⁴²⁷
- was aware that a meeting had taken place between Father Duggan and Mr Ellis⁴²⁸
- approved the appointment of Mr Eccleston as the assessor⁴²⁹
- read Mr Eccleston's report⁴³⁰

- appointed Mr Brazil as the Facilitator⁴³¹
- appointed Monsignor Rayner to represent the Church Authority during the facilitation⁴³² and was aware that he subsequently did so⁴³³
- knew that Monsignor Rayner believed that Mr Ellis had been abused by Father Duggan⁴³⁴
- knew that the facilitation had occurred.⁴³⁵

The Church parties submitted that, by contrast to the factors listed above, there were a number of ‘fundamental steps’ in Mr Ellis’s *Towards Healing* process that Cardinal Pell had no involvement in. These included:

- appointing a Contact Person
- arranging counselling for Mr Ellis
- assisting with the conduct of the assessment by providing information and responding to the assessors inquiries
- discussions, meetings and other steps taken in preparation for the facilitation
- attending the facilitation
- pursuing various steps to be taken following the facilitation – for example, regarding the appointment of a spiritual director and a possible meeting between Mr Ellis and Cardinal Pell
- responding to Mr Ellis’s requests for review of his *Towards Healing* process and implementation of recommendations following the reviews.⁴³⁶

The factors listed by the Church parties all relate to day-to-day decisions regarding the handling of Mr Ellis’s complaint, which were within the responsibility of the Director of Professional Standards NSW/ACT or the Chancellor of the Archdiocese of Sydney.

We are satisfied that Cardinal Pell relied upon the Director of Professional Standards NSW/ACT and the Chancellor of the Archdiocese of Sydney to make the day-to-day decisions regarding the handling of Mr Ellis’s complaint. However, we are also satisfied that Cardinal Pell was involved in many other significant steps during Mr Ellis’s *Towards Healing* process, as set out above and in the finding below.

► **Finding 10:** Cardinal Pell was involved in the following significant steps during Mr Ellis’s *Towards Healing* process. Cardinal Pell:

- read Mr Ellis’s complaint on 7 June 2002
- formed the view that it was a plainly serious complaint

- discussed Mr Ellis's *Towards Healing* complaint with Mr Davoren
- approved of a meeting between Father Duggan and Mr Ellis if Father Duggan could participate
- sought Mr Davoren's advice on Mr Ellis wanting to meet with Father Duggan despite his dementia
- included Mr Ellis's complaint as part of the agenda for a bishop's meeting
- discussed the complaint at the bishop's meeting, which Cardinal Pell agreed was not the usual course in a *Towards Healing* matter
- sought a briefing from Mr Davoren in relation to a facilitation
- received and considered the advice from Mr Davoren regarding Mr Ellis's case in December 2002
- formed his own view as to the status of the complaint in December 2002
- wrote a letter to Mr Ellis on 23 December 2002 stating that nothing further could be done for him by the Archdiocese of Sydney
- met with others to discuss the process when Mr Ellis was disappointed with the December 2002 letter
- considered and approved the medical assessment of Father Duggan
- was aware of the medical assessment of Father Duggan which confirmed Father Duggan lacked capacity
- considered and approved a meeting between Mr Ellis and Father Duggan notwithstanding that Father Duggan had dementia
- was aware that a meeting had taken place between Father Duggan and Mr Ellis
- approved the appointment of Mr Eccleston as the assessor
- read Mr Eccleston's report
- appointed Mr Brazil as the Facilitator
- appointed Monsignor Rayner to represent the Church Authority during the facilitation and was aware that he subsequently did so
- knew that Monsignor Rayner believed that Mr Ellis had been abused by Father Duggan
- knew that the facilitation had occurred.

We are not satisfied to the relevant standard that Cardinal Pell approved the amounts offered to Mr Ellis, although there is significant evidence that suggests that he may have.

However, we are satisfied that Cardinal Pell was told of the amounts offered to Mr Ellis and the \$100,000 proposed by Mr Ellis by 17 September 2004 at the latest. Cardinal Pell says he does not have a current recollection of those matters.

In coming to this view, we have taken into account and given weight to Cardinal Pell's evidence that it is possible that he was told. We have also taken into account the following aspects of Mr Ellis's complaint:

- Cardinal Pell's involvement in all significant steps of the *Towards Healing* process
- that Mr Ellis sought more than what was generally offered
- that Mr Ellis would not sign the deed of release proffered by Monsignor Rayner
- that Mr Ellis commenced legal action against the Archdiocese.

We have taken into account that the Cardinal's full-time principal advisers on *Towards Healing* matters all knew about the positions taken on each side of the facilitation and they expected and assumed that the Cardinal had the same knowledge.

Monsignor Usher's evidence as to his experience was not of assistance to us, as his practice differed in many respects from that of Monsignor Rayner.

Much of Monsignor Rayner's evidence concerned his usual practice. However, he gave evidence that he did tell the Archbishop the results of the facilitation and the amount put forward by Mr Ellis. We accept that Monsignor Rayner was a truthful witness who did his best to provide an honest account.

We do not accept the submission put by the Church parties that Monsignor Rayner's evidence 'was substantially a reconstruction and would not be accepted in the absence of any corroboration from another witness or documentary evidence'.⁴³⁷

We find it compelling that, by the time Mr Ellis's solicitors had foreshadowed legal action, the Cardinal knew that amounts of money would have been discussed as part of the facilitation and that no agreement had been reached. As set out above, the Cardinal agreed he had an acute concern that people who had survived abuse by clergy would be justly dealt with.

It seem unlikely that, in light of the legal action being foreshadowed, the Cardinal, as responsible for the finances of the Archdiocese and as the Church Authority responsible for ensuring that victims were dealt with justly, would not have sought or been provided with the offers made as part of the facilitation and the outcome.

The Church parties submitted that the realistic and appropriate conclusion to be drawn from the evidence is that, by 17 September 2004, Cardinal Pell did not know that Mr Ellis had put forward the amount of \$100,000 and the offers to Mr Ellis of \$25,000 and later \$30,000.⁴³⁸ In making that submission they primarily relied on evidence in relation to whether Cardinal

Pell knew of the amounts before they were offered.⁴³⁹ For the reasons set out above, we are not satisfied that Cardinal Pell approved the amounts offered to Mr Ellis.

The Church parties' submissions also relied on the evidence of Mr Salmon, Mr Davoren, Mr Daniel Casey and Dr Michael Casey in submitting that 'they did not personally inform Cardinal Pell of the reparation amounts' and that 'they did not have personal knowledge as to whether Monsignor Rayner informed Cardinal Pell of the reparation amounts'.⁴⁴⁰ Again, in making that submission they primarily relied on evidence about whether Cardinal Pell knew of the amounts before they were offered.⁴⁴¹

For the reasons given we do not accept the Church parties' submission that that evidence supports a finding that Cardinal Pell did not know of the amounts offered by 17 September 2004.

- ▶ **Finding 11:** We are not satisfied that Cardinal Pell approved the amounts offered to Mr Ellis.
- ▶ **Finding 12:** We are satisfied that Cardinal Pell was told of the amounts offered and the \$100,000 proposed by Mr Ellis by 17 September 2004 at the latest. We accept that Cardinal Pell does not have a current recollection of those matters.
- ▶ **Finding 13:** The Archdiocese of Sydney fundamentally failed Mr Ellis in its conduct of the *Towards Healing* process by not complying with clause 19 of *Towards Healing* (2000) and not giving him such assistance as is demanded by justice and compassion including:
 - not sufficiently referring to or responding to his needs in determining the amount of reparation (clause 41.1 of *Towards Healing* (2000))
 - not providing Mr Ellis with a spiritual director when that was plainly one of his needs.

5 The review of Mr Ellis's *Towards Healing* process

Mr Ellis requested a review of the *Towards Healing* process on 31 July 2004.⁴⁴² Mr Salmon discussed Mr Ellis's case with Brother Julian McDonald, a Christian Brother and the Executive Officer of the National Committee for Professional Standards. It was decided that Mr David Landa, a former New South Wales Ombudsman, would be contacted to conduct the review.⁴⁴³

Brother McDonald told Mr Ellis that his request for a review would need to be considered in the context of anticipated legal proceedings against the Church:

Your letter to Monsignor Rayner of the 28th of July 2004 would indicate that you have decided to terminate the *Towards Healing* process because you have indicated pursuing a legal claim. In these circumstances, it is clear that further correspondence should be between your lawyers and the lawyers for the Church Authority. The question of conducting a Review of Process will be given further consideration, though its relevance must also be assessed.

I am sorry that we were unable to continue to progress to a satisfactory outcome. In the event that you may wish [to] revive *Towards Healing*, the door is open. However, the outline above indicates that the process is an alternative to litigation.⁴⁴⁴

In late August 2004, Mr Ellis commenced legal action against Cardinal Pell as the Archbishop of the Catholic Archdiocese of Sydney, the Trustees of the Roman Catholic Church for the Archdiocese of Sydney (the Trustees) and Father Duggan. The claim related to the impacts of the abuse by Father Duggan.⁴⁴⁵

On 7 September 2004, Mr Ellis confirmed that he wanted the *Towards Healing* review process to continue notwithstanding that legal proceedings had commenced.⁴⁴⁶ Mr Ellis noted that he disagreed with Brother McDonald's assessment that the facilitation 'achieved significant outcomes' and with the implication that his complaint about the process centered on the failure on the issue of the financial gesture offered conditionally by the Church.⁴⁴⁷

In December 2004, the National Committee for Professional Standards engaged Mr Landa, to conduct the review of the process. Mr Landa reported on 10 January 2005 that there had been 'a failure to observe the required process' under *Towards Healing*.⁴⁴⁸

Mr Landa found the following failures in the process:

- The delay in concluding the complaint was extensive⁴⁴⁹ and he could see no reason why the complaint took 25 months to reach a conclusion.⁴⁵⁰
- There appears to have been a failure to 'case manage' the complaint in that there was a failure to appoint a Contact Person and a failure to provide the complainant with the *Towards Healing* protocol at an appropriate or timely date. These two failures contributed to Mr Ellis's confusion and probably to his mistrust of the proceedings.⁴⁵¹

- The assessment process was also protracted. An appointment was not made for 12 months and the assessor then took a further five months to conclude his function. This was a further instance of the need to ‘case manage’ complaints.⁴⁵²
- The issue of Father Duggan’s lucidity was an issue that was poorly managed. Mr Ellis at no time accepted that Father Duggan was totally incapacitated. With that issue so contested, the ultimate solution adopted was one that clearly should have been implemented almost at the outset. This failure, coupled with the lack of a Contact Person with whom the issue would have been better addressed, compounded the complainant’s distrust.⁴⁵³

In March 2005, the National Committee for Professional Standards commissioned an Interim National Review Panel to provide a report on Mr Ellis’s *Towards Healing* complaint and consider the review of the process and Mr Landa’s recommendations.

On 10 March 2005, the Interim National Review Panel, comprising Garth Blake SC, Gerald Gleeson AC and Leonard Levy SC, found in relation to Mr Landa’s report that:

- Mr Landa was justified in his findings as to the failure to observe the required processes under *Towards Healing*. Fundamental to the processes under *Towards Healing* are justice and compassion for victims, and transparency and expedition in the required processes. There was a manifest absence of transparency through the failure to refer the matter to a Contact Person and the consequent absence of an explanation to Mr Ellis of the processes for addressing the complaint. There was also an absence of justice for Mr Ellis through the extensive delays in undertaking the required process.⁴⁵⁴
- Mr Landa was justified in finding that the issue of Father Duggan’s lucidity was poorly managed. A medical assessment of Father Duggan should have occurred once it became clear that his mental state was impaired, which, in this case should have been readily apparent shortly after the receipt of the complaint.⁴⁵⁵
- It was necessary for the review by Mr Landa to consider whether the outcome was vitiated by the failures of process ... Mr Landa was justified in finding that the earlier failures of processes created in Mr Ellis a mistrust of the process of the facilitation. In these circumstances the Panel could not be confident that the facilitation, while having had an appropriate process, was not vitiated by the earlier failures of process.⁴⁵⁶
- The Panel agreed with the recommendation of Mr Landa that the complaint should have been case managed. Case management would have helped to ensure that there were no unreasonable delays in the implementation of the process.⁴⁵⁷

► **Finding 14:** All failures identified by Mr Landa were serious and substantial failures, including:

The failure to ‘case manage’ the complaint in relation to:

- the failure to appoint a Contact Person in the terms required by *Towards Healing* (2000) (clause 36)
- the failure to provide Mr Ellis with a copy of the protocol at an appropriate or timely date
- the failure to appoint an assessor for 12 months
- the poor management of the issues surrounding Father Duggan's lucidity.

The extensive delay in concluding the complaint and all of the matters above.

► **Finding 15:** We agree with the Interim National Review Panels' recommendations in relation to Mr Landa's report, including:

- Mr Landa was justified in his findings as to the failure to observe the required processes under *Towards Healing*. Fundamental to the processes under *Towards Healing* are justice and compassion for victims, and transparency and expedition in the required processes. There was a manifest absence of transparency through the failure to refer the matter to a Contact Person and the consequent absence of an explanation to Mr Ellis of the processes for addressing the complaint. There was also an absence of justice for Mr Ellis through the extensive delays in undertaking the required process.
- Mr Landa was justified in finding that the issue of Father Duggan's lucidity was poorly managed. A medical assessment of Father Duggan should have occurred once it became clear that his mental state was impaired, which, in this case should have been readily apparent shortly after the receipt of the complaint.
- It was necessary for the review by Mr Landa to consider whether the outcome was vitiated by the failures of process. Mr Landa was justified in finding that the earlier failures of processes created in Mr Ellis a mistrust of the process of the facilitation. In these circumstances the Panel could not be confident that the facilitation, while having had an appropriate process, was not vitiated by the earlier failures of process.
- The Panel agreed with the recommendation of Mr Landa that the complaint should have been case managed. Case management would have helped to ensure that there were no unreasonable delays in the implementation of the process.

The Interim National Review Panel made a number of recommendations, including that:

- The representative of the Church Authority with responsibility for handling the complaint should apologise to the Complainant for its delay in the implementation of the process.⁴⁵⁸
- The Church Authority should indicate its willingness, and invite Mr Ellis to participate in a facilitation with a Facilitator other than Mr Brazil. In

participating in the facilitation the Church Authority should take steps, including seeking any further information necessary, to understand the needs of Mr Ellis.⁴⁵⁹

- The Director of Professional Standards should apologise to Mr Ellis for his delay in the implementation of the process and failure to refer the matter to a Contact Person.⁴⁶⁰

On 23 March 2005 Corrs, by then the Archdiocese's solicitors, advised Dr Michael Casey that the Archdiocese should not implement the recommendations made by the Interim National Review Panel.

Corrs recommended that the Interim National Review Panel be asked to reconsider its recommendations in the light of the commencement of the litigation because:

Simply objecting to those recommendations, or refusing to implement them, is likely to reflect poorly on the Archdiocese should the Report ever come before the Court in the Ellis proceedings or otherwise become public. We consider the more appropriate course is to remit the report to the panel ... We recommend that you ensure that the panel be made aware not only of the existence of the proceedings but the manner in which Mr Ellis is seeking to use any admissions or apologies by the Church and any criticism of the *Towards Healing* process to his advantage in those proceedings.⁴⁶¹

The Archdiocese accepted Corrs' advice.

Corrs also wrote:

there does not appear to have been any material before the panel that reflected that, in our view at least, Mr Ellis's own behaviour in his dealings with the Church was not beyond criticism particularly regarding his apparent lack of good faith. Accordingly, it must be said that the material considered by the panel was limited in nature.⁴⁶²

Dr Michael Casey gave evidence that he was not sure what this meant and that he does not think he was conscious of an apparent lack of good faith by Mr Ellis in the *Towards Healing* process.⁴⁶³ We share Dr Casey's view.

Subsequently, the National Committee for Professional Standards and Mr Landa agreed that no apology should be offered to Mr Ellis while he was pursuing litigation, that any contact by the Archdiocese with Mr Ellis should be through the Archdiocese's solicitors, and that a *Towards Healing* process could not be followed simultaneously with litigation.⁴⁶⁴

On 7 April 2005 at a meeting attended by Brother McDonald, Mr Landa, Monsignor Rayner and Mr Salmon it was agreed that no apology should be offered to Mr Ellis while he was pursuing litigation against the Trustees and Cardinal Pell and that any contact by the Archdiocese with Mr Ellis should be through the Archdiocese's solicitors.⁴⁶⁵

5.1 Conclusion about *Towards Healing*

The Archdiocese, through Monsignor Usher, did ultimately respond in a more compassionate manner to Mr Ellis after the litigation. These matters are dealt with later in this report.

The procedures that the Archdiocese of Sydney and the Professional Standards Office NSW/ACT followed were based on an earlier iteration of the protocol now in place. Since that time, *Towards Healing* has been reviewed on two occasions, deeds of release are no longer required and Monsignor Usher has been appointed. As is clear from our findings, the approach adopted by Monsignor Usher is to be commended.

As has been stated, the issue of redress is the subject of detailed consideration by the Royal Commission and will be the subject of recommendations by mid-2015.

6 Ellis v Archdiocese of Sydney

On 31 August 2004 Mr Ellis commenced legal proceedings in the Supreme Court of New South Wales against Cardinal Pell as the first defendant, the Trustees of the Roman Catholic Church for the Archdiocese of Sydney (the Trustees) as the second defendant, and Father Duggan as the third defendant. He pleaded causes of action in tort and breach of fiduciary duty arising from allegations of sexual abuse by Father Duggan between 1974 and his 18th birthday on 14 March 1979.⁴⁶⁶

Father Duggan died soon after proceedings commenced and Mr Ellis decided not to pursue the claim against his estate. As a result, the proceedings remained on foot against Cardinal Pell and the Trustees only.

The Trustees and the Archbishop were initially represented by Mr Patrick Monahan of Monahan + Rowell on behalf of CCI.⁴⁶⁷ Mr Ellis was represented by Mr Begg of David Begg & Associates.

Mr Monahan wrote to Monsignor Rayner on 5 August 2004, 'I look forward to discussing the matter with you and to working with you to resolve this matter on fair and just terms to all concerned'.⁴⁶⁸

A few weeks later, Mr Monahan wrote to Mr Begg, 'I would welcome the opportunity to have a preliminary discussion with you about the case, in an attempt to resolve matters expeditiously, and in a manner that is just and acceptable to all concerned'.⁴⁶⁹

6.1 Cardinal Pell instructs Corrs Chambers Westgarth

Cardinal Pell requested that Corrs be asked to assist with the litigation.⁴⁷⁰ Mr Paul McCann, a Partner at Corrs, agreed to act on behalf of Cardinal Pell and the Trustees and defend the claim filed by Mr Ellis.⁴⁷¹ Mr McCann was involved in strategic decisions and giving advice. Mr Dalzell, a senior solicitor at Corrs at the time, was responsible for day-to-day matters.⁴⁷²

Cardinal Pell told us that he decided to instruct Corrs because 'I felt that it was better for us to be in control rather than Catholic Church Insurances'.⁴⁷³ He also stated:

Corrs had acted for the Archdiocese of Melbourne when I was Archbishop and I was impressed by their efficiency. As Mr Ellis was a senior lawyer who (I believed) was seeking substantial damages, I wanted high class legal help in this case and asked Corrs to act for the Archdiocese of Sydney.⁴⁷⁴

Mr McCann wrote to Dr Michael Casey on 9 September 2004 and advised:

In my preliminary opinion, we have an extremely good chance of succeeding on this [the extension of limitation] point and the Archdiocese should commit to 'vigorously' defending Mr Ellis's application to extend the limitation period.⁴⁷⁵

Cardinal Pell followed this advice and gave instructions to resist and ‘vigorously defend’ Mr Ellis’s claim.⁴⁷⁶ This was conveyed to Mr Begg in a letter dated 28 September 2004, in which Mr McCann wrote, ‘We intend to vigorously defend this claim’.⁴⁷⁷

Dr Michael Casey was the principal person conveying instructions to Corrs during Mr Ellis’s litigation.⁴⁷⁸ Cardinal Pell gave evidence that he ‘explicitly endorsed the major strategies of the defence’.⁴⁷⁹ He gave evidence that these major strategies were:

- to defend the proposition that the trustees were not liable⁴⁸⁰
- that, if an offence had been admitted by the Archdiocese, the Archdiocese could not later deny that it took place⁴⁸¹
- to appoint competent lawyers and substantially leave them to run the case or advise the Archdiocese on how the case should be run.⁴⁸²

Once Cardinal Pell had decided on a course of action or given instructions on a particular point, most of the steps involved in implementing that point were carried out without being taken back to Cardinal Pell.⁴⁸³

► **Finding 16:** Cardinal Pell accepted the advice of Corrs Chambers Westgarth to vigorously defend the claim brought by Mr Ellis.

6.2 The new approach to mediation

Mr Monahan wrote to Monsignor Rayner and Mr Cudmore on 16 September 2004 noting that he had spoken to Mr Begg on two occasions and that Mr Ellis and Mr Begg were ‘keen to participate in a further mediation before the litigation builds up a head of steam’.⁴⁸⁴

Mr Monahan also wrote that in ordinary circumstances he would ‘unhesitatingly and strongly recommend’ that they proceed down this track, but that he was ‘of course very conscious of the fact that Cardinal Pell has his own views about the matter, and that he might wish Corrs to be involved’.⁴⁸⁵

On the same day, Corrs informed Mr Begg that they were acting for Cardinal Pell and the Trustees.⁴⁸⁶

A Corrs file note recording a conversation with Dr Michael Casey on 17 September 2004 notes the following points:

- Strategic considerations – mediation process in *Towards Healing* needs to retain integrity
- No interest in entering mediation
- Once we get corresp from Monahans write to David Begg & Assoc & note they have been exploring possibility of mediation. Reject possibility of mediation.⁴⁸⁷

Dr Michael Casey gave evidence that he does not doubt that he gave these instructions.⁴⁸⁸ Cardinal Pell gave evidence that the points in this file note, including 'Reject possibility of mediation', were consistent with the instructions he gave and that he endorsed the decision not to enter into mediation in September 2004.⁴⁸⁹ Cardinal Pell said that the prospect of mediation was rejected at this stage 'because we were so advised'.⁴⁹⁰

Mr Begg sent an email to Mr Dalzell noting that he had reached a preliminary agreement with Mr Monahan to enter into mediation. He asked whether Corrs held instructions in relation to the mediation.⁴⁹¹ Mr Dalzell told him:

we are instructed that since the instigation of proceedings against our clients, mediation is no longer a viable option in this matter; this avenue having been explored by our respective clients in the '*Towards Healing*' process.⁴⁹²

► **Finding 17:** Cardinal Pell accepted the advice of Corrs Chambers Westgarth at the outset of the litigation in September 2004 that mediation was no longer a viable option and that an approach from Mr Ellis's lawyers to mediate should be rejected.

On 3 December 2004, Mr Begg wrote to Mr Dalzell attaching by way of service an offer of compromise of '\$750,000 plus costs in answer to the cause of action on which the plaintiff claims'.⁴⁹³

Mr McCann advised Dr Michael Casey not to accept Mr Ellis's offer of \$750,000 and not to put a counteroffer.⁴⁹⁴ Mr McCann wrote, 'in our view it would be a strategic mistake to indicate that the Church will be prepared to "negotiate", as he [Mr Ellis] will see this as a fallback position he can retreat to at a convenient time'.⁴⁹⁵ He also wrote, 'In considering this, we note that Ellis has forced you to outlay a significant amount of money on defending this matter'.⁴⁹⁶

Cardinal Pell agreed that it was unreasonable to suggest that the Archdiocese had been 'forced' to outlay a significant amount of money in circumstances where Mr Ellis was doing no more than exercising his ordinary legal right to take legal action. He also agreed that it was unreasonable to suggest that this factor was relevant to the decision as to whether to make a counteroffer.⁴⁹⁷

Dr Michael Casey discussed Mr McCann's advice with Cardinal Pell and Mr Daniel Casey and instructed Corrs to decline this offer without counteroffer.⁴⁹⁸ Cardinal Pell gave evidence that he instructed Corrs to decline this offer 'Because it was – I felt it was just too high'.⁴⁹⁹

However, Cardinal Pell agreed that an offer of compromise is usually the starting point and not the end point. He said, 'that has been pointed out to me, and we certainly should have made a counter-offer, even if it was some considerable distance from \$750,000'.⁵⁰⁰ He said, 'I understand that now very clearly'.⁵⁰¹

► **Finding 18:** Cardinal Pell accepted the advice of Corrs Chambers Westgarth to reject the offer of compromise put forward by Mr Ellis in December 2004 and not make a counteroffer.

Mr McCann gave evidence that his instructions were that, if someone sues the Church, the Church will not negotiate or engage in a mediation process.⁵⁰² He also said:

The church took a view, which is that the idea of – and they used the term probably loosely there ‘mediation’ was a matter that was to be conducted as part of the pastoral aspects under *Towards Healing* and that litigation was a completely different process and that, as a consequence of a person litigating, they were not interested in mediation while that litigation was on foot.⁵⁰³

Dr Michael Casey gave evidence that the instructions to vigorously defend the claim ‘would have entailed a decision that mediation wasn’t a course to be pursued and to defend the matter’ and that these instructions were inconsistent with mediation.⁵⁰⁴

In his statement, Cardinal Pell said: ‘The first preference of the Archdiocese is, and was, always to settle litigation where possible.’⁵⁰⁵

Cardinal Pell gave evidence that the Ellis litigation was unusual because he believed that Mr Ellis was asking for too much money and because he had received legal advice that there was no chance that the litigation would be successful.⁵⁰⁶ However, he said to the Royal Commission: ‘I do not think that the offer of mediation at the outset of the litigation should have been rejected.’⁵⁰⁷ Cardinal Pell gave evidence that he did not make a strategic decision to never mediate Mr Ellis’s claim.⁵⁰⁸

We note also that Cardinal Pell gave evidence that he was not prepared to settle Mr Ellis’s claim early by conceding the issue of the Trustees’ liability and that the principle that the Trustees were not liable had to be maintained ‘whatever we did’.⁵⁰⁹

6.3 The decision to vigorously defend

Cardinal Pell explained that the reasons for his decision to accept Corrs’ advice to vigorously defend Mr Ellis’s litigation were:

- Mr Ellis was seeking exorbitant damages
- Mr Ellis was being unreasonable, or attacking the Church, in attempting to bring a civil action
- this approach would discourage potential litigants from suing the Church.

Each of these reasons is considered below. It is apparent that in some respects these reasons were not well informed.

6.4 Mr Ellis was seeking exorbitant and excessive damages

In his statement, Cardinal Pell said:

A major part in my decision to defend the legal claim brought by Mr Ellis was my conviction that he was now seeking exorbitant damages of millions of dollars by way of an ambit claim, where he had lost his \$300,000 a year position and lost the probability of promotion to a position earning \$500,000 to \$750,000 a year.⁵¹⁰

Cardinal Pell gave evidence that by ‘ambit claim’ he meant ‘an attempt to set a new standard as far as you might possibly go beyond the present prevailing norms’.⁵¹¹

Further, Cardinal Pell gave evidence that the amount of compensation paid to Mr Ellis was important to him because one of his duties was to ‘not spend the money of the Church unnecessarily’.⁵¹²

Cardinal Pell also stated:

Although I now understand that the nature of Mr Ellis’s damages claim was not new, at the time I believed he was seeking to introduce new ways of seeking very large damages for loss of high level earnings. I was certainly concerned about what I considered to be an excessive claim for damages.⁵¹³

However, Mr McCann and Mr Dalzell gave evidence that Mr Ellis’s damages claim was straightforward.⁵¹⁴ Mr Dalzell agreed that there was ‘nothing particularly novel about the damages that were sought’.⁵¹⁵

Mr McCann gave evidence that he does not believe he used the words ‘exorbitant damages’ when advising the Archdiocese on Mr Ellis’s claim. He said that that he has no recollection of advising the Archdiocese that Mr Ellis was making an excessive claim for damages.⁵¹⁶

However, Mr McCann did form the view that Mr Ellis’s claim was potentially worth millions, and he conveyed that opinion to the Archdiocese.⁵¹⁷ We accept that Mr McCann’s advice in this respect was sound.

However, even if Corrs held the view that Mr Ellis was seeking millions of dollars in damages when he commenced proceedings, by 3 December 2004 the Offer of Compromise made it clear that Mr Ellis was willing to settle for no more than \$750,000 in damages. No counteroffer was made.

► **Finding 19:** A major part of Cardinal Pell’s decision to accept the advice of Corrs Chambers Westgarth to vigorously defend the claim brought by Mr Ellis was his conviction that Mr Ellis was seeking ‘exorbitant damages’ of millions of dollars.

