

# TRANSCRIPT

## FAMILY AND COMMUNITY DEVELOPMENT COMMITTEE

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

Melbourne — 30 April 2013

#### Members

Mrs A. Coote

Ms G. Crozier

Ms B. Halfpenny

Mr F. McGuire

Mr D. O'Brien

Mr N. Wakeling

Chair: Ms G. Crozier

Deputy Chair: Mr F. McGuire

#### Staff

Executive Officer: Dr J. Bush

Research Officer: Ms V. Finn

#### Witnesses

Ms M. Wright, national claims manager, and

Mr P. Rush, chief executive officer, Catholic Church Insurance.

**The CHAIR** — On behalf of the committee I welcome from Catholic Church Insurance Ms Marita Wright, the national claims manager, and Mr Peter Rush, chief executive officer. Welcome, and I thank you both for being with us this afternoon. All evidence taken by this committee is taken under the provisions of the Parliamentary Committees Act, attracts parliamentary privilege and is protected from judicial review. Any comments made outside the precincts of the hearings are not protected by parliamentary privilege. Witnesses may be asked to return at a later date to give further evidence if required. 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.

We have heard from another insurance organisation that has dealt with religious organisations. At that point in time they did make a presentation to us, so I am going to invite you also to make a presentation to the committee; you are not directly dealing with children, and if any members of the public gallery are wondering why I am changing the format slightly, that is why. Following your presentation, committee members will then ask questions relating to both your evidence and our inquiry on matters that we are particularly concerned with under the terms of reference we have been given. Mr Rush, if you could please commence.

**Mr RUSH** — Thank you, Ms Crozier. Catholic Church Insurance is an unlisted public company. Our shareholders are all the dioceses and a majority of religious institutes of the Catholic Church in Australia. The company is principally engaged in the insurance of the assets and liabilities of Catholic Church entities throughout Australia. Established in 1911 to provide insurance of church property against fire and allied risks, the company has evolved into an insurer providing all classes of cover that protect the church in all its activities, ranging from parish activities to education, health care and social welfare.

As with any commercial insurer, CCI is subject to the requirements of all financial, corporate and regulatory legislation applicable to the operation of insurance companies and reports to the Australian Prudential Regulation Authority and other regulatory bodies. From its first days in 1911 until today CCI has thought of itself as part of the community of the Catholic Church and continues to respond positively to any requests for assistance from the church's many entities.

This led to participation by CCI in the church's response to child sexual abuse at the end of the 1980s and to the appointment of our then general manager to a special issues committee, which evolved into the National Committee for Professional Standards. Representatives of both bishops and religious leaders were members. The company was engaged in the development of the early protocols, codes of conduct, principles and procedures adopted to achieve an effective response to the issues, and we remain engaged in this work. CCI provides the church with a full suite of insurance policies usually sought by companies and individuals, but it is of course the liability insurances made available to church entities which are of particular relevance to the matters being considered by this committee.

The company first issued public liability policies in 1969. In the early 1990s CCI carefully considered the question of whether such policies could respond to claims relating to sexual abuse of children. Eventually, but not immediately, it was concluded that since the conditions did not exclude such events, indemnity for claims arising from that abuse would be available under our standard public liability wording.

In 1991, while considering this question, CCI developed a special issues liability policy, which was designed to respond to claims arising specifically from criminal sexual abuse, regardless of when the abuse occurred. The special issues policy will respond when, during the period of insurance, a claim is first made against the insured, irrespective of when the event giving rise to the claim occurred. It is a condition of the policy that the claim must be reported to CCI during the relevant period of insurance, and only those matters reported during that period of insurance will be protected by that policy. The first special issues liability policies were issued for 12 months with effect from 1 July 1991 and were replaced by a new policy each year through to 30 June 1995.

The committee will be aware of the various protocols that have been in place within the Catholic Church from the late 1980s. Of particular importance is condition 1 of the special issues policy that requires insured entities to be subject to and comply with the protocol for dealing with allegations of criminal activity, to which all dioceses and religious institutes of the Catholic Church in Australia subscribed in April 1992.

In the application of our policies, the company has applied the test of prior knowledge. If, in the course of its investigations, the company was able to establish that the insured had knowledge of the person's propensity to

offend, no claim would be paid in respect of any act of abuse after the date of that knowledge of that offender. The principle was and is applied consistently to the company's public liability and special issues policies.

In Victoria CCI has paid compensation and the cost of counselling to about 600 victims, for a total cost of about \$30 million. CCI has never provided cover to any person who has committed an act of sexual abuse of a child, in either a civil or a criminal context. The management of allegations of sexual abuse under both Towards Healing and the Melbourne Response are not customary to the treatment of liability-type claims by general insurers, and it is important to understand why CCI accepts these practices in lieu of traditional claims protocols. Under both protocols, the principal elements adopted by insurers, particularly investigation and assessment, are present, and CCI is satisfied not only that these elements exist but that they have rigour and integrity and are independent of our insured clients. While CCI does not provide advice directly to the church in the protection of children from sexual abuse, the company has made a strong commitment to child safety.

As the committee is aware, the church established the National Committee for Professional Standards in 1994, a joint undertaking of the bishops and religious leaders. CCI was involved in its formation and continues to be to this day. The company contributes financially to and is a member of that committee. In 2005, the National Committee for Professional Standards created a full-time position of protection and prevention officer, whose role is to develop and implement risk management programs to address the area of sexual abuse in the church. In view of our experience in the broader risk management field, CCI was involved in the establishment of this role and provides the funding for its activities.

In 2010 the National Committee for Professional Standards, in conjunction with other church agencies, developed a risk management program called Keeping Your Parish Safe. Experts from the National Committee for Professionals Standards, the church's office for employment relations and CCI conduct training programs at diocesan and parish levels in the fields of child protection, employment relations issues and protection of church property, to groups of church personnel, both religious and laypersons, and volunteers, including safe practices and codes of conduct.

As the chief executive officer of CCI, I have been involved in the church's response to allegations of sexual abuse by its members since 1999, both as a senior officer of its insurer and through the work of the National Committee for Professional Standards. Where this has involved the provision of financial assistance to victims, CCI has often provided that assistance, although there were also many instances where cover has not been available. Where possible, we have performed our activities sympathetically to the intent of both the Towards Healing process and the Melbourne Response. The marriage of the ministry and church with the commercial realities of insurance are often uneasy. However, the company and its reinsurers are satisfied that both processes are appropriate substitutes for accepted claims management procedures.

