

TRANSCRIPT

FAMILY AND COMMUNITY DEVELOPMENT COMMITTEE

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

Melbourne — 3 May 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

Brother J. McDonald, deputy province leader,

Brother B. Brandon, executive officer for professional standards, and

Mr S. Wall, co-executive officer, professional standards office, Christian Brothers.

The CHAIR — Good morning, everybody. In accordance with the guidelines for the hearings, I remind members of the public gallery that they cannot participate in any way in the committee's proceedings. Only officers of the Family and Community Development Committee's secretariat are to approach committee members. Members of the media are also requested to observe the media guidelines. I ask that you all have your mobile phones either switched onto silent or switched off. Thank you very much.

On behalf of the committee, I welcome from the Christian Brothers, Brother Brian Brandon, executive officer for professional standards; Brother Julian McDonald, deputy province leader; and Mr Shane Wall, co-executive officer, professional standards office. On behalf of the committee I welcome the three of you and thank you for your appearance this morning.

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 and witnesses will be provided with proof versions of the transcript. Please note that these proceedings are not being broadcast.

The committee has been requested, under our terms of reference, to look at whether policies and processes of religious and other non-government organisations and systemic practices have actually contributed to the abuse of children. We are looking at a number of areas in relation to the terms of reference and whether changes to our law need to be made, amongst other things, to prevent the criminal abuse of Victorian children in the future. We have a number of questions relating to your organisation, and then you will have an opportunity at the end of that session to make some concluding remarks.

I would like firstly to get a very brief overview. Thank you very much for the documentation that you provided to the committee earlier this year and also a further submission that you provided to us on Wednesday, where you outlined the Christian Brothers history. I would like to understand or clarify that you do work in two provinces or a province here in Victoria. Could you just explain briefly how the Christian Brothers operates here in Victoria?

Br McDONALD — Thank you, Madam Chair. We are in fact now one province, Oceania province, that takes in the whole of Australia, New Zealand, East Timor, the Philippines and Papua New Guinea. In 1953, there was one Australasian province that was divided that year into two provinces, one encompassing Victoria, Tasmania, South Australia and Western Australia — that is, St Patrick's province. Subsequent to that, in 1968, the Southern province I have just mentioned, the Victorian province, was divided into two. St Patrick's province encompassed Victoria and Tasmania and a separate province was set up to encompass Western Australia and South Australia. At the same time, Queensland was separated from New South Wales; it took in Queensland and the Northern Territory. New South Wales, ACT and Papua New Guinea became a province; and New Zealand became a vice province. So the brothers have been in Victoria since 1868, just on 140 years.

The CHAIR — Thank you, and how many brothers are in Victoria currently?

Br McDONALD — There are 80 in Victoria at the moment. At our height, there were 340 in Victoria, and in our history there have been 1000 brothers in Victoria.

The CHAIR — Thank you very much. Now, in the introduction to the subsequent documentation that you provided to us on Wednesday, you say you:

... acknowledge that in the past a number of our brothers sexually abused children.

You also go on to say:

Specific and credible allegations of child sexual abuse were brought against four Christian Brothers.

As Mr O'Brien highlighted on Monday in his question relating to another witness, he said:

The principal and grade 6 teacher was convicted paedophile Christian Brother Robert Charles Best. The grade 5 teacher was convicted paedophile Christian Brother Stephen Francis Farrell. The grade 5 teacher in 1971, before Farrell, was convicted paedophile Christian Brother Edward Vernon Dowlan. The grade 3 teacher was alleged paedophile Christian Brother Fitzgerald, who passed away before any charges were laid. The St Alipius Primary School chaplain and assistant Catholic priest was convicted paedophile Gerald Francis Ridsdale.

So it is evident that in the 1970s, when these men were teaching at St Alipius in Ballarat, there were paedophiles that were engaged in the abuse of children and, as I said, the chaplain attached was also a paedophile. It appears that the only person who was working at that time who did not offend against children was the sole female lay teacher. Could you explain to the committee why this extraordinary state of affairs was allowed to occur?

Br McDONALD — I have no adequate explanation for that. Madam Chair. It is certainly an accident of history. It was a terrible, terrible situation. The lives of young people were devastated by those who offended at St Alipius's school in Ballarat. That is of great shame to us and a terrible, terrible thing to happen to victims. Was there a culture that encouraged that? We do not have any evidence to believe so. I will talk, if you would like me to talk about the culture in the Christian Brothers, and I can refer to that a little later.

The CHAIR — I would like to just interrupt you there if I could, Brother McDonald, to say that to have any four members of a religious order working at one location where this amount of abuse actually occurred would suggest that there was a serious cultural problem. Are you suggesting that there was not?

Br McDONALD — There was no cultural problem known to us. The incidents of that abuse came to light many years later, and we have only the information that has come to us subsequent to that period. Whether those people were in contact with one another, we do not know. We have no evidence to suggest that they were not; we have no evidence to suggest that they were.

Let me say that when we look at the times in which those people were in Ballarat, there is not a big overlapping time. There was an overlap of one year with two of them, so they were not all operating in the school at St Alipius all at the one time. And they did not live with Ridsdale; they were separate from Ridsdale. I know there have been suggestions that there was collusion between them and Ridsdale. They did not live with him at all. Whether they communicated is unknown to us, but we have no evidence that they did.

The CHAIR — Where did they live? Where were the brothers were living? Could you confirm?

Br McDONALD — The brothers lived at St Patrick's, Ballarat, and they served from there not only St Patrick's College, Ballarat, but at St Alipius school and St Paul's school.

The CHAIR — Do you think it is possible that the congregation was infiltrated by paedophiles?

Br McDONALD — I have no evidence to say that. We have had evidence before this committee, I believe, that has suggested — and I fully subscribe to it — that total institutions do attract, consciously or unconsciously, people who have paedophilic inclinations and tendencies. The culture of the Christian Brothers was, I would say, spartan and somewhat repressive at the time when these people to whom you have referred joined the congregation. You were taught to be tough. We were taught to have little connection with family. For instance we did not go to funerals, weddings or family celebrations. It was a culture that was based on a moral code of 'Thou shalt not', so the culture in religious life when these people joined, certainly when I joined, was repressive to that extent.

Did paedophiles consciously or unconsciously find their way into the Christian Brothers? It is clear that some did. When does a person become a paedophile? I do not know the answer to that, but people were admitted to religious life from their early teens to their late teens. Does one know that one is a paedophile as a teenager? I do not know the answer to that, but the literature would seem to suggest that patterns of behaviour develop a bit later. Inclinations that an emerging adult has an attraction to somebody as many as five years younger seems to me from the literature to be the point at which danger signs or red flags arrive — when somebody is interested in another person of the same sex five years or more younger.

The CHAIR — Could I also get clarification from you of where the priest at the time, Father Ridsdale, was living?

Br McDONALD — I am sorry, I missed your question.

The CHAIR — Could you also confirm to the committee where Father Ridsdale was living at the time the three brothers that have been mentioned — —

Br McDONALD — I cannot confirm that. I believe though that he was living in the presbytery attached to St Alipius school. I can be corrected on that, I just do not know.

The CHAIR — You just highlighted some areas of paedophile behaviour and acknowledged that the perpetrators can be very good at concealing their activities. It seems rather extraordinary that nobody noticed what was going on with these individuals. Can you comment on that?

Br McDONALD — Yes, I can make some comment on that. I believe the leadership were not trained in those days to know what the signals for paedophilic behaviour were. This was at a time when the whole of society was coming to grips with this thing. There has been an emerging understanding of paedophilic behaviour — what are the signals, what is the psychosexual profile, et cetera. That has come to light years and years later. Certainly at that time I think religious superiors would not have been educated along those lines. But there were things in our rules — ‘A brother should never be alone with a boy’. There is a Latin tag, *noli me tangere*, which means ‘Don’t touch’.

The CHAIR — Those rules were in place, but the committee has heard evidence on multiple occasions that there were complaints made and all that seems to have been done was that these people were moved around. If you are saying that there was direction from the leadership, why then did they move these people on, and can you confirm that that is correct?

Br McDONALD — It is true that there were some mistakes made and they have had devastating consequences on victims. I cannot defend, and I will not try to defend, the indefensible. Leadership made some mistakes.

The CHAIR — As in moving those people on?

Br McDONALD — As in transferring those people. But remember, in the main the knowledge of their offending did not come to us until much later. There was knowledge about Farrell.

The CHAIR — But I am talking about the complaints that people tried to make at the time when these children — they were children at the time — were trying to make a complaint and nothing was done except that the perpetrators were moved on by the very leadership you are describing.

Br McDONALD — We do not have any records of those complaints being made at the time other than with two people.

The CHAIR — Is that because you did not keep the records?

Br McDONALD — I believe not.

The CHAIR — Believe not — that they were not kept?

Br McDONALD — All of our records have been made available to you, the records where mistakes were made, and we can find two situations in which mistakes were definitely made. I will never try to defend that; that is indefensible. But we can find only two where we had prior knowledge, and I believe it was because of the whole understanding of paedophilic behaviour. It was treated as a moral failure, then eventually it came to be understood as a psychosexual dysfunction. With all of that, it is a crime. It has always been a crime and it always will be a crime.

The CHAIR — That is right.

Br McDONALD — And a terrible crime that has ruined lives.

The CHAIR — It is a crime, that is right. Thank you.

Br McDONALD — We know that and we knew that and every leader of the Christian Brothers should have known that.

The CHAIR — Thank you, Brother McDonald.

Mr McGuire — I will take you through the process a little bit more just so we understand. Were there any processes in place at the time the offenders entered the congregation to determine their suitability for being a brother — that is, the life of a brother and the rigours that you have defined as spartan and repressive?

Br McDONALD — Thank you, Mr McGuire. Yes, there were processes; they were very rudimentary processes. When I joined the Christian Brothers you had to have a letter of referral from your parish priest, you had to have good health, average intelligence and good motives. That was the screening system way back then. When I applied to go to teachers college I did a spelling test of 10 words and that qualified me for a teachers college scholarship, plus the marks I got when I matriculated. It reflects, I suppose, the kind of screening that went on across the whole of the community. That was what it was back then.

Mr McGuire — Just to take that further — —

Br BRANDON — I think that was state teachers college?

The CHAIR — Brother Brandon, would you like to say something?

Br BRANDON — I think it was state teachers college?

Br McDONALD — Yes, that was state teachers college.

Mr McGuire — So were they required to undertake teacher training, and was sex education part of that process?

Br McDONALD — They were required to undertake teacher training, yes. Sex education was certainly part of some teachers college courses. I cannot tell you whether it was part of Christian Brothers teachers education as a specific part of the curriculum, but there was certainly something about how you looked after and how you were required to exercise a duty of care in looking after children, and that would have brought in the whole business of ‘never be alone with the child’. Subsequent to that, in 1973 we introduced comprehensive psychological screening — a week long — for everybody applying to join the Christian Brothers and have introduced psychological screening for those who are required to form Christian Brothers. So it has to happen at both ends.

Mr McGuire — And was the age a mistake now, looking at it — the recruitment age from early teens to late teens? Do you think that was an error?

Br McDONALD — It was, definitely. Just think: if you take in people at that age, when they are adolescent all over the place, trying to sort themselves out, coming to terms with their own sexual identity and their own sexual integration — you do not do that in an all-male society of teenagers. It is just unhealthy.

Mr McGuire — So the culture itself and the process were unhealthy?

Br McDONALD — That was the culture of the whole of religious life, and it is true. That is one of the realities of recruitment across the board in society.

Mr McGuire — So what would you make the minimum recruitment age now?

Br McDONALD — It is not a matter of age, It is a matter of maturity — emotional maturity — sexual integration and a qualification. We require a tertiary qualification, so somebody has a level of maturity and is able to accept responsibility.