6.5 Not encouraging potential litigants

Cardinal Pell gave evidence that part of the reason he instructed Corrs to vigorously defend Mr Ellis's claim was 'at least in my mind, an attempt to encourage people not to go into litigation'.⁵¹⁸ When asked whether he was referring to prospective plaintiffs, Cardinal Pell gave evidence that 'Yes that we would prefer to deal with it not through litigation'.⁵¹⁹

When asked whether he thought that a vigorous defence of Mr Ellis's claim would cause potential plaintiffs to think twice before litigating against the Church, Cardinal Pell replied, 'That they should think clearly; they should consider the advantages of not going to litigation'.⁵²⁰

We note the submission of the Church parties that this evidence should be understood in a context where the Archdiocese was offering *Towards Healing* as an alternative to litigation.⁵²¹

► **Finding 20:** Another reason Cardinal Pell decided to accept the advice of Corrs Chambers Westgarth to vigorously defend the claim brought by Mr Ellis was to encourage other prospective plaintiffs not to litigate claims of child sexual abuse against the Church.

6.6 Mr Ellis was attacking the Church by commencing litigation and unreasonably taking action against the Trustees

Cardinal Pell gave evidence that he did not think that there was a 'serious possibility' that mediation would resolve Mr Ellis's claim. He said:

I was continually mystified, perhaps even exasperated, by the fact that three senior lawyers would continue to attack the role of the trustees. Our people were saying that they had no hope whatsoever of winning that. Therefore, I suppose, I viewed every approach they made, to some extent, through this prism – that, well, we're not really dealing with entirely reasonable people.⁵²²

He later qualified the word 'attack' as one that 'might be inaccurate and imprecise'.⁵²³ The 'three senior lawyers' to whom Cardinal Pell was referring were Mr Ellis and his legal representatives.⁵²⁴

Cardinal Pell also said that the fact that Mr Ellis and his lawyers decided to take the matter to the High Court after the Court of Appeal had unanimously rejected their position 'confirmed ... that they were mistaken, their lack of judgement'.⁵²⁵

When asked whether he was prepared to withdraw any suggestion that Mr Ellis or his lawyers were unreasonable or lacked judgment in deciding to sue the Trustees and Cardinal Pell, Cardinal Pell replied 'I am prepared to withdraw that now, but I would have to say that at the time that wasn't my conviction'.⁵²⁶

It is not apparent why Cardinal Pell has changed his mind. However, the issues in the litigation were complex and we have no doubt that an attempt to persuade the High Court to examine them was justified. So much is plain from the decision of the United Kingdom Supreme Court in *Various Claimants v Catholic Child Welfare Society and Others* [2013] 2 AC 1.

We are satisfied that neither the decision of Mr Ellis and his legal advisers to sue the Trustees and Cardinal Pell nor their decision to appeal the decision of the New South Wales Court of Appeal to the High Court was unreasonable or lacked judgment.

► **Finding 21:** We agree with Cardinal Pell's ultimate opinion that neither the decision of Mr Ellis and his legal advisers to sue the Trustees and Cardinal Pell, nor their decision to appeal the decision of the New South Wales Court of Appeal to the High Court, was unreasonable or lacked judgment.

6.7 Application to extend time

Mr Ellis had to seek an extension of time from the Court before the substance of his complaint could be considered. The reason for this is section 14(1)(b) (in combination with section 52) of the *Limitation Act 1969* (NSW), which meant Mr Ellis's action, at least in tort, became time-barred six years after his 18th birthday. Under the provisions of this legislation, therefore, Mr Ellis was required to have commenced the action by 14 March 1985.

Given that Mr Ellis commenced his action more than 19 years later, he applied to the Court seeking an extension of time under one of the exceptions in the Limitation Act. Under section 58 of the Act, if a 'material fact of a decisive character relating to the cause of action' is not known to a plaintiff or is not within the means of knowledge of the plaintiff until a date after the commencement of the year preceding the expiration of the limitation period, and there is evidence to establish the cause of action, the court can extend the period for one year from that date (the date of actual or constructive knowledge).

In effect this section allows a plaintiff who only acquires the requisite knowledge to commence an action in the last year of the limitation period or thereafter to have the limitation period extended by one year from the date upon which the last 'material fact of a decisive character' is known or ought to have been known by the plaintiff.

Section 57B(1) lists five categories of 'material facts', including 'the nature and extent of the personal injury' caused by the defendant. The assessment of when the nature and extent of the personal injury became known to a plaintiff is one of degree and judgment.

Sections 60F, 60G and 60I of the Limitation Act provide for a further discretionary extension of time where the plaintiff was unaware of the fact, nature, extent or cause of the injury at the relevant time. In Mr Ellis's case, this was either before 14 March 1985 (the expiration of the period of six years), or a one-year extension beyond the date on which no material fact of a decisive character was no longer beyond the means of Mr Ellis's knowledge.

Under section 60G(2) the limitation period can be extended for such a period as the court determines. However, pursuant to section 60I the application to extend time must be made within three years from the date the plaintiff became aware, or should have become aware, of the following:

- (i) that personal injury had been suffered,
- (ii) the nature and extent of the personal injury suffered, and
- (iii) the connection between the personal injury and the defendant's act or omission.

The result is that, in order to succeed in the extension of the limitation period, Mr Ellis had to show that he did not acquire knowledge of one or more of those three matters, or could not reasonably have been expected to have acquired such knowledge, within the period of three years before August 2004 when he commenced the action. The critical date for the assessment of Mr Ellis's awareness was therefore August 2001.

In addition to having to establish that he did not have, and could not reasonably be expected to have had, the requisite knowledge prior to August 2001, Mr Ellis still had to persuade the court to exercise its discretion in favour of the extension of time. Such a discretion is to be exercised by the court on 'just and reasonable' grounds, which include whether there could be a fair trial of the plaintiff's action. The principal consideration is therefore whether the Trustees and the Archbishop would have been prejudiced in the event that time was extended.

The lawyers for the Trustees and the Archbishop argued that the Court should not exercise its discretion and extend the limitation period in Mr Ellis' case because of the prejudice they would suffer.⁵²⁷ It was argued that this prejudice arose because the fact of Mr Ellis' abuse was in dispute and Father Duggan, by then deceased, was 'the most crucial witness' as to whether Mr Ellis's allegations about the abuse were true.⁵²⁸

6.8 Decision to dispute the fact of Mr Ellis's abuse

On 10 December 2004, Mr Begg served a Notice to Admit Facts and Authenticity of Documents, which requested that the Trustees and the Archbishop admit six facts, one of which was that Father Duggan sexually abused Mr Ellis between 1975 and 1987.⁵²⁹

On 20 December 2004, Corrs served a Notice Disputing Facts and Authenticity of Documents on David Begg & Associates. This notice disputed that Father Duggan had sexually abused Mr Ellis.⁵³⁰

Mr Ellis gave evidence that 'I was very surprised by all of the issues disputed, because I genuinely believed each of these matters to be non-contentious on the known facts and based on my dealings with officials of the Archdiocese for some 2½ years prior to that time'.⁵³¹ He also said:

I was saddened by the fact that the occurrence of the abuse was disputed, as I had accepted the acknowledgement of Monsignor Rayner and others as having been genuine, and now it appeared not only that Monsignor Rayner did not believe me,

but that the Cardinal did not believe me either, despite what I had been led to understand by what was said by Monsignor Rayner at the facilitation. I could not fathom this in light of the assessment report.⁵³²

On 25 January 2005 Corrs sent Dr Michael Casey an email stating, ‘As discussed this afternoon, we have received a notice from Ellis’s solicitor to admit certain facts in the Ellis v Duggan matter’.⁵³³ This email noted that one of the facts Mr Begg requested the Trustees and the Archbishop to admit was whether Father Duggan was at all relevant times engaged as a priest in the service of the Archdiocese of Sydney.⁵³⁴ The email did not refer to the disputed fact of Mr Ellis’s abuse.⁵³⁵

Mr McCann and Mr Dalzell gave evidence that they believed they would have obtained specific instructions before serving the Notice Disputing Facts. However, neither could specifically recall doing so.⁵³⁶ When asked whether the meeting on 25 January 2005 was the first time he discussed the Notice to Admit Facts with the Archdiocese, Mr Dalzell responded: ‘It would appear that way. I find that quite surprising.’⁵³⁷

Dr Michael Casey gave evidence that he does not recall when he first saw the Notice to Admit Facts,⁵³⁸ and that he does not have a recollection of instructions being sought in relation to the Notice Disputing Facts.⁵³⁹

We accept that specific instructions may not have been sought before the Notice Disputing Facts was served. We also accept Dr Michael Casey’s evidence that this Notice is consistent with the Archdiocese’s instructions to vigorously defend Mr Ellis’s proceedings.⁵⁴⁰

► **Finding 22:** Whether or not specific instructions were sought before the Notice Disputing Facts was served, the dispute of the fact of Mr Ellis’s abuse was consistent with the general instructions of the Trustees and the Archbishop to defend the case vigorously.

Mr McCann gave evidence that the decision to dispute the fact of Mr Ellis’s abuse was taken because it put the Trustees and the Archbishop in a tactically advantageous position with regard to the question of prejudice in the limitation hearing.⁵⁴¹ That is, by disputing that Mr Ellis had been abused, the Trustees and the Archbishop could argue that they would suffer severe prejudice if the limitation period was extended because the crucial witness in this case – namely, Father Duggan – was dead.⁵⁴² The Trustees and the Archbishop made this submission at the conclusion of the limitations hearing and on appeal.⁵⁴³

The effect of disputing the fact of the abuse was that if the limitation period was extended and his complaint proceeded to trial, Mr Ellis would have to prove that the abuse had occurred. It also meant that the Trustees and the Archbishop could cross-examine Mr Ellis about whether he had been abused and the details of the abuse.

Instead of disputing that Mr Ellis had been abused, it was open to the Trustees and the Archbishop to admit the fact of Mr Ellis’s abuse and defend the case on other grounds. Those grounds could include:

- that the limitation period should not be extended because of the difficulty in establishing the facts relevant to the vicarious liability of the Trustees and the Archbishop for the abuse by Father Duggan
- that the Trustees and Cardinal Pell were not liable for the abuse.

In particular, if it was important to the Trustees and the Archbishop to establish that the Trustees could not be sued, they could have had that issue decided separately and before the hearing of the interlocutory application to extend time. That is essentially the approach taken by the Court of Appeal. The Court stated that, for the purpose of the interlocutory proceedings, the Trustees and the Archbishop accepted that Mr Ellis had filed evidence that establishes an arguable case that he was abused as alleged. The main argument advanced before the Court was that the Trustees and Cardinal Pell were not the proper defendants.⁵⁴⁴

► **Finding 23:** Instead of disputing that Mr Ellis had been abused, it was open to the Trustees and the Archbishop to admit the fact of Mr Ellis’s abuse and defend the case on other grounds.

6.9 The Archdiocese contrives a dispute

On 24 June 2005, some seven months after the Notice Disputing Facts was served, Dr Michael Casey and Mr Daniel Casey attended a briefing at Corrs. After the briefing, Cardinal Pell asked Dr Michael Casey to seek advice from Mr Salmon as to the status of Mr Eccleston’s report in order to determine whether the Archdiocese had previously accepted Mr Ellis’s claim that he had been abused by Father Duggan.⁵⁴⁵

Dr Michael Casey later wrote to Corrs:

His Eminence asked me to check that the *Towards Healing* assessment had in fact found in favour of Ellis’s allegations. Eccleston’s report did find that on the balance of probabilities Ellis was abused by Father Duggan, and Ellis has a copy of this assessment. But as provided under section 40 of the TH protocol, the Church Authority has a discretion, after discussing an assessment with the Director of Professional Standards, to accept or reject its findings. Michael Salmon has advised me that there were reservations about the assessment, not least because of Father Duggan’s incapacity to respond and the absence of any prior evidence of predatory behaviour.

As a consequence, the final position which the Archdiocese came to was that it was not possible to make a determination that Father Duggan had abused Ellis as alleged, but because there was no reason to doubt that Ellis honestly believed he was telling the truth, and because of his evident pain, an *ex gratia* payment would be offered as a pastoral response.

The basis on which this offer was made would have been made clear by the Facilitator of the discussion between Ellis and Monsignor Rayner, Raymond Brazil, both during the facilitated discussion and in preliminary discussions with Ellis. Mr

Salmon suggests it may be useful to speak directly to Mr Brazil to confirm this (tel: [redacted]). I would be grateful if you could contact Mr Brazil to discuss his recollections.

In contrast to where we thought we were this morning, this information places us in a position where we can say that the Archdiocese has never accepted that Father Duggan was responsible for the abuse Ellis alleges he suffered, either under the *Towards Healing* process or at law.⁵⁴⁶

Mr Dalzell then sent Dr Michael Casey an email that said:

I talked to Raymond Brazil who could not remember what his attitude to the report was. I need to talk to Brian Rayner to get his views on the subject as he played a pivotal role in the subsequent meetings with Ellis.⁵⁴⁷

Mr Dalzell said that he had no recollection of having spoken to Mr Brazil.⁵⁴⁸ Mr Brazil gave evidence that he could not recall receiving such a call but that, if he had been asked, he would have acknowledged that Mr Ellis's allegations were, on the whole, confirmed.⁵⁴⁹

Mr Dalzell also said that he did not recall discussing the report with Monsignor Rayner and that he does not remember Monsignor Rayner casting any doubt on the Archdiocese's acceptance of Mr Eccleston's report.⁵⁵⁰ Monsignor Rayner said that he remembered receiving a phone call from Mr Dalzell around June or July 2005 but that he did not remember being asked for his views on Mr Ellis's allegations or Mr Eccleston's report.⁵⁵¹

Mr Salmon gave evidence that he may well have told Dr Michael Casey that Monsignor Rayner had some reservations about the assessment.⁵⁵² However, he also said that his understanding was that Monsignor Rayner had told Mr Ellis that the Archdiocese of Sydney accepted his complaint at the facilitation and that Monsignor Rayner believed Mr Ellis.⁵⁵³ Mr Salmon said it is likely he would have told Dr Michael Casey this, if for no other reason than because he believed that Monsignor Rayner 'was struck by the compelling nature of Mr Ellis in person as a witness of veracity'.⁵⁵⁴

Mr Salmon also said that he understood that this matter was facilitated on the basis that the Archdiocese accepted Mr Ellis's case. He said that it was never his understanding that the Archdiocese had not accepted that Father Duggan abused Mr Ellis.⁵⁵⁵

Dr Michael Casey gave evidence that he spoke to Mr Salmon because he was instructed to do so. He said that he tried to report Mr Salmon's comments faithfully and accurately.⁵⁵⁶ He also gave evidence that:

- Mr Salmon's comments on Mr Eccleston's report were included in this email because the Archdiocese 'was seeking to see if that possibility, the possibility of maintaining a non-admission of Mr Ellis's allegations, was possible,'⁵⁵⁷ and
- there was other, more credible, material available to him in relation to whether the Archdiocese had accepted Mr Ellis's complaint, such as the facilitation notes.⁵⁵⁸

Dr Michael Casey agreed with the proposition that the Archdiocese, on behalf of the Trustees and the Archbishop, was seeking to put itself in a position where it could maintain a

non-admission of Mr Ellis's abuse and that Corrs had advised him that this was in the interests of the Church in the litigation.⁵⁵⁹ He said, 'I agree that, looking at this now, it does look like an attempt to contrive that outcome'.⁵⁶⁰

Dr Michael Casey and Mr McCann gave evidence that the Trustees and the Archbishop disputed the fact of Mr Ellis's abuse because it suited the argument that the Trustees and the Archbishop would be prejudiced if the limitation period was extended.⁵⁶¹

However, Cardinal Pell gave evidence that he did not think that the prejudice argument was a significant argument either for or against the position he took.⁵⁶² He said, 'I'm still not entirely clear what it means, but I am clear that this was not a significant factor in my decisions'.⁵⁶³

Cardinal Pell subsequently gave evidence in response to a question from counsel for the Truth Justice and Healing Council that 'I wasn't aware of anything in such a – described as a tactic or that I perceived as simply a tactic'.⁵⁶⁴

Cardinal Pell said he was sure Dr Michael Casey would have reported back to him after his conversation with Mr Salmon but that he had no particular recollection of it.⁵⁶⁵ Cardinal Pell disagreed that Dr Michael Casey's email reflected his views. He said:

I don't believe I ever agreed with the reasoning. Dr Casey would not have made up this position. I think it – this is my conjecture. It reflects the thinking, to some extent, of others, because he is only a conduit, but it did not represent my thinking.⁵⁶⁶

Cardinal Pell also disagreed that this email suggests that Dr Michael Casey was seeking to find a way around Mr Eccleston's report. He stated, 'I've been mystified by this document. I think that Dr Michael Casey ran together denying and putting to the proof, but that's an hypothesis' and 'Because I know Dr Michael Casey very well, I do not believe that he would have taken – cooperated in any contrivance. He would have – I think he's quite muddled here'.⁵⁶⁷

However, Cardinal Pell did agree that the natural person to ask about Mr Eccleston's report was Monsignor Rayner.⁵⁶⁸ He also noted that, by proceeding to a facilitation after the receipt of the Eccleston Report, the Archdiocese had accepted that the abuse had occurred for the purposes of *Towards Healing*.⁵⁶⁹ We agree with this evidence.

Cardinal Pell gave evidence that he instructed Corrs to dispute the fact of Mr Ellis's abuse because he was told that it was legally proper and not unusual.⁵⁷⁰ He said, 'I continued to remain a bit – well, uneasy, but I was told it was an appropriate and permissible and sometimes regular way of dealing with this'.⁵⁷¹

We are satisfied that the Archdiocese was advised that it was in the Church's interests in the litigation to maintain a non-admission of the fact of Mr Ellis's abuse. This could only have been for the purpose of supporting a submission that, by reason of Father Duggan's death, the defendants were prejudiced in defending Mr Ellis's claim that he was abused.

After receiving this advice, the Archdiocese concluded, on the basis of its understanding of Mr Salmon's comments, that:

- the Archdiocese's final position was that it was not possible to make a determination that Father Duggan had abused Mr Ellis but that an ex gratia payment should be offered because of his evident pain
- this would have been made clear at Mr Ellis's facilitation
- therefore the Archdiocese could say that it had never accepted that Father Duggan was responsible for the abuse alleged by Mr Ellis.

This conclusion was reached in circumstances where:

- the Archdiocese was aware that the Church-appointed assessor had found, on the balance of probabilities, that Mr Ellis had been abused as alleged
- under *Towards Healing* a complaint will only proceed to facilitation if the Church Authority has accepted that the abuse occurred
- Mr Salmon had not attended Mr Ellis's facilitation and was not part of the Archdiocese
- Monsignor Rayner and Mr Brazil, who had attended Mr Ellis's facilitation, had not been consulted.

We are satisfied that, by reaching this conclusion in this manner, the Archdiocese contrived an outcome that would allow them to maintain the non-admission of Mr Ellis's abuse.

Mr Brazil and Mrs Ellis took notes of Mr Ellis's facilitation.⁵⁷² Mr Salmon was aware that Mr Brazil had taken notes, but he did not tell Dr Michael Casey about these notes because he assumed that the Archdiocese was aware of them.⁵⁷³ Mr Brazil's facilitation notes record Monsignor Rayner as saying, 'Never doubted what said', and 'Majority of allegations should be believed'.⁵⁷⁴

These facilitation notes were available to the Archdiocese. The notes make it clear that Monsignor Rayner, on behalf of the Archdiocese, accepted that Father Duggan had abused Mr Ellis.⁵⁷⁵

- ▶ **Finding 24:** Cardinal Pell accepted the advice of Corrs Chambers Westgarth in June 2005 to continue to dispute the fact that Mr Ellis had been abused.
- ▶ **Finding 25:** The Archdiocese wrongly concluded that it had never accepted that Father Duggan had abused Mr Ellis, either at law or under *Towards Healing*, and that this would have been made clear to Mr Ellis at his facilitation.

This conclusion allowed Cardinal Pell to instruct Corrs Chambers Westgarth to maintain the non-admission of Mr Ellis's abuse, which Corrs Chambers Westgarth had advised was in the Church's interests in the litigation.

We are satisfied that the Archdiocese contrived this outcome by relying solely on its understanding of Mr Salmon's comments, in circumstances where:

- the Archdiocese was aware that the Church-appointed assessor had found, on the balance of probabilities, that Mr Ellis had been abused as alleged
 - under *Towards Healing* a complaint will only proceed to facilitation if the Church Authority has accepted that the abuse occurred
 - Mr Salmon had not attended Mr Ellis's facilitation and was not part of the Archdiocese
 - Monsignor Rayner and Mr Brazil, who had attended Mr Ellis's facilitation, had not been consulted.
- ▶ **Finding 26:** The Facilitator of Mr Ellis's *Towards Healing* facilitation took notes which were available to the Archdiocese and which made it clear that Monsignor Rayner, who represented the Archdiocese at the facilitation, had accepted that Father Duggan had abused Mr Ellis.

6.10 The effect of the decision to 'put Mr Ellis to the proof'

Cardinal Pell did not accept that he instructed the lawyers to deny the fact of Mr Ellis's abuse. Instead, Cardinal Pell consistently distinguished between *denying* the fact of Mr Ellis's abuse and *disputing* that it had occurred.⁵⁷⁶ He said:

I was made aware at some time during the proceedings that the effect of 'disputing' such a fact is to 'put the plaintiff to proof' of that fact, rather than to deny the fact. I understood that the advice given by the lawyers was to adopt that approach. I concurred, somewhat reluctantly, as I could not condone denying the abuse occurred.⁵⁷⁷

Cardinal Pell also gave the following evidence:

- 'I was quite clear that if an offence had been admitted by the archdiocese, we could not deny that it took place'⁵⁷⁸
- 'I made it quite clear that we could not deny that an offence had taken place in the light of Mr Eccleston's report'
- 'I did not want the lawyers to be denying that the event had occurred'.⁵⁷⁹

When it was put to Cardinal Pell that the effect of disputing the fact of Mr Ellis's abuse was the same as denying that the abuse occurred, Cardinal Pell replied:

I would not draw that conclusion. We were dealing with Mr Ellis as a senior and brilliant lawyer, with other lawyers. I believe that the putting to the proof is still used in many cases. I think he, as a lawyer, would have understood the distinction.⁵⁸⁰

However, Cardinal Pell accepted that the instructions he gave resulted in Mr Ellis being cross-examined and challenged as to whether the abuse occurred, in circumstances which were harmful and painful to him.⁵⁸¹ He said:

Reflecting now on the decision to 'dispute' the fact of the abuse, I am troubled by it, given both the terms of the Eccleston report and that Msgr Rayner had evidently told Mr Ellis at the facilitation in July 2004 that he had never had any reason to doubt what Mr Ellis had said.⁵⁸²

Mr Ellis gave the following evidence:

During the first week of the hearing, I was cross examined over two hearing days by Senior Counsel for the Trustees and Cardinal Pell. That cross examination included questions on 27 July 2005 as to whether my allegations were true and whether the abuse I described had happened.

This line of questioning was extremely distressing for me, because I had understood until then that those instructing the lawyers for the Trustees and Cardinal Pell believed without a doubt that the abuse had happened.⁵⁸³

The cross-examination of Mr Ellis included the following questions:

'Are you absolutely sure in your own mind Mr Ellis that this abuse happened?'⁵⁸⁴

'And one of the reasons I raise this is this: this man Father Duggan married you and your first wife didn't he? ... How did that come about if he was unwelcome and you were resisting him?'⁵⁸⁵

'Well, on your evidence, this man who on your evidence was a paedophile, is abusing you right up to the time when you get married for the first time, he marries you and then you continue the relationship? ... Are you actually sure that that happened?'⁵⁸⁶

Decisions such as what topics Mr Ellis should be cross-examined on, how long he should be cross-examined and other evidential objections were made by the lawyers without specific instructions from the Archbishop or the Trustees.⁵⁸⁷

Mr McCann initially said that these questions ‘go squarely to Mr Ellis’s state of mind’ and that they were ‘part of a short section of the cross-examination testing the reliability and truthfulness of Mr Ellis’s earlier evidence that he had not connected his abuse with the problems he experienced in his first marriage until very recently’.⁵⁸⁸ He also said that the ‘purpose of the cross-examination was to identify when Mr Ellis first became aware of the effect of the assault upon him, which was necessary for the limitation period’.⁵⁸⁹

However, in oral evidence before the Royal Commission, Mr McCann accepted that if the purpose of the cross-examination was to test when Mr Ellis knew or understood that his abuse constituted personal injury then it was not necessary to cross-examine Mr Ellis about whether he was abused.⁵⁹⁰

It is plainly correct that it was not necessary to cross-examine Mr Ellis about whether he was abused. The issues relevant to the limitation application could have been thoroughly explored in the interlocutory application without the fact of Mr Ellis’s abuse by Father Duggan being put in issue.

During the cross-examination Mr Ellis was also asked, ‘It is your evidence that you hadn’t had any homosexual conduct with any person before Father Duggan?’. He replied: ‘Yes, hadn’t had any sexual conduct. I was 14.’⁵⁹¹

Mr McCann agreed that this question was entirely irrelevant even to the question of whether Mr Ellis had been abused and also to the question of Mr Ellis’s awareness of the abuse and that it was, at least, highly unnecessary and hurtful to Mr Ellis.⁵⁹²

Cardinal Pell gave evidence that:

- ‘the questioning was just too long, too intrusive, hurtful’⁵⁹³
- the length of the cross-examination was ‘quite inappropriate’⁵⁹⁴
- the cross-examination was ‘inappropriate in many ways’⁵⁹⁵
- ‘I do not think it should have been necessary for Mr Ellis to be cross examined for as long as three days’.⁵⁹⁶

The Church parties accepted, with the benefit of hindsight, that the decisions to maintain the non-admission of Mr Ellis’s abuse did not have sufficient regard to the likely effects of those decisions on Mr Ellis. The Church parties also accepted, with regret and apology, that the decision to maintain the non-admission resulted in Mr Ellis being cross-examined for longer than was necessary, in circumstances which were hurtful and painful to him.⁵⁹⁷

We accept this submission. The relevant finding appears below.

6.11 The proper defendant issue

During the application to extend time before the Supreme Court, the Trustees and the Archbishop also raised the question of whether they were the proper defendants to Mr Ellis's action. They argued that they could not be held liable for the abuse by Father Duggan. Corrs had provided advice on this issue, on the instructions of the Archdiocese, before Mr Ellis's proceedings had commenced.⁵⁹⁸

On 29 January 2004, Corrs provided advice on whether or not it would be prudent to identify the Trustees as the defendant for the Archdiocese of Sydney in any legal proceedings. Corrs advised against adopting this practice. It advised that 'the most appropriate approach for the Archdiocese to adopt is to let the potential plaintiffs work out for themselves who they think they should sue, let them plead their claims, and then take steps, if they be available, to strike out or summarily dismiss any such claim'.⁵⁹⁹

On 5 July 2004, Corrs provided a further advice at Mr Daniel Casey's request. Cardinal Pell was aware of and agreed with the 'general position' that the lawyers should not help Mr Ellis to identify a suitable defendant.⁶⁰⁰

► **Finding 27:** Cardinal Pell was aware of, and generally agreed with, the advice of Corrs Chambers Westgarth that the Church's lawyers should not help Mr Ellis identify a suitable defendant.

Although Corrs had considered the possibility of relying on the proper defendant argument almost immediately after Mr Ellis's proceedings were commenced,⁶⁰¹ Mr Ellis was not informed that the Archdiocese intended to put forward this defence until June 2005.⁶⁰²

During the hearing, the Trustees and the Archbishop raised this issue in the context of section 58(2)(b) of the Limitation Act, which requires an applicant for an extension of time to establish that 'there is evidence to establish the cause of action'. In effect, they argued that the extension should not be granted on the grounds that even if all of the factual allegations made by Mr Ellis were established, Cardinal Pell and Trustees would not be liable. The Court's findings on this issue are set out below.

6.12 Concern about publicity

Before the Supreme Court hearing, Mr McCann raised a concern that there was going to be heightened media interest in the litigation. He suggested that media support be obtained from Ms Tracey Cain, who had previously given that type of support to the Church.⁶⁰³ Cardinal Pell accepted this advice and sought media support to assist with media inquiries on the first day of the New South Wales Supreme Court hearing.⁶⁰⁴

At around this time, the Archdiocese was also concerned about negative publicity associated with relying upon the proper defendant defence. In an email of 24 June 2005, Dr Michael Casey wrote:

our discussion this morning concerning the proper defendant was most helpful in allaying His Eminence's concerns about how insisting on this point might be construed in media comment. Speaking of this issue in terms of the natural justice involved in requiring the plaintiff to show that those he alleges are liable, truly liable, may be one formulation to keep in mind if we are pressed to publicly justify our approach.⁶⁰⁵

The Archdiocese obtained legal advice and adopted a media strategy in response to this concern that the proper defendant argument may be construed as an assertion that the Church cannot be sued.⁶⁰⁶

Dr Michael Casey and Mr Daniel Casey did not recall seeking the Cardinal's instructions about obtaining this advice.⁶⁰⁷ Dr Michael Casey gave evidence that at this stage both he and Cardinal Pell had concerns about public perception and potential media interpretation of the Church running the proper defendant argument.⁶⁰⁸

Cardinal Pell gave evidence about the public perception of the proper defendant defence:

I was, I am, quite prepared to bear that negative publicity. The greater concern was that it would appear that we didn't have any concern for the person of the victim and were trying to completely avoid our responsibilities.⁶⁰⁹

On 20 July 2005, Dr Michael Casey sent an email to the Professional Standards Office NSW/ACT and Monsignor Usher attaching a list of questions and answers. He wrote that these 'have been prepared for Corrs to use if questioned on the case. Although they read like a script, they are intended to guide their spokesperson on the messages that should be delivered in answering questions that may arise'.⁶¹⁰

One of the proposed answers read, 'Before Mr Ellis decided to take legal action, as is his right, the Archdiocese was working with him through the independent *Towards Healing* process to resolve the matter in a supportive and pastoral setting'.⁶¹¹ Dr Michael Casey gave evidence that this 'completely mischaracterises Mr Ellis's experience of *Towards Healing*' and that 'it was certainly not true in his case'.⁶¹² We accept this evidence.

