

# TRANSCRIPT

## FAMILY AND COMMUNITY DEVELOPMENT COMMITTEE

### Inquiry into the handling of child abuse by religious and other organisations

Melbourne — 4 April 2013

#### Members

Mrs A. Coote

Ms G. Crozier

Ms B. Halfpenny

Mr F. McGuire

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Mr N. Wakeling

Chair: Ms G. Crozier

Deputy Chair: Mr F. McGuire

#### Staff

Executive Officer: Dr J. Bush

Research Officer: Ms V. Finn

#### Witnesses

Mr A. Moon, CEO, and

Ms L. Butler, National Liability Claims Manager, Ansvar Insurance Ltd.

**The CHAIR** — On behalf of the committee, I welcome Mr Andrew Moon, CEO, and Ms Lesley-Anne Butler, National Liability Claims Manager, from Ansvar Insurance. All evidence taken by this committee is taken under the provisions of the Parliamentary Committees Act 2003, attracts parliamentary privilege and is protected from judicial review. Any comments made outside the precincts of the hearings are not protected by parliamentary privilege. All evidence given today is being recorded. Witnesses will be provided with proof versions of the transcript. Please note that these proceedings are not being broadcast. Following your presentation, committee members will ask questions relating to the inquiry. We thank you for providing information and for being before us this afternoon. Please commence when you are ready.

**Mr MOON** — Thanks, Madam Chair. As you kindly introduced me, I am Andrew Moon, the CEO of Ansvar. I have brought Ms Lesley-Anne Butler with me to talk about a number of questions that were raised in a letter to us. By way of background, Ansvar was established in Australia here in Victoria in July 1961 as the subsidiary of a Swedish insurer. In fact, the name ‘Ansvar’ means ‘responsibility’. It had a very different context at that time; it was actually a company that only insured total abstainers from alcohol and in fact at that time it only employed people who were total abstainers from alcohol. More recently Ansvar has adopted the tagline of ‘integrity and responsibility’ as part of its new image, if you like.

In 1998, the company was acquired by the Ecclesiastical Insurance Group in the United Kingdom. They are ultimately owned by the Allchurches Trust, which is a charity established in the UK for the preservation and reconstruction of Anglican churches. Ecclesiastical itself was established in 1887. So Ansvar has had a long history, both in this country and through its parent generally, of operating in its five core segments, which include faith, education, care, community services, and arts and cultural, or heritage buildings, as we refer to them. The first four of those — faith, education, care and community services — all have an element of child care in their operations. That is an area of particular concern to us as an insurer.

One of the questions we were asked to address was the existence of practices, policies and protocols, but more particularly in the hands of our insureds. As part of our insurance policy and proposal process — that is far too many ‘P’s — Ansvar has a questionnaire. We require our insureds to certify to us that they do in fact have policies and protocols in place to ensure that abuse does not occur and cannot occur. We seek detailed information over the previous 12-month period, and we identify risk management procedures, particularly relating to the escalation of issues or events of which they become aware, training programs and refresher programs. We have a series of surveyors across our business who are risk surveyors both for property risk in terms of the construction of buildings, but also for these policies and procedures. They check that they exist and that they are in fact being adhered to and implemented within those organisations. Of course we have to adopt a principle of utmost good faith. We have to take what we are given as fact, and we believe that. Unfortunately, generally, it is only honoured in the breach, and that is when we find out that what we were told may not be the case. We do obtain an assurance from them that they have complied and will comply with their own policies and protocols.

We issue various publications to the market and to our policy-holders to share our expertise and experiences from various companies with whom we deal to ensure that best practice is understood and, where possible, adopted. We do not provide advice on child safety or practices, but we are very happy to share our expertise so that the practices within those organisations are improved to the best extent possible.

