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EMERITUS PROFESSOR DESMOND CAHILL - AFFIRMED

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DR PETER WILKINSON - AFFIRMED

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EXAMINED BY MS JANES

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MS JANES: May it please the Commissioners, I call to the witness stand, they are there, Dr Peter Wilkinson and Professor Des Cahill.

11.37 10

11

Chair, I will leave you to administer -

12

CHAIR: Gentlemen, as we start, the New Zealand

13

Inquiries Aact 2013 requires me to ask you both and

14

to receive an answer to this question - (witnesses

15

affirmed).

16

MS JANES:

17

Q. Before we start, could you each please state for the record your full name?

18

19

DR WILKINSON: Peter Julian Wilkinson.

11.38 20

EMERITUS PROFESSOR CAHILL: Desmond Phillip Cahill.

21

Q. Together, you have produced a comprehensive paper with appendices which have been provided to the Commission and that is to the best of your knowledge true and correct as at the time it was written?

22

23

24

25

EMERITUS PROFESSOR CAHILL: Correct.

26

DR WILKINSON: Correct, yes.

27

Q. You have also produced a shorter summary paper which you are going to be presenting today?

28

29

DR WILKINSON: Correct.

11.39 30

EMERITUS PROFESSOR CAHILL: Correct.

31

MS JANES: Chair, with your leave, I will produce the shorter paper as an exhibit. I am not sure what number we are up to.

32

33

34

CHAIR: Thank you.

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1 **MS JANES:**

2 Q. Professor Cahill, could you start please with the
3 introductory remarks that you would like to make? But
4 prior to that, can I ask you to provide background and
5 experience and also Dr Wilkinson, so that the
6 Commissioners understand the basis on which you are
7 providing expert evidence today?

8 **EMERITUS PROFESSOR CAHILL:** Thank you, madam counsel.

9 Firstly, may I make it clear that I am not a
10 victim. I was ordained a Catholic priest in 1970
11 after studying in the Melbourne seminary and then I
12 was sent to Rome where I did my four years
13 theology. I came back and worked for 6 years and
14 then I decided to do a career switch. I am married
15 and am now a very happy husband, father and
16 grandfather. And then I embarked on an academic
17 career and I became a trained
18 ~~psychologist~~psychologist, but I focused on the
19 areas of immigrant and refugee movements, cross-
20 cultural communication, second language education,
21 and then multi-cultural and multi-faith societies.

22 I am now the Chair of Religions ~~For~~for Peace which
23 is the world's largest inter-faith organisation and I am
24 Deputy Moderator of Religions ~~f~~fFor Peace Asia.

25 My engagement with child sex abuse began really way
26 back but it was in 2012 that I made a submission to the
27 Victorian Parliamentary Inquiry into Institutional
28 Responses to Child Sex Abuse and I was called up on day
29 2; initially, interestingly enough, to give evidence on
30 child sex abuse in the non-Christian religions because we
31 know that there are significant problems in countries
32 like India, Thailand and Indonesia with the issue of
33 child sexual abuse in ashrams, temples and boarding
34 schools.

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1 In 2014, I was asked to go to -

2 **CHAIR:** Professor Cahill, can I intervene for just a
3 moment, and I am sure you will realise why. When
4 you speak, the stenotyper in front of you is taking
5 it down and the signers are also keeping up with
6 what you're saying, so if you would be good enough
7 to moderate your pace by looking at them, you will
8 get the notion of speaking at a rate where it can
9 all be transcribed.

11.42 10 **EMERITUS PROFESSOR CAHILL:** Thank you, Chair. I am too
11 used to lecturing.

12 So, I went to a workshop in Spain, organised by the
13 International Institute of Sociology and the Law that
14 focused on sex abuse in the Catholic Church which brought
15 together the world's leading scholars and researchers.

16 After that, I was asked by the Australian Royal
17 Commission to be the senior consultant on the Catholic
18 Church to the Commission. And ~~seso~~, I worked with my
19 colleague, Peter Wilkinson, to produce the RMIT report
11.43 20 which, when it was released went global.

21 More recently, I was asked to go to London to give
22 advice to the UK's Independent Inquiry into Child Sex
23 Abuse, commonly known as the Jimmy Savile Inquiry and now
24 I have been asked to come here.

25 I appreciate the opportunity for you to hear of our
26 expertise and insights that we hope we bring to your
27 considerations.

28 Q. Thank you, Professor Cahill. Dr Wilkinson?

29 **DR WILKINSON:** I am a Melbourne boy and at the age of 18
11.44 30 I was admitted to the seminary of the Missionary
31 Society of St Columban. I was ordained in 1961 as
32 a Catholic priest and did my postgraduate studies
33 in Rome on two occasions, first for missionology
34 and then a doctorate in missionology.

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1 I taught in the Columban seminary in Melbourne and
2 also in Sydney for approximately 4 years and after
3 receiving my doctorate I was appointed to South Korea to
4 work as a missionary there and was there for 4 years.

5 Then I decided to seek laicization in order to marry
6 and at the moment I am married and I have four adult
7 children and four grandchildren.

8 My association with the subject of child sexual
9 abuse began I think in 2010 when I was asked to join a
10 small renewal group in Australia called Catholics of
11 Ministry. At that time I wasn't particularly interested
12 in church matters and my approach was to buy a copy of
13 the Australian Catholic Directory and examine it as a
14 piece of research, and what I found was that, looking at
15 the evidence, there was a serious crisis within parish
16 ministry within Australia. And looking further, it
17 became clear that one of the causes of this crisis was
18 child sexual abuse in the Catholic Church in Australia.

19 So, I had two reports on parish ministry published.

11.46 20 Also, at around that time, another group formed in
21 Melbourne and we called ourselves Catholics for Renewal.
22 One of the first actions of that group, was to write a
23 letter to Pope Benedict XV and call the Bishops of
24 Australia and state that the church was in crisis and
25 that the question of child sexual abuse had to be
26 addressed openly, if the church in Australia was to be
27 Christ-centered.

28 At that time also, the Victorian Parliamentary
29 Inquiry was setup. So, our group decided that we would
11.47 30 make a submission to the Victorian Parliamentary Inquiry
31 and that the subject of our submission would be good
32 governance which we believed was lacking.

33 We also argued that the Victorian Government should
34 establish mandatory criminal reporting for instances of

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1 child sexual abuse.

2 The recommendation of the report Betrayal of Trust
3 recommended that that action be taken by the Victorian
4 Parliament and it did.

5 Des has already spoken about our work with RMIT and
6 what we did in regard to the Australian Royal Commission.
7 Thank you.

8 Q. Thank you, that provides very good context, so I now
9 invite you to begin with your introduction.

11.48 10 **EMERITUS PROFESSOR CAHILL:** Well, I'd like to
11 congratulate the government and the people of
12 New Zealand for conducting this high level Inquiry
13 into child abuse, and to have included in its Terms
14 of Reference those government based and faith-based
15 institutions.

16 As we learnt this morning, the road to this Royal
17 Commission has been long and arduous, particularly for
18 the victims/survivors. Their suffering must be paramount
19 in our minds and hearts. Our focus, as we've already
11.49 20 indicated, will be on child sex abuse in faith-based
21 institutions but particularly the Catholic Church.

22 Of course, this is not New Zealand's first Royal
23 Commission into child sexual abuse. In August 1900, a
24 short Royal Commission investigated the Marist Brothers'
25 Stoke residential facility outside Nelson. The
26 Commission's report found much to criticise in its
27 management, staff and standard of care. And the Marist
28 Brothers eventually were forced to vacate that facility.

29 So, the physical, emotional and sexual abuse of
11.50 30 children, even though it occurs more often in families
31 and we need to keep that in mind, is a scourge. In
32 Christian history we can trace it back to the New
33 Testament times when the paterfamilias would abuse the
34 slave boys and slave young women of his household. And

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1 in our RMIT report, we document that the examples
2 throughout history where it has happened as much as we
3 know.

4 One outstanding example that is relevant to
5 Australia and New Zealand, was that in 1871, Mother Mary
6 MacKillop, Australia's first saint, whose Josephite nuns
7 came to New Zealand in 1880, was excommunicated by the
8 Bishop of Adelaide and one of the major reasons was
9 because she had been a whistle blower on a parish priest
11.51 10 in a rural parish outside Adelaide who was sexually
11 abusing children attending the nun's school. The priest,
12 other priests and the Bishop were all Franciscans and
13 they ganged up on her and she was excommunicated.

14 The real reason for her excommunication was kept
15 hidden from the Australian and New Zealand Catholic
16 communities for more than 140 years and one wonders what
17 salutary effect knowledge of this incident might have had
18 on religious offenders in subsequent decades.

19 The Irish Christian Brothers who came to Dunedin in
11.52 20 1876, in Australia the first one was jailed in 1919, and
21 that particular religious order had problems in every
22 decade of the 20th Century.

23 The Christian Church has always condemned child sex
24 abuse but unfortunately in recent decades has seen it as
25 a sin and not as a crime. And so we've had, as we've
26 heard this morning, the ravished innocence of the child
27 abused, assaulted, violated, raped and sodomised, and
28 that lies at the centre of this religious catastrophe.

29 In the Christian tradition, children are seen as
11.53 30 close to the mystery of God. Each and every child is
31 embraced in God's infinite tenderness, and for parents to
32 have their patient, time-consuming and loving handiwork
33 of raising a child, damaged and destroyed by abusing
34 clergy and religious is at the very core of this

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1 religious tragedy.

2 In educating our children about their own
3 self-protection, I like to use the very useful Christian
4 maxim, highlighting bodily ownership and integrity; no
5 trespassing: this is MY body.

6 It cannot be denied that the public image of the
7 Catholic priesthood and religious life has been
8 irrevocably damaged. This has impacted upon the public
9 image and self-image of countless good, committed and
11.54 10 saintly priests who have dedicated their lives
11 administering to the Catholic communities here in New
12 Zealand and across the world. I suppose this has shown
13 to us that there needs to be a thorough going renewal of
14 the Catholic Priestley ministry, including the
15 aggregation of mandatory celibacy so this would not be a
16 panacea. We have just in the last two weeks seen that
17 process begin in Rome with the findings of the Amazonian
18 Synod driven by the desire of Pope Francis to reform the
19 church.

11.55 20 I'd like to make a few reflections, madam counsel.

21 Child sex abuse is always about power and the abuse
22 of power. Power corrupts and ecclesiastical power
23 corrupts ecclesiastically. Pathologies can infect any
24 organisation. Further, child sex abuse is always hidden,
25 very hidden, hidden by the priest and religious
26 perpetrator, and that is why it is so insidious. The
27 crime takes place in secret and the victim is neutralised
28 into silence, going back to that point. The Australian
29 Royal Commission found very little evidence of pedophile
11.56 30 rings in religious settings.

31 An additional reflection that I want to make is
32 this. Priest and religious offenders are very great
33 deniers, continually and determinedly protesting the
34 denial of their own criminal behaviour. And some

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1 Catholic bishops and religious superiors have found this
2 to their great cost. And the higher up the church
3 hierarchy the offender, the more determined is the
4 denial. And so, we have to understand this within the
5 parameters of dysfunctional governance, and we will be
6 emphasising this during our presentation. The lack of
7 transparency and accountability all within the culture of
8 secretive clericalism and within flawed selection,
9 screening and training processes in previous decades and
10 centuries.

11.58

11 Q. You've set yourself four tasks for today which you
12 outline on page 5. Perhaps you could just quickly
13 summarise those and then we'll start moving through them?

14 **EMERITUS PROFESSOR CAHILL:** Okay. We want to bring to
15 your attention the recommendations of the various
16 government-sponsored and church-sponsored inquiries
17 because we were asked by the Australian Royal
18 Commission to look at 27 Australian and
19 international Inquiries.

11.58

20 To present the findings, some of the findings
21 and recommendations of the Australian Royal
22 Commission which are contained in volume 16 of the
23 7,400 page report to give you a roadmap for
24 understanding why it happened.

25 And then to present some ways forward for you here
26 in New Zealand.

27 And then we will address some special issues which
28 Peter will do, about mandatory reporting, the religious
29 confession redress issues.

11.59

30 Q. For this specific Inquiry, Terms of Reference 20 (d)
31 requires our Commission to have regard to information and
32 evidence from other Inquiries and reviews. You have
33 evidence about the Australian Royal Commission, I'd now
34 invite you to go through that section.

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1 **EMERITUS PROFESSOR CAHILL:** The Australian Royal
2 Commission's figures show that 572 Australian
3 priests, 597 brothers, as well as 543 lay persons
4 sexually offended in Catholic settings against
5 children, usually boys, about 70%.

6 Comparable to the US evidence, and using the
7 weighted figures, between 1950 and 2012, 1 in 13 diocesan
8 priests, 1 in 17 religious order priests sexually
9 offended against children under 18.

12.00 10 The offending was worst in regional diocese and the
11 least was in the archdiocese of Adelaide.

12 An estimated 1 in 8 religious brothers sexually
13 offended against children, especially amongst the St John
14 of God brothers who care for mentally disabled children,
15 as well as the Christian brothers, the Marist brothers
16 and the De La Salle brothers teaching in orphanages,
17 day-time and boarding schools.

18 When we look at the New Zealand context, there is
19 nothing to suggest in historical terms, based on the
12.01 20 prevalence data in comparable countries, that the
21 offending rate with New Zealand diocesan priests would
22 not be in the range of 5-7% and 2-5% amongst religious
23 order priests, although it may be lower because fewer
24 male religious priests had charge of schools and youth
25 ministries.

26 New Zealand has always had a relatively high
27 proportion of religious order priests compared to
28 diocesan priests and this may have had a dampening effect
29 of offending priests and the number of victims.

12.02 30 There's other reasons why amongst religious brothers
31 it may be less than the Australian rate. First,
32 New Zealand was less impacted by the child migration
33 scheme. And there's a long history to that.

34 Secondly, New Zealand moved -

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1 **COMMISSIONER ERUETI:** Would you be able to explain the
2 difference between a diocesan priest and a
3 religious order priest? I don't think it would be
4 clear to everyone.

5 **EMERITUS PROFESSOR CAHILL:** A diocesan priest is one who
6 is ordained, and incarnated is a technical term,
7 into a particular diocese. A religious order
8 priest, such as the Marist, they are called
9 religious order priests because they are founded by
12.03 10 a specific founder like St Mary of the Cross.
11 Okay?

12 Some of those may work in parishes but others may
13 work in schools, in universities, in welfare groups,
14 advocacy groups, all sorts of other kinds of work that
15 the church is engaged in across the world. Okay?