Dr Michael Casey contributed to, and reviewed, the draft of this document.⁶¹³ He could not recall whether Cardinal Pell was involved in settling these questions and answers but said 'he probably wasn't'.⁶¹⁴ However, he subsequently agreed that it would have been most unusual if this document had not been discussed with Cardinal Pell.⁶¹⁵

► **Finding 28:** The Archdiocese prepared questions and answers about Mr Ellis's litigation, which were provided to a spokesperson for the Archdiocese and which included an answer that completely mischaracterised Mr Ellis's experience of *Towards Healing*.

On 27 July 2005 *The Australian* newspaper reported Ms Cain, a spokeswoman for the Church's lawyers, as saying that Mr Ellis's alleged abuse happened too long ago for the Church to find the necessary evidence.

Cardinal Pell agreed that this statement is wrong. He gave evidence that this 'was done without my consent and knowledge'.⁶¹⁶

6.13 Another complainant comes forward

The Trustees and the Archbishop continued to dispute that the abuse had occurred throughout the litigation despite the fact that during the hearing another complainant – SA, who claimed he had been abused by Father Duggan in 1980 – came forward.

SA swore an affidavit in which he gave evidence that Father Duggan sexually abused him from approximately April 1980 until the end of 1982 at the Presbytery of St Mary's Cathedral in Sydney and at a holiday house near Ettalong on the Central Coast of New South Wales.⁶¹⁷ SA was born in May 1964.⁶¹⁸

He said that in 1983 he swore a statutory declaration about some of this abuse. The statutory declaration was given to Father McGloin, who was then Dean at the St Mary's Cathedral Presbytery in the Archdiocese of Sydney.⁶¹⁹

SA also said that Father McGloin subsequently arranged a meeting with him to discuss the matter. He said that during this meeting Father McGloin brought in Father Duggan and then left the meeting, leaving SA alone with Father Duggan.⁶²⁰ As far as SA was aware, the Church took no further action.⁶²¹

Dr Michael Casey was sent SA's affidavit on 28 July 2005.⁶²² Cardinal Pell became aware of SA's evidence during the litigation.⁶²³ Monsignor Usher knew about SA's evidence by at least 8 August 2005.⁶²⁴

On 28 July 2005, Mr Dalzell wrote to counsel that 'it turns out that Fr McGloin has a complaint file as big as the New Testament ... including some under age sex'.⁶²⁵

Mr Dalzell conducted various investigations in response to SA's complaint.⁶²⁶ On 29 July 2005, Mr Dalzell wrote to Dr Michael Casey and Monsignor Usher, 'Hopefully, at the end of these investigations, we will still have an arguable case'.⁶²⁷

On 9 August 2005, SA swore a second affidavit, which further corroborated Mr Ellis's allegations.⁶²⁸

Cardinal Pell gave evidence that at the time SA came forward he knew that the Trustees were disputing the fact of Mr Ellis's abuse.⁶²⁹ Cardinal Pell said, 'I made no secret of my view, and it was shared by everyone I spoke to, that the evidence of [SA] significantly strengthened Mr Ellis's legal case'. However, he agreed that this view did not affect the way in which the litigation was subsequently conducted.⁶³⁰

Cardinal Pell gave evidence that he should have told the lawyers that he thought SA's affidavit strengthened Mr Ellis's case.⁶³¹

Both Dr Michael Casey and Cardinal Pell agreed that SA's evidence should have caused the Archdiocese to reconsider whether the Trustees and the Archbishop continue to dispute the fact of Mr Ellis's abuse.⁶³²

► **Finding 29:** Cardinal Pell's view, which was shared by everyone he spoke to, was that the evidence of SA significantly strengthened Mr Ellis's legal case. However, during the litigation neither he nor anyone else in the Archdiocese reconsidered whether to dispute the fact of Mr Ellis's abuse.

6.14 Another prospective witness comes forward

In the meantime, another prospective witness had come forward. In an email to counsel on 28 July 2005, Mr Dalzell wrote:

Interestingly, another witness has come forward, this time in support of Father Duggan. Her name is Judith Penton and she sounds credible. I have an appointment to interview her next week. In summary, Duggan was a regular house guest of this lady. On occasions he brought Ellis with him (I know this bit doesn't look good). Apparently Ellis used to bash Duggan (who was in his 60s – Ellis was aged 14–15) and force himself upon the aging priest! She recalls one time when Ellis grabbed Duggan and started to kiss him in front of her. She remembers Duggan pushing Ellis off!⁶³³

On 8 August 2005, Ms Vozzo of Corrs sent an email to counsel about interviews that had been conducted with Mrs Penton.⁶³⁴ She wrote:

She recalled a night when Father Duggan came over after he claimed Ellis had hit him. She described how Father Duggan often alluded to 'all the boys love me and I love all the boys.' After hearing Father Duggan state this one night, Ellis apparently became quite upset and wanted to leave the Penton home. She witnessed Ellis kiss Father Duggan that night.⁶³⁵

The email concluded with the words, 'In short, it does not seem that we would want to depose an affidavit from ... Mrs Penton'.⁶³⁶ No reasons for this conclusion are given in the email.

Corrs did not depose an affidavit from Mrs Penton and did not bring her evidence to the attention of either the Court or Mr Ellis.

Dr Michael Casey said that Mr Dalzell told him of Mrs Penton's account along the lines of the July email set out above.⁶³⁷ When asked whether he informed the Archbishop of Mrs Penton's account, Dr Michael Casey gave evidence that 'I don't have a direct recall, but I'm sure I did'.⁶³⁸

Cardinal Pell said that he was not aware of Mrs Penton's account until he began preparing to give evidence at the Royal Commission.⁶³⁹ He also said that Dr Michael Casey could have

informed him of the existence of Mrs Penton's evidence but that he had no recollection of him mentioning it.⁶⁴⁰

Dr Michael Casey gave evidence that he does not believe that he was asked whether an affidavit from Mrs Penton should be deposed. He said that he did not give instructions about this issue.⁶⁴¹ Dr Michael Casey gave evidence that if his instructions had been sought on this point, he would have sought Cardinal Pell's instructions and that he does not recall doing this.⁶⁴²

The Trustees and the Archbishop continued to dispute that Mr Ellis had been abused. Cardinal Pell gave the following evidence:

I think that certainly once the affidavit of SA and the account given by Mrs Penton were available, and in the light of what Msgr Rayner said to Mr Ellis at the facilitation, the non-admission of the allegation of abuse should not have been maintained.⁶⁴³

We accept this evidence. The relevant finding appears below.

6.15 Catholic Church Insurances raises concerns

On 16 December 2005, Peter Rush of CCI sent a letter to Mr Daniel Casey in which he wrote, 'Catholic Church Insurances has serious reservations about the level of fees which have been incurred thus far by the Archdiocese in the various matters being run by Corrs'.⁶⁴⁴

Mr Rush also wrote 'CCI accepts our responsibility to pay reasonable defence costs incurred with its written consent', and noted that, as at 14 November 2005, Corrs had billed 'professional fees of \$262,272.00 and disbursements of \$104,943.76 (a total of \$367,215.76 excluding GST)' in Mr Ellis's matter.⁶⁴⁵

Mr Rush noted that the 'average legal costs per claim incurred by Catholic Church Insurances in regard to Special Issues claims over all states over recent years is less than \$15,000'.⁶⁴⁶ This letter indicated that, in another matter with 'substantial similarities' to Mr Ellis's case, the total legal fees incurred up to the conclusion of the appeal was under \$120,000.⁶⁴⁷

Mr Rush wrote:

It appears to us that Corrs are running these matters in a manner which is completely different to that currently adopted by CCI and its panel solicitors in this area of our business, which have been developed over many years. In our assessment, the legal costs run up by Corrs are a multiple of the fees which we would ordinarily expect to pay for similar matters.

... We are also concerned about the large level of costs incurred in some matters before a reasonable attempt has been made to investigate and/or consider the possibility of settlement. We would prefer to see some costs being devoted to reasonable settlement payments with claimants, rather than legal fees. In our experience, this has been the general approach taken by the Church to Special Issues

matters over many years and it seems to be a more appropriate allocation of resources.⁶⁴⁸

Mr Daniel Casey gave evidence that it is highly likely that he gave this letter to someone else in the Archdiocese but that he does not recall whether he did.⁶⁴⁹ He also gave evidence that he strongly suspects he would have shared Mr Rush's concerns about Corrs' legal fees in Mr Ellis's litigation.⁶⁵⁰

Cardinal Pell gave evidence that he does not recall this letter coming to his attention during the course of the litigation. He gave evidence that he would have expected Mr Daniel Casey to inform him of 'a substantial difference in a matter of principle, if that's the word, between CCI and what we were doing'.⁶⁵¹

6.16 The Court's decision

The hearing before Acting Justice Patten in the New South Wales Supreme Court concluded on 12 October 2005 and judgment was reserved.

On 3 February 2006, Acting Justice Patten handed down his judgment, extending the limitation period in respect of the causes of action pleaded against the Trustees but dismissing the action against Cardinal Pell on the basis that he was not a proper defendant.⁶⁵²

Acting Justice Patten held that there was an arguable case that the Trustees, at all relevant times, constituted the entity within the Roman Catholic Church which was adopted and put forward as the permanent corporate entity or interface between the spiritual and temporal sides of the Church and were therefore legally responsible for the acts and omissions of the Archbishop and his subordinates.⁶⁵³

Acting Justice Patten found that Mr Ellis did not have the means of knowing the nature and extent of the personal injury caused by Father Duggan's alleged sexual abuse until his consultation with a counsellor in September 2001.⁶⁵⁴ His Honour also held that this knowledge may only have become a decisive fact once Mr Ellis realised in 2004 that there was a connection between Father Duggan's abuse and the grave economic consequences then facing Mr Ellis following his effective dismissal from Baker & McKenzie.⁶⁵⁵

His Honour held that the death of Father Duggan was not a matter of significance in relation to the exercise of his discretion.⁶⁵⁶ This was because of SA's evidence, which Mr Ellis put before the Court. His Honour indicated that the Church, and therefore the Trustees, had the opportunity as early as 1983 to investigate the alleged sexual misconduct of Father Duggan and that the Church apparently did not do so.⁶⁵⁷

While finding that the Trustees and the Archbishop would be prejudiced if time was extended, his Honour held that the evidence established that there could be a fair trial of the action.⁶⁵⁸ That was because, although some evidence may be lost because of the passage of time, there would nevertheless be people who could attest to Mr Ellis's service as an altar boy some 30 years previously and to the systems, if any, in place at Bass Hill and elsewhere to protect persons such as altar boys from the sort of conduct alleged against Father Duggan.⁶⁵⁹

Acting Justice Patten stated: 'In my assessment, the Plaintiff was an honest witness who did his best to assist the court. In general terms, I accept his evidence as reliable.'⁶⁶⁰ On the same day, Mr Dalzell informed the Archdiocese of the decision and Acting Justice Patten's comments about Mr Ellis's reliability.⁶⁶¹

Cardinal Pell was informed about the outcome,⁶⁶² although he does not recall whether these comments were brought to his attention. He gave evidence that they added nothing to his understanding, as he already considered Mr Ellis to be an honest and reliable witness.⁶⁶³

6.17 Another offer of mediation rejected

On 8 March 2006, following Acting Justice Patten's judgment, Mr Begg spoke to Mr Dalzell and suggested that they meet and discuss 'either some form of mediation or possibly a settlement negotiation'.⁶⁶⁴ Mr Dalzell responded that they were seeking advice on the merits of an appeal and that 'therefore such a meeting would be premature at this stage'.⁶⁶⁵

On 29 March 2006, Mr Dalzell wrote to Dr Michael Casey about a 'recently received' request from Mr Begg to enter into mediation. He stated:

In my opinion, this is premature at least until the resolution of our appeal. I suspect that the plaintiff, who now faces the prospects of proving his case at trial and a costs order against the Cardinal, is hoping that we will now settle the matter. With your instructions, I will inform Begg that we intend to appeal and therefore mediation is inappropriate at this stage.⁶⁶⁶

On the same day, Dr Michael Casey wrote to Mr Dalzell that 'DC and I concur with your view that the offer of mediation should be rejected'.⁶⁶⁷ Dr Michael Casey also noted that, before providing formal instructions to this effect, Cardinal Pell wanted to confer with an adviser about the publicity implications of appealing.⁶⁶⁸

Cardinal Pell gave evidence that he presumed he was consulted on the decision to reject the offer of mediation. He accepted Dr Michael Casey's evidence that it is very likely that Dr Michael Casey had a discussion with him about the mediation.⁶⁶⁹

Cardinal Pell gave the following evidence as to why the offer was rejected:

Possibly because the whole issue of the trustees was still at issue. In retrospect, it wasn't a wise decision not to enter the mediation. Probably the issue there was not so much the mediation but as to whether we would appeal, but they were intimately linked.⁶⁷⁰

Cardinal Pell agreed that he was concerned with the publicity implications of lodging an appeal but said he thought that 'we had to put up with them for our better purposes', being to appeal.⁶⁷¹

Later that day, Corrs sent an email to Dr Michael Casey attaching a short summary of the appeal⁶⁷² and stating, 'We should run this past Tracey Cain if you are happy with the form of words'.⁶⁷³

Cardinal Pell subsequently gave instructions that the appeal should proceed.⁶⁷⁴

► **Finding 30:** Cardinal Pell accepted the advice of Corrs Chambers Westgarth to refuse a further offer by Mr Ellis to mediate after Acting Justice Patten’s decision was handed down in February 2006.

6.18 The Archbishop and the Trustees continue to dispute that the abuse occurred

After Acting Justice Patten’s decision was handed down, Cardinal Pell and CCI instructed Corrs to have Cardinal Pell’s costs assessed.⁶⁷⁵ Corrs subsequently informed Mr Ellis’s solicitors that it was anticipated that Cardinal Pell’s costs would be in excess of \$100,000.⁶⁷⁶

On 31 March 2006, in response to a second Notice served by Mr Ellis’s lawyers, Corrs served a Notice Disputing Facts on David Begg & Associates which again disputed that Mr Ellis was abused by Father Duggan.⁶⁷⁷

On 7 April 2006 Mr Dalzell emailed Dr Michael Casey a copy of the Notice to Admit Facts dated 8 March 2006. He wrote:

Subsequently, we have served a Notice Disputing Facts on the Plaintiff. Many of the facts contained in the Notice we cannot admit to, due to the absence of documentary evidence or actual knowledge (for example, there are no documents proving that Ellis was an altar server) nor due to the secret nature of the abuse can we possibly confirm this occurred.

I apologise for sending this to you after the event. However, I understand that our instructions have always been to deny the facts set out in the Notice.⁶⁷⁸

Dr Michael Casey responded on the same day, stating only, ‘thanks John. All in order. MC’.⁶⁷⁹

Cardinal Pell was in Rome from 3 to 12 April 2006 and did not recall this email coming to his attention.⁶⁸⁰ When Dr Michael Casey was asked whether he sought Cardinal Pell’s instructions before responding to Mr Dalzell on 7 April 2006, he gave evidence that: ‘I don’t recall. I may not have, because if this was a step in the process, they had already been instructed, I may have just ... given that response to Mr Dalzell on my own behalf.’⁶⁸¹

Mr McCann had no doubt that Corrs raised the question with the Archdiocese of whether the denial of the fact of Mr Ellis’s abuse should be reconsidered in light of the evidence of SA and Mrs Penton.⁶⁸²

Mr Dalzell could not recall whether he asked anyone at the Archdiocese whether the dispute of the fact of Mr Ellis’s abuse should be reconsidered in light of that evidence.⁶⁸³

Cardinal Pell and Dr Michael Casey did not recall being asked for instructions as to whether the fact of Mr Ellis’s abuse should be admitted as a result of that evidence.⁶⁸⁴ This is

supported by Mr Dalzell's email to Dr Michael Casey dated 7 April 2006, which is set out above.⁶⁸⁵

6.19 Appeal

Mr Ellis appealed Acting Justice Patten's decision in relation to Cardinal Pell's liability to the New South Wales Court of Appeal. The Trustees cross-appealed the decision to extend the limitation period against the Trustees. The Court of Appeal heard the appeal and cross-appeal in December 2006.

In May 2007 the Court of Appeal handed down its judgment upholding the appeal by the Trustees against the judgment of Acting Justice Patten and ordering Mr Ellis to pay the legal costs of Cardinal Pell and the Trustees. Because the Trustees and Cardinal Pell were successful on the proper defendant point, the Court of Appeal was not required to deal with the discretionary elements relevant to the limitation issue.⁶⁸⁶

The Court of Appeal held that, even if Mr Ellis established his factual claims, Cardinal Pell could not be liable for Mr Ellis's abuse, which occurred before he was appointed Archbishop. The Court said that Cardinal Pell, as Archbishop, could not be sued as a representative of all members of the Archdiocese of Sydney⁶⁸⁷ or as a corporation sole.⁶⁸⁸ The Court left open the question of whether the Archbishop at the time of abuse could be held liable for that abuse.⁶⁸⁹

The Court also held that the Trustees could not be liable because under the *Roman Catholic Church Trust Property Act 1936* (NSW) the Trustees were given no role in appointing, managing or removing priests⁶⁹⁰ and the evidence showed that they in fact played no such role.⁶⁹¹ Consequently, the Court found that Mr Ellis's claims against both Cardinal Pell and the Trustees would fail because neither Cardinal Pell nor the Trustees were proper defendants to the proceedings.⁶⁹²

Following the Court of Appeal's decision, Corrs wrote to Mr Ellis on 8 June 2007 and informed him that their costs were likely to be up to \$550,000 after assessment.⁶⁹³ In this email and on Cardinal Pell's instructions,⁶⁹⁴ Corrs conveyed an offer to forgo these costs if Mr Ellis agreed not to apply for special leave to appeal to the High Court.⁶⁹⁵ It was made clear that, if this offer was accepted, there would be no possibility of a monetary settlement, although the counselling and pastoral aspects of *Towards Healing* would be made available.⁶⁹⁶

Despite this offer, Mr Ellis sought special leave to appeal to the High Court. Mr Ellis gave the following evidence about this decision:

This correspondence put considerable pressure on me as I knew that special leave is difficult to obtain, and I feared that if I was unsuccessful, the Archdiocese would pursue me for costs which I would be unable to pay. The result of that would be that I would lose my house ...

Because of the public importance of the issue and my belief that many hundreds or thousands of people may be disadvantaged if the Court of Appeal decision were

allowed to go unchallenged, I made a conscious decision to risk everything I owned to do what I believed was right.⁶⁹⁷

Mr Ellis's application for special leave to appeal to the High Court was refused in November 2007.⁶⁹⁸ At the conclusion of this application, counsel for the Trustees and the Archbishop did not ask for the costs of the application. Cardinal Pell was subsequently informed of this decision.⁶⁹⁹

Because the substantive case was effectively brought to an end at that stage, the underlying issues in the action, including the abuse by Father Duggan of Mr Ellis and its consequences, were not decided.

The day after Mr Ellis's application for special leave was heard and refused by the High Court, Mr Daniel Casey wrote to Corrs saying he had heard about 'the great result in the High Court'. He thanked Corrs for their work, which, he wrote, 'has provided enormous benefit to the Church' as it 'lays the platform for a significant repositioning of the Church and enables us to more appropriately respond to litigation'. He also said that the implications must be explored to 'brief the Church more widely across Australia'.⁷⁰⁰

Mr Daniel Casey gave evidence that in this email it is likely he meant that it was a good thing that the Trustees were 'not liable for things they were not involved in' and that, if the Trustees had been found liable, it would have significantly increased the amount of money the Church would have to spend on lawyers and insurance premiums.⁷⁰¹ However, Mr Daniel Casey agreed that insurance premiums would be reduced as a result of the Court's decision because the Church's exposure to litigation was less and that the legal costs would be reduced because the Church would be defending fewer cases.⁷⁰²

Mr Ellis gave the following evidence:

Following the decision of the High Court to refuse special leave, I suffered a severe psychological decline and became again severely depressed. I considered that I had made a foolish decision to bring proceedings against the Archdiocese, given that the outcome of that decision was a judgement which created further barriers to other victims of abuse seeking justice against not only entities created for the operations of the Catholic Church ... The realisation of that was devastating. I was finding it very difficult to cope with day to day life and the impacts of my decision.⁷⁰³

On 23 November 2007 Corrs prepared a memorandum on the Court of Appeal's decision and its implications.⁷⁰⁴ It stated:

the decision places a number of significant obstacles that will need to be addressed by any claimant seeking to resolve claims litigiously rather than through *Towards Healing*. Refocusing the resolution of these claims through *Towards Healing* has alone been a significant and favourable outcome of this litigation at the very least.

Finally, as this decision has provided significant protection to the Cardinal and the Trustees, this in turn will give rise to a significant reduction in damages exposure and therefore the risks that are presently insured against.⁷⁰⁵

The memorandum continued:

The alleged perpetrator died in October 2004 after a long period of dementia. It was therefore not possible to interview the only party who could contradict the plaintiff's allegations. For this reason, the factual allegations in this case were never challenged and, indeed for the purposes of the proceedings, it was conceded that the plaintiff had been exposed to the abuse as alleged.⁷⁰⁶

Mr McCann, Dr Michael Casey and Cardinal Pell agreed that this passage is plainly wrong.⁷⁰⁷ Mr McCann could not explain how this occurred.⁷⁰⁸ Dr Michael Casey read this memorandum when he received it.⁷⁰⁹ Cardinal Pell stated that he might have seen this memorandum but that in any case he was aware of its basic content. He stated, 'I hadn't adverted to the mistake'.⁷¹⁰

On Cardinal Pell's instructions, Monsignor Usher sent this memorandum to the Metropolitan Archbishops of Australia and the Bishops of New South Wales and the ACT.⁷¹¹

► **Finding 31:** On Cardinal Pell's instructions, Monsignor Usher forwarded a memorandum prepared by Corrs Chambers Westgarth after the Court of Appeal's decision to Metropolitan Archbishops of Australia and the Bishops of NSW and the ACT.

That memorandum stated that 'the factual allegations in this case were never challenged and, indeed for the purposes of the proceedings, it was conceded that the plaintiff had been exposed to the abuse as alleged' in circumstances where the factual allegations were challenged and the defendants did not concede that Mr Ellis had been abused for the purpose of the proceedings.

6.20 Costs of the litigation

On 28 November 2007, following a discussion with Mr Michael Moore, the Archdiocese's financial controller and Mr Daniel Casey, Mr Dalzell sent an email to Ms Wright and Mr Bucci of CCI, which stated:

Paul McCann has a number of significant concerns about pursuing the plaintiff for costs. He has considerable experience of bearing the brunt of negative publicity caused by clients attempting to recover costs at the end of hostile litigation ... Michael's view is that it is ultimately a matter for CCI, however he acknowledges that we are potentially giving away a considerable amount of money. Danny's view is that he would be prepared to forgo the costs if the plaintiff would undertake not to approach the press about this matter in the future ... A more moderate option which is available is to write to the plaintiff, inform him of our estimated costs and ask him how much he is prepared to contribute.⁷¹²

Mr Dalzell gave evidence that his note of what Mr Daniel Casey said to him in that meeting would have been an accurate recording of that meeting.⁷¹³

Mr Daniel Casey gave evidence that he had no recollection of expressing the view attributed to him in the 28 November 2007 email above. He gave evidence that:

I may well have made some comments to that effect, but I have no recollection of doing so. I thought that was completely – and looking at it, it is completely inappropriate. He may have got me on a bad day.⁷¹⁴

CCI rejected the media strategy in a letter to Corrs dated 13 December 2007 and stated:

Catholic Church Insurances certainly does not support any proposal that Mr Ellis be told that the Archdiocese would forego recovery of the costs if he did not approach the Press about this matter again in the future. Such a request could easily be interpreted as, in effect, paying Mr Ellis ‘hush money’.⁷¹⁵

CCI favoured the option of proposing Mr Ellis make a contribution towards the costs.⁷¹⁶ This approach was ultimately taken.⁷¹⁷

Corrs again wrote to Mr Ellis’s solicitor informing him that it was anticipated that the Trustees and the Archbishop would recover in excess of \$500,000 in costs and inviting Mr Ellis to make an offer to settle the outstanding costs, accompanied by documentary proof of his financial position.⁷¹⁸

Mr Begg responded to Corrs and said that he did not forward this letter to Mr Ellis because he was ‘extremely vulnerable emotionally and psychologically’. He explained that Mr Ellis’s health had deteriorated markedly as a result of the court’s verdict and that ‘prospects of self-harm are evident’.⁷¹⁹

Cardinal Pell gave instructions that the Trustees and the Archbishop leave the issue of costs recovery for a few months and perhaps revisit it after that.⁷²⁰

Monsignor Usher saw this as a big breakthrough and one of the most positive things he had seen to date. However, he also acknowledged that it had the effect of leaving Mr Ellis hanging for another few months not knowing whether he would have to pay costs.⁷²¹

On 11 January 2008, Monsignor Usher wrote to Corrs conveying Cardinal Pell’s instructions that any request for costs be postponed for the time being and that Mr Begg be asked for more details of Mr Ellis’s health.⁷²² Corrs wrote to Mr Begg accordingly.⁷²³

CCI’s initial reaction to Corrs’ letter to Mr Begg was that they did not want to take any steps that might exacerbate Mr Ellis’s condition. Also, they did not want to pursue recovery if there were no prospects of recovering anything and recovery might lead to self-harm by Mr Ellis.⁷²⁴

On 4 February 2008, Mrs Ellis sent a letter to Monsignor Usher expressing concern about Mr Ellis’s health and fragile psychological state. She requested an opportunity to meet with Monsignor Usher.⁷²⁵ Monsignor Usher was happy to meet and explained that ‘the matter is more complex because it is being managed through Catholic Church Insurances in Melbourne’.⁷²⁶ Mrs Ellis met with Monsignor Usher about the effect on Mr Ellis of the dispute as to costs on 6 May 2008.

At a meeting between Mr Dalzell and Ms Marita Wright of CCI on 26 February 2008, CCI stated 'we need to be extremely mindful of Ellis's state of health'. It also proposed that an update be sought from Dr Funnell and stated 'we do not want to proceed with a formal summons for oral examination'.⁷²⁷

Corrs wrote to CCI on 27 March 2008 suggesting that they issue Mr Ellis with an Examination Notice. Mr Dalzell noted that 'by issuing an Examination Notice, we are still avoiding the possibility of negative publicity for the Sydney Archdiocese and the Church generally as this is merely a preparatory step and does not cause him any actual financial hardship'.⁷²⁸

The next month, the Archdiocese received a report from Mr Ellis's treating psychiatrist, Dr Funnell, which Monsignor Usher discussed with Cardinal Pell.⁷²⁹ This report stated:

A significant factor in John's psychiatric history, and directly contributing to his intractable depression, has been the sexual abuse that occurred over a number of years during his adolescence by a Roman Catholic priest.

The stress of protracted litigation related to this abuse, as well as the prospect of significant personal financial loss in respect of legal costs, have had a persistent adverse effect on John's mood state and response to treatment during the period of my care ...