One of the other questions we were asked to address was whether there were systemic practices to preclude or discourage reporting. We are certainly not aware of practices of any of our customers that would discourage any reporting of criminal abuse. In fact that would be contrary to the requirements of our policy; they are in fact required to disclose to us any event that may bring in or give rise to a claim, and they must notify us of any circumstances of which they are aware. Failure to notify us could of course result in the voiding of their policy. It could result in increased premiums at the very least, or it could end up with being not covered for legal fees, which is one of the things we do cover under the policy.

Our policy wording does set us apart from the market in some respects. We offer policies to customers on what is known as an ‘occurrence’ basis, which means that our policy will respond to incidents occurring during the applicable policy period no matter when it might be notified to us. It could be some years ago that an offence might have occurred, but if we were the insurance company at that time when the insured had an incident, even though we might not be notified for some years, we would still be on cover for them. A typical general liability wording would only provide cover for sexual abuse which is defined within the terms of the policy wording —

so within the period actually stated. If it were not notified, if the claim were not made within that period or a very short period thereafter, it would not be covered. Our limit of cover is typically \$5 million, with our clients' legal costs also covered as a benefit. Those legal costs are in addition to the limit of indemnity, so it does not affect the \$5 million; it does not come out of that. If an event happened during the period of insurance, the policy would respond, as I said, regardless of when the claim might be made.

For the last at least 20 years Ansvar has offered sexual abuse cover to eligible clients. I think it is a lot longer than that, but I have not been around long enough, and neither has Lesley-Anne, to be able to go back further. As part of our public liability product we are aware that for at least 20 years we have been offering this type of insurance. The cover itself provides protection to our clients when they are liable to pay damages or compensation to a victim in circumstances where there has been a breach of the duty of care that we talked about in the policies or protocols, which would then give rise to a compensation payment to the victim. The policy does not provide cover to a client where that client knows that the perpetrator has offended before. We have a 'known offenders' exclusion, so they are required to tell us if they are aware that somebody has offended, irrespective of whether that offence may have been brought to justice or charges laid or convictions made.

In determining eligibility for sexual abuse cover, we undertake an underwriting review of all of our applicants and we must be satisfied that any of our applicants has a risk-management policy in place. If we are not satisfied, then sexual abuse cover will not be provided and the general liability policy will be amended or endorsed to exclude any claim arising from sexual abuse.

We were also asked to comment on potential changes to the law to prevent criminal abuse or to deal with allegations. Without wanting to sound self-serving, obviously if companies or organisations that were involved in child care of any description were required to have insurance, those policies, procedures and protocols would exist that would allow for some protection, so that would be one change in the law that could have an advantageous effect. Other than that, we are not really aware of other changes we would recommend.

Interestingly over the past at least 15 years, which is as far back as we have been able to investigate, we are not aware of any matters with Ansvar that have ever gone to court. We have settled with many victims, and some in quite large amounts, but they have always been settled in an expeditious and fair fashion. They have always been handled thoughtfully and carefully with regard to the condition and state of mind of the victim and with regard to the welfare of the victim uppermost in our minds, notwithstanding that there may have been negligence within the hands of our insured. That is not our issue; our issue is the event for which they were insured, so we do have the care of the victim uppermost in our minds.

Recently there has been no change in the number of people requesting cover, which is probably a relevant point when you think in terms of the recent royal commission announcement yesterday and this inquiry itself. There may have been a flurry of activity. We have not seen that. Others may have; we have not. Lastly, in the event of a disclosure of a notification of an event that could give rise to damages or compensation to a victim, we do conduct a factual investigation. We establish liability, but once we have established that liability exists we will settle expeditiously and fairly. We are very conscious of the fact that the victim is the party here that has to be cared for most of all.

That really is the end of our introductory discussion. I am more than happy to then answer any questions that arise from that.

**The CHAIR** — Thank you very much indeed, and before I go to questions, would you like to make any comment?

**Ms BUTLER** — No.

**The CHAIR** — Thank you. Sorry — a telephone. My apologies; I have been asking members of the gallery to turn their phones off, and I will now ask committee members to do the same. My apologies. We will continue.