In all matters referred to Catholic Church Insurance, our officers remain independent of the underlying process. The various activities of director for professional standards, contact persons and assessors under Towards Healing and the independent commissioners, Carelink staff and the compensation panel in the Melbourne Response are totally independent of the company. We see our role as to support both protocols.

Much has been said and written about the church's legal structure and its effect on the ability of victims to seek financial compensation. The trust arrangements of the church were established many decades before allegations of sexual abuse came to the fore, and it is inaccurate to suggest that the church has structured itself in response to this issue. In our experience the church has not used its structure to prevent the payment of compensation to victims. In fact it has not used this defence to avoid paying compensation even when it has been available to it. All victims who have had an allegation of abuse upheld in either Towards Healing or the Melbourne Response have received compensation.

Finally, in the course of this inquiry I understand that testimony has been presented to the committee claiming that CCI sits on the compensation panel of the Melbourne Response. This is quite simply incorrect. At no time since the establishment of that protocol has CCI had any representative on that panel or on any other aspect of the Melbourne Response. Thank you, Ms Crozier.

**The CHAIR** — Thank you, Mr Rush, for that overview, and thank you very much for your submission that the committee received this morning and which covers a lot of those aspects you have just spoken about. Can I just get some clarification in relation to the policy and how it works and operates across Australia? Can you

clarify for me that it actually covers within Victoria parishes, schools and all the Catholic community service organisations; is that correct?

**Mr RUSH** — No, that is not correct. Could I just clarify, Ms Crozier, which policy: the public liability policy or the special issues policy?

**The CHAIR** — Could you clarify, in relation to those various organisations, those aspects of the policies, as to how they would apply to those organisations? Possibly that is a better way to frame the question.

**Mr RUSH** — I can. All the dioceses and the archdiocese in Victoria are policyholders of Catholic Church Insurance. I cannot say the same for all the congregations. Some congregations are policyholders currently, some congregations have been policyholders and are now not policyholders, and some policyholders who are now policyholders were not policyholders in the religious orders.

**The CHAIR** — Why would that be?

**Mr RUSH** — In some cases those policyholders have sought cover elsewhere; that is generally the case. The most common reason for doing so is price. They place their insurance with other competitors in the market, generally at prices that are less than ours.

**The CHAIR** — How many of those congregations would not be with CCI? Do you know?

**Mr RUSH** — No. I cannot answer that. I can give you a ballpark, but I cannot give you an exact answer. The ballpark would be that about 80 per cent of the congregations are policyholders of CCI; 20 per cent are not. That is the ballpark we use. Of course it varies to some extent with the size of the congregation. For example, some of the large congregations are currently not insured with us. Some of those have been previously and are currently not. It varies from time to time.

**The CHAIR** — Thank you very much. As you are aware, this inquiry is looking into all forms of abuse — child abuse, not just sexual abuse. I know that you referred to that quite a bit, and I noticed in the submission, or the document you have provided to us, you have said that there are 600 victims and you have paid out \$30 million in claims. Over what time period has that been undertaken?

**Mr RUSH** — We would have settled our first matter in or about 1990.

**The CHAIR** — So it is from 1990 to today?

**Mr RUSH** — Yes.

**The CHAIR** — Do you have any active claims in relation to child abuse matters that you are currently looking at?

**Mr RUSH** — Yes, we do. Ms Wright might give us a rough number.

**Ms WRIGHT** — We have approximately 50 current claims.

**The CHAIR** — Fifty?

**Ms WRIGHT** — Current claims, yes, that have not yet been resolved.

**The CHAIR** — I think you described a long history of being established within Australia. Was the company involved in the process of establishing the Melbourne Response?

**Mr RUSH** — No, the company was not involved in the establishment of the Melbourne Response.

**The CHAIR** — Or any advice to them in relation to cap fixing in terms of payment?

**Mr RUSH** — No.

**The CHAIR** — Okay. Do the congregations or the organisations you are involved with pay an excess fee to the insurance company?

**Mr RUSH** — Not in respect of our public liability policy. There is no excess under our public liability policy.

**The CHAIR** — Under any other policy?

**Mr RUSH** — For policies that are involved in the matters before this committee there is an excess under the special issues policy which we issued from 1991 through to 1995. That excess for the first three years was \$25 000 per offender. In the last year it was \$25 000 per claim, so the per claim would then be per victim.

**Mr McGuire** — Thank you for being here and for your presentation. I wanted to go to some evidence that was presented to the committee yesterday. That was that Catholic insurers stopped paying out on claims against Father Gerald Ridsdale. Are you aware of that, and can you inform us of what the circumstances were?

**Mr RUSH** — Yes, I can inform you of that. Marita will jump in if I get some facts wrong. The company started to pay matters in respect of offences caused by Ridsdale in the early 1990s. Subsequent to that in the course of our investigations we ascertained that the bishop in the diocese of Ballarat was aware of the propensity of Ridsdale to offend.

**Mr McGuire** — Bishop Mulkearns.

**Mr RUSH** — Bishop Mulkearns. The operation of our policy will not respond in the event of that prior knowledge of an offender. The knowledge about Ridsdale was first made known to the bishop in about 1975, I understand. That means that any matters where the offence occurred after that date would not be covered by either of our policies.

**Mr McGuire** — What was the mechanism for you to inform the bishop and anybody else in the Catholic Church that you were no longer going to pay out on any claims against Father Ridsdale?

**Mr RUSH** — We informed the bishop that we would not pay out claims against Father Ridsdale —

**Mr McGuire** — That is Bishop Mulkearns?

**Mr RUSH** — I am sorry, Bishop Mulkearns. I am sorry, but I cannot recall how we did that. It would, I imagine, have been by letter, but I cannot categorically say that. But it would have been immediately at the time that we understood that there was knowledge of Ridsdale's offences from a particular date.

**Mr McGuire** — It is important for us to know and understand what happened, so can you just explain: what was the knowledge you were relying on? You are saying, 'Here is this knowledge. We know that Bishop Mulkearns should know about Ridsdale's propensity to offend, and we are not going to insure you anymore'. That is a highly significant turn of events, is it not?

