

**ABUSE IN CARE ROYAL COMMISSION OF INQUIRY  
FAITH-BASED REDRESS INQUIRY HEARING**

**Under** The Inquiries Act 2013

**In the matter of** The Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions

**Royal Commission:** Judge Coral Shaw (Chair)  
Dr Andrew Erueti  
Ms Sandra Alofivae  
Ms Julia Steenson

**Counsel:** Mr Simon Mount QC, Ms Katherine Anderson, Ms Kerry Beaton, Ms Jane Glover, Mr Michael Thomas and Ms Echo Haronga for the Royal Commission  
Ms Sally McKechnie, Mr Alex Winsley, Mr Harrison Cunningham and Ms Fiona Thorp for the Catholic Church

**Venue:** Level 2  
Abuse in Care Royal Commission of Inquiry  
414 Khyber Pass Road  
AUCKLAND

**Date:** 24 March 2021

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**TRANSCRIPT OF PROCEEDINGS**

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1                   **Hearing opens with waiata and karakia tīmatanga by Ngāti Whātua Ōrākei**

2 (10.02 am)

3 **CHAIR:** Tēnā tatou katoa, nau mai haere mai ki tēnei hui. Good morning, good morning to you.  
4 Ms McKechnie.

5 **MS McKECHNIE:** Good morning, Madam Chair, Commissioners. Just to begin with a small  
6 piece of housekeeping.

7 **CHAIR:** Yes.

8 **MS McKECHNIE:** Unfortunately Mr Winsley has had to return home for a family matter and Ms  
9 Fiona Thorp will be appearing for the rest of the day.

10 **CHAIR:** Thank you, good morning Ms Thorp. And good morning to you, Ms Glover, and  
11 particularly good morning to you, Peter and Mr Hazelman, good morning.

12 **QUESTIONING BY MS GLOVER CONTINUED:** Just to, before we start, Peter, the Chair  
13 usually, you would have seen, gives some information at the end of the day reminding  
14 people not to discuss their evidence with anybody overnight including counsel, I don't think  
15 that was done yesterday, so just to confirm that is the case and you haven't discussed your  
16 evidence with anybody?

17 A. Correct.

18 **CHAIR:** Sorry, that was my omission, thank you.

19 A. I understood it because I'd seen previous end of day.

20 **Q.** That's my good luck, isn't it, and thank you for complying, that's appreciated.

21 A. Thank you, yes.

22 **QUESTIONING BY MS GLOVER CONTINUED:** Just to pick up a few things that we  
23 discussed yesterday and the first of which is the psychotherapist that - is the recent- --

24 A. Yes.

25 **Q.** -- introduction into the redress process after you received the report from the Complaints  
26 Assessment Committee. And one of the concerns that we keep hearing from survivors is  
27 that they don't necessarily have visibility of who is provided with their personal  
28 information, nor precisely which information is being shared and sometimes the  
29 information shared, such as investigation reports, is information that the victims themselves  
30 haven't seen. So I just wanted to check with you whether the Marist Brothers seek consent  
31 from survivors to share their information with that psychotherapist?

32 A. The answer is no, this is very recent as in recent weeks and months, and that is an oversight  
33 and I must apologise. Having said that, a person who is a registered psychotherapist does  
34 have their professional ethics that I would assume would guarantee the confidentiality of

1 the material. But yes, that's an excellent point, an oversight, thank you.

2 **Q.** You mentioned that you were a trustee of the Marist Trust Board for 15 years. I thought it  
3 would be useful for the Inquiry if you could explain perhaps where the Marist Trust Board  
4 fits into the overall scheme within the Marist Brothers?

5 **A.** Yes, having been a trustee for 15 years, I am in a position to comment in a way in the  
6 following remarks. I am taking off my hat of delegate of professional standards and I'm  
7 commenting in a sense as somebody who's integral within the Marist Brothers' structure  
8 outside of professional standards topic. So very briefly Catholic entities have, as you saw  
9 yesterday and you would know, have two kind of codes that we're complying with. One is  
10 the canon, the church law, and the other is the civil law within the country in which you are  
11 based. So we are a congregation operating in New Zealand, we also have our operation of  
12 this district extending to three countries in the Pacific Islands.

13 In the case of New Zealand we have our district operating according to the  
14 guidance and the canons that apply to us as a congregation under the umbrella of the  
15 church. Now if we turn to the civic side of things, in order to operate in New Zealand we  
16 have a trust and it's a civil trust that was set up in, I think the year was 1926, that then  
17 manages the affairs of the Marist Brothers from a civil perspective, and complies with civil  
18 law in New Zealand. So trust and trust structures are in accordance with how trusts would  
19 operate in New Zealand for similar charities to ourselves. So that's the Marist Brothers  
20 trust board.

21 If there's something that the Brothers are dealing with that's a canonical matter,  
22 take for example starting a new community, take for example in a small town in Tai  
23 Tokerau, that's a canonical step then the civil trust may go looking for renting a house,  
24 whatever it is, that's the civil step.

25 **Q.** You mentioned yesterday that you are only aware of three Māori claimants --

26 **A.** Correct.

27 **Q.** -- in relation to abuse. I just wanted to clarify with you whether that's your understanding  
28 of the percentage of the overall data or just the claimants that you have personal knowledge  
29 of?

30 **A.** It's my knowledge based on -- I do have some familiarity with our files and that's certainly  
31 increased since about 12 months ago when we were really getting into all of our files in  
32 order to assist Te Rōpū Tautoko with Marist and Catholic data. That enabled me to look at  
33 the files that I had not had anything to do with and say a few things in my own mind, that's  
34 interesting, this is the age group of the person, these are some more details about that

1 brother that I was unaware of, and ethnicity. So the three that I'm aware of in fact are the  
2 three that sprung into view as I went through the files about a year ago, but I didn't know  
3 that before.

4 **Q.** And that's just gleaned from the overall picture on the files, because I think you said  
5 yesterday there isn't a specific recording of the ethnicity?

6 **A.** That's correct, that's correct. So in my mind on three occasions I said, obviously, just it  
7 could be intuited in a sense, where it occurred and other contextual information just told me  
8 that's a Māori claimant or complainant.

9 **Q.** And you said in your written statement that there would have been minimal or no records  
10 kept until about 1995 and that the position improved from around 1996 when the  
11 Professional Standards Committee was established and systems for recording abuse  
12 complaints were gradually formalised and the complaints were tracked.

13 **A.** Correct.

14 **Q.** Can you explain to the Inquiry the systems introduced at that time to record and track  
15 claims of abuse? Was there a database, for example?

16 **A.** Yes, at the level of the detail within the particular case, it's just the very best system you  
17 can imagine, which is paper file. So paper file is created for each new claim as it was  
18 received from 1996 onwards, and higher level summaries of all of that, plus also the  
19 minutes of the Professional Standards Committee. So we still have those minutes of the  
20 Committee and we have the original paper file of the claim and the process and then we  
21 also have the high level summary.

22 **Q.** And when you talk about tracking complaints, what does that mean, does that mean that  
23 somebody was keeping an eye on them and ensuring they were tracking through the system  
24 in a timely way, or keeping an eye out for patterns such as geographical hotspots or  
25 particular perpetrators?

26 **A.** The tracking that I'm talking about when I used the word "tracking" yesterday was actually  
27 introduced just recently as in recent months, where it's about a complaint has begun, what  
28 should happen next, weekly meetings of the Professional Standards Committee and saying  
29 has that been done in the last week, and then going to the next week and then saying has  
30 that been done and so on, and tracking that case. So that case has come to us, we're doing  
31 something.

32 **CHAIR:** Can I just ask -- sorry to interrupt, can I just ask you both to slow down.

33 **A.** Slow down, thank you.

34 **Q.** Yes, thank you.

1 A. Good.

2 **QUESTIONING BY MS GLOVER CONTINUED:** Was somebody ensuring their old claims  
3 were reopened if further information came to light about a particular perpetrator?

4 A. I would say I don't know for a start, that's the simple fact of it. I wouldn't be aware of a  
5 system for doing what you've just said.

6 **Q.** You say that after schools were integrated in the early 1980s victims and survivors could  
7 take complaints of abuse directly to a school's board of trustees and then any investigation  
8 and redress process would be undertaken by the school. Just to clarify your understanding  
9 about the respective responsibilities of the Marist Brothers and the schools, so if the abuse  
10 was committed after 1981, in your view I take it the school has responsibility for  
11 investigation and redress and the Marist Brothers has responsibility to cooperate with the  
12 investigation to provide information to the school and to ensure safeguarding if that's  
13 required. Is that your understanding?

14 A. In 2021 that's exactly how I see it and I said that yesterday. That's a personal view. In  
15 terms of the church understanding that in 1981, my sense is that this -- the penny dropped,  
16 but it didn't drop immediately.

17 **Q.** And then you also talked about the subsequent change in 1989 when Tomorrow's Schools  
18 was introduced?

19 A. Mmm.

20 **Q.** Did the position change at all as from 1981 to 1989, or is that just a continuation?

21 A. I think it's a continuation, but I was around in the 1980s and I'm aware of how significant a  
22 change in thinking was needed by everybody involved in church schools when State  
23 integration occurred. Whether that change in mindset and whether that generational change  
24 actually got expressed precisely and accurately from day one, I can't be sure.

25 In hindsight I think my understanding grew as I became more familiar with  
26 matters of administration. I was in the classroom and it didn't seem to be different the next  
27 day when you went into the class to continue your lessons from the previous day. But the  
28 school had been integrated and in fact there were huge differences in responsibility,  
29 management, administration and accountability. And I can see all that now in hindsight  
30 from this position. Going back to your question about 1989, 1989 is the year when  
31 Tomorrow's Schools formalised what we now have, hasn't changed from then until now;  
32 the boards of trustees. So therefore there is the body, the body is now clear and identifiable  
33 who should manage these things.

34 **CHAIR:** My question does relate to that. You said that in 1981 the penny had dropped but not

- 1 completely. I want to know what the penny was, did things change and I'm talking here in  
2 terms of investigation, accountability for abuse?
- 3 A. Sure. Looking at files is how I'm going to answer. I'm reading files and I'm able to answer  
4 from that basis. I'm a classroom teacher in the 1980s, these things are not in view, not front  
5 of mind for me as a teacher. One of the ranks, if you might say it that way. The penny  
6 dropping, I think it's also tied in a little with Tom's comments yesterday. He was saying  
7 when he was asked where's the position of these Catholic schools, are they using the name  
8 Catholic and therefore they're Catholic schools and they do come under the bishop or the  
9 church authority. In another sense, that's a cultural statement, and the culture of  
10 Catholicism is very strong, we're families and the whole Catholic community identify that's  
11 our school, that's our Catholic school. So that's the penny that needed to drop, is that we're  
12 actually a State school, we're a State school and there are systems and accountability that  
13 go back through that network to where it originates.
- 14 Q. Do you have any memory, I appreciate it's a very long time ago --
- 15 A. Yes.
- 16 Q. -- of cases of abuse of children in the care of generally the Catholic Church?
- 17 A. Yes.
- 18 Q. Being raised since 1980 and if so whether they were dealt with -- sorry, you can only speak  
19 for the Marists, so I'll just say --
- 20 A. Yes, yes, Marist Brothers.
- 21 Q. -- Marist Brothers, right -- abuse claims raised at that time and whether they, in spite of the  
22 changes, were dealt with by the Marist Brothers or dealt with by the schools?
- 23 A. I can see that if you put the filter that we're applying right at this minute on our cases, the  
24 146, I can see grey areas everywhere in lots of cases. That you need to stop and say  
25 interestingly this was being followed by the Marist Brothers. Intuitively I can see why, but  
26 it would be good to run it past the proper criteria very carefully should it have been.
- 27 Q. These are cases since 1980 --
- 28 A. Mmm.
- 29 Q. -- of abuse?
- 30 A. Mmm.
- 31 Q. Which nonetheless from your reading of the files appears to have been followed by the  
32 Marist Brothers process?
- 33 A. Correct.
- 34 Q. Rather than being referred to the Board of Trustees?

