

POLICE INTEGRITY COMMISSION

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TRANSCRIPT OF PROCEEDINGS

Hearing: Operation Protea

Before Commissioner The Hon Bruce James QC

Held at Level 3, St James Centre,

Elizabeth Street, Sydney

On Monday, 13 October 2014 at 10am

WITNESS LIST

John Francis DAVOREN 32

.13/10/2014 (1) 1

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1 THE COMMISSIONER: This is a public hearing pursuant to
2 section 32 and section 33 of the Police Integrity
3 Commission Act 1996 in the Commission's Operation Protea.
4

5 Pursuant to section 12 of the Police Integrity
6 Commission Act 1996, I have appointed Ms Stern of senior
7 counsel to assist the Commission at this hearing.
8

9 I will make some brief introductory remarks. After
10 that, I will call upon Ms Stern to make an opening address.
11 At the conclusion of counsel's opening address, I will take
12 a short adjournment. After that, I will hear any
13 applications which legal practitioners may wish to make
14 seeking authorisation to represent a person at the hearing.
15

16 The general scope and purpose of the public hearing is
17 as follows: to investigate, one, whether there was any
18 police misconduct involved in the participation of any
19 NSW Police Force officer in the Catholic Church
20 Professional Standards Resource Group between 1998 and
21 2005; and, two, whether there was any police misconduct
22 involved in the participation by the NSW Police Force in
23 any agreement, protocol or memorandum of understanding,
24 whether or not formally entered into, between the
25 NSW Police Force and the Catholic Church concerning the
26 handling of complaints of abuse committed by
27 Catholic Church personnel or employees.
28

29 I will continue with my brief introductory remarks.
30 A principal function of the Police Integrity Commission is
31 to detect, investigate and prevent serious police
32 misconduct. In doing so, it is not bound by the rules or
33 practices of evidence and can inform itself on any matter
34 in such manner as it considers appropriate. The Act
35 further requires the Commission to exercise its functions
36 with as little formality and technicality as is possible
37 and, in particular, its hearings are to be conducted with
38 as little emphasis on the adversarial approach as is
39 possible.
40

41 Following this investigation, the Commission will
42 prepare a report to parliament.
43

44 All exhibits admitted into evidence during the public
45 hearing will be sequentially numbered from 1. Any
46 confidential exhibits will be numbered with the letter C as
47 a suffix.

1
2
3 If a public version of a confidential exhibit is to be
4 produced, the confidential exhibit will be numbered with
5 the letters AC as a suffix and the public version will have
6 the same number with the letter B as a suffix. The public
7 version of any confidential exhibit will be produced as
8 soon as possible.
9

10 I now call upon Ms Stern, counsel assisting the
11 Commission, to open. I repeat that at the conclusion of
12 her opening, and after a short adjournment, I will hear any
13 applications by legal practitioners seeking authorisation
14 to appear at the hearing. Yes, Ms Stern.
15

16 MS STERN: Thank you, Commissioner. The context for this
17 public hearing is a number of steps taken within the
18 Catholic Church in New South Wales under the
19 Towards Healing protocol, which I will refer to as
20 "Towards Healing", which was first promulgated
21 in December 1996.
22

23 In around mid 1997, the New South Wales and ACT
24 Professional Standards Office was established jointly by
25 the Conference of New South Wales Bishops and the
26 Conference of New South Wales Leaders of Religious
27 Institutes to manage in New South Wales and the Australian
28 Capital Territory the Catholic Church's Towards Healing
29 protocol. The Professional Standards Resource Group was
30 set up to support the director of the Professional
31 Standards Office in managing and developing the
32 Towards Healing protocol.
33

34 These steps were, in turn, taken in response to the
35 findings of the Wood Royal Commission in 1996.
36

37 More particularly, the focus of these hearings will be
38 on the involvement of officers of the NSW Police Force in
39 the PSRG - which is how I will refer to the Professional
40 Standards Resource Group - in procedures set up in
41 conjunction with the PSRG in relation to the blind
42 reporting of incidents of sexual abuse and other forms of
43 abuse alleged against Catholic Church personnel or
44 employees and on the NSW Police Force responses to such
45 procedures and such reporting, and on the steps taken by
46 the NSW Police Force to ensure that all potentially serious
47 criminal conduct was reported to and investigated by the
48 NSW Police Force.
49

50 .13/10/2014 (1) 3

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1
2
3 Consideration will also be given to whether or not
4 relevant information was appropriately investigated by the
5 NSW Police Force as a result of such reports.
6

7 One such step involved a proposed memorandum of
8 understanding between the NSW Police Force and the
9 Catholic Church in New South Wales as to procedures to be
10 taken by the church and by the NSW Police Force where there
11 was a complaint of abuse against church personnel or
12 employees. Whether or not such an MOU was entered into,
13 whether informally or formally, and whether or not
14 procedures which were part of that proposed MOU were in
15 fact adopted, will be one of the matters that will be
16 considered.
17

18 One facet of both the MOU and procedures adopted by
19 the Catholic Church and the NSW Police Force is a procedure
20 known as blind reporting. This involved some aspects of
21 a complaint of abuse being reported to the NSW Police
22 Force, apparently for intelligence purposes only, but
23 without all relevant information and usually without any
24 information identifying the complainant included in the
25 report.
26

27 The evidence of this hearing will focus upon the
28 conduct of officers of the NSW Police Force in this regard
29 and on the practices adopted by the Catholic Church with
30 the knowledge and to some extent involvement of officers of
31 the NSW Police Force. There will be consideration of what
32 safeguards, if any, were adopted to ensure that all
33 relevant information relating to potentially serious
34 criminal conduct was passed to the NSW Police Force and
35 thereafter investigated.
36

37 Great care would have to have been taken to ensure
38 that complainants realised that a decision to support
39 a police investigation rather than a church investigation
40 was not tantamount to disloyalty to the church and was not
41 interpreted within the church as such, and that
42 complainants were genuinely supported and encouraged by the
43 church to take their complaints to the police in the first
44 instance, and that complainants were made aware that
45 a decision to report to the police would thereafter be
46 fully supported and encouraged by the church.
47

48 The risk otherwise is that there may have been
49 .13/10/2014 (1) 4

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1
2 a perception held by complainants that the church would
3 prefer complainants to keep their complaints within the
4 church process and that that would be a serious
5 disincentive for many to opt to take their complaints
6 instead to the police. A further disincentive may have
7 been that the church process offered the potential for
8 church compensation and counselling that may not have been
9 available through the criminal justice process.

10
11 The Commission will need to consider whether that sort
12 of choice should have been faced by victims and whether or
13 not the police should have been aware that that choice was
14 being faced by victims and have done anything in relation
15 to that to afford a suitable safeguard.

16
17 This issue is particularly stark in relation to blind
18 reporting, given that it appears to be the case that
19 NSW Police Force officers may not themselves have taken any
20 steps to investigate in any particular case whether or not
21 the complainant had made a genuine and informed decision
22 not, themselves, to approach the police, and that the
23 consequences of a blind report was that the information
24 would be generally only logged within the police database
25 as an information report and would not receive active
26 investigation, save to the extent that it might
27 subsequently have been identified as being indicative of
28 the pattern of offending by a particular offender.

29
30 The Commission will be asked to consider firstly
31 whether the decision as to whether to investigate and how
32 to investigate should have been left to the police upon
33 receipt of all potentially relevant information rather than
34 being made within the Catholic Church upon the basis of an
35 apparent choice by the complainant not him or herself to go
36 to the police.

37
38 Secondly, whether an unwillingness by a complainant,
39 him or herself, to go to the police necessarily precluded
40 any effective investigation by the police, given the
41 potential for corroborative accounts to be obtained, other
42 sources of information to be obtained, and the fact that in
43 many cases, the relevant conduct may in fact have been
44 admitted.

45
46 Thirdly, whether the fact that a complainant had, as
47 part of an internal Catholic Church process, indicated an
48 unwillingness, himself or herself, to approach the

1
2 NSW Police Force meant that they had made an appropriately
3 informed decision, and whether that was a proper basis upon
4 which to conclude that the victim did not consent to
5 a police investigation.
6

7 Fourthly, whether there were inherent risks of
8 a complainant's wishes being inaccurately represented to
9 police in a blind report form and whether those risks
10 should have been identified and acted upon by the
11 NSW Police Force officers.
12

13 Fifthly, whether there are important benefits of
14 reporting all information through appropriate channels to
15 the NSW Police Force, whether the various officers of the
16 NSW Police Force facilitated the establishment of
17 procedures whereby this did happen, and overall, whether or
18 not these matters constitute police misconduct in the
19 circumstances.
20

21 An overarching question is whether it was open to
22 officers of the NSW Police Force to determine that certain
23 classes of case would not be investigated actively by the
24 NSW Police Force and that information in relation to those
25 cases would not be provided by the Catholic Church to the
26 NSW Police Force, notwithstanding that such information may
27 well have tended to suggest that serious criminal conduct
28 had taken place and may well have been relevant to the
29 investigation or prosecution of such crimes.
30

31 The simple fact is that the conduct complained of was,
32 in many cases, recognised to be criminal conduct, but
33 notwithstanding this, notification of all relevant
34 information to the police did not take place, and this
35 appears to have been well known to officers of the
36 NSW Police Force.
37

38 Moreover, there appears to have been a usual practice
39 of reporting of claims of sexual abuse, including against
40 children, on an intelligence-only basis, where the
41 complainant had indicated a preference to go through the
42 church process rather than report the matter themselves to
43 the police.
44

45 It appears that within this system the pursuing of
46 a complaint through the Catholic Church internal processes
47 was portrayed and effected as an alternative to the
48 involvement of the NSW Police Force. There are, thus,
49

1
2 references in the material which was before the PSRG to the
3 complainant having to choose between police or church
4 processes. These comments, as reported, do not on their
5 face suggest that the complainant was being strongly
6 encouraged to go to the police if at all possible.
7

8 If a complainant commenced the Catholic Church process
9 then went to the police, the practice appears to have been
10 that the church process would then be suspended.
11 Similarly, if there was an original or an initial
12 notification by the complainant to the police and the
13 police process terminated, the matter might then be taken
14 through the church processes. It thus appears that there
15 may have been two circumstances that could have led to the
16 PSRG considering a complaint that was going through the
17 church process. Either the complaint had not yet been put
18 to the police for investigation, or that investigation had
19 taken place but for some reason been terminated.
20

21 The material before the PSRG in relation to any
22 particular case does not, in many cases, indicate which of
23 these two possible circumstances had arisen in that case.
24 Although from the perspective of a NSW police officer
25 having regard to law enforcement priorities, there may have
26 been considerable significance to the distinction.
27

28 Whilst in a small proportion of cases, the PSRG have
29 advised that a complaint should be taken to the police, it
30 appears that only rarely did the PSRG itself make a report
31 to the police, and the vast majority of complainants do not
32 appear to have been advised, through the PSRG, to take
33 their complaint to the police.
34

35 This is so notwithstanding that the majority of cases
36 involved complaints of sexual abuse, many involving minors
37 or adolescents, and a large number of which were found
38 through the church processes to be substantiated, including
39 by admission.
40

41 Moreover, the documentation in relation to individual
42 cases as put to the PSRG was not generally in a form which
43 would have enabled the complainant or in many cases the
44 alleged offender to have been identified. This may have
45 made it difficult for police officers involved within the
46 PSRG to know whether or not an individual case had been or
47 was being investigated by the police.
48

1
2 However, it would have been apparent to a police
3 officer working within the PSRG that church personnel would
4 have had additional information about those individual
5 cases.

6
7 Whether or not and when requests were made by the
8 police for additional information and the response by the
9 church to such requests will be investigated during the
10 course of this hearing.

11
12 There are a number of versions of the Towards Healing
13 protocol as it developed over time. The 1997 protocol
14 contains no specific reference to referral of complaints to
15 the police. The 2000 protocol, at paragraphs 37.1 and
16 37.2, states that complainants should be told of their
17 right to take the matter to the police and, if desired,
18 given assistance to do so, but that unless reporting is
19 mandatory, if the complainant indicates an intention not to
20 take the matter to the police, this should be recorded in
21 the statement of complaint form.

22
23 Later versions of the protocol included further
24 information and in the 2009 version of the protocol, it
25 stated that the complainant should be told that there is
26 a strong preference for the allegation being referred to
27 the police. The shift in language is obvious. However, if
28 the complainant does not want to take the matter to the
29 police, all information, other than information that could
30 lead to the identification of the complainant, should be
31 provided to the police.

32
33 Under that 2009 protocol, the complainant is, however,
34 to sign a form indicating that he or she has been strongly
35 urged to take the complaint to the police, but doesn't wish
36 to do so.

37
38 The PSRG itself was given a formal charter in 1998.
39 Part of that charter was to provide advice and
40 recommendations to the responsible church authority,
41 specifically in relation to assessment of complaints and
42 outcomes of complaints and preventative strategies. Advice
43 was to be provided in matters concerning professional
44 standards and abuse, both in general and in relation to
45 specific cases. Part of its role was also to select, train
46 and appoint people as contact persons and to appraise their
47 carrying out of that role.

1
2 Minutes record that meetings of the PSRG took place
3 before this charter, including on 9 January 1997.
4 Father Brian Lucas, who had been nominated as a contact
5 officer to liaise with the police, attended that meeting
6 and informed the meeting that he had met with
7 Detective Heslop, Sergeant Cullen, as she then was, and
8 Sergeant Jenny Davidson, and that officers within the Child
9 Protection and Enforcement Agency within the NSW Police
10 Force in New South Wales were "available to give advice and
11 direction" to church officials.

12
13 He informed the meeting that "agreements were being
14 reached about a Memorandum of Understanding between the
15 Catholic Church and the NSW Police.

16
17 The ambit of the ongoing discussions and anticipated
18 agreement, as described by the Father Lucas at that
19 meeting, was "about when the church and the police act
20 collaboratively and when the police act without the church
21 involvement, and when the church acts, (eg when the victim
22 is unwilling to give evidence to the police), separately
23 from the police".
24

25 Inspector Elizabeth Cullen - who I will refer to as
26 "Cullen" - had a background in child protection policing,
27 most particularly as a member of the Child Protection
28 Enforcement Agency from around January 1996, holding the
29 rank of senior sergeant within the CPEA, as I will refer to
30 the Child Protection Enforcement Agency, from
31 around October 1996 until April 1999. Cullen's first PSRG
32 meeting was on 23 April 1999 and her last meeting was on
33 20 May 2005. The minutes of the PSRG record that she
34 attended 44 meetings of the PSRG in that period, seven of
35 which she attended as chair.
36

37 Her conduct will be a key focus of the public hearing.
38 In particular, having regard to the information which she
39 was provided with in her role with the PSRG, the
40 information that she would probably have realised was held
41 by the Catholic Church and by the PSO, and by the steps
42 that she did or didn't take to ensure that all information
43 held by the Catholic Church in relation to the serious
44 criminal offence of child sexual abuse or other offences
45 more generally, was appropriately reported to the
46 NSW Police Force and investigated.
47

48 In this context, the Commission may need to consider
49 .13/10/2014 (1) 9

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1
2 the effect of section 316 of the Crimes Act 1900 NSW, which
3 I will refer to as section 316. This provides, so far as
4 relevant, that

5
6 (1) If a person has committed a serious
7 indictable offence and another person who
8 knows or believes that the offence has been
9 committed and that he or she has
10 information which might be of material
11 assistance in securing the apprehension of
12 the offender or the prosecution or
13 conviction of the offender for it fails
14 without reasonable excuse to bring that
15 information to the attention of a member of
16 the Police Force or other appropriate
17 authority, that other person is liable to
18 imprisonment ...

19
20 And a term is then prescribed.

21
22 Subsection (4) of section 316 provided that:

23
24 (4) A prosecution for an offence against
25 subsection (1) is not to be commenced
26 against a person without the approval of
27 the Attorney General if the knowledge or
28 belief that an offence has been committed
29 was formed or the information referred to
30 in the subsection was obtained by the
31 person in the course of practising or
32 following a profession, calling or vocation
33 prescribed by the regulations ...

34
35 And the Crimes Regulation from 1998 prescribed for that
36 purpose a member of the clergy of any church or religious
37 denomination.

38
39 One question to be considered within the context of
40 this hearing is whether or not, to the knowledge of
41 officers of the NSW Police Force, information which may
42 well have been of material assistance in securing the
43 apprehension or conviction of an offender was withheld by
44 the Catholic Church from the NSW Police Force, and whether
45 or not the NSW Police Force in fact encouraged or condoned
46 this state of affairs.

47
48 The Commission will be asked to consider the
49 .13/10/2014 (1) 10
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1
2 appropriateness of this.
3

4 There does, however, appear to have been some
5 awareness within the PSRG of the terms of section 316. By
6 way of example, a document before the PSRG in June 2001 in
7 relation to the skills of contact persons identifies by
8 reference to the heading of "Mandatory reporting", that "if
9 the complaint is about an alleged serious crime (other than
10 alleged offence against children), what are the obligations
11 of the (Contact Person) in terms of the Crimes Act?"
12

13 Key to the operation of the Towards Healing process
14 within the Catholic Church was the completion of
15 a statement of complaint form in respect of individual
16 complainants. It was also the general position that the
17 statement of complaint form would be completed in
18 consultation with a contact person. Although the minutes
19 of the PSRG do note that complaints taken by other persons
20 may be processed, the material provided to the PSRG in any
21 individual case didn't itself draw a distinction as to
22 whether the statement of complaint form had been completed
23 by a contact person or by a third party.
24

25 From an early stage, it was identified within the PSRG
26 that the use of church personnel within each state as
27 contact persons was important, and it appears that the
28 preference was for contact persons to be church personnel
29 from within the particular diocese to enable prompt and
30 authoritative response to complaints. It was thus likely
31 that in many cases the contact person could not be
32 described as being independent of the church within which
33 the incident complained of occurred. Those contact persons
34 were to be trained under the guidance of the New South
35 Wales PSRG.
36

37 I will in due course tender a number of job
38 descriptions of a contact person, as this document
39 developed over time. The initial document dated 1 December
40 1998 contains no reference to the contact person advising
41 or encouraging the complainant to report to the police,
42 although "any further action that may be required by law"
43 was to be explained to the complainant.
44

45 Further versions dated between 2000 and December 2003
46 contain nothing about reporting to the police. These
47 documents appear to have been documents that were
48 considered and tacitly approved by the PSRG during the

1
2 period when Cullen was a member.
3

4 There was, however, also consideration by the PSRG
5 in June 2001 of a paper about contact persons which
6 identified that one of the required skills of a contact
7 person was knowledge of matters which could be taken to
8 state authorities and how to assist a person who chose to
9 take matters to state authorities.

10
11 Annual training of contact persons took place, but it
12 is not clear what that entailed.
13

14 The statement of complaint form was developed in
15 consultation with the PSRG. Thus, at a PSRG meeting on
16 23 July 1999, after Cullen became a member, "the latest
17 revision of the Statement of Complaint form was discussed."
18 That version of the statement of complaint form contains
19 text relating to the choice of a complainant, who may or
20 may not be the victim of the alleged offence, to go to the
21 police, and the following text appears:
22

23 I have been advised that if my complaint
24 includes criminal behaviour, it is
25 appropriate for me to notify the police.

26 Q. Have you notified the police?
27

28 And there was a yes/no, option:
29

30 Q. Do you intend to notify the police?
31

32 And there was again a yes/no option. As is clear, that
33 doesn't manifest a positive decision that the matter should
34 not be the subject of police investigation or any clear
35 request or requirement that the details of the complaint or
36 the complainant be kept confidential.
37

38 Whilst in 2000, text was added indicating that the
39 complainant had been advised that if the complaint involved
40 criminal behaviour, "I retain the right to make a complaint
41 to the police at any time", that doesn't alter the fact
42 that the form does not itself suggest any refusal of police
43 investigation.
44

45 The discussion of that form at the PSRG meeting on
46 23 July 1999, attended by Cullen, recorded amendments in
47 relation to qualification and details of translators, but
48 no further amendments are recorded as having been discussed
49

1
2 or suggested.

3
4 The form was again discussed at the meeting on
5 27 August 1999, which Cullen again attended, and again on
6 24 September 1999 and again on 22 October 1999. This
7 discussion at the PSRG does not appear to have led to any
8 revision in relation to the text on the form.

9
10 A later version of the form dated late 2003 has
11 a different form of words, stating that:

12
13 The Catholic Church has strongly urged me
14 to take my complaint to the police or other
15 civil authority. It has been carefully
16 explained to me that any process the Church
17 establishes cannot compel witnesses,
18 subpoena documents or insist on
19 a cross-examination of witnesses. It
20 cannot impose the same penalties as
21 a criminal court. Aware of these
22 limitations, I still state that I do not
23 wish to take my complaint to the police or
24 other civil authority at this time and
25 I ask that a Church process be established.