**Mr RUSH** — Yes. I am not sure that I can answer exactly what the knowledge would be, but the sort of knowledge we would have in general terms, if I can answer that way, would be correspondence to a bishop, or it would be correspondence to a vicar-general. It would be a report that we were able to confirm by someone in the parish or by another priest; something like that. The circumstances about how and when that knowledge was obtained by the bishop and how we found out will vary from one matter to the next. I cannot give you the exact details on Ridsdale; I can find that out.

**Mr McGuire** — If you could, and report back. Did it go up the chain of command? Marita, do you know?

**Ms Wright** — Sorry, did what?

**Mr McGuire** — Did you get a response from Bishop Mulkearns? What was his response?

**Mr RUSH** — I am sorry, Mr McGuire, I will have to investigate that and come back to you. I cannot answer that off the top of my head.

**Mr McGuire** — But do you know how much was paid out in claims concerning Father Ridsdale?

**Mr RUSH** — No, is the short answer to the question. The claims that would have been paid out, though, for Ridsdale would have been in respect of any offences that occurred prior to the date on which the bishop had

knowledge of Ridsdale's offences. We would have been able to establish that at some point in time the bishop knew of Ridsdale's propensity to offend. That could have been in any number of means by which the bishop found out, but somewhere we have found out that information that we know the bishop had.

**Mr McGuire** — And the likelihood of your testimony today is that there would have been a written correspondence to either Bishop Mulkearns or the vicar-general or somebody high up in the chain of command to say, 'Look, we're not going to insure any claims against — —

**Mr Rush** — Sorry, it would have been, 'We are not going to provide indemnity for any claims in respect of Ridsdale from this date forward', and the date would have been the date at which the bishop had that knowledge, not the date, of course, at which we are writing the letter.

**Mr McGuire** — Yes.

**Mr Rush** — Is that clear?

**Mr McGuire** — Absolutely. Did that happen with anybody else?

**Mr Rush** — Yes, it has. We have matters where we deny indemnity on the basis of prior knowledge. For example, another situation would be Glennon. Again, I do not know the details of how we established that prior knowledge, but at some stage we would have said, 'At this point in time the bishop' — or the vicar-general, it may have been; I do not know — 'would have had knowledge of the propensity of Glennon to offend, so the cover that is available on our policy ceases at the date on which the bishop got that knowledge'. If there are offences that occurred prior to that date, they are covered by the policy. If there are offences that occurred after that date, they are not covered by the policy.

**Mr McGuire** — Were there any other priests or brothers or anybody else who fitted in that category as well? You have given us two. Is there anybody else?

**Mr Rush** — There would have been, but I do not have a list of those who — —

**Mr McGuire** — Could you provide it?

**Mr Rush** — Yes, certainly we can. Sure.

**Mr McGuire** — It is just important for us to know and understand who knew what and when. It goes to that issue and where we take it from there, because we also had testimony yesterday from Bishop Connors from Ballarat, who said in relation to how the church was weighing up what it is you do, and I directly quote him, 'We were listening to insurers and lawyers who said, "Admit nothing"'.

**Mr Rush** — Yes. I think that is quite likely, Mr McGuire. In the early 1990s I was not in the company, but in the early 1990s I am confident that that would have been a way we would have advised our clients — quite wrongly, but I am confident that we would have done it. That was the way insurers then, and some even now, run liability-type portfolios. While this was a complex area, it was a new area, and I am sure the company's response would have been, 'Treat these claims with the same protocols we've always treated claims'. We ceased to do that a long time ago, but — —

**Mr McGuire** — Just explain that. What was the standard practice and procedure?

**Mr Rush** — I think in some of those matters we would have taken over the defence of the claim. We would have advised on how to conduct the claim. We would have advised on investigations. We would have virtually done all of that. That ceased with the introduction of Towards Healing and the Melbourne Response, where we do not do that anymore.

**Mr McGuire** — So is it a fair deduction to say that from the insurer's perspective Ridsdale and Glennon and others you cannot name at this stage were indefensible?

**Mr Rush** — From the insurer's perspective, yes — sorry, indemnity under any policy that we issued was not available.

**Mr McGuire** — Okay. And then just to finalise just before I hand over to my colleagues, Bishop Connors said yesterday they were listening to insurers, and now we come to this point where you are actually saying, ‘Here are the names of priests that we regard as indefensible’, yet they did not really take the action on that, did they?

**Mr RUSH** — That is a matter — —

**Mr McGuire** — They stopped listening to you at that point, didn’t they?

**Mr RUSH** — Yes. We were not advising on how an offender should have been managed; we were advising on what level of indemnity was available under a policy that we had issued. I think that would have been the extent of our advice.

**Mr McGuire** — And just to finalise on this point, because one of the things I said when I pursued this line of questioning yesterday with Bishop Connors was, ‘What was the motive behind that? Was it money?’, and he acknowledged that, yes, that was part of it — the payout that may have to happen.

**Mr RUSH** — I could not disagree with that. I think in the early 1990s that was definitely a motivation.

**The CHAIR** — Thank you, Mr Rush. Before we move on to Mrs Coote, could you possibly provide the committee with all the people that Catholic Church Insurance would not provide cover for, including the dates and when those dates became effective?

**Mr RUSH** — Yes.

**The CHAIR** — Thank you very much. It might be something you could take on notice.

**Mrs COOTE** — Thank you, Mr Rush and Ms Wright, for being here today. Could you give me some clarification about the special issues liability policy? Specifically, you touched upon before the excess arrangements. Could you just explain to us how that policy varies from general public liability insurance?

**Mr RUSH** — Yes, I can. There are some quite substantial differences between a public liability insurance policy and a special issues insurance policy. The most obvious example is the trigger of the policy. Under a public liability policy the cover applies to the date when the event giving rise to the loss occurred. For example, in 2013 we could have a claim registered against the public liability policy where the abuse of the child occurred in 1980. In that particular case the policy that we issued in 1980 would apply irrespective of when the notification of that event came to us.

A special issues policy is commonly referred to as a claims made policy. It is a common policy for professions — architects, lawyers, doctors and so on and so on. The trigger of that policy is when the event is notified, not when the event that subsequently gives rise to the loss occurred. For example, if we issued a special issues policy in 1992, then events that are notified in 1992, irrespective of when the abuse occurred, are covered by the 1992 policy. Does that clarify that?