Ansvar Insurance, I am led to believe, describes itself as a specialist, as we have just heard, in faith insurance — 'our products and services have been designed to respond to the increasingly complex challenges facing faith

organisations today'. Could you perhaps expand a little bit on what that actually means to members of the committee? What do you mean by 'increasingly complex challenges' that they face today?

**Mr MOON** — I am talking on behalf of Ansvar and looking at the history over the past 10 or 20 years. Obviously the attitude of our faith clients — and they are about 40 per cent of our business depending on how you measure it, because if you include schools that might be part of the faith organisation or care facilities that might be part of the faith organisation it is probably bigger; it is more like probably 50 or 60 per cent — over those years to their duty of care has changed because of circumstances and because of the law. They need to understand what is required of them, what is common practice and what is best practice in a marketplace that is shifting rapidly in the light of recent events and in the light of claims such as the ones we are talking about.

From our point of view with the survey group we have — we have representatives of Ansvar in all states, and while we do not have a lot of them they work extremely hard and do a lot of work on presenting how to care for children and how to care generally, but also how to manage properties — it is a whole risk mitigation plan, if you like. They are specifically not giving advice but they are sharing information such as 'Obviously, your insurance would be better if you had sprinklers'. Equally, 'Your insurance would be better if you adopted policies and protocols where people were not alone with children in a room' — where the way in which they presented to those children was done in this way or that way. It is more about giving information to them because, particularly where children are involved, those places, particularly the faith insureds, have to respond to much different environments now than they did 5, 10 or 20 years ago.

**The CHAIR** — How do you monitor that in relation to understanding what an organisation actually does and how they implement their policies?

**Mr MOON** — The implementation of the policies is more difficult. The existence of a policy is reasonably straightforward; we ask for it. We can check that through our survey process where we will have people go and ask. It is like an audit, if you will. The implementation of those policies is more difficult, and that is where utmost good faith comes into play; we have to take their word that they not only have the policy but they are also honouring the policy and protocols. We cannot go to that extent; we simply do not have the resources. It would be far too expensive for us and for them ultimately to do that audit. We expect them to do a self-audit in that regard.

**The CHAIR** — Thank you.

**Mrs COOTE** — I apologise for my phone; I thought I had turned it off. I am so sorry.

Thank you very much indeed; it is very interesting to hear the depth of your organisation. In the information that you gave us you talked about having an appropriate response plan. In that you said 'Advise your insurer immediately upon the commencement of an investigation'. Could you give me some indication of how many people have commenced an investigation and what sort of statistics we are talking about here?

**Ms BUTLER** — I can give you some information in terms of our overall claims experience if that will help. It might, in part, be an answer to your question. We have had four claims settled by mediation in the last 20-odd years that we have been on risk for molestation or sexual abuse cases. One claim was settled without the need to go to mediation. Those are our entire, I suppose, claims results.

In terms of investigations, when a client or an insured calls an intermediary or a broker they do so because they have become aware of circumstances that could give rise to a claim. That broker needs to advise the relevant insurer of that case — whether it is a notification or whether it is a claim by way of civil proceedings or whether there is an investigation, say perhaps a police investigation. The idea of early notification is so that as an insurance company we can investigate the facts and circumstances, and we will do that in a number of ways. We may investigate ourselves but normally we will appoint an expert lawyer panel. Our panels are consistently made up of people who not only know the law, because that is a given, but we choose our panel because of their ability to understand the complex nature and the sensitivity of these matters. We go and find out stuff; we want to know what is going on. We do that because we want to know whether there has been an act, error or omission or a breach of the duty of care so that if the victim takes it further or if we see that there is a way of bringing some closure, we are able to do so early.

We do not insist that victims mount legal proceedings in order to get relief — compensation. That is not our experience. When claims come to us we will investigate. The policy covers investigation costs. Does that help?