Mr McGuire — So, summing up, you are saying it was an error of judgement to have people — boys, basically, and teenagers — at this age who were emotionally and sexually immature?

Br McDONALD — That reflected society at large, and it was the same in religious congregations across the world.

Mr McGuire — Since the problem of sexual abuse of children emerged as a public issue in the early 1990s, how many members of the congregation have been the subject of complaint?

Br McDONALD — Can I tell you what we do know? We have looked at a profile of the province, and we have looked at a sad, tragic story of how some children have been abused by Christian Brothers. The earliest incident of sexual abuse relates to an incident in 1934, and it was reported in 2000. The latest incident of sexual abuse relates to 1987 — that is by a Christian Brother — and was reported in November 2008. In our 80-year

period there have been 266 complainants who have come forward. Forty of those have fallen away; they have not been pursued, either by the complainant or by the complainant's legal representation. One hundred and six of those cases came through Towards Healing. That means that around about 140 — taking the few, the 20, that fell away — were dealt with prior to the introduction of Towards Healing or through legal process. Towards Healing substantiated 39, and 13 were not substantiated. Fifty-four cases were accepted by the province leader of the time because there was form around the person complained against, so we did not want people to go through a process needlessly just by being forced to jump through the hoops. They made the complaint, and we registered that person about whom they were complaining had some kind of a history, so they were dealt with as pastorally and as quickly as possible.

Mr McGuire — So you do have a register of all complaints?

Br McDonald — We have a register of all complaints, yes.

Mr McGuire — Have you provided that? Can you provide that to this inquiry?

Br McDonald — Yes, we can.

Mr McGuire — That will certainly be valuable information for us to analyse. How many victims were involved?

Br McDonald — How many victims are involved?

Br Brandon — The number of complainants, as Brother McDonald has explained, was initially 266.

Br McDonald — That is the number, if you like.

Br Brandon — That is the number of victims, potentially. Of those, as Brother McDonald explained, a number fell away. I think Brother McDonald said 40; I think it may not be more than about 20.

Br McDonald — I think I said 20.

Br Brandon — However, the total number is the number of potential victims.

Mr McGuire — Two hundred and sixty-six?

Br McDonald — Two hundred and sixty-six.

Br Brandon — We were not too sure about 20 of those, so let us say 246.

Mr McGuire — Okay, so around 250; we will settle for that.

Br Brandon — Yes. There have been six brothers who have been convicted in court. Four of those remain as Christian Brothers. There have been criminal prosecutions and police investigations involving another six, but there was no conviction recorded. None of these 10 Christian Brothers are in any position where they have contact with or access to children.

Mr McGuire — So just so we understand that, for the record, you have said in your submission that since the early 1990s any brother or lay teacher against whom serious allegations were made were removed from contact with children. You can verify that?

Br McDonald — That is correct.

Mr McGuire — One hundred per cent. How many in each group were treated in this way? So they were all treated this way?

Br McDonald — Yes, they were all removed from contact with children.

Mr McGuire — What else was done? What else happened?

Br McDonald — What else was done?

Mr McGuire — Yes.

Br McDonald — Particularly since the 90s, which was at the height. That was a real concern for us, when complaints started to be made, so the province leader in this part of the world set up a helpline. That was to see if we could get some kind of handle on the problem that we knew we had to deal with. A psychologist — the man on my left, in fact, who was not working for us at that time — was engaged to run the helpline, and that was supervised by a group of professional psychologists to make sure that that was properly managed. That gave us some indication of the depth of the problem that we had, and therefore of the number of children who might have been being abused. So the help line was put in place — —

Mr McGuire — Do we have a figure on that? Do we have an analysis of any investigation initiated to ascertain whether there were other victims?

Br McDonald — No.

Mr Wall — Are you talking about in the early 90s?

Mr McGuire — I am talking about the entire period. Do we have any inquiries launched by the Christian Brothers themselves to ascertain the totality of victims?

Mr Wall — In Victoria, I am not aware of that. There was an investigation conducted over in Western Australia, Mr McGuire, and that was published in 1998. That is the extent of any formal investigation.

Br McDonald — You will see in our submission that we refer to some research into what may have been the causes of child sexual abuse by Christian Brothers. That is a 160-page report. It is called an initial report. It tries to identify causes, it tries to identify profile of abusers, it looks at Christian Brother culture, it makes some recommendations and it lists a whole lot of learnings. That has helped us to put in place the systems that we now have.

Mr McGuire — Is that the 1996 report?

Br McDonald — That is correct — 1998 report.

Mr McGuire — The 1998 report. Just so I understand it, what supports were provided to victims and their families?

Mr Wall — At that time?

Mr McGuire — Yes.

Mr Wall — Mr McGuire, the essential focus of the assistance was therapeutic, and the helpline terms of reference, which I have just dug up in the last day or so and am happy to provide to the committee —

Mr McGuire — Thank you.

Mr Wall — goes and describes the helpline initiative. And the terms of reference are really threefold: firstly, in consultation with the client — in other words, whoever calls up wanting access to assistance — to make some initial assessment of the most appropriate ways to facilitate therapeutic outcomes; secondly, to authorise and coordinate counselling services provided by independent psychologists or psychiatrists; and, thirdly, to monitor and review the services delivery to ensure that they remain reasonable, professional and appropriate. So it was limited. It was thought that the essential focus of reaching out to victims would be to provide counselling. Clearly, more could and should have been done. There was not any real embracing of the need to provide assistance, especially to secondary victims and families.

Mr McGuire — Can I formally ask you to provide all the reports that you have to this committee so we get a better understanding?

Mr Wall — Sure.

Mr McGuire — Brother, I do want to challenge you on what you were saying about what you should have known about the cultures, because we have from your internal reports assessments of some of the brothers going back. I refer to Brother Dowlan in 1975. The assessment that is made is:

Ted is experiencing a difficult year as he prepares for his perpetual profession. He is not at ease in the community which he considers does not provide him with the support he needs. But his needs are personal. He is immature, as shown by spending more than the normal time with boys, rather than with the brothers.

That goes back to a process of where he was, and he is immature. This goes to your issue about being immature. Why was that not picked up? That is a red light flashing for you. And then we have other stuff from the extracts from files going back even further that addresses these issues as well.

Br McDONALD — It is certainly a red light flashing from our perspective now, and should have been a red light flashing then. It is part of a visitation report, and visitation reports were based on a conversation between the provincial visitor, who was normally one of the leadership team or the provincial himself, and he then would have reported whatever was brought to his attention by other brothers in the community or that he noticed himself or that Dowlan himself disclosed to him. So, yes, it is a red flag. How does one address it? I do not know, because I was not in the mind of the leader then, but certainly now — —

Mr McGuire — This is the issue, though. Let us actually go to the issue.

Br McDONALD — Yes.

Mr McGuire — Pope John XXIII declared in 1962 that this is the worst crime that can be committed for a cleric, and it is on the state laws exactly the same. I will refer you to the letter in 1950 that was made to one of the brothers, the assessment:

You have allowed one or more boys to enter your room, and you have kissed a boy.

Do you understand it is not enough for the Christian Brothers to come here, if I can put it as bluntly as that, in front of this inquiry and actually just say, 'We didn't understand' or 'We didn't know at the time'? The law was clear, the canon law was clear, the evidence was there, and yet you have done nothing about it, and it has had tragic consequences.

Br McDONALD — It did not take John XXIII or any other pope to tell me or anybody else in the congregation that abuse of a child is a grave crime. I said to you earlier that there are some things that I am not prepared to defend, because they are indefensible. There have been tragic, tragic consequences. I know that only too well, having been dealing with this stuff since 1990.

We are trying to make sure that this never, ever happens again. Sure, there were mistakes made in the past. I do not deny it, and I do not try to defend it. It had tragic consequences, that is true, and we have to now wear that collectively and do something about it — not just lament it but do something about it.

Mr McGuire — Do you take collective responsibility?

Br McDONALD — Yes, without a doubt. This is something that all Christian Brothers have inherited, and it reflects on all of us — the good men as well as those who failed children very, very badly.

Mr McGuire — My other colleagues want to take up some questioning as well. I will come back to you later.

Mrs COOTE — Thank you, Brother Brandon, Brother McDonald and Mr Wall, for being here with us today. Could I have a point of clarification please because you speak about the leadership of Christian Brothers and the leadership having responsibility. Who does that leadership answer to in Victoria? Where does it actually stop?

Br McDONALD — The leadership for the Christian Brothers is now based in Brisbane. I am the deputy leader of the Oceania province. So, if you like, the buck stops with us in Brisbane. We are accountable to our leadership in Rome.

Mrs COOTE — So your leadership in Rome is the Pope?

Br McDONALD — No.

Mrs COOTE — Who is your leadership in Rome?

Br McDONALD — We are what is called a pontifical congregation. That means we are not attached specifically to one bishop in a diocese somewhere. Some congregations were started by bishops or started under the direction of bishops, and they emanated from there. We sought very early in our history approval by Rome to be a pontifical congregation that gave us freedom to accept invitations from bishops anywhere in the world, and our history is that by and large we followed Irish immigrants around the globe to North America, to Australia, to New Zealand, to England, to Gibraltar. Not too many Irish immigrants went to India, but we have a province in India. Now, much later, we have a province in Africa — not too many Irish immigrants there. But our history was to follow Irish immigrants and to give their children the opportunity of education and advancement in life.

Mrs COOTE — So when you attach themselves to a bishop in, say, Victoria, did you report to him?

Br McDONALD — We were invited by the bishop to establish the schools. When information about abuse came to light this was in the public arena. It was in the newspapers across Melbourne. The helpline was established and advertised publicly in newspapers across Melbourne. At meetings with bishops we would have shared the issues and the challenges that were confronting us, but there was no obligation on us to report a specific action to a bishop because the bishop was not our boss, if I could put it that way.

Mrs COOTE — Who was your boss?

Br McDONALD — The congregation leader in Rome, and matters were reported to him.

Mrs COOTE — If you had a problem in Victoria at one of your schools, you were not obligated to tell the bishop at all what that issue was. You had to report to Rome; is that correct?

Br McDONALD — We did report to Rome, yes.

Mrs COOTE — Who specifically in Rome?

Br McDONALD — To the congregation leader.

Mrs COOTE — Your congregation leader?

Br McDONALD — Yes.

Mrs COOTE — Fine. So you did not have to report to the Congregation for the Doctrine of the Faith?

Br McDONALD — No. Subsequently, many years later when I was working in the national office for professional standards as an executive officer, we met with other anglophone bishops conferences to talk about the issues that were facing the church across the world in this area. It was not a detailed ‘This happened in this place and this person was the offender and this person had so many victims’. It was not that kind of reporting. It was in-principle reporting and the kinds of issues that we were dealing with.

Mrs COOTE — What year would this have been? What decade?

Br McDONALD — That started to take place subsequent to 2000. I was province leader in New South Wales from 1990 to 2002. I went to work for the national committee for professional standards late in 2002.

Mrs COOTE — It would seem from many of the victims that we have seen and from evidence that we have been given that each organisation within the Catholic Church seems to operate within its own little bailiwick, and nobody seems to be responsible to anybody else for sexual abuse. It is always easier to either not have someone to pass it up the chain to or conveniently send off to Rome. Is that exactly what happens in your instance?

Br McDONALD — No, we pass the buck to nobody. We do not operate independently of everybody else, but we do have our own responsibilities and we must address those responsibilities ourselves; otherwise we are passing the buck. So if an incident of abuse came to light to me as a province leader, I have a serious

responsibility to make sure that that is addressed, that pastoral moves are made to address the needs of complainant and victim, and I have a responsibility to make sure that these matters are properly dealt with through systems at arm's length from the Christian Brothers.