**Mrs COOTE** — It does. What is your arrangement with the Catholic Church then in that issue? Do you issue a special issues policy every year? How does it work?

**Mr RUSH** — No. We did. We issued a special issues policy firstly in 1991, and we then issued a new policy to those dioceses and religious congregations who wanted to take one out each year until the end of the financial year of 1995, so it was four years — 91, 92, 93, 94.

**Mrs COOTE** — It appears that a suspected or known offender exclusion was only added to the ethical standards policy from 1994–95 onwards, which in your documentation is page 1, clause (b)(iii). Is this correct? Can you please explain this clause and why it was introduced?

**Mr RUSH** — I am sorry. Could you give me the reference again please, Mrs Coote?

**Mrs COOTE** — Yes. It is on page 1, clause (b)(iii). Have you got it?

**Ms WRIGHT** — I am sorry; there is no 3(b) on page — —

**Mr RUSH** — We are on page 1, and we are — —

**Mrs COOTE** — Page 1, (b)(iii).

**Ms WRIGHT** — Sorry. Halfway — —

**Mrs COOTE** — It says, ‘in respect of any wrongful act known or suspected’.

**The CHAIR** — It is headed ‘Ethical standards liability insurance policy’.

**Mr RUSH** — Yes, we have the reference.

**The CHAIR** — It is provided (a), (b) and (iii). Is it the same document that we have got perhaps?

**Mrs COOTE** — It is the document you have provided to us.

**Mr RUSH** — Yes, we have the relevant section. I think this is an articulation of the prior knowledge test, so this is saying that there will be no cover for an event where the insured — so that will be the bishop or the congregational leader — knew of the occurrence of that event prior to the operation of the policy.

**Mrs COOTE** — So therefore why was it introduced?

**Mr RUSH** — Because there will be a whole lot of events during the currency of that policy period — from 1 July, in this case 1994, through to 30 June 1995 — which will come to the attention of the bishop or the leader, and it is those matters that are covered by this policy. It is not matters that have come to the attention of the bishop or the leader prior to the inception of that policy. That is the operation of the policy. It is those matters that come to that person’s attention in the currency of that policy.

**Mrs COOTE** — I would like to talk to you now about the cap. There is a cap?

**Mr RUSH** — Under?

**Mrs COOTE** — It is provided for Melbourne Response and Towards Healing et cetera. Are you aware of this? I am wanting to know how it relates to the insurance and the insurance payouts.

**Mr RUSH** — I am sorry. The cap under the Melbourne Response will not apply to this because the Melbourne Response was introduced after this policy ceased. We did not issue this particular policy from 30 June 1995. The Melbourne Response came in at the end of 1996.

**Mrs COOTE** — Can I ask you then — —

**Mr RUSH** — Sorry, if I can just pick up the point you just made before that, to the best of my knowledge there is no cap under Towards Healing.

**Mrs COOTE** — Okay. Could I ask you about how you allocate that insurance. Do you have a schedule of maims? How do you do it?

**Mr RUSH** — Could I clarify, Mrs Coote — —

**Mrs COOTE** — Special issues policy.

**Mr RUSH** — Okay. The special issues policy is available starting from 1 July 1991 for each of four years. It does not run for four years; it runs for consecutive periods of one year each, and they are new policies each year. This is available to those entities that form the membership of the Australian Catholic Bishops Conference and what was then called the Conference of Leaders of Religious Institutes, now Catholic Religious Australia. They are dioceses and congregations that form the body that is loosely termed the Catholic Church in Australia. This policy was available to all those entities. Some entities elected to take the policy out; some entities did not take the policy out. Does that answer your question, Mrs Coote?



**Mrs COOTE** — It does. So when you go ahead and you now talk about helping and working with the Catholic Church about developing different processes — another insurance company that gave us evidence also suggested that they do as well — how do you ensure, pardon the pun — —

**Mr RUSH** — Ensure, not insure.

**Mrs COOTE** — How do you ensure that you encourage them to make certain that they do not need to have — —

How do you educate them, in other words?

**Mr RUSH** — The education is done through the National Committee for Professional Standards. Many years ago CCI identified that in the area of sexual abuse of children the organisation that is best placed in that education role is the National Committee for Professional Standards, because they are working in that area constantly. The way CCI has approached that is, instead of having risk management strategies in the area of sexual abuse of children run by Catholic Church Insurances, we support that work in the National Committee for Professional Standards.

**Mrs COOTE** — Okay. Thank you.

**Mr RUSH** — Does that answer your — —

**Mrs COOTE** — Yes, it does. If you were talking about public liability insurance — someone trips over the step or whatever — how do you allocate for these sexual abuses?

**Mr RUSH** — I am sorry. Could I just ask you to — —

**Mrs COOTE** — How do you identify what sexual abuse is to you? What does it mean in your policies?

**Mr RUSH** — In our ethical standards and our special issues policy it is clearly stated as criminal sexual abuse.

**Mrs COOTE** — Does it identify what that means? Does it give any definitions?

**Mr RUSH** — Yes. There would be a definition in here.

**Mrs COOTE** — Could you let me know what that is?

**Mr RUSH** — I hope. Here we go; I am on the next page:

‘Wrongful act’ shall mean any actual or attempted sexual activity with a child or any other person which constitutes a criminal act irrespective of whether such actual or attempted sexual activity results in a criminal prosecution or criminal conviction.

That would have been the — —

**Mrs COOTE** — Right. So it is — —

**Mr RUSH** — Do we then go and say, ‘What is sexual activity?’. No, we do not.

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

**Ms HALFPENNY** — I know it is getting a bit late in the day, but I have a few things to clear up. You said before that Catholic Church Insurances would have been involved in decisions about payments and compensation, and how to deal with claimants and all that sort of thing prior to the introduction of Towards Healing and the Melbourne Response. What happened then? What relationship do you have with the Melbourne Response and Towards Healing?