16 The second point I was going to make is that
17 New Zealand seems to have moved a little bit earlier than
18 Australia and Ireland away from large scale orphanages to
19 foster care arrangements, which again are not without
12.04 20 their problems.

21 The exception is that Catholic boarding schools but
22 their numbers greatly declined in the post-World War II
23 period.

24 The third reason we think is that through Peter's
25 research particularly, is that the number of religious
26 brothers in New Zealand has been relatively modest, 116
27 at the moment, and it peaked at 385 in 1966. We also
28 note in the post-World War II period, all the Catholic
29 orphanages, as which understand it, were being run by
12.05 30 female religious orders.

31 Now, I need to talk about the nuns. The Australian
32 figures show there was very little sexual offending by
33 nuns. Sometimes, through sheer sexual naivety, they did
34 permit priests and handymen to have access to children in

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1 their orphanages. However, both the relevant Australian
2 and Irish reports have documented serious emotional and
3 physical abuse by nuns against children in their
4 residential care institutions, though also many former
5 inmates regard their nun carers with love and affection.

6 Now, I think we need to explain the very high
7 offending rate amongst religious brothers. The central
8 factor was their lack of interface with the feminine.
9 Whilst this has now partially changed, their contact with
12.06 10 women was generally minimal, beginning with the fact that
11 they were educated usually in male only schools, went to
12 male only juniorates, novitiates and scholasticates. And
13 then they went on, they did go to university but they
14 were then appointed to male only schools and lived in all
15 male religious communities. This was a recipe for a
16 psycho-spiritual disaster.

17 The Irish Ryan Report has studied this best and they
18 highlight within the Christian brothers their failure to
19 appreciate the emotional needs of the children in their
12.07 20 care or to pursue appropriate training in community child
21 and youth welfare. It documented their lack of
22 acknowledgment of congregational responsibility for what
23 happened, the consequences of the regime of blind
24 obedience with its humiliating punishments, their fear of
25 change, the lack of institutional memory, and their use
26 of government funds to cross-subsidise other activities.
27 Their psychological fear of women were factors that
28 operated across their structures but also right across
29 the structures of the Catholic Church, both in its
12.08 30 decision-making structures and in its ordained ministry.

31 While there is much talk, very little seems to be
32 changing in the Catholic Church, although with the recent
33 Amazonian Synod two weeks ago, Pope Francis will look at
34 the issue of the female diaconate but amongst

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1 traditionalist Catholics they have gone ballistic in
2 their opposition.

3 Terrible as these statistics are, they must be
4 balanced by the fact that 59% of Catholic priest
5 offenders had only one claim of redress against them.
6 This suggests they had only one victim who perhaps was
7 abused many times. And from our own research, we know
8 that the probability of a young Catholic child being
9 abused in a religious setting was always relatively small
12.10 10 but not low. It ranged from about 1 in 200 to 1 in 400.
11 The risk, however, was very much higher for boys,
12 especially if they were altar boys and choir boys, and it
13 was very high for boys in Catholic residential
14 institutions cared for by religious brothers.

15 We know from the American data that when altar girls
16 were introduced in the 1980s, the rate of abusing of both
17 the altar boys and girls was about equal, and this brings
18 up the issue of access and we'll talk about that.

19 This brings out the issue, as we heard this morning,
12.10 20 of the serial predator priest and brother who abused at
21 least 10 children. And we know that the serial offender,
22 Gerard Ridsdale in Australia abused more than 100
23 children.

24 Another offending category is the recycled
25 seminarian; the one who began training in one seminary,
26 was asked to leave and then was accepted by another
27 seminary. This has happened right across the world, we
28 now know, and so there have been Inquiries that we looked
29 at in the US (7), Canada (2), England and Wales (2),
12.11 30 Ireland (4), Belgium (1 but was never finished) and the
31 Netherlands (1). But I must say that none has been as
32 well funded or as thorough or as detailed as the
33 Australian Royal Commission.

34 In September 2018, a year ago, the German Catholic

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1 Bishops published a very useful research report. And
2 last night the French Bishops received a draft report of
3 their research study. The Australian methodology was
4 built around private sessions and written accounts, and
5 then the Prime Minister, in October last year, made a
6 formal apology in Parliament to all survivors, as well as
7 those who didn't survive~~er~~ through natural death or
8 suicide.

9 The Royal Commission subpoenaed 1.2 million
10 documents and its major other strategy was to conduct
11 57 case studies.

12 The Commission made 2250 referrals to the Police and
13 exactly half of those related to religious settings and
14 those are now working through Police investigation and
15 Court Criminal Justice processes.

16 Q. And we will return a little later to talk about
17 additional matters relating to the Australian Royal
18 Commission but before moving to that, there was some
19 myths that you thought it was important to discuss and
12.13 20 why they should be looked at differently?

21 **EMERITUS PROFESSOR CAHILL:** Yes. In Australia as
22 elsewhere, some Catholics have accused the various
23 government Inquiries such as this one of conducting
24 anti-Catholic vendettas. Anti-Catholicism and
25 anti-clericalism has always been around.

26 Other Catholics have accused the Inquiries, have
27 been disapproving of the media and its journalists,
28 alleging that they're exaggerating its scope and
29 repeating again the same material, and certainly there
12.14 30 has been some of this.

31 But it's been journalists, together with female
32 researchers and priest and ex-priest researchers,
33 particularly psychologists, who have brought this out
34 into the open.

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1 When we look at the figures, except for the Jehovah
2 witnesses, no other religious group came close to the
3 Catholic Church, in the level of offending, though the
4 Anglican level was relatively high and the Jehovah
5 Witness contained se instances of family abuse that was
6 mishandled by the elders.

7 The second myth is that clerical sex abuse occurred
8 only after World War II and it was made worse by the
9 sexual revolution of the 1960s, and the Second Vatican
12.16 10 Council in the 1960s and the general climate of secular
11 and Catholic 'libertine' liberalism which led priests and
12 religious to experiment. Based on research evidence,
13 we 've concluded the Holy See Vatican knew right
14 throughout the 20th Century, as we can see in the 1922
15 Instruction Crimen Sollicitationis, the crime of
16 solicitation which was reissued in 1960.

17 Sexual soliciting by means of the confessional has
18 always been a problem for the church and the situation
19 was made worse in 1910 by Pope Pius X when he lowered the
12.17 20 age of confession from 12-13 to 7-8 years of age.

21 These second myth was driven especially by two
22 very good John Jay reports. John Jay is the John Jay
23 Centre for Criminal Justice administration attached to
24 the university of New York. It was commissioned
25 by the
26 New York Catholic Bishops and produced wonderful data as
27 we will be emphasising, but unfortunately it gave
28 credence to this myth.

29 It started its study in 1950 in its data, whereas it
12.18 30 really should have gone back further. But we don't have
31 proper data for the first half of the 20th Century but we
32 now know but we will never be able to quantify it to
33 compare it with later decades.

34 Q. Can I just confirm that in your evidence you talk about
two John Jay reports, one in 2004 and another one in
2011?

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1 **EMERITUS PROFESSOR CAHILL:** Mm, yes. The first one was
2 collecting data ~~from~~ all the diocese across the
3 United States, okay? And it was only focused on
4 diocese and diocese and priests, unlike the
5 Australian Royal Commission which was much broader.
6 Okay? And the second one looked at associated but
7 other issues between 2004 and 2011.

8 Q. And you set out the basis of the data available, if you
9 could go through that, that would be helpful.

12.19 10 **EMERITUS PROFESSOR CAHILL:** Yes. I need to mention also
11 that this second myth has been perpetuated in a
12 recent letter, a very unfortunate letter by
13 Emeritus Pope Benedict XVI unfortunately.

14 There was a rise in offending during the 1950s, into
15 the 1960s, the 1970s and the first part of the 1980s, and
16 later on we'll talk about why. But let us think about
17 why there was this rise.

18 There was greater access to vulnerable children in
19 the aftermath of the Second World War, where there were
12.20 20 increased numbers of such children in orphanages,
21 including migrant children as well and children who were
22 orphaned, abandoned and displaced as a result of the
23 Second World War and wartime dalliances, let us say.

24 There was a marked increase in the Catholic
25 population in the migrant receiving countries such as
26 Australia. So, there was pressure on the Bishops to fill
27 vacant parishes as the Catholic population expanded and
28 they sometimes ordained less than suitable priests who
29 simply should not have been ordained. And there was
12.20 30 remarkable irresponsibility in rejecting the advice of
31 seminary staff.

32 There was a changing lifestyle of the priests, the
33 proliferation of one-priest presbyteries from the 1960s,
34 the greater and easier mobility with access to cars from

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1 1930s by the priests and, as a consequence, less
2 monitoring of priestly activity and less accountability.

3 Also there was an increasingly positive image of the
4 Catholic priesthood and that attracted young members who
5 were prepared to accept mandatory celibacy as part of the
6 priesthood package without fully understanding the
7 commitment. There was greater access to children through
8 the growth of schools, youth clubs Boy Scouts etc.

9 And also greater turbulence in the church
12.22 10 immediately and during the Second Vatican Council which
11 may have had unsettling effects upon priests. And there
12 was the impact of sexual revolution but I think that's
13 just one factor.

14 Lastly, there was a deep rejection by the Catholic
15 faithful of the church's theology of sexuality based on
16 the interlinking of sexuality and procreation, following
17 the Humanae Vitae and its condemnation of artificial
18 contraception, with the result the church was unable to
19 offer a credible and acceptable theology of sexuality, a
12.23 20 situation that still exists today.

21 Q. To try and help us understand how and why clerical abuse
22 of children occurred, you've actually identified what you
23 call a constellation of features and you have five of
24 those. You will set out (a)-(d) and then Dr Wilkinson
25 will talk to (e).

26 **EMERITUS PROFESSOR CAHILL:** Let's begin with the
27 psychosexual abnormalities and situational factors.

28 Our reading of the literature points to the central
29 conclusion that young and vulnerable Catholic children,
12.23 30 especially boys, were in danger and at risk in the
31 presence of psychosexually immature, psychosexually
32 maldeveloped and sexually deprived and deeply frustrated
33 male priests and male religious, especially those who had
34 not satisfactorily resolved their own sexual identity.

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1 Psychosexual maldevelopment was usually, not always,
2 but usually associated with the religious perpetrators
3 themselves being sexually abused during their childhood,
4 and this occurred to about one-third of the priest
5 perpetrators. And the notorious Australian serial priest
6 offender Gerard Ridsdale was abused by his uncle, his
7 cousin and a religious offender.

8 This offending behaviour was also mediated, and I
9 know this is complex, but it was mediated by a set of
12.25 10 cognitive and emotional distortions, denial mechanisms
11 and neutralisation techniques. And behind that, were the
12 theological ideas of a patriarchal idea of God that
13 lacked intimacy and closeness in their spirituality.

14 There was a sacrificial theology of priesthood based
15 on their own divine calling as priests and brothers.

16 There was the flawed theology of sexuality that I've
17 referred to.

18 And as well as that, there was a set of
19 psychological realities, unresolved sexual identity, an
12.26 20 ungrieved loss of sexual intimacy in their celibate
21 commitment and overwhelming feelings of emotional
22 loneliness.

23 As well as that, I'll draw on the German study that
24 they were often in stressful situations. Firstly, a
25 general sense of overburden with official duties or
26 problems in their ministry, isolation and loneliness,
27 substance abuse, alcohol, medicines, illegal drugs,
28 inadequate social skills, particularly interacting with
29 parishioners due that immaturity, particular stress or
12.27 30 changes or difficulties related to their personal
31 circumstances, such as financial problems, illness or
32 caring for or death of relatives.

33 This issue of sexual identity raises the whole issue
34 of confusion or denial about those with a homosexual

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1 orientation and their training and operating in a
2 profoundly homophobic church environment.

3 There's little psychological evidence that the
4 priest and religious offenders were suffering from
5 psychotic illnesses. In fact, most of the offenders were
6 talented and attractive men, and they are better educated
7 and had higher IQ than the normal child sex offender.
8 They came from intact families. But there was evidence
9 of a pattern where discussion of sex in the family was
12.28 10 taboo, where the father was generally distant and aloof,
11 perhaps alcoholic or physically abusive, while the mother
12 was a smothering mother, perhaps vicariously covering up
13 her own unhappiness through her son whose priesthood
14 boosted her image and the social status of the family.

15 Now, the issue of homosexuality is important to
16 raise because traditionalist Catholics are basically
17 saying that this whole tragedy is due to homosexuality
18 and the solution is to get rid of all gay priests.

19 Now, Catholic moral theology has always insisted
12.29 20 that homosexual behaviour is intrinsically disordered,
21 based on scripture and on natural law theory. That says
22 that human sexuality is principally about penetration and
23 procreation. There's no Biblical evidence to support
24 that. Whereas, condemned in the Bible is generally about
25 gay prostitution, particularly in temples.

26 Of course, the issue of homosexual behaviour was
27 developed over centuries well before the emergence of
28 concepts such as sexual orientation, sexual preference
29 and same-sex attraction. The traditional Catholic
12.30 30 tradition was not complemented by a relational ethic.
31 And comprehensively rejects the experience of gay people.
32 Now the church has increasingly accepted the presence of
33 conscientious gay people but the official Catholic
34 position is still that all gay people have to live lives

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1 of enforced celibacy without sexual expression, through
2 the virtues of self-control and self-mastery.

3 The final report of the Australian Royal Commission
4 stressed that current, "Vatican documents that link
5 homosexuality to child sex abuse by clerics are not in
6 keeping with current understandings about healthy human
7 sexuality."

8 And this report and every other report intrinsically
9 insists that homosexuality is not the cause of the sexual
10 abuse of children. There are many well integrated and
11 mature gay priests who do not abuse children.

12 Let us now go on and try to enter the mind of the
13 perpetrator. This is difficult for us.

14 We find that the offending, the thinking of the
15 offenders was much more distorted than those of the
16 non-offending priests and brothers.

17 As well, their mechanisms of denial and their
18 techniques of neutralising and ensuring the silence of
19 the child victims had a religious overlay.

12.33 20 Now, with the "normal", if that's the right word,
21 the child sex offender, their cognitive distortions say,
22 "oh well, having sex with children is a good way for
23 adults to teach them about sex". But with religious
24 offenders there's another layer which is driven by
25 psychospiritual and theological factors and by the
26 offender's wilful deliberate suspension of their own
27 moral standards.

28 So, the ~~se~~'s rationalisations ~~were~~is, "When God
29 called me, he knew what I was like, what my needs were",
12.33 30 "I have a right to love and affection because I spend my
31 life doing good for others" and "God will look after this
32 particular child and see that it comes to no harm; it
33 will have its special protection".