**Mrs COOTE** — That certainly does help. I am interested here in two aspects. One is whether in the procedures that you just outlined you have established whether the people have gone to the police and if they have not, whether you advise them to go to the police or the authorities — these experts that you have?

**Ms BUTLER** — We often do not have direct contact with a victim. The direct contact is with our client, or normally it is with the victim's representative. In our experience victims are legally represented, but certainly we would never stand in the way of a victim going to the police; in fact we would encourage it. We ask our clients whether they have asked the victim to go to the police. It is also not our call. These cases are very sensitive; there is privacy there, there is pain there and we have to be careful about how we approach this very hard topic. It is not for us to tell somebody, 'You must go to the police'. That is not in our policy wording.

**Mr MOON** — I think it might be worth adding, if I may, that the victim is not the insured. The organisation that was guilty of negligence that allowed a perpetrator to indulge in the sexual abuse of a victim is the situation, so it puts us in a slightly invidious position when we are talking about going to the police.

**Mrs COOTE** — I do understand. Following on from a comment you made, Andrew, and I am not certain who might be able to answer this, you said that you had had many clients where a sexual abuse issue had been resolved and some of them had had very large payouts. Is that included in that group of four? Is it only four or is it more people?

**Ms BUTLER** — We have had four claims where we have paid out money.

**Mrs COOTE** — Okay, so there are significant amounts. Could I just have some sort of ballpark figure here?

**Mr MOON** — Between \$1 million and \$2 million — that would be the largest.

**Mrs COOTE** — Between \$1 million and \$2 million. Thank you. Could you give me an outline of the type of sexual abuse?

**Ms BUTLER** — The notifications that come to us range from inappropriate touching of a child through to rape of a child. The compensation payouts reflect the damage that a claimant or victim has incurred. In the case of our larger payouts, typically the abuse happens when they are very young children and in circumstances where they have very difficult psychological problems to overcome. The money that we pay will hopefully go some way to providing those people with appropriate counselling and psychological support.

**Mrs COOTE** — Thank you. How do you actually calculate that? For example, if a child's genitalia is molested, that is one thing. If they have been buggerised, that is another issue altogether. Do you have a price on these issues, or do you look at the psychological issues rather than the physical abuse itself?

**Mr MOON** — No. Absolutely no.

**Ms BUTLER** — Absolutely not.

**Mr MOON** — It goes more to the point of the long-term nature of the damage or concern to the victim. It may be physical, it may be mental. In the particular instance that Lesley-Anne was talking about it was a significant mental issue; she was significantly impaired. You have to assess what that means to her future ability to work and her ability to lead a normal life. It was significantly impaired. That is very different. These are very subjective discussions in every single case.

**Mrs COOTE** — Or if the child has been raped, if it is a girl. So do you not have a scale with a dollar amount attached to it that tells you about the actual abuse that has happened to the child?

**Ms BUTLER** — We operate within the system of common law in this country, and unfortunately every state is different insofar as its common law damages are concerned. Victoria, for example, is governed by the Wrongs Act, which sets out various levels of compensation available to victims. Future economic loss, for example, is capped, as is general damages. That is the same position in Queensland and New South Wales. We very much operate within the system of common law that we have. We are assisted, and indeed the claimant

victim is assisted, by precedent and by evidence. We certainly do not have a sliding scale. There is certainly not a table of maims, if you like, that we all see in workers compensation.

**Mrs COOTE** — That happens with physical things.

**Ms BUTLER** — No, that is not how it is in this.

**Mrs COOTE** — Just one final question: which state is easier to deal with in its common law in relation to these issues?

**Ms BUTLER** — We have not needed to address that question, but we can certainly turn our minds to that and provide you with some meaningful comment. Certainly it is our experience that where there is liability, we will look to settle a claim for what it is worth. We pay fair compensation. We will not short settle cases.

**Mrs COOTE** — Thank you very much indeed.

**Ms HALFPENNY** — In the cases that you have been involved with regarding child sex abuse have you ever advised the organisation that you are insuring not to apologise or issue any sort of comment that might be seen as accepting liability?