**Mr RUSH** — Melbourne Response we have no relationship with.

**Ms HALFPENNY** — You do not pay any — —

**Mr RUSH** — Yes, we certainly do, but we are not involved in the protocol of the Melbourne Response.

**Ms HALFPENNY** — You do not decide how much will be paid out?

**Mr RUSH** — No. We are satisfied with the rigour and the processes in the Melbourne Response, and the investigative work and the independent — —

**Ms HALFPENNY** — In Towards Healing or the Melbourne Response?

**Mr RUSH** — I am sorry; can I talk about the Melbourne Response?

**Ms HALFPENNY** — Yes, sorry.

**Mr RUSH** — We are satisfied with the process and the rigour and the independence of the independent commissioners and the other elements of the Melbourne Response — that they satisfy the normal tests we would apply in assessing a liability claim.

**Ms HALFPENNY** — Right.

**Mr RUSH** — Under Towards Healing it is slightly different because we have had an involvement at a committee level — not at an operational level, but at a committee level — in the protocols and the standards and the various risk management strategies. We have been involved, if you like, at a very high level in that process. Does that answer your question, Ms Halfpenny?

**Ms HALFPENNY** — Yes, it does. How did you get to the point with Melbourne Response that you were confident in the amounts and how it is being — —

**Mr RUSH** — Only by doing an assessment of the steps in the process. That is how we got to that point.

**Ms HALFPENNY** — And the fact that they only pay out so much money, I guess.

**Mr RUSH** — No. The level of compensation is not — —

Would we support it if it did not have a cap? We support Towards Healing and that does not have a cap. The application or otherwise of a cap is irrelevant to the application of the policy. The policy is going to respond if there is a cap or if there is not a cap.

**Ms HALFPENNY** — Has there ever been any discussion between Catholic Church Insurances and, say, the church on the issue of what would happen if victims had a clearer way to sue the church in the civil courts as opposed to the in-house scheme? Has there been any sort of assessment of what that might mean?

**Mr RUSH** — Not to my knowledge, no. Not in my time.

**The CHAIR** — Would you like to comment, Ms Wright?

**Ms WRIGHT** — No, I am not aware of any discussions around that particular issue in that way. Having said that, there have been to date a number of matters in which victims have proceeded down a legal pathway. That is always their right if they choose not to proceed in Towards Healing.

**Ms HALFPENNY** — But I guess there are those issues about property trusts and vicarious liability — those barriers.

**Ms WRIGHT** — Yes.

**Ms HALFPENNY** — Have ever been any discussion about what if those barriers were not there or if the church decided not to use those barriers? What would the insurance say about that?

**Mr RUSH** — There have not been to my knowledge. I think it is important, and in my opening statement I made the point, that the church does not use those barriers. In all of the matters that have been before us — the vast majority of which fall under Towards Healing or the Melbourne Response; the vast majority of them fall under those two protocols — there has not been one matter, not one matter, where the church has disallowed the payment of compensation because of the structure of the church.

**Ms HALFPENNY** — Because it has gone through their in-house system.

**Mr RUSH** — No, because it is not a defence that the church uses.

**Ms HALFPENNY** — Okay. They do not use vicarious liability or — —

**Mr RUSH** — There has only been one matter — and I know this is outside your terms of reference, but if I could make a comment — there has only been one matter in all of those matters that we are aware of in the church where the interpretation by a court of a particular body of law, which relates to the correct defendant, has prevented compensation being paid to a victim, and that is the matter of Ellis. In that case Ellis received a substantial amount of money irrespective of whether the church had a legal liability to pay it.

**Ms HALFPENNY** — Okay, but I — —

**Mr RUSH** — I am sorry; I know that is outside your terms of reference, Ms Crozier.

**The CHAIR** — That is quite all right, Mr Rush. We are well aware of that case. Ms Halfpenny, do you have another question?

**Ms HALFPENNY** — Just to clear it up, are you saying that the church would not use those as barriers or defences if a victim wanted to pursue a civil action — that they would not use those defences or even try to?

**Mr RUSH** — We have many matters which are in a civil context rather than either of the two protocols in place, and the church does not use that as a defence to prevent the payment of compensation.

**Ms HALFPENNY** — Okay.

**Mr RUSH** — And we do not use that as a defence.

**Ms HALFPENNY** — So you would not advise them to do that, you would accept whatever?

**Mr RUSH** — No.

**Ms HALFPENNY** — Just one other question. I think you are saying that to get the special issues insurance they have to sign up to — was it the integrity and ministry — —

**Mr RUSH** — No. It was the 1992 protocol — —

**Ms HALFPENNY** — I know what you are talking about.

**Mr RUSH** — called the Protocol for Dealing with Allegations of Criminal Activity, which was produced in — —

**The CHAIR** — April 1992.

**Mr RUSH** — In 1992. If I could clarify that, Ms Halfpenny, the position is that Catholic Church Insurances I think, and it was before my time, was obviously keen to see this protocol implemented and adhered to. That is why it made it special condition no. 1.

**Ms HALFPENNY** — We have heard from other insurers about the idea of good practice in terms of having requirements for certain policies and risk assessments and so on. But given the history of the church, is there any concern that it is an in-house policy that is monitored in-house? Is there sort of any external monitoring or auditing or assessment that is performed by — —

**Mr RUSH** — Certainly from CCI's point of view there is a huge amount of external monitoring. It is monitored by APRA. Sorry, APRA is the Prudential Regulation Authority. It is monitored by our external auditors, which again is an external process.

**Ms HALFPENNY** — In terms of the individuals in the church adhering to the policy?

**Mr RUSH** — Oh, I am sorry.

**Ms HALFPENNY** — That is what I meant. In terms of being child safe or trying to prevent abuse. You are asking them to sign up to a policy that means they will do things to ensure that they will try to prevent abuse from happening and therefore reduce their insurance claims. What I am asking is: is there confidence in that policy, because it is an internal, in-house one as opposed to an external one?

**Mr RUSH** — I can only answer it generally, and that is through the National Committee for Professional Standards. That is the responsibility of the National Committee for Professional Standards: to ensure the adherence to the protocols that are in place. CCI does not have a condition in its current policies, and to the best of my knowledge it has never had a condition in its public liability policies — this is a special issues policy we are talking about — saying that you must adhere to the protocols. But sitting on the National Committee for Professional Standards I know how much the protocols are adhered to. Marita, in the work that she does on a day-to-day basis in looking at the claims that come forward, knows how much the protocols are adhered to.

**Mr O'BRIEN** — I want to pick up from where Ms Halfpenny left off in relation to the defences. I am happy for you to clarify as well, Ms Wright. Can I ask you, just generally: how many cases have been litigated to judgement in Victoria since you have been involved, or that you are aware of through CCI's records, in relation to the liability of the Catholic Church or one of its entities or an individual priest?