26
27 There is also material indicating that if a particular
28 complainant was equivocal about whether to take the
29 complaint to the police, that would not automatically lead
30 to any change in the church processes. By way of example,
31 there is a document before the PSRG in relation to a case
32 213 which indicates that:

33
34 The question of police notification was
35 discussed. It was noted that the
36 Complainant had not notified the Police,
37 and it was undecided as to whether she
38 should. JD -

39
40 which I presume to be a reference to Mr Davoren -

41
42 advised that considering the nature of the
43 alleged incident, and the fact that the
44 time was 1978, the Police were not likely
45 to be interested.

46
47 This would appear to fall well short of a positive choice
48 on the part of the complainant not to report the matter to
49 .13/10/2014 (1) 13

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1
2 the police. There is no recorded discussion of reporting
3 requirements from the Catholic Church at that meeting.
4

5 In other cases, there are suggestions that
6 complainants might, on the statement of complaint form,
7 have expressed only a provisional intention not to report
8 the matter to police or may, indeed, have expressed an
9 intention to report the matter to the police, or have left
10 that entry blank, and it doesn't appear to be the case that
11 such entries automatically precluded the matter being
12 considered through the Towards Healing process rather than
13 a referral to the police.
14

15 At the PSRG meeting on 9 January 1997, it appears from
16 the minutes that consideration was given to the appointment
17 of contact persons to act within the Towards Healing
18 process. The recommendation recorded in the minutes was
19 that two persons should be nominated within each diocese
20 and that members of the PSRG be themselves considered the
21 contact persons for their diocese. A contact person should
22 have some therapeutic experience and that a mixture of
23 laypersons, priests and religious persons was recommended.
24 However, the appointment was to be a matter for the bishops
25 to make in light of the deliberations of the committee.
26

27 It necessarily followed from this recommendation that
28 a proportion of contact persons would be persons who
29 themselves had a role within the church and were from the
30 diocese which was the focus of the complaint. It may be
31 thought that such persons might possibly be perceived to
32 have a vested interest in seeing complaints resolved within
33 the church rather than through police involvement.
34

35 The extent to which NSW Police Force officers could
36 place reliance upon choices apparently manifested in the
37 statement of complaint forms or as set out in the blind
38 reporting forms, when they did not routinely themselves see
39 the statement of complaint forms, and appear to have had no
40 involvement in the process of their completion, and when
41 those choices were made with no involvement of an
42 independent third party, will be a matter for the
43 Commission to consider in the course of these hearings.
44

45 Some of the documents that formed the blind reports
46 made by the Catholic Church and the NSW Police Force will
47 be tendered during the course of this hearing. There was
48 in those forms during the relevant period a pro forma entry
49 .13/10/2014 (1) 14

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1
2 in typed text which read:

3
4 Is the informant willing to speak to the
5 police if necessary?
6 No ...
7

8 Although there was space following the typed "no" for
9 further text to be handwritten or otherwise added.
10

11 Whilst these forms included space for victim details,
12 these were generally not provided in these blind report
13 forms. However, details of the suspect were generally
14 included.
15

16 The notifying person was also specified, and in
17 pro forma reports during the earlier period, that is given
18 as Mr Davoren of the PSO and later Mr Salmon. It was thus
19 clear to the NSW Police Force, on receipt of these forms,
20 that there was an identified individual from whom further
21 information could, if appropriate, have been sought.
22

23 One example of such a blind report arose in relation
24 to a Father Denis McAlinden. The blind report form
25 contained a statement that the victims had accused
26 Father McAlinden of sexual assault of children and that
27 they believed there might be other victims apart from the
28 identified victims. They have not indicated at this stage
29 any wish to take the matter to police. It is not clear
30 whether or not this was a case which was brought to
31 Cullen's attention at the time through her involvement with
32 the PSRG, but one matter for the Commission to consider is
33 whether or not such a statement could properly form the
34 basis for a proper failure by police to seek further
35 information from Mr Davoren of the PSO who was identified
36 in the blind report form as the notifying person, and
37 whether any steps further to investigate this report were
38 in fact taken.
39

40 There is also an example in the material that will be
41 tendered of a complainant who, despite having originally
42 indicated an unwillingness herself to report to police,
43 indicated that she would consider providing a statement if
44 aware that there were other complaints about the same
45 individual. There is no evidence of anyone from the PSRG
46 having spoken to this individual to tell her about other
47 complaints against the same offender, nor any evidence of
48 steps taken by Cullen within the PSRG to seek to ensure

1
2 that this happened or to herself speak to the complainant
3 in that case. This example shows potential vulnerabilities
4 of the system which may well have been apparent to the
5 NSW Police officers.
6

7 The Commission will also be asked to consider whether
8 or not the risk of inaccuracy was a further reason for
9 information held by the church in relation to complaints of
10 sexual abuse to be fully investigated by the NSW Police
11 Force. In relation to one matter that the Commission will
12 be asked to consider, a blind report form was submitted
13 indicating that the complainant in relation to forced
14 intercourse with an 11-year-old girl was not prepared to
15 talk to police but, in fact, in that case, the complainant,
16 in the statement of complaint form in 1999, clearly
17 indicated her intention to notify the police and appears
18 also to have made a complaint directly to the NSW Police
19 Force.
20

21 Similarly illustrating the risk of inaccuracy, on that
22 same form information from the complainant indicated that
23 she would like her experience to be used in corroboration,
24 but that was not included in the blind report form provided
25 to the NSW Police Force.
26

27 The document for the pro forma blind report form was
28 altered in 2013 and in the 2013 blind report form, the text
29 against the question "Is the informant willing to speak to
30 the police" has been altered and is filled in on
31 a pro forma basis in typed text as follows:
32

33 No, at this stage, the informant has chosen
34 to go through the Catholic Church's Towards
35 Healing process. The informant is aware of
36 his right to speak to the police.
37

38 It is not clear precisely at what date that additional text
39 was added, although it was clearly included in the 2013
40 form that will be tendered.
41

42 It must have been apparent to the PSRG members,
43 including Cullen, that a variety of different forms of
44 documentation and information was held by the
45 Catholic Church and, more particularly, by the PSO, by
46 reason of the Towards Healing process. This included tapes
47 of assessment interviews, interviews with relevant
48 witnesses and examination of records in relation to the
49

1
2 allegations of sexual abuse, medical evidence relating to
3 the victims and on occasion also in relation to the alleged
4 offenders, daily records of a particular case recording
5 telephone interactions with the complainant or victim,
6 interviews with potential witnesses, assessment reports
7 which were on occasion before the PSRG in full, and an
8 example report, which was before the PSRG, expressly
9 indicates, by way of example, that the accused was
10 interviewed and, in part, sets out his account of having
11 kissed the victim, which was the very matter about which
12 the victim had complained. It includes the text that he
13 was quite willing to agree that he might have hugged. He
14 said that he kissed her on the lips and "She pushed me away
15 and ran off."

16
17 A reasonable presumption from someone considering
18 these reports would have been that other assessment reports
19 would also have included similar relevant details,
20 including admissions by the person accused of the conduct.

21
22 On occasion, identifying information was also included
23 in material before the PSRG, although that seems to have
24 been the exception rather than the rule.

25
26 One issue is whether or not this information was
27 passed to the NSW Police Force and whether Cullen or other
28 police officers, whose conduct will be considered in the
29 course of this hearing, took any steps to ensure that it
30 was passed to the police or, indeed, whether they should
31 have done so. It is clear that cases of criminal behaviour
32 were discussed at the PSRG. It is difficult from the PSRG
33 minutes to discern the nature or content of the discussion
34 or, in many cases, whether or not the police had or were
35 investigating the matter or had had information provided to
36 them by the Catholic Church other than through the PSRG.

37
38 By way of example, on 23 July 1999, there was
39 discussion of a 40-year former priest accused of sexual
40 abuse against a female but who was not in the area at the
41 time of the alleged offence. On 27 August 1999 there is
42 discussion of "the case of the matter, recently in the
43 press, of the unresolved complaint by a very vulnerable
44 woman against a serious and probably serial clerical
45 perpetrator" in which a compensation payment was being
46 negotiated.

1
2 Case number 29 of a complaint by a man against his
3 brother, who was a priest, that he abused the complainant's
4 daughter when she was 11 years old.

5
6 Whilst Cullen was not at that particular meeting, she
7 would have received the agenda papers including those
8 details. There is no record of any suggestion by her that
9 the matter should be referred directly by the PSO or the
10 PSRG to the police, or that she should herself conduct
11 further investigation.

12
13 There is also case number 338 of a choir master who
14 had been restored to duty "and cannot now be stood down
15 again", in which the view of the PSRG is recorded as being
16 that "there were insufficient grounds for concluding that
17 the accused is an acceptable risk to children", but it is
18 not recorded that any referral was made directly by the PSO
19 to the police or any child protection body.

20
21 At the next meeting it was recorded that the church
22 authority in the matter was "convinced that the person had
23 been appropriately returned to duty" and that Mr Davoren
24 "noted that there was little to be gained by the Resource
25 Group pursuing the matter at this stage", and that
26 "committal proceedings would be commencing early in the new
27 year and that when this happens the accused had agreed to
28 step down from his position".

29
30 On some limited occasions the PSRG minutes record the
31 PSRG recommending that a particular complainant be advised
32 to complain to the police, and there is an example on
33 24 September 1999 where the complaint was of rape by
34 a priest in the 1980s. However, the reason for this
35 recommendation in that case was that the church wasn't in a
36 position to investigate the matter since the accused priest
37 was no longer in the jurisdiction.

38
39 It is not clear why the church didn't themselves
40 report that matter to the police as opposed to advising the
41 complainant to do so, given that it would seem unlikely
42 that the complainant had herself indicated an unwillingness
43 to involve the police.

44
45 A further issue for consideration during this hearing
46 is the extent to which appropriate records were made in
47 relation to information which came to Cullen's attention by
48 reason of her role in the PSRG. In particular, whether or

1
2 not such information was or should have been recorded in
3 her police notebook, which records information relating to
4 alleged criminal activity, and in COPS, as an event report,
5 and the Commission will be asked to consider various
6 NSW Police policy documents relating to the reporting
7 requirements.
8

9 Further, it appears that Cullen didn't retain the
10 documentation which she was provided through her role on
11 the PSRG and was of the belief that this would be retained
12 by the PSO. The appropriateness of this, in the
13 circumstances, will be an issue for this hearing, bearing
14 in mind the potential for such material to assist in
15 further investigation or prosecution of potential
16 offenders.
17

18 If I could turn now to consider agreements or
19 understandings between the NSW Police Force and the
20 Catholic Church and, in particular, the issue of whether or
21 not a memorandum of understanding was entered into formally
22 or informally or whether there was some agreement or
23 arrangement to that effect.
24

25 The earliest draft MOU between the NSW Police Force
26 and the Catholic Church appears to be that attached to
27 a memorandum dated 12 June 1997. This is described as
28 having been submitted to the Catholic Church by the Child
29 Protection Enforcement Agency. It identifies as an
30 objective the exchange of both information and intelligence
31 between the two organisations. It identifies that the
32 church would seek advice and referral to appropriate police
33 services through the CPEA and that the church would provide
34 information to the police where the police conducts an
35 investigation of church personnel.
36

37 The proposal in relation to intelligence reporting
38 identified the strategy as being that where a person may be
39 suspected of committing an offence against a child but no
40 complaint has been made, the church will report the matter
41 to the CPEA. The proposal in relation to reports of
42 historical abuse was that where the reporting person wanted
43 the matter to be kept confidential, victim and offender
44 details would be reported to the police through the normal
45 channels and that the "Police Service will reserve the
46 right to interview the victim for the purpose of obtaining
47 further intelligence to ensure that the offender is still
48 not a risk to other children and accurately to record the

1
2 information" but that "the Police Service will not
3 institute proceedings against an alleged offender where the
4 victim does not want this to occur."

5
6 It was set out that "the New South Wales Police
7 Service respects the rights of the victim, but also has
8 a duty of care to investigate a crime and to take all steps
9 to ensure the alleged offender is no longer in a position
10 to offend."

11
12 A critical feature of this particular proposed MOU,
13 which appears to have come from the police and been
14 submitted to the church, was that the details of both the
15 victim and the offender would be included in the report and
16 that the Police Service expressly reserved their right to
17 interview the victim.

18
19 A further unsigned MOU is dated 15 May 2000. This
20 involved a significant shift from the earlier draft as
21 regards the reporting of matters where a victim did not
22 want to report the matter himself or herself. This
23 provides, in clause 6, that, "Where a criminal offence is
24 alleged, and the complainant does not wish to make a report
25 to the police, the Convenor of the New South Wales
26 Professional Standards Resource Group will report the name
27 of the alleged offender to the police, but not the name of
28 the complainant, and will provide such information
29 concerning the alleged offence as is possible without
30 disclosing the identity of the complainant."

31
32 Further, it provided in clause 14 that where
33 a complainant makes a report to the police subsequent to
34 a church investigation, such information would be provided
35 to the police concerning the process and outcomes of
36 a church investigation as was possible without breaching an
37 obligation of confidentiality to any person. In clause 19
38 it provided that "Church authorities shall make available
39 the report of an assessment and any other matter relevant
40 to the accused's account of events only if required to do
41 so by court order."

42
43 Questions may arise as to the consistency of those
44 provisions with section 316 and the propriety of the
45 NSW Police ever agreeing to such provisions, although
46 I add, whether or not they were agreed to or reflected
47 a practice in fact put in place is a question for this
48 hearing.

49 .13/10/2014 (1) 20

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1
2
3 On 11 December 2001 advice on the issue of a proposed
4 protocol and memorandum of understanding with the
5 Catholic Church was prepared by an Officer Treadwell, legal
6 officer within the NSW Police Force. This concluded that
7 clause 6 of the MOU, that I have just read, may be
8 incongruent with section 316, commenting that there would
9 prima facie be a conflict between the requirements of the
10 MOU and the law in circumstances where a serious indictable
11 offence is reported to Catholic Church personnel but there
12 is a desire expressed by the complainant to remain
13 anonymous.

14
15 Officer Treadwell advised that it would be nonsensical
16 and undesirable for the NSW Police Force to enter into
17 private agreements inconsistent with public law. It was
18 also advised that a desire to maintain confidence would be
19 unlikely to outweigh the need for disclosure where
20 a serious indictable offence had been committed.

21
22 A further draft MOU was prepared in March 2002, which
23 is after this advice, and this included clauses 6, 14 and
24 19 in identical terms.

25
26 On 18 June 2003, Mr McDonald, the executive director
27 of the Catholic Commission for Employment Relations wrote
28 to Kim McKay, commander of the Child Protection Squad at
29 the NSW Police Force, seeking confirmation that "The
30 unsigned Memorandum of Understanding with the police
31 remains in place and that our contact point with the police
32 is the Executive Officer of the Professional Standards
33 Office, at this time, Mr Michael Salmon." Mr McDonald
34 attached a draft MOU for information which contained
35 clauses 6, 14 and 19, as already set out.

36
37 On 1 July 2003, Commander McKay sought legal advice on
38 the letter and attached the draft MOU. Advice provided to
39 Commander McKay by Angela Friedrich, a solicitor in the
40 common law section, on 8 August 2003, was to the effect
41 that no MOU had been approved by the NSW Police, the MOU
42 should not currently direct the working relationship
43 between the church and police, as had been suggested by
44 Mr McDonald, and the arrangements proposed by the draft MOU
45 were inappropriate insofar as they were inconsistent with
46 the law and would be void on the basis of public policy.

47
48 Ms Friedrich attached a draft letter for
49 .13/10/2014 (1) 21

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1
2 Commander McKay to send to Mr McDonald. This set out that
3 the draft unsigned MOU had not been approved by the
4 NSW Police Force, the arrangements proposed by the MOU were
5 not currently in place, and "The arrangements proposed by
6 the draft MOU appear to be in direct conflict with the
7 explicit legislative requirements of s 316 of the Crimes
8 Act 1900." This letter was sent by Commander McKay to
9 Mr McDonald on 20 August 2003 and was tabled before the
10 PSRG.

11
12 Notwithstanding this advice, it is not clear that the
13 practices of the PSRG or the PSO altered. Further, it
14 appears that additional steps towards an MOU were in fact
15 taken - for example, in a further draft dated 21 August
16 2004 and by way of discussions at meetings in 2005. Issues
17 may arise as to whether or not the procedures set out in
18 the draft MOU in 2000, which were the subject of those two
19 legal advices, were in fact informally adopted in any
20 event, and whether, in the light of the advice on the MOU,
21 adequate steps were taken to ensure that the potential
22 problems identified in that legal advice did not also taint
23 the informal procedures already in place.

24
25 According to the statutory declaration of Mr Salmon
26 provided for the Cunneen inquiry, the current practice of
27 the PSO is that all allegations of sexual abuse of children
28 made through the Towards Healing protocol which have not
29 already been reported to the NSW Police Force should be
30 reported to the NSW Police Force, and that all admissions
31 disclosed by accused persons should also be reported to the
32 NSW Police Force, although he said it "has never been the
33 practice of the PSO when reporting information to the
34 Police to provide information which would identify the
35 victim unless such information has been formally requested
36 by the Police." The justification for this, and the
37 NSW Police Force officers' knowledge of this, will be
38 investigated during this hearing.

39
40 The most recent suggested protocol for providing
41 information to the NSW Police Force issued by the
42 Sex Crimes Squad appears in cases where there is not
43 a current child victim to maintain a system of
44 differentiation between reports which will be investigated,
45 in which case an investigation will be commenced, and those
46 which will not, in which case, the COPS report will be
47 merely disseminated for information to the Sex Crimes
48 Squad.

1
2
3 However, it does require that prior to that
4 categorisation being undertaken, there should be
5 consideration of whether the victim wishes the police to
6 investigate, whether the person of interest is living and
7 whether there are children or other persons at risk. The
8 current system may provide some valuable points of
9 comparison, but it is nonetheless appropriate, in the
10 course of this hearing, to scrutinise this current system
11 to ensure that it facilitates appropriate reporting and
12 investigation of all relevant information held by the
13 Catholic Church which relates to or might relate to serious
14 criminal conduct.

15
16 Thank you, Commissioner.

17
18 THE COMMISSIONER: Thank you, Ms Stern. I repeat that the
19 Commission will take a short adjournment and when the
20 Commission returns, I will hear applications by legal
21 practitioners for authority to appear for persons at the
22 hearing. The Commission will now take a short adjournment.

23
24 SHORT ADJOURNMENT

25
26 THE COMMISSIONER: I will hear applications by legal
27 representatives who wish to seek authorisation to represent
28 someone. I think it is convenient, first of all, to take
29 legal representatives who wish to seek authorisation to
30 appear for someone who has been summoned to give evidence.
31 Under the Commission's Act, a person who has been summoned
32 to give evidence is generally to be granted legal
33 representation. Are there applications by such?

34
35 MR K MADDEN: Commissioner, Madden, Solicitor. I seek
36 your authority to appear for Inspector Cullen.

37
38 THE COMMISSIONER: Pursuant to section 35 of the Act,
39 I authorise Elizabeth Cullen to be represented by a legal
40 practitioner at the hearing and I note the appearance of
41 Mr Madden for Ms Cullen.

42
43 MR E OATES: If the Commission please, my name is Oates.
44 I seek authorisation to appear for Mr John Heslop.

45
46 THE COMMISSIONER: Yes. Pursuant to section 35,
47 I authorise John Heslop to be represented by a legal
48 practitioner at the hearing and I note the appearance of

1
2 Mr Oates for Mr Heslop.

3
4 MS L HUGHES: Commissioner, my name is Hughes and I seek
5 authorisation on appear to behalf of Mrs Kim McGee.

6
7 THE COMMISSIONER: Yes. Pursuant to section 35,
8 I authorise Kim McGee to be represented by a legal
9 practitioner at the hearing and I note the appearance of
10 Ms Hughes for Ms McGee. Are there other applications to
11 represent persons who have been summoned to give evidence?

12
13 MR D STANTON: Yes, Commissioner. Stanton is my name.
14 I seek authorisation to appear for Michael Salmon. Also,
15 Commissioner, I am instructed by Eamonn O'Neill.

16
17 THE COMMISSIONER: Thank you. Pursuant to section 35 of
18 the Act, I authorise Michael Salmon to be represented by
19 a legal practitioner at the hearing and I note the
20 appearance of Mr Stanton, instructed Eamonn O'Neill, for
21 Mr Stanton.

22
23 MS K HARRISON: Commissioner, my name is Kate Harrison.
24 I am seeking leave to represent Michael McDonald in the
25 hearing.