Mrs COOTE — I would like to refer to the document you gave us this week dated 1 May — that submission that you have given us. Under the heading 'Emergence of allegations of abuse' in paragraph 20 you said:

In the early 1990s, allegations that a number of Christian Brothers had sexually abused children came to the attention of the province leadership team.

Then you go on to say in paragraph 21:

There is evidence of some offending before this time.

That is, the 1990s, and you have explained to my colleague that there were only two — I think that you said — that had been perpetrators. Could you tell me who those two were?

Br McDONALD — Prior to?

Mrs COOTE — You say here prior to the 1990s. You say:

... the archives reveal that such reports were isolated and few in number.

I think you gave some detailed statistics to Mr McGuire. You went back to 1934, which was reported in 2000; 1987, which was reported in 2008; and then you spoke of the 266 or 246 complaints, but you did not actually put a time on those. But you did go back and say that there were two people prior to the 1990s that were on your books and that you knew and you had records for. I would like to know who they were.

Br McDONALD — I believe one of them was Farrell and I think the other one was Fitzgerald.

Mrs COOTE — Okay, do those records indicate whether there was any action taken in respect of what they were accused of doing?

Br McDONALD — Tragically, I believe the only action that was taken was that they were reprimanded for what they had done, and this was because the leaders saw the offending as a moral failure. They did not have the knowledge that we have now.

Mrs COOTE — So who actually chastised them? Was it Rome?

Br McDONALD — No, it was not Rome. It would have been the province leader of the time, and that would have been communicated to Rome.

Mrs COOTE — Now how would they have punished them?

Br McDONALD — I do not believe they were punished in the sense other than being severely reprimanded.

Mrs COOTE — That is particularly interesting. You do not expect that anyone told the police about this at the time?

Br McDONALD — It is clear that nobody told the police, and that is why I say that it is indefensible.

Mrs COOTE — The same paragraph 21 goes on to say:

Whilst clearly aware that child sexual abuse was an abhorrent and grave criminal offence, the leadership also treated such behaviours as moral transgressions that were amenable to censure, the demand for repentance and the expectation that those offending behaviours would not be repeated.

Could you explain to me what exactly they would have felt 'moral transgressions' were?

Br McDONALD — Any sin of sexuality against one of the commandments. Anything to do with misuse of one's sexuality or manipulating anybody else with it.

Mrs COOTE — At that stage in Victoria, in fact as recently until 1949, there was a death penalty in this state for bugging children, boys particularly. Why is it that your leadership at that time did not understand that that was a serious crime and in fact not just a moral transgression but a serious crime in this state?

Br McDONALD — As I said, I have no answer to that. I was not there. I did not know the thinking, other than these matters were dealt with as moral transgressions.

Mrs COOTE — In those reports that you have that they were chastised, obviously not very severely, did those reports in those archives explain to you what actual punishment was meted out to them? What do those archives say?

Mr WALL — If I may, Mrs Coote, the archives are short on detail but also speak volumes. If I could just correct Brother McDonald in referring to the two matters, I would say the two matters that the archives reveal are Fitzgerald and Elmer. With the former there is a document there from 5 or 6 June 1950. The reprimand, as such, goes as follows:

He —

I would presume the provincial leader, or whoever was in authority —

forbade him to have anything to do with the boys ... Since visitation he has allowed some boys to enter his bedroom, even kissing one.

If we look at Fitzgerald's history of appointments thereafter, the reprimand is obviously not severe enough, it is not adequate enough and not enough is done because Fitzgerald receives postings to schools thereafter. That is the first matter, speaking volumes that not enough was done. It is not enough in my view to make excuses as to the era. That speaks volumes.

The matter of Elmer is instructive as well. Would you like me to read out what that file says?

The CHAIR — Yes, thank you, Mr Wall.

Mr WALL — The files speak about a discovery in 1976, and there are two issues. As soon as I started in September of last year one of the first things I wanted to do was find out what was in the archives and how jumbled up those archives were. These were two matters that came to the fore.

Mrs COOTE — Excuse me, could I ask at what point you had a look at these archives — was that after this committee had been constituted?

Mr WALL — I started in August of last year.

Mrs COOTE — So it was. It was after this committee had been constituted.

Mr WALL — Yes.

Mrs COOTE — Thank you.

Mr WALL — In 1976 there is a visitation report, I presume with a province leader going to the community, and it speaks about Elmer. It makes the following comment:

Whilst the visitation was in progress, a child welfare officer reported to Brendan —
who I presume is a Christian Brother in charge —

Br McDONALD — Brother Murphy.

Mr WALL —

that Rex —

Rex Elmer —

had been interfering with little boys; this was true and it has been attended to by the provincial.

I am trying to find out what that attention was.

There is a letter from a P. C. Naughtin, provincial, dated subsequent to that, 20 June, to Brother P. B. Murphy, and if I may I will just read three paragraphs.

Mrs COOTE — Yes, please do.

Mr WALL — It states:

Thank you very much for the report on the situation which developed at St Vincent's —

St Vincent's boys home —

in connection with Brother Elmer. It is indeed a serious and most unfortunate state of affairs and I am grateful for your bringing it to my attention so promptly.

I have interviewed Brother Elmer and discussed the position with him. He is clearly aware of the serious nature of his actions and I took pains to point out his legal and moral obligations in the matter. It seems to me extremely unlikely that there will be any recurrence of what has happened, for I have great confidence in brother's sincerity and he has assured me that he will take the necessary precautions. As you know, his approach to his work at St Vincent's has been otherwise exemplary.

The following paragraph states:

It would seem to me best at this stage not to transfer brother from St Vincent's immediately, though I would propose to announce his change next August — the usual time for releasing details of staffing for the following year. In coming to this decision I have been guided by brother's assurances for the future, by his excellent record to date and by consideration for his reputation, which would undoubtedly be harmed by a sudden transfer at this time. However, I am aware of the possibility of embarrassment to the department inherent in this proposed course of action. Hence I would like you to discuss the matter fully with the officials of the department and let me know their opinion. Should they feel strongly that there is need for an immediate transfer, then we would make the necessary arrangements.

Mrs COOTE — So in your searching of the archives, did you find out actually whether Brother Murphy had in fact perpetrated more abuse against the children at St Vincent's?

Br McDONALD — The perpetrator was not Brother Murphy.

Mrs COOTE — I beg your pardon; what was the man's name?

Mr WALL — Elmer. There is no record of that, Mrs Coote, but once again, as is the case with the previous matter of Fitzgerald, Brother Elmer continued to receive postings where he was in contact with children.

Mrs COOTE — Do you have in your archives copies of other reports against Brother Elmer?

Mr WALL — I have not found any others.

Mrs COOTE — I have here a document — and thank you for allowing our legal team to have a look at your documents — and it would seem that when Brother Farrell was reported to Paul Nagle, who was the leader at that stage — —

Br BRANDON — Nangle.

Mrs COOTE — Nangle. What he did was this — and this is on 7 March 1997:

... one complaint, not Nagle, near the end of the year confronted ...

SF —

who cried. Rang province leader who said that SF was not renewing vows and no further action. Did not know anything about counselling ...

et cetera.

Spoke about his continuing role at Suva with the workload et cetera.

Was that the culture of the time? The culture of the time was to look after the priests, forget about the brothers, forget about the victims, move them on, have no accountability, whether here in Australia or to Rome — just keep pushing them around; is that right?

Mr WALL — I would say there was certainly a culture of ‘protect the reputation’, which is evident in those words, and not having a focus on having safety of children paramount.

Mrs COOTE — We have been dealing here with abuses by individual brothers, and therefore I ask again, Brother McDonald, about the leadership’s attitude at this stage. Surely they would have seen that there was a trend. Whether in fact any of those were substantiated, the same names were coming up time and again. Is there documentation of this relationship with your leadership and the bishops? Was anything documented? Is there anything in writing to show that they were at that stage looking at investigating these particular offenders?

Br McDONALD — You have seen our records and those records expose serious errors that were made. There are serious errors made in reference to two serious offenders. Subsequent to that the measures were put in place to make sure that this history did not continue. As I said at the very beginning, I cannot defend the indefensible and I will not try. We made mistakes, the records indicate those mistakes, and we made those records available to you. We did not try to expunge anything. We gave you the records as they were that exposed the errors that were made by leadership in the past.

Mrs COOTE — Could I ask you one further question, Brother Brandon. Today how would you cope with the moral transgression issue in the Christian Brothers?

Br BRANDON — I would cope with it simply from the perspective of saying that that is somebody within my family who has transgressed. I am not happy, personally, that that has occurred. I am desperately sorry and ashamed that that has occurred. I cannot hide from the fact that it has occurred. That is me, and that is my personal reaction, but I cannot be selfish about it because it has harmed other people, so just to think about it from my own perspective is in fact being very selfish. While it is immoral to think that others have seen it simply as a moral transgression is narrowing the picture and is narrowing it too much. I am ashamed it was seen purely as that, but I cannot allow myself to see it as just that.

It is part of the evolution of the understanding of these sorts of issues within society and therefore also within the Christian Brothers over time. I am sorry that it has taken so long for society and for the Christian Brothers to come to the realisation that it is a much broader picture than just an issue of moral righteousness or moral integrity. As has been said, it is a criminal matter.

Mrs COOTE — What role do you believe the Christian Brothers have with the police today in light of sexual abuse issues?

Br BRANDON — The Christian Brothers have every responsibility to cooperate thoroughly with the police in exercising their responsibility in addressing these issues within the community. I think we have a very good record of cooperating with the police. We are on very cordial terms with the sexual offences and child abuse unit, for example, in Melbourne on Flinders Street. There are particular officers there who contact me regularly and who have a direct line to my office. I could name them, but perhaps it is not appropriate to name them in this forum. Our attitude is, firstly, to respect, and secondly, to cooperate with those officers. I certainly believe the role of the police is very significant in addressing these issues. A lot of the issues are historical of course, but a lot of the work the police do in this arena has to deal with the historical issues.

Mrs COOTE — Just for the record, if an allegation were to be made today, how would the process go? Would you deal with it, or would you send it to a higher authority? Would you send it to Rome? At what point in that process would you tell the police?

Br BRANDON — That is a very general sort of question. Let me give you a scenario. Allegations will generally come to us through one of two mechanisms. They will generally come to us by notice from a legal firm or they will come to us through a Towards Healing application. They are the two general ways in which an allegation will come to us today.

If they come to us through a legal firm, then we will assume, in the first instance, that the person making the allegation is well advised by competent legal advisers of issues associated with taking the matter to the police.

We do not have direct contact with that person in any instance because the advice is coming to us through his or her legal representative. If we did have any direct contact, we would certainly advise them to take the matter to the police.

In the second instance, if the matter comes to us through Towards Healing, then the first and primary advice line within Towards Healing, as you are probably familiar with through the documentation, is for the matter to be reported to the police. That is the first line of encouragement within the Towards Healing protocol. We support both of those approaches. Our response in both instances is for the matter to be reported to the police.

Br McDONALD — we would offer to accompany the person to the police if the person wanted accompaniment and support. We are advocating that all matters that are brought to our attention go to Towards Healing. We are advocating the establishment of a formal liaison between Towards Healing and the child sexual abuse unit in Victoria. One has been established in New South Wales. If an allegation is brought to the director of professional standards — if the allegation came to us directly — we would say, ‘No, it has to be dealt with independently of us. You can go to the police. We will support you in doing that. You can pursue a civil suit or you can go through Towards Healing’. We want one formally established. We would be very happy for this committee to recommend that there be a liaison established between the Victorian police and Towards Healing so that in historical cases the name of the accused is given to the police, just in case they already have information about that person and just in case other complaints have come to them. We would strongly recommend that to this committee.