**Ms WRIGHT** — Certainly I am not aware of one case that has been litigated to judgement.

**Mr RUSH** — No, I would suspect none. Not that I am aware of.

**Mr O'BRIEN** — How many cases are you aware of that have been commenced in the court system outside of Towards Healing?

**Ms WRIGHT** — I do not have a precise figure. At the moment we tend to see claims that fall into four categories, for want of a better word. You have victims that elect to proceed through the Melbourne Response or Towards Healing. You have others that take a pure litigation pathway, so commence proceedings. Then we have another group of claims that are what we refer to as alternative dispute resolution. They are in an ADR-type process where in most cases the victim is legally represented but they have chosen not to litigate. But they do want that legal representation, and we look at an alternative method to resolving that matter without recourse to litigation. Generally speaking that is moving the matters around to early settlement conferences, having a discussion — —

**Mr O'BRIEN** — I am aware of that, yes. Are you aware of the litigation, for example, we received evidence about yesterday in relation to St John of God? I think there were 15 defendants in a class action by Slater and Gordon.

**Mr RUSH** — I am not familiar with that, no.

**Mr O'BRIEN** — I would really like it to be the case that the Catholic Church does not take these defences in litigation in the courts, as you say. Is that what you are saying you would like the Catholic Church to do, or is it what it does?

**Mr RUSH** — I think if a matter proceeds to court, then the parties before that court are asking the court to make decisions, and part of that decision is that the court and the parties going to the court will take into account all aspects of the law. The way these matters are resolved at the moment is most victims do not seek to have matters litigated. If they elect not to be in the church responses, then they go into an alternative dispute resolution process. We have a number in that manner at the moment.

**Mr O'BRIEN** — I put it to you that one of the reasons the victims choose that is that they perceive — and it may be an incorrect perception, because there has not been a litigated, determined case in this state, as you say, that you can recall — but they perceive, presumably on legal advice, that the Catholic Church will maintain the defences that Ms Halfpenny put to you in relation to its structures and they will not succeed in the courts on those grounds, irrespective of the actual instances of abuse that might have taken place against them. Do you accept that?

**Mr RUSH** — No, because I think that there are other avenues. Even in litigation there are other avenues.

**Mr O'BRIEN** — Absolutely there are other avenues in litigation, but are you trying to say that the Catholic Church has not used in litigation before the courts defences that are open to it based on the structures? I know you say those structures were not put in place to do this, but does the Catholic Church, on your evidence — —

**Mr RUSH** — It has used it once, and that is not in Victoria.

**Mr O'BRIEN** — In the Ellis decision, successfully to judgement, but it uses it in other litigation when it has commenced, doesn't it, Ms Wright?

**Ms WRIGHT** — Yes, it does. It can be pleaded in certain cases. But I say once again that CCI does not rely on it to avoid the payment of compensation. Can I also say that they are not necessarily the knock-out defences that people have, I think, led the committee to believe. Quite often there are a variety of other defendants with direct and personal liability that can respond to those claims. In actual fact in the matters that I have seen recently which are litigated, plaintiffs' lawyers are very active in pursuing individual defendants with personal liability, and the so-called Ellis defence does not have applicability in that scenario.

**Mr O'BRIEN** — I share some of those sentiments, but the situation that you put is that the Catholic Church has not used these structures, but you were confining your answer essentially when you gave that evidence, Mr Rush, to its non-court proceedings. I think Ms Halfpenny put it to you fairly, and many victims have put it to us, that because there is compensation available in a non-court setting without these defences but if you go to the courts you have to run the gauntlet of whether or not the church will, first of all, take the defence and, second of all, succeed, that discourages victims from pursuing their rights in courts and channels them into the non-judicial processes. Do you agree with that?

**Mr RUSH** — We have not seen that.

**Mr O'BRIEN** — You have not seen that?

**Mr RUSH** — No.

**Mr O'BRIEN** — All right. For example, one of the issues with the Melbourne Response is that it is actually limited to \$75 000. Are you aware of the quantum of compensation that have been negotiated in out-of-court settlements for people who could otherwise have been within the Melbourne Response?

**Ms WRIGHT** — I am only aware of, I think, one matter that is — or there may be more than one — without going back and looking at actual figures, I am not aware of many matters that have fallen outside Melbourne Response.

**Mr O'BRIEN** — Or that the victims have chosen to go to the courts, not within the Melbourne Response?

**Ms WRIGHT** — Yes.

**Mr O'BRIEN** — And are you aware, and I referred to it earlier this morning, that we received a copy of a cheque that the Fosters received for \$450 000 as a result of the settlement once they had taken their case into the court system?

**Ms WRIGHT** — Yes.

**Mr O'BRIEN** — You are aware of that. Were you involved in that settlement? Is that something that CCI was involved in?

**Mr RUSH** — No.

**Mr O'BRIEN** — Okay, so that was a matter for the Catholic Church, outside of its insurance claims against you?

**Mr RUSH** — Yes.

**Mr O'BRIEN** — Okay, thank you. And in relation to the number of claims, do you have a quantum on how many civil claims that have been commenced in the courts that you have been involved in negotiations to settle, including class actions?

**Ms WRIGHT** — No, we do not have that.

**Mr O'BRIEN** — Could you provide that information?

**Mr RUSH** — Yes.

**Ms WRIGHT** — I think so. I am sorry; I am just thinking around how we record our information. We have an insurance-based data system. We have some of that information that we started collecting previously. It may not be accurate, but we have been settling claims since the early 90s. I do not know whether I can give that information accurately for that whole period of time.

**Mr O'BRIEN** — We have received, for example, 304 claims within the Melbourne Response system, and your evidence is that most of them end up in that system, so obviously if you could check your databases, that would be appreciated. But I will ask you to go bit further. You referred in answers to Mr McGuire's questions, and Mrs Coote as well, in relation to this prior knowledge ground, how many cases — and I think the Chair has asked you to identify this — are you aware of where this prior knowledge ground has been investigated, as opposed to accepted?

**Ms WRIGHT** — It is routine for claims management that we investigate prior knowledge in relation to every matter that is currently notified to us. It is one of the core tests of determining whether indemnity is available under their policy.