1 A. Correct, that's at first reading. I'm not sure exactly what happened, but at first reading I can  
2 see that in some cases.

3 Q. That's the grey area that you're talking about?

4 A. Yes, that's what I'm talking about. It could all turn out to be that the right allocation was  
5 made every time, but at initial reading of the files, the question pops up.

6 Q. Thank you for that.

7 A. Okay, thank you.

8 **QUESTIONING BY MS GLOVER CONTINUED:** And sort of a linked topic is the -- so we're  
9 talking about the division of responsibility between the Marist Brothers and the schools and  
10 another division is as between the responsibility of the Marist Brothers and the bishop.  
11 You've said in your written statement that there's no explicit requirement for the Marist  
12 Brothers to inform the bishop of any complaints of abuse, but that in the present day when  
13 the Marist Brothers receive a complaint against a brother who is still in active ministry, the  
14 Marist Brothers will inform the bishop of the diocese in which the alleged abuse occurred.  
15 But you say that even in the present day the Marist Brothers would not inform the bishop if  
16 the brother concerned was deceased or retired as there's no on-going safety risk, and in that  
17 case the matter, according to your written evidence, can be dealt with solely by the Marist  
18 Brothers.

19 My first question is just a practical one. Do you accept that even a retired brother  
20 might pose a risk to the wider community and therefore be a matter of concern to the  
21 bishop.

22 A. There's quite a long question there, I just -- can I pick up on the first part, is that acceptable  
23 before I answer the second part?

24 Q. By all means.

25 A. So the first part is if my witness statement says that the Marist Brothers don't have a  
26 responsibility to inform the bishop currently, I just want to refine that by making the  
27 following remark. That A Path to Healing is the document that we are signed up to and  
28 we've always been following the principles of that document and of course we come under  
29 the National Office of Professional Standards since 2016 for investigations. So let's go to  
30 A Path to Healing. In A Path to Healing it's very clear that the bishop must be informed.  
31 However, A Path to Healing does not say by whom. So it's either NOPS or the Brothers  
32 that should inform the bishop.

33 Q. And in your view presumably from what you've written in your statement, you think it's  
34 NOPS?

- 1 A. I'm not saying that, I'm just saying there's a little bit of a looseness in that particular  
2 paragraph in a part to healing that could do with some clarification. We would accept that  
3 it's our responsibility every time, and I think in a moral sense that's correct.
- 4 **Q.** So do you think that as a matter of practice the bishop has been informed in every case?
- 5 A. I would think so. I'm now talking -- I've been in the role since 2018 and I'm only just  
6 saying I would think so if we're thinking about Marist Brothers historically in managing  
7 these things.
- 8 **Q.** Sorry, so since 2018 you think that the bishop has always been informed but you're not sure  
9 before that, is that what you're saying?
- 10 A. That's what I'm saying right now, yes, just in terms of not being able to give evidence that I  
11 have firmly in front of me that that was done.
- 12 **Q.** So it might be on the extent of the information and knowledge that you have that the bishop  
13 might have ended up with a more limited or somewhat skewed understanding of the extent  
14 of abuse that had occurred within his diocese?
- 15 A. In a way that's a hypothetical question and I can see what the question is asking and I can  
16 see that that is a possibility. I can't say that it never turned out that way, I can't say one way  
17 or the other.
- 18 **Q.** You will recall we spoke yesterday about the witness John who gave evidence last year,  
19 and he says in his written statement at 4.28 and 4.29 "We've now met with Bishop Paul  
20 Martin, the Bishop of Christchurch, we did this to find out about the bishop's responsibility,  
21 both for the Marist Brothers operating in the diocese and the fact that I was raped many  
22 times at the Diocesan Cathedral. It was absolutely awful, he was really patronising.  
23 Bishop Martin said the bishop was only responsible for diocesan priests and that bishops  
24 don't have responsibility for the Marist Brothers. He said that he doesn't see that the  
25 diocese has any responsibility for what happened at the Cathedral and he provided an  
26 analogy. If a person came into your house and molested another person, would you expect  
27 to be held responsibility for it?"
- 28 Do you agree with Bishop Martin that the bishop or the diocese does not have any  
29 responsibility for a religious such as a Marist brother abusing a child in a Diocesan  
30 Cathedral or elsewhere in the diocese?
- 31 A. There's a lot in that question. The first part, let me just place on record, if it's not in my file  
32 for John, it should be, but I had a phone call with Bishop Martin, a brief phone call with  
33 Bishop Martin before that phone call between John and Bishop Martin. So going back to  
34 the previous question, was the bishop informed; yes.

1                   Now in terms of the question you're asking, do I agree that the bishops and the sort  
2 of hierarchy have some responsibility for the religious that are in their diocese? I think I'd  
3 frame it in the way that Tom framed it yesterday. The bishop does have a concern and the  
4 interest of the pastoral care of all souls, and that's in fact the canonical term I think he used  
5 several times yesterday. So I'm not going to say the bishop has no responsibility and it all  
6 sits with the congregation.

7 **Q.** So in practical terms, what do you think the nature of the bishop's responsibility is?

8 **A.** In practical terms I think the congregation should conduct its own investigation and in  
9 New Zealand here we have taken NOPS on to lead that investigation. So that in a way  
10 is -- it's a win-win in the sense that we in New Zealand have an investigation body that we  
11 belong to and so do the bishops. So therefore any kind of pin pricking decision over whose  
12 responsibility this is, in a way it falls away because NOPS is doing the investigation.

13 **Q.** John's partner sent an e-mail to Bishop Martin on 3 July last year saying it looks to us that  
14 canon law 678 to 681 makes it clear that the bishop has ultimate responsibility. I don't  
15 think I need to bring that document up, but just so that it's on the record, it's CTH0009763.  
16 But we will have a look perhaps at Bishop Martin's reply dated 7 July 2020. That's  
17 CTH0009762. So we can see there, if we have a closer look at the paragraph starting "Our  
18 church protocol 'A Path to Healing'".

19                   "Our church protocol 'A Path to Healing' agreed by all bishops and religious orders  
20 provides that it is the church order to whom the offending individual belonged, in this case  
21 the Marist Brothers, who is responsible for responding to John's complaint of abuse. As  
22 you know I have spoken with Brother Peter and I understand from him that the Brothers are  
23 still in discussions with you regarding resolution of this matter."

24                   So looking at what the bishop is saying here, does that accord with your  
25 understanding of how A Path to Healing does and should operate?

26 **A.** I have A Path to Healing here but I don't have it in front of me where that particular  
27 reference arises in A Path to Healing. However, just wanting to acknowledge the overall  
28 thrust of that paragraph, I don't have any difference in my mind with what's been said by  
29 Bishop Martin in that paragraph.

30 **Q.** I'd like to turn now to ask you about a slightly different topic, namely barriers to disclosure  
31 of abuse. It's striking that, for example, Frances Tagaloa and John and Ms K all came from  
32 very devout Catholic families. For example, John told his father early on that he'd been  
33 abused but his father didn't believe him because he said that a man of the cloth would never  
34 do such a thing. Do you think that a strong Catholic family environment and a culture of

- 1 clericalism in that way can inhibit disclosures of abuse?
- 2 **A.** I think I'm being asked for a personal opinion and in a sense it's an observation from within  
3 the Catholic culture about the Catholic culture. Also with the privilege of my being  
4 familiar with the files as I am, I think that is just a sort of an intuitive picture, I think that  
5 certainly occurred historically. These cases are in the 1970s and the 1980s in that sort of  
6 period and so many of our cases are. And as I said yesterday, we even have somewhere the  
7 person has now reported the abuse 50 years plus afterwards. Tragically and really  
8 distressingly I think what you've just described is part of that. In the Australian Royal  
9 Commission the average time that past between the incident and the reporting was 22 years.  
10 In our case files it's even more than that.
- 11 **Q.** As a child, John couldn't report the abuse at school because he was fearful of the  
12 repercussions from Brother Giles who was the principal and was a big man and used a  
13 cane. John didn't talk to his teachers, but he wishes that they'd been concerned enough to  
14 raise questions about his behaviour like why he was away with the fairies when he came  
15 back from Brother Giles' office, or why he was wetting himself at school.
- 16 Presumably there are any number of possible ways to assist students to report  
17 abuse, including reporting it anonymously. They might include strategies such as help lines  
18 or online reporting, for example. What have the Marist Brothers done to help students to  
19 report abuse that occurs in school settings?
- 20 **A.** The first part -- I'm just still with the first part of the question. In the John case, and  
21 I acknowledge that for John and the others who have come forward to the Commission,  
22 that's another side, there's the Catholic culture and the family environment and there is also,  
23 as you said, where do I go, what is the avenue for presenting my complaint and how safe  
24 would it be? I think that's a huge question. We have only gradually evolved an  
25 understanding of what it takes to allow reporting and encourage reporting and to bring the  
26 sense that this is the right thing to do and to encourage reporting.
- 27 **Q.** So in practical terms?
- 28 **A.** Yes.
- 29 **Q.** In the school ground have the Marist Brothers done anything in that setting that would  
30 enable students to make reports of abuse more easily?
- 31 **A.** These questions fall with the board of trustees.
- 32 **Q.** At that point perhaps we could play a video clip of one of the other oral witnesses from the  
33 first hearing. This is Frances Tagaloa talking about cultural barriers to disclosing abuse.  
34 (Video played). Would you accept that there can be significant cultural barriers to

- 1 disclosing abuse?
- 2 A. I do accept that.
- 3 Q. Do you know whether the Marist Brothers have ever asked Pasifika or other cultural  
4 communities what might be helpful to assist them to report abuse despite those cultural  
5 barriers?
- 6 A. I'm not aware, say, of the things that would be obvious, which would be to go to the Pacific  
7 media, I mean Brother John has spoken with Pacific media, that would be an answer  
8 obviously. But for us to front-foot it into the Pacific community, there's still more that  
9 needs to be done.
- 10 Q. In your written statement you say that with the Marist Brothers Professional Standards  
11 Committee investigations, if the respondent denied the allegation, the Committee would  
12 investigate the complaint further to decide whether on the balance of probabilities the  
13 complaint would be upheld. So that's your written statement at paragraph 44.
- 14 A. Mmm-hmm.
- 15 Q. You may have heard the evidence from Murray Houston from The Salvation Army last  
16 week?
- 17 A. I didn't I'm sorry.
- 18 Q. In any event he emphasised the importance to survivors of being believed and he said, and  
19 I'll just recap this for you briefly seeing as you didn't watch it, is that "Within the Salvation  
20 Army redress process, to the extent that there is any verification -- and he used that word  
21 very cautiously -- of a claimant's report of abuse, the focus is not to look to discredit it in  
22 any way." Hearing that summary of The Salvation Army process in terms of investigation,  
23 what are your thoughts, immediate thoughts on it, given that that process seems quite  
24 different to the process adopted by the Marist Brothers?
- 25 A. There's a phrase that you used in the question, "balance of probability". Balance of  
26 probability is in a sense the threshold or the legal sense of did this complaint have what it  
27 takes from our point of view for us to then say this is what occurred and go from there and  
28 take it forward. Balance of probability is not the same as the legal level of criteria applied  
29 to, say, "beyond reasonable doubt". A very open mind in fact, really, and it's the phrase  
30 that's used three times in A Path to Healing.
- 31 Q. So you're saying an open mind --
- 32 A. Yes.
- 33 Q. -- should be brought to bear on these investigations?
- 34 A. Absolutely, yes, yes. So balance of probability, it certainly is, from our point of view,

1 justice, just to check the identity. That's one of the tricky areas, a young person as young as  
2 8, 9, 10 years old, then comes to report decades later, and is using the name of a brother  
3 that was as that person recalls their classroom teacher. The naming of our Brothers is a  
4 rather arcane and tricky area, because there are so many factors in what a brother's name  
5 was in the minds of students when they were at school.