Mrs COOTE — Do you still notify Rome?

Br McDONALD — Yes, we do.

Mrs COOTE — Thank you very much indeed.

The CHAIR — Brother Brandon, can I ask you a question? You commented to Mrs Coote that you were sorry that society had taken so long to realise this issue. Are you referring to 2013?

Br BRANDON — Sorry, I did not hear that.

The CHAIR — You commented to Mrs Coote that you were sorry that society had taken so long to realise this issue. Were you referring to 2013 when you said that?

Br BRANDON — I was referring to the evolving consciousness of the situation. It really took until the 1990s for this issue to be raised, generally, in society. It took until the 1990s for these claims to come to us, by and large — 1993 was the first time, beyond those couple of instances that have been referred to, when claims started to come to us. Claims first started going to the police in 1993 or 1994. That was something out there in society. It became something that was more commonly in the media. It was something that was more commonly talked about, not just in relation to the Christian Brothers but in relation to other organisations. There was more of a social consciousness. I think it became more of a general issue that was raised within society.

So that is what I meant, and that has been more consistently reported on in the media. We do need to thank the media for bringing those things to the consciousness of the broader community, and that has increased over time. So that is what I meant by increasing in awareness within the community, right up to and including today.

The CHAIR — Mr Wall, can I have some clarification of when you were appointed to your position?

Mr WALL — Yes. I was formally appointed at the end of August or 1 September last year.

The CHAIR — To look specifically at this issue in relation to the files, amongst other things?

Mr WALL — The appointment was made on a couple of fronts. One was to bring a different dimension to the management of the cases, to manage all current and future cases, and the other one was to be of assistance in the kinds of inquiries that we are involved in now and will be with the royal commission.

Mr O'BRIEN — Thank you, Brothers. Do you accept that child sexual abuse or paedophilia or buggery is a crime and was a crime at all times?

Br McDONALD — Without a shadow of a doubt.

Mr O'BRIEN — But you have said that the attitude of the brothers at the time was that it was treated as a moral failure?

Br McDONALD — I did.

Mr O'BRIEN — Do you accept that the real position is that the brothers knew at the time that it was a crime at the time, and that the moral failure is in fact of the church now to try and minimise the damage to its present reputation by construing it as a moral failure at the time?

Br McDONALD — I do not believe we are about minimising damage at all. I believe we are about saying very clearly that we have a serious obligation to reach out to victims. Those victims became known to us substantially in the 1990s. We have a serious responsibility to do that and we will do it certainly to the best of our ability.

Mr O'BRIEN — But do you accept that there must have been, even on the raw numbers alone, an element of cover-up within the Christian Brothers organisation?

Br McDONALD — I am not sure that it — —

I am sure it would not have been interpreted as cover-up. In hindsight, certainly that is what it looks like.

The CHAIR — If I could ask for quiet from the public gallery, please.

Br McDONALD — As I said, from this perspective the community can certainly be excused for interpreting it that way.

Mr O'BRIEN — I am interested in how you interpret it. I do not want to cut you off. Continue please.

Br McDONALD — I can refer to anecdotal, if you like, experiences to illustrate what I am trying to say. There were times, certainly, when parents became aware that their child or children had been abused, and there is anecdotal evidence that goes this way: parents turned up at the door of the brothers' house, wanted to see the community leader or the principal of the school, and said, 'Remove so-and-so because he has done this to my son or we will get the police'. There were times when the police turned up and said, 'Remove so-and-so or we will charge him'. That simply reflects a culture that existed that gave special privilege — and it should not have — to people in religious life and in the priesthood. It was a perception that they were beyond offending. We know that now. People, religious people, priests, should resist being put on a pedestal.

Christian Brothers are lay people by definition. We used to wear clerical collars. We now dress like this because we have reclaimed our lay status. It is true — or I believe it is true — that any institution, indeed any person, is as sick as its secrets, and there was a culture that kept things secret. We have to address the sickness of the congregation of the Christian Brothers so that nobody is harmed into the future. We have to address our secrets, and you are helping us to do it.

Mr O'BRIEN — Thank you. If I could continue and ask: so you agree with the proposition that it is important now to undertake these exercises with the utmost transparency in relation to those secrets?

Br McDONALD — I do, and it was important then but not realised.

Mr O'BRIEN — Yes, in relation to those secrets, you mentioned — and I am not sure if they are secrets — two anecdotal cases where parents knew. Could you identify those cases for us and also the one with the police?

Br McDONALD — They were cases that I dealt with in New South Wales when I was the province leader. They do not relate to Victoria. I was simply using those as illustrations.

Mr O'BRIEN — I will let someone else take them up then. Would you agree with the position that was identified in Ireland in relation to the Christian Brothers that sexual abuse there was a chronic problem?

Br McDONALD — Yes.

Mr O'BRIEN — And would you agree that that also relates to the situation that at least occurred in Ballarat at St Alipius?

Br McDONALD — Yes.

Mr O'BRIEN — Would you agree that the Christian Brothers organisation effectively physically terrorised and sexually abused children in the classroom?

Br McDONALD — I would not say the organisation did it. I would say that some individuals did it. Let me just expand on that a little. All abuse, sexual or otherwise, is an abuse of power. Sexual abuse is a very tragic and horrible abuse of power. Corporal punishment is very often abuse of power, or it is an abuse of power. I banned it when I was province leader in New South Wales. Yelling at students, belittling them — all abuse is an abuse of power, and that is something that has to be addressed in a culture.

Mr O'BRIEN — If I could just continue with the Ryan report findings. One of them was that effectively the paedophiles were persistently protected by the church in Ireland. Would you agree with the proposition that the Christian Brothers in Victoria persistently protected over many years a number of the paedophile brothers?

Br McDONALD — A number of paedophile brothers were protected, I believe, not by organisational design.

Mr O'BRIEN — If I could take you to one of the positions you make in your submission. Would you accept that they were protected by elements of your organisation?

Br McDONALD — Yes.

Mr O'BRIEN — Because at paragraph 5 your submission says:

However, at no time have the Christian Brothers adopted a strategy deliberately to ignore or cover up such abuse. Nor have we colluded to allow further abuse to occur when an offender has been identified.

Would you accept that that has to be qualified at least by the examples which you have uncovered and which we have heard about this morning?

Br McDONALD — It does, but it is not a policy of cover-up. They are incidents of cover-up by some people in leadership.

Mr O'BRIEN — Would you accept that that last statement is an assertion? What we have on the state of the evidence at the moment is evidence of a cover-up. The only question is how far it goes.

Br McDONALD — Yes.

Mr O'BRIEN — And in a sense, if you have a situation as outlined by the Chair where you have four of the male teachers in a school at a particular time — and I will name them again: Brother Farrell; Brother Dowlan; Brother Fitzgerald, who died before conviction but who on your evidence was the one kissing little boys; and the notorious Brother Best — all supervised by, or in a chaplain relationship with, Ridsdale, that there is an extremely high probability statistically that there was a cover-up occurring at that school at that time?

Br McDONALD — Certainly not by design.

Mr O'BRIEN — Not by design from a higher power, shall we say, but certainly amongst those operating at the time?

Br McDONALD — But they were not all together at the one time.

Mr O'BRIEN — You can argue the details, but do you accept the proposition that at that stage there is a systemic failure within your organisation?

Br McDONALD — Yes.

Mr O'BRIEN — And that there were elements of a cover-up and a protection of paedophiles occurring at that time for that to occur?

Br McDONALD — There was a systemic failure, without a doubt.

Mr O'BRIEN — Including an element of cover-up?

Br BRANDON — No.

Br McDONALD — The information was not known at that time that these people were offending.

Mr O'BRIEN — Do you accept that it is more probable than not, and, I put it to you, highly likely, that there was an element of cover-up?

Br BRANDON — No.

The CHAIR — Brother Brandon, are you trying to comment?

Mr O'BRIEN — I heard you say no a couple of times, Brother Brandon, is that what you would like to say?

The CHAIR — Because I have got Mr Wall nodding yes and you are saying no, would you like to make a statement?

Br BRANDON — I would just like to say that it is very difficult to say 'it is more likely than not' to that. That is highly speculative, and it has been pointed out that these four individuals were not all there together for all of this period of time. There is no clear evidence that there was a cover-up, and therefore it is difficult to speculate that 'it is more likely than not'.

Mr O'BRIEN — Would you accept that it is a reasonable — —

The CHAIR — Just before you go to that point, Mr O'Brien, would you like to make a comment, Mr Wall?

Mr WALL — I would just like provide a point of factual clarification for the Chair and Mr O'Brien about these four offenders and their time at St Alipius, Ballarat. Best was there from 1968 to 1973; Dowlan was there for one year in 1971; Farrell was there from 1973 to 1974; and Fitzgerald was there for a long period of time from 1962 to 1975. So to do the analysis then of their cross-referencing, three of those were there at any relevant period.

The CHAIR — Thank you for that clarification.

Mr O'BRIEN — And the other is Ridsdale?

Mr WALL — Ridsdale, yes.

The CHAIR — Have you got his time frames as well?

Mr WALL — No.

Mr O'BRIEN — All right. Would you accept it is a reasonable inference that one should draw, just on those numbers alone with the date clarifications, that there must have been or there was likely to have been an element of cover-up, or protection, occurring between those brothers?

Br BRANDON — What I accept is that significant abuse occurred at the hands of each of those brothers. I do not have any doubt about that.

Mr O'BRIEN — But you have not done an investigation to conclude that there has not been a cover-up amongst them, have you; or have you?

Br McDONALD — No, we have not.

Br BRANDON — No, we have not done that. All I am saying is that I do not have any evidence that there has been.

Mr O'BRIEN — I did not ask you that, but whether we can draw the evidence from what we have. We have to draw an inference from the evidence we have.

Br BRANDON — I do not have any evidence that there has been a cover-up.

Mr O'BRIEN — You are not prepared to draw that inference. The Facing the Truth website contains a concession in recent times. It says:

While in earlier years some offending clergy and religious institute members may have covered up fellow offenders, it is clear that the vast majority of clergy and religious simply could not believe that a colleague could do such appalling things.

Leaving the latter bit to one side and to the extent that is conceded, do you accept that there may have been a cover-up? Is that what you are prepared to concede? I think you may have been prepared to earlier, Julian.

Br McDONALD — There may have been a cover-up, but we do not have any evidence to say that there was.

Mr O'BRIEN — Why has there not been an investigation conducted? You have conducted one in Western Australia. Why have you not conducted a similar one in Victoria given that this is another statistical cluster of common cases?

Br BRANDON — I might just say that our primary concern always and consistently has been with the victims. Despite comments or reflections from elsewhere, we have worked hard to respond to victims. The focus of our attention and energy has been in responding either through Towards Healing or in civil cases to claims and working our way through processes in relation to victims. Our office does that day in and day out and that is really where our energy has been. Maybe we should have spent more time in researching the questions that you are asking, and I do not deny that they are good questions, but I am simply saying that our energy has been in a different direction and, I think, a very appropriate direction. Maybe the questions that you are asking are questions to which we should give some further consideration and put some more energy into, but our energy and our focus has been in a different and, I think, a primary direction.

Mr O'BRIEN — Many of these questions, would you accept, have actually come from the victims themselves who have, firstly, called for an inquiry like this and then given us evidence. One of the things they feel is that the brothers and the church are, in a sense, unrepentant because they have not been prepared to undertake of their own volition such an investigation into their cultural issues. Would you accept that?

Br McDONALD — I would think that the investigation should be done by somebody not part of the Christian Brothers — —

Mr O'BRIEN — Absolutely; it could be done independently.

Br McDONALD — So that it is an objective bit of research.