The early resolution of litigation would certainly contribute in a positive way to John's present mental health and his prospects for further recovery over time. John is very concerned regarding the possibility of an adverse outcome with regard to legal costs, and an unfavourable outcome in this area could be expected to have a significant deleterious effect on his condition.⁷³⁰

Members of the Archdiocese met with Corrs on 7 May 2008 in relation to the issue of costs recovery. Mr Dalzell summarised what Monsignor Usher had said about Cardinal Pell's views as follows:

His Eminence wants to avoid any negative publicity associated with causing Ellis to go bankrupt or causing him to experience an exacerbation of his psychiatric condition; and

Balanced against this, we do not want Begg and other plaintiff lawyers to think that the Church will simply roll over on its costs every time the plaintiff loses a case.⁷³¹

Cardinal Pell confirmed that this accurately reflected his position, although he gave evidence that the first point listed factors in an order that was the reverse of his priorities.⁷³²

Monsignor Usher gave evidence that this part of the email should be read as follows:

I think the Cardinal's opinion was, sure, he didn't want negative publicity and he didn't want to cause John an exacerbation of his psychiatric condition. I'm sorry it says 'or', but I don't think that quite expresses what the Cardinal said, although the next day, or sometime, he agreed that what I said was correct.⁷³³

On 8 May 2008, on the instructions of Cardinal Pell and CCI,⁷³⁴ Corrs served Mr Ellis with an Examination Notice, which required him to answer questions about his income, assets and liabilities and produce supporting documentation.⁷³⁵

Mr Begg responded to the letter giving detailed information that had been given before about Mr Ellis's financial position. He stated:

As you are aware, the prospect of your client enforcing the costs judgment and forcing our client and his family from their home is a cause for considerable stress and is adversely affecting his wellbeing.⁷³⁶

Cardinal Pell gave evidence that he does not recall having seen or being informed of this letter at the time.⁷³⁷

On 22 May 2008 Mrs Ellis wrote a letter to Monsignor Usher setting out the correspondence from Corrs and the effect on Mr Ellis's mental health. She wrote that she did not 'believe that the aggressive brinkmanship that Corrs are engaged in is coming from the Cardinal's instructions'.⁷³⁸ Cardinal Pell stated that he was shown the letter, was very much moved by it and that a decision not to pursue costs had already been made.⁷³⁹

On 23 May 2008, after having discussed the matter with Cardinal Pell, Monsignor Usher accepted Corrs' advice that the Trustees and the Archbishop defer the recovery of costs at that point in time because of a report from Mr Ellis's psychiatrist and because of his financial status.⁷⁴⁰ In a communication to members of the Archdiocese in relation to a draft of the letter conveying these instructions, Mr Dalzell wrote:

it is open ended, which will infuriate Begg who obviously wants finality. However, this reflects our position and reserves the possibility of enforcing the judgment should the plaintiff's health condition stabilise and his financial circumstances improve.⁷⁴¹

Mr Begg responded, noting that Mr Ellis's psychiatrist considered it detrimental to Mr Ellis's wellbeing to have the issue of costs hanging over him.⁷⁴² Cardinal Pell gave evidence that he does not recall being made aware of this correspondence at the time.⁷⁴³

At a meeting with the Ellises on 21 August 2008, Monsignor Usher gave a commitment on behalf of Cardinal Pell that the order for costs would not be enforced against Mr Ellis.⁷⁴⁴ Monsignor Usher also agreed to meet Mr Ellis's out-of-pocket expenses for counselling, which were subsequently paid.⁷⁴⁵

6.21 The Ellises meet with Cardinal Pell

On 18 February 2009, the Ellises met with Cardinal Pell and Monsignor Usher.⁷⁴⁶ During this meeting, Cardinal Pell said that he believed Mr Ellis's claim was for multi-millions of dollars and that he had no idea that Mr Ellis had asked for an ex gratia payment of \$100,000.⁷⁴⁷

Following this meeting Mr Ellis sent Cardinal Pell a letter of thanks, in which he also wrote:

Our meeting with you has given us some heart that the perseverance has been to some avail. It was encouraging to hear your frank acknowledgement of the mistakes of the past and a commitment that you would not like to see some aspects of the manner in which I have been responded to by the Archdiocese repeated ...

It would help to know how the attitude of the Archdiocese went within the space of less than 4 weeks from inviting discussions 'in an attempt to resolve matters expeditiously, and in a manner that is just and acceptable to all parties' to a notice that the Archdiocese intended to 'vigorously defend' my claim, and there being no further discussions. I attach the 2 letters, only because they paint such a sharp contrast. In light of your own attitude to the proper response to these matters – to always seek to achieve justice – the contrast between the 2 letters is (to me) totally unfathomable and appears oddly capricious.⁷⁴⁸

On 11 March 2009, Monsignor Usher responded to Mr Ellis on behalf of Cardinal Pell, who was overseas. Monsignor Usher wrote:

He has asked me to thank you for your very kind remarks and, he too, found the meeting a rewarding experience.

The Cardinal's comments during the meeting were genuine. His frank acknowledgement of the mistakes of the past and his commitment that he would not like to see some aspects of the manner in which you have been responded to by the Archdiocese of Sydney repeated.⁷⁴⁹

On 6 August 2009, some six months after the meeting between Cardinal Pell and the Ellises, Monsignor Usher wrote to Mr Ellis confirming the assurance Cardinal Pell gave during that meeting that the Archdiocese would not pursue Mr Ellis for any legal or other costs.⁷⁵⁰

Monsignor Usher had held the view since June 2007 that he did not want the Archdiocese to pursue costs recovery from Mr Ellis.⁷⁵¹ Monsignor Usher expressed this view to Cardinal Pell at about that time and understood that the Cardinal was listening to and agreeing with him. However, Cardinal Pell 'was also getting advice from his lawyers about how to proceed with these matters, which would have been different to what I was discussing with him'.⁷⁵²

Monsignor Usher said:

I was trying to help the Cardinal to understand that – not for any other reason, not about publicity or not appealing; it was about Mr Ellis's well-being, and I told the Cardinal about my conversation with Nicola, and he was very sympathetic to what I was saying, but obviously there were other factors in the background, I mean legal factors.⁷⁵³

Between June 2007 and August 2009, Monsignor Usher saw a 'gradual movement towards not seeking costs'.⁷⁵⁴ During this time Mr Ellis was very distressed. Monsignor Usher said that the resolution of the costs issue took too long.⁷⁵⁵

We agree with Monsignor Usher's evidence that the resolution of the costs issue took too long.

Following the decision not to recover costs from Mr Ellis, Monsignor Usher agreed to meet the costs incurred by the Ellises for an overseas holiday and house renovations.⁷⁵⁶ The Archdiocese made payments of approximately \$568,000 to the Ellises.⁷⁵⁷ In October 2012, the Archdiocese ceased meeting any further costs, with the exception of those related to counselling.⁷⁵⁸ The legal costs not recovered by the Archdiocese from Mr Ellis were about \$800,000.⁷⁵⁹

► **Finding 32:** Cardinal Pell had decided not to pursue costs against Mr Ellis by May 2008. Monsignor Usher told Mr Ellis that costs would not be pursued against him in August 2008; however this was not confirmed in writing until August 2009.

The length of time taken to resolve the costs issue had an adverse effect on Mr Ellis's health.

6.22 Conducting litigation fairly

The Archdiocese of Sydney has never adopted any obligations to guide its response to litigation by victims of child sexual abuse. As set out earlier, from 1996 it had adopted detailed principles and procedures to guide its dealings with complainants who had suffered sexual abuse as a child within the Archdiocese: *Towards Healing*. However, these principles and procedures, which include a compassionate response, cease upon the commencement of litigation, although they may be subsequently revived.

In 1999, the Commonwealth of Australia adopted an obligation to act as a model litigant in the conduct of litigation.⁷⁶⁰ The current terms of this obligation are contained in the *Legal Services Direction 2005* (Cth) and include the following:

The obligation

1. Consistently with the Attorney-General's responsibility for the maintenance of proper standards in litigation, the Commonwealth and its agencies are to behave as model litigants in the conduct of litigation.

Nature of the obligation

2. The obligation to act as a model litigant requires that the Commonwealth and its agencies act honestly and fairly in handling claims and litigation brought by or against the Commonwealth or an agency by: ...
 - (a) dealing with claims promptly and not causing unnecessary delay in the handling of claims and litigation
 - (aa) making an early assessment of:
 - (i) the Commonwealth's prospects of success in legal proceedings that may be brought against the Commonwealth; and

- (ii) the Commonwealth's potential liability in claims against the Commonwealth
- (b) paying legitimate claims without litigation, including making partial settlements of claims or interim payments, where it is clear that liability is at least as much as the amount to be paid
- (c) acting consistently in the handling of claims and litigation
- (d) endeavouring to avoid, prevent and limit the scope of legal proceedings wherever possible, including by giving consideration in all cases to alternative dispute resolution before initiating legal proceedings and by participating in alternative dispute resolution processes where appropriate
- (e) where it is not possible to avoid litigation, keeping the costs of litigation to a minimum, including by:
 - (i) not requiring the other party to prove a matter which the Commonwealth or the agency knows to be true
 - (ii) not contesting liability if the Commonwealth or the agency knows that the dispute is really about quantum
 - (iii) monitoring the progress of the litigation and using methods that it considers appropriate to resolve the litigation, including settlement offers, payments into court or alternative dispute resolution, and
 - (iv) ensuring that arrangements are made so that a person participating in any settlement negotiations on behalf of the Commonwealth or an agency can enter into a settlement of the claim or legal proceedings in the course of the negotiations
- (f) not taking advantage of a claimant who lacks the resources to litigate a legitimate claim
- (g) not relying on technical defences unless the Commonwealth's or the agency's interests would be prejudiced by the failure to comply with a particular requirement
- (h) not undertaking and pursuing appeals unless the Commonwealth or the agency believes that it has reasonable prospects for success or the appeal is otherwise justified in the public interest, and
- (i) apologising where the Commonwealth or the agency is aware that it or its lawyers have acted wrongfully or improperly.⁷⁶¹

Cardinal Pell gave evidence that he agrees, in particular, with the following aspects of the Commonwealth's model litigation obligation:

- (a) paragraph 2(d) – that in all cases consideration should be given to alternative dispute resolution⁷⁶²

(b) that conducting litigation honestly and fairly includes keeping the costs to a minimum by not requiring the other party to prove a matter which is known to be true⁷⁶³

(c) the principles set out in paragraphs 2(d), 2(e)(i), and 2(e)(iii).⁷⁶⁴

Dr Michael Casey said, ‘I would have assumed that we would conduct litigation honestly and fairly’.⁷⁶⁵ He said that, at the time of Mr Ellis’s litigation, ‘I certainly understood I was acting honestly and fairly’.⁷⁶⁶

Cardinal Pell said that handling claims and litigation honestly and fairly ‘was always my ambition’.⁷⁶⁷ Cardinal Pell gave evidence that, in relation to Mr Ellis’s case, ‘In a legal sense, we always acted honestly’ but that ‘from a Christian point of view, leaving aside the legal dimension, I don’t think we did fairly’.⁷⁶⁸

We accept Cardinal Pell’s evidence that “we”, which we take to be the Archdiocese, the Trustees and he as Archbishop, did not conduct the litigation fairly from a Christian point of view.

► **Finding 33:** We agree with Cardinal Pell’s evidence that ‘we’, which we take to be the Archdiocese, the Trustees and he as Archbishop, did not act fairly from a Christian point of view in the conduct of the litigation against Mr Ellis.

When asked whether the Church should adopt principles similar to the Commonwealth’s model litigant obligation, Cardinal Pell gave evidence that ‘certainly that would be something that should be examined very, very closely and sympathetically’.⁷⁶⁹

The Royal Commission will be publishing a report on redress and will consider the issue of model litigant obligations in that report.

6.23 The overall conduct of the litigation

The Church parties submitted that the Archdiocese failed to conduct the litigation with Mr Ellis in a manner that adequately took account of his pastoral and other needs as a victim of sexual abuse by:

- (a) rejecting the first offer of mediation
- (b) not making a counteroffer
- (c) instructing its lawyers in June 2005 to continue not to admit the fact of the abuse:
 - (i) in circumstances where Monsignor Rayner had told Mr Ellis at the facilitation in July 2004 that he had never had any reason to doubt what Mr Ellis had said, and

- (ii) which allowed Mr Ellis to be cross-examined and challenged as to whether the abuse occurred, in circumstances which were harmful and painful to Mr Ellis
- (d) not instructing its lawyers that Cardinal Pell thought SA's affidavit strengthened Mr Ellis's case and that the Archdiocese should reconsider whether to continue not to admit the fact of Mr Ellis's abuse
- (e) maintaining the non-admission of the allegation of abuse after the affidavit of SA and the account given by Mrs Penton were available, in the light of what Mr Rayner said to Mr Ellis at the facilitation, and
- (f) employing the measures set out in paragraphs (a) to (e) above, which were disproportionate to the objective and psychological state of Mr Ellis.⁷⁷⁰

We accept this submission. On the basis of this submission, and our view of the evidence as set out in the preceding sections of this report, we make the following finding.

► **Finding 34:** The Archdiocese failed to conduct the litigation with Mr Ellis in a manner that adequately took account of his pastoral and other needs as a victim of sexual abuse by:

- (a) rejecting the first offer of mediation
- (b) not making a counteroffer after receiving a written offer from Mr Ellis
- (c) wrongly concluding that the Archdiocese had never accepted that Mr Ellis had been abused by Father Duggan, either at law or under *Towards Healing*, and that this would have been made clear to Mr Ellis at his facilitation
- (d) instructing its lawyers in June 2005 to continue not to admit the fact of Mr Ellis's abuse because of legal advice that this suited its interests in the litigation, in circumstances where:
 - i. these instructions allowed Mr Ellis to be cross-examined and challenged as to whether the abuse occurred, in circumstances which were harmful and painful to him
 - ii. it was not necessary to dispute the fact of Mr Ellis's abuse in order to properly test whether an extension of the limitation period should be granted or whether the Trustees were liable for Mr Ellis's abuse
- (e) not instructing its lawyers that Cardinal Pell thought SA's affidavit strengthened Mr Ellis's case and that the Archdiocese should reconsider whether to continue its non-admission of the fact of Mr Ellis's abuse

- (f) maintaining the non-admission of the allegation of Mr Ellis’s abuse after the affidavit of SA and the account given by Mrs Penton were available
- (g) rejecting an offer to mediate after Acting Justice Patten’s decision in February 2006
- (h) taking too long to resolve the issue of recovery of costs from Mr Ellis
- (i) employing the measures set out in paragraphs (a) to (h) above, which were disproportionate to the objective and psychological state of Mr Ellis.

6.24 Financial position of the Archdiocese of Sydney

This section sets out the evidence that the Royal Commission received in relation to:

- payments made by the Archdiocese in response to complaints of child sexual abuse
- the Archdiocese’s financial position.

Payments made by the Archdiocese in response to child sexual abuse

The Archdiocese of Sydney’s records show that, between the 1980s and 28 February 2014,⁷⁷¹ the Archdiocese paid a total of \$8,977,266 for ‘special issues payments’.⁷⁷² Of this figure, \$4,669,000 related to child sexual abuse and \$746,000 related to boundary violations of adults⁷⁷³ within the Archdiocese.⁷⁷⁴

This figure takes into account:

- deductions the Archdiocese was able to recover – for example, through insurance⁷⁷⁵
- some payments the Archdiocese made in relation to events in schools⁷⁷⁶
- deductions made for money recovered from the Catholic Education Office,⁷⁷⁷ which manages complaints and makes payments separately from the Archdiocese.⁷⁷⁸

Of this total:

- \$4,743,932 was cash payments to victims within the Archdiocese or reimbursements of expenses incurred by such victims, including for legal fees and counselling⁷⁷⁹
- \$958,514 was paid to victims but recovered through insurance⁷⁸⁰
- \$671,102 was expenses incurred by the Archdiocese but not paid to victims – usually legal fees.⁷⁸¹

In addition, the Archdiocese spent a total of \$790,953 on legal fees that did not relate to any particular victim.

The Archdiocese also made unrecovered payments totalling \$857,560 in relation to victims of other Church authorities – namely, the Bathurst, Broken Bay and Wilcannia Forbes

Dioceses, the Congregation of the Blessed Sacrament and the Vincentian Fathers.⁷⁸² The Archdiocese paid a further \$345,583 to these victims and then recovered the payments from those Church authorities.⁷⁸³

After the hearing, the Church parties submitted that the following is an accurate summary of the average payments made by the Archdiocese in relation to complaints of child sexual abuse.⁷⁸⁴

Before 2001, the Archdiocese and Professional Standards Office had received 17 complaints of child sexual abuse and made a payment in respect of three of these. The average payment received by these three complainants was \$5,503 and the total amount paid by the Archdiocese was \$16,509.

We note that, during the hearing, Mr Daniel Casey gave evidence that 'the quantum ... pre-2001 and those early parts of 2000 I think were highly inadequate'.⁷⁸⁵

Between 2001 and the end of 2007:

- 35 complainants initiated claims with the Archdiocese or Professional Standards Office
- there were 32 claims in respect of which the Archdiocese made a first payment
- the Archdiocese made total payments to complainants of \$1,280,840
- the average payment received by the 32 complainants was \$40,026.

Between 2008 and 28 February 2014:

- 47 complainants initiated claims with the Archdiocese or Professional Standards Office
- there were 37 claims in respect of which the Archdiocese made a first payment
- the Archdiocese made total payments to complainants of \$5,551,403
- the average payment received by the 37 complainants was \$150,038.

We note that the data that the Archdiocese provided to the Royal Commission demonstrated considerable variance in the amounts and types of payments made in relation to individual victims. The following table sets out payments made to four separate victims, including Mr Ellis, by way of example.⁷⁸⁶

	Legal fees incurred by Archdiocese	Cash payments made to victim	Reimbursements made to victim	Total
Mr Ellis	\$267,006	\$526,445	\$43,920	\$837,372
Second victim	\$206,152	\$0	\$0	\$206,152
Third victim ('boundary violation') ⁷⁸⁷	\$74,645	\$192,567	\$52,958	\$320,171
Fourth victim	\$0	\$573,174	\$275,761	\$848,934

The Archdiocese made payments of \$570,365 to Mr Ellis, which consisted of:

- counselling costs of \$10,424 to a period before October 2012
- \$6,944 for Medicare gap payments and surgery
- about \$474,464 for repairs and renovations to Mr Ellis's house, which was affected by storm damage
- \$28,533 for a holiday to New York
- a final lump sum payment of \$50,000.

We also note that there was also considerable variance in the total payments made by year in relation to 'special issues' such as child sexual abuse, including in relation to the Archdiocese's own costs and including legal fees relating to relevant legal reform:⁷⁸⁸

	Gross payment	Net payment (allowing for recoveries)
Pre-2001	\$195,078	\$186,708
2001	\$8,482	\$8,482
2002	\$459,273	\$459,273
2003	\$260,128	\$252,628
2004	\$313,545	\$313,545
2005	\$455,930	\$455,930
2006	\$1,009,130	\$915,559
2007	\$55,294	\$31,706

2008	\$587,336	\$587,336
2009	\$971,209	\$822,154
2010	\$1,066,428	\$1,056,686
2011	\$762,359	\$493,281
2012	\$2,209,149	\$2,024,679
2013	\$950,446	\$224,225
2014 (to 28 February 2014)	\$45,285	\$37,699
Total (to 28 February 2014)	\$9,349,072	\$7,806,479

The Archdiocese's allocated budget for special issues payments

The Archdiocese only began to allocate a specific portion of its Procuration Fund's assets as a budget for special issues payments from 2003.⁷⁸⁹ This allocation is set out in the following table.

Year	Budget
2003	\$100,000
2004	\$300,000
2005	\$400,000
2006	\$640,000
2007	\$800,000
2008	\$500,000
2009	\$400,000
2010	\$400,000
2011	\$400,000
2012	\$400,000
2013	\$400,000
2014 (to 28 February 2014)	\$500,000

Year	Budget
Total (to 28 February 2014)	\$5,240,000

Mr Daniel Casey gave evidence that the budget was ‘useful for cashflow planning, perhaps, because it recognises that a certain amount might come through in a particular year’,⁷⁹⁰ but that the budget did not constrain what could be paid in relation to special issues.⁷⁹¹ He accepted that ‘if you were running your cashflow off the back of [the budget], you would be in trouble ... The amounts almost bear no relationship in some years’.⁷⁹²

The Archdiocese’s financial position 2002–2013

The Archdiocese of Sydney is an unincorporated association.⁷⁹³ It operates under about 190 entities that have been registered with Australian Business Numbers.⁷⁹⁴ Nine of those entities are incorporated⁷⁹⁵ and 137 are parishes.⁷⁹⁶

The entities for which the Archdiocese provided financial statements to the Royal Commission are the Procuration Fund,⁷⁹⁷ the Sustentation Fund,⁷⁹⁸ the Catholic Development Fund⁷⁹⁹ and Catholic Press Newspaper Company Pty Ltd.⁸⁰⁰ The funds are controlled by the Archbishop, although he takes advice from the financial administrator, the College of Consulters and the Financial Council.⁸⁰¹

The financial statements for the Procuration and Sustentation Funds related to the 2013 calendar year, the statements for the Catholic Development Fund related to the 2012–13 financial year and the statements for the Catholic Press Newspaper Company Pty Ltd related to the 2012 calendar year.

The Archdiocese also provided financial statements for the Archdiocese’s aggregated financial position and income for the years 2002 to 2013.⁸⁰² However, these statements only aggregate the positions and incomes of the four entities named above. They do not aggregate other Catholic entities in Sydney, including the Charitable Works Fund, CatholicCare Sydney, the Catholic Education Office Sydney, the Priests’ Retirement Foundation, the clergy fund, the sick priests fund and individual parishes within the Archdiocese.⁸⁰³

When questioned about whether the state of the Archdiocese’s funds ‘is such that it would be possible to spend significantly greater moneys in assisting people who have been abused than has been spent so far’,⁸⁰⁴ Mr Daniel Casey said:

Yes, your Honour, there is always an opportunity to redirect existing expenditure. ... it is of course possible that money could be redirected. We could close programs. We could cancel work that we’re doing in a particular area to redirect it. ... it is always open to redirect expenditure, to sell assets that are currently deployed in various works.⁸⁰⁵

The aggregated financial statements of the Archdiocese show that, in 2013, the total assets of the Archdiocese were valued at \$1,081,373,886.⁸⁰⁶ Taking its liabilities into account, the Archdiocese’s net assets were valued at \$192,747,182.⁸⁰⁷

This must understate the Archdiocese's net asset position.

First, this figure assesses the value of the real estate assets of the Archdiocese's Procurement Fund according to historical cost instead of market value.⁸⁰⁸ The assessed market value of those assets was greater than the historical cost by \$27,335,663.⁸⁰⁹

Secondly, as noted, the financial records provided to the Royal Commission did not account for the assets and liabilities of the Charitable Works Fund, CatholicCare Sydney, the Catholic Education Office Sydney, the Priests' Retirement Foundation, the clergy fund, the sick priests fund and individual parishes within the Archdiocese.⁸¹⁰ The financial records also did not include the value of diocesan schools.⁸¹¹

In 2002, the year in which Mr Ellis lodged his *Towards Healing* complaint, the Archdiocese recorded net assets totalling \$112,540,549 in value.⁸¹² In each year from 2002 until 2007, the year in which the High Court dismissed his application for special to leave to appeal, the Archdiocese recorded its net assets as having increased from the previous year⁸¹³ by at least \$8,234,497.⁸¹⁴ The value of these net assets and the annual rate of their increase far exceeds the \$1,280,840 the Archdiocese paid to victims between 2001 and 2007. The Archdiocese's net assets have increased over every year since 2002 except 2008.

The Archdiocese's records also demonstrated a surplus in income in every year between 2002 and 2013 inclusive except 2008.⁸¹⁵ Its surplus income in 2013 was \$9,122,696.⁸¹⁶ In the years between 2002 and 2007 inclusive, respectively the years in which Mr Ellis lodged his *Towards Healing* complaint and in which the High Court dismissed his application for special to leave to appeal, the Archdiocese recorded annual surpluses ranging from \$3,528,745⁸¹⁷ to \$43,950,969.⁸¹⁸

Mr Daniel Casey agreed that 'in many years the Church makes significant investments, but from property transactions and other transactions gets significant returns'⁸¹⁹ and that 'in many years there are significant sums of money that provide significant returns'.⁸²⁰ He gave evidence that the Archdiocese's surplus income is placed into an investment pool⁸²¹ and that the 'philosophy' applied was to 'manage the net assets, maintain them in real terms and then work them very, very hard on doing good work'.⁸²²

The Archdiocese of Sydney						
Financial position						
	2002⁸²³	2003⁸²⁴	2004⁸²⁵	2005⁸²⁶	2006⁸²⁷	2007⁸²⁸
Total assets	\$471,487,932	\$567,676,475	\$590,805,833	\$613,528,488	\$672,061,158	\$842,735,730
Net assets	\$112,540,549	\$128,944,644	\$137,179,141	\$146,690,066	\$165,331,040	\$205,172,800

Income	\$19,271,949	\$17,166,403	\$21,343,360	\$24,538,920	\$25,101,239	\$44,386,565
Net surplus	\$3,528,745	\$16,947,913	\$7,768,927	\$8,063,786	\$19,622,404	\$43,950,969
	2008⁸²⁹	2009⁸³⁰	2010⁸³¹	2011⁸³²	2012⁸³³	2013⁸³⁴
Total assets	\$754,422,990	\$733,815,125	\$779,796,584	\$840,723,919	\$972,945,181	\$1,081,373,886
Net assets	\$160,073,006	\$166,331,442	\$177,883,210	\$184,385,858	\$184,715,863	\$192,747,182
Income	\$26,262,137	\$20,787,095	\$27,121,845	\$26,967,674	\$26,837,627	\$33,529,815
Net surplus	-\$46,804,892 (deficit)	\$12,490,125	\$12,873,795	\$7,813,428	\$1,409,008	\$9,122,696

The Procuration Fund

The Procuration Fund is controlled by the Archbishop.⁸³⁵ It holds all the assets that have been acquired or procured for the Archdiocese,⁸³⁶ such as real estate,⁸³⁷ the value of which was assessed according to historical cost.⁸³⁸

Although the Procuration Fund holds some of its assets on trust to be applied towards certain purposes,⁸³⁹ these are accounted for in the Fund's financial statements as liabilities.⁸⁴⁰ As at 31 December 2013, the Fund held net assets of \$159,077,430.⁸⁴¹

On 31 December 2002 the Fund held net assets of \$104,743,336⁸⁴² and has increased the value of its net assets every year since except for 2008 and 2012.⁸⁴³

The Procuration Fund recorded a surplus income in 2013 of \$2,876,364.⁸⁴⁴ Since 2002, the Fund has recorded annual surplus incomes for each year except 2008 and 2012.⁸⁴⁵

The Procuration Fund includes a 'Provision for Special Issues' to recognise payments in relation to special issues including child sexual abuse that are not covered by insurance.⁸⁴⁶ Amounts in the Provision that are unused by the end of a calendar year are retained in the Provision for the next year.⁸⁴⁷ Special issues payments are recorded in the Fund's financial statements as expenditure. In 2013, \$970,502 was drawn from the Procuration Fund as special issues payments.⁸⁴⁸ In 2012, \$2,371,597 was drawn.

The Archdiocese has previously drawn all payments in relation to child sexual abuse from the Procuration Fund.⁸⁴⁹ However, Cardinal Pell gave evidence that, if the Archdiocese had

to draw funds to meet a judgment in relation to child sexual abuse, those funds did 'not necessarily' have to be drawn from the Procurement Fund.⁸⁵⁰ Rather, they 'would be drawn from somewhere. It is a bit irrelevant where they would be drawn from, but they would come from church funds'.⁸⁵¹

The Procurement Fund						
	2002⁸⁵²	2003⁸⁵³	2004⁸⁵⁴	2005⁸⁵⁵	2006⁸⁵⁶	2007⁸⁵⁷
Total assets	\$173,826,869	\$291,603,704	\$299,411,581	\$305,361,307	\$325,746,926	\$369,842,977
Net assets	\$104,743,336	\$117,887,529	\$123,682,177	\$129,763,412	\$144,657,084	\$182,574,957
Income	\$12,619,607	\$8,260,191	\$13,044,543	\$14,997,823	\$13,850,195	\$35,057,008
Net surplus	\$1,931,090	\$13,144,193 (includes 'Abnormal Items')	\$4,454,258	\$3,552,351	\$14,573,365	\$41,180,712 (includes 'Abnormal Items')
	2008⁸⁵⁸	2009⁸⁵⁹	2010⁸⁶⁰	2011⁸⁶¹	2012⁸⁶²	2013⁸⁶³
Total assets	\$316,602,403	\$326,603,862	\$340,841,660	\$347,247,456	\$337,864,180	\$426,171,002
Net assets	\$137,734,505	\$147,247,109	\$156,355,947	\$160,223,850	\$156,201,066	\$159,077,430
Income	\$16,482,635	\$11,555,421	\$15,860,777	\$16,342,654	\$15,308,570	\$21,071,292
Net surplus	-\$47,283,773 (deficit; includes 'Abnormal Items')	\$12,854,864 (includes 'Abnormal Items')	\$9,136,641 (includes 'Abnormal Items')	\$3,867,903 (includes 'Abnormal Items')	-\$4,022,784 (deficit; includes 'Abnormal Items')	\$2,876,364 (includes 'Abnormal Items')

Catholic Development Fund

The Archdiocese's internal treasury is the Catholic Development Fund.⁸⁶⁴ It is vested in the Trustees of the Roman Catholic Church for the Archdiocese of Sydney and is controlled by

the Archbishop.⁸⁶⁵ The Fund receives and invests deposits from and makes loans to other Church entities.⁸⁶⁶

Even when these deposits, which the Catholic Development Fund receives from Catholic entities, are counted as liabilities, the Fund has positive equity.⁸⁶⁷ As at 30 June 2013 the Fund's net assets were valued at \$39,813,390.⁸⁶⁸ Of its debts to depositors, \$154,800,611 are owed to entities considered to be 'Non Archdiocesan Entities'⁸⁶⁹ despite still being 'Catholic entities'⁸⁷⁰ that are 'within the Archdiocese of Sydney'.⁸⁷¹ This figure can therefore be considered to be an asset held by those Catholic entities. In the 2001–2002 financial year the Fund held net assets of \$10,150,873⁸⁷² and has increased the value of its net assets every financial year since.⁸⁷³

In relation to the Catholic Development Fund's liquid assets, as at 30 June 2013, it held \$12,348,515 in cash or cash equivalents⁸⁷⁴ and had invested \$8,968,416 in an at-call bank deposit.⁸⁷⁵

The Catholic Development Fund recorded a surplus income for the 2012–13 financial year of \$16,244,355.⁸⁷⁶ Since the 2001–02 financial year, the Fund has recorded an annual surplus income of at least \$4,995,192.⁸⁷⁷

Catholic Development Fund						
	2002⁸⁷⁸	2003⁸⁷⁹	2004⁸⁸⁰	2005⁸⁸¹	2006⁸⁸²	2007⁸⁸³
Total assets	\$339,543,072	\$427,465,246	\$445,219,178	\$460,523,560	\$501,019,559	\$582,489,428
Net assets	\$10,150,873	\$13,500,254	\$16,000,084	\$18,102,387	\$20,412,016	\$22,358,245
Income	\$7,070,272	\$8,269,852	\$9,044,203	\$8,813,871	\$9,765,914	\$11,158,159
Net surplus	\$4,995,192	\$6,399,580	\$7,574,111	\$7,383,594	\$8,061,366	\$9,608,099
	2008⁸⁸⁴	2009⁸⁸⁵	2010⁸⁸⁶	2011⁸⁸⁷	2012⁸⁸⁸	2013⁸⁸⁹
Total assets	\$545,005,485	\$531,090,421	\$574,305,855	\$641,578,968	\$766,175,197	\$810,697,380
Net assets	\$23,709,697	\$23,747,118	\$26,584,800	\$30,039,451	\$34,586,219	\$39,813,390

Income	\$13,662,175	\$13,906,103	\$14,910,915	\$15,650,289	\$17,052,115	\$18,013,252
Net surplus	\$11,089,678	\$11,583,850	\$12,987,019	\$13,785,431	\$15,345,065	\$16,244,355

Archdiocese of Sydney's payments in relation to other Catholic dioceses and authorities

The financial records that the Archdiocese of Sydney provided to the Royal Commission showed that the Archdiocese had made special issues payments in relation to victims of abuse falling within other church authorities, namely monastic orders and other dioceses.⁸⁹⁰ These payments extended to costs to the diocese, cash payments to victims and payments to victims reimbursing them for their costs.⁸⁹¹ They are set out in the following table.