6 **Q.** So when you are receiving a report of abuse and you're assessing it on the balance of  
7 probabilities --

8 **A.** Yes.

9 **Q.** -- is what you are looking at whether on the balance of probabilities any abuse occurred, or  
10 whether any abuse occurred that you can attribute to a particular perpetrator?

11 **A.** Talking for myself, I would think any abuse occurred, that's a no-brainer, I think abuse has  
12 occurred. The person is motivated to come forward. I'm already in that space of believing  
13 it.

14 **Q.** So it doesn't matter necessarily that they might struggle with the naming systems --

15 **A.** Yes.

16 **Q.** -- of the Marist Brothers?

17 **A.** Yes, correct.

18 **Q.** I'd like to now have a look at the experience of another witness you referred to yesterday,  
19 Ms K in relation to investigation and the decisions around that. So just to give you some  
20 context, I know you're familiar with this case, you mentioned it already, but just to signal  
21 this is not part of the question. In around 2004, Ms K reported separate acts of abuse by  
22 two former Brothers, Michael Beaumont and Peter Healey and Ms K was living in  
23 Australia at the time she reported the abuse, and so her claim came to the Marist Brothers  
24 via the Professional Standards Resource Group in Australia. And an investigation was  
25 commenced and meanwhile Ms K was offered a series of counselling sessions.

26 Now that was plainly I think a good idea. But there were some matters that  
27 weren't made clear to Ms K about that counselling. So for example, Ms K's evidence was  
28 that she had no idea that the Marist Brothers were paying for the counsellor, she thought  
29 that was being paid for by the diocese in Perth. And she also didn't realise that the  
30 counsellor was passing back reports about her mental state to the Marist Brothers in  
31 New Zealand.

32 I don't think I need to take you to the documents, but just to note the reference here  
33 and this document that I'm giving the reference for, CTH0010180 is one we'll come back  
34 to, it's a review by NOPS of the process undertaken by the Marist Brothers. In that

1 document it says that there was an interim report by Ms K's counsellor saying that she was  
2 halfway through the allocated number of sessions, ten sessions, and that she was  
3 responding well but the level of trauma was quite high.

4 Now this part is the question. Bearing in mind your training in relation to  
5 counselling, do you think that some survivors might feel violated or humiliated by the fact  
6 that a counsellor was reporting back to the very institution at which the abuse occurred?

7 A. So that's the question?

8 Q. That is the question.

9 A. Right. I'm going to be very guarded about any comment on the Ms K case. It's firstly  
10 historic in the early 2000s. Secondly, there's two former Brothers that have been named  
11 and I'm fine with that. Thirdly, the process involving the Professional Standards Resource  
12 Group and the Marist Brothers, all that I know is what I have on file and in fact more is  
13 held about that case by the lawyers but I'm not aware of that material. So there's a little bit  
14 there that could fill out the picture that I haven't seen.

15 Q. All right, but just taking it as a general proposition then.

16 A. Sure.

17 Q. In general terms, do you think that a survivor might feel violated or humiliated by the fact  
18 that information that they were disclosing to a counsellor is then referred back to the  
19 institution where abuse occurred?

20 A. The question's kind of tangling up the matter of where the counselling was agreed to and  
21 progressed may have been unclear in the mind of the person receiving the counselling.  
22 From the point of view of the Resource Group in Australia and the Marist Brothers in  
23 New Zealand, I wouldn't put fault in either camp that this misunderstanding occurred, but I  
24 can see that it's a misunderstanding. It's not satisfactory in hindsight.

25 Q. The counsellor was also concerned that Ms K's parents did not appear to be coping in  
26 respect of the guilt --

27 A. Sure.

28 Q. -- that they felt. And so the counsellor suggested an initial course of five sessions of  
29 counselling for Ms K's parents and the Marist Brothers declined this request on the basis  
30 that it would be like pre-judging the case. Presumably in your current role as delegate, and  
31 with your training in counselling, you are aware of the trauma that can be suffered by  
32 secondary victims such as family members?

33 A. Totally agree with that.

34 Q. So in your personal view, and accepting that this was not the decision that you personally

1 made, do you think that it was appropriate for the Marist Brothers to reject that request for  
2 help by any secondary victims in that situation?

3 A. Just a few minutes ago I said I don't have the full picture. Asking the question in general  
4 terms, and I'll answer it in general terms, I support the idea that the family or any secondary  
5 victims should also receive our support. And on the face of it if that has been withdrawn or  
6 not made available, that's a shortcoming.

7 Q. In addition, do you accept, again as a general proposition, that embarking on a course of  
8 counselling but knowing that it's for a few short specified sessions of counselling, could be  
9 problematic for a survivor?

10 A. In the world of counselling is my understanding, and I was last a practising counsellor,  
11 getting on, almost 20 years ago, 2004. My sense is that the beginning period of  
12 establishing the counselling sessions makes the suggestion or sets up the environment for  
13 the process of counselling for those initial sessions. Quite commonly, at least back in 2004,  
14 the notion was that it might be, say, six sessions and that six sessions would be spoken  
15 about in those initial negotiations or establishing stages relative to what lay in store. The  
16 person who has a much greater need than six sessions should never be left to feel that the  
17 curtain's going to come down.

18 Q. I would like to bring up the document that I referred to earlier, that's CTH0010180 on the  
19 screen. This is a document, a letter from NOPS. It's a recent letter, 17 November 2020  
20 relating to a review of Ms K's case and which is a matter I'll come to. But for immediate  
21 purposes, this document simply provides a helpful potted summary of the background. But  
22 I will just note while we are here that paragraph 4 in relation to that wider review sets out  
23 the ultimate conclusion of the NOPS review which is that the deficiencies in the Marist  
24 Brothers process were sufficient and led to a conclusion that is not reliable.

25 But for present purposes moving on then to paragraph 24 on page 4, so we see  
26 here that in June 2005 there was a report from Ms K's counsellor at the end of the first  
27 allocated ten sessions seeking funding for further therapeutic support and there is also  
28 evidence in the counsellor's report that Ms K was being treated for the consequences of  
29 both instances of abuse that she had reported, and the counsellor recorded the events, the  
30 consequences for Ms K, and the results of treatment and there was no reference to any other  
31 intervening events being the cause of the symptoms that were being treated. I'd also like to  
32 note, paragraph 25 here, shows that in July 2005 there was a further report from Ms K's  
33 counsellor, it was reported that Ms K was progressing well, she had a fight on her hands,  
34 but she kept pulling through.

1           And then moving further through to paragraph 33 following the chronology of  
2 what happened, later in July 2005 the professional standards organisation in Australia  
3 raised concerns about the Marist Brothers' process in New Zealand, in particular they noted  
4 that the Australian process involved a meeting with the victim to listen to their story and it  
5 appeared this was not contemplated here. And they asked whether any consideration had  
6 been given to addressing the needs of Ms K's parents.

7           And then at paragraph 34 we see the Marist Brothers' response, the Marist  
8 Brothers in New Zealand replied to say that the New Zealand protocol, ie A Path to  
9 Healing, said that the denials and absence of any other factors meant that the claim could  
10 not proceed any further and it was not appropriate, even to meet with Ms K as no purpose  
11 was seen in such a meeting.

12           In your view, was the process as outlined here in accordance with A Path to  
13 Healing, do you agree that the proper application of A Path to Healing meant that Ms K's  
14 claim couldn't proceed any further?

15 A. I haven't got the original documents in front of me and in fact there are some that are being  
16 referred to there that I think I wouldn't be familiar with anyway, because I think they're in  
17 other files such as lawyers, not ours. However, I'm picking up on in paragraph 34 "The  
18 Committee also said -- this the Marist Brothers Professional Standards Committee in the  
19 early 2000s -- that the New Zealand protocol says that the denials and absence of other  
20 factors meant it could not proceed any further."

21           So it's the denials -- in fact let's just pick that apart. I interpret that to mean that  
22 the person writing this NOPS review is saying that the New Zealand protocol as against the  
23 Western Australian protocol and that the New Zealand protocol in fact that the reviewer is  
24 referring to just could be that in a letter of the Marist Brothers they said their protocol and  
25 they just meant the Brothers' protocol, not A Path to Healing.

26           So that sentence does not say that A Path to Healing says what it says, it's just that  
27 when the reviewer is looking at all the material, the reviewer has noticed that in some  
28 correspondence, which may in fact be lawyer to lawyer correspondence or something from  
29 our lawyer, not necessarily that I would have seen, that the Brothers' protocol is not able to  
30 endorse or substantiate a claim if the respondents in this case have denied, which is true,  
31 they did deny.

32 **Q.** The Brothers' protocol presumably would be in accordance with A Path to Healing?

33 A. Yes, I agree that it would, but I just have a feeling -- I'm just not sure, let's put it that  
34 way -- that that word "protocol" sitting in that sentence is referring to A Path to Healing.

1 I'm just thinking that the Brothers or the Brothers' representative being a lawyer, whoever  
2 wrote that this reviewer has reviewed, has just said Brothers have reached an end point  
3 because of denials. I think that's what it's saying.

4 **Q.** Then we see, having reached that end point because of denials at paragraph 35, Ms K's  
5 counsellor then identified potentially corroborating lines of inquiry about the incidents of  
6 abuse and he also gave expert advice as to Ms K's credibility. Does it strike you as unusual  
7 that Ms K's counsellor is stepping into the breach somewhat here and making suggestions  
8 about how the investigation could perhaps be further advanced?

9 **A.** It's commendable, I'm not saying it's unusual. That's all I can say, that if I was the  
10 counsellor and I was wanting to move towards advocacy I'd give myself a pat on the back.  
11 I think that that is commendable on the counsellor's part saying more could have been done  
12 or more needs to be done. That's all I can say about the counsellor making that remark. I  
13 can't comment on the total story, it's something from before my time and I -- I'm accepting  
14 the review by the NOPS, the signed review which we asked for, that's fine. I'm looking at  
15 what that counsellor is doing, that's understandable. And good for them.

16 **Q.** You do not see an alternative perspective that might be taken, which is perhaps that it's not  
17 so much commendable on the part of the counsellor to wade into the matters of the  
18 investigation, but rather the counsellor was placed in a very difficult position and in that  
19 position felt obliged to cross professional boundaries in a sense, to step outside the  
20 counselling space it try and aid the investigation?

21 **A.** I call it advocacy. I accept the question in the spirit of what's in front of us, that's what it  
22 looks like.