Mr O'BRIEN — I put similar questions to Brother Graham of St John of God, who also accepted that it is a useful idea — 'a helpful idea' — was his phrase; and I was going to say that it should be an independent and properly coordinated investigation in conjunction with police to make sure we are not interfering with any police matters.

Br McDONALD — Anything that is done to put handles on the magnitude of this and on the impact it has had on children who are now adults is a desirable thing to do.

Mr O'BRIEN — I will leave that matter because it is ultimately a matter for us as to whether you have undertaken — I know you have appointed Mr Wall, but you have not undertaken it. Could I just take you to a folder of documents in relation to one case? You mentioned the sort of knowledge you may have had in relation to Brother Elmer and Brother Fitzgerald. I have a folder of documents relating to Brother Dowlan. Would you accept these general propositions arising from the case of Brother Dowlan that there was, firstly, an awareness of Dowlan's sexual problems early on and his associations with and risk to children?

Br McDONALD — I simply do not know the answer to that because I am not sufficiently familiar with these documents, but Mr Wall may have an answer to that.

The CHAIR — You will need some time just to — —

Br BRANDON — You may like to define what you mean by ‘early on’.

Mr O’BRIEN — He effectively started offending at least at the age of 21, joining the brothers at that age in, I think, 1971. I am putting it as a general proposition. We will go to the documents and I am happy for Mr Wall to answer.

The CHAIR — Would you like to refer — —

Mr O’BRIEN — I will go to specifics. It is just a general proposition because you have identified Elmer and Fitzgerald of those. Would you accept that Dowlan is in this category as well?

Mr WALL — I will just read the extract.

Br McDONALD — To which page are you referring, Mr O’Brien?

Mr O’BRIEN — I am not taking you to the documents yet, I am asking you to accept the general proposition.

Mr WALL — Yes, I understand.

Br BRANDON — Clearly we are not going to be able to deal with lots of documents just put in front of us at this notice.

The CHAIR — No, Brother Brandon, we are not expecting you to.

Mr O’BRIEN — I will take you to the bits you need to deal with.

Mr WALL — I accept that.

The CHAIR — Mr Wall, thank you.

Mr O’BRIEN — Would you also accept that there was a persistent course of conduct — and again this is not from the documents — in moving Brother Dowlan around to different schools and institutions and not warning vulnerable parents or children of his prior behaviour?

Br BRANDON — No, I think that any movement of Brother Dowlan from one community to another was not done on the basis that he had offended in one place and therefore he was given another chance somewhere else. It was done on the basis that he was understood to be struggling a little bit in terms of his own maturity and there was an opportunity for him to develop further in terms of growing up, if you like; and there was a chance to make a new start in life. I do not mean in terms of having offended somewhere and starting with a clean sheet; I do not mean that at all. I mean in terms of just growing as an individual — maturing. That was the basis on which some changes from one community to another were made.

Mr O’BRIEN — On what information or evidence do you make that assertion to us now?

Br BRANDON — That is my assessment. That is my personal judgement, that is all.

Mr O’BRIEN — Have you undertaken an investigation into what happened with Brother Dowlan?

Br BRANDON — I worked on our leadership team in Victoria for some years, and while it does not go back to the 1970s it does go back to the 1980s, so I did have some knowledge of Brother Dowlan and some of the maturation problems that Brother Dowlan experienced.

Mr O’BRIEN — If I could just take you to the first report. It is a visitation report in 1975 and it says in relation to Brother Dowlan — —

The CHAIR — Which paragraph are you referring to, Mr O’Brien?

Mr O’BRIEN — It is page 2 of the report under tab 1. Do you see that?

Br McDONALD — Yes.

Mr O'BRIEN — I think Mr McGuire might have read this to you earlier —

He is immature ... spending more than the normal time with boys, rather than ... brothers.

Do you see that? Have you read that, brothers?

The CHAIR — We will just give you a moment to read that paragraph.

Br McDONALD — Is it headed 'August 1975'?

Mr O'BRIEN — Yes. It is Brother Edward Dowlan.

Mr WALL — Page 2.

Mr O'BRIEN — It concludes by saying:

He is not considering deferring his perpetual profession for a year; he wants to decide this year his whole future in the brothers.

Br McDONALD — Yes.

Br BRANDON — Yes.

Mr O'BRIEN — Do you accept that in fact at this time Brother Dowlan actually left St Alipius, and there had been a complaint by one family in St Thomas More School in Forest Hill? The boys at the school had been told Brother Dowlan had gone on a religious retreat when later it had been shown he had been posted to St Patrick's, Ballarat. Do you accept that? That is from the police files. It is cited on the Broken Rites website, but that is from the police file of complaints by parents in relation to St Pat's, Ballarat. It is not in the documents.

The CHAIR — Mr O'Brien, who are you directing your question to?

Mr O'BRIEN — Do you accept that that had happened at the time?

Br BRANDON — Can you put the question again, please?

Mr O'BRIEN — That at the time the comment was made in relation to the document in front of you there had been a complaint by one family at St Thomas More School in Forest Hill and that the boys at that school had been told that Brother Dowlan had gone on a religious retreat when it was shown he had been posted to St Patrick's, Ballarat, 1973. Are you aware of that or not?

Br BRANDON — I do not understand your question, I am sorry.

Mr O'BRIEN — Are you aware that there was a complaint in Forest Hill in relation to Brother Dowlan which resulted in Dowlan being removed from the Forest Hill school in 1973?

Br McDONALD — No.

Br BRANDON — No.

Mr O'BRIEN — Okay. Thank you. We have been to the 1973 report. Then the next, document 2, is — —

The CHAIR — If you could go to document 2, gentlemen. Thank you.

Mr O'BRIEN — Behind tab 2 — the first page has 'Ted Dowlan'. Do you see that?

Br McDONALD — Yes.

Mr O'BRIEN — I will get you to read from about the third sentence, where it says:

Tony is a relative of his and finds this a hindrance to speaking the truth to Ted in love.

I ask you: what does that mean?

Br McDONALD — Being honest up-front. He was calling a spade a shovel.

Mr O'BRIEN — All right. What does he mean by 'in love', though? Is that a reference to sexual — who was he in love with as a brother?

Br McDONALD — No, there is a bit in our current constitutions, if you like, that one of the hallmarks of healthy community living is to be prepared to speak openly and honestly with somebody if you have a concern about his behaviour. It is not about erotic love or anything like that.

Mr O'BRIEN — All right. Could you read the next sentence for me, Brother Brandon?

Br BRANDON — 'Tony remarked that Ted is overtly affectionate in expression with his boys'.

Mr O'BRIEN — All right. Is that a red flag?

Br McDONALD — Yes.

Mr O'BRIEN — And should that have been more properly acted upon as a signal?

Br McDONALD — Undoubtedly.

Br BRANDON — Yes, agreed.

Mr O'BRIEN — And then it concludes in that section by saying, 'Ted felt that he was not imprudent in his expression of affection when confronted with this remark'. Then in 1985 again Broken Rites indicates that in an East Melbourne college the defence admitted after a complaint that Dowlan was removed from teaching to do a year diploma in theology. Are you aware of that?

Br BRANDON — I am prepared to accept the record.

Mr O'BRIEN — It says here:

He is frightened by the prospect of a year of study and renewal but is prepared to face it if his superiors deem it advisable. He is fearful of change.

Are you saying that that was not being done either to protect the reputation of Brother Dowlan or the reputation of the brothers at the time?

Br McDONALD — I would have thought it was done to try to sort him out.

Mr O'BRIEN — There was a reference, when you were talking to Brother Elmer, to advice as to legal matters. You referred to that, Mr Wall, in your summary. It is clear that at least in the Elmer case the brothers were aware of the legal implications of paedophilia as a crime, weren't they, Mr Wall?

Mr WALL — Yes.

Mr O'BRIEN — Would you expect that the same sort of awareness ought to have been applied to Brother Dowlan at the time?

Br McDONALD — Without a doubt.

Mr O'BRIEN — All right. If I could then just take you to the convictions that occur — I will read, effectively, a summary of these. He has been convicted for offences. Could you tell me: are you aware of what he has been convicted for?

Br BRANDON — Generally.

Mr O'BRIEN — Did you say 'generally'?

Br BRANDON — Yes.

Mr O'BRIEN — In relation to the convictions that occurred, the next thing that happens is that a letter, at paragraph 3, in relation to an author — behind tab 3, 31 July 1996, this author writes:

I am writing to you to voice my dismay and anger following last week's revelation about the activities of Brother Dowlan.

Do you see that letter?

Br BRANDON — Yes.

Mr O'BRIEN — Could one of you read the next two paragraphs?

Br McDONALD — It reads:

While I was deputy director of St Vincent's Boys Home I, and many other staff members, worked 15 to 16-hour days and practically sweated blood to assist the brothers to look after the residents. I accepted with good faith the sudden departure of Brother Elmer from the school and the appointment of Brother Dowlan to fill his position. Indeed, I spent many extra hours, which I could ill afford, assisting Brother Dowlan to understand the nature and behaviours of the boys and the teachers.

As you are probably aware, many of St Vincent's residents had been sexually abused, and often displayed overt and outrageous sexualised behaviour. Furthermore, they expected or requested that this behaviour be reciprocated by the adults in their lives. A major part of our endeavours at St Vincent's was getting these boys to a point where they would expect not to be abused. Now I find that all of this work could have been compromised by the presence of a man like Brother Dowlan.

Mr O'BRIEN — Could you read the next two paragraphs as well?

Br McDONALD — They read:

I take note of your congregation's position that the brothers were unaware of Brother Dowlan's tendencies and activities. I cannot accept this as a reasonable position. I cannot believe that the number of allegations against this man could have been kept from his various communities' and the congregation's superiors. I find that expecting the public to believe this is preposterous. I do not believe this plea of ignorance.

Mr O'BRIEN — Can I just pause you there, Brother McDonald. Would you accept those in a sense findings could be equally applicable to certainly the victims but also the wider Victorian community in relation to the church's knowledge of Brother Dowlan's activities?

Br McDONALD — Yes, I can accept that people out there in the community would reasonably come to that conclusion.

Mr O'BRIEN — And is it one that you come to in the light of these documents that I am showing to you and your knowledge?

Br McDONALD — Yes.

Mr O'BRIEN — Thank you. If I could then refer to the criminal charges. He was charged in 1994 in respect of offences at St Alipius college, Ballarat; St Thomas More College, Forest Hill; St Patrick's College, Ballarat; Cathedral College, East Melbourne. He pleaded guilty in June 1996 to 16 counts of indecent assault on 11 victims, sentenced imposed for 9 years 8 months and a non-parole period of 6 years reduced to 6.5 from 9.4.

There is a reported decision in the Supreme Court reports of an appeal — Brother Dowlan; it is *R. v. Dowlan* [1998] 1 VR 123. Are you aware of that report?

Br McDONALD — I am not.

Mr O'BRIEN — It lists some of the background, which I will not take you to. It certainly lists some of the behaviours — say count 11, which:

... constituted by an incident in a dormitory at St Patrick's College in 1974. The victim awoke to find the applicant stroking his head and leaning down to kiss him ...

et cetera, et cetera.

The kissing was a passionate nature. After about a minute the boy managed to kick back and sideways and the applicant lost his footing, falling to the floor ...

et cetera, et cetera. It is obviously graphically set out there in the judgement of Chief Justice Phillips.

What I wanted to take you to: do you accept that these are the impacts on victims as related from one of the victim impact statements? It says:

In the agreed facts there were references, variously, to victims being —

and I will use graphic language —

‘shit scared’, ‘hyperventilating’, being ‘upset’, ‘uncomfortable’, ‘feeling humiliated and sick’, ‘crying’ and ‘screaming’. The applicant’s admitted references to parents and the quality of work was also relevant, as is the age range of the victims.