26
27 THE COMMISSIONER: All right. Pursuant to section 35 of
28 the Act, I authorise Michael McDonald to be represented by
29 a legal practitioner at the hearing and I note the
30 appearance of Ms Harrison for Mr Michael McDonald.
31 Thank you.

32
33 MR D CARROLL: Commissioner, may it please, my name is
34 Carroll. I seek authorisation to appear for John Davoren.

35
36 THE COMMISSIONER: Pursuant to section 35 of the Act,
37 I authorise John Davoren to be represented by a legal
38 practitioner at the hearing and I note the appearance of
39 Mr Carroll for Mr Davoren.

40
41 MR G LEWIS: Commissioner, Lewis is my name. I seek your
42 authorisation to represent Inspector Armstrong.

43
44 THE COMMISSIONER: Pursuant to section 35 of the Act,
45 I authorise Wayne Armstrong to be represented by a legal
46 practitioner at the hearing and I note the appearance of
47 Mr Lewis for Mr Armstrong. Are there any more applications
48 in the category that we have been dealing with?

49 .13/10/2014 (1) 24

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1
2
3 MS STERN: Commissioner, I wonder if I might just rise to
4 indicate that Linda Howlett has been in touch indicating
5 that she is seeking to arrange representation but has not
6 yet been able to do so, so there may be a further
7 application in due course that we have been tentatively
8 notified of in relation to Linda Howlett.

9
10 THE COMMISSIONER: Thank you. Just allow me a moment.
11 Are there other applications for authority to represent
12 someone?

13
14 MR P SAIDI: Yes, Commissioner, Patrick Saidi. I seek
15 authorisation to appear on behalf of the Commissioner of
16 Police. I am instructed by Michael Sullivan from Henry
17 Davis York.

18
19 THE COMMISSIONER: Thank you. I will grant that
20 application. Pursuant to section 35 of the Act,
21 I authorise the Commissioner of Police to be represented by
22 a legal practitioner at the hearing and I note the
23 appearance of Mr Saidi for the Commissioner of Police.

24
25 MR SAIDI: Commissioner, could I just indicate this for
26 your benefit. As Ms Stern indicated, Linda Howlett is
27 presently seeking representation. Up until very shortly,
28 that is, last Friday, I intended to appear on her behalf.
29 It may be - I only foreshadow this - if anything were to go
30 wrong in relation to that, I may make an application later,
31 during the course of the hearing, in relation to her.

32
33 THE COMMISSIONER: Was it indicated to you that the
34 Commission might take an unfavourable attitude?

35
36 MR SAIDI: It was indicated. As a matter of abundant
37 caution we have taken this course of action, but I just
38 indicate that if anything were to go wrong, there may be
39 a course of action that is taken on her behalf.

40
41 THE COMMISSIONER: All right. Thank you for keeping me
42 informed. Are there other applications?

43
44 MR SAIDI: Could I just make one thing clear as well,
45 Commissioner? The unfavourable attitude, so it is not
46 misinterpreted by those in court --

47
48 THE COMMISSIONER: Yes, I should say something by way of
49 .13/10/2014 (1) 25

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1
2 clarification. The Commission would generally oppose the
3 same legal representative acting for different persons, and
4 in particular the same legal representative acting for the
5 Commissioner of Police and for an individual police
6 officer. That does not cast any reflection at all on
7 either the Commissioner of Police or the individual police
8 officer.

9
10 MR SAIDI: Thank you for that indication, Commissioner.

11
12 THE COMMISSIONER: Yes.

13
14 DR A MORRISON SC: Commissioner, my name is Morrison SC.
15 I seek a limited right of appearance on behalf of the
16 Australian Lawyers Alliance, many of whose members act for
17 victims and many of whom went through the Towards Healing
18 process at the appropriate time. I seek only the
19 opportunity to make submissions either in writing or
20 perhaps orally at the end. I don't seek any involvement in
21 the fact-finding exercise prior to that stage.

22
23 THE COMMISSIONER: If I grant authorisation, would you be
24 attending the hearings of the Commission?

25
26 DR MORRISON: I would propose to attend some of the
27 hearings, depending upon who is giving evidence and what
28 stage has been reached. I would not be proposing to take
29 any active part until the fact-finding exercise is
30 complete.

31
32 THE COMMISSIONER: I have to say that I have some doubts
33 whether the group you seek to represent is substantially
34 and directly interested, which is what the provision of the
35 Act requires.

36
37 DR MORRISON: It might assist if I indicate that, for
38 example - and just by way of example - Mr John Ellis, whom
39 I represented in court, was one of those who went through
40 the Towards Healing process at the relevant time. Now,
41 I don't propose or don't anticipate any evidence directly
42 relating to that matter, but I simply indicate that by way
43 of illustrating the sort of victims whom our members have
44 represented over the relevant period.

45
46 THE COMMISSIONER: All right. I am prepared to authorise
47 representation. I note that the application is for limited
48 representation. I will be vigilant to ensure that it is

1
2 only limited representation. I authorise the Australian
3 Lawyers Alliance to be represented by a legal practitioner
4 at the hearing and I note the appearance of Dr Morrison SC
5 for the Alliance. Is there anybody else?
6

7 Ms Stern, I think we have reached the stage where
8 I will ask you to call your first witness.
9

10 MR CHAN: I am seeking leave to appear as a witness to
11 give evidence. Do I do that now or do I do that later?
12

13 THE COMMISSIONER: Are you familiar with this gentleman?
14

15 MR CHAN: I am seeking leave to appear as a witness to
16 give evidence.
17

18 MS STERN: Commissioner, I wonder if I could propose this
19 course. I am not familiar with this gentleman but I was
20 proposing to deal with a matter of a non-publication
21 direction and preliminary tender and then to suggest that
22 we could take a morning tea adjournment. I wonder whether
23 I could invite Mr Broyd to have a word with this gentleman
24 at that point in time and if necessary we can deal with
25 that in court later.
26

27 THE COMMISSIONER: I am under the impression that he has
28 not been summoned to give evidence.
29

30 MR CHAN: Your Honour, I am not summoned. I am responding
31 to the advertisements asking people who wished to give
32 evidence or any relevant information to the Commission to
33 appear at 10am this morning. I am responding to that
34 advertisement. Before I came to this hearing I asked the
35 Commission who I should speak to beforehand and do I need
36 to speak to anybody beforehand and nobody could answer my
37 question. So I have contacted the Commission before but
38 nobody has answered my question.
39

40 THE COMMISSIONER: I will be taking a short adjournment
41 very soon and during the short adjournment you will have
42 the opportunity to speak to one of the Commission's
43 investigators or staff.
44

45 MR CHAN: Can I have the name of the person, please,
46 because nobody speak to me.
47

48 THE COMMISSIONER: It will probably be either or both of
49 .13/10/2014 (1) 27

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1
2 the two gentlemen who are sitting at the same table as
3 counsel assisting.

4
5 MR CHAN: I'm sorry, I didn't catch that. Would you
6 please not interrupt me? I am listening.

7
8 THE COMMISSIONER: You will have the opportunity in a
9 short time - there will be a short adjournment and somebody
10 from the Commission will speak to you.

11
12 MR CHAN: Okay. So should I wait here?

13
14 (The gentleman left the hearing room)

15
16 THE COMMISSIONER: I was about to ask you to call your
17 first witness but is it appropriate to take a break now and
18 the gentleman can be spoken to?

19
20 MS STERN: Thank you, Commissioner.

21
22 THE COMMISSIONER: I have seen the public notices and the
23 public notices do invite people with information to come
24 forward. Obviously, it has to go through members of the
25 staff of the Commission and at this stage I'm not even sure
26 if the gentleman has legal representation. It seems
27 unlikely. Is there anything before we take an adjournment?

28
29 I anticipate taking an adjournment of about the usual
30 length of morning tea adjournment in court and Commission
31 hearings - that is, for about 20 minutes. After that, the
32 Commission will sit again. The Commission will now
33 adjourn.

34
35 SHORT ADJOURNMENT

36
37 MS STERN: Commissioner, before I call the first witness,
38 I do ask that the Commission make a non-publication
39 direction under section 52 of the Act, and if I could
40 indicate that the terms that I would seek is a direction
41 that there be no publication of any evidence given before
42 this hearing or the contents of any document or other thing
43 tendered or referred to during the hearing which is
44 reasonably likely to identify any person who it is or has
45 been alleged was a victim of abuse, or any person who it is
46 or has been alleged committed abuse against another person.

47
48 And without limiting that, we would ask the direction
49 .13/10/2014 (1) 28

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1
2 include that there be no publication of any name of such
3 persons, and there is to be no publication of any location
4 where it is alleged that such abuse occurred, and, further,
5 that there be no publication of the personal contact
6 details of any individual referred to in evidence or in any
7 document or other thing tendered during the hearing,
8 including personal telephone numbers, residential addresses
9 and/or personal email addresses.

10
11 THE COMMISSIONER: Yes. I am satisfied that the direction
12 sought is necessary or desirable in the public interest.
13 As far as alleged victims are concerned, or alleged
14 offenders are concerned, my understanding is that none of
15 them will give evidence in these proceedings; none of them
16 have been given notice of these proceedings; none of them,
17 of course, will be legally represented at these
18 proceedings. In those circumstances, I consider that
19 a direction of the kind sought by counsel assisting is an
20 appropriate direction to make. I will set out the terms of
21 the direction and I understand that members of the media
22 will be able to obtain a copy of the directions.

23
24 MS STERN: Commissioner, that is right. We have had
25 a copy of the direction in the terms that I sought printed
26 out to be available, although it should be noted that the
27 terms are important because it doesn't just prohibit
28 publication of name, but anything which may identify
29 individuals within the two categories, which may be a range
30 of information covering a gamut of matters, such as
31 position or description or circumstances. Those matters
32 would conceivably be within the terms of the direction if
33 they were reasonably capable of leading to the
34 identification of the individuals.

35
36 THE COMMISSIONER: Yes. I will set out the terms of the
37 direction. As I have said, copies of the direction can be
38 obtained from one of the Commission's officers.

39
40 The terms of the direction are: being satisfied as
41 required by section 52(2) of the Act that it is desirable
42 in the public interest to do so, I direct that there is to
43 be no publication of any evidence given before this hearing
44 or the contents of any document or other thing tendered or
45 referred to during the hearing which is reasonably likely
46 to identify any person who it is or has been alleged was
47 a victim of abuse, or any person who it is or has been
48 alleged committed abuse against another person. Without

1
2 limiting the above, there is to be no publication of any
3 name of such persons and there is to be no publication of
4 any location where it is alleged that such abuse occurred.

5
6 I further direct that there is to be no publication of
7 the personal contact details of any individual referred to
8 in evidence or in any document or other thing tendered
9 during the hearing, including: personal telephone numbers,
10 residential addresses and/or personal email addresses.
11 I make that non-publication order.

12
13 MS STERN: Commissioner, having asked for that
14 non-publication order, could I ask that there be an
15 exception to it in relation to Father McAlinden, whose name
16 was referred to in my opening statement, on the basis that
17 the matters that are covered by the evidence that it is
18 proposed to tender or to go to are already in the public
19 domain.

20
21 THE COMMISSIONER: Yes. I will make that exception to the
22 general direction.

23
24 MS STERN: Commissioner, if I could now turn to the tender
25 of some material which has been circulated to all the
26 proposed witnesses in advance of today's hearing. Could I
27 hand up a barcode reference 8106847, which is described as
28 a Tender Bundle Index of Material, Commissioner, could I
29 ask that this index of material be marked for
30 identification?

31
32 THE COMMISSIONER: Yes. Just allow me a moment. I might
33 explain that the purpose of this procedure is to prevent
34 a lot of time being taken up at this public hearing by my
35 individually admitting a very large number of documents.
36 A list of documents described as "Tender Bundle Index of
37 Material" will be MF11. The documents referred to in MF11
38 will be admitted as exhibits. They will have the exhibit
39 numbers in the left-hand column of MF11, they will have the
40 descriptions in the middle column of MF11 and they will
41 have the Commission barcode references in the right-hand
42 column of MF11.

43
44 MF1 #1 LIST OF DOCUMENTS DESCRIBED AS "TENDER BUNDLE INDEX
45 OF MATERIAL"

46
47 THE COMMISSIONER: I think the documents can be classified
48 as correspondence and other documents relating to the
49 .13/10/2014 (1) 30

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1
2 appointment of a New South Wales police officer to the
3 Professional Standards Resource Group; correspondence and
4 other documents relating to a proposed memorandum of
5 understanding; versions of a memorandum of understanding;
6 Towards Healing protocols; blind reporting pro formas;
7 Professional Standards Resource Group documents of various
8 sorts, including material relating to the taking of
9 complaints and contact persons, statement of complaint
10 forms, brochures produced by the PSO, other documents,
11 minutes of the Professional Standards Resource Group from
12 1996 right up to May 2005, material from agenda papers of
13 the PSRG; and NSW Police Force policy documents of various
14 kinds. Stated very broadly, they are the classes of
15 documents. We have MF11 and we have exhibits 1 to 309 as
16 set out in MF11, having the exhibit numbers, the exhibit
17 descriptions and the barcode references set out in MF11.

18
19 MS STERN: Commissioner, in relation to exhibits 61
20 through to 309, we would ask that these be tendered as
21 confidential exhibits, but for ease of reference, if they
22 could keep the same number but with a C in front of them.
23 The justifications for the confidentiality order that is
24 sought fall into two categories. The first is in relation
25 to the minutes and agendas relating to the Professional
26 Standards Resource Group meetings. Their confidential
27 tender is sought on the basis that notwithstanding the
28 non-publication order, there does remain some risk of
29 identification of victims or those who were accused or
30 asserted to have perpetrated various conduct and that out
31 of an abundance of caution at this stage, it is sought to
32 tender these on the basis that they are confidential
33 exhibits, with access allowed to all those who have been
34 granted leave to appear.

35
36 In relation to the NSW Police Force policy documents,
37 which are exhibits 292 to 309, I understand from Mr Saidi
38 that it may be that some of these are not publicly
39 available and that there are good reasons for them not
40 being publicly available. He is going to come back to me
41 during the course of the week in relation to which
42 documents are publicly available or which documents are
43 sought to be confidential, and in those circumstances, we
44 would seek that those documents at exhibit 292 to 309 are
45 also tendered only on a confidential basis at this stage,
46 with access limited to those who have been granted leave to
47 represent and access to the Commission and counsel
48 assisting and those assisting the Commission.

49 .13/10/2014 (1) 31

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1
2
3 THE COMMISSIONER: Does anyone wish to say anything in
4 opposition to the application by counsel assisting?
5

6 Exhibits 61 to 309 - there are the NSW Police Force
7 documents which are 292 to 309, but I thought you had
8 limited the earlier batch from document 61. Is it the
9 position that you seek the exhibits to be confidential
10 which are numbers 61 to 291 - they are documents of the
11 PSRG - and for different reasons you seek to have made
12 confidential exhibits 292 to 309, but between them that
13 means that all the exhibits from number 61 to number 309
14 are to be confidential?
15

16 MS STERN: Yes.
17

18 THE COMMISSIONER: All right. I will make that direction.
19 Exhibits 61 to 309 are all to be confidential exhibits, so
20 the letter C will appear in the exhibit reference. All
21 those exhibits will retain the same number as they have in
22 document marked for identification 1.
23

24 MS STERN: I am grateful, Commissioner.
25

26 Commissioner, those are the only preliminary matters
27 I sought to deal with and I now call John Davoren to give
28 evidence.
29

30 <JOHN FRANCIS DAVOREN, sworn: (12.05pm)
31

32 THE COMMISSIONER: Mr Davoren, before the hearing proceeds
33 any further, there are a number of matters to which I need
34 to direct your attention. I want you to understand that
35 you must answer all questions that are asked of you unless
36 I tell you that you do not have to answer. You should
37 understand that you are entitled to object to answering
38 a question. Is a declaration sought?
39

40 MR CARROLL: Yes.
41

42 THE COMMISSIONER: Thank you. If you object, you must,
43 nevertheless, still answer the question, but any answer you
44 give will not be admissible in evidence against you in any
45 civil or criminal proceedings except: a prosecution for
46 giving false or misleading evidence at a hearing of the
47 Commission that you knew to be false or misleading in a
48 material particular; or a prosecution for an offence which
49 .13/10/2014 (1) 32 J F DAVOREN
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1
2 you may have committed or you may commit under the
3 legislation governing the Commission; or proceedings for
4 contempt of the Commission under that legislation.
5

6 As I understand has been explained to you, to avoid
7 the need for you to object to answering individual
8 questions, I can make a declaration that all the answers
9 you give will be regarded as having been given on
10 objection. I am informed by your legal representative that
11 you ask me to make such a declaration and I will make it.
12

13 I make a declaration pursuant to section 41 that all
14 answers given by you will be regarded as having been given
15 on objection by you.
16

17 <EXAMINATION BY MS STERN:
18

19 MS STERN: Q. Mr Davoren, could you please give the
20 Commission your full name?

21 A. John Francis Davoren.
22

23 Q. It is correct that you were a priest for 22 years?

24 A. Yes.
25

26 Q. And in around 1965 you left the priesthood?

27 A. No, in 1982.
28

29 Q. And you also, as I understand it, have qualifications
30 as a social worker?

31 A. I do.
32

33 Q. You were the initial director of the Professional
34 Standards Office of the Catholic Church?

35 A. I was.
36

37 Q. And you were appointed to that role in 1996?

38 A. 1997.
39

40 Q. And in that role, is it right that you supervised the
41 process that was set up by the Catholic Church under the
42 Towards Healing protocol?

43 A. Yes.
44

45 Q. And you were instrumental in setting up the
46 Professional Standards Resource Group?

47 A. I appointed them, yes.
48

1
2 Q. And you set that up or you appointed those individuals
3 to act as an advisory body to you as the director of the
4 Professional Standards Office?

5 A. Yes.
6

7 Q. I wonder if I could put a document to you. It is at
8 tab 266 of the Commission's hearing brief, but not the
9 tender bundle, but barcoded 7997559. Mr Davoren, I hope
10 that then appears for you on a screen in front of you.
11 Does a document now appear on that screen?

12 A. It has just appeared, yes.
13

14 Q. Is that described as "Liaison Committee (Professional
15 Standards)"?

16 A. The liaison committee, yes.
17

18 Q. Do you see there a job description for the director of
19 professional standards?

20 A. Yes.
21

22 Q. If I ask you to look through that document, do you see
23 paragraph 3.2, towards the bottom of the first page, which
24 identifies that the director shall "manage the process in
25 relation to specific complaints". Do you see that?

26 A. Yes.
27

28 Q. Was that what you understood to be part of your role
29 throughout your role as director of the Professional
30 Standards Office?

31 A. It was, yes.
32

33 Q. And, secondly, to "appoint assessors, facilitators and
34 reviewers when required"

35 A. Yes.
36

37 Q. And it is right, isn't it, that assessors were
38 appointed to assess particular complaints that were being
39 dealt with through the Towards Healing protocol?

40 A. Yes.
41

42 Q. And facilitators were appointed to facilitate an
43 outcome either by way of compensation payment or provision
44 of counselling or some other form of agreement between
45 a complainant and the Catholic Church?

46 A. I'm sorry, I don't get that last question.
47

48 Q. Do you see under paragraph 3.2.1.2 it is set out that
49 .13/10/2014 (1) 34 J F DAVOREN (Ms Stern)

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1
2 part of your role is to appoint facilitators?

3 A. And reviewers, yes.

4
5 Q. And it is right that facilitators were people who were
6 appointed to, after the assessment process was completed,
7 seek to reach a negotiated outcome with an individual
8 complainant?

9 A. That was one of their objectives, yes.

10
11 Q. And one possible outcome might have been
12 a compensation payment from the Catholic Church to the
13 individual complainant?

14 A. At a certain stage in process when the case - the
15 matter had been found to be substantiated, yes, not prior
16 to that.

17
18 Q. And that would be something that could be negotiated
19 and arranged through a facilitator?

20 A. Yes, under instructions. The person who made that
21 decision was the head of the church agency concerned - the
22 bishop or the head of the religious order.

23
24 Q. And another option through the facilitation process
25 might have involved the provision or payment for
26 counselling or other treatment for an individual
27 complainant?

28 A. Yes.

29
30 Q. But if one sees in a description that a particular
31 complaint or case was in the facilitation stage, it's
32 right, isn't it, that that meant that the complaint had
33 been found substantiated?

34 A. No, not necessarily.

35
36 Q. So some complaints were facilitated even if they were
37 not found to be substantiated?

38 A. Yes, as a support for the complainant.

39
40 Q. But is it right that in the majority of complaints
41 that were taken through to facilitation, that was on the
42 basis that the complaint had been substantiated?