23 **Q.** And then we come to the outcome of the Marist Brothers' investigation. I'd like now to  
24 bring up CTH0007025\_00054. This is the Professional Standards Committee report dated  
25 9 July 2005. At page 2 at paragraph 1.3, this is what you were talking about these denials,  
26 we see at the end of paragraph 1.3 at the second interview Michael Beaumont provided a  
27 statement to the Committee denying the allegation completely. And then at paragraph 1.4,  
28 at least according to this report, Peter Healey said that as far as he knew he had never in his  
29 life abused anyone in any way, but he finished by stating that if something like that had  
30 indeed happened, he was very sorry and if he has been responsible in any way he  
31 apologised for any harm caused to the complainant. As denials go, you must presumably  
32 accept that that's not especially vehement?

33 **A.** Could I just look at what the document is please, the first page?

34 **Q.** Yes. Actually after we've done that it may be, in fairness to you, better if we go to the

1 actual handwritten notes that underpin this report?

2 A. Right.

3 Q. So this is --

4 **CHAIR:** Sorry, would it help you, Peter, to have a hard copy of this document?

5 A. I think so. I'm just struggling that there's a couple of paragraphs, they are a report by  
6 somebody, looks like it's from the Marist Brothers Professional Standards Committee, as  
7 to -- it's like their minutes perhaps or it's -- I'm just not sure what this document is.

8 Q. I think we can give you a copy, I think it's only fair to you --

9 A. Sure.

10 Q. -- that that happens. Our registrar I can hear flipping of papers as we go, so hopefully. But  
11 what was the other thing you thought you would be helped by?

12 A. I just want to get the total context of what we're looking at and then frame my  
13 understanding of it and then deal with the question.

14 Q. In that case, would a very brief adjournment be necessary to enable you to do that?

15 **MS GLOVER:** You've got it right there Madam Registrar? I think --

16 **CHAIR:** Let's have a look and see, if you need time to look at it then let me know.

17 A. Sure, thanks very much. **[Copy provided]**. Thank you.

18 **QUESTIONING BY MS GLOVER CONTINUED:** The question I was asking you was about  
19 paragraph 1.4 of that document. We're talking about the denial by Peter Healey.

20 A. Yes.

21 Q. And I won't take you to the underlying handwritten notes of the interview with Mr Healey  
22 that underpinned this, but I will give the document reference, which is  
23 CTH0004228\_00027. And those handwritten notes of the interview with Mr Healey say "It  
24 may have happened, I don't know, who knows, she might be confusing me with someone  
25 else. If it did happen I would be very apologetic, but I can't remember having hurt anyone  
26 in my life."

27 So my question to you was clearly this is some way off an admission, but on the  
28 face of it, reading this, do you think that it is an outright denial? He's not just saying "it  
29 may have happened, I can't remember"?

30 A. I think it's very difficult to read between the lines and to enter the minds of Brother Henry  
31 and Brother Brian who were the interviewers and then fed their information back to Brother  
32 Richard who wrote this letter. There's a lot of filtering or possibly miscommunication or  
33 possibly Chinese whispers, I don't know, but it doesn't look as the strongest denial I've  
34 seen, that's fair.

1 **Q.** Looking at paragraph 2.3 of the document you have, which says, "There does not seem to  
2 be any corroboration of the allegations that are made by Ms K, thus there would appear to  
3 be no other avenues which can be explored. It would seem this Committee can proceed no  
4 further with the investigation."

5 Looking back at this letter now and we know that you were not responsible for it,  
6 do you find it concerning that this was the end of the line for Ms K?

7 **A.** Concerning isn't perhaps the word I'd like to use, but I've got lots of questions that are left  
8 in my mind that mean it doesn't look like everything that could have been done, everything  
9 that could have been initiated might necessarily have been. The obvious thing would be, if  
10 we were sitting here today and we had a case like this right in front of us, unfortunately  
11 we're in Covid, but why not go to West Australia and especially wherever the parents live  
12 and other family members.

13 **Q.** I think that's exactly what did happen and we'll see when we come to the criminal  
14 convictions of these two Brothers that in fact --

15 **A.** Ex-Brothers, sorry, they were ex-Brothers even at this time.

16 **Q.** Yes, that's correct?

17 **A.** Yes, these two men.

18 **Q.** And then we see that actually the family members did come to New Zealand and give  
19 evidence in the criminal proceedings under subpoena. While we're here I'd also like to look  
20 at paragraph 4.2 of this document on page 3, it's under the heading "Legal Advice". I'd just  
21 like to note that at subparagraph (c) we see there a reference to Accident Compensation  
22 legislation and also the statute of limitations and at (d) a reference to legal advice that the  
23 New Zealand Marist Brothers were not liable because there was no vicarious liability.

24 Looking back at this 2005 report through today's eyes, are you disturbed by the  
25 willingness at that time to reach for legal defences such as ACC or statute of limitations or  
26 lack of vicarious liability?

27 **A.** I'm uncomfortable with the way the question is posed because reaching for legal advice  
28 makes it sound as though it's dodging or it's just not the way that I'd quite see being a  
29 report, maybe it's just setting out the whole situation as it stands, all factors to be put on the  
30 table, nothing being held back, even if it's unpleasant for the reader.

31 **Q.** So the next step in the chronology is this somewhat discouraging report --

32 **A.** Mmm.

33 **Q.** -- with some unpleasant material?

34 **A.** Mmm-hmm.

1 **Q.** As you describe it being provided by the Professional Standards Committee to Ms K?

2 **A.** Sorry, I wasn't aware who recipient of this report was, okay.

3 **Q.** Actually it is somewhat unusual, the recipient of this report appears to have been, according  
4 to Ms K's evidence, and I'm referring here to paragraph 4.8 and 4.10 of her evidence, that  
5 actually this report went to her counsellor in Australia and the gist of the report was  
6 conveyed to Ms K by the counsellor but the counsellor, whether or not he was not  
7 authorised to do so or you chose not to do so, didn't actually provide a copy to Ms K at that  
8 time, she didn't receive a copy of this document until I think 2016. The NOPS review  
9 document that we looked at previously --

10 **A.** Sure.

11 **Q.** -- records that when the counsellor told Ms K of the contents of this report, Ms K  
12 experienced pain and she walked out of the counselling and she never returned. Again,  
13 putting on your counselling hat perhaps, do you think it was appropriate for the Marist  
14 Brothers to ask Ms K's counsellor to convey the report to her?

15 **A.** There's a dilemma in there. The best intentions may in fact for the purposes of emotional  
16 safety of a client may have been behind that request. I just can't say. I'm looking at this  
17 through a very limited filter of not having all the information.

18 **Q.** Many years later, actually on two subsequent occasions, Ms K instructed lawyers to try and  
19 challenge this report --

20 **A.** Mmm-hmm.

21 **Q.** -- and to seek redress from the Marist Brothers, and as you will know, neither of those  
22 attempts has been successful. Ms K's evidence and the reference here is 4.11 of her  
23 evidence, was that the first attempt resulted in the Marist Brothers relying on the statute of  
24 limitations and that her lawyer at the time said that he was appalled that the church was  
25 using the statute of limitations against her, however it was the law, and Ms K says that she  
26 was devastated and took her complaint to the Police instead. And as I foreshadowed and as  
27 you will know, both abusers were convicted of offences against Ms K and also in both  
28 instances of offences against other victims.

29 Ms K poses a question in her evidence at 4.25. She says, "I would like to know if  
30 in the subsequent court cases, those criminal cases, the Marist Brothers or the Catholic  
31 Church contributed to the defence of these men." Do you know the answer to her question?

32 **A.** If I take off my professional standards hat and put on my administration hat that I've had in  
33 the Marist Brothers over the years, I don't recall us supporting the defence of any  
34 ex-Brothers and I'm sure that we haven't provided the support for these ex-Brothers in their

- 1 defence.
- 2 **Q.** Are you talking there financial support?
- 3 **A.** Yes.
- 4 **Q.** What about other support?
- 5 **A.** Support, no. If you take -- this would be one example, right? To say to a person you need  
6 a lawyer, how do you characterise that, because one of these two people I did say that to  
7 and therefore if I say we've provided no support at all, that makes it a little bit like I've  
8 fudged it, but actually I did say you need a lawyer.
- 9 **Q.** Was that the extent of your support?
- 10 **A.** Yes.
- 11 **Q.** Then quite recently in 2018 Ms K made another approach to the Marist Brothers --
- 12 **A.** Mmm-hmm.
- 13 **Q.** -- via lawyers?
- 14 **A.** Yes.
- 15 **Q.** And at that stage the Police investigations were underway but the men had not been  
16 convicted?
- 17 **A.** Mmm-hmm.
- 18 **Q.** I'd like to bring up a letter please from Robert Burnes, Marist Brothers' lawyer, this is  
19 CTH0003348, this is a letter dated 2 May 2018. If we look at page 1, the highlighted text  
20 there, "As a basic principle because there is no corroborative evidence we have advised our  
21 client that it could not accept the veracity of the allegations in light of the denials."
- 22 Then at page 2, 1.6 we see a reference to the limitation period. At 3.2 also on page  
23 2, we see this comment about the lack of vicarious liability on the basis that the incidents  
24 concerned didn't take place in either of these gentlemen carrying out their work as members  
25 of the order or as teachers at the school.
- 26 Then finally at paragraph 3.3, we see the Marist Brothers' lawyer saying, "It would  
27 be inappropriate for the Marist Brothers to consider a matter such as an informal settlement  
28 conference or any other aspect of the matter in the face of denials by Messrs Beaumont and  
29 Healey. It's not the place of our order to reject the denials..."
- 30 Do you know who within the Marist Brothers approved that letter?
- 31 **A.** Let's go back, I just want to see who it's been written to. I think it's to another lawyer is it?
- 32 **Q.** That's right, this is to?
- 33 **A.** Sorry, yes, Artemis.
- 34 **Q.** That's right, to Ms K's lawyer.

1 A. I'm not prepared to comment on that, it's a lawyer to lawyer letter.

2 Q. No, no I'm saying who within the Marist Brothers approved Robert Burnes & Associates  
3 sending this letter, who would have been responsible within your organisation?

4 A. In a general sense that's me, that's correct, it would be -- I would be aware of this in that  
5 sense, but I'm very reluctant to talk about a lawyer to lawyer letter.

6 Q. What do you mean by "in a general sense"?

7 A. There's no-one else that I'm going to say, I'm going to say that's brother so and so or that's  
8 somebody so and so; no, in that general sense yes, as the delegate for professional standards  
9 this is a matter that's on foot, it's still on foot and I'm just very reluctant to go any further  
10 with a comment about what is happening in this lawyer to lawyer process, that it has  
11 reached or it had reached in 2018.

12 **CHAIR:** The question is, Peter --

13 A. Yes.

14 Q. -- before this letter was sent, did the lawyers take instructions from anybody about what the  
15 content of the letter was going to be?

16 A. In that sense yes, I am aware of these ideas, yes, the ideas of vicarious liability, ACC and  
17 that they come into play in correspondence when it's also important to stress that these  
18 ex-Brothers, we can't represent them, we're purely representing the order, and our  
19 understanding of New Zealand law is this, this and this. And that would be approved by  
20 me.

21 Q. So you were advised by your lawyers this is what the law is currently?

22 A. Yes.

23 Q. And we're going to tell that --

24 A. Yes.

25 Q. -- to Ms K's lawyers?

26 A. And I'd say fine.

27 Q. And you'd say fine. Okay, thank you.

28 A. Yes, and generally that's a phone call.

29 **QUESTIONING BY MS GLOVER CONTINUED:** Thank you Madam Chair. Now moving on  
30 to a slightly different topic, which is this watershed moment in 2016.