	Costs to the Archdiocese of Sydney (gross)	Costs to the Archdiocese of Sydney (net)	Cash payments to victims (gross)	Cash payments to victims (net)	Reimbursement of claimant's costs (gross)	Reimbursement of claimant's costs (net)	Total (net)
Blessed Sacrament Fathers Order	\$7,586	\$0	\$0	\$0	\$0	\$0	\$0
Diocese of Bathurst	\$0	\$0	\$0	\$0	\$2,219	\$2,219	\$2,219
Diocese of Broken Bay	\$78,945	\$74,679	\$473,842	\$289,167	\$21,363	\$21,363	\$385,209
Diocese of Wilcannia Forbes	\$0	\$0	\$282,920	\$141,460	\$59,282	\$51,687	\$193,147
Vincentian Fathers	\$0	\$0	\$227,810	\$227,810	\$49,175	\$49,175	\$276,985
Total	\$86,532	\$74,679	\$984,572	\$658,437	\$132,038	\$124,443	\$857,560

Mr Daniel Casey indicated that the reason these payments were made was that Cardinal Pell and Monsignor Usher 'have always been strongly committed to putting the victims first, and so if they felt that there was a need to provide immediate support to a victim, they would do that. ... It's really an attempt to assist the victim'.⁸⁹²

However, he did not agree that ‘the Sydney Archdiocese has accepted responsibility to make cash payments’.⁸⁹³ Rather, he stated that the responsibility in relation to abuse ‘primarily falls upon the diocese in which [the victim was] abused’.⁸⁹⁴

Mr Daniel Casey agreed that the ‘Sydney Archdiocese is accepting a responsibility beyond its boundaries’, one ‘beyond which it is legally or even morally required to do’.⁸⁹⁵

7 The way forward

Cardinal Pell agreed that the Church has a moral responsibility for child sexual abuse that occurs within the Church.⁸⁹⁶ Cardinal Pell accepted that this moral responsibility arises from the following factors:

- The Church's structure 'creates the opportunity' for abuse by priests because of those priests' physical proximity to children and the influence of their authority over children, both as teachers or priests and as men of God.⁸⁹⁷
- The Catholic Church makes an offer to parents that if they bring their children to the Church those children will be cared for, spiritually nurtured and helped to grow as human beings.⁸⁹⁸
- The Church has provided a priest with the opportunity to be alone with a child 'for as long as there is a memory'.⁸⁹⁹
- The Church traditionally vested a position of authority in its priests.⁹⁰⁰
- Children have found it 'impossible' to complain about abuse inflicted on them by priests because of the high esteem in which priests were held.⁹⁰¹

Cardinal Pell gave evidence that he would like to see an independent body set up to investigate complaints of child sexual abuse, which would recommend compensation but not damages.⁹⁰² Cardinal Pell said that the Church's 'moral responsibility' would require any such independent body to provide:

- compensation for income lost as a result of the abuse⁹⁰³
- compensation for the victim's hurt and suffering⁹⁰⁴
- funds to meet the victim's medical needs resulting from the abuse, including counselling costs and psychiatric care.⁹⁰⁵

This also reflects the common law position in relation to damages. We accept Cardinal Pell's evidence that he does not have any knowledge about the manner in which common law damages are assessed.

Cardinal Pell said that it would be desirable for payments to different victims to have 'some comparability',⁹⁰⁶ meaning that there should be 'some general consideration of the comparable needs of others'⁹⁰⁷ and that 'when we go forward, we will need a more sophisticated system of judging the value on these issues'.⁹⁰⁸ He said that he would like to see the establishment of an independent organisation that could award compensation 'so that across the board we could have some comparability and some better approach to justice'.⁹⁰⁹

Cardinal Pell also said that the proper moral response would be to revisit the amounts paid under *Towards Healing*.⁹¹⁰

Cardinal Pell gave evidence that in his view the Church should be able to be sued in cases of child sexual abuse.⁹¹¹ He suggested that the Church set up a corporation sole that would have perpetuity and would appoint and supervise people ‘so that the successors, if God forbid there were any after Mr Ellis, would have somebody to sue’.⁹¹²

However, he also stated that this corporation sole should only be liable for future abuse.⁹¹³ Cardinal Pell said that the Church should only be held liable for past abuse if liability could be established on legal principles in place at the time.⁹¹⁴

Finally, Cardinal Pell opposed an expansion of vicarious liability principles in Australia, as has occurred in the United Kingdom.⁹¹⁵ The changes in the United Kingdom have made it easier to hold the Church liable for abuse committed by priests and do not depend upon a finding that the Church itself was somehow at fault.

In relation to the conduct of litigation, Cardinal Pell gave evidence that the Archdiocese’s current policy is to be ‘quite explicit that we will defend the trustees on those situations where they had no responsibility’.⁹¹⁶

We note that the Church parties submitted that the Archdiocese’s current practice is to respond to questions about the proper defendant by providing plaintiffs with ‘whatever factual information it can about which entity or person was responsible at the relevant time for the appointment and supervision of a person accused of sexual abuse’.⁹¹⁷

The Church parties also submitted that:

- whether or not this particular entity or person has insurance or funds to meet the claim is irrelevant
- the Archdiocese’s publicly stated position is that any damages awarded against those responsible for supervising someone accused of abuse will always be paid
- the insurance policies and assets of the Archdiocese are drawn on to do this.⁹¹⁸

However, the Church parties stated that, if a victim chooses to bring or maintain civil proceedings against a person or entity within the Church who had no responsibility for or involvement in supervision of the perpetrator, the Archdiocese would continue to defend proceedings on the basis that an incorrect party has been sued.⁹¹⁹

Finally, the Church parties submitted that legislation should be introduced imposing a requirement on all unincorporated associations that appoint or supervise people working with children to establish an incorporated entity able to be sued on behalf of the institution. The Church parties also submitted that this entity should be insured and/or indemnified so that it can meet any civil claims of child sexual abuse; however, they stated that strict liability should not attach to it.⁹²⁰

The scope of this hearing was confined to the Archdiocese’s response to Mr Ellis’s case. Accordingly, we did not consider any evidence of changes made to the Archdiocese’s

approach to civil litigation since that time. However, we note that since Mr Ellis's case the Archdiocese has employed an in-house lawyer to oversee the conduct of litigation.

The Royal Commission will consider civil litigation further as part of its redress project.

8 Summary of systemic issues

The Royal Commission will continue to consider civil litigation and redress in later case studies, roundtables and consultations.

The Royal Commission intends to examine the following aspects of redress and civil liability:

- how institutional redress schemes can achieve an objective assessment of allegations or claims
- how institutional redress schemes can achieve an objective and principled assessment of any financial redress
- what degree of independence from the institution is required for these processes to be reasonably accepted as objective and principled
- the issue of model litigant codes and the principles that might guide responses to litigation by victims of child sexual abuse in an institutional context
- limitation statutes, vicarious liability and other issues in litigation
- the relationship between pastoral care and reparation
- how to meet the ongoing needs of victims, including counselling.

APPENDIX A: Terms of Reference

Letters Patent

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO

The Honourable Justice Peter David McClellan AM,
Mr Robert Atkinson,
The Honourable Justice Jennifer Ann Coate,
Mr Robert William Fitzgerald AM,
Dr Helen Mary Milroy, and
Mr Andrew James Marshall Murray

GREETING

WHEREAS all children deserve a safe and happy childhood.

AND Australia has undertaken international obligations to take all appropriate legislative, administrative, social and educational measures to protect children from sexual abuse and other forms of abuse, including measures for the prevention, identification, reporting, referral, investigation, treatment and follow up of incidents of child abuse.

AND all forms of child sexual abuse are a gross violation of a child's right to this protection and a crime under Australian law and may be accompanied by other unlawful or improper treatment of children, including physical assault, exploitation, deprivation and neglect.

AND child sexual abuse and other related unlawful or improper treatment of children have a long-term cost to individuals, the economy and society.

AND public and private institutions, including child-care, cultural, educational, religious, sporting and other institutions, provide important services and support for children and their families that are beneficial to children's development.

AND it is important that claims of systemic failures by institutions in relation to allegations and incidents of child sexual abuse and any related unlawful or improper treatment of children be fully explored, and that best practice is identified so that it may be followed in the future both to protect against the occurrence of child sexual abuse and to respond appropriately when any allegations and incidents of child sexual abuse occur, including holding perpetrators to account and providing justice to victims.

AND it is important that those sexually abused as a child in an Australian institution can share their experiences to assist with healing and to inform the development of strategies and reforms that your inquiry will seek to identify.

AND noting that, without diminishing its criminality or seriousness, your inquiry will not specifically examine the issue of child sexual abuse and related matters outside institutional contexts, but that any recommendations you make are likely to improve the response to all forms of child sexual abuse in all contexts.

AND all Australian Governments have expressed their support for, and undertaken to cooperate with, your inquiry.

NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and under the Constitution of the Commonwealth of Australia, the *Royal Commissions Act 1902* and every other enabling power, appoint you to be a Commission of inquiry, and require and authorise you, to inquire into institutional responses to allegations and incidents of child sexual abuse and related matters, and in particular, without limiting the scope of your inquiry, the following matters:

- a. what institutions and governments should do to better protect children against child sexual abuse and related matters in institutional contexts in the future;
- b. what institutions and governments should do to achieve best practice in encouraging the reporting of, and responding to reports or information about, allegations, incidents or risks of child sexual abuse and related matters in institutional contexts;
- c. what should be done to eliminate or reduce impediments that currently exist for responding appropriately to child sexual abuse and related matters in institutional contexts, including addressing failures in, and impediments to, reporting, investigating and responding to allegations and incidents of abuse;
- d. what institutions and governments should do to address, or alleviate the impact of, past and future child sexual abuse and related matters in institutional contexts, including, in particular, in ensuring justice for victims through the provision of redress by institutions, processes for referral for investigation and prosecution and support services.

AND We direct you to make any recommendations arising out of your inquiry that you consider appropriate, including recommendations about any policy, legislative, administrative or structural reforms.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to have regard to the following matters:

- e. the experience of people directly or indirectly affected by child sexual abuse and related matters in institutional contexts, and the provision of opportunities for them

to share their experiences in appropriate ways while recognising that many of them will be severely traumatised or will have special support needs;

- f. the need to focus your inquiry and recommendations on systemic issues, recognising nevertheless that you will be informed by individual cases and may need to make referrals to appropriate authorities in individual cases;
- g. the adequacy and appropriateness of the responses by institutions, and their officials, to reports and information about allegations, incidents or risks of child sexual abuse and related matters in institutional contexts;
- h. changes to laws, policies, practices and systems that have improved over time the ability of institutions and governments to better protect against and respond to child sexual abuse and related matters in institutional contexts.

AND We further declare that you are not required by these Our Letters Patent to inquire, or to continue to inquire, into a particular matter to the extent that you are satisfied that the matter has been, is being, or will be, sufficiently and appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to consider the following matters, and We authorise you to take (or refrain from taking) any action that you consider appropriate arising out of your consideration:

- i. the need to establish mechanisms to facilitate the timely communication of information, or the furnishing of evidence, documents or things, in accordance with section 6P of the *Royal Commissions Act 1902* or any other relevant law, including, for example, for the purpose of enabling the timely investigation and prosecution of offences;
- j. the need to establish investigation units to support your inquiry;
- k. the need to ensure that evidence that may be received by you that identifies particular individuals as having been involved in child sexual abuse or related matters is dealt with in a way that does not prejudice current or future criminal or civil proceedings or other contemporaneous inquiries;
- l. the need to establish appropriate arrangements in relation to current and previous inquiries, in Australia and elsewhere, for evidence and information to be shared with you in ways consistent with relevant obligations so that the work of those inquiries, including, with any necessary consents, the testimony of witnesses, can be taken into account by you in a way that avoids unnecessary duplication, improves efficiency and avoids unnecessary trauma to witnesses;
- m. the need to ensure that institutions and other parties are given a sufficient opportunity to respond to requests and requirements for information, documents

and things, including, for example, having regard to any need to obtain archived material.

AND We appoint you, the Honourable Justice Peter David McClellan AM, to be the Chair of the Commission.

AND We declare that you are a relevant Commission for the purposes of sections 4 and 5 of the *Royal Commissions Act 1902*.

AND We declare that you are authorised to conduct your inquiry into any matter under these Our Letters Patent in combination with any inquiry into the same matter, or a matter related to that matter, that you are directed or authorised to conduct by any Commission, or under any order or appointment, made by any of Our Governors of the States or by the Government of any of Our Territories.

AND We declare that in these Our Letters Patent:

child means a child within the meaning of the Convention on the Rights of the Child of 20 November 1989.

government means the Government of the Commonwealth or of a State or Territory, and includes any non-government institution that undertakes, or has undertaken, activities on behalf of a government.

institution means any public or private body, agency, association, club, institution, organisation or other entity or group of entities of any kind (whether incorporated or unincorporated), and however described, and:

- i. includes, for example, an entity or group of entities (including an entity or group of entities that no longer exists) that provides, or has at any time provided, activities, facilities, programs or services of any kind that provide the means through which adults have contact with children, including through their families; and
- ii. does not include the family.

institutional context: child sexual abuse happens in an **institutional context** if, for example:

- i. it happens on premises of an institution, where activities of an institution take place, or in connection with the activities of an institution; or
- ii. it is engaged in by an official of an institution in circumstances (including circumstances involving settings not directly controlled by the institution) where you consider that the institution has, or its activities have, created, facilitated, increased, or in any way contributed to, (whether by act or omission) the risk of child sexual abuse or the circumstances or conditions giving rise to that risk; or
- iii. it happens in any other circumstances where you consider that an institution is, or should be treated as being, responsible for adults having contact with children.

law means a law of the Commonwealth or of a State or Territory.

official, of an institution, includes:

- i. vi. any representative (however described) of the institution or a related entity; and
- ii. vii. any member, officer, employee, associate, contractor or volunteer (however described) of the institution or a related entity; and
- iii. viii. any person, or any member, officer, employee, associate, contractor or volunteer (however described) of a body or other entity, who provides services to, or for, the institution or a related entity; and
- iv. ix. any other person who you consider is, or should be treated as if the person were, an official of the institution.

related matters means any unlawful or improper treatment of children that is, either generally or in any particular instance, connected or associated with child sexual abuse.

AND We:

require you to begin your inquiry as soon as practicable, and

require you to make your inquiry as expeditiously as possible; and

require you to submit to Our Governor-General:

first and as soon as possible, and in any event not later than 30 June 2014 (or such later date as Our Prime Minister may, by notice in the Gazette, fix on your recommendation), an initial report of the results of your inquiry, the recommendations for early consideration you may consider appropriate to make in this initial report, and your recommendation for the date, not later than 31 December 2015, to be fixed for the submission of your final report; and

then and as soon as possible, and in any event not later than the date Our Prime Minister may, by notice in the Gazette, fix on your recommendation, your final report of the results of your inquiry and your recommendations; and

authorise you to submit to Our Governor-General any additional interim reports that you consider appropriate.

IN WITNESS, We have caused these Our Letters to be made Patent.

WITNESS Quentin Bryce, Governor-General of the Commonwealth of Australia.

Dated 11th January 2013

Governor-General

By Her Excellency's Command

Prime Minister

Appendix B: Public hearing

The Royal Commission	Justice Peter McClellan AM (Chair) Justice Jennifer Coate Mr Bob Atkinson AO APM Mr Robert Fitzgerald AM Professor Helen Milroy Mr Andrew Murray
Commissioners who presided	Justice Peter McClellan AM (Chair) Professor Helen Milroy Mr Andrew Murray
Date of hearing	10 March – 27 March 2014
Legislation	<i>Royal Commissions Act 1923</i> (Cth) <i>Royal Commissions Act 1923</i> (NSW) <i>Royal Commissions Act 1923</i> (VIC)
Leave to appear	Catholic Archdiocese of Sydney Professional Standards Office of New South Wales/ACT Catholic Church Insurance Limited National Committee for Professional Standards Truth, Justice and Healing Council Daniel Casey Dr Michael Casey John Dalzell John Ellis Paul McCann Monsignor Brian Rayner Reverend John Usher EV
Legal representation	G Furness SC, Senior Counsel assisting the Royal Commission and A M Stewart, Senior Counsel assisting the Royal Commission
Pages of transcript:	1,426 pages
Notice to Produce issued under <i>Royal Commissions Act 1923</i> (Cth) and documents produced:	11 notices to produce producing 43 documents

Summons to Produce issued under *Royal Commissions Act 1923* (NSW) and documents produced: 17 summons to produce producing 5,038 documents

Summons to Produce issued under *Royal Commissions Act 1923* (VIC) and documents produced: 3 summons to produce producing 843 documents

Number of exhibits: 30 exhibits consisting of a total of 473 documents tendered at the hearing

Witnesses

- 1 **John Ellis**
Toward Healing Participant
- 2 **John Francis Davoren**
Former Director of Professional Standards (NSW/ACT)
- 3 **Michael Salmon**
Director of Professional Standards
- 4 **Raymond Max Brazil**
Facilitator, Professional Standards Office (NSW/ACT)
- 5 **Monsignor Brian Rayner**
Former Vicar General and Chancellor of the Catholic Archdiocese of Sydney
- 6 **Paul McCann**
Partner at Corrs Chambers Westgarth
- 7 **John Dalzell**
Former Senior Associate at Corrs Chambers Westgarth
- 8 **Dr Michael Alan Casey**
Private Secretary to Cardinal Pell
- 9 **Reverend Monsignor John Joseph Usher EV**
Chancellor of the Catholic Archdiocese of Sydney
- 10 **Cardinal George Pell**
Former Archbishop of the Catholic Archdiocese of Sydney
- 11 **Danny Casey**
Business Manager, Catholic Archdiocese of Sydney

Endnotes

- ¹ Exhibit 8-1, Tab 4, CTJH.300.01005.0109_R.
- ² Exhibit 8-1, Tab 4, CTJH.300.01005.0109_R.
- ³ Exhibit 8-1 ,Tab 4, CTJH.300.01005.0109_R and Exhibit 8-2 Tab 301, DUG.080.061.0010 at .0015 to .0018 [12].
- ⁴ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [35].
- ⁵ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [38].
- ⁶ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [49].
- ⁷ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [35].
- ⁸ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [37]
- ⁹ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [59].
- ¹⁰ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [61].
- ¹¹ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [60].
- ¹² Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [79].
- ¹³ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [48].
- ¹⁴ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [69]-[70].
- ¹⁵ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [71].
- ¹⁶ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [72].
- ¹⁷ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [78].
- ¹⁸ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [82].
- ¹⁹ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [84].
- ²⁰ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [85].
- ²¹ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [87].
- ²² Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [91]-[92].
- ²³ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [99].
- ²⁴ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [100].
- ²⁵ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [104].
- ²⁶ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [106].
- ²⁷ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [109].
- ²⁸ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [110].
- ²⁹ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [116].
- ³⁰ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [117].
- ³¹ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [182].
- ³² Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [183].
- ³³ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [185].
- ³⁴ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [185].
- ³⁵ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [189].
- ³⁶ Exhibit 8-2, Tab 301 DUG.080.061.0010 at .0036.
- ³⁷ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0078.
- ³⁸ The Melbourne Response was established by the Archdiocese of Melbourne in 1996 to respond to complaints of child sexual abuse by those holding an appointment in that

Archdiocese at the time of the abuse. The Royal Commission considered the Melbourne Response in its 16th public hearing.

- ³⁹ Exhibit 8-1, Tab 4, CTJH.300.01005.0109_R at .0110_R.
- ⁴⁰ Exhibit 8-3, Tab E, CTJH.0001.001.0073.
- ⁴¹ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0079 [3].
- ⁴² Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0080 [6].
- ⁴³ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0080 [6].
- ⁴⁴ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0080 [7].
- ⁴⁵ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0080 [8].
- ⁴⁶ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0081 [17]-[18].
- ⁴⁷ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0081 [18].
- ⁴⁸ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0081 [19].
- ⁴⁹ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0081 [20].
- ⁵⁰ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0086 [35.2].
- ⁵¹ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0086 [35.3].
- ⁵² Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0088 [36.1].
- ⁵³ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0087 [35.4].
- ⁵⁴ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0088 [36.4].
- ⁵⁵ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0089 [38.2].
- ⁵⁶ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0089 [38.4].
- ⁵⁷ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0089 [38.4].
- ⁵⁸ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0090 [38.5].
- ⁵⁹ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0090 [38.6].
- ⁶⁰ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0090 [38.7].
- ⁶¹ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0092 [39.3].
- ⁶² Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0090 [40.1].
- ⁶³ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0090 [40.1.1].
- ⁶⁴ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0095 [40.13].
- ⁶⁵ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0092 [40.2].
- ⁶⁶ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0092 [40.3].
- ⁶⁷ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0093 [40.4].
- ⁶⁸ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0093 [40.4].
- ⁶⁹ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0094 [40.11].
- ⁷⁰ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0095 [40.12].
- ⁷¹ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0095 [40.12].
- ⁷² Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0095 [40.12].
- ⁷³ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0095 [41.1].
- ⁷⁴ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0095 [41.1].
- ⁷⁵ Exhibit 8-3, Tab D, CTJH.301.04001.0001 at .0006 [35.8.2]
- ⁷⁶ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0096 [41.3].
- ⁷⁷ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0096 [41.3.3].
- ⁷⁸ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0096 [41.3.1].
- ⁷⁹ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0096 [41.3.6].
- ⁸⁰ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0096 [41.3.5].
- ⁸¹ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0096 [41.3.9].
- ⁸² Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0097 [41.5].
- ⁸³ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0098 [43.1].

- ⁸⁴ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0099 [43.4].
- ⁸⁵ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0099 [43.4].
- ⁸⁶ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0099 [43.6].
- ⁸⁷ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0099 [43.7].
- ⁸⁸ Transcript of Monsignor Brian Rayner T5759:17-23 (Day 55).
- ⁸⁹ Exhibit 8-12, Statement of Dr Michael Casey, STAT.0166.001.0001_R [16]; Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [64].
- ⁹⁰ Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [52] and [62].
- ⁹¹ Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [2].
- ⁹² The reference to ‘currently’ is a reference to at the time of hearing.
- ⁹³ Exhibit 8-12, Statement of Dr Michael Casey, STAT.0166.001.0001_R [42].
- ⁹⁴ Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [70]; Exhibit 8-18, Statement of Mr Daniel Casey [2]; Transcript of Mr Daniel Casey T6394:7-9 (Day 61).
- ⁹⁵ Exhibit 8-12, Statement of Dr Michael Casey, STAT.0166.001.0001_R [36].
- ⁹⁶ Exhibit 8-12, Statement of Dr Michael Casey, STAT.0166.001.0001_R [36]; Transcript of Monsignor Brian Rayner T5756:26-31 (Day 55).
- ⁹⁷ Transcript of Monsignor Brian Rayner T5756:42-44 (Day 55); Exhibit 8-12, Statement of Dr Michael Casey, STAT.0166.001.0001_R [43].
- ⁹⁸ Exhibit 8-9, Statement of Monsignor Brian Rayner, STAT.0171.001.0001 [9]-[10].
- ⁹⁹ Exhibit 8-12, Statement of Dr Michael Casey, STAT.0166.001.0001_R [60].
- ¹⁰⁰ Exhibit 8-13, Statement of Monsignor John Usher, STAT.0168.001.0001_R [11].
- ¹⁰¹ Exhibit 8-9, Statement of Monsignor Brian Rayner, STAT.0171.001.0001 [4].
- ¹⁰² Exhibit 8-9, Statement of Monsignor Brian Rayner, STAT.0171.001.0001 [15]; Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [68]; Exhibit 8-13, Statement of Monsignor John Usher, STAT.0168.001.0001_R [23].
- ¹⁰³ Transcript of Monsignor Brian Rayner T5754:38-46; See also Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [67].
- ¹⁰⁴ Exhibit 8-12, Statement of Dr Michael Casey, STAT.0166.001.0001_R [11], [16], [17]; Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [65].
- ¹⁰⁵ Exhibit 8-12, Statement of Dr Michael Casey, STAT.0166.001.0001_R [37].
- ¹⁰⁶ Transcript of Monsignor John Usher, T6392:16-27 (Day 61).
- ¹⁰⁷ Exhibit 8-12, Statement of Dr Michael Casey, STAT.0166.001.0001_R [18].
- ¹⁰⁸ Exhibit 8-12, Statement of Dr Michael Casey, STAT.0166.001.0001_R [42-43].
- ¹⁰⁹ Transcript of Dr Michael Casey T6037:36-T6038:11 (Day 58).
- ¹¹⁰ Exhibit 8-12, Statement of Dr Michael Casey, STAT.0166.001.0001_R [25].
- ¹¹¹ Exhibit 8-12, Statement of Dr Michael Casey, STAT.0166.001.0001_R [38].
- ¹¹² Exhibit 8-12, Statement of Dr Michael Casey, STAT.0166.001.0001_R [39].
- ¹¹³ Exhibit 8-1, Tab 3, CTJH.402.01001.0001_R.
- ¹¹⁴ Transcript of Mr John Ellis, T5331:16-36 (Day 52).
- ¹¹⁵ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001_R [127], Transcript of Mr John Ellis, T5332:22 -25 (Day 52).
- ¹¹⁶ Exhibit 8-1 Tab 4, CTJH.300.01005.0109_R.
- ¹¹⁷ Exhibit 8-1 Tab 4, CTJH.300.01005.0109_R.
- ¹¹⁸ Exhibit 8-5, Statement of Mr John Davoren, STAT.0173.001.0001 [14].
- ¹¹⁹ Exhibit 8-5, Statement of Mr John Davoren, STAT.0173.001.0001 [8].
- ¹²⁰ Exhibit 8-5, Statement of Mr John Davoren, STAT.0173.001.0001 [7].
- ¹²¹ Transcript of Mr John Davoren, T5470:12-T5471:23; T5479:33-T5480:20 (Day 53).