34 Now, these distortions we find from the two best

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1 studies that the offenders blamed their behaviour on
2 things like alcoholism, mental health problems, their
3 parents, their need for intimacy, their sexual
4 orientation. And so, their denial leads to more denial.

5 Now, I want to give an example from the Queensland
6 report which is an example of the gross misuse of
7 spiritual power. And this is a young victim speaking,
8 this is what he said:

9 "Father told me it wasn't a sin as I was one of
10 God's chosen children and that God made boys to be
11 special so that those who did God's work were not led
12 into the temptation of sinning with women. I was told by
13 him that I was to say nothing to anyone because God would
14 be very angry with me for revealing his secret ways."

15 The second factor -

16 Q. On that sobering note, you then go on to talk about
17 access to children and that situational opportunity that
18 permits that to occur?

19 **EMERITUS PROFESSOR CAHILL:** Yes, as part of this jigsaw.
12.36 20 There's a fairly direct correlation between
21 religious offending and access to children because
22 there are some religious orders that have no access
23 to children and the rate of offending is nil or
24 extremely low.

25 But the unfortunate reality is that access to
26 children, particularly vulnerable children, has grown
27 immensely over the last two centuries in particular. One
28 was the growth in educational opportunities for children,
29 the massification of education for children and that led
12.36 30 to the founding of many male and female teaching
31 religious orders. It led to the ~~formation~~ of formation of
32 the Catholic schooling system which is quite extensive in
33 many countries. But I do want to say ~~publically~~ publicly
34 at this point in time, that certainly in Australia, and I
am sure

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1 it's true also in New Zealand, that Catholic schools are
2 now very safe institutions because they have brought in
3 proper protocols; and secondly, they are staffed almost
4 100% by laymen and lay women.

5 Alongside this schooling expansion was the
6 development of residential schools and I think we've
7 talked enough about that. We know from the Dutch study,
8 that there were many orphan children after World War II.
9 In fact during World War II and the Dutch Bishops were
12.38 10 aware of this issue in the 1940s.

11 And then there was a point about some countries
12 introducing the foster care strategy.

13 The John Jay report says 40% of the abuse occurred
14 in the priest's residence. In the residential care,
15 often the offender's bedroom was next to the dormitory of
16 the children and so, the child would be dragged into that
17 bedroom, often as a punishment for something the child
18 may have done during the day.

19 The other thing was the Child Migration Programme,
12.38 20 which I've already mentioned, and according to the
21 current UK Inquiry, only 549 children were sent to
22 New Zealand, although I'm not totally convinced of that
23 figure. Just over 6,000 were sent to Australia. It was
24 a well intentioned but badly monitored programme and the
25 British Government knew its flaws in the 1950s.

26 Q. Then you talk about the flawed response of the Bishops
27 and other religious leaders to the findings of sexual
28 abuse or complaints of sexual abuse.

29 **EMERITUS PROFESSOR CAHILL:** Thank you, madam counsel.

12.39 30 One thing that strikes anyone who looks
31 systematically at this, is the startling uniformity
32 of the response of the Catholic Bishops in every
33 country. And any report, including the Australian
34 Royal Commission, have heavily criticised the

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1 Catholic Bishops, their failures, their deliberate
2 attempts to cover up the abuse which is all
3 embedded in the secrecy and secretiveness at the
4 heart of Catholic governance, and little has
5 changed.

6 During the 20th Century, more and more secrecy
7 provisions were imposed, beginning with the secret of the
8 Holy Office in 1922 and later the pontifical secret
9 because with the development during the 20th Century of
12.41 10 radio transmissions, newspapers, television,
11 investigative journalism, now with the social media and
12 so on, the Holy See became increasingly fearful of public
13 scandal because it and the diocese bishops were all
14 fearful of scandalising the Catholic faithful.

15 So, they covered up to protect the image of the
16 Catholic Church as an all holy institutions but all
17 religious leaders do that.

18 Holy See was always concerned about the accused
19 priests and religious leaders would not receive a fair
12.42 20 civil trial but the Vatican showed no concern whatever
21 for the victims of the accused priests and their
22 families. And
23 they used veiled speech and mental reservations, and we
24 go into that in some detail in our longer presentation.
25 But Bbishops even kept his priests consultor in the
26 dark about why he wanted to shift this particular priest
27 or religious brother to another parish, to another
28 diocese, overseas or whatever, all in the good name of
29 protecting the reputation of the priest.

12.43 30 Now, we've called that, using a social psychologist
31 Albert Bandura who is trying to understand why is it good
32 men do bad things? And why much destructive behaviour
33 has been perpetrated by people such as bishops, and he
34 was looking at the Vietnam War, and how that's been done
in the name of righteous ideologies, religious principles

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1 and nationalist frameworks. And we go into some detail
2 about that and how that process operates through very
3 questionable moral justification, exonerating social
4 comparisons and using euphemistic labels, the offending
5 priest is having health problems, other phrases like
6 that.

7 So, that meant the Holy See officials, the diocese
8 and priests, the leaders of religious orders, could
9 minimise their role in causing harm to the victims and
12.44 10 their families through the defusion and displacement of
11 responsibility.

12 And as Bandura states:

13 "The triumph of evil requires a lot of good people
14 doing a bit of it in a morally disengaged way with
15 indifference to the human suffering they have
16 collectively caused".

17 **MS JANES:** Chair, that might be a good time to give the
18 witness' voice a rest and also to take a break.

19 **CHAIR:** We have reached a convenient point on page 16 of
12.45 20 the brief. I think we all agree this is a suitable
21 time to take the luncheon adjournment. Madam
22 Registrar, would you please adjourn the sitting?

23

24 **Hearing adjourned from 12.45 p.m. until 2.15 p.m.**

25

26 **MS JANES:**

27 Q. Professor Cahill, prior to the lunch break, you were just
28 about to move on to the next section, which was the
29 cultural and praxis factors on page 13 of your brief.

14.19 30 A. Thank you very much, madam counsel. We are onto the
31 fourth of the five factors and Peter will deal with the
32 fifth.

33 It is necessary to understand the cultural and
34 praxis factors operating in an institution. And the

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1 Australian Royal Commission listed the following cultural
2 risk factors in institutions caring for children, whether
3 they're schools, orphanages or whatever residential care
4 institutions, whether they're government based ~~or~~ State
5 based.

6 Firstly, a lack of understanding or awareness of
7 child sexual abuse or its possibility.

8 Secondly, failure to listen attentively and
9 sensitively to children, especially when they are
14.20 10 attempting to disclose.

11 Failure to educate children about healthy and
12 appropriate sexual development.

13 The prioritisation of institutional reputation over
14 the safety of children and the harm done to them.

15 Cultivation of a culture of secrecy and isolation.

16 Failure to see prevention of child sexual abuse as a
17 shared responsibility for all staff.

18 Failure to address racism and prejudice in an
19 institutional culture.

14.21 20 And lastly, normalisation of harmful practices.

21 From the Australian report, we know that for the
22 Anglicans, the problems were in the church of England
23 Boys' Society and in their secondary schools,
24 particularly boarding schools.

25 And for the Anglican's, the Royal Commission said
26 their risk factors included:

27 Weaknesses in structure and governance preventing a
28 consistent approach.

29 The role of the bishops and failures of leadership.

14.21 30 Conflicts of interest for bishops and other
31 office-holders.

32 Cultural issues, including forms of clericalism.

33 The practice of forgiveness and confession.

34 And lastly, inadequate screening, selection,

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1 training and supervision of people in ministry.

2 For the Catholic Church, the contributing factors
3 were:

4 Individual pathology, factors I mentioned this
5 morning.

6 Clericalism in all its facets.

7 Monarchical and feudal aspects of

8 ~~Governments~~governance, including lack of transparency
9 and accountability of those in leadership and the lack
10 of any meaningful participation of the laity especially_
11 for women.

12 Lack of leadership, including poor education for
13 leadership.

14 The failure of canon law and its secrecy provisions.

15 The poor selection, screening and inadequate initial
16 formation of priests.

17 Celibacy and the associated sexual dysfunction as
18 the linchpin of the clericalist system.~~element~~

19 The lack of oversight, support and ongoing training
14.23 20 of priests and religious.

21 And lastly, the practice of the sacrament of
22 confession and its cheap forgiveness which allowed
23 perpetrators to minimise the impacts of their sexual
24 abusing.

25 The ~~S~~salvation Army were criticised for the
26 questionable environment of its residential institutions
27 with poor resourcing, the hierarchical leadership, the
28 devaluing of children and its ~~types~~ of muscular
29 Christianity.

14.24 30 The Jehhovah Witnesses were criticised for the
31 absence ~~lack~~ of women from their decision making
32 processes, their separateness from the world and their
33 two witness rule which maintains a person can only be
34 sanctioned if the sexual abuse has been observed by two
witnesses, this is based on Deuteronomy 19, 15.

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1 As we look at the report, I think itwe should
2 have given more attention to whistle blowing. It
3 showed not much interest in historical-restorative
4 justice, which is not strong in Australia. And a
5 failure to advocate for a healing strategy.

6 And an organisation called For the Innocence Support
7 has produced a healing strategy for the - although it's
8 directed at the Catholic Church. And its 22 strategies
9 incorporate a lot of things from the Royal Commission's
10 recommendations. But it would envisage the appointment
11 of chaplains for survivors, Gardens of Healing,
12 particularly in the hotspot parishes where much abuse
13 took place, and contritional eucharists.

14 Q. Just before you move on, are you able to confirm what the
15 status of the Hearing Strategy is at this point in time?

16 **EMERITUS PROFESSOR CAHILL:** It has no status. It's been
17 sent to every Catholic Bishop twice now. We get
18 responses from a handful. To what extent they're
19 implementing it varies, I think, across Australia
20 because the response is more diocesan based than
21 nationally based, although now you do have a
22 Catholic Professional Standards body but that's
23 focused on redress.

24 Madam counsel, I would like now to move on to
25 looking at secretive clericalism, the culture of
26 secretive clericalism.

27 The term is often used and everyone says it's bad
28 but it's not always defined. The Australian Royal
29 Commission called upon I think the world's foremost
30 expert in clerical sex abuse, Dr Thomas Doyle who was
31 mentioned this morning, a Dominican priest and canon
32 lawyer who was working in the office in 1984 in
33 Washington. And he noticed all these cases coming across
34 his desk and he wrote a report that went to Pope John

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1 Paul II and nothing happened, so that led.

2 He's identified the following elements of the
3 culture of clericalism:

4 The vocational belief that all priests are unique
5 and special because of the supernatural effects of
6 priestly ordination and that links up with the idea that
7 a priest upon ordination is ontologically -
8 ~~ecclesiastically~~ changed and that is a very questionable
9 theoretical concept.

14.27 10 Secondly, consciousness of a special bond of
11 solidarity that exists among all priests and bishops
12 because of the sacred nature of ordination.

13 Priestly authority which is derived from their role
14 as sacramental Ministers ~~and~~ not necessarily connected
15 to their office as priests.

16 The public perception of priests as men set apart
17 and entitled to deference because of their special
18 calling and they're entitled to respect and credibility
19 because of their priesthood, not because of their
14.28 20 personal competences.

21 Life as celibates in a ~~home~~ social environment
22 where they interact with women and married people but
23 their essential living environment is all male, with~~there~~
24 ~~are~~ no truly intimate relationships allowed.

25 Priests are part of a monarchical culture that is
26 hierarchically stratified and which creates a clerical
27 aristocracy.

28 Priests have a high degree of discretion in their
29 behaviour and a very low degree of supervision and
14.29 30 accountability.

31 Priests' official dress which sets them apart and
32 when exercising their official ministry at mass and
33 other sacramental celebrations, they are the central
34 focus of rituals that are generally medieval in nature.

The Royal Commission then went on and talked about

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1 similar things, and I won't go through these in the
2 interests of time and you will appreciate that, but I
3 just want to focus on a few things.

4 One is I bring forward the concept from centuries
5 old theology of the church as a *societas perfecta*, a
6 perfect society and how damaging that was in the
7 development of the theology of priesthood and the
8 hierarchy.

9 The other point I want to point out is also the
10 obligation of mandatory celibacy for Latin right priests.

11 In the very complex Catholic church, you have 23
12 eastern Catholic churches like the Ukrainians, the
13 Maronites and the Melkites.

14 And we know from the Canadian and American data,
15 that in these eastern churches where priests are allowed
16 to marry, there's always been married priests in the
17 Catholic Church but not in the Latin right. In those
18 eastern Catholic Churches, there was virtually no
19 offending, no offending.

14.31 20 And so, the Commission found that compulsory
21 celibacy was a contributing factor but not the cause.

22 So, I think we'll now go on to the next part and
23 it's time for Peter.

24 Q. Dr Wilkinson, thank you, and you're going to be speaking
25 to the Commission about the pre-service and in-service
26 training aspects.

27 **DR WILKINSON:** Thank you, Ms Janes. This Royal
28 Commission is looking at historical sexual abuse
29 and the Australian Royal Commission found that most
14.32 30 of the historical abuse occurred in the period of
31 the 1950s through to the 1980s.

32 So, in order to give you a better understanding of
33 the formation programme, what I'm going to talk about
34 most is the formation programme for priests being formed

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1 in the period prior to that or in the period during the
2 time when the abuse was mostly taking place.

3 I'll say a few words about the programs, current
4 programs, but the essential focus will be on the
5 formation programs for the priests who were abusing in
6 that historic period.

7 The literature on the screening of candidates for
8 the priesthood and religious life, I am making the
9 distinction there between the priesthood, the diocesan
14.33 10 priesthood and the religious priesthood. That's priests
11 working in diocese that are incarnated into a diocese
12 that don't take the vows of poverty, chastity and
13 obedience but they do make a promise of celibacy.
14 Whereas, the religious priests and brothers and sisters,
15 they take a vow of poverty, a vow of chastity and a vow
16 of obedience. But I'll talk about both of them in the
17 same address as it were.

18 The literature concludes that the selection and
19 screening processes for young people, and we're talking
14.34 20 essentially about young people, wishing to enter a
21 seminary or officiate or juniorate, those processes were
22 inadequate and often defective.

23 The 1917 Code of canon law, this is a code of church
24 law, and this is the first Code for the Latin Church, was
25 put together in 1917. In that Code, there are canons
26 that specifically talk about who should be selected and
27 how they should be formed.

28 Canon 1354 says that bishops should recruit
29 adolescents for training for the clerical state, that's
14.35 30 for the priesthood. And that they should establish two
31 kinds of seminaries, a minor seminary for younger boys
32 and a major seminary for older boys.

33 Now, in Australia we had just one minor seminary and
34 I understand that in New Zealand you also had one minor

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1 seminary in Christchurch.