31 A. Sure.

32 Q. When the Marist Brothers joined up to the NOPS process, you say that in 2016 the Marist  
33 Brothers accepted an invitation from NOPS to have all sexual abuse claims go straight to  
34 them for investigation rather than it being done internally. Do you know why the Marist

- 1 Brothers accepted that invitation from NOPS?
- 2 A. I'm not sure if the word "invitation" fits. The moment was the right moment for us, for all  
3 sorts of reasons. I think we saw it as solidarity in terms of the Catholic Church in  
4 New Zealand, why not?
- 5 Q. Just noting the word "invitation" was from your evidence.
- 6 A. I see, sorry. As I said, I really would have liked to have gone through it one more time just  
7 in case there's something that's just not exactly true, not exactly right. I can't remember  
8 how the process went.
- 9 Q. So under this 2016 system, NOPS contract investigators and the investigation report's sent  
10 to the Complaints Assessment Committee?
- 11 A. Correct.
- 12 Q. And then the Complaints Assessment Committee makes recommendations to the Marist  
13 Brothers and certain recommendations not around quantum, and the Marist Brothers  
14 contact the victim or survivor and negotiate the actual redress outcome. Is that correct?
- 15 A. Correct.
- 16 Q. And we've already heard that the NOPS process and A Path to Healing only relates to  
17 sexual abuse of minors?
- 18 A. Just to clarify that, it does, but on the other hand all the principles are there that apply to the  
19 management of other complaints that are not sexual abuse. So even if those other  
20 complaints are led by ourselves and our professional standards office team, we have a  
21 template, we have guidelines in A Path to Healing.
- 22 Q. And then at a practical level, though, so if you're a complainant and you have a complaint  
23 that relates to both sexual abuse and physical abuse, that might have occurred in the same  
24 context and it might have occurred with the same perpetrator, part of your abuse claim goes  
25 to NOPS, that's the sexual abuse aspect and part of it goes direct to the Marist brother, the  
26 physical abuse element, albeit that's the same or similar principles apply to both; is that  
27 correct?
- 28 A. It goes to NOPS. It's a sexual abuse claim and to substantiate the physical abuse part of it,  
29 it can all be part of the whole process I would believe. I don't think that we would divide  
30 the work or divide the investigation into two parts.
- 31 Q. I might just bring up CTH0009895\_00036. This is a complaint that relates to a different  
32 survivor, not one we've been speaking about so far. And it's a file note of your discussion  
33 with Jacinta Stopforth in August 2019 and it's discussing the situation where you've got a  
34 mixture of allegations against a brother, both physical abuse and sexual abuse. And it

1 records that Jacinta has tried to explain to the survivor's solicitors that there are separate  
2 pathways that should be taken when it comes to responding to mixed allegations, and  
3 responding to the mixed allegation is not just a matter for NOPS, some aspects of the  
4 investigation will be referred to the Brothers, i.e. to the order, i.e. the Marist Brothers. That  
5 seems to be slightly at odds with your description as you've just -- the description you've  
6 just given?

7 A. Yeah.

8 Q. Have you got any comments on that?

9 A. Well, as I see that I said, just seeing this now and right at this minute from my file note that  
10 I wrote in 2019, I accepted that, and I saw it as fine. So it is at odds with what I said just a  
11 moment ago.

12 Q. I'd like now to play another video clip from the Phase One hearing last year and this one is  
13 of John and he's talking about the stage in the process when there is a hand-over from the  
14 NOPS investigation to the Complaints Assessment Committee and then to the Marist  
15 Brothers.

16 (Video played).

17 Can you see that from John's perspective at that stage he was waiting to hear from  
18 the Complaints Assessment Committee as to whether or not his complaint was upheld, and  
19 then all of a sudden, he heard from the Marist Brothers not the Complaints Assessment  
20 Committee as he'd been expecting. Would you accept that the communication to John  
21 about the hand-over from NOPS and the CAC to the Marist Brothers could have been  
22 better?

23 A. First comment I want to make is that I would acknowledge that John is probably viewing  
24 this live stream, or if he may even be here, but the point I want to acknowledge is there's a  
25 lot of distress and hurt in his testimony and in what he was sharing throughout what he said  
26 in the 4 December. And I am very, very sorry about all of these hurt feelings. That the  
27 church process has let him down and left him with these feelings of abandonment, which I  
28 have detected even in that clip I can sense that he's not getting a great sense of connection  
29 and of the hand-over having worked well for him when he first hears from me and he's  
30 feeling abandoned and distressed and in a painful condition relative to how this has all  
31 taken place.

32 Specific to your question, the hand-over, it could be one of those things that we  
33 should explain more clearly right at the beginning of the process. There will be an  
34 investigation, this letter will be written to the church authority, they will get in touch with

1 you. That could be a leaflet, that could be something that is all part of explaining how the  
2 system works and how it will be navigated and what might happen, and for just a sense of  
3 where this is going next. And that's a general comment. More specifically to the Marist  
4 Brothers, I think that's where we're missing something as well. We have not given people a  
5 guideline as to where we are in the process and what happens next. And that has caused  
6 huge difficulty and I can see that with John and several others in my time.

7 **Q.** Significantly John is saying here that he doesn't want to deal with the Marist Brothers at  
8 all?

9 **A.** Yes.

10 **Q.** He doesn't want the Marist Brothers to be part of his redress process. Would you accept  
11 that there may be some benefit in having a completely independent organisation in charge  
12 of redress for victims and survivors?

13 **A.** I do. I can see, there's a perfect example and it's very compelling, that would say the  
14 survivor may feel far more at home in any other environment than working with someone  
15 from the Marist Brothers.

16 **MS GLOVER:** Thank you, Madam Chair, that might be a good time to pause for the morning  
17 adjournment.

18 **CHAIR:** Very well. We'll take 15 minutes, thank you. And I will remind you, even though you  
19 don't need reminding just so I'm comforted I've done it properly.

20 **A.** Thank you, Madam Chair.

21 **Adjournment from 11.29 am to 11.49 pm**

22 **CHAIR:** Thank you Ms Glover.

23 **MS GLOVER:** Thank you. I'd like to start by pulling up a document on the screen please, it's  
24 CTH0009899 and it's with the suffix 0001. Just to give you some context while we wait for  
25 that to come up, this is an e-mail from you to Jacinta Stopforth at NOPS dated 7 January  
26 this year and it's talking about insurance. It's CTH0009899 and 0001 is the suffix. I can  
27 start reading out the relevant section while we wait for that to come up on the screen.

28 **CHAIR:** Just repeat again what it is Ms Glover?

29 **MS GLOVER:** It's an e-mail from Peter to Jacinta Stopforth who's an employee at NOPS and it's  
30 from this year, January this year. I can just read the section which is "What you have  
31 learned -- this is what you are saying Peter -- what we have learned is that insurance  
32 companies' protocols are strict and consistent. For prudent reasons we are advised that  
33 should we initiate any communications with other parties off our own bat, this would create  
34 real difficulties and the desired outcomes could be jeopardised for everyone, including John

1 and his partner. As you can imagine that creates an awkward situation. We can't be sure of  
2 the outcome of the current discernment that is still in train, and for the present moment,  
3 while others are doing whatever they need to do, these matters remain in limbo and outside  
4 of our control."

5 **CHAIR:** It's appeared on the screen now, if we could just call out the highlighted parts please.

6 **QUESTIONING BY MS GLOVER CONTINUED:** Do you recall this e-mail, is this familiar to  
7 you?

8 A. Yes.

9 **Q.** So you've already acknowledged that there have been significant delays in the Marist  
10 Brothers redress process, is one reason for those delays and lack of proactive  
11 communication because you were worried about jeopardising the position with relation to  
12 the Marist Brothers insurance cover?

13 A. I'll describe some contextual aspects of this before I answer. Firstly, I'm feeling thwarted,  
14 exasperated and in completely new territory relative to insurance. This is our first  
15 insurance claim with having been under insurance with a particular insurance company for  
16 close to 20 years. On top of that we have everything that we know about with John and  
17 John's situation and what he's brought to us and how we would want to go forward and  
18 have something achieved for everybody.

19 So it's a particularly galling situation that we've found ourselves in. So I'm  
20 explaining this in this e-mail to someone who knows a little bit about John and is likely to  
21 receive communications from John, as are we at our office. And just so that the picture is  
22 described, I would call myself relatively measured in what I've put here in this e-mail to  
23 Jacinta. This is where we are, it's not where we want to be but it's where we are.

24 **Q.** What are you finding particularly galling and frustrating about this process?

25 A. My understanding of insurance is limited to my other experiences with vehicles or  
26 buildings or healthcare. It seems it me that what one might expect is an insured  
27 communicates with an insurer and says this is the situation we're in and then there is an  
28 agreement of how we progress, or who will progress or what will happen. In the meantime,  
29 though, we've got a different experience with this particular, and this could be typical for  
30 the sorts of things that do come up when you have this type of cover, that it's complex,  
31 there's a whole situation that needs to be unpacked, understood, set into context, set into  
32 the context of the Marist Brothers historically, all of that, so I appreciate that. We're now  
33 talking about matters that are between insured and insurer, the lawyer for the insured which  
34 is our lawyer, and the lawyer for the insurance company and I just have to leave it at that,

- 1           because it's way above my pay grade.
- 2   **Q.**     So you said that you didn't see The Salvation Army evidence?
- 3   **A.**     No.
- 4   **Q.**     But Colonel Walker from the Salvation Army gave evidence on Monday that The Salvation  
5           Army no longer involves insurers in relation to claims of abuse?
- 6   **A.**     Right.
- 7   **Q.**     Because it resulted in an approach that was too legalistic and too punitive?
- 8   **A.**     Yes.
- 9   **Q.**     So I'm taking from what you are saying about your experience with the insurers on this case  
10           that you would agree with those sentiments?
- 11 **A.**     It looks like my experience is heading in a similar direction or I'm just in a very awkward  
12           space relative to this whole thing. So I can -- if that's their experience I hear what they're  
13           saying.
- 14 **Q.**     And just to be clear, what's awkward about your -- the awkward space that you find  
15           yourself in?
- 16 **A.**     Well, I know that I'm very clearly in the wrong in my conducting of the redress process  
17           with John between the release of the Complaints Assessment Committee recommendations  
18           and the point at which we went to the insurers. I'll own that, but this is what I've just said  
19           here, this is outside of my control, and that's the awkward part. So what we have is, this is  
20           the simple summary of the situation, is that we have on John's behalf from John's lawyer a  
21           claim, this is the first time we've ever had a claim, okay, I've spoken yesterday about  
22           ex gratias, I've spoken about being party to redress in all sorts of form, we've never had a  
23           claim as I call it in a classical sense, of a claim from a lawyer saying this is what we're  
24           putting in front of you as the Marist Brothers. Then the Marist Brothers go to their insurer  
25           which is what the insurance policy is for, indemnity insurance. So that's what our policy is  
26           for.
- 27 **Q.**     So is that the reason why this is the first time that it's gone to insurers?
- 28 **A.**     For such a large amount being put in front of us as a claim, yes.
- 29 **Q.**     So in this case you've got a claim from John's lawyers for a dollar figure?
- 30 **A.**     Yes.
- 31 **Q.**     That's come to the Marist Brothers and you're saying that but for that fact, but for the fact  
32           that there's a specific figure, it would otherwise not have gone to the insurers?
- 33 **A.**     Correct, in the sense that what we see the redress process as is a process of a pathway to  
34           healing, which is the whole principle behind the document A Path to Healing, and

1 accompanied by what would be best as an outcome, and what might represent as a symbol  
2 or a token our regret. And that's the pathway that we're familiar with. This is different.