- ¹²² Transcript of Mr John Davoren, T5494:33-T5495:2 (Day 53).
- ¹²³ Transcript of Mr John Davoren, T5494:41-44; T5506:20-27 (Day 53).
- ¹²⁴ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0087 [35.4].
- ¹²⁵ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001_R [122]; Transcript of Mr John Ellis, T5330:33-39; T5335:7-10; T5338:32-35 (Day 52).
- ¹²⁶ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [157].
- ¹²⁷ Exhibit 8-5, Statement of Mr John Davoren, STAT.0173.001.0001 [30]; Exhibit 8-1, Tab 7, CTJH.400.01001.0323 at .0323 to .0324.
- ¹²⁸ Exhibit 8-1, Tab 67, CTJH.400.01001.0192; Salmon T5607:5 –26 (Day 54); Note that Counsel for Mr Ellis when questioning Mr Salmon also stated that the Church Authority had not offered to pay for counselling but had only offered to pay the gap of the counselling costs of Mr Ellis. See also Transcript of Mr Michael Salmon T5670:10-36 (Day 55).
- ¹²⁹ Exhibit 8-1, Tab 67, CTJH.400.01001.0192.
- ¹³⁰ Exhibit 8-1, Tab 6, CTJH.400.01001.0288_R.
- ¹³¹ Exhibit 8-1, Tab 10, CTJH.400.01001.0389_R.
- ¹³² Exhibit 8-1, Tab 10, CTJH.400.01001.0389_R.
- ¹³³ Transcript of Mr John Ellis, T5333:31-T5334:2 (Day 52).
- ¹³⁴ Exhibit 8-1, Tab 7, CTJH.400.01001.0323.
- ¹³⁵ Exhibit 8-1, Tab 9, CTJH.402.01001.0006_R.
- ¹³⁶ Exhibit 8-1, Tab 11, CTJH.402.01001.0008.
- ¹³⁷ Transcript of Mr John Davoren, T5518:15-18 (Day 53).
- ¹³⁸ Exhibit 8-1, Tab 14, CTJH.402.01001.0009.
- ¹³⁹ Exhibit 8-1, Tab 15, CTJH.400.01001.2084_E.
- ¹⁴⁰ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001_R [143]-[144].
- ¹⁴¹ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001_R [144].
- ¹⁴² Exhibit 8-1, Tab 16, CTJH.402.01001.0011; Exhibit 8-1, Tab 17, CTJH.402.01001.0010.
- ¹⁴³ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001_R [147].
- ¹⁴⁴ Exhibit 8-1, Tab 46, CRT.0001.001.0281_R.
- ¹⁴⁵ Exhibit 8-1, Tab 47A, CTJH.402.01001.0037.
- ¹⁴⁶ Exhibit 8-1, Tab 47A, CTJH.402.01001.0037.
- ¹⁴⁷ Exhibit 8-1, Tab 47A, CTJH.402.01001.0037.
- ¹⁴⁸ Transcript of Mr John Ellis, T5351:5 -9 (Day 52).
- ¹⁴⁹ Exhibit 8-1, Tab 51A, CTJH.400.01001.2761.
- ¹⁵⁰ Exhibit 8-1, Tab 51A, CTJH.400.01001.2761.
- ¹⁵¹ Exhibit 8-1, Tab 51B, CTJH.400.01001.2762_R.
- ¹⁵² Exhibit 8-1, Tab 52, CTJH.400.01001.2764.
- ¹⁵³ Exhibit 8-1, Tab 25, CTJH.402.01001.0018.
- ¹⁵⁴ Exhibit 8-1, Tab 30, CTJH.402.01001.0022_R.
- ¹⁵⁵ Exhibit 8-1, Tab 26, CTJH.402.01001.0017_R.
- ¹⁵⁶ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001_R [140].
- ¹⁵⁷ Transcript of Cardinal George Pell, T6306:38-41 (Day 60).
- ¹⁵⁸ Transcript of Cardinal George Pell, T6307:34-40 (Day 60).
- ¹⁵⁹ Transcript of Cardinal George Pell, T6308:5-7 (Day 60).
- ¹⁶⁰ Exhibit 8 -14 Statement of Cardinal George Pell, STAT.0169.001.0001_R [86] and [89].
- ¹⁶¹ Exhibit 8-1, Tab 111, CTJH.402.01001.0297_R at .0300_R.
- ¹⁶² Exhibit 8-1, Tab 51, CTJH.402.01001.0050_E at .0051_E.

- ¹⁶³ Truth Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Case Study 8: Response of the Catholic Church to the complaint made by John Ellis under Towards Healing*, 13 August 2014, [182].
- ¹⁶⁴ Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [86].
- ¹⁶⁵ Transcript of Cardinal George Pell T6305:38-40 (Day 60).
- ¹⁶⁶ Exhibit 8-1, Tab 26, CTJH.402.01001.0017_R, Exhibit 8-1, Tab 30 CTJH.402.01001.0022_R; Transcript of Cardinal George Pell, T6306:4-36 (Day 60).
- ¹⁶⁷ Transcript of Cardinal George Pell, T6306:27-36 (Day 60).
- ¹⁶⁸ Transcript of Cardinal George Pell T6306:27-T6307:4.
- ¹⁶⁹ Exhibit 8-1, Tab 26, CTJH.402.01001.0017_R; Exhibit 8-1, Tab 30, CTJH.402.01001.0022_R; Transcript of Cardinal George Pell, T6309:41-47 (Day 60).
- ¹⁷⁰ Transcript of Mr John Ellis, T5341:18-20 (Day 52).
- ¹⁷¹ Transcript of Mr John Ellis, T5341:31-39 (Day 52).
- ¹⁷² Transcript of Cardinal George Pell, T6308:2-16 (Day 60).
- ¹⁷³ Transcript of Cardinal George Pell, T6276:4-10 (Day 60).
- ¹⁷⁴ Transcript of Cardinal George Pell, T6300:26-33 (Day 60).
- ¹⁷⁵ Transcript of Cardinal George Pell, T6294:13-23 (Day 60).
- ¹⁷⁶ Transcript of Cardinal George Pell, T6294:25-27 (Day 60).
- ¹⁷⁷ Transcript of Cardinal George Pell, T6320:1-31 (Day 60).
- ¹⁷⁸ Exhibit 8-1, Tab 61, CTJH.402.01001.0153_R.
- ¹⁷⁹ Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [96].
- ¹⁸⁰ Transcript of Cardinal George Pell, T6324:35-39; T6326:31-44 (Day 59).
- ¹⁸¹ Transcript of Cardinal George Pell, T6299:38-T6300:13 (Day 60).
- ¹⁸² Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [81].
- ¹⁸³ Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [79].
- ¹⁸⁴ Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [35], [79], [88]-[89].
- ¹⁸⁵ Transcript of Cardinal George Pell, T6324:35-39; T6326:31-44 (Day 59).
- ¹⁸⁶ Truth Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Case Study 8: Response of the Catholic Church to the complaint made by John Ellis under Towards Healing*, 13 August 2014, [297].
- ¹⁸⁷ Exhibit 8-13, Statement of Monsignor John Usher, STAT.0168.001.0001_R [25].
- ¹⁸⁸ Transcript of Monsignor John Usher, T6219:16 -25 (Day 59).
- ¹⁸⁹ Exhibit 8-13, Statement of Monsignor John Usher, STAT.0168.001.0001_R [28].
- ¹⁹⁰ Exhibit 8-5, Statement of Mr John Davoren, STAT.0173.001.0001 [49].
- ¹⁹¹ Exhibit 8-1, Tab 32, CTJH.402.01001.0027_R at.0029_R to .0030_R.
- ¹⁹² Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [157]-[158].
- ¹⁹³ Exhibit 8-1, Tab 47A, CTJH.402.01001.0037 at .0039 to .0040.
- ¹⁹⁴ Exhibit 8-1, Tab 49, IND.0004.001.0252_R.
- ¹⁹⁵ Exhibit 8-1, Tab 7, CTJH.400.01001.0323; Exhibit 8-1, Tab 9, CTJH.402.01001.0006_R.
- ¹⁹⁶ Transcript of Mr John Davoren, T5488:20-26; T5489:46-T5490:12 (Day 53); Exhibit 8-5, Statement of Mr John Davoren, STAT.0173.001.0001 [62]-[65].
- ¹⁹⁷ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at.0090 [38.7].
- ¹⁹⁸ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at.0092 [40.1]
- ¹⁹⁹ Transcript of Mr John Davoren, T5511:16-38 (Day 53).
- ²⁰⁰ Transcript of Mr John Davoren, T5511:40-5513:1 (Day 53).
- ²⁰¹ Exhibit 8-5, Statement of Mr John Davoren, STAT.0173.001.0001 [59].

- ²⁰² Transcript of Mr John Davoren, T5513:3-15 (Day 53).
- ²⁰³ Exhibit 8-5, Statement of Mr John Davoren, STAT.0173.001.0001 [59].
- ²⁰⁴ Transcript of Mr John Davoren, T5515:6-12 (Day 53).
- ²⁰⁵ Exhibit 8-5, Statement of Mr John Davoren, STAT.0173.001.0001 [57].
- ²⁰⁶ Exhibit 8-5, Statement of Mr John Davoren, STAT.0173.001.0001 [57].
- ²⁰⁷ Exhibit 8-5, Statement of Mr John Davoren, STAT.0173.001.0001 [58].
- ²⁰⁸ Transcript of Mr John Davoren, T5515:25-32 (Day 53); T5534:32-39 (Day 54).
- ²⁰⁹ Transcript of Mr John Davoren, T5516:5-18 (Day 53).
- ²¹⁰ Transcript of Mr John Davoren, T5516:20-24 (Day 53).
- ²¹¹ Transcript of Mr John Davoren, T5517:32-40 (Day 53).
- ²¹² Transcript of Mr John Davoren, T5498:31-37 (Day 53).
- ²¹³ Transcript of Mr John Davoren, T5537:43-T5538:7 (Day 54).
- ²¹⁴ Transcript of Mr John Davoren, T5488:20-30 (Day 53).
- ²¹⁵ Transcript of Cardinal George Pell, T6284:30-37 (Day 60).
- ²¹⁶ Transcript of Cardinal George Pell, T6671:39-45 (Day 63B).
- ²¹⁷ Transcript of Cardinal George Pell, T6343:34-40 (Day 60); T6560:14-17 (Day 62).
- ²¹⁸ Transcript of Cardinal George Pell, T6512:44-T6513:1 (Day 62).
- ²¹⁹ Transcript of Cardinal George Pell, T6560:2 -8 (Day 62).
- ²²⁰ Transcript of Cardinal George Pell, T6560:10-12 (Day 62).
- ²²¹ Transcript of Cardinal George Pell, T6509:13-19 (Day 62).
- ²²² Transcript of Cardinal George Pell, T6326:41-T6327:2 (Day 60).
- ²²³ Transcript of Mr John Davoren, T5510:33-38 (Day 53).
- ²²⁴ Transcript of Mr John Davoren, T5511:44-T5513:1 (Day 53).
- ²²⁵ Transcript of Mr John Davoren, T5514:17 -25 (Day 53); Exhibit 8-1, Tab 10, CTJH.400.01001.0389_R.
- ²²⁶ Transcript of Mr John Davoren T5522:42-46 (Day 53); Exhibit 8-5, Statement of Mr John Davoren, STAT.0173.001.0001 [59].
- ²²⁷ Exhibit 8-5, Statement of Mr John Davoren, STAT.0173.001.0001 [59].
- ²²⁸ Exhibit 8-9, Statement of Monsignor Brian Rayner, STAT.0171.001.0001 at [4].
- ²²⁹ Transcript of Mr Michael Salmon, T5577:4-14 (Day 54).
- ²³⁰ Exhibit 8-1, Tab 57, CTJH.400.01001.1919.
- ²³¹ Exhibit 8-1, Tab 59, CTJH.402.01001.0151_E.
- ²³² Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [94].
- ²³³ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001_R [166]; Exhibit 8-1, Tab 62 CTJH.402.01001.0155_R.
- ²³⁴ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001_R [168]; Transcript of Mr Michael Salmon, T5600:15-T5601:1 (Day 54).
- ²³⁵ Exhibit 8-1, Tab 59, CTJH.402.01001.0151_E.
- ²³⁶ Exhibit 8-1, Tab 60, CTJH.402.01001.0152_E; Exhibit 8-1, Tab 61, CTJH.402.01001.0153_R.
- ²³⁷ Exhibit 8-1, Tab 66, CTJH.402.01001.0164_R.
- ²³⁸ Exhibit 8-1, Tab 1, CTJH.402.01001.0247_E; Exhibit 8-1, Tab 66, CTJH.402.01001.0164_R at .0177_R; Exhibit 8-16, EXH.008.016.0001.
- ²³⁹ Exhibit 8-1, Tab 66, CTJH.402.01001.0164_R at .0177_R to .0178_R.
- ²⁴⁰ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001_R [177].
- ²⁴¹ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001_R [177].
- ²⁴² Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001_R [179].
- ²⁴³ Exhibit 8-9, Statement of Monsignor Brian Rayner, STAT.0171.001.0001 [33].

- 244 Transcript of Monsignor Brian Rayner, T5777:5-20 (Day 56).
- 245 Transcript of Monsignor Brian Rayner, T5777:22-28; T5933:40-44 (Day 56).
- 246 Transcript of Monsignor Brian Rayner, T5778:9 –15 (Day 56).
- 247 Transcript of Mr Daniel Casey, T6432:14-24 (Day 61).
- 248 Transcript of Mr Daniel Casey, T6431:42-6432:5 (Day 61).
- 249 Transcript of Monsignor Brian Rayner, T5778:20-23 (Day 56).
- 250 Transcript of Monsignor Brian Rayner, T5778:25-27 (Day 56).
- 251 Transcript of Monsignor Brian Rayner, T5778:29-32 (Day 56).
- 252 Transcript of Cardinal George Pell, T6321:11-22 (Day 60).
- 253 Transcript of Cardinal George Pell, T6321:4-9 (Day 60).
- 254 Transcript of Mr Michael Salmon, T5658:11-30 (Day 55).
- 255 Transcript of Mr Michael Salmon, T5644:3-7 (Day 54).
- 256 Transcript of Mr Michael Salmon, T5688:4-8 (Day 55).
- 257 Exhibit 8-7, Statement of Mr Michael Salmon, STAT.0174.001.0001 [106].
- 258 Transcript of Mr Michael Salmon, T5642:31-43 (Day 54).
- 259 Exhibit 8-2, Tab 259, CTJH.402.01001.0502.
- 260 Exhibit 8-2, Tab 204, CCI.0030.00003.0100 at .0102.
- 261 Exhibit 8-0001 Tab 66 CTJH.402.01001.0164_R at 0179_R
- 262 Exhibit 8-1, Tab 66, CTJH.402.01001.0164_R.
- 263 Exhibit 8-1, Tab 68, CTJH.402.01001.0148_E.
- 264 Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001_R [186].
- 265 Transcript of Mr John Ellis, T5362:40-46 (Day 52).
- 266 Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0096 [41.3].
- 267 Transcript of Mr Michael Salmon, T5608:8 -21 (Day 54).
- 268 Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0095 [41.1].
- 269 Exhibit 8- 8, Statement of Mr Raymond Brazil, STAT.0175.001.0001 [23]; Ex 8-9 Rayner [45]; Exhibit 8-7, Statement of Mr Michael Salmon, STAT.0174.001.0001 [93]; Transcript of Mr Michael Salmon, T5578:43-45 (Day 54).
- 270 Truth Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Case Study 8:Response of the Catholic Church to the complaint made by John Ellis under Towards Healing*, 13 August 2014, [194].
- 271 Truth Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Case Study 8:Response of the Catholic Church to the complaint made by John Ellis under Towards Healing*, 13 August 2014, [191].
- 272 Truth Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Case Study 8:Response of the Catholic Church to the complaint made by John Ellis under Towards Healing*, 13 August 2014, [199].
- 273 Exhibit 8-1, Tab 78, CTJH.402.01001.0143_E.
- 274 Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001_R [191]; Exhibit 8-8, Statement of Mr Raymond Brazil, STAT.0175.001.0001 [23].
- 275 Exhibit 8-1, Tab 78, CTJH.402.01001.0143_E.
- 276 Exhibit 8-1, Tab 78, CTJH.402.01001.0143_E; Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001_R [193]-[195].
- 277 Exhibit 8-1, Tabs 79, CTJH.402.01001.0142_E , Exhibit 8-1, Tab 80, CTJH.400.01001.1833.
- 278 Exhibit 8-1, Tab 80, CTJH.400.01001.1833.
- 279 Exhibit 8-1, Tab 80, CTJH.400.01001.1833.
- 280 Transcript of Mr Michael Salmon, T5614:39-44 (Day 54).
- 281 Exhibit 8-9, Statement of Monsignor Brian Rayner, STAT.0171.001.0001 [45].

- ²⁸² Exhibit 8-1, Tab 80, CTJH.400.01001.1833.
- ²⁸³ Exhibit 8-1, Tab 85, CTJH.402.01001.0267_R at .0268_R; Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [198].
- ²⁸⁴ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [198]-[199].
- ²⁸⁵ Exhibit 8-1, Tab 85 CTJH.402.01001.0267_R at .0268_R; Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [200].
- ²⁸⁶ Exhibit 8-1, Tab 102 CTJH.400.01001.0431 at.0434. See also Transcript of Mr Michael Salmon, T5622:29-32 (Day 54).
- ²⁸⁷ Exhibit 8-1, Tab 112 CTJH.402.01001.0307 at.0314.
- ²⁸⁸ Exhibit 8-1, Tab 113, CTJH.402.01001.0319_R, Exhibit, 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [200]-[201]. See also Transcript of Mr Raymond Brazil, T5716:30-T5717:34; T5720:33-42 (Day 55).
- ²⁸⁹ Exhibit 8-1, Tab 113, CTJH.402.01001.0319_R, Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [200]-[201]. See also Transcript of Mr Raymond Brazil, T5717:36-42; T5720:33 -42 (Day 55).
- ²⁹⁰ Exhibit 8-1, Tab 113, CTJH.402.01001.0319_R; Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [200]-[201]. See also Transcript of Mr Raymond Brazil, T5720:44-T5721:2 (Day 55).
- ²⁹¹ Exhibit 8-1, Tab 113 CTJH.402.01001.0319_R; Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001_R [200]-[201].
- ²⁹² Transcript of Monsignor Brian Rayner, T5821:6-24 (Day 56).
- ²⁹³ Transcript of Mr Michael Salmon, T5615:40-T5616:5 (Day 54).
- ²⁹⁴ Transcript of Cardinal George Pell, T6588:14-17 (Day 62).
- ²⁹⁵ Transcript of Cardinal George Pell, T6344:24-36 (Day 60); T6560:19-21 (Day 62).
- ²⁹⁶ Transcript of Cardinal George Pell, T6344:11 -14 (Day 60).
- ²⁹⁷ Transcript of Cardinal George Pell, T6289:36-T6290:5; T6560:23-24 (Day 62).
- ²⁹⁸ Transcript of Cardinal George Pell, T6512:36-42 (Day 62).
- ²⁹⁹ Exhibit 8-1, Tab 80, CTJH.400.01001.1833.
- ³⁰⁰ Exhibit 8-3, Tab E, CTJH.0001.001.0073 at .0096 [41.3.2].
- ³⁰¹ Exhibit 8-7, Statement of Mr Michael Salmon, STAT.0174.001.0001 [75].
- ³⁰² Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001_R [226].
- ³⁰³ Exhibit 8-8, Statement of Mr Raymond Brazil, STAT.0175.001.0001[41], Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001 [226].
- ³⁰⁴ Exhibit 8-1, Tab 102, CTJH.400.01001.0431; Exhibit 8-1, Tab 103, CTJH.400.01001.0417; Exhibit 8-1, Tab 104, CTJH.400.06001.0001; Exhibit 8-1, Tab 104A, CTJH.400.01001.0339.
- ³⁰⁵ Exhibit 8-1, Tab 102, CTJH.400.01001.0431 at.0434; Exhibit 8-1, Tab 104, CTJH.400.06001.0001 at .0007.
- ³⁰⁶ Exhibit 8-1, Tab 102 CTJH.400.01001.0431 at.0434; Exhibit 8-1, Tab 104, CTJH.400.06001.0001 at.0007.
- ³⁰⁷ Exhibit 8-1, Tab 102 CTJH.400.01001.0431 at.0435; Exhibit 8-1, Tab 104, CTJH.400.06001.0001 at.0007.
- ³⁰⁸ Exhibit 8-1, Tab 102 CTJH.400.01001.0431 at.0432; Exhibit 8-1, Tab 104, CTJH.400.06001.0001 at.0004.
- ³⁰⁹ Exhibit 8-1, Tab 102 CTJH.400.01001.0431 at.0436; Exhibit 8-1, Tab 104, CTJH.400.06001.0001 at.0008.
- ³¹⁰ Exhibit 8-1, Tab 105, CTJH.402.01001.0137_E.
- ³¹¹ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001_R [231].

- ³¹² Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001_R [232], [242].
- ³¹³ Truth Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 2: Towards Healing*, 30 September 2013, pp. 61-2 [133]-[136].
- ³¹⁴ Exhibit 8-1, Tab 85 CTJH.402.01001.0267_R at.0268_R.
- ³¹⁵ Exhibit 8-1, Tab 113, CTJH.402.01001.0319_R at .0320_R.
- ³¹⁶ Transcript of Raymond Brazil, T5714:16 –T5715:7 (Day 55).
- ³¹⁷ Transcript of Monsignor Brian Rayner, T5796:24-30 (Day 56).
- ³¹⁸ Exhibit 8-13, Statement of Monsignor John Usher, STAT.0168.001.0001_R [32].
- ³¹⁹ Transcript of Monsignor John Usher, T6215:40-T6216:5 (Day 59).
- ³²⁰ Transcript of Mr John Ellis, T5392:5-19 (Day 52).
- ³²¹ Exhibit 8-1, Tab 87, CCI.0030.00003.0618; Exhibit 8-1, Tab 89, CTJH.402.01001.0270_R; Exhibit 8-1, Tab 91A, CCI.0030.00006.0213; Exhibit 8-1, Tab 94, CCI.0030.00003.0619.
- ³²² Exhibit 8-1, Tab 92, CTJH.400.01001.0141; Exhibit 8-1, Tab 93, DUG.080.152.0225.
- ³²³ Exhibit 8-1, Tab 96, CTJH.402.01001.0278_R at .0279_R.
- ³²⁴ Exhibit 8-1, Tab 96, CTJH.402.01001.0278_R at.0279_R.
- ³²⁵ Exhibit 8-1, Tab 101, CTJH.402.01001.0283_R at .0284_R.
- ³²⁶ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001_R [221].
- ³²⁷ Exhibit 8-1, Tab 111, CTJH.402.01001.0297_R at.0298_R to.0299_R; Exhibit 8-1, Tab 119, CTJH.402.01001.0335.
- ³²⁸ Transcript of Mr John Ellis, T5393:5-37 (Day 52).
- ³²⁹ Exhibit 8-1, Tab 117, CTJH.402.01001.0333.
- ³³⁰ Exhibit 8-7, Statement of Mr Michael Salmon, STAT.0174.001.0001 [81]; Exhibit 8-1, Tab 78A, CTJH.400.01001.3863_R.
- ³³¹ Exhibit 8-2, Tab 220, CTJH.400.01004.0136_R.
- ³³² Exhibit 8-2, Tab 205, DUG.080.152.0124_R, DUG.080.152.0134_R; Exhibit 8-2, Tab 206, DUG.080.152.0135.
- ³³³ Exhibit 8-1, Tab 124, CTJH.400.01001.0336_R.
- ³³⁴ Exhibit 8-1, Tab 126, CTJH.400.01001.1779_R.
- ³³⁵ Exhibit 8-1, Tab 128, CTJH.402.01001.0397_R.
- ³³⁶ Exhibit 8-1, Tab 129 CTHJ.402.01001.0401_R.
- ³³⁷ Transcript of Mr John Ellis, T5404:42-T5405:3 (Day 53).
- ³³⁸ Exhibit 8-2, Tab 233, CTJH.400.01001.0327.
- ³³⁹ Transcript of Mr Paul McCann, T5978:26-31 (Day 57).
- ³⁴⁰ Transcript of Mr Paul McCann, T5978:33-35 (Day 57).
- ³⁴¹ Transcript of Dr Michael Casey, T6109:39-T6110:2 (Day 58).
- ³⁴² Transcript of Mr Michael Salmon, T5689:30-36 (Day 55).
- ³⁴³ Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [104].
- ³⁴⁴ Transcript of Cardinal George Pell, T6349:43-T6350:30 (Day 60).
- ³⁴⁵ Transcript of Cardinal George Pell, T6350:17-30 (Day 60).
- ³⁴⁶ Transcript of Cardinal George Pell, T6350:36-40 (Day 60).
- ³⁴⁷ Transcript of Cardinal George Pell, T6351:2-6 (Day 60).
- ³⁴⁸ Transcript of Monsignor John Usher, T6231:42-T6232:5 (Day 60).
- ³⁴⁹ Transcript of Monsignor John Usher, T6232:19-24. (Day 59)
- ³⁵⁰ Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [155]; Transcript of Cardinal George Pell, T6561:3-6 (Day 62).
- ³⁵¹ Exhibit 8-1, Tab 106, CTJH.400.01001.2206.
- ³⁵² Exhibit 8-1, Tab 106, CTJH.400.01001.2206.

- 353 Transcript of Mr Michael Salmon, T5628:18-29 (Day 54).
- 354 Transcript of Mr Michael Salmon, T5628:36-42 (Day 54).
- 355 Exhibit 8-13, Statement of Monsignor John Usher, STAT.0168.001.0001_R [68].
- 356 Exhibit 8-1, Tab 121, CTJH.402.01001.0349_R.
- 357 Exhibit 801, Tab 129, CTHJ.402.01001.0401_R at .0402_R.
- 358 Exhibit 8-1, Tab 130, CTJH.400.01001.1550_R.
- 359 Exhibit 8-1, Tab 130, CTJH.400.01001.1550_R.
- 360 Transcript of Mr John Ellis, T5406:39-T5407:6 (Day 53).
- 361 Exhibit 8-12, Statement of Dr Michael Casey, STAT.0166.001.0001_R [94].
- 362 Transcript of Mr Paul McCann, T5964:30-38 (Day 57); Exhibit 8-10, Statement of Mr Paul McCann, STAT.0212.001.0001_R [49].
- 363 Exhibit 8-18, Statement of Mr Daniel Casey, STAT.0197.001.0001 [33]; Transcript of Mr Daniel Casey, T6429:20-30 (Day 61).
- 364 Exhibit 8-9, Statement of Monsignor Brian Rayner, STAT.0171.001.0001 [47]; Transcript of Monsignor Brian Rayner, T5789:42-45; T5793:34 -43; T5800:28-31; T5825:43-T5826:13 (Day 56); T5891:25-T5892:4 (Day 57).
- 365 Transcript of Mr John Davoren, T5502:12 -31 (Day 53).
- 366 Transcript of Dr Michael Casey, T6079:32-39 (Day 58).
- 367 Transcript of Dr Michael Casey, T6079:41-T6080:3 (Day 58).
- 368 Transcript of Dr Michael Casey, T6080:9-15 (Day 58).
- 369 Transcript of Dr Michael Casey, T6199:37-44 (Day 58).
- 370 Exhibit 8-1, Tab 102, CTJH.400.01001.0431 at .0434 to .0435.
- 371 Exhibit 8-1, Tab 102, CTJH.400.01001.0431 at 0435.
- 372 Exhibit 8-9, Statement of Monsignor Brian Rayner, STAT.0171.001.0001 [68].
- 373 Transcript of Monsignor Brian Rayner, T5910:39-42; 5911:22 (Day 57).
- 374 Transcript of Monsignor Brian Rayner, T5911:14-26 (Day 57).
- 375 Transcript of Mr Michael Salmon, T5612:24-42 (Day 54).
- 376 Transcript of Cardinal George Pell, T6289:36-T6290:5; T6334:37-T6335:2; T6342:39-44 (Day 60); T6687:22-25; T6688:5-21 (Day 63B). See also Transcript of Cardinal George Pell, T6284:8-17; T6285:28 -40; T6287:38-T6288:18 (Day 60).
- 377 Transcript of Cardinal George Pell, T6687:22-25 (Day 63B).
- 378 Transcript of Cardinal George Pell, T6288:6-46 (Day 60).
- 379 Transcript of Cardinal George Pell, T6289:45-T6290:5 (Day 60). See also Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [97]-[98].
- 380 Transcript of Cardinal George Pell, T6684:9 -18 (Day 63B).
- 381 Transcript of Cardinal George Pell, T6684:9 -18 (Day 63B).
- 382 Exhibit 8-18, Statement of Mr Daniel Casey, STAT.0197.001.0001 [33]; Transcript of Mr Daniel Casey, T6429:20-30 (Day 61).
- 383 Transcript of Mr Daniel Casey, T6430:18-35 (Day 61).
- 384 Statement of Mr Daniel Casey, STAT.0197.001.0001 [33].
- 385 Transcript of Mr Daniel Casey, T6431:12-23 (Day 61)
- 386 Transcript of Mr Daniel Casey, T6476:1-32 (Day 61)
- 387 Transcript of Monsignor Brian Rayner, T5800:28-31; T5825:43-T5826:13; T5827:30-35 (Day 56).
- 388 Transcript of Mr Michael Salmon, T5613:19 -29 (Day 54).
- 389 Transcript of Dr Michael Casey, T6082:3-36 (Day 58)
- 390 Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [97].