2 The Code's screening requirements were focused
3 mainly on the candidate's legitimacy of birth, prior
4 reception of the sacraments, baptism and confirmation and
5 known adolescent life and morals. The prevailing policy
6 was to recruit young boys, and girls if they were going
7 to be religious sisters, showing signs of what was
8 usually called a 'vocation'.

9 And to recruit them as early as possible before they
10 were humanly and sexually mature, and to admit them to a
11 seminary or a religious junior at or owe vitiate to
12 "protect them from the contagion of the world". That is
13 canon 1353.

14 This policy continued the policy adopted by the
15 Council of Trent in the mid 70s which called for young
16 boys from the age of 11-12 years, preferably young poor
17 boys, to be trained in piety and religion before habits
18 of vice took possession of them.

19 At such a young age, proper screening is nigh
14.37 20 impossible, so the real screening was assigned to the
21 seminary formators who, as time passed, and we're talking
22 about considerable time, years, were expected to dismiss
23 "the disruptive, incorrigible and unruly candidates;
24 candidates whose lifestyle and characteristics seemed
25 unsuitable for the ecclesiastical state; those not
26 progressing well in their studies or likely to; and above
27 all, those who offend against good morals and faith".

28 Many of the 27 Australian and international reports
29 that we studied in our review on child sexual abuse
14.38 30 expressed serious misgivings about the screening
31 processes, as well as the use of personality tests which,
32 while they might identify certain personality defects,
33 could not provide a fully accurate assessment of a young
34 candidate's capacity for chaste and celibate living.

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1 Once admitted to the seminary or the religious house
2 of formation, the candidates were placed in the hands of
3 priest or religious formators, for their spiritual,
4 intellectual and disciplinary formation. Prior to the
5 90s, there was no mention of human formation. The
6 formators were meant to be the best people available and
7 professionally trained in their respective fields,
8 particularly philosophy, theology, scripture, canon law,
9 liturgy and spirituality. Sometimes they were not.

14.39 10 For priest candidates, the major seminary programme
11 lasted for a minimum of 6 years, at the end of which the
12 rector or superior of the formation house was responsible
13 for advising the Bishop on each candidate's suitability
14 for ordination. And occasionally, as Des mentioned, some
15 bishops did not take that advice and ordained candidates
16 who were unready or unsuitable.

17 Canon law also warned of the danger of accepting
18 seminarians dismissed from other seminaries and Des
19 mentioned that about the e recycled seminarian, and
14.40 20 some Bishops were also lax in this area and did not take
21 the necessary screening precautions. Iit created a
22 problem and that problem was specifically addressed in
23 1996 with a Holy See instruction but it appears it has
24 reemerged.

25 Instructions have also been issued on screening of
26 candidates with homosexual tendencies in 2005 and
27 Guidelines For the Use of Psychology in Seminary
28 Admission and Formation in 2008.

29 The 2005 document on homosexuality was interpreted
14.41 30 by some as suggesting that homosexuality was tied to the
31 sexual abuse of children and Professor Cahill has
32 addressed that in his presentation.

33 In many respects, priests and religious were not
34 well served by the pre-Vatican II formation programme.
The curriculum was heavily intellectualised and
rationalistic with lectures often given in Latin and
Latin textbooks used. The content and teaching
methodology was

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1 scholastic and favouring the text of the 13th Century
2 theologian St Thomas Aquinas.

3 The principles of competency-based and
4 work-integrated learning were not integrated into
5 seminary ~~learning-teaching and curriculum~~ until recent
6 times, and there was a serious mismatch between
7 competencies and capabilities, particularly in respect
8 of the knowledge, skills and attitudes required by a
9 priest for effective parish ministry.

14.42 10 Until the 1970s, Catholic seminaries and religious
11 houses of formation were usually situated in isolated
12 rustic settings, outside urban ~~centres~~ areas, and often
13 cut off from secular culture and the dangers of female
14 interaction.

15 They were segregated, regimented and all celibate
16 places, where the regime was obedience to the 'rule' and
17 superiors, and conformity to the system.

18 The rules ~~was~~ ~~ere~~ essentially based on the rules
19 drawn up by St Charles Boromao of Milan in the mid 16th
14.43 20 Century.

21 Yet, they were generally happy places, filled with
22 the natural exuberance of youth and they were places of
23 innocence and youth infused with a spirit of generosity.
24 And for all their shortcomings, they did produce many
25 good competent and pastorally minded priests.

26 More serious were the deficiencies in the spiritual
27 and psychological formation for healthy and mature living
28 of a celibate life.

29 Candidates for the priesthood and religious life
14.44 30 were also inculturated into a clericalist ethos. Des has
31 spoken about that, where priestly and religious holiness
32 were seen as superior to lay holiness. And the 1917 Code
33 stipulated, "Clerics must lead an interior and exterior
34 life holier than that of laity", canon 124. And the
Council of Trent decreed that consecrated virginity was a

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1 higher calling than marriage because of the sacrificing
2 of sexual intimacy.

3 Preparation for celibate living was minimal and
4 usually entrusted to priests who lacked special training.
5 Celibacy, as Des has already mentioned, was simply part
6 of the package and it was presented in terms of sacrifice
7 to a higher ideal of sexual purity in imitation of the
8 celibate Jesus Christ. Serious discussion of sexuality
9 never happened and the psychological aspects were
14.45 10 completely ignored.

11 In the pre-Vatican years and even for decades after,
12 though much of the formation programme was the same in
13 every seminary because it was a systemic programme set
14 down in canon law, each seminary or house of religious
15 formation did its own thing, resulting in much
16 duplication, fewer resources because many of the
17 seminaries were very small and poorer educational
18 outcomes. It has changed however in recent years.

19 Following the second Vatican Council in 1962-1965,
14.45 20 serious efforts were made to reform, update and
21 contextualise priestly formation. Between 1965 and 2019,
22 over 40 official documents addressing priestly formation
23 were issued by the Holy See. The most notable being Pope
24 John Paul II Apostolic Exhortation on Priestly Formation
25 in the present circumstances. The Latin name of the
26 document is Pastores dabo vobis. The other documents
27 were the Fundamental Programme For Priestly Formation,
28 first published in 1970 and revised in 2016 and the
29 Directory on the Ministry of Life of Priests, first
14.46 30 published in 1994 and revised in 2013.

31 These documents have been augmented by others,
32 developed by local episcopal conferences to ensure that
33 the fundamental programme with its key principles is
34 suitably adapted to the local social, religious and

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1 cultural context of the particular country, such as
2 Australia or New Zealand, where the programme is used.

3 In Australia, the national programme for priestly
4 formation was developed by the Australian Catholic
5 Bishops Conference in 2007 and revised in 2016. The
6 New Zealand Catholic Bishops Conference has produced a
7 similar document which I understand has recently been
8 sent to the Holy See for approval. It includes a Ratio
9 Studiorum curriculum, if you like, and follows the
10 emphasis on priestly identity and formation for
11 priesthood from the perspectives of human, spiritual,
12 intellectual and pastoral formation. One must assume the
13 document addresses the contemporary issues which
14 challenge priests in New Zealand and which challenge
15 their ministry.

16 **CHAIR:** Can I intervene to ask you to just slow down a
17 little so that the signers, as well as the
18 stenotyper, can keep pace with you?

19 **DR WILKINSON:** Thank you, Mr Chair. I would also assume
20 that the prevention of child sexual abuse would
21 have to be included in that national programme as a
22 challenge to be included.

23 If I may talk now about the source of priests.
24 During the 19th and early 20th Century, the churches in
25 both Australia and New Zealand relied heavily on priests
26 and religious brothers and sisters imported from churches
27 outside both of those countries, mainly from Ireland and
28 from European countries. In the last two decades,
29 certainly in Australia, that reliance on priests and
30 religious from overseas has reemerged, except now it is
31 mainly Asian churches that are supplying the needed
32 priests and religious for the needs of both Australia and
33 New Zealand.

34 In Australia, local seminaries and locally-born

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1 seminarians did not appear in significant numbers until
2 the 1930s. At that time, there were just 7 seminaries,
3 and then in 1940 there were 30, in 1960 there were 39.
4 And in the 1970s, they peaked at 43 seminaries and houses
5 of formation.

6 Seminarians, both diocesan and religious, number
7 just 200 during the 1920s, rose to 622 in 1940 and peaked
8 at almost 1400 in the mid-1960s.

9 Since 1970, the number of seminaries has decreased
10 from 43 to 15 and seminarian numbers have fallen from
11 1400 to just 302 at the end of 2017.

12 Moreover, at the end of 2017, more than half of all
13 the diocesan seminarians were born outside Australia,
14 mostly in Vietnam, Philippines and several African
15 nations, and an even greater proportion of religious
16 seminarians are from overseas.

17 In New Zealand, the data shows there were 4
18 seminaries in the 1950s and from a low base in the 1940s
19 seminarian numbers grew rapidly to peak at 335 in 1954.
20 Currently, there are just two seminaries remaining and a
21 total of 26 seminarians, 21 diocesan and 5 religious.

22 Q. Just to confirm, that is a change in the numbers from
23 what's in the document by one?

24 **DR WILKINSON:** Thank you.

25 Q. Professor Cahill, you've identified that there has been a
26 decline in sexual abuse since the 1980s and outlined ten
27 reasons for that. Can you summarise those now, please?

28 **EMERITUS PROFESSOR CAHILL:** Thank you. It has declined
29 but I want to insist that offences are still being
30 committed, as we shall see.

31 But the reasons for the decline are, I think the
32 high and sustained public visibility given to the issue
33 since the 1980s, particularly through the media
34 attention, this has been a mitigating impact.

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1 The better child protection mechanisms now in place,
2 including through State legislation.

3 The greater vigilance of Catholic parents and church
4 employees.

5 The declining number of active priests over the past
6 four decades and the associated aging of the remaining
7 group.

8 The dismissal of many at-risk priests and religious
9 brothers.

14.53 10 The almost total collapse of the altar-boy system.

11 Substantial decline in the number of Catholics who
12 regularly make a confession.

13 The closure of the majority of Catholic boarding
14 schools, farming schools, orphanages and other
15 residential institutions.

16 The reduced interaction of students with Catholic
17 priests in Catholic schools which have become much more
18 professionalised, as I was saying earlier, and more run
19 by lay people.

14.54 20 And the partial reform of the selection processes
21 that Peter has been talking about.

22 The Catholic Church has only, in Australia it's only
23 belatedly followed Catholic churches in other comparative
24 countries by putting in place safeguarding mechanisms in
25 every parish and by setting up better monitoring and
26 training mechanisms, or by establishing special
27 initiatives such as hotlines and helplines, as in
28 Germany.

29 We'll come back a little later on to the precautions
14.55 30 that have been put in place in the Ireland, UK and the
31 US.

32 Now I would like to move on to, if I may, providing
33 transformed care in faith-based institutions, and the
34 recommendations of the Australian Royal Commission.

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1 I'll skip over a lot of the detail but I want to
2 emphasise the points, the points which I see as
3 important. The Australian Royal Commission made 58
4 recommendations pertaining to religious institutions.
5 And this has all happened within the establishment of the
6 National Office of Child Safety which last year was
7 placed in the Department of Prime Minister and Cabinet.

8 It recommended that all religious bodies, with all
9 their institutions, should adopt the 10 Child Safe
14.56 10 Standards and work closely with State and territory
11 oversight bodies.

12 So, those religious agencies will have to report
13 their compliance to the National Office, as well as to
14 the religious institution itself, and that all religious
15 leaders must be provided with leadership training in
16 child safety and mechanisms in place for regularly
17 receiving additional professional expertise. And they
18 need to be accountable to an appropriate authority, as
19 well as a provision for managing conflicts of interest.

14.57 20 Any institution with children in its care should be
21 provided with age-appropriate prevention education for
22 the children, including about the power and status issue.
23 And family and community should be involved in commenting
24 and evaluating child safety policies.

25 They further went on and looked at all candidates
26 for religious ministry. They should have an external
27 psychological testing, not in-house. And they've
28 undergone training that equips them with the
29 understanding of the ten standards and about ethical and
14.58 30 boundary issues and how to work with children and
31 understanding the impact of child sexual abuse.

32 And that all people in ministry should have
33 effective management and oversight with regular
34 appraisals and with independent professional supervision.

- 1099 -

1 They particularly focused on the point that Peter
2 was making about priests coming from overseas and
3 seminarians coming from overseas to work in religious
4 ministry and there's about 2000 of those coming to
5 Australia each year for all religious communities and
6 that they should need to be properly screened, trained
7 and professionally supervised and undergo regular
8 training.

9 Another point they made about sacramental confession
10 which pertains to Anglican, Catholic and orthodox
11 churches, if a child is making a confession it should be
12 done in an open space with a clear line of sight from
13 another adult, as well as the priest hearing the
14 confession.

15 There are other recommendations about handling of
16 complaint and removal from ministry, including permanent
17 removal from ministry of anyone who's convicted.

18 And then recommendation 16.57 deals with the
19 situation where a person, a religious person or a lay
15.00 20 person, has been convicted of child sex abuse, has been
21 released from jail, if jailed, and then comes back in a
22 normal way with the particular parish or local community,
23 and how there needs to be a risk management plan put in
24 place for such people, and that there should be a
25 National Register for each religious organisation.

26 Five recommendations applied particularly to the
27 Anglican Church regarding a uniform episcopal standards
28 framework that ensures the accountability of bishops to
29 an appropriate authority. In other words, they can't be
15.01 30 King of their own castle.

31 The management of actual or perceived conflicts of
32 interest, the amending of a Code of Conduct for lay
33 people to incorporate offending against children. The
34 church should adopt a national approach to the selection,

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1 screening and training of ordination of candidates and
2 ensure that all in pastoral ministry undergo mandatory,
3 regular professional development, mandatory professional
4 supervision and regular performance appraisals.

5 The Australian data highlighted that child sexual
6 abuse and its mishandling by the Jehovah's Witnesses'
7 elders which included some family abuse cases, was a
8 serious problem and this has been confirmed in a recent
9 UK study done by the Independent Inquiry over there where
10 in a study 11% of all victims of religious perpetrators
11 belonged to the Jehovah's Witness faith.

12 The Australian Commission recommended they abandon
13 their two-witness rule in ~~such~~^{two} cases, involve women
14 in assessing allegations and no longer require its
15 members to shun those who have basically been
16 whistleblowers.

17 The Royal Commission conducted one case study of
18 Jewish Yeshiva congregations making one recommendation
19 that all ~~Jewish-religious~~ institutions should ensure
20 that their complaint handling policies explicitly state
21 that the halachic concepts of mesirah, moser and loшон
22 horo do not apply to the communication and reporting of
23 allegations of child sexual abuse to Police and other
24 civil authorities.