3 **Q.** This might be something outside your knowledge, but are you aware of any other Catholic  
4 religious orders or institutions that have insurance in place for claims of sexual abuse?

5 **A.** No, I'm not, but my hunch would say there could be.

6 **Q.** You've said that where recommendations include making an ex gratia payment, this token  
7 acknowledgment, as you describe it, to a claimant, the quantum of the payment is ratified  
8 by the Marist Trust Board on advice from the leader?

9 **A.** Ratified's not quite the word, but I'll accept the general principle of what you've just said.

10 **Q.** Again I --

11 **A.** Is that my word, sorry?

12 **Q.** That is your word.

13 **A.** Thank you, okay.

14 **Q.** And you've said that the Marist Trust Board has as an overarching consideration the aims of  
15 the Marist Trust Board's charitable trust deed.

16 **A.** Yes.

17 **Q.** To your knowledge, are the aims of the Marist Trust Board charitable trust deed in any way  
18 incompatible with providing financial redress to survivors?

19 **A.** If you put it in as negative it's not incompatible; it's not incompatible no, but the principles  
20 of the trust deed are for educational purposes and what the Marist Brothers' mission is in  
21 this country. They're the civil arm that enables our Marist Mission within New Zealand to  
22 have the vitality that it might have.

23 **Q.** So there's nothing in the Trust Board that would in any way impact upon what redress  
24 could be provided in financial terms to a survivor, is that what you're saying?

25 **A.** There's not anything that impedes it and restricts it from being a consideration, but on the  
26 other hand a trust is a charity, it has its stated purposes, it's going to be audited every year,  
27 and if it is -- a disproportionate part of its activity is supporting, say, redress or any other  
28 one-off sort of sideline to the educational mission of the Brothers, it might come under  
29 question. In a sense of scale.

30 **Q.** Under question from whom?

31 **A.** The auditors.

32 **Q.** The Marist Brothers --

33 **A.** You've got a trust deed, you've got financial records of what your activity has been in the  
34 last 12 months, and then you've got the auditors to say that's all aligned to your trust deed.

- 1 That's the audit.
- 2 **Q.** We've seen from the Marist Brothers' data that's been provided to this Inquiry that the vast  
3 majority of claims relate to abuse that occurred within an educational setting?
- 4 **A.** Correct.
- 5 **Q.** You do not think that providing redress in relation to abuse that occurred in an educational  
6 setting is part of providing educational services or whatever?
- 7 **A.** Yes.
- 8 **Q.** The term is in the trust deed?
- 9 **A.** No, that's fine, I accept that, yes. I can see that that link can be supported and should be,  
10 yes, no, that's fine.
- 11 **CHAIR:** That begs the question --
- 12 **A.** Yes.
- 13 **Q.** -- Peter, why would the amount matter. The amount of --
- 14 **A.** Redress.
- 15 **Q.** -- redress that you give, why would that matter?
- 16 **A.** Sure, I think that it's a question, I suppose, what happens with auditing is you do a year by  
17 year comparison. So therefore it is, I regret, a low baseline our gratuities and our ex gratias  
18 are at the lower end in what I know of Catholic data now in the last few weeks which I've  
19 never known before. And that would all help to explain at the next audit, if we were to  
20 increase our gratuities, there'd be no problem, I can say well look, we're out of line with the  
21 rest of the church. I didn't know that. So that's one element. And I guess the other is year  
22 by year if you're, you know, say your gratuities for one year are X, so last year it was  
23 40,000, and the following year it's 200,000, auditors will question that. So you just  
24 need -- it could be explained, that would be fine, but you just need to get your thinking cap  
25 on.
- 26 **Q.** That's what I was going to suggest, it's matter not of principle but of explanation, isn't it?
- 27 **A.** Yes, it is, how to explain it.
- 28 **Q.** Yes, how to explain it.
- 29 **A.** Exactly, yeah, then have your thoughts in shape for that explanation.
- 30 **Q.** And your evidence.
- 31 **A.** And your evidence, that would be fine, yeah, okay.
- 32 **Q.** So that's a slight --
- 33 **A.** Difference from what I was saying.
- 34 **Q.** Yeah, but it's also perhaps an understanding that's come to you in the course of this

1 questioning.

2 A. Inquiry, well this Inquiry has put documents in front of me about the church and others  
3 beyond our little circle of wagons and I can understand a lot better the total picture.

4 Q. Thank you.

5 A. Yes, thank you.

6 **QUESTIONING BY MS GLOVER CONTINUED:** So I take it from what you're saying it  
7 never occurred to you to look beyond that circle of wagons to find out proactively what  
8 other organisations were providing in terms of financial redress?

9 A. I had the baseline that goes back a long time and that's out of line, in hindsight I should  
10 have thought about it and done some checking. Whether it would have come to me as  
11 freely as it has just come to me now I'm not sure, but it is really helpful information, it's  
12 really good big picture information.

13 Q. You say in your written evidence that in the period the mid 90s up to 2016 the Marist  
14 Brothers usually offered an ex gratia payment of up to \$10,000. Then you go on to say that  
15 further advice from legal advisors in the late 1990s and early 2000s reiterated that the  
16 figure of \$10,000 was consistent with the amount paid by ACC. Why do you think it was  
17 important that the amount paid by the Marist Brothers was consistent with the amount paid  
18 by ACC?

19 A. I think that ACC was in most people's understandings the body that dealt with sensitive  
20 claims, had thought through what will be a long-standing guideline, and in fact in a way we  
21 wouldn't be the only organisation that would take that as a criterion of some kind. There's  
22 many possibly outside church bodies and all sorts of other parts of the New Zealand  
23 community would be taking ACC as its guideline, its touchstone. That's how I see it just as  
24 a general thing, whether it's a church body or anybody, any group.

25 Q. The part that I'm struggling with is that the Marist Brothers encourage victims and  
26 survivors to go to ACC as well as coming to the Marist Brothers. So when you say you  
27 want the Marist Brothers' financial compensation to be consistent with that provided by  
28 ACC, is that only in situations where the victim couldn't, for whatever reason, access ACC.  
29 Are you saying it's an alternative, you can take one or the other?

30 A. So firstly let's just take a step back, that we're talking about the period before I became the  
31 delegate for professional standards, so I'm just speaking in a general sense as I see that  
32 historic period of the Marist Brothers, setting those guidelines and that's what I've put in my  
33 witness statement. Trying to report the facts as this is what was done. Now to interpret  
34 what was done and why it was done, I'm into speculation.

1           Having said that, I would think, this is just trying to answer the question, I would  
2 think that there are people exactly as you've described that for one reason or another they're  
3 unable to access ACC. So therefore I would think, this is speculation, why not have  
4 something that's similar, equitable and so on.

5 **Q.** And as at today's date, with you running the process, if a victim or survivor did access  
6 ACC, or did not access ACC, would that have any impact on the financial redress provided  
7 by the Marist Brothers?

8 **A.** It certainly would be information that goes into the mix. I can't -- it's a hypothetical  
9 question, it's not that often that ACC payments to victims are known to us, but from what I  
10 would think it would go into the mix in terms of the discussion.

11 **Q.** So you're saying there's a possibility that if they were receiving ACC, you would take that  
12 into account in the overall balancing of the redress that you would consider fair and  
13 appropriate?

14 **A.** I would think that's information for sure. I mean it's just information, it's not -- I'm not  
15 saying what we would do with it, I think that that's preempting what might happen in the  
16 future and I wouldn't want to do that in the public domain like this.

17 **Q.** I'd like to bring up another document, CTH0001472. This document that is going to come  
18 up on the screen is a memorandum from Bishop Dunn, it's dated 20 June 2003, so this is  
19 presumably at the time that you were on the Professional Standards Committee but you  
20 were certainly not a delegate. I'd like to call up the paragraph beginning "When we met  
21 with Gail Kettle in Wellington." So this is Bishop Dunn saying, "When we met with Gail  
22 Kettle in Wellington we agreed to try to use the Marist Brothers' agreed maximum payment  
23 of \$12,000. In light of the publicity given to the John of God settlements -- that's the  
24 Marylands issue that you refer to earlier -- that maximum no longer seems feasible. Father  
25 Tim Duckworth from the Society of Mary has since informed me confidentially that the  
26 Society of Mary sees \$30,000 as their maximum payment - i.e. for someone who was  
27 determined to have suffered abuse at a level of 80-100%."

28           When you said previously that you were aware anecdotally back in the mists of  
29 time of a baseline, is this what you were referring to, an understanding about this situation?

30 **A.** I haven't seen this memo from Bishop Dunn before and I haven't seen that figure before in  
31 the context that it's there in those three lines. I'm only going to speculate and I'm not sure  
32 that I'm comfortable saying too much more, it is news to me in that sense, that we had that  
33 agreed maximum and that it was deemed to be no longer feasible. That's very interesting.

34 **Q.** So in 2003 Bishop Dunn's saying that that maximum payment's no longer seemed feasible?

1 A. Yes.

2 **Q.** And we've seen that the payments made by the Marist Brothers since --

3 A. Yes.

4 **Q.** -- that time have still largely been in that range?

5 A. Can I comment on that?

6 **Q.** Yes.

7 A. Okay, that's the first step is that 2003 that makes sense. From 2003 onwards, this is just by  
8 my working through step-by-step what has occurred with our gratuities, I'm interested to  
9 see all that. It didn't move from that sort of figure in the period around 2003. I know there  
10 was a very significant time in terms of the church dealing with many complainants all at  
11 once. There was almost a frenetic time relative to all of these issues.

12 But what I was aware of more recently when I have moved into administration and  
13 been involved in thinking about these things at a higher level, I can see that we have settled  
14 in our minds on a figure that's close to twice that, we usually would be thinking our figure  
15 is more like 20 to 23. 15 to 23 for sexual abuse. That has been in play in more recent  
16 times. But how it got there, I've never seen this.

17 **MS McKECHNIE:** Excuse me Chair, if we could clarify whether the Marist Brothers ever  
18 received this. It's addressed to the cardinals and the other bishops. As far as I'm aware the  
19 Marist Brothers didn't receive this at the time.

20 **CHAIR:** All right. I think, Peter, you've said that you've never seen it before.

21 A. That's correct.

22 **Q.** And I take it if the Marist Brothers had received it you in your present role might have seen  
23 that in a bundle of correspondence somewhere?

24 A. I would have, but I think there would be reasons why as I'm getting my feet under the table  
25 with this job there would be some correspondence that I have yet to read, especially from  
26 2003.

27 **Q.** Yes, so it may be there and you haven't seen it --

28 A. That's correct.

29 **Q.** -- or it might not have arrived at all?

30 A. That's correct.

31 **Q.** We don't know until a search?

32 A. Yes, sure.

33 **Q.** Thank you.

34 A. Okay, thank you.

1 **QUESTIONING BY MS GLOVER CONTINUED:** And more generally, do you have any  
2 insight, personally, as to why the payments by the Marist Brothers might or are often lower  
3 than those of other diocese or congregations?

4 A. I just have a few prepared thoughts on that?

5 **Q.** [Nods].