**Mr O'BRIEN** — When did that routine become established?

**Ms WRIGHT** — It has always been a core feature of claims management. I cannot comment on how thoroughly that may have been done in years prior to my time. I have been in this role for eight years. To give you an example, every matter in which we deny indemnity must be signed off by myself. Certainly in the eight years I have held this role, it is investigated very thoroughly.

**Mr O'BRIEN** — Does it include investigations back to the bishop?

**Ms WRIGHT** — Yes.

**Mr O'BRIEN** — And to the archbishop?

**Ms WRIGHT** — Yes, if relevant.

**Mr O'BRIEN** — Does it involve investigations to the cardinal or to representatives from Rome? The papal nuncio?

**Ms WRIGHT** — I do not think we go as far as to the papal nuncio. It would depend on what information we had to hand. Generally speaking, it is in relation to information that is relevant at a bishop level, because obviously if we can establish that the bishop had knowledge of an offender's propensity to offend, that is sufficient for us then to deny indemnity. We do not necessarily need to establish what the bishop may have then done in relation to the hierarchy above him.

**Mr O'BRIEN** — In relation to your organisation, I think Mrs Coote put to you that it commenced in 1994. You would be aware, and this goes back to the property trust structures, that one of the previous senior representatives with both Catholic Church Insurances and a number of the property trusts was later found to be an accepted paedophile by the church, and that is Monsignor Penn Jones. Are you aware of his time in your organisation, for example?

**Mr RUSH** — Yes, it preceded both of us, but I am aware of his time in the organisation.

**Mr O'BRIEN** — Were investigations into conduct that the bishops may have known taken by your predecessors under his watch, to your knowledge?

**Mr RUSH** — I am not sure that I understand your question.

**Mr O'BRIEN** — Okay. Were investigations as to the prior knowledge of bishops undertaken whilst Monsignor Penn Jones had a leading role in both the Catholic Church Insurances and the property trusts?

**Mr RUSH** — I would have to take that on notice. Monsignor Penn Jones retired from our board in 1992.

**Mr O'BRIEN** — I know, and then coincidentally the practice then puts in this clause that Mrs Coote put to you, that this denial-of-liability where the bishop was aware comes into the picture, and I am wondering — —

**Mr RUSH** — Completely unrelated issues.

**Mr O'BRIEN** — Well, these are the questions. Are you aware of any investigations that were undertaken whilst he was, for example, the leader of your organisation?

**Mr RUSH** — I am not, no.

**Mr O'BRIEN** — Okay. Finally, in relation to some claim amounts. We are aware that payments have been made roughly around — and we will have the compensation panel before us — \$300 000 in one instance under Towards Healing, and obviously you have got the \$450 000 case of the Fosters in the court system that settled. Do you have an idea of the range of payments in the Melbourne Response?

**Mr RUSH** — That would be a matter that it would have to be directed to the archdiocese or to the independent commissioners.

**Mr O'BRIEN** — And finally, what information do you require in order to compensate a victim vis-a-vis the psychiatric assessment? How is that process undertaken, to pick up Mrs Coote's questions? Do you look at the number of abuses, the extent of the abuse, how the victim has coped with that abuse? What process do you go through if there is a table of maims, to use her phrase?

**Ms WRIGHT** — Yes, I would just like to reiterate that there is no table of maims. Obviously the impact of child sexual abuse is individual to every victim, so we have a victim focus when we assess compensation. For instance, in a matter that may proceed through Towards Healing, there will be a contact report that is taken — and I believe Towards Healing is speaking to you later in the week, so they will go through their process in more detail — and that provides us with a very detailed statement from the victim's perspective. It gives us a firsthand understanding of the impact that the abuse has had on that particular individual. After that they conduct an assessment report, which is analogous in insurance terms to an investigation report, where they will then determine on the balance of probabilities whether the abuse has actually occurred, and in my experience that is generally always sustained.

From there we move forward to a facilitation, and the facilitation is with the view to looking at what the victims needs are for moving forward. Mr O'Brien, I think you mentioned previously a psychiatric report. That may be relevant in that instance, and that will go to things looking at the victim's current position, so how this abuse may have had an impact on their family life, their personal relationships, their roles as a parent, husband or wife, how their working history may have been impacted, and, more importantly I think, what the future looks like. What will that working capacity look like moving forward?

I think the most important thing of all is what treatment is needed to help them move forward with their lives in a more positive manner. We would give an assessment to all of those factors. The victim would have an opportunity to provide us with any other relevant information that gives us a more accurate picture of how the abuse has impacted them, and then we would make an assessment based on those factors.

**Mr O'BRIEN** — Thank you. Just a final question, if I could. Moving forward to recommendations, would you agree from a simplicity point of view that if the evidence you have received is that the majority of claims from Melbourne Response have been accepted by the independent commissioner and you have come to us saying that the church has not used these structures when available to it in these external processes, would it not be simpler and easier to have a court sanctioned-type settlement claim system — such as in the James Hardie litigation — where if something is defended, it can be taken to the courts if necessary, if that is what the parties want, but otherwise has the court doing the best that it can and with the church not relying on these defences? Would that not be a simpler system, given what we know now?

**Mr RUSH** — I think it is very difficult to comment on that, Mr O'Brien. Until we see what the nature of that is, then it is impossible for us to comment. It is a proposition that is best put to the church rather than the church's insurer.

**Mr O'BRIEN** — We will put it to several bodies.

**Mr RUSH** — At the end of the day the insurer protects the legal liability which a church entity has in respect of a whole lot of circumstances, one of those circumstances being the sexual abuse of children. If that legal liability question is satisfied, then subject to all the conditions of the policy, the policy will respond.

**Mr O'BRIEN** — Thank you for your answer.

**Mr RUSH** — I wonder if I could just make one point to Mr O'Brien — that is, that I do not want to leave the position that the committee thinks that Penn Jones had anything to do with the day-to-day management of sexual abuse claims in Catholic Church Insurances or any other claim. That is simply not the way that the company is structured and governed.

**Mr O'BRIEN** — I am happy for you to provide a further response in relation to Penn Jones's involvement, knowing what we know, and particularly those investigations into the behaviour of bishops at the time.