43 A. Yes.

44
45 Q. And then, this paragraph also identifies part of your
46 role as appointing reviewers, and it is right, is it not,
47 that that is a reference to persons appointed to review the
48 way in which the Towards Healing protocol had been

49 .13/10/2014 (1) 35 J F DAVOREN (Ms Stern)

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1
2 implemented if a request for review or a further complaint
3 was provided?

4 A. Yes.

5
6 Q. The assessors, as I understand it, on occasion were
7 persons who had professional qualifications?

8 A. Yes.

9
10 Q. And were they necessarily persons within the
11 Catholic Church?

12 A. No. We liked to have a broader base.

13
14 Q. So some assessors were from within the church and some
15 were appointed from outside of the church?

16 A. Yes.

17
18 Q. But as regards facilitators, is it not right that the
19 facilitators were generally from within the Catholic
20 Church?

21 A. Not as a matter of procedure. Whether that happened
22 or not I don't know. We normally called on qualified
23 psychologists or people with that sort of background.

24
25 Q. And then if we look through this paragraph, 3.2, the
26 next heading refers to:

27
28 ... convene and chair meetings of the
29 Professional Standards Resource Group as
30 required.

31
32 A. Yes.

33
34 Q. Now, throughout your role as director of the
35 Professional Standards Office, that was part of your
36 responsibility?

37 A. It was.

38
39 Q. And "as required" was interpreted, as I understand it,
40 as a fairly regular timetable of meetings of the
41 Professional Standards Resource Group?

42 A. Yes.

43
44 Q. On an approximately monthly basis but with a slightly
45 longer break over the Christmas vacation period?

46 A. I would have thought it varied a bit, but certainly
47 the papers I saw recently indicated they were occurring
48 monthly, mmm.

1
2
3 Q. And then if you look at paragraph 3.2.1.5, there was
4 identified that part of the responsibility of the director
5 was to:

6
7 ... be responsible for the safekeeping of
8 all documentation connected with these
9 procedures.

10
11 Do you see that?

12 A. Yes.

13
14 Q. It is correct, is it not, that throughout your role as
15 director of the Professional Standards Office, you were
16 responsible for the safekeeping of all documentation that
17 was collected by the Catholic Church in connection with the
18 Towards Healing procedures?

19 A. Yes.

20
21 Q. And this document that we see here - which is
22 described, firstly, as a 5 July 2001 document with
23 a strike-through and then 8 November 2002 - you agree that
24 this accurately sets out your job description throughout
25 the period of your involvement as director of the PSO?

26 A. I can only - are you talking about specific
27 responsibilities there, are you?

28
29 Q. Yes.

30 A. I can only see the first two there.

31
32 THE COMMISSIONER: Q. When you say "the first two", what
33 do you mean by that?

34
35 MS STERN: Q. Are you referring to paragraph 4.1.1 and
36 4.1.2?

37 A. 4.1 - yes, yes.

38
39 Q. But if I can ask you specifically about
40 paragraph 4.1.5, do you see that one of your specific
41 responsibilities is identified as to interact with the New
42 South Wales Police Service and, in particular, its
43 specialist body, the Child Protection Enforcement Agency?

44 A. Yes.

45
46 Q. And that was one of your specific responsibilities
47 throughout your role as director of the PSO?

48 A. It was.

1
2
3 Q. This document is part of the agenda documents that
4 were before the Professional Standards Resource Group
5 meeting on 15 November 2002, and if I can ask that the
6 witness be shown the document at tab 264, which is 7997512?

7 A. My screen is blank at the moment.
8

9 Q. I hope that doesn't persist for too long. I think
10 that it will be coming up in just a moment.

11 A. Right. "Professional Standards Resource Group" - yes.
12

13 Q. Do you see that? This is the proposed agenda, and it
14 is right, is it not, that when one sees a proposed agenda
15 and then a number of documents with that, that when an
16 agenda was sent out for a PSRG meeting, documents that it
17 was proposed would be considered at the meeting would be
18 sent out with the agenda?

19 A. I'm relying on my memory, and I can't swear to the
20 accuracy of this, but I wouldn't have thought so. It would
21 just be the agenda went out and the documents were
22 available around the table when people came together.
23

24 Q. Is that your recollection of the actual invariable
25 practice?

26 A. Yes.
27

28 Q. But if you look at the second page - so 7997513 of
29 this - do you see there is a heading, "11. Change in PSO
30 Staffing Arrangements"? Do you see that?

31 A.
32 ... to increase the office staff the
33 Liaison Committee has agreed to the
34 appointment of a Case Manager. A draft job
35 description is attached for information and
36 discussion.
37

38 Q. But then if you look a little below that, there is
39 a bold type entry which reads "Documents", and there are
40 three documents referred to there. Do you see that?

41 A. Yes.
42

43 Q. And one is the amended role description of director?

44 A. Yes.
45

46 Q. So it may be you don't recall, but this is
47 a November 2002 - the document I just took you to, which
48 was your job description, was a document that was for

49 .13/10/2014 (1) 38 J F DAVOREN (Ms Stern)

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1
2 discussion before the PSRG; do you agree with me?

3 A. Yes, the list of documents there would indicate they
4 went with the meeting - went with the agenda.

5
6 Q. So it would be your understanding that the document
7 that I just took you to, which was the job description for
8 the director of professional standards, was a document that
9 was circulated to all members of the group together with
10 the agenda?

11 A. Yes.

12
13 Q. In relation to your position as the convenor of the
14 PSRG, it is right, is it not, that your last meeting as
15 convenor of the PSRG was in March 2003?

16 A. Yes, it would have been. I finished
17 late March/early May 2003.

18
19 Q. And after that point in time, as I understand it, you
20 had no further role on the PSRG?

21 A. Correct.

22
23 Q. And did you have no further role in relation to the
24 PSO from that point in time onwards?

25 A. Yes.

26
27 Q. And you passed that over as regards both of those
28 roles to Mr Michael Salmon?

29 A. I did.

30
31 Q. And in relation to your role as the convenor of the
32 PSRG, you had an active role in dealing with complaints
33 that were put to the Catholic Church through the
34 Towards Healing process?

35 A. Yes.

36
37 Q. And you in fact received all complaints?

38 A. Yes.

39
40 Q. And then the first step, as I understand it, was you
41 would pass the complaint to the relevant church authority?

42 A. Yes, the complaint was taken by the contact person,
43 who then sent me a copy. I studied it and then I sent it
44 to the church authority with a covering letter.

45
46 Q. You would then supervise the assessment and
47 facilitation and review process?

48 A. Supervise in the sense that I appointed the assessor

49 .13/10/2014 (1) 39 J F DAVOREN (Ms Stern)

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1
2 or assessors and looked at their report.

3
4 Q. But did you not also supervise in the sense that you
5 sought to ensure that all proper procedures were followed
6 by way of the assessment process?

7 A. Yes.

8
9 Q. And you sought to ensure that the outcome that was
10 recommended was one that you considered to be appropriate?

11 A. Yes.

12
13 Q. And you took advice in relation to both of those
14 aspects of your role from the PSRG?

15 A. When there were complications I did, not
16 automatically.

17
18 Q. So it would be your role to assess whether there was
19 a complication and whether there was any requirement to
20 involve the PSRG?

21 A. Yes.

22
23 Q. And the PSRG was really there in order to advise you
24 in implementing that role?

25 A. Yes.

26
27 Q. I wonder if the witness could be shown, please, the
28 document at 7998250, which is tab 152 and is the minutes of
29 a meeting on 15 August 2003.

30 A. 2003 - that's after my time.

31
32 Q. It is, but I just want to ask you one matter about
33 this, Mr Davoren. 7998250. If we could please scroll
34 through to the second page, which has the barcode 7998251,
35 Mr Davoren, I well appreciate this is after your time by
36 a couple of months, but if you note, there is a heading
37 there, "7. Assessment Reports". There is a comment in
38 relation to a particular assessor's report which had been
39 tabled that it was:

40
41 ... of poor quality and there was
42 a deficiency in not following up
43 corroborative evidence that had been
44 identified.

45
46 Do you see that?

47 A. Sorry, I haven't seen that yet.

1
2 Q. It is the fifth paragraph under that general heading
3 of "7. Assessment Reports"; do you see that?

4 A. Right.

5
6 Q. Do you see that there is a note in relation to an
7 assessor's report, that there was a deficiency in not
8 following up corroborative evidence that had been
9 identified?

10 A. Yes.

11
12 Q. In your time, do you agree with me that part of the
13 assessment process involved the identification of
14 potentially corroborative evidence?

15 A. Yes.

16
17 Q. And that it was expected that through the assessment
18 process, corroborative evidence would be followed up?

19 A. Yes.

20
21 Q. And that that might include interviews with
22 potentially corroborative witnesses?

23 A. Yes.

24
25 Q. And consideration of any documentation which could
26 provide corroboration?

27 A. Yes.

28
29 Q. And it was generally your expectation that that would
30 be something which would be routinely carried out through
31 the assessment process?

32 A. Yes.

33
34 Q. And that was something that was from time to time,
35 between 1999 and 2003, in your experience, openly discussed
36 at PSRG meetings?

37 A. Probably, yes.

38
39 Q. Then, after the process of assessment, as I've already
40 indicated, you were involved in recommending what action
41 should be taken, but the final decision as to what action
42 would be taken was a decision which was taken by the
43 relevant church authority?

44 A. That's correct.

45
46 Q. And so in your role as director of the PSO, you were
47 responsible for the process but not ultimately responsible
48 for the outcome; is that right?

49 .13/10/2014 (1) 41 J F DAVOREN (Ms Stern)

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1
2 A. Yes.

3
4 Q. And if there was an outcome after the assessment
5 process and facilitation process was complete, that you
6 didn't consider to be appropriate, was there any step
7 available for you to take?

8 A. I'm not sure I understand that question.

9
10 Q. Well, if you had recommended a particular outcome but
11 that wasn't what the church authority ultimately decided to
12 do, was there any further involvement of you as director of
13 the PSO in that process?

14 A. It depends on the circumstances. If the church
15 authority disagreed with the recommendation, then Towards
16 Healing specified that they needed to state in writing why
17 they had disagreed with that assessment. It's also an
18 issue that I could well have taken to the advisory group.
19 There's also mention of the liaison committee, which of
20 course is not the same as the Professional Standards
21 Resource Group. That is several bishops and several heads
22 of religious orders that I was directly answerable to.

23
24 Q. So there were matters that could be done, and, if
25 appropriate, you would seek advice from the PSRG in
26 relation to those matters?

27 A. Yes.

28
29 Q. If I could just ask you a question about the
30 Towards Healing protocol and ask if the witness could be
31 shown, please, it is at tab 86, barcode reference 8062015.
32 Mr Davoren, is that - and I appreciate you are seeing it
33 a screen, not in hard copy in front of you - a document
34 that you recognise as the Towards Healing protocol --

35 A. Yes.

36
37 Q. -- that was effective between December 1996
38 and December 2000 when a subsequent version was published?

39 A. Yes.

40
41 Q. If I could ask that the witness be shown page 8062030,
42 Mr Davoren, this is page 11 of that protocol, but do you
43 see towards the top of that page paragraph 6.2, which
44 identifies:

45
46 At any time prior to or during the
47 assessment, the Contact Person and the
48 assessors may recommend to the Church

49 .13/10/2014 (1) 42 J F DAVOREN (Ms Stern)
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1
2 authority that the accused be asked to
3 stand aside from a particular office or
4 from all offices held in the Church.

5
6 Do you see that?

7 A. Yes.

8
9 Q. It is right, is it not, that the process was that
10 there might be such a recommendation, but it wasn't an
11 automatic matter - namely, if a complaint was received
12 through the Towards Healing process, that did not
13 automatically lead to the accused person being asked to
14 stand aside?

15 A. No, it depended on the nature of the issue.

16
17 Q. And that was a matter that, according to this, appears
18 to be being decided by the assessor and the contact person,
19 but is it right that you, as director of the PSO, were also
20 from time to time involved in that decision?

21 A. I would always be involved in that decision. The
22 assessors were simply investigation and the contact person
23 simply took the contact, the complaint. I was the one who
24 would put up a recommendation to the church authority of
25 that kind.

26
27 Q. And so that was part of your responsibility throughout
28 your role --

29 A. It was.

30
31 Q. -- namely, to determine whether someone about whom
32 a complaint had been made should be asked to stand aside
33 either from a particular role or from a general role?

34 A. Either to stand aside temporarily while the assessment
35 was being completed or more permanently.

36
37 Q. And in relation to that, it is right that from time to
38 time you would take advice in relation to that decision
39 from the PSRG?

40 A. If there were particular complicating factors, yes.

41
42 Q. And what would be the particular complicating factors
43 that would cause you to take a matter to the PSRG rather
44 than making such decision yourself?

45 A. The background, whether there had been any other
46 complaints made against the person concerned, the nature of
47 the offence - there are all sorts of side issues that can
48 come in and just muddy the waters - and I would then put it

1
2 before the resource group.

3
4 Q. So on a proportion of cases you would put it before
5 the resource group when you considered there were
6 complicating factors?

7 A. Yes.

8
9 Q. And those complicating factors might include material
10 that went to, if you like, the reliability of the complaint
11 that was being made --

12 A. Yes.

13
14 Q. -- or the likelihood that it was well founded?

15 A. Yes.

16
17 Q. And did you routinely seek advice in relation to that
18 particular decision from the NSW Police Force?

19 A. I certainly did so from time to time. I don't know
20 how often I did that. I had meetings at Redfern to discuss
21 some of these issues.

22
23 Q. And when you say "meetings at Redfern", is that with
24 members of the Child Protection Enforcement Agency?

25 A. Yes.

26
27 Q. The question I asked was whether you routinely sought
28 advice from police on that question - namely, whether
29 a particular accused or named offender should be asked to
30 stand aside. Do I understand from your answer that you did
31 not routinely make that decision on advice from the police
32 force?

33 A. I would have done so on every case that involved
34 paedophilia and certainly if the case was established, yes.

35
36 Q. Could I just take those two in turn. The first is you
37 said every case that involved paedophilia. Are you saying
38 that in every case where there was a complaint which
39 involved conduct where the victim was at the time of the
40 complained conduct a child, you would routinely seek advice
41 from the NSW Police?

42 A. Yes, defining paedophilia as offences against children
43 below the age of 12.

44
45 Q. So in every case where the complaint related to
46 a change who was aged below 12 at the time of the offending
47 behaviour --

48 A. Yes.

1
2
3 Q. -- you would consult with the NSW Police as to whether
4 or not the individual "complainee" (sic), if I can put it
5 that way, would be stood down?

6 A. Oh, no, sorry. Once it was established, I would be
7 recommending that the person be stood down. I didn't
8 require the police's advice on that one.

9
10 Q. But at the outset, when you received a statement of
11 complaint form or a written or telephone complaint and you
12 were aware that the complaint related to conduct which at
13 the time that it was carried out related to a child under
14 the age of 12, at that point, namely, the point when you
15 received the complaint, did you automatically refer that to
16 the Child Protection Enforcement Agency?

17 A. I can't recall precisely what I did on all occasions.
18 I certainly did on occasions do that. Of course, it was
19 complicated by the fact that often the reports that we
20 received were 20 and 30 years after the event and the
21 offender, alleged offender, was dead or had already been
22 removed, so it gets very murky.

23
24 Q. Is your answer that there was no automatic practice of
25 referring matters to the police at that early stage, when
26 there was a complaint involving a victim who at the time
27 was a child?

28 A. I would have thought that we did refer, yes, but,
29 I mean, I don't have statistical analysis of that. That
30 certainly was my reaction - that that's what I would do.

31
32 Q. Were you ever advised by any officer of the NSW Police
33 Force that you ought to immediately refer all complaints
34 which related to children at the time of the conduct
35 alleged to the police?

36 A. It's not a question of the advice but when it applied.
37 We received a number of unsubstantiated complaints of that
38 kind. We would investigate them and if we found that there
39 was a substantive case, we would then talk to the
40 complainant. If the complainant had opted not to go to the
41 police, either get their permission to pass the whole thing
42 over or if they didn't want to go to the police, to report
43 the matter but without identifying the particular
44 complainant. Usually, by the time we got to that stage, we
45 had discovered other complainants as well.

46
47 Q. What you have just described to me are steps that were
48 taken at the end of the assessment process, do you agree?

49 .13/10/2014 (1) 45 J F DAVOREN (Ms Stern)

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1
2 A. Yes.

3
4 Q. But if we go back right to the start, so when the
5 complaint, in whatever form, is first received by the
6 Professional Standards Office and by you as director, did
7 you automatically refer all those complaints to the police
8 in order to inform your decision whether the person
9 complained of should be stood down from duties?

10 A. Certainly if there was a continuing danger to
11 children, yes.

12
13 Q. So if there was a situation where it was identified
14 that there was a child currently at risk, then you would
15 ensure that was reported; is that right?

16 A. Yes, but we didn't get too many of them.

17
18 Q. If you had a complaint which related - say it was 10,
19 15 years old, but that the complainant had been a child at
20 the time of the complaint, how did you, at that very early
21 stage, form a view as to whether or not there might be
22 other children now currently at risk by reason of that
23 alleged perpetrator remaining with access to children?

24 A. We would look at the statement of complaint, normally
25 appoint one or two assessors to meet that person and to get
26 the details. We would also inquire from the church
27 authority concerned whether there had been any other
28 complaints made against this particular person. If there
29 was a clear danger, my memory would be that we would report
30 the matter to the police - the Child Protection Enforcement
31 Agency.

32
33 Q. And that was if you, as a result of those steps that
34 you have just described, decided that there was a current
35 danger to children --

36 A. Yes.

37
38 Q. -- who might be exposed to this individual?

39 A. Yes.

40
41 Q. And during that process, prior to making that report
42 to the police, how did you know whether or not that
43 particular individual might or might not be subject to
44 a number of other complaints that had been put to the
45 NSW Police Force?

46 A. I believe I did have some discussion - I had
47 discussions with the church authority to find out if they
48 had any reports, and I would occasionally talk to

49 .13/10/2014 (1) 46 J F DAVOREN (Ms Stern)

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1
2 Child Protection Enforcement Agency as well to see if they
3 had any more, and we then would pass over what we had.
4

5 Q. So you occasionally would talk to the Child Protection
6 Enforcement Agency, but doesn't it follow from that that
7 when you received an individual complaint, you had no way
8 of knowing whether that individual person might not even
9 have been convicted of offences in the past, unless they
10 were also known to the church authority?

11 A. Yes, but the church agencies would generally be aware
12 of that, if they had been convicted.
13

14 Q. And did any NSW Police Force officer ever tell you
15 that you needed to change your system; that instead you
16 should routinely consult the NSW Police Force at the moment
17 of receiving a complaint to find out whether the person
18 might not also have been the subject of complaints or
19 convictions that were known to the NSW Police Force?

20 A. I don't remember any such conversation.
21

22 Q. Do you think that if you had had such advice you would
23 recall it?

24 A. I would imagine so, yes.
25

26 Q. So you think it likely that you were never given any
27 such advice?

28 A. It is a long time ago. I wouldn't be prepared to make
29 a firm statement on that.
30

31 Q. I wonder if I could ask you to turn back to the
32 document that I have had called up before and which may now
33 have disappeared from the screen. It is page 11 of
34 Towards Healing at document number 8062030. If I could ask
35 you now about paragraph 6.3.3. Part of the Towards Healing
36 process, as you understood it, involved an attempt to
37 interview the victim; is that correct?

38 A. Sorry, what was that again?
39

40 Q. Part of the Towards Healing process, as you understood
41 it, involved an attempt to interview the victim of the
42 conduct complained of?

43 A. Yes.
44

45 Q. And as you understood it, that happened in most cases?

46 A. Yes.
47

48 Q. And so it follows, doesn't it, that the material that
49 .13/10/2014 (1) 47 J F DAVOREN (Ms Stern)
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1
2 would be known to you as the director of the PSO would,
3 over time and during the assessment process, include not
4 just the original statement of complaint but also a more
5 fulsome account from the victim of what had happened?
6 A. The people taking the complaints generally did a very
7 thorough job and got all that the complainant wanted to
8 say. So we didn't often get significant new information,
9 or the assessors didn't, initially, then later on they did.
10 But it wasn't that they had been keeping quiet, it expanded
11 over a number of interview sessions, and the victim was
12 asked, "Would you be prepared to have an assessor come and
13 talk to you about this?"

14
15 Q. So over the course of the assessment there might be
16 more than one interview of the victim?

17 A. Yes.

18
19 Q. And that, as you have just described, the information
20 available in relation to the matter complained of would
21 increase over the course of those interviews?

22 A. Yes.

23
24 Q. And you held, as I understand it, a written account of
25 all interviews that were conducted?

26 A. Yes.

27
28 Q. And that included interviews with the victim, but also
29 interviews with the accused, if possible?