25 There were 21 recommendations in respect of the
26 Catholic Church. 8 of those were to do with
27 technicalities with regard to common law, and I won't go
28 into the detail except to mention that one is asking the
29 Vatican authorities to redefine a minor from someone aged
30 from 14 and under, to someone aged 18 and under. The
31 Catholic Church still allows girls of 14 and boys of 16
32 to enter into a marriage if their parents approve. And
33 this is an issue about the age of marriage and child
34 marriage which is an issue especially in the developing
world.

- 1101 -

1 Another major recommendation was for the Australian
2 Catholic Church to conduct a national review of
3 governance and management and that has now
4 ~~commenced~~commenced, and we're impressed by its
5 membership.

6 The Commission expressed concern about the quality
7 of bishops and their decision-making capacity.

8 So, it's asked the Australian Catholic bishops to
9 request the Holy See to publish its criteria for the
15.05 10 selection of bishops and establish a transparent
11 appointment process. Nothing has happened. We've heard
12 no word of that.

13 The Royal Commission came to the conclusion that
14 mandatory celibacy was a contributing factor and it
15 requested the bishops to allow voluntary celibacy for
16 diocese and priests.

17 There was also a series of recommendations about
18 guideline documents and current models of initial
19 formation.

15.06 20 I now would like to move on to Catholic safeguarding
21 initiatives.

22 Q. Just before you do that, for anyone who is interested in
23 reviewing all of the recommendations, can you confirm
24 that the 17 volumes of the Australian Royal Commission
25 are available online and those specifically relating to
26 religious institutions are also there?

27 **EMERITUS PROFESSOR CAHILL:** Yes, they are all there.

28 Q. Thank you. We will move now onto safeguarding.

29 **EMERITUS PROFESSOR CAHILL:** Yes. In our review across
15.07 30 the countries outside Australia, I think the three
31 models of safeguarding that this Royal Commission
32 ought to look at, is the Irish, the UK and the USA,
33 and there's more detail in our document. But I
34 particularly want to focus on Ireland because
that's the model for the Australian one. In many

- 1102 -

1 ways it's a very good one but there are other ones
2 but that's the one I'm focussed on.

3 The Catholic bishops in Ireland which covers
4 the Republic and Northern Ireland, establish the
5 National Board for Safeguarding Children in the
6 Catholic Church and its website is there and you
7 can follow all this if you wish.

8 They establish the Towards Healing process, the
9 counselling and support service and one principal focus
15.08 10 has been on the auditing of diocese and religious orders
11 which are published on the website.

12 By September 2015, it had completed 43 such audits
13 and it's now begun this year another round of audits.

14 And an interesting new initiative was to provide
15 training in good child safeguarding practices for those
16 Irish missionary priests and volunteers who are going to
17 work in overseas countries, in Africa and Asia, for
18 example.

19 Its 2018 annual report notes that it received 143
15.08 20 new notifications against priests and religious, which
21 were mainly of a historic nature.

22 It receives thousands of calls on its helpline and
23 provides face-to-face counselling. And its advocacy
24 service dealt with many different matters, including
25 connecting clients to services, financial, homelessness,
26 and educational services. And some of its clients are
27 engaged in restorative justice processes.

28 It meets regularly with the Irish Police and the
29 government child and family agency and provides training
15.09 30 for clergy, current trainers and volunteers. And it's
31 done two reviews also of its services.

32 In the UK, they have the National Catholic
33 Safeguarding Commission, this is there on its website.
34 In every parish, the UK has a safeguarding

1 representative, every parish.

2 Its 2018 annual report revealed that in 2017 there
3 were 152 new allegations and that is increasing, although
4 almost all of them are of a historic nature.

5 The US, which is obviously much bigger, its
6 Secretariat of Child and Youth Protection, you can find
7 it on the United States Catholic Conference of Bishops.
8 It's a bit hard to find but it puts out an annual report
9 and last year's June 2019 report, there had been a sharp
10 rise in allegations, 858, these were mostly historical
11 but there were 26 allegations made by those who are still
12 today minors, and 7 had been unsubstantiated.

15.11

13 So, I think there's a lot of material on those
14 websites.

15 Q. Thank you, Professor Cahill. Dr Wilkinson, turning to
16 you and the microphone, there are now a matter of some
17 special interest topics that you will address and
18 summarise, please.

19 **DR WILKINSON:** Thanks, Ms Janes. I would like to talk
15.11 20 about mandatory reporting and the seal of
21 confession.

22 Des has already pointed out the occurrence of child
23 sexual abuse by clergy and religious and lay persons has
24 been present in the Catholic Church since early times.
25 It has always been condemned, it has always involved
26 power and the abuse of power, it has usually been denied
27 and kept secret, and in recent times, has been viewed as
28 a sin, not a crime.

29 During the 20th Century, there was substantial
15.12 30 criminal child sexual abuse in the Catholic Church in
31 many countries, perpetrated by Catholic priests and
32 members of Catholic religious orders. The Holy See,
33 could I just explain the Holy See? The Holy See in
34 Catholic legal terms means the Pope and the various

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1 bureaucracies, it's called secastories, that serve the
2 Pope in the work that he does.

3 So, I'll use that term the Holy See. If I refer to
4 the Pope, that will mean specifically the Pope.

5 So, the Holy See, the highest authority in the
6 church, knew about the abuse during the 20th Century and
7 developed a range of legal instruments, including the
8 1917 and the revised 1983 Code of canon law, to construct
9 a wall of secrecy around the abuse, both past and
15.14 10 present, on the pretext that the church faithful needed
11 to be protected from grave scandal and grave offence and
12 that souls must not be harmed.

13 What the Irish and Victorian Parliamentary Inquiry
14 found, however, was that the whole legal construct was
15 designed essentially to keep the handling of abuse
16 in-house and to secure a systemic coverup on an
17 international scale in order to protect the reputation of
18 the church and to prevent perpetrators being held
19 accountable.

15.14 20 Rather than identifying and addressing the problem
21 openly and accountably, looking for the causes of the
22 abuse and seeking to eradicate them, the systemic coverup
23 arrangements ensured that local communities were kept
24 uninformed of the abuse that had happened, and was still
25 happening, allowed the perpetrators not to be held
26 accountable, and contributed to, even facilitated, more
27 abuse. And this happened particularly with the movement
28 of known abusers from one parish where the situation
29 became too hot and the priest was moved to another parish
15.15 30 or to overseas or to another diocese.

31 The arrangements were found to be derived from
32 dysfunctional governance, a culture of secrecy and
33 clericalism, and Des has already spoken about that.

34 In the church's effort to protect its own

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1 reputation, it often either entirely overlooked or gave
2 scant consideration to the welfare of the abused
3 children, the effect of the abuse on them and their
4 families, as well as their just entitlement to
5 counselling, compensation and redress.

6 As public awareness of these horrific crimes
7 committed by clergy and religious became widespread,
8 essentially through the media, various responses from the
9 Holy See emerged. One was a special grant for the
10 statute of limitation, it was extended to 10 years, and
11 the age of minors extended up to 18 years, first in the
12 US in 1994 and then in Ireland in 1996 and everywhere in
13 2001. In 2002 a special limited dispensation from the
14 pontifical secret was granted to the US to allow the
15 reporting of abuse allegations to civil authorities but
16 only in states with mandatory, civil mandatory reporting
17 laws.

18 In 2010, a document entitled, "A guide to
19 understanding basic CDF", CDF is one of the Holy See
20 congregations, called the congregation for the doctrine
21 and faith usually referred to as CDF, "Understanding of
22 their procedures concerning child sexual abuse
23 allegations".

24 And that guide stated, I quote, "Civil law
25 concerning reporting of crimes to the appropriate
26 authorities should always be followed".

27 So, for the first time in worldwide, the Holy See
28 was instructing that wherever civil jurisdictions had
29 reporting laws for child sexual abuse, allegations were
30 to be reported.

31 I'd just like to say something about the duty of
32 care. Before talking about mandatory reporting, let me
33 say that a duty of care is a well defined legal duty
34 placed on institutions to take reasonable steps to

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1 prevent and minimise the risk of child abuse within their
2 organisations. It also gives abuse survivors a clear
3 cause of action to commence legal action against an
4 institution for the abuse that they have suffered, even
5 with the institution having to prove or with the
6 institution having a prove that it did take reasonable
7 steps to prevent the abuse.

8 The Victorian Parliamentary report Betrayal of Trust
9 found that in the State of Victoria, offenders in
10 institutions often obtained credibility, trustworthiness
11 and easy access to children in the institution, with the
12 abuse facilitated by the trust relationship.

13 But the liability for the abuse was often unclear
14 and limited. So, the Parliamentary Inquiry recommended a
15 clear legal obligation for the institution to implement
16 appropriate measures to ensure the safety of children in
17 their care with the institution liable for the abuse by
18 any person associated with the institution.

19 So, where a child is found to have been abused, the
20 institution, including a religious institution, is
21 presumed to have breached its duty of care.

22 Mandatory reporting. In the Victorian Parliamentary
23 Inquiry, there was a distinction made between two types
24 of mandatory reporting. The first was mandatory welfare
25 reporting to the child protection authorities, and the
26 other is mandatory criminal reporting, the reporting of a
27 crime or credible evidence of a crime to Police.

28 Welfare reporting is for the protection of a child
29 at risk. Criminal reporting is aimed at catching,
30 prosecuting and convicting offenders. It is meant to
31 prevent the concealment of child sexual abusers. Child
32 sexual abuse is a crime, or perhaps we should say is
33 above all a crime, as well as a welfare issue.

34 The Catholic Church in Victoria was initially

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1 opposed to the extension of mandatory welfare reporting
2 laws to religious personnel but later accepted it, but it
3 did not want mandatory criminal reporting and has
4 consistently sought to ~~retain~~obtain the exemption for
5 information received during the religious right of
6 confession.

7 The Catholic Archdiocese of Sydney, however, has
8 stated "sexual abuse is a crime which must be reported to
9 the Police. The best way to investigate it is to report
10 criminal conduct to the Police". But in Australia prior
11 to 2015, New South Wales, of which Sydney is the capital,
12 was the only Australian jurisdiction with a civil
13 criminal reporting law.

14 In its evidence to the Victorian Parliamentary
15 Inquiry, the Victorian Police stated that mandatory
16 criminal reporting creates "a public duty to report such
17 suspicions and send a message to everyone with the
18 organisation who may know such issues, but are reluctant
19 to become involved". The seriousness of criminal child
20 sexual abusing cannot be denied.

21 The Victorian Inquiry concluded that, "It should be
22 a crime for any person who knows or believes that a
23 serious offence has been committed by another person
24 against a child, and has information that they believe
25 might be of material assistance - it should be a crime to
26 fail to report that information to Police". The
27 Australian Royal Commission came to the same conclusion
28 about the need for a failure to report offence. But it
29 came to a different conclusion regarding an exemption for
30 information gained in a sacramental confession.

31 Let me talk about mandatory reporting and the seal
32 of confession. The Australian Royal Commission examined
33 both mandatory reporting and the seal of confession. Its
34 criminal justice report recommended the introduction of a

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1 failure to report offence, such as recommendation 33, and
2 its final report, volume 7, in respect of "Improving
3 institutional responding and reporting recommendations"
4 made 6 recommendations. Recommendation 7.1-7.6 on
5 mandatory reporting, including two recommendations, 7.3
6 and 7.4 on religious confession. A practice used
7 especially by the Anglican, Catholic and orthodox
8 churches.

9 Recommendation 7.3 reads, "State and territory
10 Governments should amend laws concerning mandatory
11 reporting to child protection authorities to achieve
12 national consistency in reporter groups. At a minimum,
13 they should also include the following groups of
14 individuals as mandatory reporters in every
15 jurisdiction."

16 Then it listed the groups and at group (e) was:

17 "People in religious ministry".

18 Recommendation 7.4 reads:

19 "Laws concerning mandatory reporting to child
15.26 20 protection authorities should not exempt persons in
21 religious ministry from being required to report
22 knowledge or suspicions formed in whole or in part on the
23 basis of information disclosed in or in connection with a
24 religious confession."

25 During the public hearings for case study 50, and
26 that case study was Institutional Review of Catholic
27 Church Authorities held on 6-24 February 2017, the
28 evidence given by the Catholic bishops and canon lawyers,
29 all the Archbishops of the church in Australia gave
15.27 30 evidence at that hearing, as well as several leading
31 canon lawyers, they discussed the seal of confession and
32 the responses of the bishops amongst themselves was
33 confused and the responses of the bishops and the canon
34 lawyers also did not line up.

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1 And it was over two issues. One was the confession
2 of a child who had been abused, I forget the name, the
3 name I think used was Sally. Sally goes to confession
4 and says, "Bless me father, I have sinned, I have been
5 abused by a priest". The legal question was, is that
6 Sally's sin that she is confessing? No, it's not her
7 sin. But is that information that Sally has given in her
8 confession, information that is covered by the seal of
9 confession? And there was confusion amongst the lawyers
15.29 10 and the bishops about whether that was covered.

11 The other question was, if a priest offender comes
12 to you in confession and confesses that he has abused a
13 child, what are your options? In canon law, the
14 confessor can forgive, give absolution, he can deny
15 absolution or defer absolution.

16 The question arose, is it possible for the confessor
17 to make absolution conditional upon the offender
18 reporting his crime of child sexual abuse to the Police?

19 That wasn't able to be resolved at the hearing
15.30 20 because of the confused responses of the lawyers and the
21 bishops.

22 So, the Australian Royal Commission made
23 recommendation 16.26 and it reads, "The Australian
24 Catholic Bishops Conference should consult the Holy See
25 and make public any advice received in order to clarify
26 whether (a) information received from a child during the
27 sacrament of reconciliation, that's confession, that they
28 have been sexually abused is covered by the seal of
29 confession. And (b) ask the Holy See if a person
15.31 30 confesses during the sacrament of reconciliation to
31 perpetrating child sexual abuse, whether absolution can
32 and should be withheld until they report themselves to
33 civil authorities".

34 I made an inquiry of the General Secretary of the

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1 Australian Bishops Conference before coming here to
2 present to this Commission and I asked what had
3 transpired with regard to these recommendations, the 7.3,
4 7.4 and specifically 16.26.

5 I was advised that all the recommendations of the
6 Royal Commission had been sent to the Holy See and that
7 there had been consultation between the Australian
8 Bishops Conference and the Holy See concerning the
9 specific recommendations. That the consultation is
10 ongoing and that during the Australian bishops visits to
11 home, they are going to visit in June of this year,
12 further consultation had taken place.