6 A. Okay. As I've said several times, for the first time, just recently, I could get a sense of this  
7 comparative picture. So the fact that our figures were lower is now in front of us as  
8 evidence. I didn't even have a hunch let alone have the figures that this might be the case.  
9 So just firstly to see what the comparison is, that there would be many Catholic  
10 organisations that will be presenting their material through Tautoko to this Commission  
11 where they're more likely to have \$20,000 as say their average across their ex gratias. The  
12 Marist Brothers across all of our ex gratias that I'm aware and that we've submitted through  
13 Tautoko as to our track record look more in the realm of \$8,500. That encompasses, as  
14 I said yesterday, physical abuse, psychological abuse, other matters that have come up in a  
15 complaint that doesn't even, or put it in that limiting way, but doesn't fit categories that are  
16 far more serious.

17 So we've had some figures given to us for an ex gratia by an external process;  
18 example, mediation. The mediated figure, and I'm aware of a number of instances of a  
19 mediated figure that would be in the kind of average that I've just spoken about. Another is  
20 court order. Again, court orders I've seen almost exactly 8,500 is the court order.

21 So, there's a range, when you have an average and the average is 8,500, of course  
22 there are some at the higher level, which I just mentioned a few moments ago. And then  
23 there are incidents that are reported of physical abuse, physical harm, they're less likely to  
24 be anything above 8,000, they're more likely to be below that figure. So it all evens out,  
25 okay?

26 So I'm just reiterating that in the Marist Brothers, yes sexual abuse, but also  
27 physical and psychological offending and episodes and settlements are all in that mix. I  
28 can't have in front of me whether that makes us different from the other congregations, but  
29 it could be a factor, it just could be. I'm not sure, okay?

30 Another point is that we've recorded our ex gratia as the payment, the payment, the  
31 amount passed to the recipient. Our redress process has had separate matters and separate  
32 amounts that we've captured differently in our bookkeeping, and we've had records of most  
33 of these but not necessarily all. I'll give you examples. One is funeral expenses. Another  
34 is a complainant had court fines to pay. We paid those fines. Another is purchasing a

1 laptop for the complainant. Another is paying the children's school fees for that  
2 complainant. Another is the headstone for the family of that complainant. Others are  
3 donations to designated recipients that the complainant wished us to make the donation to.  
4 Others are in the line of a taonga, something that would be a symbol and valuable to that  
5 complainant. Those are all separate from the ex gratia dollar amounts, and there are others.

6 **Q.** So those are not captured in the data?

7 **A.** Not captured in the data.

8 **Q.** None of those, is that what you're saying? Or some of them might be?

9 **A.** We could supply the figures but they're not in the figures that we supply to the Catholic  
10 Church collective collation of data.

11 **Q.** The final question or issue that I wanted to explore with you is something that you've  
12 mentioned quite a few times as we've gone through and that's the nature of this ex gratia  
13 payment and what its purpose is, and you've described it as a token, you've described it as a  
14 symbol and you've described it as an acknowledgment, and you've said very clearly that  
15 you wanted to step away from any characterisation of that as compensatory or meeting an  
16 obligation?

17 **A.** Yes.

18 **Q.** You say that the reason for this, this part is taken from paragraph 51 of your written  
19 statement, that the Brothers recognise that no monetary amount could compensate a person  
20 for the harm and trauma of being abused. I wanted to explore that idea with you. How do  
21 you know that no monetary amount could compensate, or even partially compensate  
22 perhaps?

23 **A.** I don't. I accept that I don't know.

24 **Q.** You haven't obviously then asked survivors about that?

25 **A.** Survivors at different stages of this process can have a number of ideas that they present to  
26 us. Those ideas we may be able to match with or we may not. It's possibly part of the  
27 process of the Path to Healing, the Path to Healing for the person is actually where our  
28 philosophy is based and the Path to Healing is what I refer back to if we're thinking in these  
29 terms. Once we start talking about quantum amounts and that conversation is starting  
30 to be had, it's very hard to have the Path to Healing conversation run concurrently with the  
31 dollar conversation. That's my experience of the recent times, but also anecdotally before  
32 that.

33 So just going back to the question, it's true that our philosophy has been  
34 established over a long period of time, and I haven't seen fit yet to review it or change it or

1 make it go in a different direction. That we've said to ourselves, trying to say what is the  
2 compensation to a person for the harm done is very awkward territory to start venturing  
3 into.

4 I'm still thinking about it. I certainly found it enlightening to think about how over  
5 the last generation we've seen similar jurisdictions to New Zealand start to talk this way and  
6 have redress schemes. So we've got the UK, we've got the Republic of Ireland, we've got  
7 Canada, we've got Australia, you would know all that. 20 years ago, none of those redress  
8 schemes and none of this thinking was around, so compensation was really in the model of  
9 what Tom talked about yesterday, which is lawyers and that whole kind of North American  
10 litigation-style, and we just wanted no part of that. Now we're in a different place and we  
11 could rethink perhaps. But I can't preempt what would come from that thinking process.

12 **Q.** So as you've seen it so far, the Path to Healing process is really quite divorced from ideas of  
13 compensation and obligation to a survivor?

14 **A.** There are some paragraphs, I can't recall them, I haven't got them in front of me right now,  
15 but there are some perhaps in A Path to Healing that do speak about the ex gratia but look  
16 at the total document and the spirit of it, it isn't focusing on that.

17 **Q.** Thank you.

18 **MS GLOVER:** Thank you Madam Chair, that's all the questions that I have for Peter.

19 **CHAIR:** Thank you. I'll just ask my fellow Commissioners if they wish to ask any questions.

20 **COMMISSIONER ERUETI:** Tēnā koe Peter.

21 **A.** Tēnā koe.

22 **Q.** My name's Anaru Erueti I'm one of the Commissioners. I wanted to explore, I've got a few  
23 questions related to the Treaty. At the beginning of your evidence you talked about how  
24 when looking at your records you could see only three claims that have been made by  
25 someone who were Māori?

26 **A.** Correct.

27 **Q.** It seems a really low number.

28 **A.** Mmm.

29 **Q.** And I'm just wondering why do you think that might be the case?

30 **A.** I think we haven't been as proactive as we might be to reach into communities outside of  
31 what we might call the limited community in our three schools that we own in Auckland in  
32 terms of Māori, but even they deserve us to approach them and to activate much more open  
33 dialogue about all of this. Hato Petera, it possibly goes back to my comments that I've been  
34 making about division, shall we say, or clarification between proprietorship and also the

- 1 post integration phase where the Board of Trustees may in fact, I would suspect, have led  
2 those inquiries. Those are some factors, but it's a very good question, yeah.
- 3 **Q.** So the claims could have gone somewhere else, to the Board of Trustees?
- 4 **A.** They could have gone somewhere else, yes, Board of Trustees particularly, yes.
- 5 **Q.** But overall the numbers are low?
- 6 **A.** Correct.
- 7 **Q.** So you're going to endeavour to, a strategy or communication strategy, to reach out to these  
8 communities?
- 9 **A.** Correct. I mean I think I just need to mention the Marist Brothers as teachers have taught  
10 in other schools, including State schools, so I sort of nominated our three schools that we  
11 still -- that we are the proprietor of and they would be the obvious first place, so let's start  
12 from there.
- 13 **Q.** Yes.
- 14 **A.** Yes.
- 15 **Q.** If you put yourself into the shoes of a Māori boy or girl who went to one of these kura, for  
16 example.
- 17 **A.** Yes.
- 18 **Q.** Looking at whether they would come to you for redress, there would seem to be significant  
19 questions raised it seems, given the discussion we've been having, particularly on what  
20 you've just told us about, how you perceive redress as being only token, and there being no  
21 real obligation, if you like. Would you also, in looking forward, explore what, say, a  
22 Treaty-informed approach to redress might be?
- 23 **A.** I would. I think that that's quite an energising question. I would also say we've actually  
24 established a little bit of a platform for this, if you just think about what I said a few  
25 minutes ago, obviously our Professional Standards Committee has been thinking and has  
26 been quite active in engaging with the redress process. Those instances like a funeral or a  
27 headstone or a taonga, that they're not sitting on their hands and there's a platform there that  
28 we should perhaps make it far more cultural but we already have started to think that way  
29 and let's take it forward, yes.
- 30 **Q.** That seems to be a reactive case-by-case --
- 31 **A.** Yes.
- 32 **Q.** -- approach to specific survivor wants?
- 33 **A.** Absolutely, yes.
- 34 **Q.** Rather than a methodical engagement with survivor communities and Māori?

- 1 A. Absolutely, that's the leap, yes.
- 2 Q. The other matter I think is independent, and you've conceded yourself that you could deal  
3 with more independence in your process, that with this survivor coming forward would be  
4 the perception that it is coming back to the institution that harmed he or she.
- 5 A. [Nods].
- 6 Q. So but I don't think we need to take that into further --
- 7 A. No, yeah, sure.
- 8 Q. -- I think you've recognised that this is an issue that needs to be sorted.
- 9 A. That is an issue, yes.
- 10 Q. Yeah. Finally, it's just a puzzle to me that with your engagement with Māori with the  
11 Marist Brothers, right from the early 19th century, then a bit of a gap but then the post-war  
12 years, particularly at a time when Māori communities were under tremendous stress, the  
13 Marist Brothers are there in the schools, I took it that when you talked about the  
14 commitment by the Brothers to Te Tiriti, you expressed it as been in a general way?
- 15 A. Yes.
- 16 Q. I'm not quite sure what you meant by that?
- 17 A. Well, I think there's more work to be done and our thinking is still unfortunately a little bit  
18 up in that kind of level of theory, I suppose you could almost call it, as against flax roots.  
19 But I do want to just go back to right at the beginning, just to comment, if I may, for a  
20 second. I wanted to say a bit about that history in order to acknowledge our own mana that  
21 we have to be here and to have these conversations, and to not just assume that we have the  
22 entitlement to speak about these things. We were making quite deliberate decisions in the  
23 1970s and 80s to take a brother from the classroom and to say we really think where the  
24 need is is Moerewa or Kawakawa; there's a loss of income, there's the person who's on the  
25 ground. He doesn't go into the school, he does social work. I think we have the mindset,  
26 the Marist Brothers have put their -- have kind of backed up what they have claimed they  
27 do. We need to now take that forward. We're a different generation, and we did that then,  
28 what do we do now.
- 29 Q. Again, I wonder whether it's -- you've got these responses in different instances over time.
- 30 A. Yes.
- 31 Q. But what I don't see is a normative sort of framework --
- 32 A. Correct.
- 33 Q. -- to guide it.
- 34 A. Correct.