30 A. Yes.

31
32 Q. And interviews with those who might be identified as
33 providing potentially corroborative evidence?

34 A. Yes.

35
36 Q. And you also received a copy of all assessment
37 reports?

38 A. Yes.

39
40 Q. And assessment reports would generally include
41 a summary of the information that had been obtained through
42 the interview process?

43 A. Yes.

44
45 Q. But it might also include additional information that
46 had been obtained other than through interviewing
47 individual either complainants or accused or potential
48 witnesses?

49 .13/10/2014 (1) 48 J F DAVOREN (Ms Stern)

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1
2 A. Yes.

3
4 Q. And that might include information that had been made
5 available by those who had been treating the victim on
6 a professional basis?

7 A. Yes.

8
9 Q. And you agree with me that it was generally discussed
10 in the PSRG that interviews of complainants took place?

11 A. Yes.

12
13 Q. And also that, where possible, interviews of the
14 accused took place?

15 A. Yes.

16
17 Q. And that interviews of third parties who could provide
18 potentially relevant accounts also took place?

19 A. Yes.

20
21 Q. And it was also generally discussed within the PSRG
22 that there might be other forms of evidence that had been
23 collected during the assessment process?

24 A. This is assuming that it is a complex case and we
25 needed their advice. We would give them all the
26 information we had.

27
28 Q. When you say you would give them all the information
29 that you had, it wasn't the practice of the PSO to provide
30 all of the information I've just asked you about - namely,
31 written reports of interviews, full assessment reports,
32 other information --

33 A. Oh, no, no, sorry, a summary; not the documents.

34
35 Q. The summaries would be provided to the PSRG but not
36 the full documents --

37 A. No.

38
39 Q. -- as a matter of routine?

40 A. No.

41
42 Q. But there were occasions, weren't there, when
43 assessment reports would be provided to the PSRG?

44 A. Yes.

45
46 Q. Or where individual items of correspondence would be
47 provided to the PSRG?

48 A. Yes.

1
2
3 Q. Or where individual medical reports relating to either
4 an accused or a victim would be provided to the PSRG?

5 A. Yes.

6
7 Q. And they would be provided generally at the meetings
8 themselves?

9 A. Yes.

10
11 Q. But on occasion, would they not also be provided
12 together with the agenda, so that individual members of the
13 PSRG could consider the information in advance?

14 A. I don't recall that happening in any great detail, no.

15
16 Q. But we looked earlier at, for example, the job
17 description of the PSO director --

18 A. Yes.

19
20 Q. -- and you identified that in that instance you
21 thought it likely that that was a document that had been
22 provided in advance?

23 A. Yes, but that wasn't regarding a case; that was
24 structural.

25
26 Q. We know that Inspector Beth Cullen was on the PSRG
27 from around April 1999. Do you agree with that?

28 A. Yes.

29
30 Q. Are you able to explain, from your perspective, how it
31 was that she came to join the PSRG?

32 A. Yes. I have a reasonable memory of that. The
33 resource group was talking about members and they wanted to
34 broaden the base so that it wasn't just fanatical Catholics
35 in the show, that it was a broad base. I remember talking
36 to my opposite number in the Anglican Church, Sydney, about
37 the possibility that he might even join it, but - I didn't
38 make a firm offer, I just said, "What would you think?" And
39 he said, "Thanks all the same". And then I think I spoke -
40 I can't swear to this, but I think I spoke to the Child
41 Protection Enforcement Agency people and said, "What do you
42 think about the possibility of having one of the people
43 there from the force?" And I think they thought about it
44 and later put up a name.

45
46 Q. Why was it that you thought that it would be a good
47 idea to have someone from the Child Protection Enforcement
48 Agency on the PSRG?

49 .13/10/2014 (1) 50 J F DAVOREN (Ms Stern)

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1
2 A. I don't know that I specified that, but just whether
3 there would be some use in having somebody looking at it
4 from another perspective, and the police seemed to be one
5 such avenue. In fact, I'm not sure that I even came with
6 the proposal that it would be a police person, but somebody
7 who Child Protection Enforcement Agency was aware of.
8

9 Q. Were you or weren't you specifically seeking a police
10 perspective on the PSRG?

11 A. I frankly don't remember whether that was specific or
12 not.
13

14 Q. But you knew, when she was proposed to come on to the
15 PSRG, that she was a serving police officer?

16 A. Yes.
17

18 Q. And that she was a member of the Child Protection
19 Enforcement Agency?

20 A. Yes.
21

22 Q. And you already knew her in that capacity, as
23 I understand it?

24 A. I had conversations with her. I don't know that
25 "knew" would be quite the word. We hadn't - we weren't
26 friends or anything, but we did work occasionally together
27 and I presume I put a couple of questions to her at one
28 stage when I was visiting Redfern.
29

30 Q. If we just go back to this visit in Redfern, what
31 would be the nature of the inquiries that you were putting
32 to the police when you were visiting Redfern on those
33 occasions?

34 A. I remember one occasion where we'd kicked the priest
35 out of the priesthood and I wanted advice as to whether he
36 should be declared to be unsuitable for any other
37 employment, and the police proceeded with that and he was
38 so declared. Unfortunately, when he got a freedom of
39 information document it said in it he's been declared this
40 way "as John Davoren wanted it", which was a pity, but it
41 didn't do any harm.
42

43 Q. So if I could just ask you about that particular
44 example, that is an instance when you yourself went to the
45 police and told them about a particular individual against
46 whom a complaint had been made?

47 A. Yes.
48

1
2 Q. And that was at the point when the complaint had been
3 substantiated?

4 A. Yes.

5
6 Q. And part of the resolution involved removing him from
7 a position of access to children?

8 A. Yes.

9
10 Q. And at that point, and it may be you can't recall, did
11 you go back to the complainant and ask whether they would
12 consent to you taking the matter to the NSW Police Force?

13 A. No, I can't remember that. Of course, not all of them
14 were totally opposed to the police being involved, so no,
15 I don't know.

16
17 Q. And when you say "not all of them were totally opposed
18 to the police being involved", do you accept that a number
19 of the cases that were considered in the Towards Healing
20 protocol were cases whereby the complainant hadn't
21 indicated any opposition to police involvement in the
22 investigation of their claim?

23 A. It was a standard question for the contact person, the
24 one taking the complaint, to mention, "If it is a matter of
25 criminal offence then you can go to the police and we
26 recommend that you do." They decided not to, not I think
27 because of any feeling of allegiance to the church, because
28 most of them couldn't stand the church by this stage, but
29 a reluctance to involve the police.

30
31 Q. But that was not the background to each and every case
32 that was being heard or considered through the
33 Towards Healing protocol?

34 A. No, there were a lot of variations on that, yes.

35
36 Q. Could you elaborate a bit on the circumstances of
37 those persons who, as you said a moment ago, were not
38 totally opposed to police involvement in their matter?

39 A. They decided to make their complaint through our
40 process and said at this stage they did not intend to
41 report to the police. What their thinking was about it we
42 didn't always know, but they opted to make a complaint.
43 Whether they then subsequently wanted it made to the
44 police, sometimes we wouldn't know.

45
46 Q. Just in terms of your own involvement with the
47 completion of the statement of complaint form and, in
48 particular, whether or not to tick "Yes" or "No" as to

49 .13/10/2014 (1) 52 J F DAVOREN (Ms Stern)

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1
2 whether the complainant intended to take their case to the
3 police at that point, you would not generally be involved
4 in the process by which the complainant would make that
5 choice, would you?

6 A. No.

7
8 Q. That was done by contact persons?

9 A. Yes.

10
11 Q. In fact, is it not right that you were never involved
12 in discussions with the complainant about that particular
13 choice?

14 A. No, I wouldn't have been.

15
16 Q. And so any information you had about that choice came,
17 firstly, from the statement of complaint form itself?

18 A. From their discussion with the contact person. We
19 advised the contact person to bring this up and give it at
20 least equal status, if not more strongly recommend that
21 they go to the police.

22
23 Q. So there was a general advice given to contact persons
24 that you have just described. That was given by way of
25 training days; is that not right?

26 A. Yes.

27
28 Q. Not by way of an individual conversation between you
29 and the contact person on a one-on-one basis?

30 A. No, but I met with the contact people as a group and
31 we went through all that, and they put up issues that they
32 were running into and we talked about them.

33
34 Q. And we know there were training days from around 2002.
35 Were there also training days in 1999, 2000 and 2001 that
36 you can recall?

37 A. Whenever we appointed a contact person we went through
38 that process and then every now and then, once a year or
39 so, I would have a meeting with various groups of them
40 because they were in different places.

41
42 Q. But in relation to a particular complaint or case,
43 other than in an exceptional case, it was unlikely that you
44 would have a conversation with the contact person about the
45 choice that had been made by the individual complainant
46 whether or not to go to the police at that stage?

47 A. That is so, yes.

1
2 Q. And there might have been, over the period when you
3 were director of the PSO, one or two cases where you might
4 have had that sort of conversation with a contact person?

5 A. Yes, I would have had an occasional conversation,
6 especially if the contact person was a bit concerned about
7 whether they wanted to or not and they would - you know,
8 the examples that you gave of quivering between the two,
9 what was going on, we talked about that, and then I would
10 also get back to the complainant if the police indicated
11 that they wanted to talk to the complainant.
12

13 Q. And how would the police even know about the complaint
14 or the complainant?

15 A. We would have - we would let them know that we had
16 received the complaint, especially if we knew that there
17 were other matters that the police were investigating.
18

19 Q. I would just like to ask you a little bit about that.
20 I was asking you earlier about what you did at the initial
21 point upon receipt of the complaint, and you indicated that
22 other than in certain unusual cases, you wouldn't routinely
23 notify the police of a complaint immediately upon your
24 receipt of a complaint?

25 A. No.
26

27 Q. That's right, isn't it? Then during the assessment
28 process, as we have discussed, further information became
29 available, but I understand that it wasn't your routine
30 practice during the assessment process to notify the
31 police, either of the complaint or of additional
32 information that you had received; is that not right?

33 A. We looked for - I looked for balance of probability
34 evidence before we started to take the matter further. We
35 did get a number of complaints that turned out not to be
36 substantiated. So taking a complaint by somebody who
37 reckoned that 25 years before he or she had been abused by
38 X, we needed to get more information before we started the
39 process that - notify the police, notify the church head.
40

41 Q. So there is the process of - well, you actually
42 automatically refer the individual complaints to the church
43 authority, don't you, at the initial stage of receipt?

44 A. Yes.
45

46 Q. But not the police then. Then you undergo the
47 assessment process.

48 A. Mmm.

1
2
3 Q. But is it not right that you didn't notify the police
4 unless or until an individual complaint was found to be
5 substantiated?

6 A. That's true, yes.
7

8 Q. And even when a complaint was found to be
9 substantiated, is it not also right that the general
10 practice was only to notify the police by way of an
11 anonymised blind report form?

12 A. My memory is that I let the police know precisely what
13 the complaint was, but that at this stage the complainant
14 was not prepared to have his or her name given.
15

16 Q. I wonder if the witness could be shown, please, the
17 documents which is at tab 29, barcode 8063327. And where
18 you say that your recollection was that you would give the
19 police details of the complaint, but not the identification
20 of the victim, is this the form which you used to provide
21 that information to the police?

22 A. Frankly, I don't remember, but it seems to be
23 essentially what - ah.
24

25 Q. Do you see it has your name printed at the bottom?

26 A. Yes, and Brother Michael Hill is mentioned there.
27

28 Q. I think that may be because it is a specific instance.
29 We have the form, and it may have been a form that had been
30 partially completed relating to a specific instance,
31 because there is also an individual date on that form,
32 which presumably wouldn't have been on the standard
33 pro forma?

34 A. No.
35

36 Q. But is this not the means by which you provided the
37 information that you have just described upon a complaint
38 being substantiated - namely, that you would provide
39 information by completing this form, but omitting the
40 victim details?

41 A. Yes, and then, if the police came back and said, "We
42 have other cases now, we would like to talk to your
43 complainant", I would go to the complainant and say, "The
44 police would like to talk to you. We recommend you do so
45 and we will help you do so if you would like."
46

47 Q. So that was the system whereby we got to what you said
48 at the outset of this line of questions - namely, that

49 .13/10/2014 (1) 55 J F DAVOREN (Ms Stern)

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1
2 sometimes the police got back to you and said they wanted
3 to speak to the individual complainant?

4 A. Yes.

5
6 Q. And the way that they were aware of the complaint was
7 because you would provide them with a report in this format
8 once you had identified that the complaint was
9 substantiated?

10 A. Yes.

11
12 Q. And when that happened, was it your experience that
13 the complainant was generally willing to speak to the
14 police in the manner suggested?

15 A. I don't know statistically, but certainly a number
16 were happy to do that, yes.

17
18 Q. From your part, if the police said to you, "We would
19 like to try and get in touch with that complainant", did
20 you attempt to facilitate that on each and every occasion?

21 A. Yes.

22
23 Q. And it may be you can't remember, and it may be that
24 it is not helpful to speak in terms of generality, but are
25 you able to say roughly how many times a year that would
26 happen?

27 A. No, honestly, I couldn't, but it did happen reasonably
28 frequently, I would say.

29
30 MS STERN: Commissioner, I note the time.

31
32 THE COMMISSIONER: It is a convenient time, is it?

33
34 MS STERN: It is, certainly. I was going to go back to
35 another topic.

36
37 THE COMMISSIONER: If you are about to switch topics, we
38 will take the adjournment. The Commission will adjourn
39 until 2 o'clock.

40
41 LUNCHEON ADJOURNMENT

42
43 THE COMMISSIONER: Is there anything before the evidence
44 resumes? No? Could you come forward, Mr Davoren. You're
45 still bound by your oath, of course. Yes.

46
47 MS STERN: Q. Mr Davoren, I'd asked you a few questions
48 earlier about the role of Beth Cullen on the Professional

49 .13/10/2014 (1) 56 J F DAVOREN (Ms Stern)

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Standards Resource Group. From your perspective - and really the group was there to advise you - was she there as a representative of the NSW Police Force?

A. No, I wouldn't have thought so, not officially. She was there because of her perspective but she wasn't an official representative. There were no such things as official representatives on that group.

Q. If she agreed with a proposed mode of resolving a particular complaint or a proposed step to be taken in the process, did you interpret her agreement as agreement given on behalf of the NSW Police Force?

A. No.

Q. You interpreted the decisions or views that she expressed as being her views personally?

A. I'm not sure quite what that means.

Q. You interpreted the views that she expressed or the agreements that she gave as reflecting her personal view rather than any view given on behalf of the NSW Police Force?

A. I don't think I took particular notice of who said what. There was an animated discussion around the room and they came to a conclusion, those in favour, those against.

Q. Did you consider Beth Cullen to be on the Professional Standards Resource Group as a liaison between the church and the NSW Police Force?

A. No.

Q. Did you consider her presence as a means of ensuring that the NSW Police Force knew what the Professional Standards Resource Group was doing?

A. No, I don't think I had that view.

Q. Was information that was provided to her as a member of the Professional Standards Resource Group information that was provided by way of a report to the NSW Police Force?

A. No.

Q. Did you consider the provision of information to Beth Cullen on the Professional Standards Resource Group as a way of complying with any mandatory reporting obligations that you might have been under through your role as director of the Professional Standards Office?

.13/10/2014 (1) 57 J F DAVOREN (Ms Stern)

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1
2 A. No.

3
4 Q. Did you consider that Beth Cullen was free to
5 communicate all information passed to her on the
6 Professional Standards Resource Group to her colleagues in
7 the NSW Police Force?

8 A. My memory is that a lot of documentation that we
9 presented to the resource group didn't have the names in.

10
11 Q. Irrespective of that, did you consider that she was
12 free to pass all and any documents that were provided to
13 her as a member of the Professional Standards Resource
14 Group to her colleagues in the NSW Police Force?

15 A. No, I would have thought that for all members, the
16 papers were put down, discussed and then picked up again,
17 but the media put this down at one stage as destroying
18 records, which it wasn't, of course.

19
20 Q. If we can just go into what it was. Documents were
21 provided to members of the Professional Standards Resource
22 Group?

23 A. Yes.

24
25 Q. Some of them were provided in advance of the hearing
26 and some were provided at the hearing?

27 A. The only ones we've established that were provided
28 were things regarding structure. I don't think we had too
29 much of the cases presented.

30
31 Q. In any event, material that was passed to members of
32 the Professional Standards Resource Group you've just
33 indicated was left at the meetings and then collected by
34 yourself or a member of your staff; is that right?

35 A. Yes, yes.

36
37 Q. Is that the invariable practice?

38 A. My memory was that, yes, that's what we did.

39
40 Q. Was that something that you recall discussing with
41 Beth Cullen as a member of the Professional Standards
42 Resource Group?

43 A. No, I don't recall any such discussion.

44
45 Q. Do you recall any situation or any occasion in which
46 Beth Cullen asked whether she could take any document with
47 her?

48 A. I wouldn't be surprised if she did but I don't recall

1
2 specifically.

3
4 Q. Are you saying you don't recall any occasion when she
5 discussed with you a desire to take a document away from a
6 PSRG meeting?

7 A. It doesn't come readily to mind, no.

8
9 Q. So on what basis do you think it may have happened?

10 A. I don't know that I did think it happened.

11
12 THE COMMISSIONER: I think you're assuming something in
13 the question. I disallow the question.

14
15 MS STERN: Q. Do you recall or do you believe that that
16 happened on any occasion?

17 A. No.

18
19 Q. Do you recall any discussion between yourself and
20 Beth Cullen when she indicated an intention to report
21 something that she'd learnt through the PSRG to her
22 colleagues at the NSW Police Force?

23 A. I imagine we had several discussions at the Redfern
24 office but I don't recall anything immediately after the
25 resource group meetings, no.

26
27 Q. Do you recall any instance when she asked whether she
28 could report something that she had learnt at the resource
29 group meeting to her colleagues at the NSW Police Force?

30 A. My reply to that would be that if she had that
31 impression, she would have stated that at the meeting.

32
33 Q. Do you recall any instance when she told you that that
34 was what she intended to do.

35
36 MR MADDEN: I object to this. My friend is asking the
37 same question three times. It is really the same question
38 asked in a different way. The witness says he doesn't
39 remember.

40
41 THE COMMISSIONER: I've understood the witness's evidence
42 to be that he doesn't recall any such instance - not that
43 he has no recall about the subject matter, but he doesn't
44 recall any such instance. I will allow this question, but
45 there could be a limit to it.

46
47 MS STERN: Q. Mr Davoren, do you recall any instance
48 when Beth Cullen told you that she intended to report

49 .13/10/2014 (1) 59 J F DAVOREN (Ms Stern)

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1
2 something that she'd learned at the resource group meeting
3 to her colleagues at the NSW Police Force?

4 A. I don't recall such a statement but I would add that
5 if she felt that way at the meeting, she would have said
6 so.

7
8 Q. But you don't recall her saying so on any occasion?

9 A. I'm sure she did say during the meetings, yes, that it
10 ought to be reported if it hadn't been. In many cases it
11 already had been.

12
13 Q. Did she ever indicate at the meeting or otherwise to
14 you that she personally intended to report the matter back
15 to the NSW Police Force?

16 A. No.

17
18 Q. Did she on occasion, however, indicate during a
19 meeting that material should be reported to the NSW Police
20 Force?

21 A. I'm sure she did.

22
23 Q. Do you actually recall her doing that?

24 A. I recall her being very positive during the meetings
25 and being the person she was.

26
27 Q. Do you recall during any meeting her indicating that a
28 particular piece of information should be reported to the
29 NSW Police Force?

30 A. Specifically, no, I can't recall an incident of that,
31 but a lot of the cases we were discussing had already been
32 reported to the police.

33
34 Q. Do you recall any instance when Beth Cullen advised
35 that a particular case should be reported to the NSW Police
36 Force?

37 A. I'm sure she did.

38
39 Q. Do you recall her doing that?

40 A. Not a specific incident, but that was her approach,
41 very positive.

42
43 Q. When you say "that was her approach", are you
44 indicating that from time to time you believed that she
45 identified that there were matters that should be taken to
46 the police?

47 A. Yes.

1
2 Q. Is it right that in relation to such matters, you
3 yourself would not take the matters to police but that you
4 might advise the church authorities that they ought to do
5 so?

6 A. No. In those cases I would have gone directly and
7 reported the matter myself.
8

9 Q. And earlier in your evidence you described the system
10 of blind reporting, and I showed you a form and you
11 explained that that was a form of reporting that took place
12 after a complaint was found to be substantiated.

13 A. Mmm.
14

15 Q. Is this a different form of reporting, what you are
16 now describing, namely, a report during the Towards Healing
17 process as a result of advice given by the PSRG?