13 I was also advised that on the 29th of June of this
14 year, the Holy See's Apostolic Penitentiary, one of the
15 departments of the Holy See, had issued a document
16 titled, "Note of the Apostolic Penitentiary on the
17 Importance of the Internal Forum and the Inviolability of
18 the Sacramental Seal". It was published on the website
19 and approved by Pope Francis and that note is significant
20 for this Royal Commission for it contains very strict
21 interpretations of the seal of confession, including the
22 following:

23 The sacramental seal is indispensable. No human
24 power has jurisdiction over it, nor can any human power
25 lay claim to it. It is indispensable for the sanctity of
26 the sacrament and for the freedom of conscience of the
27 penitent, who must be certain at any time that the
28 sacramental conversation will remain within the secrecy
29 of the confession.

15.34 30 Second point, the inviolable secrecy comes directly
31 from the revealed divine right. It does not omit of any
32 exception in the ecclesiastical sphere, nor least of all
33 in the civil one.

34 Point 3. The church has always taught that priests,

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1 in the celebration of the sacraments, acts in the very
2 person of Christ the head.

3 Point 4. The confessor must defend the sacramental
4 seal if necessary "to the spilling of his own blood".

5 The seal is regulated by canon law and explained in
6 the Catechism of the Catholic Church which states "every
7 priest who hears confessions is bound under very severe
8 penalties to keep absolute secrecy regarding the sins
9 that his penitents have confessed to him".

15.35 10 Point 6. The confessor is never allowed for any
11 reason whatsoever "to betray in any way a penitent in
12 words or in any manner" just as "a confessor is
13 prohibited completely from using knowledge acquired from
14 confession to the detriment of the penitent even when any
15 danger of revelation is excluded".

16 Point 7. The sacramental seal includes "all the
17 sins of both the penitent and others known from the
18 penitent's confession, both mortal and venial, both
19 occult and public, as manifested with regard to
15.36 20 absolution and therefore known to the confessor by virtue
21 of sacramental knowledge"

22 Point 8. The sacramental seal concerns everything
23 the penitent has admitted, even in the event that the
24 confessor does not grant absolution. If the confession
25 is invalid or for some reason the absolution is not
26 given, the seal must be maintained in any case.

27 Point 9. The priest becomes aware of the sins of
28 the penitent "not as man but as God". To such an extent
29 that he simply "does not know" what he was told during
15.37 30 confession because he did not listen to the penitent as a
31 man but precisely in the name of God.

32 Point 10. The confessor can therefore "swear"
33 without any prejudice to his conscience to "not know"
34 what he knows only as a Minister of God.

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1 Point 11. In the presence of sins that involve
2 criminal offences, it is never permissible, as a
3 condition for absolution, to place on the penitent the
4 obligation to turn himself in to civil justice. Where a
5 penitent has been a victim of the evil of others, the
6 confessor must instruct the penitent regarding his rights
7 and the practical juridical instruments to refer to, in
8 order to report the fact in a civil and/or ecclesiastical
9 forum to invoke justice.

15.38 10 Q. Peter, may I just stop you there and check with the
11 Chair? I am very conscious that we have gone past the
12 adjournment, that would be a convenient point to stop and
13 pick up.

14 **CHAIR:** Yes, I think this would be a suitable time for
15 the afternoon adjournment to be taken.

16

17 **Hearing adjourned from 3.40 p.m. until 3.55 p.m.**

18

19 **MS JANES:** With the indulgence of the Commission, we are
15.58 20 very conscious of the time. So, if we could move
21 very briefly to redress and civil litigation.

22 I foreshadow the comments that this is a
23 summary of the Australian Royal Commission
24 findings, so they are available to the Commission
25 and anyone else who is interested, and we also have
26 the written long brief and summary, so without any
27 disadvantage to the information available to the
28 Commission.

29 Q. Dr Wilkinson, can I ask you to summarise what the Royal
15.59 30 Commission found was an appropriate redress framework?

31 **DR WILKINSON:** In essence, what the Commission insisted
32 was appropriate redress for survivors who were
33 looking for justice, that the redress should
34 include three elements: direct personal response;

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1 counselling and psychological care; and monetary
2 payments. And then that's expounded on in the
3 document you have before you.

4 Q. Thank you, Dr Wilkinson. Turning the microphone now to
5 Professor Cahill, just emphasising that you're not here
6 speaking about the New Zealand context but are there
7 recommendations you would like to make to this Royal
8 Commission as it embarks on investigation of this aspect
9 that you would want them to consider?

16.00

10 **EMERITUS PROFESSOR CAHILL:** I think one of the key
11 things that you would need to look at is really
12 prevalence data and trying to collect that,
13 particularly with regard to the Catholic Church.

14 I think the English ~~Norway-Norlan~~ Inquiry in 2000 was
15 certainly not a failure but it would have been much more
16 strengthened if it had had prevalence data, so that's what
17 I would say. why we say that.

18 So, in conclusion, it's really in concluding our
19 input, I think you're going to have to deal with the
20 issue of the governence ment and management of religion
21 and religious diversity, especially when you have bad
22 religion or bad religious practices. And connected to
23 that is the whole issue of the right to religious
24 freedom.

25 In 2011, I was a co-author of a studyies of the
26 Australian Law Reform Commission on the treatment this
27 freedom of religion. I think you need to keep in mind
28 that the right to religious freedom is a relative, not an
29 absolute right. And, therefore, the difficulty is where
30 do you draw the line? And that's an issue which needs
31 a lot of debate across the world actually by legal
32 philosophers ies, moral theologians sts and so on. And
33 lastly to I'd say in all of this, let us never forget the
34 child. Children with their openness, trust and
receptiveness give us a glimpse of openness to God.

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1 And we have concluded our presentation with a quote
2 ~~from~~ the Catholic Education Office from South
3 Australia
4 highlighting the wonder of children.

4 Thank you very much.

5 **MS JANES:** And the absence of . The Jehovah's Witness has
6 raised some issues about findings of the Royal
7 Commission, these two witnesses are not able to
8 assist with that but if I may introduce through
9 them an exhibit so that the Commissioners have
16.03 10 available the findings of the Australian Royal
11 Commission but also the independent review about
12 data that looks at those issues so that the
13 Commission may make its own findings on those
14 points.

15 I produce as Exhibit 17 Jehovah's Witnesses and the
16 final report of the Royal Commission into Institutional
17 Responses to Child Sexual Abuse, 14 November 2018.

18 **Exhibit 17 produced**

19 I'll leave you there, we do have an indication from
16.04 20 counsel that there are two who would like to question
21 Professor Cahill and Dr Wilkinson. I will just check if
22 that's still correct. First, Ms Guy Kidd QC.

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EMERITUS PROFESSOR DESMOND CAHILL

3

DR PETER WILKINSON

4

QUESTIONED BY MS GUY KIDD QC

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6

7

Q. Tena koutou, good afternoon, my name is Fiona Guy Kidd and I appear for the General Synod ~~dagogue~~ known as Taonga Whanui of the Anglican Church of Aotearoa New Zealand and Polynesia.

16.04 10

11

I just have a few questions arising out of your evidence today.

12

13

Firstly, on page 14 of your shortened report, the one you've been referring to today, when dealing with the issue of cultural and praxis factors - am I correct in understanding praxis is another word for practice?

14

15

16

17

EMERITUS PROFESSOR CAHILL: Yes.

18

Q. You talk about the findings of the Australian Royal Commission and you speak of the problems for the Anglicans were in the Church of England Boys' Society and in their secondary schools.

16.05 20

21

22

I am curious, what is the Church of England Boys' Society?

23

24

EMERITUS PROFESSOR CAHILL: I'm not an expert on the Anglican Church but, as I understand it, it was a society specifically for boys, adolescent boys, to encourage them to remain in the Anglican faith. And also as a kind of youth group. And so, it didn't exist in every parish, as I understand it. It was more a diocesan thing. And the problems was partly to do with clergy but it was more to do with the youth workers that were employed by the church who ended up abusing younger people, younger adolescents.

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16.06 30

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1 Q. Thank you. On page 15, this is a part that you didn't
2 speak to orally. You write there about the culture of
3 secretive clericalism in the Catholic Church and you
4 comment there, "Similar features are found in the
5 Anglican Church". And my question is, are you referring
6 to the Anglican Church in Australia?

7 **EMERITUS PROFESSOR CAHILL:** That comes from the Royal
8 Commission, so, yes, it is referring to the
9 Anglican Church in Australia. But evidence - may I
10 draw your attention because I think that, as a
11 result of the introduction of women to ordination
12 and to the episcopacy, there's now a feeling that
13 the level of clericalism is much diminished in the
14 Anglican Church.

15 And I'd like to draw your attention to the
16 work of Bishop Alison Taylor who was the fourth
17 woman in Australia to be consecrated as an Anglican
18 Bishop for the Diocese of Brisbane. She is
19 currently doing a PhD on interrogating holiness, a
20 contribution to the ecclesiology of the Anglican
21 Church of Australia in light of the child sex abuse
22 scandal. She spoke last year at a conference
23 organised by the University of Divinity in
24 Melbourne. I think she would be a very good source
25 for you in looking at this whole issue from an
26 Anglican perspective. As I understand, it is
27 complicated by the different traditions within the
28 Anglican Church, the Anglo-Catholic, evangelical
29 and the more liberal progressive.

16.08 30 Q. We've identified that's the Anglican Church in Australia
31 and it comes from their recommendations, and you are
32 talking here about cultural and practice factors in
33 relation to this culture of clericalism. Would you agree
34 that to determine to the extent that clericalism is

- 1117 -

1 active in the Anglican Church in New Zealand, one would
2 need to look at the composition of the people in
3 authority in the church? You're nodding. The rules,
4 governing rules? The gender makeup? And maybe even the
5 ethnic makeup of who's involved in that church; would
6 that be fair?

7 **EMERITUS PROFESSOR CAHILL:** I think that's fair but
8 anything I've said about the Anglican Church in our
9 presentation is taken directly from the Royal
10 Commission report and I cannot comment at all with
11 any knowledge about the Anglican Church in
12 New Zealand.

13 May I add also, the Anglican Church in Australia has
14 instituted a new procedure for the sacrament of
15 confession which does allow for mandatory reporting if a
16 priest comes to the knowledge of child sex abuse in the
17 confessional but I can't give you the detail.

18 Q. And even within the Anglican Church in Australia, there
19 are some conservative parts in relation to the ordination
20 of women?

21 **EMERITUS PROFESSOR CAHILL:** Yes.

22 Q. For instance, in Sydney, which I understand is the
23 largest diocese of the Anglican Church in Australia,
24 still does not permit the ordination of women. Whereas,
25 in New Zealand all parts of our structure permit,
26 encourage the ordination of women. And we led Australia
27 by 15 years in the ordination of women, so that is
28 another example of a different factor.

29 **EMERITUS PROFESSOR CAHILL:** Sure.

30 **MS GUY KIDD:** Thank you for your assistance.

31 Commissioners, we had sought leave to ask
32 questions but in light of the range of issues
33 raised and the focus on Australia, it now doesn't
34 seem the appropriate time to interrogate those.

08/11/19

Emeritus Prof Cahill & Dr Wilkinson (QD by Ms Guy Kidd QC)

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1 And so while my clients don't necessarily accept
2 all the evidence that has been given, and there is
3 a range of perspectives that you will hear in the
4 future, now is not the time that we will support
5 those. Thank you.

6 **MS JANES:** Thank you, Sir. I now hand the witnesses to
7 the Commissioners.

8 **CHAIR:** Thank you. I will now ask my colleagues if any
9 of them has a wish to ask questions of Professor
16.12 10 Cahill and Dr Wilkinson?

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08/11/19

Emeritus Prof Cahill & Dr Wilkinson (QD by Commissioners)

- 1119 -

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EMERITUS PROFESSOR DESMOND CAHILL

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DR PETER WILKINSON

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QUESTIONED BY COMMISSIONERS

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COMMISSIONER GIBSON: I think just briefly, a clarifying

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question about timing. The document on the

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viability of the sacrament of confession, that was

16.12 10

written after the Australian Royal Commission

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Inquiry?

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DR WILKINSON: Yes.

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COMMISSIONER GIBSON: Was your sense in response to some

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recommendations of it?

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DR WILKINSON: My response to the content of the note?

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COMMISSIONER GIBSON: Yes, the viability document was

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written in response to the Australian Inquiry, is

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that your sense of -

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DR WILKINSON: Yes, it was definitely written in

16.13 20

response, I think, to those questions that were

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posed or recommended by the Australian Royal

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Commission and referred to Rome for explicit

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clarification by the relevant authority at the Holy

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See.

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COMMISSIONER GIBSON: Thanks.

26

COMMISSIONER ALOFIVAE: Thank you, Dr Wilkinson and

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Professor Cahill. Just clarifying, you were

28

referring to the note there?

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DR WILKINSON: Yes. When Professor Cahill and I met

16.13 30

with the Australian Royal Commissioner, Justice

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Peter McClelland, one of the things he asked us

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was, in the recommendations that we're likely to

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make, what is the appropriate way for our

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recommendations to reach the Holy See because canon

- 1120 -

1 law is made by the Holy See and specifically by the
2 Pope, so the Pope can change canon law as and when
3 he wishes.

4 The Royal Commission was aware that it was probably
5 going to need to recommend changes but it wasn't sure how
6 its recommendations could reach the Holy See.

7 So, our response to Justice McClelland, was to say
8 the appropriate way would be to make a recommendation to
9 the Australian Catholic Bishops Conference, and through
10 them the recommendation could then be forwarded to the
11 Holy See for whatever response that you required, and
12 that was the way the Australian Royal Commission worked.

13 So, they made the recommendation to the Australian
14 Catholic Bishops Conference, that they should refer this
15 matter to the Holy See for clarification. And subsequent
16 to that, this note, which is only a couple of months old,
17 has been written and is now published and available on
18 the Vatican website.

19 **COMMISSIONER ALOFIVAE:** Thank you. So, following up,
16.15 20 that note then is, for want of a better phrase,
21 it's your current policy or it's the - how is that
22 perceived in terms of influence, if it's on the
23 website?

24 **DR WILKINSON:** It would be perceived as the current
25 policy of the Holy See. Now, I'm not sure what its
26 status would be as canon law because it's not
27 formulated as legal decrees but it is giving an
28 official opinion as to how the seal is now being
29 interpreted by the Holy See, not only in respect to
16.16 30 that question about what is covered and is
31 conditionality acceptable, but across a wider range
32 of concerns about what is covered by the seal of
33 confession and how seriously it may be protected.
34 And particularly, whether civil law has any, not

- 1121 -

1 only influence but any effect on the seal.