- 391 Transcript of Cardinal George Pell, T6505:34-42 (Day 62).
- 392 Transcript of Cardinal George Pell, T6505:44-46 (Day 62).
- 393 Transcript of Cardinal George Pell, T6335:23-47 (Day 60).
- 394 Transcript of Cardinal George Pell, T6688:20-21 (Day 63B).
- 395 Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [97].
- 396 Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [98].
- 397 Transcript of Cardinal George Pell, T6505:17-23 (Day 62).
- 398 Transcript of Cardinal George Pell, T6505:39-42 (Day 62).
- 399 Transcript of Cardinal George Pell, T6338:32-T6339:3 (Day 60).
- 400 Transcript of Cardinal George Pell, T6596:33-42 (Day 62).
- 401 Transcript of Cardinal George Pell, T6596:44-T6597:5 (Day 62).
- 402 Transcript of Cardinal George Pell, T6597:7-12 (Day 62).
- 403 Transcript of Cardinal George Pell, T6334:37-T6335:2 (Day 60).
- 404 Transcript of Cardinal George Pell, T6340:13-20 (Day 60).
- 405 Transcript of Cardinal George Pell, T6332:31-34 (Day 60).
- 406 Transcript of Cardinal George Pell, T6285:42-T6286:9 (Day 60).
- 407 Transcript of Mr John Ellis, T5464:12-23 (Day 53).
- 408 Transcript of Cardinal George Pell, T6592:9-13 (Day 62).
- 409 Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [77].
- 410 Transcript of Cardinal George Pell, T6285:15-21 (Day 60).
- 411 Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [79].
- 412 Exhibit 8-1, Tab 4, CTJH.300.01005.0109_R; Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [77]; Transcript of Cardinal George Pell, T6332:36-38 (Day 60).
- 413 Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [77]; T6291:25-28; Transcript of Cardinal George Pell, T6332:40-42 (Day 60).
- 414 Exhibit 8-1, Tab 10, CTJH.400.01001.0389_R; Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [79]; Transcript of Cardinal George Pell, T6332:44-46 (Day 60).
- 415 Exhibit 8-1, Tab 12, CTJH.400.01001.0322; Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [80]; Transcript of Cardinal George Pell, T6332:1- 3 (Day 60).
- 416 Exhibit 8-1, Tab 21, CTJH.400.01001.0320; Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [84].
- 417 Exhibit 8-1, Tab 23, CTJH.400.01001.0317_R; Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [85]; Transcript of Cardinal George Pell, T6296:31-37; T6297:36-38 (Day 60).
- 418 Exhibit 8-1, Tab 23, CTJH.400.01001.0317_R; Transcript of Cardinal George Pell, T6333:10-11 (Day 60).
- 419 Transcript of Cardinal George Pell, T6296:31-37 (Day 60).
- 420 Exhibit 8-1, Tab 23, CTJH.400.01001.0317_R; Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [85].
- 421 Exhibit 8-1, Tab 25, CTJH.402.01001.0018; Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [86].
- 422 Transcript of Cardinal George Pell, T6333:24-26 (Day 60).
- 423 Exhibit 8-1, Tab 30, CTJH.402.01001.0022_R; Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [86]; Transcript of Cardinal George Pell, T6333:28-30 (Day 60).
- 424 Transcript of Cardinal George Pell, T6334:11-13 (Day 60).
- 425 Exhibit 8-1, Tab 33A, CTJH.400.01001.4904; Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [90]; Transcript of Cardinal George Pell, T6334:15-16 (Day 60).

- ⁴²⁶ Exhibit 8-1, Tab 57, CTJH.400.01001.1919; Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [94]; Transcript of Cardinal George Pell, T6334:18 -20 (Day 60).
- ⁴²⁷ Exhibit 8-1, Tab 63, CTJH.402.01001.0156_R; Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [95]; Transcript of Cardinal George Pell, T6333:5-8 (Day 60).
- ⁴²⁸ Exhibit 8-1, Tab 63, CTJH.402.01001.0156_R; Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [95].
- ⁴²⁹ Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [96], Transcript of Cardinal George Pell, T6334:22-24 (Day 60).
- ⁴³⁰ Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [96], Transcript of Cardinal George Pell, T6334:26-27 (Day 60).
- ⁴³¹ Transcript of Cardinal George Pell, T6329:36-39 (Day 60).
- ⁴³² Transcript of Cardinal George Pell, T6329:41-44 (Day 60).
- ⁴³³ Exhibit 8- 14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [97].
- ⁴³⁴ Transcript of Cardinal George Pell, T6320: 45-T6321:22 (Day 60).
- ⁴³⁵ Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [97].
- ⁴³⁶ Truth Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Case Study 8:Response of the Catholic Church to the complaint made by John Ellis under Towards Healing*, 13 August 2014, [179].
- ⁴³⁷ Truth Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Case Study 8:Response of the Catholic Church to the complaint made by John Ellis under Towards Healing*, 13 August 2014, [240].
- ⁴³⁸ Truth Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Case Study 8:Response of the Catholic Church to the complaint made by John Ellis under Towards Healing*, 13 August 2014, [226].
- ⁴³⁹ Truth Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Case Study 8:Response of the Catholic Church to the complaint made by John Ellis under Towards Healing*, 13 August 2014, [227].
- ⁴⁴⁰ Truth Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Case Study 8:Response of the Catholic Church to the complaint made by John Ellis under Towards Healing*, 13 August 2014, [227].
- ⁴⁴¹ Truth Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Case Study 8:Response of the Catholic Church to the complaint made by John Ellis under Towards Healing*, 13 August 2014, [228]-[239].
- ⁴⁴² Mr Ellis initially sent the complaint to Mr Salmon on 30 July 2004 (Exhibit 8-1, Tab 108, CTJH.402.01001.0285_R; Exhibit 8-1, Tab 109, CTJH.402.01001.0286_R). He then sent a corrected version on 31 July 2004 (Exhibit 8-1, Tab 110, CTJH.402.01001.0296_R, Exhibit 8-1, Tab 111, CTJH.402.01001.0297_R). The marked up version of the corrected document is at Exhibit 8-1, Tab 112, CTJH.402.01001.0307_R.
- ⁴⁴³ Exhibit 8-1, Tab 116, CTJH.402.01001.0318_E; Exhibit 8-1, Tab 117, CTJH.402.01001.0333.
- ⁴⁴⁴ Exhibit 8-1, Tab 122, CTJH.300.01005.0150_R at .0152_R.
- ⁴⁴⁵ Exhibit 8-2, Tab 205, DUG.080.152.0124_R, DUG.080.152.0134_R, Tab 206, DUG.080.152.0135.
- ⁴⁴⁶ Exhibit 8-1, Tab 127 CTJH.300.01005.0138_R at .0140_R.
- ⁴⁴⁷ Exhibit 8-1, Tab 127, CTJH.300.01005.0138_R at .0139.
- ⁴⁴⁸ Exhibit 8-1, Tab 134, CTJH.300.01005.0105.
- ⁴⁴⁹ Exhibit 8-1, Tab 136, CTJH.300.01005.0144 at .0149.
- ⁴⁵⁰ Exhibit 8-1, Tab 135, CTJH.300.01005.0106.

- 451 Exhibit 8-1, Tab 136, CTJH.300.01005.0144 at.0149.
- 452 Exhibit 8-1, Tab 136, CTJH.300.01005.0144 at.0149.
- 453 Exhibit 8-1, Tab 136, CTJH.300.01005.0144 at.0149.
- 454 Exhibit 8-1, Tab 141, CTJH.300.01005.0003 at.0006.
- 455 Exhibit 8-1, Tab 141, CTJH.300.01005.0003 at.0006 to .0007.
- 456 Exhibit 8-1, Tab 141, CTJH.300.01005.0003.0007.
- 457 Exhibit 8-1, Tab 141, CTJH.300.01005.0003 at.0007.
- 458 Exhibit 8-1, Tab 141, CTJH.300.01005.0003 at.0007.
- 459 Exhibit 8-1, Tab 141, CTJH.300.01005.0003 at.0007.
- 460 Exhibit 8-1, Tab 141, CTJH.300.01005.0003 at.0007.
- 461 Exhibit 8-1, Tab 142, CTJH.400.01004.0493 at.0493.
- 462 Exhibit 8-1, Tab 142, CTJH.400.01004.0493 at.0493.
- 463 Transcript of Dr Michael Casey, T6122:30-47 (Day 58).
- 464 Exhibit 8-1, Tab 144, CTJH.300.01011.0111.
- 465 Exhibit 8-1, Tab 144, CTJH.300.01011.0111.
- 466 Exhibit 8-2, Tab 205, DUG.080.152.0124_R at .0132_R.
- 467 Exhibit 8-2, Tab 212, CTJH.400.04001.0115.
- 468 Exhibit 8-2, Tab 203, CTJH.400.01004.0140 at .0141.
- 469 Exhibit 8-2, Tab 212, CTJH.400.04001.0115.
- 470 Transcript of Cardinal George Pell, T6492:5-9 (Day 62); Exhibit 8-12, Statement of Dr Michael Casey, STAT.0166.001.0001_R [103].
- 471 Exhibit 8-10, Statement of Mr Paul McCann, STAT.0212.001.0001_R [12].
- 472 Exhibit 8-10, Statement of Mr Paul McCann, STAT.0212.001.0001_R [11] and [13].
- 473 Transcript of Cardinal George Pell, T6492:28-40; T6523:4-8; T6532:14-19 (Day 52). See also Exhibit 8-2, Tab 224A, CTJH.400.04002.0243; Exhibit 8-18, Statement of Mr Daniel Casey, STAT.0197.001.0001 [32].
- 474 Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [103].
- 475 Exhibit 8-2, Tab 220A, CTJH.400.04002.2682 at.2683.
- 476 Transcript of Cardinal George Pell, T6493:2-32 (Day 62). See also Transcript of Dr Michael Casey, T6098:44-T6099:4; T6105:11-17 (Day 58).
- 477 Exhibit 8-2, Tab 234, DUG.080.040.0470.
- 478 Transcript of Dr Michael Casey, T6083:16-24 (Day 58); T6138:43-47 (Day 59); Transcript of Mr Paul McCann, T5945:27-30 (Day 57).
- 479 Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [37].
- 480 Transcript of Cardinal George Pell, T6496:3-35 (Day 62).
- 481 Transcript of Cardinal George Pell, T6496:31-38 (Day 62).
- 482 Transcript of Cardinal George Pell, T6496:44-T6497:8 (Day 62).
- 483 Transcript of Dr Michael Casey, T6083:16-24 (Day 58); T6138:43-47; T6151:29-34; T6152:45-T6153:42 (Day 59); Exhibit 8-12, Statement of Dr Michael Casey, STAT.0166.001.0001_R [52] to [53].
- 484 Exhibit 8-2, Tab 227, DUG.080.040.0518.
- 485 Exhibit 8-2, Tab 227, DUG.080.040.0518.
- 486 Exhibit 8-2, Tab 227A, DUG.080.040.0516.
- 487 Exhibit 8-2, Tab 229, DUG.080.068.0335.
- 488 Transcript of Dr Michael Casey, T6107:17-31 (Day 58). See also Exhibit 8-2, Tab 229, DUG.080.068.0335.
- 489 Transcript of Cardinal George Pell, T6501:46-T6502:4 (Day 62); Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [42].

- ⁴⁹⁰ Transcript of Cardinal George Pell, T6351:39-44 (Day 60).
- ⁴⁹¹ Exhibit 8-2, Tab 230, DUG.080.040.0506.
- ⁴⁹² Exhibit 8-2, Tab 231, CTJH.400.04002.0224.
- ⁴⁹³ Exhibit 8-2, Tab 239, CTJH.400.02002.0012; Exhibit 8-2, Tab 240, CTJH.400.02002.0013.
- ⁴⁹⁴ Exhibit 8-2, Tab 242, DUG.080.040.0239.
- ⁴⁹⁵ Exhibit 8-2, Tab 242, DUG.080.040.0239 at .0241.
- ⁴⁹⁶ Exhibit 8-2, Tab 242, DUG.080.040.0239 at .0241.
- ⁴⁹⁷ Transcript of Cardinal George Pell, T6503:6-45 (Day 62).
- ⁴⁹⁸ Exhibit 8-2, Tab 244, DUG.080.040.0237.
- ⁴⁹⁹ Transcript of Cardinal George Pell, T6502:6-41; T6507:3-28 (Day 62).
- ⁵⁰⁰ Transcript of Cardinal George Pell, T6502:14-41 (Day 62).
- ⁵⁰¹ Transcript of Cardinal George Pell, T6502:14-41 (Day 62).
- ⁵⁰² Transcript of Mr Paul McCann, T5973:14-21 (Day 57).
- ⁵⁰³ Transcript of Mr Paul McCann, T5972:39-T5973:21 (Day 57).
- ⁵⁰⁴ Transcript of Dr Michael Casey, T6105:19-32 (Day 58).
- ⁵⁰⁵ Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [152], [173].
- ⁵⁰⁶ Transcript of Cardinal George Pell, T6348:21-43 (Day 60).
- ⁵⁰⁷ Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [155].
- ⁵⁰⁸ Transcript of Cardinal George Pell, T6499:20-T6500:34; T6511:34-35; T6540:38-41 (Day 62).
- ⁵⁰⁹ Transcript of Cardinal George Pell, T6558:6-25; T6571:17-21 (Day 62).
- ⁵¹⁰ Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [43].
- ⁵¹¹ Transcript of Cardinal George Pell, T6362:30-44 (Day 60).
- ⁵¹² Transcript of Cardinal George Pell, T6354:21-33 (Day 60).
- ⁵¹³ Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [44].
- ⁵¹⁴ Transcript of Mr Paul McCann, T5962:9-25 (Day 57); Transcript of Mr John Dalzell, T6001:47-T6002:14; T6004:30-39 (Day 58).
- ⁵¹⁵ Transcript of Mr John Dalzell, T6001:47-T6002:14; T6004:30-39 (Day 58).
- ⁵¹⁶ Transcript of Mr Paul McCann, T5962:1-24 (Day 57).
- ⁵¹⁷ Transcript of Mr Paul McCann, T5984:22-30 (Day 57). See also Exhibit 8-10, Statement of Mr Paul McCann, STAT.0212.001.0001_R [17], [110]; Transcript of Mr John Dalzell, T6002:23-25; T6004:11-28 (Day 58).
- ⁵¹⁸ Transcript of Cardinal George Pell, T6493:14-18 (Day 62).
- ⁵¹⁹ Transcript of Cardinal George Pell, T6493:14-23 (Day 62).
- ⁵²⁰ Transcript of Cardinal George Pell, T6493:14-32 (Day 62).
- ⁵²¹ Truth Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Case Study 8: Response of the Catholic Church to the complaint made by John Ellis under Towards Healing*, 13 August 2014, [542].
- ⁵²² Transcript of Cardinal George Pell, T6512:10-16; T6513:31-34 (Day 62).
- ⁵²³ Transcript of Cardinal George Pell, T6515:38-39 (Day 62).
- ⁵²⁴ Transcript of Cardinal George Pell, T6497:37-41 (Day 62).
- ⁵²⁵ Transcript of Cardinal George Pell, T6514:26-29 (Day 62).
- ⁵²⁶ Transcript of Cardinal George Pell, T6664:6-12 (Day 63B).
- ⁵²⁷ Transcript of Mr Paul McCann, T5958:1-26 (Day 57); Transcript of Mr John Dalzell, T6006:34-43 (Day 58).
- ⁵²⁸ Transcript of Mr John Dalzell, T6006:34-43 (Day 58).
- ⁵²⁹ Exhibit 8-2, Tab 241, DUG.080.068.0198; Exhibit 8-2, Tab 241A, DUG.080.068.0198.

- 530 Exhibit 8-2, Tab 245, DUG.080.010.0131 at .0132.
- 531 Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001_R [259].
- 532 Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001_R [267].
- 533 Exhibit 8-2, Tab 247, DUG.080.040.0205.
- 534 Exhibit 8-2, Tab 247, DUG.080.040.0205.
- 535 Exhibit 8-2, Tab 247, DUG.080.040.0205.
- 536 Transcript of Mr Paul McCann, T5992:39-T5993:4; T5946:1-30 (Day 57); Exhibit 8-10, Statement of Mr Paul McCann, STAT.0212.001.0001_R [61-62]; Transcript of Mr John Dalzell, T6021:6-25; T6022:18-T6023:17; T6025:1-20; T6024:35-42 (Day 58).
- 537 Transcript of Mr John Dalzell, T6022:18-24 (Day 58).
- 538 Transcript of Dr Michael Casey, T6114:12-39 (Day 58).
- 539 Transcript of Dr Michael Casey, T6114:12-T6115:3 (Day 58).
- 540 Transcript of Dr Michael Casey, T6115:5-11 (Day 58).
- 541 Transcript of Mr Paul McCann, T5958:1-10 (Day 57).
- 542 Transcript of Mr Paul McCann, T5958:21-26 (Day 57).
- 543 Transcript of Mr Paul McCann, T5958:21-26 (Day 57); Transcript of Mr John Dalzell, T6006:34-43 (Day 58).
- 544 Exhibit 8-2, Tab 333, DUG.080.037.0140 at .0141 [4].
- 545 Transcript of Cardinal George Pell, T6696:36-45; T6697:27-29 (Day 63B); Transcript of Dr Michael Casey, T6128:18-25; T6129:42-45; T6131:10-22; T6133:21-31; T6194:10-43; T6195:8-14 (Day 59).
- 546 Exhibit 8-2, Tab 259, CTJH.402.01001.0502.
- 547 Exhibit 8-2, Tab 260, CTJH.402.01001.0504.
- 548 Transcript of Mr John Dalzell, T6007:23-25 (Day 58).
- 549 Transcript of Mr Raymond Brazil, T5733:1-T5734:4 (Day 55).
- 550 Transcript of Mr John Dalzell, T6008:3-T6009:7 (Day 58).
- 551 Transcript of Monsignor Brian Rayner, T5856:45-T5857:40 (Day 56).
- 552 Transcript of Mr Michael Salmon, T5639:33-T5643:2 (Day 54).
- 553 Exhibit 8-7, Statement of Mr Michael Salmon, STAT.0174.001.0001 [106-107].
- 554 Transcript of Mr Michael Salmon, T5682:47-T5683:8 (Day 55).
- 555 Exhibit 8-7, Statement of Mr Michael Salmon, STAT.0174.001.0001 [110]; Transcript of Mr Michael Salmon, T5643:25-T5644:7 (Day 54).
- 556 Transcript of Dr Michael Casey, T6129:36-45; T6130:35-43; T6131:11-22 (Day 59).
- 557 Transcript of Dr Michael Casey, T6130:10-20 (Day 59).
- 558 Transcript of Dr Michael Casey, T6131:2-42; T6133:10-19 (Day 59).
- 559 Transcript of Dr Michael Casey, T6129:14-28; T6130:10-25 (Day 59).
- 560 Transcript of Dr Michael Casey, T6129:30-40 (Day 59).
- 561 Transcript of Dr Michael Casey, T6129:14-28 (Day 59); Transcript of Mr Paul McCann, T5958:1-26 (Day 57); Transcript of Mr John Dalzell, T6006:34-43 (Day 58).
- 562 Transcript of Cardinal George Pell, T6528:32-45; T6529:8-21; T6529:38-45 (Day 62).
- 563 Transcript of Cardinal George Pell, T6528:32-45; T6529:8-21; T6529:38-45 (Day 62).
- 564 Transcript of Cardinal George Pell, T6699:12-29 (Day 63B).
- 565 Transcript of Cardinal George Pell, T6697:31-T6698:16 (Day 63B).
- 566 Transcript of Cardinal George Pell, T6527:29-43 (Day 62). See also Transcript of Cardinal George Pell, T6529:35-36 (Day 62).
- 567 Transcript of Cardinal George Pell, T6526:26-38; T6530:8-17 (Day 62). See also Transcript of Cardinal George Pell, T6599:1-45 (Day 62).
- 568 Transcript of Cardinal George Pell, T6600:18-42 (Day 62).

- ⁵⁶⁹ Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [127].
- ⁵⁷⁰ Transcript of Cardinal George Pell, T6523:20-30 (Day 62).
- ⁵⁷¹ Transcript of Cardinal George Pell, T6521:42-46; T6523:20-30; T6524:14-22; T6531:8-13 (Day 62).
- ⁵⁷² Exhibit 8-1, Tab 102, CTJH.400.01001.0283; Exhibit 8-1, Tab 104, CTJH.400.06001.0001.
- ⁵⁷³ Transcript of Mr Michael Salmon, T5643:4-12 (Day 54).
- ⁵⁷⁴ Exhibit 8-1, Tab 104, CTJH.400.06001.0001 at .0004.
- ⁵⁷⁵ Transcript of Mr Raymond Brazil, T5723:27-38; T5724:39-T5725:17; T5732:33-46 (Day 55); Transcript of Dr Michael Casey, T6130:45-T6131:9 (Day 59).
- ⁵⁷⁶ Transcript of Cardinal George Pell, T6521:5-12; T6522:16-43; T6526:40-43; T6542:17-27 (Day 62); T6696:12-23; T6698:26-42 (Day 63B).
- ⁵⁷⁷ Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [115].
- ⁵⁷⁸ Transcript of Cardinal George Pell, T6496:31-38 (Day 62).
- ⁵⁷⁹ Transcript of Cardinal George Pell, T6520:1-8 (Day 62). See also Transcript of Cardinal George Pell, T6528:14-19 (Day 62).
- ⁵⁸⁰ Transcript of Cardinal George Pell, T6521:27-34; T6522:1-9; T6527:3-6 (Day 62).
- ⁵⁸¹ Transcript of Cardinal George Pell, T6567:25-30 (Day 62).
- ⁵⁸² Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [115].
- ⁵⁸³ Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001_R [265-266].
- ⁵⁸⁴ Exhibit 8-10, Statement of Mr Paul McCann, STAT.0212.001.0001_R [102].
- ⁵⁸⁵ Exhibit 8-10, Statement of Mr Paul McCann, STAT.0212.001.0001_R [102].
- ⁵⁸⁶ Exhibit 8-10, Statement of Mr Paul McCann, STAT.0212.001.0001_R [102].
- ⁵⁸⁷ Transcript of Mr John Dalzell, T6031:3-31 (Day 58).
- ⁵⁸⁸ Exhibit 8-10, Statement of Mr Paul McCann, STAT.0212.001.0001_R [103].
- ⁵⁸⁹ Transcript of Mr Paul McCann, T5957:31-39, T5959:9-13 (Day 57).
- ⁵⁹⁰ Transcript of Mr Paul McCann, T5958:12-19 (Day 57).
- ⁵⁹¹ Transcript of Mr Paul McCann, T5959:15-29 (Day 57).
- ⁵⁹² Transcript of Mr Paul McCann, T5959:15-40 (Day 57).
- ⁵⁹³ Transcript of Cardinal George Pell, T6666:38-42 (Day 63B).
- ⁵⁹⁴ Transcript of Cardinal George Pell, T6523:32-38, T6527:3-8 (Day 62).
- ⁵⁹⁵ Transcript of Cardinal George Pell, T6523:32-38, T6527:3-8 (Day 62).
- ⁵⁹⁶ Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [155(f)].
- ⁵⁹⁷ Truth Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Case Study 8: Response of the Catholic Church to the complaint made by John Ellis under Towards Healing*, 13 August 2014, [455].
- ⁵⁹⁸ Exhibit 8-22, DUG.051.038.0010.
- ⁵⁹⁹ Exhibit 8-22, DUG.051.038.0010 at .0012.
- ⁶⁰⁰ Transcript of Cardinal George Pell, T6516:9-T6217:14 (Day 62). See Exhibit 8-22, DUG.051.038.0010.
- ⁶⁰¹ Exhibit 8-2, Tab 217, DUG.080.068.0390.
- ⁶⁰² Exhibit 8-2, Tab 295, DUG.080.033.0381; Exhibit 8-2, Tab 296, DUG.080.033.0382.
- ⁶⁰³ Transcript of Mr Paul McCann, T5949:42-T5950:4 (Day 57).
- ⁶⁰⁴ Transcript of Dr Michael Casey, T6132:10-18 (Day 59).
- ⁶⁰⁵ Exhibit 8-2, Tab 259, CTJH.402.01001.0502.
- ⁶⁰⁶ Transcript of Dr Michael Casey, T6137:10-24 (Day 59); Exhibit 8-2, Tab 278, CTJH.400.04002.0392; Exhibit 8-2, Tab 279, CTJH.400.04002.0395.

- 607 Transcript of Mr Daniel Casey, T6453:12-13 (Day 61); Transcript of Dr Michael Casey, T6146:8-14 (Day 59).
- 608 Transcript of Dr Michael Casey, T6146:16-25 (Day 59).
- 609 Transcript of Cardinal George Pell, T6558:27-34 (Day 62).
- 610 Exhibit 8-1, Tab 146, CTJH.402.01001.0506.
- 611 Exhibit 8-1, Tab 146A, CTJH.402.01001.0507.
- 612 Transcript of Dr Michael Casey, T6176:20-39 (Day 59).
- 613 Transcript of Dr Michael Casey, T6174:28-T6176:45 (Day 59).
- 614 Transcript of Dr Michael Casey, T6177:8-10 (Day 59).
- 615 Transcript of Dr Michael Casey, T6177:8-35 (Day 59).
- 616 Transcript of Cardinal George Pell, T6555:16-27 (Day 62).
- 617 Exhibit 8-2, Tab 267, CTJH.400.04001.0012 at .0012.
- 618 Exhibit 8-2, Tab 267, CTJH.400.04001.0012 at .0012.
- 619 Exhibit 8-2, Tab 267, CTJH.400.04001.0012 at .0013.
- 620 Exhibit 8-2, Tab 267, CTJH.400.04001.0012 at .0013.
- 621 Exhibit 8-2, Tab 267, CTJH.400.04001.0012 at .0013.
- 622 Exhibit 8-2, Tab 266, DUG.080.039.0550_R.
- 623 Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [129]; Transcript of Cardinal George Pell, T6530:25-32 (Day 62).
- 624 Exhibit 8-2, Tab 283, DUG.080.039.0423_R.
- 625 Exhibit 8-2, Tab 271, DUG.080.039.0541_R.
- 626 Exhibit 8-2, Tab 271, DUG.080.039.0541_R; Exhibit 8-2, Tab 274, DUG.080.039.0536_R; Exhibit 8-2, Tab 276, CTJH.400.04002.0399_R; Exhibit 802, Tab 277, CTJH.400.04002.0398_R.
- 627 Exhibit 8-2, Tab 275, DUG.080.039.0523_R.
- 628 Exhibit 8-2, Tab 284, CRT.0001.001.0501_R.
- 629 Transcript of Cardinal George Pell, T6530:39-T6531:29 (Day 62).
- 630 Transcript of Cardinal George Pell, T6531:37-46 (Day 62). See also Transcript of Cardinal George Pell, T6532:8-12 (Day 62).
- 631 Transcript of Cardinal George Pell, T6532:26-33 (Day 62).
- 632 Transcript of Dr Michael Casey, T6139:27-30 (Day 59); Transcript of Cardinal George Pell, T6531:44-T6532:2 (Day 62). See also Transcript of Dr Michael Casey, T6193:38-42 (Day 59).
- 633 Exhibit 8-2, Tab 271, DUG.080.039.0541_R.
- 634 Exhibit 8-2, Tab 282, DUG.080.039.0425_R.
- 635 Exhibit 8-2, Tab 282, DUG.080.039.0425_R.
- 636 Exhibit 8-2, Tab 282, DUG.080.039.0425_R.
- 637 Transcript of Dr Michael Casey, T6141:8-14 (Day 59). See also Transcript of Mr John Dalzell, T6010:15-34 (Day 58).
- 638 Transcript of Dr Michael Casey, T6141:8-17 (Day 59).
- 639 Transcript of Cardinal George Pell, T6532:35-46 (Day 62).
- 640 Transcript of Cardinal George Pell, T6533:1-T6535:3 (Day 62). See also Transcript of Cardinal George Pell, T6699:31-T6700:21 (Day 63B); T6534:26-34 (Day 62).
- 641 Transcript of Dr Michael Casey, T6142:22-42 (Day 59).
- 642 Transcript of Dr Michael Casey, T6143:5-11 (Day 59).
- 643 Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [155]; Transcript of Cardinal George Pell, T6535:14-33 (Day 62).
- 644 Exhibit 8-2, Tab 300, DUG.083.002.0030.
- 645 Exhibit 8-2, Tab 300, DUG.083.002.0030.
- 646 Exhibit 8-2, Tab 300, DUG.083.002.0030 at .0032.