18 A. I think in a specific case where the accused was still
19 a danger to children, that I would report the matter to the
20 police.
21

22 Q. And are they the only category of cases, namely, where
23 there was a current risk to children, in your view, that
24 you would report the matters during the Towards Healing
25 process rather than at the point at which the complaint had
26 been substantiated?

27 A. I would think so, yes.
28

29 Q. Is that the category of case in relation to which you
30 believe advice was given by Beth Cullen?

31 A. As I said, there was a lot of discussion going on. I
32 couldn't identify who said what precisely in a matter and
33 the minutes don't really reflect that either.
34

35 Q. Do you recall any instance, whether at the PSRG
36 meeting or in private session between yourself and
37 Beth Cullen, where she asked to see material that you held
38 as director of the PSO when that material hadn't already
39 been provided to the PSRG?

40 A. I have no clear memory of that, but it doesn't mean it
41 didn't happen.
42

43 Q. Did you ever refuse to take a step which Beth Cullen
44 advised that you should take which involved reporting
45 either a case or information to the police?

46 A. I do not recall such, no.
47

48 Q. Did you ever refuse any request from Beth Cullen to
49

1
2 give her any additional information?

3 A. I have no recollection of such, no.
4

5 Q. In the description of the Towards Healing process that
6 you've already given, it seems to be implicit that
7 individual complainants were required to make a choice
8 between going through church or police processes at the
9 point where they made their initial complaint. Is that
10 right?

11 A. No. They were not required to make a choice between
12 the two. They could opt for one and leave the other option
13 open.
14

15 Q. In terms of a current mode of dealing with their
16 complaint, is it not right that they had to make a choice
17 at that particular point in time whether to go through the
18 police process or the church process?

19 A. They could choose either but they could later change
20 that.
21

22 Q. But is it not right that a complaint wouldn't be dealt
23 with by the Towards Healing process if the individual
24 complainant had indicated a current intention to report the
25 matter himself or herself to the police?

26 A. Sorry, what was the question again?
27

28 Q. Was it not right that a matter couldn't be considered
29 through the Towards Healing process if the complainant had
30 indicated a current intention to report the matter to the
31 police?

32 A. It would be discussed with the complainant and if they
33 decided to go to the police, we would wish them well and
34 accompany them if they liked.
35

36 Q. But you would not, at that point, then initiate the
37 Towards Healing process, would you?

38 A. No, and in fact, once the police started an
39 investigation we would stop our investigation.
40

41 Q. And the only way that it could come back to Towards
42 Healing would be if the complainant decided no longer to
43 pursue the police process or if the police concluded their
44 investigation one way or the other?

45 A. I don't recall any such event.
46

47 Q. Are you saying you don't recall any event when a
48 complainant had chosen to go through the police process but

1
2 the complaint came back in some way, shape or form to the
3 Towards Healing process?

4 A. I have no recollection of such.

5
6 Q. Were you ever advised by Beth Cullen that individual
7 complainants should not have to make a choice between
8 church or police processes at the point when they completed
9 their initial complaint?

10 A. I'm sorry, would you mind asking that question again?

11
12 Q. You indicated earlier that a choice had to be made by
13 a complainant to the extent that they were asked whether
14 they intended to report the matter to the police and it was
15 only if they didn't at that point in time, that the
16 complaint would be dealt with through the Towards Healing
17 process?

18 A. Yes.

19
20 Q. Were you ever advised by Beth Cullen that individual
21 complainants should not have to make that choice?

22 A. I'm a bit flummoxed as to where you're getting to
23 there.

24
25 Q. Were you ever advised by Beth Cullen that individual
26 complainants should not be told that their complaint will
27 only be dealt with under the Towards Healing process if
28 they indicate that it's not their current intention to go
29 to the police?

30 A. If that advice was offered it would have been by one
31 of the officers at the Child Protection Enforcement Agency,
32 whether it was Beth or not I have no idea.

33
34 Q. Was that advice ever offered?

35 A. If they opted to go to the church they couldn't then
36 go to the police, is that what you're saying?

37
38 Q. In essence, they were told, were they not that, if
39 they opted to make a notification to the police and they
40 indicated that that was their current intention, then their
41 complaint wouldn't be dealt with through the Towards
42 Healing process?

43 A. No.

44
45 THE COMMISSIONER: Q. Are you agreeing with that or
46 disagreeing? When you say "no" --

47 A. Yes, I'm agreeing, yes. The way the question was
48 phrased, though, "no" seemed to be the answer.

49 .13/10/2014 (1) 63 J F DAVOREN (Ms Stern)

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1
2
3 THE COMMISSIONER: It's no reflection on you. It's just a
4 question of a sort that "no" can be ambiguous.

5
6 MS STERN: Q. Given what you've just said in terms of
7 the way in which it was put to individual complainants,
8 were you ever told by any member of the Child Protection
9 Enforcement Agency that it was wrong to require
10 complainants to make that choice, namely, to have to say,
11 "No, I don't intend to go to the police", if they wanted
12 their complaint dealt with through the Towards Healing
13 process?

14 A. That it was wrong to give them a choice?

15
16 Q. That it was wrong to tell them that it was only if
17 they didn't intend to make a complaint to the police that
18 their case could be dealt with by the church through the
19 Towards Healing process?

20 A. I would have thought that was a very basic choice.

21
22 Q. But that was never something that was criticised to
23 you by the NSW Police Force officers?

24 A. I still don't see what's wrong about it.

25
26 Q. I'm just asking whether any of the NSW Police Force
27 officers ever identified anything wrong about it to you?

28 A. It never occurred to me that it was wrong.

29
30 Q. Do I take from that that they never did give you that
31 advice?

32 A. No, I don't think you can conclude that. If it was
33 legally wrong I presume they gave that advice but it didn't
34 register with me.

35
36 Q. You have no recollection of receiving such advice?

37 A. No.

38
39 Q. Were you ever advised by Beth Cullen that NSW Police
40 Force officers should be involved in interviewing all
41 individual complainants to ascertain whether or not they
42 wanted the police to investigate their complaint?

43 A. I don't remember getting that advice from anybody. Is
44 that reasonable advice?

45
46 Q. I'm simply asking the question whether you ever were
47 given that advice.

48 A. The reason Towards Healing was set up was that people

1
2 wanted an avenue where they could complain to the church
3 and so they were given the option but we recommended, if it
4 was a criminal matter, that they go to the police. It was
5 their choice and they could reverse that choice any time
6 they liked.
7

8 Q. Did you rely on Beth Cullen to advise you within the
9 PSRG whether or not a particular matter should be reported
10 to the police?

11 A. I didn't see Beth as being an adviser. She was a
12 member of the committee and expressed her view at the
13 committee meetings and if she felt that something needed to
14 be discussed she would mention that to me and I would then
15 have discussion either with her or with somebody at
16 Redfern.
17

18 Q. Could I show you a document - and this is not a
19 document that I suggest that you at any point have seen -
20 it is at tab 49, document reference number 7999303. Just
21 for context, Mr Davoren, this is advice that was provided
22 within the NSW Police Force, and I don't for a moment
23 suggest that it was advice that was provided to you, and it
24 was advice which related to a proposed memorandum of
25 understanding. What I would just like to ask you is if you
26 look under the heading "Comment", there is then a reference
27 in italicised text to a proposed paragraph in an MOU which
28 reads:
29

30 Where a criminal offence is alleged, and
31 the complainant does not wish to make a
32 report to the police, the Convenor of the
33 NSW Professional Standards Resource Group
34 will report the name of the alleged
35 offender to the police, but not the name of
36 the complainant, and will provide such
37 information concerning the alleged offence
38 as is possible without disclosing the
39 identity of the complainant.
40

41 Do you see that text?

42 A. I do.
43

44 Q. Do you agree with me that that accurately reflects the
45 system that you have described, namely that, if a
46 complainant did not wish to make a report to the police,
47 the only report that you would make to the police would be
48 by way of the blind report form, reporting the name of the

1
2 offender but not the name of the complainant, and you would
3 only provide such information concerning the offence as was
4 possible without disclosing the identity of the
5 complainant? That was the general system had you in place,
6 was it not?

7 A. It was.

8
9 Q. Were you ever told that that particular system was in
10 any way incongruent with any provision in the Crimes Act in
11 New South Wales?

12 A. No, I don't recall any such advice.

13
14 Q. Could I ask if the document could be scrolled on to
15 page 7999305. If I could just read to you the first
16 sentence in the first full paragraph on that page, that
17 reads:

18
19 The fact that disclosure of information to
20 the police by the Catholic Church
21 personnel, in circumstances where the
22 complainant wishes to remain anonymous may
23 be a breach of confidence, is unlikely to
24 be viewed by a court as a reasonable
25 excuse.

26
27 Were you ever advised that a desire to maintain the
28 confidentiality of a complainant would not be a reasonable
29 excuse for non-disclosure of information to the police?

30 A. We were sharing information about the complaint, not
31 the identity of the complainant, unless the complainant
32 agreed, but we would go back to the complainant and say
33 "The police want to talk to you. Can we give them your
34 name?"

35
36 Q. But as I understand it, the reason for not giving the
37 identifying information in relation to the complainant was
38 a desire to maintain that complainant's confidentiality; is
39 that right?

40 A. Yes, but we consulted the complainant about that.

41
42 Q. You consulted the complainant at the later point when
43 the police requested further information; is that right?

44 A. Yes.

45
46 Q. Were you ever told by any member of the NSW Police
47 Force that the desire to maintain the complainant's
48 confidentiality would not be regarded as a reasonable

1
2 excuse for not giving the information to the police?

3 A. I don't recall ever hearing that sentence, no.

4
5 Q. I know I've just shown you two aspects of this advice,
6 and they're the only two aspects I want to ask you about.
7 Were you ever told by Beth Cullen that the NSW Police Force
8 had been in receipt of legal advice to the effect of what
9 I've just shown you?

10 A. I don't recall any such conversation.

11
12 MS STERN: I don't believe this has already been tendered,
13 Commissioner. It has. It is within the tender bundle. I
14 don't need to tender that.

15
16 Q. Could I ask you now some questions about the ambit of
17 the Towards Healing process. It is right, isn't it, that
18 not every complaint came to you could properly be dealt
19 with through the Towards Healing process?

20 A. That's a fairly broad statement. Could you clarify
21 that a little?

22
23 Q. For example, if at the time of the conduct complained
24 of the offender was not working within the church
25 authority, that might be a reason why a complaint couldn't
26 be dealt with through the Towards Healing process?

27 A. No, that would not be - that would not exclude it, no.

28
29 Q. If a complaint related to someone and that person was
30 in no way related to or a representative of the church,
31 would that be a reason why the matter couldn't be dealt
32 with through the Towards Healing process?

33 A. The Towards Healing process addressed questions of
34 accusations of abuse within the parameters of the church,
35 so we wouldn't be dealing with general complaints, no.

36
37 Q. If the complaint related to an individual who no
38 longer had anything to do with the church, so who might
39 have been, if you like, employed by or working with the
40 church earlier but at the time of the complaint they were
41 no longer involved with the church in any way, could a
42 complaint of that nature be dealt with through the Towards
43 Healing process?

44 A. Yes.

45
46 Q. Was it the case that you wouldn't accept a complaint
47 under Towards Healing unless the priest or other person
48 accused admitted the complaint?

49 .13/10/2014 (1) 67 J F DAVOREN (Ms Stern)

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1
2 A. No.

3
4 Q. So complaints would be accepted through the Towards
5 Healing process even where they weren't admitted?

6 A. Especially when they were not admitted, yes. If they
7 were admitted we didn't have to go to any further
8 investigation.

9
10 Q. I would just like to ask you about a few case
11 examples, if I might, and the first is at tab 125 with the
12 barcode reference 7998611. The particular case I'd like to
13 ask you about is case 133. Just for reference, I can tell
14 you this document is the minutes of the meeting on Friday,
15 28 July 2000. Do you see there's a reference there to
16 case 133, and the allegation is:

17
18 Allegations of failure of duty of care in
19 the supervision of a foster home placement
20 allegedly involving a paedophile foster
21 father.

22
23 It was AGREED to recommend to the Bishop
24 concerned that internal investigations
25 cease and the matter to be handed over to
26 the police.

27
28 It was AGREED to ask the complainant
29 whether she would be willing to go to the
30 police directly or she would prefer the
31 office to do so on her behalf.

32
33 That is the discussion in relation to that. So this is an
34 example where it appears that a decision was taken through
35 the PSRG that the matter should be handed over to the
36 police. Do you see that?

37 A. Yes.

38
39 Q. Are you able now to explain why it was that in respect
40 of some complaints they were handed over to the police but
41 others, which also involved serious criminal conduct, were
42 dealt with through the Towards Healing process?

43 A. Of course, I don't know the precise details of
44 case 133 but my immediate suspicion is that the foster home
45 placement was not under the provision of the church.

46
47 Q. So the explanation would be that this wasn't a matter
48 which properly fell within the ambit of the Towards Healing

1
2 protocol?

3 A. That's right, that the person concerned was not
4 answerable and responsible to the church.

5
6 Q. Because generally within the ambit of Towards Healing,
7 you would only include those cases where you felt that
8 there was some church responsibility --

9 A. Yes.

10
11 Q. -- in relation to the person who was alleged to be the
12 perpetrator?

13 A. And that is very broadly interpreted, as the Royal
14 Commission, that anything that happened under the auspices
15 of the church, even though they knew nothing at all about
16 it, the church can be held responsible.

17
18 Q. And in this instance, it appears that there is a
19 direct offer, as it were, that was to be made to the
20 complainant that the Professional Standards Office - namely
21 your office as director - could make a complaint to the
22 police on her behalf?

23 A. Yes.

24
25 Q. But is it right that other than in a case like this
26 which was determined not to fall within Towards Healing, it
27 was not your practice to make complaints to the police on
28 behalf of individual complainants whose cases were being
29 assessed through the Towards Healing process?

30 A. We would recommend that the complainant make the
31 complaint directly and we would assist him or her in doing
32 so.

33
34 Q. Could I go to another example, and this is described
35 as case 15 and it is at tab 189, barcode reference 7992207.
36 This is a document, just for your information, do you see
37 it is described at the top as "Case 15. Agenda 6"?

38 A. Yes.

39
40 Q. Do you see that? That is a document that was put
41 before the Professional Standards Resource Group meeting on
42 22 October 1998. This is a statement of complaint and do
43 you see that the matter that is complained of includes, and
44 you'll see this in the first full lengthy paragraph,
45 towards the end:

46
47 ... I vividly remember being pushed to the
48 ground, physically attacked, knifed, raped,
49 .13/10/2014 (1) 69 J F DAVOREN (Ms Stern)
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51

1
2 helpless against his physical strength
3 (I was unable to fight him off due to an
4 inherent weakness caused by my physical
5 disability). This was my first sexual
6 experience and I was traumatised and
7 terrified.
8

9 And this is a copy of a complaint form or a written
10 complaint that clearly was held by you as the director of
11 the PSO and put before the Professional Standards Resource
12 Group for discussion. Could I ask then if you could be
13 shown the document at page 7992184, which is at tab 188, if
14 you look in relation to this - I don't think you can look
15 at anything yet. It is 7992184. If you see in relation to
16 this particular incident or complaint, which was case 15,
17 if we could scroll to the top of the second page of that
18 document, please, do you see that it records there:
19

20 The decision taken at the last meeting was
21 that we should recommend that the rape
22 allegation be taken up with the police and
23 that we cannot, and should not take any
24 further action on that matter. The
25 question is whether some investigation at
26 the diocesan level should be recommended.
27 Without such a review it can look like a
28 cover-up with our accepting uncritically
29 the picture that the diocese presented as
30 if it were the only version.
31

32 The complainant's statement of complaint
33 and the draft letter to the Bishop are
34 attached.
35

36 The advice that was then given in relation to that, which
37 is then set out at tab 117, barcode reference 7998562,
38 could I ask if that could be scrolled through to the second
39 page --
40

41 THE COMMISSIONER: What's the tab number?
42

43 MS STERN: 117.
44

45 THE COMMISSIONER: Thank you.
46

47 MR STANTON: The tab number does not correlate with the
48 exhibit number, I take it?

49 .13/10/2014 (1) 70 J F DAVOREN (Ms Stern)
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1
2
3 THE COMMISSIONER: No, it doesn't.

4
5 MS STERN: I can help there.

6
7 THE COMMISSIONER: I'm afraid it is a reference for our
8 convenience.

9
10 MR STANTON: I know some of it --

11
12 THE COMMISSIONER: Most of the documents have been already
13 collected and I have a set of them on this trolley. Each
14 document has been given a tab number but the tab number is
15 quite distinct from the exhibit number that it gets.

16
17 MR STANTON: Yes, I appreciate that.

18
19 THE COMMISSIONER: It is really only for our convenience
20 to pick up the document in these pre-prepared folders.

21
22 MR STANTON: I wonder if I could invite my friend to refer
23 to the exhibit number reference which would help those at
24 the Bar table.

25
26 MS STERN: I can certainly give that for this one. It is
27 exhibit 87. I will try to cross-refer that or else ensure
28 that I give you the date of the meeting because that should
29 enable you to look that up fairly quickly.

30
31 MR STANTON: Thank you.

32
33 MS STERN: This is exhibit 87, minutes of the meeting of
34 24 September 1999.

35
36 Q. Mr Davoren, do you see there the text relating to case
37 number 15, two-thirds of the way down the page - we may
38 need to scroll through a bit. Do you see that there's a
39 reference there, and that's the same case, to:

40
41 ... complaint about sexual involvement by a
42 priest and subsequent birth of a child.

43
44 The current complaint introduces the matter
45 of rape not previously mentioned.

46
47 It agreed that:

48 . The complainant should be advised to

49 .13/10/2014 (1) 71 J F DAVOREN (Ms Stern)

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1
2 complain to the police, as the church is
3 not in a position to investigate this
4 matter since the accused priest is no
5 longer within the jurisdiction of the
6 church, and there could be contamination of
7 evidence.

8
9 . If the complaint about a rape is
10 withdrawn, this is not a PSRG matter as it
11 involves a review of process that pre-dated
12 Towards Healing.

13
14 In relation to that first bullet point, this appears to
15 suggest that the Towards Healing process did not encompass
16 matters where the accused priest was no longer within the
17 jurisdiction of the church. Is that not the position
18 through the period 1999 to 2003?

19 A. No. That's not the position.

20
21 MR CARROLL: I object. It doesn't flow from the very
22 words of the statement itself. All that is saying because
23 the priest is no longer under the church, they can't
24 investigate and ask questions of police. It doesn't
25 follow. There's a mischief in the question.

26
27 THE COMMISSIONER: I'm not ruling immediately.

28
29 MS STERN: I'm happy to rephrase the question.

30
31 THE COMMISSIONER: I'm going to make things more confusing
32 perhaps, because I like to have the tab number. I know
33 you've mentioned it but what's the tab number.

34
35 MS STERN: It is tab 117, and the document reference, it
36 is the second page behind that tab. It is document
37 reference 7998563.

38
39 THE COMMISSIONER: I have that. What case is it?

40
41 MS STERN: It is the second page behind tab 117 and it's
42 case number 15, two-thirds of the way down the page. I'm
43 happy to rephrase the question.

44
45 MR CARROLL: My friend is conflating two issues here.
46 There is the issue in terms of whether or not Towards
47 Healing in an offence predating 1998 could occur and an
48 investigation by the police outside the auspices when a
49 .13/10/2014 (1) 72 J F DAVOREN (Ms Stern)
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51

1
2 priest is no longer subject to the control of the church.
3

4 There's been a series of questions along this line
5 from the outset. Mr Davoren said quite clearly that the
6 issue in terms of going to the police or not is independent
7 of the process, and there was a clear process and policy
8 whereby they would be encouraged to go to the police.
9 Whether or not the person who is complained about is
10 currently subject to the authority of the church is
11 irrelevant to that process.
12

13 MS STERN: I'm perfectly happy to rephrase --
14

15 THE COMMISSIONER: I might say at this stage that there
16 has been a tendency, natural tendency, to refer to
17 documents by their tab numbers. They should be referred to
18 by exhibit numbers. Ideally, from my point of view, they
19 would be referred to by both the exhibit number and the
20 tab number and a sort of reconciliation list should be
21 produced reconciling tab numbers with exhibit numbers and
22 perhaps the other way around too, tab numbers with exhibit
23 numbers.
24

25 MS STERN: I will attempt to do that. I've been trying to
26 avoid the multiple references by using the document ID
27 reference and giving the document description. I will try
28 that. Mr Broyd has the cross-referred list and I'll try to
29 ensure I do that.
30

31 THE COMMISSIONER: Thank you.
32

33 MS STERN: Q. In relation to this particular document,
34 Mr Davoren, do you see that the agreement, as set out
35 there, is, firstly, that the complainant should be advised
36 to complain to the police. Do you see that?
37

38 A. I do.
39

40 Q. Are you able to explain why it was that as director of
41 the PSO, having seen the complaint form or the complaint
42 letter in the terms that I read out a moment ago, which
43 included a complaint of violence and rape - why you
44 yourself did not report this matter immediately to the NSW
45 Police Force?
46

47 A. Are you sure that I didn't?
48

49 Q. I'm sorry?
50

51 A. Are you sure that I didn't?

1
2
3 Q. The suggestion here in this minute is that the
4 agreement was that the complainant should be advised to
5 complain to the police, which might suggest that you
6 yourself had not already taken this matter to the police.
7 Do you not agree with me that you would not have recorded
8 advice that the complainant be advised to complain to the
9 police if you yourself had already reported the matter to
10 the police?