These were matters that ended up in the Court of Appeal. Do you accept that that was in fact an impact on these victims which the church at the time ignored by its actions?

Br McDONALD — That is sickening, detestable behaviour.

Mr O’BRIEN — Could we look briefly at what happened in relation to charges against Brother Dowlan for further offences in 2008, because I put it to you that the Christian Brothers in the way they have since treated Brother Dowlan are in fact unrepentant. Do you accept that?

Br McDONALD — I do not accept that. We have an obligation to make sure that offenders are not just kicked out, left in the community.

Mr O’BRIEN — But you have also done some other things in relation to Brother Dowlan that include protecting his assets. If I could take you to document no. 4, I will be as quick as I can but, being fair to you, do you see that that is an email?

Br McDONALD — Yes.

Mr O’BRIEN — From 11 February 2008. They talk about in the second paragraph:

I am writing to you for some quick information... We had submitted the application for Ted Dowlan’s dispensation. The Vatican have asked me for some details ...

Do you see that?

Br McDONALD — Yes.

Mr O’BRIEN — If I could then go to the next page, which is a memo from you, Brian Brandon. Could I ask you to read the second paragraph of that?

Br BRANDON — It reads:

TD looking for advice re protecting his assets in some sort of testamentary trust. We talked about this a bit. It is a good way for him to proceed but he needs independent legal advice and obviously needs help to set it up.

Mr O’BRIEN — All right. And the last thing?

Br BRANDON — The last paragraph.

Mr O’BRIEN — The last paragraph, yes.

Br BRANDON — It reads:

In response to a question from TD re costs, I indicated that, given his present status as a brother, we would pick up the cost of the advice and implementation process.

Mr O’BRIEN — So you have continued to support him there, and in fact you are looking at protecting his assets. That is right, isn’t it?

Br BRANDON — It was the cost of — —

The CHAIR — What date is that, Mr O’Brien?

Mr O'BRIEN — That is the date 29 August 2008.

Br BRANDON — It was the cost of the legal advice.

Mr O'BRIEN — Yes, well. If I could take you to the next document, document 6. This letter at the bottom refers to another matter for which there are various statements in the form of a hand-up out brief in the Best matter. It says:

No charges have been laid at this point in time in relation to these other parties. For reasons of potential conflict of interest Geoff, after discussing the issue with me, has asked that you provide advice and as necessary represent these other parties I have approved of that arrangement.

Do you accept that this letter effectively, given that no charges had been laid against those other people, to include Brother Dowlan, constitutes a heads-up or an effective tip-off that police are investigating those other brothers?

Br BRANDON — No.

Mr O'BRIEN — You do not accept that?

Br BRANDON — Put the question to me again, please?

Mr O'BRIEN — Do you accept that that effectively amounted to a heads-up or a tip-off that other potential investigations were occurring against Brother Dowlan at the time but he had not been charged? I understand it is a legal, and if you do not wish to accept it, I will not press it with you.

Br BRANDON — No, I do not wish to answer that.

Mr O'BRIEN — Okay. In relation to the assets, on 15 October 2008 — behind tab 8 this is — do you see it is a letter from Tolhurst Druce and Emmerson dated 15 October 2008 to you, Brother Brandon, as Trustees of the Christian Brothers. It says:

...the entitlement of Ted Dowlan while unaltered in quantum is left to him —

this is in the last sentence of the first paragraph, it says:

... the entitlement of Ted Dowlan while unaltered in quantum is left to him in the form of a discretionary trust to protect it, so far as that is possible, from any attack on his assets after Mrs Dowlan's death.

Do you see that?

Br BRANDON — I do see that.

Mr O'BRIEN — What attack were you anticipating?

Br BRANDON — Give me a moment and I will read the letter.

Mr O'BRIEN — Whilst you do that, could I ask Brother McDonald: would it be obvious that the most likely attack would come in the form of similar claims for compensation from one of the victims?

Br McDONALD — Certainly that is a very real possibility; maybe a probability.

Mr O'BRIEN — How could the congregation assist in all its conscience to support such an arrangement?

Br BRANDON — I would simply say by way of response to your question that I was not the author of the letter.

Mr O'BRIEN — It is addressed to you; do you accept that? I will have some answers from Brother McDonald.

Br McDONALD — As I say, this letter does not come from us; it comes from a legal firm and it is about, I presume, Dowlan's future.

Mr O'BRIEN — If I could take you to paragraph 9, which concerns a series of emails; it says:

Dear Brian,

25 November 2008 was the date when Ted Dowlan accepted the indulgence of dispensation and it thus became effective.

The CHAIR — What date is this email, Mr O'Brien?

Mr O'BRIEN — It is 9 December 2008 at 5.30 p.m. Then it says:

The quantum of separation payment was AUD125 000, and there will be further assistance offered to Ted by way of accommodation — details yet to be finalised.

Why is there any payment of such an amount, and how did this come about?

Br McDONALD — When a brother is severed from the congregation we believe it is an obligation for us to provide him with some kind of stability. He has to have accommodation and he has to have the wherewithal to survive. This man is a psychological cripple. That is manifest in his behaviour, in his whole history of abuse. So he is not going to get employment anywhere.

Mr O'BRIEN — Could I just pause you there? If we are looking at a choice between money to go to his victims or money to go to the brother's future needs, would not the Christian thing be to give the money to the victims?

Br McDONALD — To both.

Mr O'BRIEN — Would you not put the victims first if there is a choice? Sometimes you cannot give it to both.

Br McDONALD — I would put the victims first, but this is not saying the victims are put second.

Mr O'BRIEN — Can I get you to read the last couple of sentences of the other email?

The CHAIR — Which email are you referring to?

Mr O'BRIEN — It is on Thursday, 4 December 2008. Brother Brandon wrote:

I'm aware of Ted Dowlan's signing of his dispensation papers in recent times.

Could you, just for the sake of it, skip to the sentence that says:

It will also be helpful to me to have some idea of the quantum of his separation payment.

Could you read the rest of that?

Br McDONALD — It states:

I don't need to know that to the nearest cent, but at least a broad indication will assist me in helping ensure that it isn't all lost through the said legal action with some consequent further call on the CBs for support funds. I am aware of the arrangements made in relation to the estate that will come to him in line with his mother's will when she dies.

Mr O'BRIEN — That is precisely the opposite to what you just put in Brother Brandon's own hand — namely, it is a concern to make sure that all the money is not lost to the victims in the legal action, isn't it?

Br McDONALD — I do not believe so. Legal action and paying legal fees is one thing. It does not mean that we deny victims.

Mr O'BRIEN — If I could just ask you to go to the next document. You referred to cooperation to the police. This is, after all that has occurred, a document dated 5 November 2010, written to Detective Sergeant Carson. Notwithstanding that you have been dealing with Brother Dowlan in at least 2008, Brother Brandon, could I get you to read the second paragraph to that letter.

Br BRANDON — It states:

You also raised in your letter a question about the placement of Br Dowlan. I don't recall your request of some months back, but I may have overlooked the matter. In any event, I advise that Ted Dowlan is no longer a Christian Brother. In fact, he left the Christian Brothers quite some years ago. His last 'placement' by the Christian Brothers goes back to the time before he went to prison (1996) and was at Catholic Regional College Geelong 1990–93. If I can be of further assistance in this matter, please be in touch.

Mr O'BRIEN — Do you accept that that is misleading to Detective Sergeant Carson in that you have maintained a position that once a brother, always a brother, and that you have been in contact with him at least until 2008 rather than 1996?

Br BRANDON — No. He is not always a brother once he seeks and gains dispensation. Ted Dowlan officially signed off and left the Christian Brothers. That is what the previous letter was talking about with the settlement figure of \$125 000.

Mr O'BRIEN — But you do not mention that you had been dealing with him in 2008 in your letter to Detective Sergeant Carson, do you?

Br BRANDON — No, I do not mention that. There was not any issue about mentioning that. That was not raised as a question.

Mr O'BRIEN — Was that a case of mental reservation?

Br BRANDON — No.

Mr O'BRIEN — Where you have selectively decided not to tell Detective Sergeant Carson the critical information that you had been dealing with him until 2008.

Br BRANDON — No.

Mr O'BRIEN — I put it to you that the attitude of this correspondence shows that the Christian Brothers, far from being repentant, still remained protective of not only Brother Dowlan but other brothers including Brother Best; do you agree?

Br BRANDON — No.

Br McDONALD — No, it is not about repentance. It is about obligation and caring for people who would just be put on the scrapheap.

Mr O'BRIEN — My colleague Mr Wakeling will ask you some further questions in relation to Brother Best, but do you recall Dr Coldrey's evidence to this committee in relation to the brothers' attitude to Brother Best?

Br McDONALD — You are talking about Dr Barry Coldrey?

Mr O'BRIEN — Yes.

Br McDONALD — I have some knowledge of it.

Mr O'BRIEN — I will not read it to you because of the time, but I put it to you that it would demonstrate a different attitude in relation to the brothers. I will let Mr Wakeling take it from here.

Mr WAKELING — Gentlemen, thank you very much for your attendance. I have some information, and I will pass one copy to Brother Brandon, if I may. The questions I would like to bring to your attention are in regard to the matter of Brother Robert Best. Robert Best, as you would be aware, has been the subject of criminal proceedings over many years. Brother Brandon, you may be aware that in 1996 Brother Best was committed and found guilty of a conviction for indecently assaulting a boy. You are aware of that trial?

Br BRANDON — Yes.

Mr WAKELING — Brother Brandon, if I may, item no. 1 that you have in front of you is a document that our secretariat received, which I understand is in your handwriting.

Br BRANDON — No, it is not.

Mr WAKELING — It is a document that we were provided by your organisation in regard to Brother Best. Can you read the first line, the highlighted section?

Br BRANDON — The first line is 'R. C. Best — Legal costs to date (09.08.96)'.

Mr WAKELING — So this is the cost to date in 1996 that the Christian Brothers had spent on Brother Best. In the highlighted section at the bottom how much was spent by the brothers for that criminal proceeding?

Br BRANDON — It is \$158 000 approximately.

Mr WAKELING — So during the first criminal proceeding in 1996 the brothers spent \$158 312.53 on the defence of Brother Best. You would agree with that figure?

Br BRANDON — It is not precise as to whether it says criminal defence.

Mr WAKELING — But you acknowledge that \$158 000 was spent on legal costs for Mr R. C. Best?

Br BRANDON — That is what it says.

The CHAIR — Do you know what the case was then — what the legal costs were for?

Br BRANDON — I do not know from this document.

Mr WAKELING — In 1998 as a consequence of the 1996 trial, Brother Best faced further criminal proceedings. Those criminal proceedings, which related to six boys, or six men at the time, involved a trial and an appeal, and ultimately the DPP did not proceed with a retrial. You are aware of those proceedings? I ask you to look at item 2. It should be numbered in the top right hand corner '2'.

Br BRANDON — The date?

Mr WAKELING — You have document 2?

Br BRANDON — Yes, I have got the document.

The CHAIR — Could you confirm the date for Brother Brandon?

Mr WAKELING — Yes, I was going to ask. Firstly, that is a document, and if you look at the bottom at the footer it will tell you the organisation that this letter is from.

The CHAIR — Would you mind reading it out, please, Brother Brandon?

Br BRANDON — The organisation is 'Kenna Croxford'.

Mr WAKELING — And they were? What was that organisation?

Br BRANDON — They were solicitors.

Mr WAKELING — Solicitors, and they were acting on behalf of the Christian Brothers?

Br BRANDON — They were acting on behalf of Robert Best.

Mr WAKELING — The date on the document?

Br BRANDON — The date is 3 July 1998.

Mr WAKELING — Yes, and this is a document that you would agree is in regard to costs?

Br BRANDON — It is in regard to legal costs.