- ⁶⁴⁷ Exhibit 8-2, Tab 300, DUG.083.002.0030 at .0032.
- ⁶⁴⁸ Exhibit 8-2, Tab 300, DUG.083.002.0030 at .0031.
- ⁶⁴⁹ Transcript of Mr Daniel Casey, T6444:1-6 (Day 61).
- ⁶⁵⁰ Transcript of Mr Daniel Casey, T6436:32-T6437:5 (Day 61). See also Transcript of Mr Daniel Casey, T6440:27-34 (Day 61).
- ⁶⁵¹ Transcript of Cardinal George Pell, T6536:40-T6537:12 (Day 62).
- ⁶⁵² Exhibit 8-2, Tab 301, DUG.080.061.0010 at .0067.
- ⁶⁵³ Exhibit 8-2, Tab 301, DUG.080.061.0010 at .0055 [73].
- ⁶⁵⁴ Exhibit 8-2, Tab 301, DUG.080.061.0010 at .0058 to .0059 [80].
- ⁶⁵⁵ Exhibit 8-2, Tab 301, DUG.080.061.0010 at .0058 to .0059 [80].
- ⁶⁵⁶ Exhibit 8-2, Tab 301, DUG.080.061.0010 at .0061 to .0062 [90].
- ⁶⁵⁷ Exhibit 8-2, Tab 301, DUG.080.061.0010 at .0061 [89].
- ⁶⁵⁸ Exhibit 8-2, Tab 301, DUG.080.061.0010 at .0067 [95].
- ⁶⁵⁹ Exhibit 8-2, Tab 301, DUG.080.061.0010 at .0063 to .0066 [90].
- ⁶⁶⁰ Exhibit 8-2, Tab 301, DUG.080.061.0010 at .0026 [29].
- ⁶⁶¹ Exhibit 8-2, Tab 303, CTJH.400.04002.2220; Transcript of Dr Michael Casey, T6193:7-25 (Day 59).
- ⁶⁶² Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [135]; Transcript of Cardinal George Pell, T6538:37-44 (Day 62).
- ⁶⁶³ Transcript of Cardinal George Pell, T6539:3-17 (Day 62).
- ⁶⁶⁴ Exhibit 8-2, Tab 305, DUG.080.034.0399.
- ⁶⁶⁵ Exhibit 8-2, Tab 305, DUG.080.034.0399.
- ⁶⁶⁶ Exhibit 8-2, Tab 314, DUG.080.034.0269.
- ⁶⁶⁷ Exhibit 8-2, Tab 315, DUG.080.034.0269.
- ⁶⁶⁸ Exhibit 8-2, Tab 315, DUG.080.034.0253.
- ⁶⁶⁹ Transcript of Cardinal George Pell, T6539:19-T6540:18 (Day 62).
- ⁶⁷⁰ Transcript of Cardinal George Pell, T6530:13-18 (Day 62).
- ⁶⁷¹ Transcript of Cardinal George Pell, T6556:20-34 (Day 62).
- ⁶⁷² NB:Summary was not attached to document produced to the Royal Commission.
- ⁶⁷³ Exhibit 8-2, Tab 314, DUG.080.034.0269.
- ⁶⁷⁴ Transcript of Cardinal George Pell, T6540:29-36 (Day 62). See also Transcript of Dr Michael Casey, T6153:44-T6154:6 (Day 59); and Exhibit 8-2, Tab 310, CTJH.400.04002.2461; Exhibit 8-2, Tab 315, DUG.080.034.0253.
- ⁶⁷⁵ Exhibit 8-2, Tab 302, DUG.080.034.0410; Exhibit 8-2, Tab 304, DUG.080.034.0403; Transcript of Dr Michael Casey, T6154:8-21 (Day 59); Transcript of Cardinal George Pell, T6551:33-40 (Day 62).
- ⁶⁷⁶ Exhibit 8-2, Tab 329, DUG.080.035.0405.
- ⁶⁷⁷ Exhibit 8-2, Tab 319, DUG.080.034.0238 at .0239.
- ⁶⁷⁸ Exhibit 8-2, Tab 323, CTJH.400.04002.3388.
- ⁶⁷⁹ Exhibit 8-2, Tab 323, CTJH.400.04002.3388.
- ⁶⁸⁰ Transcript of Cardinal George Pell, T6542:17-23 (Day 62).
- ⁶⁸¹ Transcript of Dr Michael Casey, T6151:29-38 (Day 59).
- ⁶⁸² Transcript of Mr Paul McCann, T5993:30-36 (Day 57); T5943:40-T5944:1 (Day 57).
- ⁶⁸³ Transcript of Mr John Dalzell, T6028:29-43 (Day 58).
- ⁶⁸⁴ Transcript of Cardinal George Pell, T6530:34-37; T6531:31-42; T6532:8-12 (Day 62); Transcript of Dr Michael Casey, T6150:25-42; T6151:40-44; T6152:21-25; T6139:20-33 (Day 59).

- 685 Exhibit 8-2, Tab 323, CTJH.400.04002.3388.
- 686 Exhibit 8-2, Tab 333, DUG.080.037.0140 at .0204.
- 687 Exhibit 8-2, Tab 333, DUG.080.037.0140 at .0163 [71], .0173 [93].
- 688 Exhibit 8-2, Tab 333, DUG.080.037.0140 at .0200 [181].
- 689 Exhibit 8-2, Tab 333, DUG.080.037.0140 at .0177-178 [77]-[78].
- 690 Exhibit 8-2, Tab 333, DUG.080.037.0140 at .0177-178 [111]-[112].
- 691 Exhibit 8-2, Tab 333, DUG.080.037.0140 at .0187 [141].
- 692 Exhibit 8-2, Tab 333, DUG.080.037.0140 at .0142 [9].
- 693 Exhibit 8-2, Tab 340, DUG.080.056.0020.
- 694 Transcript of Cardinal George Pell, T6553:32-37 (Day 62).
- 695 Exhibit 8-2, Tab 340, DUG.080.056.0020; Exhibit 8-2, Tab 339, CTJH.400.04003.3992; Exhibit 8-13, Statement of Monsignor John Usher, STAT.0168.001.0001_R [87], [89].
- 696 Exhibit 8-2, Tab 340, DUG.080.056.0020.
- 697 Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001_R [282].
- 698 Exhibit 8-2, Tab 349, DUG.080.057.0251.
- 699 Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [139].
- 700 Exhibit 8-2, Tab 350, CTJH.400.04002.2578.
- 701 Transcript of Mr Daniel Casey, T6454:8-T6457:39 (Day 61).
- 702 Transcript of Mr Daniel Casey, T6456:33-T6457:11 (Day 61).
- 703 Exhibit 8-4, Statement of Mr John Ellis, STAT.0179.001.0001_R [284].
- 704 Exhibit 8-2, Tab 351, CTJH.400.04002.0690_E.
- 705 Exhibit 8-2, Tab 351, CTJH.400.04002.0690 at .0694.
- 706 Exhibit 8-2, Tab 351, CTJH.400.04002.0690 at .0691.
- 707 Transcript of Mr Paul McCann, T5964:45-T5966:47, T5994:21-T5995:26 (Day 57); Transcript of Dr Michael Casey, T6168:4-16 (Day 59); Transcript of Cardinal George Pell, T6543:16-46 (Day 62).
- 708 Transcript of Mr Paul McCann, T5967:2-4 (Day 57).
- 709 Transcript of Dr Michael Casey, T6168:18-T6169:2 (Day 59).
- 710 Transcript of Cardinal George Pell, T6543:4-14; T6549:1- 5 (Day 62).
- 711 Exhibit 8-2, Tab 355, CTJH.400.04002.0689.
- 712 Exhibit 8-2, Tab 353, CTJH.400.04002.0722.
- 713 Transcript of Mr John Dalzell, T6017:29-32 (Day 58).
- 714 Transcript of Mr Daniel Casey, T6459:27-40 (Day 61).
- 715 Exhibit 8-2, Tab 357, CTJH.400.04007.0684 at .0685.
- 716 Exhibit 8-2, Tab 357, CTJH.400.04007.0684 at .0685.
- 717 Exhibit 8-2, Tab 358, DUG.080.057.0159; Exhibit 8-18, Exhibit 8-18, Statement of Mr Daniel Casey, STAT.0197.001.0001 [49].
- 718 Exhibit 8-2, Tab 358, DUG.080.057.0159.
- 719 Exhibit 8-2, Tab 359, CTJH.400.04001.0348.
- 720 Exhibit 8-2, Tab 361, DUG.080.061.0756; Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [143]; Exhibit 8-12, Statement of Dr Michael Casey, STAT.0166.001.0001_R [155].
- 721 Transcript of Monsignor John Usher, T6231:22-31 (Day 59).
- 722 Exhibit 8-2, Tab 363, DUG.080.061.0756; Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [144]; Exhibit 8-13, Statement of Monsignor John Usher, STAT.0168.001.0001_R [106].
- 723 Exhibit 8-2, Tab 364, DUG.080.059.0139.
- 724 Exhibit 8-2, Tab 365, CCI.0030.00006.0425.

- ⁷²⁵ Exhibit 8-2, Tab 148, CTJH.400.01001.0702_R.
- ⁷²⁶ Exhibit 8-2, Tab 372, CTJH.400.01001.0701.
- ⁷²⁷ Exhibit 8-2, Tab 369, CCI.0030.00006.0391.
- ⁷²⁸ Exhibit 8-2, Tab 370, DUG.080.059.0091.
- ⁷²⁹ Exhibit 8-2, Tab 373, DUG.080.063.0152; Exhibit 8-2, Tab 374, DUG.080.063.0149; Exhibit 8-13, Statement of Monsignor John Usher, STAT.0168.001.0001_R [110].
- ⁷³⁰ Exhibit 8-2, Tab 373, DUG.080.063.0152.
- ⁷³¹ Exhibit 8-2, Tab 380, DUG.080.063.0137.
- ⁷³² Transcript of Cardinal George Pell, T6556:36-T6557:23 (Day 62).
- ⁷³³ Transcript of Monsignor John Usher, T6235:31-42 (Day 59).
- ⁷³⁴ Exhibit 8-2, Tab 378, DUG.080.063.0133. See also Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [147].
- ⁷³⁵ Exhibit 8-2, Tab 381, DUG.080.059.0050; Exhibit 8-2, Tab 382, DUG.080.059.0050.
- ⁷³⁶ Exhibit 8-2, Tab 383, DUG.080.059.0048_R.
- ⁷³⁷ Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [148].
- ⁷³⁸ Exhibit 8-2, Tab 150, CJTH.400.01001.0705_R at .0707.
- ⁷³⁹ Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [150].
- ⁷⁴⁰ Exhibit 8-2, Tab 392, DUG.080.063.0055; Exhibit 8-2, Tab 394, CTJH.400.04002.1911.
- ⁷⁴¹ Exhibit 8-2, Tab 393, DUG.080.063.051.
- ⁷⁴² Exhibit 8-2, Tab 396, DUG.080.059.0002.
- ⁷⁴³ Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R [151].
- ⁷⁴⁴ Exhibit 8-1, Tab 186, CTJH.402.01001.1472_R at .1481_R.
- ⁷⁴⁵ Exhibit 8-1, Tab 186, CTJH.402.01001.1472_R at .1481_R.
- ⁷⁴⁶ Exhibit 8-1, Tab 159, CTJH.400.02002.0026_R.
- ⁷⁴⁷ Exhibit 8-1, Tab 159, CTJH.400.02002.0026_R; Exhibit 8-1, Tab 161, CTJH.400.01001.0666.
- ⁷⁴⁸ Exhibit 8-1, Tab 159, CTJH.400.02002.0026_R.
- ⁷⁴⁹ Exhibit 8-1, Tab 160, CTJH.400.01001.0655_R.
- ⁷⁵⁰ Exhibit 8-1, Tab 164A, CTJH.400.04001.0344; Exhibit 8-13, Statement of Monsignor John Usher, STAT.0168.001.0001_R [146].
- ⁷⁵¹ Transcript of Monsignor John Usher, T6226:22-24 (Day 59).
- ⁷⁵² Transcript of Monsignor John Usher, T6229:4-27; T6226:31-36 (Day 59).
- ⁷⁵³ Transcript of Monsignor John Usher, T6229:4-16 (Day 59).
- ⁷⁵⁴ Transcript of Monsignor John Usher, T6227:28-35 (Day 59).
- ⁷⁵⁵ Transcript of Monsignor John Usher, T6227:43-T6228:21 (Day 59).
- ⁷⁵⁶ Exhibit 8-1, Tab 166, CTJH.400.01001.4336_R; Exhibit 8-1, Tab 167, CTJH.400.01001.4971_R; Exhibit 8-1, Tab 168, CTJH.400.01001.0601_R; Exhibit 8-1, Tab 168A, CTJH.400.01001.0608_R; Exhibit 8-1, Tab 170, CTJH.400.01001.0919.
- ⁷⁵⁷ Exhibit 8-1, Tab 174, CTJH.400.01001.0002_R at .0003_R.
- ⁷⁵⁸ Exhibit 8-1, Tab 175, CTJH.400.01001.4920_R.
- ⁷⁵⁹ Exhibit 8-1, Tab 174, CTJH.400.01001.0002_R.
- ⁷⁶⁰ See *Legal Services Directions 2005 (Cth), Appendix B: The Commonwealth's obligation to act as a model litigant*.
- ⁷⁶¹ Note: The obligation to act as a model litigant has never been adopted by the Archdiocese of Sydney.
- ⁷⁶² Transcript of Cardinal George Pell, T6494:43-T6495:3 (Day 62).
- ⁷⁶³ Transcript of Cardinal George Pell, T6495:5-9 (Day 62).
- ⁷⁶⁴ Transcript of Cardinal George Pell, T6494:11-T6495:44 (Day 62).

- 765 Transcript of Dr Michael Casey, T6092:32-47; T6094:8-21 (Day 58).
- 766 Transcript of Dr Michael Casey, T6094:36-T6095:3 (Day 58).
- 767 Transcript of Cardinal George Pell, T6494:21-25 (Day 62).
- 768 Transcript of Cardinal George Pell, T6494:27-41 (Day 62).
- 769 Transcript of Cardinal George Pell, T6564:19-25 (Day 62).
- 770 Truth Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Case Study 8:Response of the Catholic Church to the complaint made by John Ellis under Towards Healing*, 13 August 2014, [547].
- 771 Transcript of Mr Daniel Casey, T6398:5-28 (Day 61).
- 772 Exhibit 8-19, EXH.008.019.0003 at .0004.
- 773 Transcript of Mr Daniel Casey, T6397:47; T6398:41-T6399:7 (Day 61).
- 774 Exhibit 8-19, EXH.008.019.0003 at .0003.
- 775 Exhibit 8-19, EXH.008.019.0003 at .0003-.0004; Transcript of Mr Daniel Casey, T6414:33-38 (Day 61).
- 776 Exhibit 8-19, EXH.008.019.0003 at .0003-.0004.
- 777 Exhibit 8-19, EXH.008.019.0003 at .0003-.0004; Transcript of Mr Daniel Casey, T6303:20-T6345:5 (Day 61).
- 778 Transcript of Mr Daniel Casey, T6304:18-T6305:7 (Day 61).
- 779 Exhibit 8-19, EXH.008.019.0003 at .0004.
- 780 Exhibit 8-19, EXH.008.019.0003 at .0004.
- 781 Exhibit 8-19, EXH.008.019.0003 at .0004.
- 782 Exhibit 8-19, EXH.008.019.0003 at .0004.
- 783 Exhibit 8-19, EXH.008.019.0003 at .0004.
- 784 Truth Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Case Study 8:Response of the Catholic Church to the complaint made by John Ellis under Towards Healing*, 13 August 2014, pages 127 to 129.
- 785 Transcript of Mr Daniel Casey, T6452:25-27 (Day 61).
- 786 Exhibit 8-19, EXH.008.019.0003; Transcript of Mr Daniel Casey T6399:9-T6403:18 (Day 61). Note these figures have been rounded.
- 787 Transcript of Mr Daniel Casey, T6400:32-T6401:7 (Day 61).
- 788 Exhibit 8-20, EXH.008.020.0001.
- 789 Exhibit 8-20, EXH.008.020.0001.
- 790 Transcript of Mr Daniel Casey, T6414:17-19 (Day 61).
- 791 Transcript of Mr Daniel Casey, T6414:11-13; T6414:20-21 (Day 61).
- 792 Transcript of Mr Daniel Casey, T6414:23-26 (Day 61).
- 793 See *Trustees of the Roman Catholic Church for the Archdiocese of Sydney v Ellis* (2007) 70 NSWLR 565, 574 [35] (Mason P).
- 794 Transcript of Mr Daniel Casey, T6439:5-6; T6483:26-28 (Day 61).
- 795 Transcript of Mr Daniel Casey, T6439:6-7 (Day 61).
- 796 Transcript of Mr Daniel Casey, T6483:30-31 (Day 61).
- 797 Exhibit 8-21, Tab 2, EXH.008.021.0007.
- 798 Exhibit 8-21, Tab 3, EXH.008.021.0032.
- 799 Exhibit 8-21, Tab 4, EXH.008.021.0046.
- 800 Exhibit 8-21, Tab 5, EXH.008.021.0070.
- 801 Transcript of Mr Daniel Casey, T6439:8-16 (Day 61).
- 802 Exhibit 8-24, EXH.008.024.0001; Exhibit 8-21, Tab 1, EXH.008.021.0002.
- 803 Transcript of Mr Daniel Casey, T6416:2-11 (Day 61).
- 804 Transcript of Mr Daniel Casey, T6451:28-31 (Day 61).

- ⁸⁰⁵ Transcript of Mr Daniel Casey, T6451:32-39; T6452:6-7 (Day 61).
- ⁸⁰⁶ Exhibit 8-21, Tab 1, EXH.008.021.0002.
- ⁸⁰⁷ Exhibit 8-21, Tab 1, EXH.008.021.0002.
- ⁸⁰⁸ Exhibit 8-21, Tab 2, EXH.008.021.0007 at .0015; Transcript of Mr Daniel Casey, T6415:22-24 (Day 61).
- ⁸⁰⁹ Exhibit 8-21, Tab 2, EXH.008.021.0007 at .0025; Transcript of Mr Daniel Casey, T6423:39-T6424:3 (Day 61).
- ⁸¹⁰ Transcript of Mr Daniel Casey, T6416:2-11 (Day 61).
- ⁸¹¹ Transcript of Mr Daniel Casey, T6485:37-43 (Day 61).
- ⁸¹² Exhibit 8-24, EXH.008.024.0001.
- ⁸¹³ Exhibit 8-24, EXH.008.024.0001 at .0001-.0002; Exhibit 8-21, Tab 1, EXH.008.021.0002.
- ⁸¹⁴ Exhibit 8-24, EXH.008.024.0001 at .0002.
- ⁸¹⁵ Exhibit 8-24, EXH.008.024.0001; Exhibit 8-21, Tab 1, EXH.008.021.0002.
- ⁸¹⁶ Exhibit 8-21, Tab 1, EXH.008.021.0002 at .0002; Exhibit 8-21, Tab 1, EXH.008.021.0002 at .0003.
- ⁸¹⁷ Exhibit 8-24, EXH.008.024.0001.
- ⁸¹⁸ Exhibit 8-21, Tab 1, EXH.008.021.0002 at .0006.
- ⁸¹⁹ Transcript of Mr Daniel Casey, T6426:20-24 (Day 61).
- ⁸²⁰ Transcript of Mr Daniel Casey, T6426:26-29 (Day 61).
- ⁸²¹ Transcript of Mr Daniel Casey, T6484:34-42 (Day 61).
- ⁸²² Transcript of Mr Daniel Casey, T6484:42-44 (Day 61).
- ⁸²³ Exhibit 8-24, EXH.008.024.0001.
- ⁸²⁴ Exhibit 8-24, EXH.008.024.0001 at .0002.
- ⁸²⁵ Exhibit 8-21, Tab 1, EXH.008.021.0002 at .0003.
- ⁸²⁶ Exhibit 8-21, Tab 1, EXH.008.021.0002 at .0004.
- ⁸²⁷ Exhibit 8-21, Tab 1, EXH.008.021.0002 at .0005.
- ⁸²⁸ Exhibit 8-21, Tab 1, EXH.008.021.0002 at .0006.
- ⁸²⁹ Exhibit 8-24, EXH.008.024.0001 at .0003.
- ⁸³⁰ Exhibit 8-24, EXH.008.024.0001 at .0004.
- ⁸³¹ Exhibit 8-24, EXH.008.024.0001 at .0005.
- ⁸³² Exhibit 8-24, EXH.008.024.0001 at .0006.
- ⁸³³ Exhibit 8-24, EXH.008.024.0001 at .0007.
- ⁸³⁴ Exhibit 8-21, Tab 1, EXH.008.021.0002 at .0002.
- ⁸³⁵ Exhibit 8-21, Tab 2, EXH.008.021.0007 at .0009; Transcript of Mr Daniel Casey, T6439:8-10 (Day 61).
- ⁸³⁶ Exhibit 8-21, Tab 2, EXH.008.021.0007 at .0008; Transcript of Mr Daniel Casey, T6423:4-6 (Day 61).
- ⁸³⁷ Exhibit 8-21, Tab 2, EXH.008.021.0007 at .0009, .0024.
- ⁸³⁸ Exhibit 8-21, Tab 2, EXH.008.021.0007 at .0015; Transcript of Mr Daniel Casey, T415:22-24 (Day 61).
- ⁸³⁹ Transcript of Mr Daniel Casey, T6423:21-31; T6481:42-T6482:4 (Day 61).
- ⁸⁴⁰ Exhibit 8-21, Tab 2, EXH.008.021.0007 at .0009, .0026-.0029.
- ⁸⁴¹ Exhibit 8-21, Tab 1, EXH.008.021.0002 at .0002; Exhibit 8-20, Tab 2, EXH.008.021.0007 at .0009.
- ⁸⁴² Exhibit 8-24, EXH.008.024.0001 at .0001.
- ⁸⁴³ Exhibit 8-24, EXH.008.024.0001; Exhibit 8-21, Tab 1, EXH.008.021.0002.
- ⁸⁴⁴ Exhibit 8-21, Tab 1, EXH.008.021.0002; Exhibit 8-21, Tab 4, EXH.008.021.0046 at .0047.

- 845 Exhibit 8-24, EXH.008.024.0001 at .0001.
- 846 Exhibit 8-21, Tab 1, EXH.008.021.0002 at .0030.
- 847 Transcript of Mr Daniel Casey, T6413:33-42 (Day 61).
- 848 Exhibit 8-21, Tab 1, EXH.008.021.0002 at .0010.
- 849 Exhibit 8-20, EXH.008.020.0001; Transcript of Mr Daniel Casey, T6397:1-4; T6404:10-16; T6412:44-46; T6439:29-32 (Day 61).
- 850 Transcript of Cardinal George Pell, T6565:11-15 (Day 62).
- 851 Transcript of Cardinal George Pell, T6565:15-17 (Day 62).
- 852 Exhibit 8-24, EXH.008.024.0001.
- 853 Exhibit 8-24, EXH.008.024.0001 at .0002.
- 854 Exhibit 8-21, Tab 1, EXH.008.021.0002 at .0003.
- 855 Exhibit 8-21, Tab 1, EXH.008.021.0002 at .0004.
- 856 Exhibit 8-21, Tab 1, EXH.008.021.0002 at .0005.
- 857 Exhibit 8-21, Tab 1, EXH.008.021.0002 at .0006.
- 858 Exhibit 8-24, EXH.008.024.0001 at .0003.
- 859 Exhibit 8-24, EXH.008.024.0001 at .0004.
- 860 Exhibit 8-24, EXH.008.024.0001 at .0005.
- 861 Exhibit 8-24, EXH.008.024.0001 at .0006.
- 862 Exhibit 8-24, EXH.008.024.0001 at .0007; Exhibit 8-20, Tab 2, EXH.008.021.0007 at .0009-.0010.
- 863 Exhibit 8-21, Tab 1, EXH.008.021.0002; Exhibit 8-20, Tab 2, EXH.008.021.0007 at .0009-.0010.
- 864 Transcript of Mr Daniel Casey, T6419:21-22 (Day 61).
- 865 Exhibit 8-21, Tab 4, EXH.008.021.0046 at .0061.
- 866 Transcript of Mr Daniel Casey, T6419:22-27; T6482:45-T6483:13 (Day 61).
- 867 Exhibit 8-21, Tab 4, EXH.008.021.0046 at .0048. See also Transcript of Mr Daniel Casey, T6483:3-9 (Day 61).
- 868 Exhibit 8-21, Tab 1, EXH.008.021.0002; Exhibit 8-21, Tab 4, EXH.008.021.0046 at .0048.
- 869 Exhibit 8-21, Tab 4, EXH.008.021.0046 at .0057.
- 870 Transcript of Mr Daniel Casey, T6418:43 (Day 61).
- 871 Transcript of Mr Daniel Casey, T6418:41 (Day 61).
- 872 Exhibit 8-24, EXH.008.024.0001.
- 873 Exhibit 8-24, EXH.008.024.0001; Exhibit 8-21, Tab 1, EXH.008.021.0002.
- 874 Exhibit 8-21, Tab 4, EXH.008.021.0046 at .0048.
- 875 Exhibit 8-21, Tab 4, EXH.008.021.0046 at .0055.
- 876 Exhibit 8-21, Tab 1, EXH.008.021.0002; Exhibit 8-21, Tab 4, EXH.008.021.0046 at .0047.
- 877 Exhibit 8-21, EXH.008.024.0001 at .0001.
- 878 Exhibit 8-24, EXH.008.024.0001.
- 879 Exhibit 8-24, EXH.008.024.0001 at .0002.
- 880 Exhibit 8-21, Tab 1, EXH.008.021.0002 at .0003.
- 881 Exhibit 8-21, Tab 1, EXH.008.021.0002 at .0004.
- 882 Exhibit 8-21, Tab 1, EXH.008.021.0002 at .0005.
- 883 Exhibit 8-21, Tab 1, EXH.008.021.0002 at .0006.
- 884 Exhibit 8-24, EXH.008.024.0001 at .0003.
- 885 Exhibit 8-24, EXH.008.024.0001 at .0004.
- 886 Exhibit 8-24, EXH.008.024.0001 at .0005.
- 887 Exhibit 8-24, EXH.008.024.0001 at .0006.

- ⁸⁸⁸ Exhibit 8-24, EXH.008.024.0001 at .0007; Exhibit 8-21, Tab 4, EXH.008.021.0046 at .0047-.0048.
- ⁸⁸⁹ Exhibit 8-21, Tab 1, EXH.008.021.0002 at .0002; Exhibit 8-21, Tab 4, EXH.008.021.0046 at .0047-.0048.
- ⁸⁹⁰ Transcript of Mr Daniel Casey, T6408:9-21 (Day 61).
- ⁸⁹¹ Exhibit 8-19, EXH.008.019.0003 at .0004.
- ⁸⁹² Transcript of Mr Daniel Casey, T6409:24-30 (Day 61).
- ⁸⁹³ Transcript of Mr Daniel Casey, T6410:1-4 (Day 61).
- ⁸⁹⁴ Transcript of Mr Daniel Casey, T6410:24-27 (Day 61).
- ⁸⁹⁵ Transcript of Mr Daniel Casey, T6411:8-11 (Day 61).
- ⁸⁹⁶ Transcript of Cardinal George Pell, T6356:32 (Day 60); T6670:32-33 (Day 63B); Transcript of Mr Daniel Casey, T6450:11-18 (Day 61); Transcript of Dr Michael Casey, T6135:27-28 (Day 59).
- ⁸⁹⁷ Transcript of Cardinal George Pell, T6356:36-T6357:11 (Day 60).
- ⁸⁹⁸ Transcript of Cardinal George Pell, T6357:13-22 (Day 60).
- ⁸⁹⁹ Transcript of Cardinal George Pell, T6356:24-37 (Day 60).
- ⁹⁰⁰ Transcript of Cardinal George Pell, T6357:39-42 (Day 60).
- ⁹⁰¹ Transcript of Cardinal George Pell, T6358:5-20 (Day 60).
- ⁹⁰² Transcript of Cardinal George Pell, T6360:24-39 (Day 60).
- ⁹⁰³ Transcript of Cardinal George Pell, T6361:18-24 (Day 60); Transcript of Mr Daniel Casey, T6450:37-T6451:7 (Day 61).
- ⁹⁰⁴ Transcript of Cardinal George Pell, T6360:30-33 (Day 60); Transcript of Mr Daniel Casey, T6450:37-T6451:7 (Day 61).
- ⁹⁰⁵ Transcript of Cardinal George Pell, T6361:39-42 (Day 60); Transcript of Mr Daniel Casey, T6450:37-T6451:7 (Day 61).
- ⁹⁰⁶ Transcript of Cardinal George Pell, T6585:28-30 (Day 62).
- ⁹⁰⁷ Transcript of Cardinal George Pell, T6586:17-18 (Day 62).
- ⁹⁰⁸ Transcript of Cardinal George Pell, T6586:47-T6587:3 (Day 62).
- ⁹⁰⁹ Transcript of Cardinal George Pell, T6565:4-9 (Day 62).
- ⁹¹⁰ Transcript of Cardinal George Pell, T6506:1-30 (Day 62); Transcript of Mr Daniel Casey, T6452:47-T6453:3 (Day 61).
- ⁹¹¹ Exhibit 8-14, Statement of Cardinal George Pell, STAT.0169.001.0001_R at [155(d)].
- ⁹¹² Transcript of Cardinal George Pell, T6355:28-34 (Day 60).
- ⁹¹³ Transcript of Cardinal George Pell, T6355:36-37 (Day 60).
- ⁹¹⁴ Transcript of Cardinal George Pell, T6355:39-T6356:3; T6356:20-34 (Day 60).
- ⁹¹⁵ Transcript of Cardinal George Pell, T6359:23-33 (Day 60); T6546:42-43 (Day 62).
- ⁹¹⁶ Transcript of Cardinal George Pell, T6517:37-39 (Day 62).
- ⁹¹⁷ Truth Justice and Healing Council, *Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse in Case Study No.8*, 13 August 2014, [331].
- ⁹¹⁸ Truth Justice and Healing Council, *Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse in Case Study No.8*, 13 August 2014, [332].
- ⁹¹⁹ Truth Justice and Healing Council, *Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse in Case Study No.8*, 13 August 2014, [333].
- ⁹²⁰ Truth Justice and Healing Council, *Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, Issues Paper 5: Civil Litigation*, 15 April 2014 [4, 5, 13].



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