11 A. The other possibility is that when I reported the
12 matter to the police, they suggested that I get her to
13 report the matter to the police too. Especially since
14 there was something strange about the complaint that the
15 matter of rape was not mentioned in the first complaint but
16 subsequently.

17
18 Q. I understand that but do you not think it likely that
19 if you had referred the matter to the police yourself, you
20 would have reported that to the PSRG at this meeting?

21 A. I could well have. Minutes are not always totally
22 infallible.

23
24 Q. Would you not have checked the minutes to ensure that
25 they accurately recorded something as important as the fact
26 of you referring a complaint of rape to the police?

27 A. I think I was unaware that I was likely to be
28 answerable for a Commission for that, so I may not have
29 read the minutes.

30
31 Q. In any event, just dealing with your current
32 recollection, do you have any recollection of this case at
33 all?

34 A. I don't.

35
36 Q. Would it have been your usual practice that if you
37 yourself, as director of the PSO, had referred a matter to
38 the police you would have included that in a discussion or
39 in a record of discussion of the case in the minutes of the
40 PSRG?

41 A. Yes, I would imagine so. I would have mentioned it at
42 the meeting. However, the minute taker may not have picked
43 it up and we didn't get around to correcting it.

44
45 Q. The second matter in relation to this particular case,
46 if you read this first bullet point it appears that one of
47 the reasons why the complainant was being advised to
48 complain to the police was that the church wasn't in a

1
2 position to investigate the matter because the accused
3 priest was no longer within the jurisdiction of the church
4 and there could be contamination of evidence. Was that one
5 instance when the Towards Healing process would be stopped
6 short - namely, when there was no means for the Towards
7 Healing assessors to investigate a particular matter?

8 A. Sorry, the question is?

9
10 Q. The reason why there seems to be here the suggestion
11 being made that this should be referred to the police is
12 because the church wasn't in a position to investigate the
13 matter?

14 A. That would certainly be a factor, yes.

15
16 Q. Would that be one reason why a matter might be
17 considered to be inappropriate to be further dealt with in
18 the Towards Healing process?

19 A. Especially if the only source of information was the
20 complainant and there was no other - so it would be one
21 person's word technically against another.

22
23 Q. As a general rule, did you seek to ensure that if a
24 complainant was to be advised to go to the police, that
25 would be recorded in the Professional Standards Resource
26 Group minutes?

27 A. Not necessarily, no. They were an advisory group. We
28 didn't give them a full report on everything that was
29 happening.

30
31 Q. But if in a particular case that was discussed before
32 the PSRG the view of the PSRG was that a particular
33 complainant should be advised to make a complaint to the
34 police, would it be your general practice to seek to ensure
35 that that was recorded in the minutes?

36 A. Yes.

37
38 Q. I've already asked you some questions about the
39 information that you collected as the director of the PSO,
40 and we've gone through a number of different categories of
41 information. In the period between 1999 and 2003, did you
42 routinely consult with the NSW Police Force as to whether
43 or not particular items of information that you had
44 received should be reported to them?

45 A. I certainly had discussions. I imagine that was one
46 of the subjects of discussion we had, yes.

47
48 Q. Do you recall any instance when you consulted with the

1
2 NSW Police Force as to whether or not a particular item of
3 information collected through the Towards Healing process
4 should be reported to the NSW Police?

5 A. Well, we were reporting regularly, so the discussion
6 came up often enough.
7

8 Q. Did you have discussions in relation to particular
9 items of information as opposed to the forms of reports
10 that you've already described which related to either blind
11 reporting or children-at-risk reporting?

12 A. As a lot of details were shared, we didn't normally
13 keep, deliberately keep, details, other than, subject to
14 their approval, the complainant's identity.
15

16 Q. But when you did report in the blind reporting form,
17 you would include the information that was set out in that
18 form but you wouldn't attach, for example, the interview
19 transcript.

20 A. At times I think we did.
21

22 Q. Was it your routine practice to do so?

23 A. Sorry?
24

25 Q. Was it your routine practice to do so?

26 A. It happened often enough.
27

28 Q. Would you routinely attach the assessment report in
29 full?

30 A. Summary of, not necessarily the whole report, unless
31 the detail was such that it couldn't be fitted into a
32 summary.
33

34 Q. Would you routinely attach, for example, the
35 transcript of any interview with the offender?

36 A. I don't recall that. I don't know.
37

38 Q. Do you recall any instance when you attached the
39 entire transcript of the interview with the offender?

40 A. I can't readily, no.
41

42 Q. Can you recall any instance when you attached a
43 transcript of an interview with a corroborating witness?

44 A. Again, it would be summary rather than the whole
45 document, not in an effort to cover anything up, but just
46 in terms of ease of communication and if they wanted more,
47 we'd give them more.
48

1
2 Q. In general terms, is it not right that the summary
3 would be included within the body of the blind reporting
4 form rather than by way of attaching additional documents?

5 A. Either way, I would think.
6

7 Q. Do you recall specific examples when you did attach
8 documents to a blind report form?

9 A. Not 10, 15 years ago, no.
10

11 Q. Could I now just show you a draft memorandum of
12 understanding.
13

14 Commissioner, that's at tab 416. The document
15 reference is 8128051. I think this is a new document.
16 Commissioner, I seek to tender this document. It is
17 between barcode reference 8128051 and barcode reference
18 8128058. I understand that Mr Broyd has copies of that
19 document which he will circulate around the Bar table.
20

21 THE COMMISSIONER: Are you tendering it now?
22

23 MS STERN: Yes.
24

25 THE COMMISSIONER: Is this the first exhibit we've had
26 since the great list?
27

28 MS STERN: Yes, it is, Commissioner.
29

30 THE COMMISSIONER: This will be exhibit 310; is that
31 right?
32

33 MS STERN: Yes, that's what we were up to, 309 was the
34 last exhibit, confidential exhibit 309.
35

36 EXHIBIT #310 MEMORANDUM FROM FATHER BRIAN LUCAS TO
37 MR DAVOREN, DATED 12/6/1997, BARCODED 8128051-8128058,
38 BEHIND TAB 416
39

40 THE COMMISSIONER: On the face of it, at least, it is a
41 memorandum from Father Brian Lucas to Mr Davoren, dated
42 12/6/1997, the barcode reference is 8128051-8128058,
43 document behind tab 416.
44

45 MS STERN: Q. Mr Davoren, this is a memorandum to you
46 from Father Brian Lucas dated 12 June 1997. Do you see
47 that the first paragraph says:
48

1
2 As requested here is a copy of the draft
3 memorandum of understanding which has been
4 submitted by the Child Protection
5 Enforcement Agency.
6

7 And then it says:
8

9 We have not yet formulated any response
10 pending the formation of the new (PSRG) and
11 due to the leave of Sergeant
12 Carolyn O'Hare.
13

14 Do you know Sergeant Carolyn O'Hare?

15 A. No.
16

17 Q. Do you recall receiving a copy of a draft memorandum
18 of understanding in 1997 from Father Lucas?

19 A. I have absolutely no memory of such and I suspect that
20 "as requested" was not my request. Brian Lucas was running
21 something dealing with complaints before the Towards
22 Healing was set up. He no longer had any role and I have
23 no memory of pursuing the matter at all.
24

25 Q. What I'd just like to ask you in relation to some of
26 the provisions in here is whether this, what is set out
27 here, reflects a current practice that you put in place at
28 any time between 1999 and 2003. In particular, could you
29 turn, please, to page 8128057. Do you see at the top it
30 appears to say "Proposal":
31

32 Ensure the rights of the victim are
33 paramount and the Police Service and
34 Catholic Church policy of victim care is
35 strictly adhered to.
36

37 Do you then see there's a heading "Strategy" and some text
38 by the side of that and it says:
39

40 Where a person reports to a contact person
41 a historical assault and wants the matter
42 to be kept confidential, the contact person
43 should report the matter through the normal
44 channels to the police, including victim
45 and offender details.
46

47 Firstly, if I just pause there, is that a practice that you
48 ever put in place?

49 .13/10/2014 (1) 78 J F DAVOREN (Ms Stern)
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1
2 A. No.

3
4 Q. Is that a practice that you were ever advised by
5 Beth Cullen to put in place?

6 A. No.

7
8 Q. It then says:

9
10 The Police Service will reserve the right
11 to interview the victim for the purpose of
12 obtaining further intelligence to ensure
13 that the offender is still not a risk to
14 other children, and to accurately record
15 the allegation.

16
17 To the extent that you can give evidence only of your
18 understanding not of what might have actually happened, do
19 you understand that that particular practice was one that
20 was ever put in place during your time as the director of
21 the PSO?

22 A. No, because the role of the contact person was to take
23 the contact, to take the complaint and pass it on to me.
24 They had no role in reporting the matter to the police.
25 That would be my decision.

26
27 Q. I take it from your evidence earlier, you have no
28 recollection either of receiving this document or formally
29 responding to it?

30 A. No.

31
32 Q. I've already asked you about some of this, but could
33 I go now to tab 69.

34
35 THE COMMISSIONER: Are you about to move on to something a
36 bit different?

37
38 MS STERN: It all sort of links together. It is certainly
39 a convenient moment for a break if that's what you want.

40
41 THE COMMISSIONER: I intend to take a short break. I will
42 take a break, no more than about five minutes. We will
43 take a five-minute break.

44
45 SHORT ADJOURNMENT

46
47 MS STERN: Q. Could the witness please be shown
48 exhibit 147, which is tab 177, barcode 7992366.

49 .13/10/2014 (1) 79 J F DAVOREN (Ms Stern)
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1
2 Commissioner, it is tab 177 but it is exhibit 147.

3
4 THE COMMISSIONER: I have that.

5
6 MS STERN: Q. The barcode is 7992366.

7
8 THE COMMISSIONER: Yes.

9
10 MS STERN: Q. Mr Davoren, do you recognise this as a
11 "Statement of Complaint" form?

12 A. Yes, it certainly was one.

13
14 Q. And it is the form in which a contact person, together
15 with a complainant, would complete and register a complaint
16 for the purposes of the Towards Healing protocol?

17 A. Yes.

18
19 Q. Could I ask if the witness could be shown, please, the
20 second page of that document, with the barcode 7992367. Do
21 you see that in relation to notification of the police,
22 there's text approximately halfway down that page which
23 says:

24
25 I have been advised that if my complaint
26 includes criminal behaviour, it is
27 appropriate for me to notify the police.

28
29 Do you see?

30 A. Yes.

31
32 Q. There is the question:

33
34 Have you notified the police?

35
36 With "yes" or "no" tick boxes?

37 A. Yes.

38
39 Q. Then the question:

40
41 Do you intend to notify the police?

42
43 And there are "yes" or "no" tick boxes?

44 A. Yes.

45
46 Q. Do you agree with me that this is the format in which
47 complaints were routinely notified to you as director of
48 the PSO during the period between 1999 and May 2003?

49 .13/10/2014 (1) 80 J F DAVOREN (Ms Stern)

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51

1
2 A. There may have been some change in the latter part,
3 but basically that's it, yes.
4

5 Q. Do you also agree with me that in the text that I've
6 just specifically taken you to, there is nothing to
7 indicate whether or not the complainant would have any
8 objection to the PSO notifying the matter to the police?

9 A. Yes, I'd agree with that.
10

11 Q. Do you also agree with me that there's nothing in the
12 text that I drew your attention to to indicate that the
13 complainant did not want their details to be shared with
14 the police?

15 A. Yes, that's true.
16

17 Q. And it is this form, is it not, that was relied upon
18 to indicate the choice that I discussed with you earlier,
19 namely, the choice whether to go down the route of current
20 notification to the police or to opt for the Towards
21 Healing process?

22 A. Yes.
23

24 Q. I think you indicated that one of the aspects of that
25 choice is that this form would be completed together with a
26 contact person; is that right?

27 A. Yes.
28

29 Q. I wonder if I could now ask you to go to barcode
30 reference 7991859, which is tab reference 352, and I'll
31 come up with the exhibit number in just a moment for the
32 contact person's details. It is exhibit 38. Mr Davoren,
33 do you have that up on your screen yet?

34 A. Not yet.
35

36 Q. It is 7991859. Mr Davoren, do you see there the job
37 description of a contact person?

38 A. I do.
39

40 Q. Could we scroll down to the bottom. You will see it
41 is dated 1 December 1998?

42 A. Yes.
43

44 Q. Would you agree with me that the job descriptions of a
45 contact person were reviewed before the Professional
46 Standards Resource Group?

47 A. Where does it say that?
48

1
2 Q. It doesn't say that. I'm asking you the question,
3 Mr Davoren?

4 A. I can't remember, but I see

5
6 Sign the statement and two copies as a the
7 witness, and receive these documents on
8 behalf of the Professional Standards
9 Resource Group.

10
11 Q. Do you agree that these were documents that it was
12 your practice to refer for comment and advice to the
13 Professional Standards Resource Group?

14 A. It certainly looks like it, yes.

15
16 Q. If you look at this document which sets out the job
17 description of a contact person, do you see that there are
18 a number of tasks that the contact person is required to
19 carry out? Do you see they are listed 1 to 10 on this
20 document?

21 A. Yes.

22
23 Q. They're to establish phone contact, meet the person,
24 listen, there is the reference to "Explain the role and
25 function of the contact person and any further action that
26 may be required by law", "Assist to make contact with an
27 appropriate person about problems if it is wanted, "Assist
28 the person to make the complaint", "Sign the statement",
29 et cetera, et cetera. And then "Advise the Professional
30 Standards Office if there are any significant circumstances
31 that aren't already mentioned in the statement of
32 complaint." Do you agree with me that there's nothing
33 there to suggest that the contact person should, in every
34 case, encourage the complainant to report their matter to
35 the police?

36 A. Certainly it's not there, no.

37
38 Q. You agree with me that it was no part of the job
39 description of a contact person, as put to the contact
40 person in writing, that they should encourage every
41 complainant to report the matter complained of to the
42 police?

43 A. It was certainly our practice from very much at the
44 beginning that that would happen. It is interesting that
45 it's not actually listed in this document.

46
47 Q. Could I show you now the next document, it is behind
48 tab 352 at B, I think it is probably exhibit 39 and the
49 .13/10/2014 (1) 82 J F DAVOREN (Ms Stern)
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51

1
2 barcode is 7992905. Mr Davoren, do you see there - and
3 just so that you can be clear, if we could scroll through
4 to the bottom of that document, this is a revised version
5 of the job description of a contact person which is dated
6 April 2000 - if you look through there, do you see that,
7 again, whilst there are a number of tasks which the contact
8 person is required to carry out, there is no mention of the
9 contact person encouraging or seeking to persuade the
10 complainant to report the matter to the police?

11 A. It is - yes, that's certainly a strange absence, but
12 the complaint document certainly does talk about it and the
13 contact person was advised that they were to address that
14 subject directly. I don't know why it's not in the
15 statement.
16

17 Q. Do you not agree with me that in the absence of a
18 written requirement to that effect in the job description,
19 there was nothing to require in each case that a contact
20 person seek to encourage complainants to report the matter
21 to police?

22 A. In all of the group sessions this would have been
23 emphasised.
24

25 Q. In relation to Beth Cullen's involvement, do you
26 recall Beth Cullen advising you that you should amend the
27 job description for a contact person to include specific
28 requirements for a contact person to advise a complainant
29 to go to the police?

30 A. She may well have said that at the meeting but I can't
31 recall everything that was said at the meeting.
32

33 Q. You don't recall that ever happening, do you?

34 A. I presume the next version does have it in.
35

36 Q. Could I ask if the witness could be shown, please, the
37 document barcoded 7996828 which is described as "The job
38 description of a contact person", "Revised 14 March 2002",
39 which is exhibit 42.
40

41 THE COMMISSIONER: Do you have a tab number for that?
42

43 MS STERN: I'm sorry, it is tab E behind tab 352.
44

45 THE COMMISSIONER: Thank you.
46

47 MS STERN: Q. Barcode 7996828. Mr Davoren, so you can
48 be clear, this is described at the bottom of it as a

49 .13/10/2014 (1) 83 J F DAVOREN (Ms Stern)

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1
2 version revised on 14 March 2002. If you look through
3 that, do you agree with me that again in that version
4 there's nothing to suggest that the contact person would be
5 in their job description told that it was a requirement
6 that they encourage complainants to take their complaint to
7 the police. Do you agree with me?

8 A. Yes, I agree that it's not there. However, I'd also
9 argue that a much more practical application is the working
10 documents. Reading job descriptions is not something
11 people do very often anyway. It is a pity that it's not
12 there, but I don't think it matters. It certainly was part
13 of the process.

14
15 Q. When you refer to the working document, are you
16 referring to the statement of complaint form?

17 A. The complaint, yes.

18
19 Q. But you agree that the statement of complaint form
20 simply indicates that the complainant has been notified of
21 their right to take the matter to the police but doesn't
22 suggest that they've been encouraged to do so. Do you
23 agree with me? I can take you back to the document if it
24 would assist.

25 A. Yes. I think that the issue of complaint to the
26 police was a real one. Just whether they needed to be
27 encouraged to do so or not - they came because they'd
28 already made up their mind to complain to the church.
29 That's what most people seemed to do. They didn't want to
30 complain to the police. And when they filled in the form,
31 it was talked about what complaints they were going to make
32 in the police or not.

33
34 Q. How do you know that any individual complainant had
35 made up their mind before they decided to get in touch with
36 the church in relation to their complaint?

37 A. Because they had thought about making a complaint and
38 they knew what the options were.

39
40 Q. How do you know that in relation to any individual
41 complainant?

42 A. I'd have thought anything that involves a criminal
43 event is something that the police would be interested in.

44
45 Q. How do you know any individual complainant had really
46 thought about whether they should complain to the police or
47 whether they wanted to complain to the police before they
48 came to the church?

49 .13/10/2014 (1) 84 J F DAVOREN (Ms Stern)

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51

1
2 A. Well, I can't read the minds of people, but certainly
3 it was a big decision to make a complaint anyway and
4 Towards Healing was set up so that at least a systematic
5 way of make complaint was available, but so was the police.
6

7 Q. We've gone through a number of the job description
8 documents, and they were tabled before the PSRG. If
9 Beth Cullen had advised you to amend that document to make
10 it a requirement that contact persons specifically
11 encourage complainants to go to the police, would you have
12 sought to amend the document in accordance with her advice?

13 A. I'm not sure even how much attention these documents
14 got at the meeting. There was a lot to be discussed. They
15 were just tabled and passed on.
16

17 Q. If she advised you at the PSRG meeting in those terms,
18 would you have taken her advice on board and amended the
19 document to reflect her advice?

20 A. If there had been any discussion in the group to that
21 effect, yes, I would have.
22

23 Q. Did you yourself ever take any step to check that any
24 individual complainant had made a properly informed choice
25 not to complain at that point to the police?

26 A. Yes, quite a lot.
27

28 Q. How did you do that?

29 A. When they came to talk to me about something or other,
30 or they were dissatisfied with the process that had taken
31 place, that was one of the questions I asked.
32

33 Q. So if a complainant approached you personally then
34 that's something that you would raise with them?

35 A. It would depend on what they came to see me about, but
36 often, yes.
37

38 Q. Would you agree that only a small proportion of the
39 total number of complaints that came through Towards
40 Healing were then complainants that you had a personal
41 one-on-one meeting with?

42 A. Yes, that would be a small group.
43

44 Q. And other than when the complainant sought to get in
45 touch with you, did you ever seek to get in touch with
46 individual complainants to see whether they'd made a
47 properly informed choice not, at that point, to go to the
48 police?