**Mr RUSH** — He was not involved in that, though, Mr O'Brien.

**Mr O'BRIEN** — I do not want to argue with you now; my time is finished.

**Mr RUSH** — Okay.

**The CHAIR** — Thank you for that clarification, Mr Rush.

**Mr WAKELING** — Thank you to both of you for your presentation. Ms Wright, I will just take you further to the questions of Mr McGuire and Mr O'Brien in terms of the investigations that you undertake when there is an allegation regarding a member of the clergy or a staff member of a relevant member company. You conduct an investigation to determine that there was any prior knowledge of offending by that person within the organisation. That is correct?

**Ms WRIGHT** — Yes.

**Mr WAKELING** — As a consequence of that, have you identified evidence of prior offending which has then caused you to apply the indemnity?

**Ms WRIGHT** — Yes, it has — —

**Mr RUSH** — Sorry, to deny the indemnity, Mr Wakeling.

**Mr WAKELING** — Yes. How often would that be the case? I understand you said you have been there for eight years.

**Ms WRIGHT** — Yes.

**Mr WAKELING** — How often would that have occurred?

**Mr RUSH** — In Victoria, about 5 per cent of the matters that are presented to us.

**Mr WAKELING** — Five per cent would be what sort of number?

**Mr RUSH** — Five per cent of the 600.

**Mr WAKELING** — Five per cent of 600?

**Mr RUSH** — Sorry, I should clarify that. That is misleading; I do not want to mislead you, Mr Wakeling. That is the number of matters that are denied under the policies that we have issued. There are a number of reasons by which a claim could be denied. It could fall outside the time — the event might have occurred prior to 1969, for example. I cannot say that those 5 per cent all relate to the issue of prior knowledge. I suspect the bulk of them would, but we cannot say that that is the case without investigating it, and we do not trap that data.



**Mr WAKELING** — What you are saying is that you have confirmed there is clear evidence, from your investigation, of prior knowledge within the hierarchy of a perpetrator and that there was then ongoing employment of that alleged perpetrator.

**Ms WRIGHT** — Our investigations confirm that there was knowledge on the part of the bishop at a particular point in time. We would have to go back to the individual circumstances of the particular case to determine what the bishop did once that knowledge was known. I assume that that is the question you are asking — whether they were allowed to continue in ministry or not. That would not have been the case in all matters. Some may have been stood down. It would depend on the particular circumstances of that matter.

**Mr WAKELING** — In terms of your investigation, what has been the practice of the bishop in those circumstances — to allow the ongoing employment of that person, or the termination of that person, or the referral of that person to the police? What has been your investigation?

**Mr RUSH** — That would depend on the time context in which you are talking, Mr Wakeling. For example, what was the practice in the 1970s? The practice in the 1970s in some of those cases would have been to allow the person to remain in ministry.

**Mr WAKELING** — All right.

**Mr RUSH** — That is evidenced. I do not think we are saying anything that is not known by the committee.

**Mr WAKELING** — Yes, I know.

**Mr RUSH** — Certainly since the introduction of Towards Healing and the Melbourne Response the protocols around how offenders are treated, even before allegations are sustained, are much more rigorous. You will not have offenders who are returned to ministry now if they are a danger to children.

**Mr WAKELING** — Would that include people covered by Melbourne Response?

**Mr RUSH** — Yes.

**Mr WAKELING** — Right. We had evidence yesterday by Bishop Connors which confirmed that there was prior knowledge — —

**Mr RUSH** — Again I think, Mr Wakeling, it is important to time contextualise it. In the matter of Ridsdale, the bishop of the day in Ballarat knew about Ridsdale in 1975 or 1976 or something like that.

**Mr McGUIRE** — Seventy-five.

**Mr RUSH** — Seventy-five.

**Mr WAKELING** — Yes.

**Mr RUSH** — I cannot give you the date on which Ridsdale was finally removed from ministry; you would have to ask the diocese of Ballarat about that.

**Mr WAKELING** — Yes, but I want to firstly just confirm that not only across Towards Healing but more importantly across Melbourne Response there was knowledge that you have identified by the bishops in terms of their knowledge and in fact there was ongoing employment of those people.

**Mr RUSH** — No, not since the introduction of Towards Healing and the Melbourne Response. In the early days, pre those protocols, absolutely.

**Mr WAKELING** — Yes, okay. Thank you very much. Can I just go to the compensation that is paid. What proportion of victims have been paid compensation under the Towards Healing process? Would you have an idea?

**Ms WRIGHT** — Again, following on from what I was saying earlier, we do not necessarily record this data in relation to Towards Healing. We do at present but we have not done it in the past, so I am mindful of giving figures that may not be accurate for a 25-year time period.

**Mr WAKELING** — I appreciate that.

**The CHAIR** — Is it something that you could perhaps get for the committee?

**Mr RUSH** — We can, yes, certainly.

**Ms WRIGHT** — We can. Yes.

**Mr WAKELING** — Finally, if I may. If as a consequence of your initial investigations there is no prior knowledge and compensation is paid out to a victim or victims, if at a later stage prior knowledge becomes available in terms of the production of documents which for whatever reason may have been hidden, what happens at that point? Do you then cease future claims, despite the fact you have already paid out on previous claims?

**Mr RUSH** — Two things happen in that case, Mr Wakeling. One is we cease to pay any further claims in respect of that offender, and, two, we seek reimbursement of those matters that we have paid after the date of that knowledge.

**Mr WAKELING** — To your knowledge, has that occurred?

**Mr RUSH** — Yes.

**Mr WAKELING** — Has that been a regular occurrence?

**Mr RUSH** — Oh, no, it is very rare.

**Mr WAKELING** — How many times?

**Mr RUSH** — One that I am aware of.

**Mr WAKELING** — One, and who did that relate to?

**Mr RUSH** — That related to Ridsdale.

**Mr WAKELING** — And how long did it take for you to get that information from your initial claim?

**Mr RUSH** — I would have to come back to you on that, Mr Wakeling. I cannot answer that off the top of my head.

**The CHAIR** — I do not believe there are any remaining questions, so on behalf of the committee, can I thank you both very much indeed for your appearance this afternoon. As I said, your willingness to appear before us and your evidence has been most helpful. Thank you again.

**Mr RUSH** — Thank you, Ms Crozier.

**Ms WRIGHT** — Thank you.

**The CHAIR** — That now concludes the public hearings for today.

**Witnesses withdrew.**