Mr WAKELING — And it says 'Re' in regard to whom? The matters in regard to which person?

Br BRANDON — Brother Best.

Mr WAKELING — Brother Best. This was a document that was sent to who? Up the top.

Br BRANDON — Me.

Mr WAKELING — The name of the person that it was sent to — up the top of the document?

Br BRANDON — Yes, it was sent to me.

Mr WAKELING — Brother Brandon. And what was the figure that was billed to your organisation?

Br BRANDON — Billed to the Christian Brothers: \$33 598.40.

Mr WAKELING — So you would acknowledge that in regard to the second matter the Christian Brothers were billed a figure of \$33 000?

Br BRANDON — Yes, I do.

Mr WAKELING — As you would be aware, in 2010 there were further proceedings in regard to Brother Best.

Br BRANDON — I am aware of that.

Mr WAKELING — In those proceedings Brother Best was found guilty of 20 counts of indecent assault and one count of buggery in regard to eight victims, plus Brother Best pleaded guilty to four counts of indecent assault against two victims and two counts of aggravated indecent assault against one victim. It was a total of 11 victims, of which he pleaded guilty to 3. Would you agree with those findings?

Br BRANDON — I am aware of those findings.

Mr WAKELING — Can I take you to document no. 3?

Br BRANDON — Yes.

Mr WAKELING — The date at the top of that letter?

Br BRANDON — I think it is 15/7/11.

Mr WAKELING — If I can ask you to turn to page 3, at the back of that document, this is a document that is signed off by whom?

Br BRANDON — By myself.

Mr WAKELING — And can I ask you to read the heading of the document on page 1?

Br BRANDON — ‘Issues around the possible funding by the Christian Brothers of an appeal of sentence by Bob Best as a result of the series of trials that concluded on 30 May 2011.’

Mr WAKELING — So I can take from this that this is a document that looks at funding options that were available to your organisation as part of a potential appeal to those proceedings — is that correct?

Br BRANDON — Yes.

Mr WAKELING — In item 2, which is headed ‘Cost’, can I ask you to read the second paragraph, which is highlighted?

Br BRANDON — ‘Costs ... billed to 28.06.11 in relation to defence of the 2010–2011 criminal proceedings are \$980 000.’

Mr WAKELING — Can I confirm with you, Brother Brandon, that in regard to that second trial your organisation had expended nearly \$1 million in defence of Brother Best?

Br BRANDON — Including GST.

Mr WAKELING — I would have thought regardless of the GST component it was a significant amount of funds — would that be correct?

Br BRANDON — That is correct.

Mr WAKELING — If I may then, Brother Brandon, how much money have the Christian Brothers spent on criminal proceedings involving brothers?

Br BRANDON — About \$1.5 million.

Mr WAKELING — In total?

Br BRANDON — In total.

Mr WAKELING — Of which this case is the largest proportion?

Br BRANDON — By far.

Mr WAKELING — If I may ask, was Queen's Counsel or Senior Counsel engaged as a matter of course in all criminal trials involving brothers?

Br BRANDON — It is a matter of providing support for brothers and the level of counsel is a matter of judgement in each case.

Mr WAKELING — And may I ask: during these trials, obviously these matters will be dealt with by Crown prosecutors, but what financial assistance was afforded by the Christian Brothers to victims during these proceedings?

Br BRANDON — The level of financial support for victims over time has run to about \$10.5 million.

Mr WAKELING — I am not talking in terms of payouts; I am talking in terms of assistance for these victims during the trials and leading up to the trials, to assist them with their trials.

The CHAIR — Legal support.

Mr WAKELING — For legal support. Other assistance was provided. You have indicated \$1.5 million was spent by your organisation on priests. What about for victims who were involved; were any moneys afforded to those people?

Br BRANDON — No, we did not support the victims directly in the trial process.

Mr WAKELING — Okay, so no financial support was provided. Brother Brandon, you indicated earlier in an answer — it may have been to Mrs Coote but I will stand corrected — that your energy has been in a different direction.

Br BRANDON — Different from?

Mr WAKELING — A different direction. You indicated earlier the approach of your organisation, in learning of the errors of the past, you were focusing your energies in a different direction. Was that correct?

Br McDONALD — On research, I think the topic was at that time.

Br BRANDON — Our energy has been towards the settlement of issues with victims.

Mr WAKELING — Okay, so if I could put to you: if your energies have been focused in a different direction, how in all conscience can your organisation spend nearly \$1 million, as confirmed in 2011, on providing counselling assistance for Brother Best's legal expenses, given his conviction in 1996, but, more importantly, in the 2010 trial he actually admitted guilt to abusing three victims — found guilty of eight, but more importantly agreed that he had committed serious criminal assault against three children?

Br BRANDON — Clearly, the admissions did not come before the costs. If the admissions were at the start of the whole series of events, then there would not have been the costs that you are referring to. To put it in context, and we are referring basically to the last trial, if you are talking about the massive costs, we had budgeted a small amount of money — small in terms of criminal defence costs — of \$140 000, and you have seen the papers associated with that because they were available to counsel assisting the inquiry and it is a matter of history how the costs associated with the criminal defence spiralled out of control.

I just make the point that whether we fund the defence costs or whether we rely on legal aid and therefore ask the taxpayers, the people in this chamber today, to foot the bill, is a matter for determination and perhaps a matter of generosity, even. But I am just wanting to make the point as to who pays for the costs of criminal defence. Even today on the front page of the *Age* there are issues around struggles about legal aid and its capacity to provide support for justice in the criminal defence system. So how criminal defence is paid for and by whom is a real issue for society and for the Victorian government, but we determined, as we generally do, to pay for the criminal defence of those within our family, and we try and do it as economically as we can. This matter in relation to Robert Best spiralled out of our control; we are not happy that those costs got to the level that they did get to.

Mr WAKELING — Brother Brandon, I appreciate your comments, but I think the fundamental issue here is not one of cost impacts on Victorian taxpayers. The issue here sheets back to the issue of culture within the organisation. I put to you, from what you are saying, that the fact that Robert Best was in fact found guilty of an offence as early as 1996, that had no bearing on your decision as to whether you would be representing him again in 1998 or, more importantly, in 2010; is that correct?

Br BRANDON — It was certainly considered, but they were different allegations.

Mr WAKELING — Brother Brandon, if I may: Brother Best was convicted in 1996 of indecently assaulting a boy.

Br BRANDON — Right.

Mr WAKELING — In 1998 there were proceedings relating to six boys. We accept the fact that the DPP did not proceed with those and — —

Br BRANDON — Right, and we do need to note that.

The CHAIR — Brother Brandon, I do not want this debate. Just put your question please, Mr Wakeling.

Mr WAKELING — In 2010, there were 20 counts of indecent assault and 1 count of buggery for 8 victims, and 4 counts of indecent assault against 2 victims and 2 counts of aggravated indecent assault against another victim. They were clearly directly related. They were not separate offences. They were clearly sexual assault of a child in 1996 and sexual assault of children in 2010. There is no clear distinction.

Br BRANDON — The 2010 matters are all post the decision to engage criminal support defence.

Mr WAKELING — If I may ask, Brother Brandon: if someone such as Brother Best was subject to a future trial — and I am not speculating in regard to that — would your organisation provide financial support in that matter to defend him?

Br BRANDON — For what?

Mr WAKELING — If someone such as Brother Best faced future criminal proceedings for another allegation of criminal sexual abuse of a child, would your organisation provide help?

Br BRANDON — No.

Mr WAKELING — So why would you not provide financial support in a future case but be willing to do so as little as two years ago to a cost of upwards of \$980 000?

Br BRANDON — Because of the accumulated history that now exists.

Mr WAKELING — It took three separate criminal proceedings for which you afforded Brother Best significant funds. You are now saying that you have now drawn the conclusion that this is not a person worth defending; is that correct?

Br BRANDON — I am saying that the funds have nothing to do with decision. It is the history of those trials that would impact on our decision.

Mr WAKELING — If I may, you are asking us to believe, with respect, Brother Brandon, that you defended the allegations in 1996; we accept that that is the first trial. Two years later, after conviction, you then went back a second time to defend Brother Best and provided \$33 000 in financial assistance in his defence. But then 12 years later, with significant allegations, you provided funding of up to \$980 000 — —

Br BRANDON — We did not choose to do that.

Mr WAKELING — With the greatest respect, I am guessing no legal requirement was placed on you to pay Brother Best's bill; is that correct?

Br BRANDON — You would have to ask what would happen were we not to have done that.

Mr WAKELING — I would have thought that ultimately it is a decision for your organisation as to whether or not you choose to pay someone's legal defence. You are not obliged to.

Br BRANDON — You would have to consider the alternative.

Mr WAKELING — And what would that be?

Br BRANDON — That is a good question.

Mr WAKELING — Is it correct that members of the congregation who are in custody are provided with counselling and other support services?

Br McDONALD — Only by the prison system.

Mr WAKELING — With respect to someone like Brother Best, would he be visited in jail by members of the congregation?

Br McDONALD — Yes.

Mr WAKELING — Is Brother Best provided with any other assistance whilst in jail?

Br McDONALD — Not to my knowledge.

Mr WAKELING — Can I ask why members of the congregation would be visiting Brother Best?

Br McDONALD — We regard visiting prisoners as one of the Catholic Church's corporal works of mercy, so visiting prisoners is part of the charisma of the Christian Brothers. Our founder, before he established the Christian Brothers, did a lot of work with prisoners. We do not just add further to the punishment. Any family member would visit a member who had committed a crime anywhere.

Mr WAKELING — I thank you for talking about a family member. Is Brother Best still considered a member of the congregation?

Br McDONALD — He is.

Mr WAKELING — This is a man who has been convicted of offending against 12 victims, 3 of which he admitted to himself. Can I ask: what terrible act, in addition to what we have just heard, would Brother Best have to commit before your organisation would formally remove him from the congregation?

Br McDONALD — That is an option available to us — to formally dismiss him from the congregation. One of the questions we must ask is: are we being responsible by letting somebody with a record like that loose in the community unsupervised?

Mr WAKELING — Just in regard to that, if I might ask Mr Wall a question. Can I ask whether or not you visited any members of the Christian Brothers in custody?

Mr WALL — I have.

Mr WAKELING — And who would that be?

Mr WALL — That was Peter Toomey.

Mr WAKELING — In what circumstances did you undertake that visit?

Mr WALL — That was as part of my role in providing psychological supervision for Toomey after his Encompass treatment program, as I recall.

Mr WAKELING — Can I then confirm with you, Brother McDonald, when you indicated that the organisation provides no support to members of the congregation who are in custody that that is in fact not true.

Br McDONALD — I understood that you were talking about financial support; you did not qualify it. I accept that counselling is part of our responsibility to monitor offenders. That is not a kind of a support thing; that is a matter of us carrying out our responsibilities. It is not a support for Toomey.

Mr WAKELING — Therefore you would concur that your organisation does provide support for members of your congregation who are currently in jail?

Br McDONALD — If that is what you mean by ‘support’, yes. But we also have to ensure that when this person comes out of prison he is properly monitored, and the monitoring starts while he was in prison.

Mr WAKELING — If I may provide a copy of a letter to you, Brother McDonald.

Br McDONALD — Thank you.

Mr WAKELING — I appreciate that this is the first time you have seen this letter. Can I ask you to turn to the second page.

The CHAIR — Could you just clarify the letter, Mr Wakeling?

Mr WAKELING — Yes. The signature on the second page is whom?

Br McDONALD — Barry Coldrey.

Mr WAKELING — Barry Coldrey. Is that gentleman known to you?

Br McDONALD — He is.

Mr WAKELING — Can I ask what his position is?

Br McDONALD — Barry is a retired Christian Brother from active ministry. He does research. He does writing. He has a PhD as an historian.