1
2 A. I would have thought that the complaint-taking process
3 had raised that issue.
4

5 Q. Did you ever yourself get in touch with individual
6 complainants to discuss that particular matter?

7 A. No, that wasn't my - I was supervising the process
8 rather than one-to-one dealings with complainants.
9

10 Q. Could I then now turn to look at the blind report
11 form. Could I ask you to turn, please, to tab 331,
12 document reference 8093405, exhibit 36. Mr Davoren, I've
13 already taken you to this and this is the blind report form
14 that you described as being part of the Towards Healing
15 process and the form in which reports were routinely made
16 after they were found to be substantiated through the
17 Towards Healing process. If you see under the heading
18 "Source of Information" the last line says:
19

20 Is the informant willing to speak to police
21 if necessary?
22

23 And the printed text appears to say, "No". Do you see?

24 A. I do.
25

26 Q. Is it your understanding that that particular part of
27 this form - namely, the information that the informant was
28 not willing to speak to the police if necessary - was based
29 factually upon the completion of the statement of complaint
30 form by indicating no current intention to go to the
31 police? Is that not right?

32 A. I'm not even sure when this document started. It's --
33

34 Q. Our understanding is certainly that this is the CPEA
35 report form between 1999 and 2013. Have you seen this form
36 before?

37 A. I do not recall having seen that before, except in
38 discussions today.
39

40 Q. These are the forms that you indicated would be
41 completed by way of the blind report at the end of the
42 Towards Healing process when a complaint was found to be
43 substantiated?

44 A. "Blind report" was not part of my jargon.
45

46 Q. It was not part of - sorry?

47 A. My jargon. I never heard of a blind report. It was
48 not a term I used.

49 .13/10/2014 (1) 86 J F DAVOREN (Ms Stern)

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51

1
2
3 Q. You described earlier that non-identifying reports
4 would be made to the police, and when I say
5 "non-identifying", reports would be made omitting details
6 which would identify the victim?

7 A. Yes, but that was all.
8

9 Q. Do you not recall that the forms upon which that
10 report was made included the information that the informant
11 wasn't willing to speak to the police if necessary?

12 A. That's not a question that I would certainly have had
13 on my form consciously.
14

15 Q. At the time when the report was made to the police in
16 the way that you've just described - namely, once a
17 complaint was found to be substantiated through the Towards
18 Healing process - at that point in time, it is my
19 understand that there was no procedure in place by which
20 someone would go back to the complainant and ask them
21 whether they were now content for their details to be
22 provided to the police. Now, that's correct, isn't it,
23 that there was nothing that was done at that point to check
24 whether or not the complainant would or would not want
25 their individual details given to the police?

26 A. This would have been a standard question on the part
27 of the assessor, beginning the assessment, to talk about
28 reporting the matter to the police.
29

30 Q. But there was no routine means by which that question
31 was put to each complainant at the point at which their
32 complaint was found to be substantiated, was there?

33 A. No, I'm talking about the first meeting that they had
34 with the assessor. That would have been an issue raised.
35

36 Q. Whilst you described earlier sometimes going back to
37 complainants if the police asked you to do so to see
38 whether they were content to talk to the police --

39 A. Yes.
40

41 Q. -- you didn't take that step of going back to the
42 complainants unless the police specifically requested you
43 to do so, did you?

44 A. No.
45

46 Q. Could I take you to some example statements of
47 complaint and blind report forms, please. Could I ask you
48 to go, first - if the witness could be shown, please, the

49 .13/10/2014 (1) 87 J F DAVOREN (Ms Stern)

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1
2 document at tab 346 which has the barcode reference
3 8093517. Mr Davoren, this is a statement of complaint form
4 that has been anonymised to use the pseudonym of (AE), but
5 it was one of the statements of complaint that related to
6 Father McAlinden. This particular statement of complaint
7 form indicates the nature of the complaint, and if I can
8 just ask you to note under "Nature of Complaint", four
9 lines down:

10
11 Fr McAlinden would drop the other two girls
12 home. He then took (AE) to a secluded back
13 road ... and initiated sexual contact by
14 removing her underpants.

15
16 It was clearly a historical complaint relating to 1953-54
17 and then there are further details in relation to the
18 complaint. Just looking at that, would you agree with me
19 that this is something which reflects a complaint of
20 potentially serious criminal contact.

21
22 MR STANTON: Can we get the exhibit number?

23
24 MS STERN: There is no exhibit number.

25
26 THE COMMISSIONER: Is it up on the screen and available to
27 those at the Bar table?

28
29 MS STERN: It is up on the screens. Commissioner, I was
30 going to tender it at the end of the questions but I can
31 tender it now. I seek to tender the statement of complaint
32 form in the anonymised form with the barcode reference
33 8093517 through to 8093520.

34
35 THE COMMISSIONER: It is not already an exhibit, I take
36 it?

37
38 MS STERN: No.

39
40 THE COMMISSIONER: Exhibit 311. What I have in front of
41 me is not anonymised.

42
43 MS STERN: Commissioner, there should be at 8093517 a
44 version which has under the name "I, (AE)" it is tab 346
45 but it is page 5 behind that tab with the barcode reference
46 8093517.

47
48 THE COMMISSIONER: Yes. I was looking at the
49 .13/10/2014 (1) 88 J F DAVOREN (Ms Stern)
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1
2 non-anonymised version.

3
4 EXHIBIT #311 ANONYMISED STATEMENT OF COMPLAINT DATED
5 5/10/1999, BARCODED 8093517-8093520, BEING ONE OF THE
6 DOCUMENTS BEHIND TAB 346

7
8 MS STERN: Q. Mr Davoren, do you agree that the conduct
9 complained of in this statement of complaint form would
10 constitute, if found proved, serious criminal conduct?

11 A. Yes.

12
13 Q. The next document in relation to this particular
14 matter is behind tab 347. It is the second document behind
15 that tab and it has the barcode 8093522.

16
17 THE COMMISSIONER: Are you tendering that at this stage?

18
19 MS STERN: I will.

20
21 THE COMMISSIONER: This will be exhibit 312.

22
23 EXHIBIT #312 LETTER FROM THE PROFESSIONAL STANDARDS OFFICE
24 TO AN ANONYMISED ADDRESSEE, DATED 8/10/1999, BARCODED
25 8093522, BEING ONE OF THE DOCUMENTS BEHIND TAB 347

26
27 MS STERN: Q. Mr Davoren, this is a letter from you to
28 the complainant, or the victim, I should say, it is dated
29 8 October 1999, so it is three days after the statement of
30 complaint form was completed.

31 A. Which is a standard thing I always wrote to the --

32
33 Q. You would write a letter. In this particular letter
34 you say in the third paragraph:

35
36 The next step will probably be the police
37 investigation and we have no way of
38 predicting how long that will take.

39
40 Do you have any recollection - and I understand you've been
41 asked about this elsewhere - in relation to the reason why
42 you have said that in this particular letter relating to
43 (AE)'s case?

44 A. Yes.

45
46 Q. Could you explain it?

47 A. It had happened in 1953-54. The person concerned was
48 now in her 80s. The priest had been kicked out of

49 .13/10/2014 (1) 89 J F DAVOREN (Ms Stern)

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1
2 Australia, had manipulated a way of getting into the
3 Philippines, I think, and the bishop of the diocese was
4 trying to tell the bishop of the Philippines to get rid of
5 the goat and not give him a job. All of that came up
6 immediately I investigated it, so it seemed sensible to
7 talk to the police. He had lived in Western Australia and
8 went back to England and then over to the Philippines, so
9 it was not the sort of case we could reasonably assess. It
10 would take police forces from a number of places to catch
11 up with him.
12

13 Q. How was it that it was your understanding when you
14 wrote this letter three days after receiving - or it may
15 have been less than three days after receiving, because it
16 was completed on 5 October 1999 - how was it that at that
17 point in time it was your understanding that there was
18 going to be a police investigation?

19 A. I think - "The next step probably will be a police
20 investigation".
21

22 Q. Had you reported the matter to the police in that
23 three-day period?

24 A. I believe I would have, yes.
25

26 Q. Do you recall that you had?

27 A. I can't recall that detail no. I would be surprised
28 if I hadn't.
29

30 Q. Why is it that in this case you believe that you would
31 have reported the matter to the police immediately upon
32 receipt of the statement of complaint form, when, as I
33 understand it, that wasn't your usual practice?

34 A. It was sometimes my practice and sometimes not. In
35 this case, the fact that the priest had already been, to
36 use that terrible word that the media keep talking of,
37 "defrocked", but he had kidded his way back into the
38 priesthood and some silly bishop hadn't checked back with
39 the man's former bishop. That's why I thought we should
40 get the police onto it quickly.
41

42 Q. At this point, did you believe that the police were
43 already investigating this particular offender?

44 A. I had no reason to believe that they were.
45

46 Q. The next document is at tab 348. It has the barcode
47 reference 8093563. I do seek to tender this, Commissioner.
48

1
2 THE COMMISSIONER: All right. This will be exhibit 313.

3
4 EXHIBIT #313 DOCUMENT REGARDING DISSEMINATION OF CHILD
5 SEXUAL ABUSE INFORMATION TO NSW POLICE SERVICE, CHILD
6 ENFORCEMENT PROTECTION AGENCY, BARCODED 8093563, BEING ONE
7 OF THE DOCUMENTS BEHIND TAB 348

8
9 MS STERN: Q. Could we scroll through that document to
10 the bottom of it. You'll see that this is a notification
11 where you are identified as the notifying officer, and do
12 you see the date of notification is given as 4 March 2003?

13 A. Yes.

14
15 Q. So that's probably about three and a half years after
16 the original statement of complaint form. Do you see that
17 the format of this form largely reflects that which I put
18 to you earlier and described as a "blind report form"?

19
20 THE COMMISSIONER: What barcode reference are you on now?

21
22 MS STERN: 8093563, it is the first document behind tab
23 348 it is now exhibit 313.

24
25 Q. Do you agree with me --

26
27 THE COMMISSIONER: 8093563; is that right?

28
29 MS STERN: Yes. In my bundle that's the first document
30 behind tab 348.

31
32 THE COMMISSIONER: I've got it now.

33
34 MS STERN: Q. Do you see your name as the notifying
35 officer?

36 A. Yes.

37
38 Q. Do you agree that this is a form, the format of which
39 largely reflects the form that I showed you earlier and
40 described as a "blind --

41 A. No, I think it is significantly different in that that
42 trick business of, sort of, "would be prepared to talk to
43 the police if necessary" has gone.

44
45 Q. Is that not --

46 A. "Is the victim willing to speak to the police?" And
47 then, "Neither complainant is prepared to speak to the
48 police". It looks like an addition to the form. However,

49 .13/10/2014 (1) 91 J F DAVOREN (Ms Stern)

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51

1
2 it's - and down below it says, "After considerable delays
3 both matters were found to have been", yes. So one
4 complaint 1999, the other in 2001, neither complainant was
5 prepared to talk to the police.
6

7 Q. Mr Davoren, if you see under the heading "Source of
8 Information" do you see the last line under that heading,
9 as with the earlier form I put to you, says:

10
11 Is the informant willing to speak to the
12 police if necessary?
13

14 Do you see that?

15 A. Sorry, where is that?
16

17 Q. The last line under the heading "Source of
18 Information". Do you see there is text?

19 A. Oh.
20

21 Q. The text I pointed out in relation to the other form
22 is also reflected in this form, do you agree?

23 A. Obviously the comment at the bottom indicates that the
24 contact person did ask the question. It's a silly line,
25 but I guess it really means, "Now that you've reported it
26 to the church, and if we report it to the police, will you
27 be prepared to speak to them?" It seems to me to be more
28 the context than a quick way of trying to stop them going
29 to the police, which is the last thing we wanted to do.
30 That was never on our agenda.
31

32 Q. Mr Davoren, just in terms of the format of the form,
33 you agree that it is largely the same format as the version
34 that I put to you earlier, in that it includes the question
35 "Is the informant willing to speak to police if necessary?"

36 A. "Source of Information", under that heading? Yes,
37 well, certainly the wording is the same, but I don't think
38 it is - it wasn't intended to be a way of dissuading people
39 from going to the police, which was the last thing we
40 wanted to dissuade people from --
41

42 Q. Mr Davoren, also if you look at the offence details
43 completed by you, you've referred to one complaint received
44 in 1999 and one in 2001. You agree with me that the
45 complaint received in 1999 is a reference to the earlier
46 statement of complaint that I showed to you a moment ago?

47 A. Yes.
48

1
2 Q. You have said in this:

3
4 Neither complainant is prepared to speak to
5 the police.
6

7 Do you see that?

8 A. Yes.
9

10 Q. But we saw that in the statement of complaint form,
11 the particular complainant had ticked "yes" against the
12 entry, "Do you intend to notify the police?" So do you not
13 agree with me it was inaccurate in this report form to say
14 that the complainant in 1999 was not prepared to talk to
15 the police?

16 A. I think that would depend very much on the
17 communication we had with that complainant and I would
18 guess - I obviously can't recall the detail - that in
19 checking back with her, we found that she hadn't reported
20 to the police.
21

22 Q. Do you not agree that if, as set out in the statement
23 of complaint form, there was a current intention by her to
24 notify the police --

25 A. Yes.
26

27 Q. -- it wasn't accurate to describe her as not being
28 prepared to talk to the police?

29 A. It later emerged that she was not prepared to talk to
30 the police.
31

32 Q. But at the time of making her complaint, it is not an
33 accurate description, is it, if one has regard to the
34 statement of complaint form?

35 A. "One complaint was received in 1999..." "Neither
36 complainant is prepared to speak to the police." That
37 doesn't have anything to do with the precision of time. It
38 turned out that way, that, having said she would, she
39 didn't, and then indicated, presumably on the telephone,
40 that she had decided not to.
41

42 Q. Do you have any recollection of her specifically
43 indicating that?

44 A. No, but I think it is very likely.
45

46 Q. Could the witness please be shown a document behind
47 tab 349, with the barcode reference 8093533. Do you see
48 here this is a further statement of complaint form relating

49 .13/10/2014 (1) 93 J F DAVOREN (Ms Stern)

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51

1
2 to Father McAlinden?

3
4 THE COMMISSIONER: Which tab are we again?

5
6 MS STERN: It is tab 349. It is a statement of complaint
7 form, Commissioner. It is some pages into that tab. It is
8 an anonymised version with the barcode reference 8093533.

9
10 THE COMMISSIONER: Yes, I have it.

11
12 MS STERN: I tender that document, Commissioner, which
13 goes from 8093533 through to 8093542.

14
15 THE COMMISSIONER: All right. This will be exhibit 314.

16
17 EXHIBIT #314 STATEMENT OF COMPLAINT DATED 12/6/2002,
18 BARCODED 8093533-8093542, BEING ONE OF THE DOCUMENTS BEHIND
19 TAB 349A

20
21 MS STERN: Q. I wonder if that document could be put up
22 on the screen, 8093533. Do you have that up on your
23 screen, Mr Davoren?

24 A. No.

25
26 Q. Mr Davoren, do you see there there's another statement
27 of complaint that relates to Father McAlinden. This one
28 has been anonymised as coming from (AC). It is similarly
29 a complaint from some time ago, 1955 or 1959. If you could
30 turn to the second page of the complaint, the statement of
31 complaint form, do you see there's the question:

32
33 Do you intend to notify the police?

34
35 And there's the text "See addendum"?

36
37 A. Yes.

38
39 Q. The complaint form is dated 12 June 2002, so it is
40 after the earlier complaint in 1999 and also after the
41 other complaint that was referred to in the report form in
42 2001. Could we scroll through, please, to page 8093539 to
43 see the addendum. Do you see there it says:

44
45 Addendum re: criminal behaviour.

46
47 This is the addendum which was flagged in relation to
48 whether or not there was a current intention to notify the
49 .13/10/2014 (1) 94 J F DAVOREN (Ms Stern)
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51

1
2 police. What is written is:

3
4 If other serious complaints are made about
5 Father McAlinden, if the Professional
6 Standards Office is made aware of other
7 complaints of other (criminal) behaviour by
8 him, then I would like my experience to be
9 used in corroboration.

10
11 Do you see that?

12 A. I do.

13
14 Q. Do you agree with me that as regards the intention to
15 notify the police, this complainant made it quite clear
16 that it was a qualified intention, but that if there were
17 other serious complaints, she was willing for her complaint
18 to go to the police by way of corroboration?

19 A. This is dated 12 June 2002.

20
21 Q. It is. Do you agree with me that that is what the
22 complainant is indicating in this statement of complaint
23 form?

24 A. Yes.

25
26 Q. You also agree with me that it is clear from what
27 we've just looked at that you had at least one other
28 complaint of serious criminal conduct at that time in
29 relation to Father McAlinden?

30 A. Yes.

31
32 Q. The complaint that I've already referred to in
33 relation to (AE) in 1999?

34 A. Yes.

35
36 Q. In the light of that, do you not agree with me that it
37 couldn't be said that, having regard to the circumstances,
38 this complainant did not want the police notified, could it
39 it?

40 A. No, that would be indicated, yes.

41
42 Q. This complaint is dated 12 June 2002. Could we have
43 on screen, please, a letter from yourself, barcoded 8093544
44 and, Commissioner, that's the last page in this tab, so it
45 is the very last page in tab 350. I tender that letter.

46
47 THE COMMISSIONER: Just a moment. It is the last page of
48 the documents behind tab 349.

49 .13/10/2014 (1) 95 J F DAVOREN (Ms Stern)

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1
2
3 MS STERN: Yes.

4
5 THE COMMISSIONER: All right. Are you tendering that?

6
7 MS STERN: I am.

8
9 THE COMMISSIONER: Exhibit 315.

10
11 EXHIBIT #315 LETTER FROM THE PROFESSIONAL STANDARDS OFFICE
12 TO AN ANONYMISED COMPLAINANT, DATED 14/6/2002, BARCODED
13 8093544, BEING THE LAST DOCUMENT BEHIND TAB 349

14
15 MS STERN: Q. Mr Davoren, do you see that letter which
16 is the letter you wrote immediately after receiving the
17 statement of complaint form?

18 A. Yes.

19
20 Q. There's nothing in that letter to say, "We have had
21 other complaints. You should go straight to the police",
22 is there?

23 A. No.

24
25 Q. Why, given the terms of the statement of complaint
26 form and the information that you held, was this
27 complainant not immediately told that she should go to the
28 police rather than through Towards Healing?

29 A. Well, it's - that's a fairly standard form
30 acknowledging receipt of the complaint and details of what
31 we were going to do later would follow. We knew that the
32 priest was no longer a priest and out of the country, so he
33 wasn't a threat to anyone, and the question of notifying
34 the NSW Police may not have been all that useful anyway; we
35 might need to notify the Filipino police. I think it is
36 just a standard letter. It wasn't making any comment about
37 what was the right thing to do.

38
39 Q. It is right, isn't it, that those two complaints that
40 I've just referred to were then dealt with - that meaning
41 (AE) and (AC), the two I've just taken you to - as formal
42 Towards Healing complaints, weren't they?

43 A. But I believe the police were also notified.

44
45 Q. Do you not agree that this chronology illustrates the
46 risk inherent in the system that there may be some
47 individuals who would be perfectly happy to notify the
48 police but who weren't given prompt advice to do so through

49 .13/10/2014 (1) 96 J F DAVOREN (Ms Stern)

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51

1
2 the Towards Healing processes?

3 A. Yes, I take your point.
4

5 MS STERN: Commissioner, I wonder whether that would be a
6 convenient moment, since I intend to move to another topic.
7 I anticipate that Mr Davoren's evidence may go for probably
8 half an hour, 45 minutes tomorrow, and then I anticipate we
9 can move on to further witnesses.
10

11 THE COMMISSIONER: We have a fairly large number of
12 witnesses, don't we?
13

14 MS STERN: We do, but there are probably three who are
15 likely to be lengthy, and I anticipate that we should be
16 okay with the timetable as we've set it.
17

18 THE WITNESS: What time do I need to be here tomorrow?
19

20 THE COMMISSIONER: I'm afraid so, Mr Davoren. It does
21 mean that.
22

23 THE WITNESS: Yes, but what time?
24

25 THE COMMISSIONER: Well, counsel has given an estimate of
26 about how much longer she'll be. Other counsel will have
27 an opportunity to ask you questions. Your own counsel will
28 have an opportunity to ask you questions. I have no idea
29 how many questions you're likely to be asked by counsel
30 other than counsel assisting.
31

32 THE WITNESS: Tomorrow what time should I arrive? I'm not
33 concerned about how long it will take.
34

35 THE COMMISSIONER: All right. We'll sit at 10 o'clock.
36 As far as I'm concerned, provided you're here by
37 10 o'clock, that's fine.
38

39 THE WITNESS: Very good.
40

41 THE COMMISSIONER: Nobody wants to say anything to the
42 contrary of that, do they? No. All right then.
43

44 The Commission will adjourn until 10 o'clock tomorrow.
45

46 AT 4PM THE COMMISSION WAS ADJOURNED
47 TO TUESDAY, 14 OCTOBER 2014 AT 10AM
48