2 **COMMISSIONER ALOFIVAE:** Okay, thank you. And so,
3 appreciating that that would have happened at a
4 high level, in terms of the administration -

5 **DR WILKINSON:** Highest.

6 **COMMISSIONER ALOFIVAE:** The highest level. If you bring
7 it down a couple of levels, what is the discourse,
8 what was the socialisation of the final
9 recommendations that came out in the note amongst
10 the Australian Catholic public at least?

11 **DR WILKINSON:** I would say at this stage that the
12 Australian Catholic public are not aware of this
13 note. It's not the sort of thing that the media
14 have picked up on as yet. It's not the sort of
15 thing that ordinary Catholics go hunting for.

16 And bear in mind that the practice of
17 sacramental confession in Australia is extremely
18 low. I think the figure normally tossed around is
19 maybe 1% of Catholics go to confession, maybe
20 lower, because at the moment only 10% of Catholics
21 regularly go to mass, and the practice of going to
22 sacramental confession is very, very low.

23 **EMERITUS PROFESSOR CAHILL:** Can I just add to that? The
24 note is a document for the universal church, okay?
25 It's not specifically for Australia. And no doubt
26 there may be things that came from other episcopal
27 conferences.

28 Now, the Australian bishops, for all the
29 recommendations, except for the seal which they didn't
30 recommend to be followed, they sent all those off to
31 Rome, okay? But we don't know about the supporting
32 documentation with regard to each of the recommendations
33 that was forwarded to Rome and that were relevant to
34 Rome, so I think that's an important point.

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1 Secondly, every 5 years the bishops have to give a
2 quinquennial report on their own diocese prior to their
3 making what's called an ad limina visit to the Pope,
4 where they meet the Pope and the heads and it's really a
5 stocktake on each particular diocese and the national
6 church.

7 Your bishops here in New Zealand have just finished
8 theirs a week, two weeks ago. Whereas, the Australian
9 one was in June, I think, yes, June. I think it would be
16.20 10 very interesting if the Royal Commission subpoenaed those
11 quinquennial reports, not only about, particularly this
12 latest one on the issue of confession, the seal of
13 confession, but also the prevalence data, if they have
14 done any prevalence data within their own diocese and how
15 truthfully their quinquennial report reflects the real
16 situation in their particular diocese.

17 **DR WILKINSON:** The quinquennial report is mandated at
18 canon 399.1 of the 1983 Code of Canon Law and each
19 Bishop who is in charge of a diocese must submit
16.21 20 that report, and there is a form that they must
21 follow. It has 22 sections in it and section, I
22 think, 7 relates to the life and ministry of
23 priests, so they must report on that. And
24 section 8 is to do with religious members of the
25 congregations and they must report on that.

26 Furthermore, each Bishop in the report is urged to
27 be objective, precise and succinct and must include his
28 pastoral difficulties in the diocese, the causes of those
29 difficulties, means being used to resolve them, pastoral
16.22 30 issues yet to be resolved and confidential matters which
31 can be sent directly to the relevant congregation. And
32 the Bishop's personal contribution is essential.

33 So, they are matters that must be in those
34 quinquennial reports. We're not sure where those

- 1123 -

1 quinquennial reports go to. I asked the archivist in the
2 Melbourne archdiocese in archives, "Are those reports in
3 the archives?" She said, "Peter, there are no reports in
4 the archives, not even in the secret archives". I have
5 found only one and that seems to be accidental.

6 So, I'm not sure what the Australian Royal
7 Commission, whether they tried to get hold of those
8 documents or whether they were unobtainable but that
9 might be something that you would like to take up with
10 the attorney in Australia.

11 **COMMISSIONER ALOFIVAE:** Thank you. Just one final
12 question. In a lot of our private sessions, a
13 recurring theme or insight that's coming through is
14 around the concept of celibacy. So, very - I
15 looked at your comments very carefully about what
16 came out of the Australian Royal Commission and
17 actually, there's evidence to support why canon law
18 should be changed to revisit that?

19 **DR WILKINSON:** Yes, and it is - local bishops or local
16.24 20 episcopal conferences cannot change that law, it is
21 beyond their competence, is the phrase. That is
22 something that only the Pope can change. Now,
23 there is - I don't think you'd call it pressure but
24 certainly within the Catholic community, within
25 Australia, there are certain quarters that would
26 enthusiastically support the removal of mandatory
27 clerical celibacy. Others would say it must
28 remain. But that is a decision beyond the
29 competency of the Australian church or the church
16.24 30 in Australia.

31 I should imagine that at the upcoming 2020
32 Preliminary Council that is to be held in Australia, that
33 that issue will be on the agenda.

34 **COMMISSIONER ALOFIVAE:** Thank you, no further questions,

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1 much appreciated.

2 **COMMISSIONER ERUETI:** It seems that in Australia even
3 though there are - if you could clarify for me -
4 mandatory reporting laws even for confessions made
5 in the confessional across several states; is that
6 correct?

7 **DR WILKINSON:** Yes.

8 **COMMISSIONER ERUETI:** And yet, I saw recently that the
9 Archbishop of Melbourne, that's your hometown,
10 isn't it?

11 **DR WILKINSON:** Yes.

12 **COMMISSIONER ERUETI:** Said that he would defy the law,
13 is that correct?

14 **DR WILKINSON:** Yes.

15 **COMMISSIONER ERUETI:** So, there is this deeply
16 entrenched culture of opposition to mandatory
17 reporting in these Australia states?

18 **DR WILKINSON:** When a Bishop is appointed, he swears, I
19 am not sure whether it's an oath, I think it is, to
20 be obedient to the Pope, to maintain the communion
21 within the Catholic Church. Therefore, whatever
22 the official position of the Catholic Church is, a
23 Bishop would be expected to observe that position.
24 And, therefore, if there is a mandatory civil law
25 that says you break the seal of confession, then
26 effectively that would break the communion within
27 the church between the Bishop and the Pope.

28 So, I think that is the source of that response.

29 **EMERITUS PROFESSOR CAHILL:** It's true that the
30 Archbishop of Melbourne basically said I would go
31 to jail. That was very clear.

32 Now, here in New Zealand, I suspect that it's a
33 matter of some sensitivity because during World War II a
34 New Zealand Columban priest was executed by Japanese

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1 soldiers because he refused to give any information about
2 the confessions of guerrierillas who were living up in the
3 hills and they knew that the - the Japanese soldiers knew
4 about that.

5 That priest's name is Francis Douglas and I think
6 there is some moves to try and canonise him as a saint
7 because he is seen as a martyr for defending the seal of
8 confession.

9 **COMMISSIONER ERUETI:** It seems even in your paper, that
16.28 10 you're not insisting that the church change this
11 principle but rethink it in light of the factors
12 that you outline on page 27 of your paper; is that
13 right?

14 **EMERITUS PROFESSOR CAHILL:** Yes.

15 **COMMISSIONER ERUETI:** The balance is freedom of
16 religion?

17 **DR WILKINSON:** Our position is the child must come
18 first. The safety of the child, we feel, is
19 greater than the sacredness of the seal, and that
16.29 20 needs more discussion and that will be something I
21 think for you as Commissioners that you will have
22 to look at clearly because there will be an
23 expectation, I suspect, that you say something
24 about the seal of confession in your final report.

25 **EMERITUS PROFESSOR CAHILL:** There is a 2000 year history
26 to this because initially, the church only had the
27 practice of open confessions made publically. Then
28 by about the 5th century, it started to change to
29 private confession being heard by the confessor.

16.29 30 After the Second Vatican Council, there were other
31 forms of confession that were brought in, particularly a
32 communal penitential or reconciliation session, where the
33 person would confess in private to God and then
34 absolution would be given to the whole community. Then

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1 that was abrogated by Pope John Paul II.

2 So, I think there needs to be a conversation that
3 goes on within the Catholic Church at a universal level
4 about whether to go back to that or to even have new
5 forms of confession.

6 **COMMISSIONER ERUETI:** Another question, this is part of
7 the puzzle, is trying to, there's plainly a man or
8 boy issue here of sexual abuse in the context of
9 the church and you seem to provide some explanation
10 referring to psychosexual issues and also location.
11 At the same time, I think you said with nuns,
12 religious nuns, even though you would, perhaps you
13 would have some features of psychosexual and also
14 accessibility, yet it still remains a male, older
15 male on boy is a prominent feature. Are you able
16 to explain, unpack that for me?

17 **EMERITUS PROFESSOR CAHILL:** With regard to the priest or
18 religious brothers or to the nuns?

19 **COMMISSIONER ERUETI:** Well, the comparison is that it's
16.31 20 not so prevalent in the context of nuns and
21 children, right?

22 **EMERITUS PROFESSOR CAHILL:** Yes.

23 **COMMISSIONER ERUETI:** Even though it would seem to me
24 there would be some sort of psychosexual
25 abnormalities as you describe them and also access,
26 but it seems to be mostly, there is abuse but it's
27 mostly physical and not sexual.

28 The sexual abuse is largely men, priests on boys?

29 **EMERITUS PROFESSOR CAHILL:** Yes.

16.32 30 **COMMISSIONER ERUETI:** Why is there this distinction, is
31 the question fundamentally?

32 **EMERITUS PROFESSOR CAHILL:** I'm not sure I have
33 understood you fully. Don't forget that 30% of the
34 victims were girls, females, okay, and it was

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1 partly an access issue but also of orientation.
2 So, you know, there are many factors coming into
3 this.

4 With regard to the low offending rate among nuns,
5 the Australian Royal Commission, the figures are 96 and
6 we think that's an exaggeration for various reasons but
7 it's quite low.

8 But with regard to the sexual abuse by nuns of
9 children, the rate was extremely low and I suppose you
16.33 10 have to explain that in terms of, one is the lack of
11 sexual knowledge of nuns during - up until the 60s and
12 70s, was extremely low, and that comes out in the
13 Queensland Ford report but also I think that nuns had a
14 better appreciation of their own virginal commitment and
15 perhaps the level of sexual desire was not as immediate
16 or as strong as it is with priests and brothers.

17 **COMMISSIONER ERUETI:** Thank you.

18 **COMMISSIONER SHAW:** May I thank both of you for your
19 evidence. All of the questions that I had have
16.34 20 already been covered by my colleagues, so I won't
21 labour the point. Thank you both very much.

22 **CHAIR:** I have one question which relates to, and I am
23 not going to use the language you used, but the
24 Royal Commission made its findings to the Bishops
25 Conference on the basis that the bishops would send
26 a request or the finding to the Holy See. Was it
27 ever canvassed that they might simply make the
28 recommendation to the bishops and leave it at that?

29 **EMERITUS PROFESSOR CAHILL:** Well, the Royal
16.35 30 Commissioners were very aware, they had a deep
31 knowledge of the Catholic Church. They knew that
32 on some of recommendations it was only Rome that
33 could make the decision, do the necessary
34 recommended changes. And so, that's why the

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1 recommendations are worded that way. And so, the
2 Australian bishops had no trouble accepting those
3 recommendations because, in a sense, they were
4 acting as a postbox to send it to Rome.

5 What we don't know, and it's never been
6 revealed, is what was the covering letter and the
7 comment by the bishops on each of those
8 recommendations? Did they make no comment? Did
9 they put a negative view of the particular
16.36 10 recommendation or a positive view? We don't know.

11 It wasn't until 8 months later that the bishops
12 actually came together and made an explicit decision on
13 each of the relevant recommendations. And there's been a
14 lot of criticism that it took them so long to get to that
15 point of making that decision because there's a lot of
16 division within the Australian Episcopal Conference, and
17 that is part of the problem, that they find it very hard
18 to get cohesion and agreement on almost anything. I
19 think Peter would probably agree with that.

16.36 20 **DR WILKINSON:** The Australian Catholic Bishops
21 Conference setup a mechanism or a structure that it
22 called the Truth, Justice and Healing Council, that
23 would be the liaison group between the Australian
24 Royal Commission and the Catholic Bishops
25 Conference. And I understand the New Zealand
26 Catholic Bishops Conference has setup a similar
27 structure.

28 I would imagine that before that mechanism that we
29 talked about, namely sending the recommendations through
16.37 30 the Catholic Bishops Conference, that would have been
31 discussed with the Truth, Justice and Healing Council to
32 sound out whether this was a process that was acceptable
33 to the bishops.

34 At no stage, that I am aware of, was there any

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1 discussion about it being an unsuitable process for
2 getting the recommendations from the Commission to the
3 Holy See.

4 **CHAIR:** Thank you for clarifying that. I join my
5 colleagues, gentlemen, in thanking you for the
6 broad expanse of your evidence which you can be
7 assured will be of great assistance to the Royal
8 Commission. Thank you.

9 **DR WILKINSON:** Thank you, Commissioners.

16.38 10 **MS JANES:** Thank you, Chair, and thank you Professor
11 Cahill and Dr Wilkinson for your evidence, that is
12 now concluded and you may step down.

13 Chair and Commissioners, while they're doing that,
14 Ms McKechnie has requested and been given leave to make a
15 short statement.

16 **CHAIR:** Thank you.

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STATEMENT BY MS MCKECHNIE QC

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6 **MS McKECHNIE:** Thank you, Chair, Commissioners.

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Following the close of this hearing, the next focus of the Royal Commission is going to be on the State and the Crown response. It's going to be some time before Catholic matters come back before the Commission and, because of that, the Bishops and Congregational Leaders have sought and have been granted leave to make some remarks at this point, so thank you for leave.

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I make these remarks, Commissioners, on behalf of Te Ropu Tautoko which has been setup by both the Bishops and Congregational Leaders of the Church of Aotearoa New Zealand.

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At this Contextual Hearing, there has been evidence which sets the scene for the work that you will do in the coming months and today there has been extensive evidence about Catholic matters. Representatives of Te Ropu Tautoko and the Auckland diocese, as we are here in their diocese, have attended the hearing, each day of hearing and listened to the evidence, both State and faith-based. And have learned much from the witnesses. Their presence here, I want to say to you and to those who are listening on the livestream, is part of the commitment by the Bishops and Congregational Leaders of the Catholic Church to listen, to learn from and to support ~~theis~~ survivors.

Our clients are very conscious that there may well be survivors listening to this hearing who have not approached the Catholic entities for the civil authorities about their experiences and they are

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1 encouraged to do that, to approach the National Office of
2 Professional Standards which represents the Catholic
3 entities here or to approach the Police, so I say that to
4 those of you who may be listening who have not yet come
5 forward.

6 We also encourage them to approach you and share
7 their experiences with the Royal Commission.

8 Turning to the evidence that this Royal Commission
9 will hear in the future about the Catholic Church and the
10 entities of that church in New Zealand, the Catholic
11 Bishops and Congregational Leaders are very aware that
12 dark chapters of their history will be examined.