**Ms BUTLER** — We encourage people to say sorry. We think it is very much a part of the healing process. It is not for us to provide justice. We do not know what justice looks like; that is very subjective. We, as an insurance company, provide compensation to victims where there is a legal liability to do so — that is, where there has been an act, error or omission such as to give rise to a breach of the duty of care. An apology is very personal. We will often broach that subject via our solicitors or the claimant's solicitors, because we know through our experience that an apology can make a difference. We will not just offer a one-sentence apology, because that is dismissive. We will work together with a victim's solicitor or with a victim if they are not legally represented — although we are reluctant to do that because there is a power imbalance that we need to be aware of — to come up with an agreed set of words which provides a victim, hopefully, with an acknowledgement. As part of our settlement discussions or negotiations we will invite the victim, via our solicitors, to make a statement if they want to. Again, it is really personal, so we are not going to push that, but if a victim thinks that will help, we will listen.

**Ms HALFPENNY** — If the victim thinks that to have an apology would help or for them to do a statement?

**Ms BUTLER** — We are happy to provide an apology. We are happy to do that.

**Ms HALFPENNY** — What about the organisation that you are insuring?

**Ms BUTLER** — I have no problems with an organisation saying, 'We are very sorry this has happened to you'.

**Ms HALFPENNY** — The other question I was just going to ask relates to your dealings with all organisations, but first looking at the faith organisations. When you have to go through and look at their procedures and policies — you say they must have procedures and policies to deal with child safety — what do you gather from that? Do you think those organisations or people within those organisations are very aware of this issue and how damaging it is to children to be abused? I guess I am asking that based on the 20 years or so that you were saying you have insured for these types of things.

**Mr MOON** — If I speak very generally — and I think Lesley may want to get more specific — from very general point of view the small incidents that we have had of the number of claims that we have settled, or indeed that have been made, suggest that that is the case. The fact that we require those policies and protocols to be in place says that now there is a very high understanding by those organisations in whatever field, particularly faith organisations, that they do have a very high and probably higher duty of care than perhaps other people because they are, if you like, even more trusted, if there is such a thing — maybe you are just trusted or you are not.

I think you get what I mean. Over a 20-year period I would say that there was certainly not as much knowledge or understanding of the requirements 20 years ago, but their general behaviour was such that they behaved in a responsible fashion anyway. The implementation of the formal policies and procedures has simply codified that.

I would say that we have not had a huge rash of claims made so, yes, you would have to suggest that they are reasonably responsible in that regard.

**Ms HALFPENNY** — Thank you.

**Mr O'BRIEN** — Thank you for your evidence. Can I ask — you may not be able to answer it, but you might provide an answer at some stage — if you insure any current dioceses of the Catholic Church or any of the Catholic Church in this country or any other countries?

**Mr MOON** — Right now, no we do not; not at all.

**Mr O'BRIEN** — Okay. Are you aware of the Catholic Church insurance policies by way of comparison with your policies and protocols?

**Mr MOON** — I have not done an examination of the differences, but I am obviously aware of them, yes.

**Mr O'BRIEN** — Okay. One of the things with insurance and liability is, if there is a civil defence or a restriction on civil liability, there may not be seen to be a role for insurance, because there might not be cases brought where you might have an instance where there is liability. I was a barrister who was in immunity and advocates liability for many years and in certain circumstances.

You made a statement that it is the whole of the conduct of the organisation, so I presume in your insured organisations there is no distinction, as is done in the Ellis defence, between, say, the property aspects of a trust and the ecclesiastical aspects of a church. Do you make those distinctions in your cover?

**Mr MOON** — I will defer to Lesley.

**Ms BUTLER** — No.

**Mr MOON** — We have different policies for different covers, so they are distinguished by the fact that we would have property cover under a property policy, and we would have liability cover, and then the liability cover may in fact be divided into sections itself. There is distinction made by the cover that is purchased, but we make no distinction as to where in the organisation — If you had a property insured with us but not another property insured with us, and an event occurred in the other property but it was under the liability policy, it would make no difference for us, for example.