Mr WAKELING — Can I ask the date of his letter? It is at the top of the first page.

Br McDONALD — It is 24 April 2013.

Mr WAKELING — This is a letter from last week. Can I ask you to read the second paragraph.

The CHAIR — Could you just confirm, Mr Wakeling, who it is addressed to?

Mr WAKELING — Yes. It is addressed to whom?

Br McDONALD — To Ms Crozier.

Mr WAKELING — Yes. And the distribution list above that?

Br McDONALD — ‘Committee members of the Victorian parliamentary committee on the handling of abuse allegations by members of churches and other NGOs’.

Mr WAKELING — Can I ask you to read the second paragraph.

Br McDONALD — It states:

At my oral presentation before your committee, 1 March 2013, Mr Michael O’Brien asked me the question, ‘Why is a serious convicted sex offender such as Brother Robert Best permitted to remain a Christian Brother?’.

The CHAIR — I think he meant Mr David O’Brien, but nevertheless continue.

Br McDONALD — I accept that. I am just reading what is here, Chair.

The CHAIR — Yes, you are.

Br McDONALD —

Mr O’Brien said that this situation was extremely offensive to men who had suffered abuse by Brother Robert Best, especially in the Ballarat area.

Mr WAKELING — If I may stop you there; would you concur with that conclusion by Mr O’Brien:

... that this situation was extremely offensive to men who had suffered abuse by Brother Robert Best, especially in the Ballarat area?’

Br McDONALD — I can understand how people in the community would see that as offensive. I do not have the same view. I understand they are taking offence, but I think we also have a responsibility to address the issue.

Mr WAKELING — If I may take you to the fourth paragraph, if you could read that please?

Br McDONALD —

Yesterday (23 April) a member of the Christian Brothers executive (based in Brisbane) visited me at the address above for my routine annual visitation. I raised the question with him and suffice to say that current policy, expressed with some vehemence, remains and is likely to remain that ... Robert Best can remain a Christian Brother as long as he wishes — now and if/when he emerges from Ararat prison. The executive said that in that way ‘we’ (the Brothers) to an extent monitor his activities.

Mr WAKELING — So can I ask for your commentary and your opinion on that?

Br McDONALD — Yes, my opinion is that I believe we have an obligation to the community not to let people like Best loose in the community unsupervised. By retaining him we can supervise his behaviour and monitor his movements and make sure that he does not just run loose in the community.

Mr WAKELING — Can I put it to you, if I may, that if a perpetrator of similar crimes was employed by an organisation not only in the state of Victoria but anywhere in Australia, there would be an expectation that that organisation would sever relations with that person. If a similar person had undertaken these types of activities, if they were a member of a community organisation, sporting club, scouting organisation, et cetera, there would be a general assumption in the community that that organisation would sever relations with that person; would you agree with that?

Br McDONALD — I think that happens.

Mr WAKELING — Given that, can you please then explain to me why your organisation would not take similar action? The second question I would like to ask is: what message does that send to not only those within the community of the Christian Brothers but more importantly the broader Victorian community?

Br McDONALD — Firstly, I would like to say that the recidivism among Christian Brothers who have been retained after having been in prison is nil. I think that has partly to do — or not partly — I think it is largely to do with the fact that we do monitor their behaviour and we do put restrictions on them and we do expect them to be accountable.

Mr WAKELING — Can I take you to item 4, Brother Brandon, on the documentation that I handed you? This is a document from Stynes Dixon Lawyers. Do you have you that?

Br BRANDON — Yes.

Mr WAKELING — What is the date of the letter?

Br BRANDON — The date was 25 November 2010.

Mr WAKELING — And it is attention to whom?

Br BRANDON — It is addressed to me.

Mr WAKELING — And it is in regard to whom?

Br BRANDON — It is in relation to Brother Robert Best.

Mr WAKELING — Can I ask you to read the highlighted section in the second paragraph?

Br BRANDON —

He has requested that we make discreet enquiries through a private investigator to try and find out something about this man as his behaviour is bizarre and if the reason can be ascertained, it would be of enormous assistance to Bob's case.

Mr WAKELING — Can I take you to item 5, and to the highlighted section at the top. That is identified as who? Who is on the letterhead?

Br BRANDON — That is Glynis McNeight.

Mr WAKELING — And what is her occupation?

Br BRANDON — It says, 'Licensed inquiry agent'.

Mr WAKELING — And from your understanding, what is a 'Licensed inquiry agent'? What is the role of a licensed inquiry agent?

Br BRANDON — What is the role of it?

Mr WAKELING — What duties do they undertake?

Br BRANDON — It does not — —

The CHAIR — What is your understanding, I think, is Mr Wakeling's question.

Br BRANDON — Can you explain what your question is?

Mr WAKELING — I put to you that the role of a licensed inquiry agent is in fact a private investigator. Would you concur with that?

Br BRANDON — It appears to be.

Mr WAKELING — The statement regards whom?

Br BRANDON — The statement is about 'Dowlan investigation'.

Mr WAKELING — And the amount provided? It says:

This account has been reduced to ...?

Br BRANDON — It is \$5320.

Mr WAKELING — And that is from 24 April. If I can take you to item 6.

Br BRANDON — Yes.

Mr WAKELING — So the document you have just read is 24 April. The next item is dated?

Br BRANDON — That was 24 April 1995.

Mr WAKELING — That is correct, so the next document, item 6, is dated...?

Br BRANDON — It is 26 April 1995.

Mr WAKELING — And this is from Doyle Considine barristers?

Br BRANDON — Yes.

Mr WAKELING — It was sent to yourself?

Br BRANDON — That is true.

Mr WAKELING — In regard to Brother Ted Dowlan?

Br BRANDON — That is true.

Mr WAKELING — Can you just read the highlighted section in that final paragraph?

Br BRANDON — It says:

We also confirm funding has been approved for the investigator to continue her investigations for an additional sum of \$5000 (plus disbursements).

Mr WAKELING — Can I put to you, Brother Brandon, is it common practice for the Christian Brothers to pay private investigators to spy on sexual abuse victims?

Br BRANDON — I am not sure there was any spying involved, but it is not common practice and in fact I am not aware of any other occasion on which that has taken place.

Mr WAKELING — Can I ask how many victims have the brothers paid to be spied on, apart from in reference to these two letters here?

Br BRANDON — I just mentioned that I am not aware of any other occasion where that took place.

Mr WAKELING — What is the total spend on private investigators?

Br BRANDON — Look, I am not aware of any other occasion, and I presume the figure is what you saw quoted in those documents.

Mr WAKELING — Can I ask whether or not you are currently paying private investigators to spy on other victims?

Br BRANDON — I think I have already answered that.

Mr WAKELING — Okay. Finally, do you accept that the failure to expel the brother on conviction and the provisions of continuing support, the admissions that you have been spying on victims — —

Br BRANDON — I do not accept the word ‘spying’ on anyone.

The CHAIR — ‘Current investigations’.

Mr WAKELING — The ‘investigating’ of sexual abuse victims, will you concede that terminology?

Br BRANDON — I accept that an investigation took place in this instance.

Mr WAKELING — Do you accept that this is likely to leave victims in particular, and the community generally, with a sense that the interests of brothers continue to predominate and that the seriousness of what has been proven beyond reasonable doubt is still not appreciated by your organisation?

Br BRANDON — Can you frame that question again, please?

Mr WAKELING — If I may.

Br BRANDON — Perhaps simplify it for me.

Mr McGUIRE — Do you have a culture of denial?

Mr WAKELING — Is there a clear problem in your organisation that, despite the fact that you have convictions recorded against Brother Best, you have continually supported those people in deference to supporting victims — that is, there is a perception that your organisation is concerned with cover-up and protection and not with a concern for victims and the broader community?

Br BRANDON — I do not think so. There was one instance here a significant time back — as you note — in 1995, when this issue in relation to Dowlan was being explored by solicitors to try and ascertain what the circumstances were. I think that was a valid approach on their part. It is not current practice. It was not a general practice at that time. We are not seeking in any way to cover up the issues around Ted Dowlan or Robert Best, and we have mentioned those issues very openly today.

I hope that what we are doing today in talking about the issues here publicly and acknowledging the failures of those men and our own failures in dealing with those matters will say to the community, as we are saying to this committee, that we are genuinely sorry for those things and we are sorry for our own failures in dealing with those things adequately. We mean that very sincerely when we speak to this inquiry, and we want to say also to the broader community that we have not always managed these things very well.

Mr WAKELING — Thank you.

The CHAIR — Thank you, Mr Wakeling, and thank you, Brother Brandon. Brother McDonald, would you like to make some brief concluding remarks to the committee?

Br McDONALD — Thank you for the opportunity, Madam Chair. The Christian Brothers welcome the opportunity to contribute to this parliamentary inquiry. We hope that in response to the submissions it has received and as a result of its own deliberations the inquiry committee will be able to offer recommendations and strategies for addressing the needs of survivors of child abuse suffered in religious and other institutions and also to recommend strategies to ensure that children will be protected from abuse into the future. Let me state very clearly that any adult who steals a child's innocence and uses a child for his or her own sexual gratification sinks to the depths of depravity. Such conduct is inexcusable.

That far too many Christian Brothers have betrayed the sacred trust placed in them and have sunk to the depths of abusing children is a matter of great shame to us. It is diametrically opposed to all that we proclaim and for which we stand. Such abusive behaviour and repulsive conduct can never be condoned or excused. Sadly, we have learnt that the vast majority of those Christian Brothers who have abused children were themselves victims of sexual abuse by strangers, peers or family members.

The three of us here before you this morning representing the Christian Brothers in Victoria have spent a combined total of more than 50 years working to address the needs of survivors of abuse in our schools and institutions and endeavouring to collaborate with others in both church and the broader community to put in place measures to safeguard children from all forms of abuse. We commit ourselves to continuing those efforts.

On behalf of all Christian Brothers in this country, I want to acknowledge that children entrusted to our care have indeed been abused and in some cases even brutalised by some of our number. I know that we will never fully comprehend the extent and depth of the pain carried by all of you out there who have been victims of abuse by Christian Brothers. I can only extend to you our profound apologies, beg your forgiveness and assure you that the Christian Brothers will do their best to right the wrongs that have been done to you. I acknowledge that you will carry the scars of what was done to you for a lifetime.

As an order of religious brothers, we have been responsible for the education and care of young people in Victoria for over 140 years. We have had a proud history of education in this community, educating boys and girls from every social background. The parents of those students from generation after generation reposed their trust in the brothers to care for and educate their children. The trust of those parents and the rights of those

students to enjoy a safe and protected environment have been profoundly betrayed by the reprehensible and disgraceful conduct of a number of brothers. Their conduct has caused substantial harm to a significant number of young people and pain to their families for which we as an order accept responsibility.

Their conduct has also caused irreparable damage to the good name and reputation of the order and stress to its upstanding members who have given their lives to the education and care of the young.

We have six schools in Victoria and a total of some 8000 students. We undertake to do all that is humanly possible to ensure that no such conduct occurs again within a Christian Brothers institution in Victoria. There has been no such incident of abuse since 1987, a period of about 25 years. We are confident that what we have learnt and the systems we now have in place will ensure that our students will be safe in their school environments and that the order will continue to enjoy the trust and confidence of so many Victorian families.

We are grateful for the opportunity to present this morning to the inquiry; it is important for Christian Brothers and for all those who have suffered that we be here. We remain prepared to assist the inquiry in whatever way we reasonably can to enable it to fulfil its charter. Thank you.

The CHAIR — Thank you very much, Brother McDonald. Can I, on behalf of the committee, thank the three of you for your appearance before us this morning. Your evidence has been most helpful.

Witnesses withdrew.