13 Some of that evidence has been heard in this hearing
14 already.

15 Sadly, it is very clear that many things have
16 happened within the Catholic diocese and congregations in
17 New Zealand which should not have happened. All forms of
18 abuse are unacceptable and indefensible. And all people
19 should have been safe in the care of Catholic entities in
20 New Zealand.

21 The Bishops and Congregational Leaders are committed
22 to working with the Royal Commission in this Inquiry and
23 have asked me to ~~publically~~publicly reiterate that both
24 to you and to those who are listening this afternoon.

25 They are committed to their errors and omissions
26 being examined transparently and openly.

27 They acknowledge that as part of a global church,
28 there will be a significant number of - there have been a
29 significant number of Inquiries and investigations into
30 entities around the world, including extensively today in
31 Australia, many of these Inquiries have revealed events
32 that should never have happened and to which the Pope and
33 Catholic leaders in those areas expressed great
34 ~~regre~~neglect.

The evidence of Professor~~Dr~~ Cahill and Dr Wilkinson at
this hearing

- 1132 -

1 have discussed some of that context in other countries
2 and has sought to draw parallels in New Zealand and make
3 a number of global generalisations around what you may
4 find here.

5 Now, while our clients do not agree with all of the
6 evidence given by Professor Cahill and Dr Wilkinson, and
7 as you have heard there is a range of perspectives
8 amongst Catholics and Catholic entities around the world
9 and indeed in New Zealand, they accept and acknowledge
16.43 10 that there are very serious issues to consider.

11 There will be parallels which you can draw from the
12 global experience but because of the size and the
13 structure and the nature of the Catholic community and
14 leadership here in Aotearoa, there are significant
15 differences that will need your exploration. Professor
16 Cahill and Dr Wilkinson highlighted some of those
17 differences in their evidence this afternoon.

18 The history of care provided by Catholic entities in
19 New Zealand is also complex. As you will hear in
16.43 20 evidence in your future Inquiries I am sure, it is a
21 history of both significant societal good and times of
22 intense shame.

23 As you embark on your work, Commissioners, the
24 Catholic Bishops and Congregational Leaders ask that you
25 consider the entities within the Catholic Church and
26 Aotearoa New Zealand in their full context and in the
27 context of Aotearoa New Zealand, its work, its errors,
28 the lessons they have learned and the lessons that they
29 are still to learn.

16.44 30 We anticipate, and Counsel Assisting indicated this
31 morning, that investigations into faith-based churches
32 will begin shortly. We anticipate there will be an
33 investigation into care by Catholic entities here. The
34 Catholic Bishops and Congregational Leaders welcome that

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1 opportunitycommunity. They are committed to
2 accepting responsibility and their responsibility to act
3 to stop future abuse in the Catholic Church and to learn
4 the lessons of how to respond to what has already
5 happened and should not have happened in the care of the
6 Catholic entities in Aotearoa New Zealand. They are
7 committed to learning the lessons that will come from
8 your work.

9 Thank you.

16.45 10 **CHAIR:** Thank you.

11 **MR MOUNT:** Mr Chair, Commissioners, as we draw towards
12 the close of this Contextual Hearing, may I seek
13 your indulgence to make some closing remarks?

14 **CHAIR:** Certainly.

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CLOSING REMARKS

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5 **MR MOUNT:** I begin by acknowledging mana whenua Ngati
6 Whatua Orakei for generously hosting us, for
7 opening each day and for closing each day. Your
8 support and your welcome are very much appreciated.

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16.45 10

I also acknowledge survivors and members of our
Survivor Advisory Group and our ambassadors who have
either joined us here in person or who have watched on
the livestream or who have otherwise been involved in
this hearing.

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I also acknowledge the witnesses who have
participated and in many cases have very generously
shared some of the most important aspects of their lives
with us over the last two weeks.

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16.46 20

And I also acknowledge the other participants who
have contributed to this hearing and of course the
members of the Secretariat and others who have made this
complicated process possible.

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As you know, this is New Zealand's largest ever
Royal Commission. ~~and no~~ No doubt there are many different
ways in which we could measure size, but what we have
seen in the last two weeks is that perhaps the most
appropriate measure is to say that this is perhaps the
largest in terms of the number of people affected and the
largest in terms of the impact on New Zealanders who have
been abused or neglected in care, as well as their
families, their communities and also the generations over
time.

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We've heard from 29 witnesses in this room. ~~But~~ But in
many cases they have spoken on behalf of large numbers of
others, from Judge Henwood who spoke on behalf of 1100

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- 1135 -

1 people who came forward to the Confidential Listening and
2 Assistance Service, to Sonja Cooper and Amanda Hill who
3 represented more than 1,000 clients of their firm.
4 Survivors such as Rawiri Waretini-Karena and Arthur
5 Taylor who represented the thousands of people in prison
6 and the generations before them. If nothing else, it is
7 obvious that this Inquiry is a lot bigger than any one
8 person. But, Mr Chair, we won't see you at another
9 public hearing and so it is appropriate to acknowledge
10 at this time that you are not only the first among equals
11 at the Commissioner table but you were also the first to
12 take on the responsibility of this important work.

13 It was early last year when you accepted the request
14 of the government to lead public consultation on the
15 Terms of Reference for this Inquiry. It was the first
16 time that had been done in New Zealand, to lead a fully
17 public consultation process for the Terms of Reference of
18 the Royal Commission. And you brought to that task your
19 mana, and the respect in which you are held as our former
20 Governor-General and the holder of several higher public
21 offices. And—I know that the many people that you met
22 with very much respected and appreciated the way you
23 approached that task.

24 It was then you who recommended to the government
25 that the scope of this Inquiry be broadened from State
26 care to include non-State care, particularly faith-based
27 institutions.

28 And importantly, you recommended that Te Tiriti o
29 Waitangi be built into the Terms of Reference and woven
30 into the fabric of the Royal Commission. Those were your
31 suggestions which were accepted by the government and
32 they form a very important part of the work of the
33 Inquiry.

34 Late last year, you were joined by your four

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1 colleagues and, having helped to design the ship, you
2 have captained it to its first ~~wayeigh~~ point, the start
of
3 the private sessions earlier this year, and now to this
4 significant ~~wayeigh~~ point, the end of the first substantive
5 contextual public hearing.

6 And if I may say, what you have shown throughout the
7 time since you took on this important work, is an
8 uncompromising commitment to the substance of the work, a
9 steady resolve to do the work in a principled, inclusive
16.50 10 and sensitive way and a deep compassion for the
11 New Zealanders of all backgrounds who are at the centre
12 of this work.

13 Very soon you will be passing on the responsibility
14 of captaining the ship to a new Chair and what we have
15 seen, if I may say so, in the last two weeks, is that
16 this is an Inquiry in good health and one with real grass
17 roots support. And for that, Mr Chair, we thank you.

18 There will, I hope, be other opportunities to thank
19 you and to acknowledge you for what you have done but I
16.51 20 do know that I speak on behalf of a very large number of
21 people in wanting to acknowledge you today on this public
22 occasion.

23 Now, Madam Registrar, I believe that you may have a
24 further exhibit that you may be able to present directly
25 to the Chair? (Bouquet of flowers presented to the
26 Chair).

27 And on that note, for the final time in this public
28 hearing, may it please the Commission, kia ora tatou
29 katoa.

16.51 30 **CHAIR:** Thank you, Mr Mount.

31 **MS MeKECHNIEMcCARTNEY QC:** I am speaking on behalf of all
counsel in

32 addressing you, Sir Anand, because we wish to
33 acknowledge your retirement as Chair. And,
34 speaking on behalf of all counsel, they have all

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1 asked me to convey to you our thanks for the mana
2 that you have brought to these hearings. And such
3 was the mana that you have brought, that in the
4 nine days we have been here, we have seen survivors
5 of the abuse, witnesses who have been prepared to
6 speak ~~publically~~publicly about their most personal
7 experiences. And of those survivor witnesses,
8 there are survivors who, while they started out in
9 terrible circumstances, they were able to tell us
16.53 10 how they went on to get high education degrees,
11 some of them having been gang leaders went on to do
12 this, another is a United Nations representative
13 and there were quite a number who have written
14 books.

15 The indictment on New Zealand is that so many of
16 them said there were times when they felt they were not
17 human and every one of them said that they lost trust in
18 authority. Yet, before this Royal Commission they were
19 able to stand up and speak of their experiences.

16.54 20 You, Sir Anand, spoke directly to each one of them.
21 You provided a personal and sincere thanks to each one.
22 You conveyed respect and empowerment. And those who are
23 here of the survivors, they saw that. Your dignified
24 leadership has really set the course of this Royal
25 Commission.

26 If I may turn and just speak to the survivors who
27 are here. As counsel, we hope that having seen these
28 last 9 days, that you can be optimistic that this Royal
29 Commission may bring about the transformational change
16.55 30 that you are seeking.

31 We, as counsel, are optimistic of that. And we wish
32 to convey to the survivors that in the time that you have
33 spoken in the time of these hearings, the hope that we
34 have that many more will come forward has in fact been

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1 expressed to us already. We are already hearing that
2 this is happening.

3 Sir Anand, counsel appearing here have a great
4 affection for you. It has been a privilege to be here
5 for your final sitting.

6 **CHAIR:** Ladies and gentlemen, I am going to exercise a
7 right of reply and I'm conscious as I start of
8 needing to be brief and to say what I ought in the
9 words of one Corinthians 40, that is decently and
10 in order.

16.56

11 I first acknowledge, as I ought, mana whenua Ngati
12 Whatua Orakei whose presence has indeed been a central
13 point of reference in the last fortnight. The connection
14 is appropriate for a number of reasons. I have had many
15 associations with Ngati Whatua, ranging from standing
16 with the late Takutai 'Doc' Wikiriwhi at many public
17 occasions, through seeking and obtaining the help of
18 Kahurangi Naida Glavish on many topics, including how
19 this Royal Commission should work when I was doing the
20 public consultation last year.

16.57

21 And lastly, I recall, when having the privilege of
22 being Governor-General and the equal privilege of hosting
23 Prince William at Government House in Epsom, the
24 centre-piece was a magnificent hangi put down by the Hall
25 family, to all of you greetings.

26 The whakapapa element of my speech is to reflect on
27 a life that has been steeped in the law and the
28 community. All of that has been relevant to the setting
29 up of the Royal Commission and it's been a real
30 professional thrill to be part of this Contextual Hearing
31 and to observe the lawyers applying their skills in the
32 course of this hearing.

16.58

33 On the basis of doing the right thing, I want at
34 this point, Mr Mount, to return to you, through the

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1 Registrar, the wonderful book called The Conduct of
2 Public Inquiries by Ed Ratushny that you gave me when we
3 started the work together. It has never been far away
4 from me at work and at home, and I have made frequent
5 reference to it.

6 The whaikorero element of my speech is to reflect
7 that today is Friday the 8th day of November 2019, the
8 312th day of our 2019 year. We're just two days short of
9 an anniversary of the 10th of November in 1942, which
16.59 10 incidentally was a Tuesday. On that day, 77 years ago,
11 in the midst of World War II, in a memorable speech at
12 Mansion House in London, speaking at a crucial turn of
13 events in that war, the Prime Minister of the UK, the
14 Rt Hon Winston Churchill, said in the context of things
15 that had occurred, now this is not the end. It is not
16 even the beginning of the end but it is perhaps the end
17 of the beginning.

18 That statement about the end of the beginning
19 characterises, to my mind, the positioning today of where
17.00 20 we all are in mid-2019 in the life of the Royal
21 Commission into Abuse in Care. We are truly here in
22 New Zealand at the end of another beginning and the
23 successful completion of this Contextual Hearing has
24 provided that.

25 A considerable amount to date has been done and
26 spoken about since I started in office as Chair of the
27 Royal Commission, appointed on 1 February 2018, into a
28 role which was to galvanise the purpose of the Royal
29 Commission.

17.01 30 Looking at you and acknowledging you, makes a number
31 of things clear. As I see you, may I say in a nutshell,
32 the contribution that everyone has made is made up of a
33 number of little things, all of which point to making two
34 important points.

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1 Number one, in a country like New Zealand, we
2 support whatever is the game and its followers. The work
3 of the Royal Commission is important and vital as a
4 number of the nearly 30 witnesses over these two weeks
5 have said in a variety of ways.

6 Number two, in the same setting, we support those
7 people who have put in time and effort to ensure that we
8 have done well. I refer, of course, and principally, to
9 the survivors, to the survivors and their advisers and
17.02 10 families. I refer to the academic community, to the
11 media representatives and the staff that the Royal
12 Commission has amassed, the logistics staff, the
13 wellbeing staff, the people who have made sure that
14 things over a lengthy time have started on time and ended
15 in the same way. Everyone has provided a professional
16 input to make things go as well as they have.

17 This brings me to the wiri element and the challenge
18 to the Royal Commission that has been laid down by many
19 witnesses. One is the work which is unique. Another is
17.03 20 the breadth of what's involved. And another yet, is the
21 people who service it. It is inherently difficult for a
22 government department whose natural territory is
23 libraries, raffles and passports, to take on the
24 servicing of the largest Royal Commission that the
25 country has known but the Department of Internal Affairs
26 has us and we have them.

27 Everyone deserves encouragement in what lies ahead
28 and I offer mine. It has been a privilege to be a
29 central part of the build up and delivery of what lies
17.04 30 ahead. I will now go to the sideline and watch with
31 interest how it all plays out.

32 I am grateful, of course, for the kind remarks that
33 you, Mr Mount, and you, Ms McKechnie, have made. I wish
34 everyone well.

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1 Tena koutou tena koutou tena koutou katoa. Kia ora.

2 **MR MERRICK:** (Address in Te Reo Maori).

3 **REPRESENTATIVE FROM NGATI WHATUA:** I would like to say
4 on behalf of us, thank you for the very kind words.
5 The next time I go, I must talk to Uncle Doc that
6 we were here on the last day of this with you, Sir
7 Anand.

8 I would like to thank everybody for welcoming
9 us here, we have enjoyed it, it's been brilliant.

17.08 10 I only have one other thing, and that has to
11 do with my father making me read The Herald from
12 5 years old, which is 65 years ago now, so that
13 every opportunity I see your name in the paper, I
14 read The Herald and I've known these things.

15 When you leave tonight, and you and your Lady
16 get on your charges, don't ride away too far
17 because your mana, your understanding, and your
18 love is still needed here.

19 Tena koutou tena koutou tena koutou katoa.

17.11 20

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22 **Hearing adjourned at 5.15 p.m.**

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