**Ms BUTLER** — In terms of a trust, we have not had that experience. We have not had to address or consider the Ellis defence in our cases. We are very much of the view, and our clients are very much of the view, that if there is exposure there, we will look to settle appropriately and fairly, but perhaps that is because of the nature of the clients that we have. Our clients typically are not trusts.

**Mr O'BRIEN** — Yes, so it is a combination that you do not have the structures in place in the first place, but are you also saying — and I do not want to put words in your mouth; I would appreciate your very careful answer, if you could — your clients and you as an insurance company would choose not to rely on that defence given your holistic cover? Is that right?

**Ms BUTLER** — We would take advice.

**Mr O'BRIEN** — Yes. A very careful answer.

**Ms BUTLER** — As you would expect.

**Mr O'BRIEN** — Well, that is right. This is a very important matter for us to explore with you, so if you could come back to it.

**Ms BUTLER** — I am aware of the interest that the committee has in relation to trusts. I know it is a very important point for this committee, so we are very happy to take that on board and give it further consideration.

**The CHAIR** — Thank you.

**Mr O'BRIEN** — If you could do that in comparison to other policies. If I could put two matters to you from your documents that are of intriguing interest to me. You say in 'A child safe church', in the second paragraph:

Whilst there is a tendency to concentrate on the issue of child abuse, it should be remembered that wherever there is a position of trust established, there exists the potential for abuse of this position. It is important to adopt practices within your church to protect your employees and volunteers by training them to recognise situations which may frighten or even intimidate those to whom they minister.

It is a very general statement of the duty. Over the page you say:

YOUR LEGAL OBLIGATION

...

If a person is injured while making use of your property and/or activities and; the circumstances which caused the injury were foreseeable and; you had not taken reasonable steps to reduce the risk of injury; you may be found to have acted negligently by a court and ordered to pay compensation.

Again, a very broad statement of the duty combined with your general statements. It may be a matter of opinion, and it may be a matter of trust law et cetera and property law, but I would very much appreciate your detailed answer as to your statement of position in terms of cover for volunteers working in one of your churches, say, a parish priest abusing children in the parish sacristy or something like that, whatever the equivalent is in your religious organisations. Do you think you would be able to do that for us?

**Ms BUTLER** — Not today, but we will certainly do that for you.

**Mr O'BRIEN** — We would most appreciate it. Thank you.

**The CHAIR** — Thank you for obliging. Mr Wakeling?

**Mr WAKELING** — Thank you very much for your presentation. I would just like to take you through the process of your clients making a claim involving allegations of sexual abuse. I just want to segue that with the Catholic Church which, you may be aware, has the Melbourne Response and the Towards Healing process.

**Ms BUTLER** — Yes, I am aware of that.

**Mr WAKELING** — They are different but similar. I just want to firstly ask: in regard to the process that you go through as part of the investigation — and you said you engage lawyers — the lawyer that is engaged is engaging with whom? Are they engaging with a legal representative of the alleged victim, or are they dealing directly with the victim in terms of the investigation?

**Ms BUTLER** — If a victim is legally represented, our panel will not make direct contact with the victim; we think that that is entirely inappropriate. Our panel solicitor is appointed to investigate the facts and circumstances and provide us with a factual report. They will provide us with information, opinion or advice in relation to whether or not there has been a breach of the duty of care.

**Mr WAKELING** — Who is on the panel, if I may ask?

**Ms BUTLER** — Our panel of solicitors is who is on the panel.

**Mr WAKELING** — Oh, the panel of solicitors.

**Ms BUTLER** — Yes, yes.

**Mr WAKELING** — Right. Okay.

**Ms BUTLER** — We have a panel of solicitors across the country. It is not a large panel, but we have a panel.

**Mr WAKELING** — Okay. Yes. If the victim is not represented, who then engages with the victim?

**Ms BUTLER** — It would still be our panel solicitor.



**Mr WAKELING** — So it would be the solicitor?

**Ms BUTLER** — Yes. However, let me say this, we are very mindful of power, and we would, via our solicitor, encourage the victim to consider independent legal representation.