- 1 **Q.** And reduce to writing with prescriptions and so forth.
- 2 **A.** Yes.
- 3 **Q.** Compared to, say, with the churches that we've spoken to within the last couple of weeks.
- 4 **A.** Yes.
- 5 **Q.** Was it The Salvation Army has rolled out Treaty policies on an ongoing basis.
- 6 **A.** Yes.
- 7 **Q.** Today we don't have anything of that nature with the Marist Brothers, but possible in the
- 8 future?
- 9 **A.** Absolutely, I think that sums it up, absolutely.
- 10 **Q.** Okay, kia ora, thank you for your time.
- 11 **A.** Yeah.
- 12 **COMMISSIONER ALOFIVAE:** Talofa Peter.
- 13 **A.** Talofa.
- 14 **Q.** The Marist Brothers are an international --
- 15 **A.** Correct.
- 16 **Q.** -- brotherhood, and I see that the trust --
- 17 **A.** Yes.
- 18 **Q.** -- covers a couple of the Pacific Islands.
- 19 **A.** Indeed.
- 20 **Q.** Would that be correct?
- 21 **A.** Indeed.
- 22 **Q.** That's Fiji, Kiribati and the two Samoas?
- 23 **A.** Correct, so we've just moved out, we've just had to unfortunately withdraw from American
- 24 Samoa due to lack of numbers, that's of just recently.
- 25 **Q.** Okay, so what you do here in New Zealand, if you were to draw up a redress policy, would
- 26 that then flow into your other -- into your Pacific nations, is that the intention?
- 27 **A.** There's a slightly nuanced way of looking at this discussion. In spirit yes, in detail, we just
- 28 acknowledge that each of those Pacific Island countries is its own sovereign territory.
- 29 Secondly, the mana, if we use our local language here from New Zealand, the mana of the
- 30 local bishop needs to be acknowledged.
- 31 I've just finished my presentation and I was concerned that I might be asked about
- 32 a particular piece of correspondence between a brother in New Zealand and the Area
- 33 Coordinator for Fiji. And where my hesitation lay is that that brother in Fiji is under the
- 34 mana or the authority of the Bishop of Fiji, the Archbishop. And acknowledging all of

1 those elements, my answer is, yes, we would be thinking along those lines, that the redress,  
2 the discussion, the way in which an acknowledgment could be extended into any incidents  
3 that have occurred off-shore, especially if the perpetrator is an expatriate New Zealand  
4 brother or anyone who's a number of our community, Brother John has the authority over  
5 the Brothers in the Pacific. So yes, I'd say in spirit we acknowledge exactly that principle,  
6 but the devil would be in how might it all be worked out.

7 **Q.** As one would expect.

8 **A.** Yes, yes.

9 **Q.** As long there's a deliberate intent --

10 **A.** Intent, correct, yes, yes.

11 **Q.** -- to pull that together, it could certainly --

12 **A.** Sure. So just to be clear, while we're talking about the Pacific Islands, this I know is the  
13 New Zealand inquiry, but if an inquiry like this were to be launched in some way in the  
14 countries that are within our district, we would engage actively there in that inquiry. I am  
15 the district delegate for professional standards, so therefore if a complaint is going up  
16 through the steps in the Pacific, it ultimately does come to me if the brother who  
17 perpetrated was a brother of our district. Thank you.

18 **Q.** Thank you for making that clear, that those pathways actually are in existence.

19 **A.** Yes.

20 **Q.** And they're open, obviously, to the survivors, and thank you to John for the call that was  
21 put out in both the Samoan language but also again in English.

22 **A.** Sure, thank you.

23 **Q.** Your schools and you refer to the board of trustees.

24 **A.** Yes.

25 **Q.** So the assumption is that they would be Catholic parents on the board?

26 **A.** Are we talking Pacific or New Zealand?

27 **Q.** Here in New Zealand.

28 **A.** Here in New Zealand, yes. Yes.

29 **Q.** So the phrase -- so it was used in the Anglican context, a cradle Anglican, so if you're a  
30 cradle Catholic, it's quite, you know, it's a fair assumption to say actually this is the  
31 Catholic way, this is the way it's done.

32 **A.** Mmm-hmm.

33 **Q.** And you're very fortunate here in New Zealand you've got very big Pacific Catholic  
34 communities.

- 1 A. Mmm-hmm.
- 2 Q. So the deference that's paid to the priest, to the bishop, I think some might use the phrase  
3 "next level", even in your own faith.
- 4 A. Mmm-hmm.
- 5 Q. So you've got a non-Catholic looking at that time it really looks even bigger.
- 6 A. Right.
- 7 Q. Is that your experience as well, though, actually as a Catholic brother?
- 8 A. In some ways the brotherhood, when it is lived well, and when the brother is able to call  
9 upon the vocation that he's trying to embody, he actually accompanies and walks alongside  
10 rather than sits on top of the community that he is serving. So those parent communities I  
11 would like to think have the experience of the Brothers being more accessible, user  
12 friendly, nice to know, than -- at just an intuitive level, relative to what they might do.  
13 We're talking about the Pacific communities.
- 14 Q. Yes.
- 15 A. Relative to the likes of pastors and priests and so on.
- 16 Q. So we know that abuse happened.
- 17 A. Yes.
- 18 Q. And you've reported it in your figures.
- 19 A. Sure.
- 20 Q. So my question is really forward thinking, because you've referred to the educational  
21 context, which is very much a part of the Marist Brothers mission.
- 22 A. Mmm-hmm.
- 23 Q. And now that there is some real enlightenment in terms of actually the trauma and the  
24 ongoing impacts of what survivors essentially have to live with --
- 25 A. Mmm-hmm.
- 26 Q. -- their entire lives. Do you see the role of the Marist Brothers Trust actually playing a  
27 stronger role, or the Brothers themselves, in actually being able to start asking some of  
28 those, or start broaching those conversations that Frances referred to as tapu?
- 29 A. Yes, it is an awkward one. In the Pacific Islands where the Pacific peoples have come  
30 from, I think it's my observation, John would be the better person to speak in some ways,  
31 but it's my observation to see that the Brothers are elevated and have enjoyed a certain  
32 privilege just by their title and there's no denying that. Now the immigrants who are in  
33 New Zealand who have come from that experience, either first generation or the next may  
34 have, by osmosis, that might be still be around, you don't speak about the brother other than

- 1 with great deference and all of that. And what Frances said in the clip, I totally accept.
- 2 **Q.** So in knowing that that's a real concrete barrier?
- 3 **A.** Correct. We need to do something about it.
- 4 **Q.** The balance would actually lie in the hands of the church, in this case the Marist Brothers
- 5 institution --
- 6 **A.** Sure.
- 7 **Q.** -- to actually start unpacking some of that to make it safe --
- 8 **A.** Yes.
- 9 **Q.** -- for congregations to actually start visiting --
- 10 **A.** Yes.
- 11 **Q.** -- some of these tapu topics.
- 12 **A.** Correct, I think the responsibility sits with the Brothers who, in a sense, have power by the
- 13 power of everything that we've just said, it's ascribed power, didn't choose it necessarily,
- 14 but because we have that power it is for us to take the first step to -- for the relationship to
- 15 become different, yes, I agree with that.
- 16 **Q.** Thank you, thank you very much.
- 17 **A.** Okay, sure.
- 18 **COMMISSIONER STEENSON:** Tēnā koe.
- 19 **A.** Tēnā koe.
- 20 **Q.** I just have a couple of questions of clarification. Just given the abuse and impacts being
- 21 quite lifelong on survivors, I just want to understand the thinking or the rationale behind the
- 22 Marist Brothers not wanting to give an impression of obligation to those survivors for a
- 23 redress claim?
- 24 **A.** Sure. I think we thought that way and we were probably in tune with the church generally
- 25 a generation ago. That's how we saw it that we didn't want to create the sense that we had
- 26 an obligation, we were giving freely. The notion, though, of doing less than we should
- 27 have and now as the figures have shown doing less than others, that's embarrassing and that
- 28 needs to be set right. So there's an obligation.
- 29 But to think into that new space is where we find ourselves now and there's some
- 30 work ahead. That doesn't your answer entirely. Obligation just -- and compensation were
- 31 just sort of set aside, set to one side and we did what we thought by our own lights was this
- 32 is the way to go. That could be revisited but that is just telling you what the history is. And
- 33 that's where we find ourselves now. It hasn't been reviewed, so therefore those assumptions
- 34 are still around.

- 1 **Q.** But do you think in the future those attitudes may be adjusted around that?
- 2 **A.** I think so, I think so. It's a real eye opener to see, say, the likes of the Australian Royal  
3 Commission and all the other information that's just coming in and saying there is an  
4 obligation. I mean that's really one of the key findings that it strikes me has come to the  
5 Marist Brothers or any other congregation in Australia. There is an obligation.
- 6 **Q.** Okay, thank you.
- 7 **A.** Sure.
- 8 **Q.** Just one thing, it's related to you talked with my fellow Commissioner Erueti around being  
9 more Treaty focused.
- 10 **A.** Sure.
- 11 **Q.** I guess the other aspect to that is it strikes that the process to date hasn't been  
12 survivor-focused. So do you think there'll be more going forward to adapt it to be more  
13 survivor- focused?
- 14 **A.** Yes, I do. Picking up a phrase that is in the witness statement, you know, as I said it was  
15 something that we would have liked to just do one more careful edit. I know that I've said  
16 we're now survivor-focused, well, you know, that's not where we're at. We are relatively  
17 speaking from where we were we have moved to be relatively more survivor- focused but  
18 we're nowhere near being as survivor-focused as should be the case.
- 19 **Q.** Thank you for your answers, ngā mihi.
- 20 **CHAIR:** For me I just have one tiny detailed question.
- 21 **A.** Sure.
- 22 **Q.** In your list of matters that you had considered about why the Marist Brothers payments  
23 would be lower --
- 24 **A.** Yes.
- 25 **Q.** -- you obviously prepared that and thank you for doing that.
- 26 **A.** Yes.
- 27 **Q.** You referred to mediated figures and court orders.
- 28 **A.** Yes.
- 29 **Q.** What court orders are you referring to there, what sort of court orders?
- 30 **A.** As a conviction, my understanding is the conviction is, and you were to pay, so here's --
- 31 **Q.** Reparation payments --
- 32 **A.** Reparation payments, so --
- 33 **Q.** -- made following a criminal trial?
- 34 **A.** Correct, so that reparation payment has gone through our process, say our finance people,

1 or whatever, because the brother does not have an income and the brother is not a  
2 financially independent person in the normal sense. So therefore the order takes up that  
3 reparation payment, and therefore that can get captured as one of our ex gratia.

4 **Q.** That has happened has it?

5 **A.** That has happened.

6 **Q.** Did that happen in the case of the Brothers who are no longer Brothers?

7 **A.** No.

8 **Q.** It didn't happen in that case?

9 **A.** No. No, it has happened, we have a person who's convicted and at the time of the  
10 conviction he is a Brother, and that's the court order, the Brothers have paid for that  
11 Brother.

12 **Q.** Recognising that it's an obligation on the Marist Brothers as much as the individual do you  
13 think?

14 **A.** I don't in the sense, but I mean it's the individual -- the whole spirit of what has been  
15 awarded in the court case is that there should be some sense that that person as an  
16 autonomous individual has something to pay, that's what the court order is really about.  
17 But the actual practicality when you go back through the whole process of a brother living  
18 within community and he has forfeited his sort of financial independence, and he's a  
19 community member, he doesn't have a bank account, his income, if he has some income, is  
20 treated in the collective way, that's part of our common life, we end up paying his bills, and  
21 that's one of them.

22 **Q.** Thank you. So it remains for me to thank you on behalf of the Commissioners for coming,  
23 being very frank.

24 **A.** Thank you.

25 **Q.** And accepting of some past failures and particularly of your acceptance of the ways in  
26 which your processes could be improved, that is heartening to hear. So we thank you for  
27 that and your candour in doing that.

28 **A.** Thank you.

29 **Q.** And thank you again to you, for being a loyal supporter, Brother John.

30 **A.** Kia ora.

31 **MS McKECHNIE:** The next witness is Ms Noonan. Given the time would you like to take an  
32 early adjournment and we return early?

33 **CHAIR:** Absolutely, I think if that suits everybody else, yes, we'll do that and we'll return at, shall  
34 we say 10 to 2? Thank you we'll take the adjournment.