**Mr WAKELING** — Yes. This might be something you can take on notice, but certainly we have had evidence led to us that this is something that has been of concern to people who have been involved in the Catholic response, that they are concerned about that power — or evidence has been led that there is a power imbalance.

**Ms BUTLER** — It is hard.

**Mr WAKELING** — I ask you to take that on notice. The second thing I wish to ask is: if a matter is potentially before the police, do you adopt a position to not engage in determining a position until the police matter is dealt if there is a police investigation and/or criminal investigation, or would you still deal with it independently or concurrently?

**Ms BUTLER** — We would like to deal with it concurrently. We certainly do not have the view that the police investigation needs to run its course. Indeed in some of our cases the alleged perpetrator never admits guilt. The criminal investigation is separate to our client's legal liability — the vicarious liability, if you like, so we would see that as being very much separate to our client's role in these often heinous acts.

**Mr WAKELING** — Okay, so even if the client is found not guilty — —

**Ms BUTLER** — The perpetrator.

**Mr MOON** — I think we made it very clear that our client is the organisation.

**Ms BUTLER** — We do not cover the perpetrator.

**Mr WAKELING** — That is right.

**Mr MOON** — The perpetrator may or may not be found guilty. The client, because this is — —

**Mr WAKELING** — I understand. If it was proven in court that no offence had occurred, then technically there would be no vicarious liability for an action that did not occur. But that is not something that you would — —

**Ms BUTLER** — We would not look at that.

**Mr WAKELING** — Okay.

**Ms BUTLER** — If our client has breached its duty of care, we will provide compensation where it is appropriate to do so.

**Mr WAKELING** — Just one final thing, are you — or more importantly your clients — as part of any settlement engaged in the issuing of a deed of release or confidentiality provisions that receipt of these monies is in full and final settlement of any further action against that organisation?

**Ms BUTLER** — The deed of release is the usual way that settlements are made in these sorts of civil liability cases — and just generally as well. There is nothing unusual about that. The only thing we would say is that we would never discourage a victim from coming forward to this inquiry or indeed to the royal commission should he or she so desire. We would never stop that from happening. In our experience it is often the victim who wants the release and the confidentiality clauses as well. We are also governed by the privacy principles. We are not about to breach a confidentiality clause. As I said, in my experience often victims will want that protection as well. This stuff is really hard; it can tear people apart, so we are not going to be a barrier to that. But, yes, there are, confidentiality clauses in our releases.

**Mr WAKELING** — Just one final thing, evidence has been led to us that some of the releases from organisations prevent a person from taking their matter further to the police. In terms of your organisation are you in a position to make any comment regarding that?

**Ms BUTLER** — I can certainly comment on that. We would never prevent anybody from going to the police; we actively encourage it. Our releases do not have that condition in them.

**Mr WAKELING** — Thank you.

**Mr O'BRIEN** — I have a question flowing on from Mr Wakeling's question, and that is the definition of 'organisation'. Hopefully you can give us an answer today. In relation to the organisations you insure are there definitional questions as to the individual perpetrator — perhaps the dioceses or an order — and then the overall church structure as are presently exhibited in issues relating to the liability of the Catholic Church as an entity?

**Mr MOON** — It will vary in different circumstances. For example, there are some churches that will insure with us in a global sense, so they will have, if you like, sub-policies within a master policy. There will be others that will be a collection of individual policies. There will be others that will be a single policy with 'named insured' underneath that — not separate policies but separate situations in each of the cases. So the dioceses might be named insured under a global policy or they might be individually insured under a collective policy. There are a variety of different cases depending on whether it is a single dioceses or even a single church or a single parish.

**Mr O'BRIEN** — In all those instance, though, it is almost a form of underwriting up to the umbrella organisation of the individuals, if you like — —

**Mr MOON** — Often it is actually a collection of like organisations. So it may be different faiths that gather together as a buying collective, if I can put it that way, to buy an insurance policy from us, but they may indeed be from different churches. So it can be a wide variety of different circumstances.

**Mr O'BRIEN** — Going back to what you said earlier regarding organisations admitting liability if there is a duty, are there any instances where you have said, 'I'm sorry, we insured this entity, but that person wasn't part of it', even though they might have been — —

**Mr MOON** — If we look back at Ansvar's history, it is far more likely that the opposite would occur. The way the organisation has operated and still operates to this day is that it is far more likely to take a wider view than a narrower view of the circumstances.

**Mr O'BRIEN** — You are saying you take the wider view?

**Mr MOON** — Yes, with the example you used, we are more likely to say that they are covered than they are not.

**Mr O'BRIEN** — Sometimes we need to be very clear. I do not want to keep the double negative going.

**Mr MOON** — Yes, certainly. If somebody was to say, 'They're not part of our church', the insurance company might say 'They weren't part of your church; we'll exclude them'. We would be more likely to say, 'It happened in your church even though they were not a member of your church' or whatever it might be. We would be more inclusive than exclusive in our approach.

**Mr O'BRIEN** — Could you detail that in a further response? Also, and this is publicly online, page 80 of the Catholic Church submission refers to the notion of the Catholic Church as a voluntary organisation and cites the case of *Attorney-General for the State of New South Wales v. Grant*, which talks about the church being a broad voluntary organisation rather than an entity that can be sued and that only the property trust exists as an entity, but not for this ecclesiastical matter, so it is a complex problem. Obviously you do not insure them, but could you provide us with a detailed comparison of what you do with what you understand of those policies? Those submissions will become available in due course, if they become available to us.

Finally, to pick up Mr Wakeling's point, the question of vicarious liability fits in as well. Do you deny vicarious liability situations? When do you say that someone is acting outside the scope of their employment et cetera in these situations? Will you use that to deny cover, or will you still say that there is global cover but that they have now breached their policy and might have to pay for that out of their own pocket rather than claiming from you vis-a-vis the relationship with the third parties?

**Ms BUTLER** — Our policy protects the organisation. If there is an act, error or omission on the part of the organisation, the policy will respond. Ansvar will not protect a known offender.

**Mr O'BRIEN** — Yes. That is part of your omissions.

**Ms BUTLER** — That is clear. We will not stand by a known offender.

**Mr O'BRIEN** — What is your situation with third parties? If an organisation has, say, had a perpetrator reinstated, and a third party or a victim has nevertheless been — —

**Ms BUTLER** — There is a known offender exclusion under our policy wording. It is in section 15 of the wording, which we have handed up to you.

**The CHAIR** — Mr Moon made that very clear in his opening statement.

**Mr O'BRIEN** — You have made that clear. So you will not cover in those situations?

**Ms BUTLER** — No.

**Mr O'BRIEN** — Nevertheless, in relation to a global vicarious liability, if it is not a situation that they had known about before, will you cover it?

**Ms BUTLER** — If the particular person is named and insured under our policy, by definition we will extend cover. We are not out to deny victims compensation; we are here to assist where we can under the terms and conditions of our policy.

**Mr O'BRIEN** — We are very interested in that evidence, because we will contrast it perhaps with some other evidence we have received and may receive, and that is why I am interested in a detailed and, if you like, legalistic and insurance-based response to these serious matters.

**Ms BUTLER** — We can provide you with the assistance that we can. We would be delighted to do so.

**The CHAIR** — Thank you very much indeed. On behalf of the committee I thank you both very much for your attendance this afternoon, for providing evidence and for your willingness to follow up on our detailed questions. Thank you again.

**Committee adjourned.**