

**ROYAL COMMISSION INTO INSTITUTIONAL
RESPONSES TO CHILD SEXUAL ABUSE**

**Public Hearing
(Day 20)**

Level 17, Governor Macquarie Tower
Farrer Place, Sydney

On Friday, 22 November 2013 at 10am

Before the Chair: Justice Peter McClellan AM
Before Commissioners: Justice Jennifer Coate
Mr Robert Fitzgerald AM

Counsel Assisting: Ms Gail Furness SC
Mr Simeon Beckett

1 MR BECKETT: Before we start, I understand Ms Wass is
2 slightly delayed. Mr Taylor is here for Bishop Slater and
3 wants to announce his appearance.

4
5 MR M TAYLOR: If the Royal Commission pleases, I seek
6 leave to appear on behalf of Bishop Keith Slater.

7
8 THE CHAIR: I think I've already granted leave, haven't I?
9

10 MR TAYLOR: I understood that Bishop Slater had made
11 a formal application.

12
13 THE CHAIR: Thank you, Mr Taylor.

14
15 MR TAYLOR: Can I just place on the record, I know
16 your Honour raised the issue the other day about no
17 appearance or any appearance on behalf of Bishop Slater.
18 Could I indicate to you that there was a logistical problem
19 in obtaining funding. Bishop Slater was well aware of the
20 proceedings and has been following the proceedings. It was
21 only due to that practical problem that either he wasn't
22 here or I wasn't here prior to today.

23
24 THE CHAIR: Thank you for that. The reason I raised the
25 matter was because I didn't want anyone who might be
26 interested in our proceedings to be under any illusion as
27 to the capacity for people who might be spoken about to be
28 represented. That's all.

29
30 MR TAYLOR: Thank you, your Honour. I appreciate that.
31 I can indicate that Bishop Slater has been following the
32 proceedings, as I said, and is in a position to assist as
33 best he can.

34
35 THE CHAIR: Thank you.

36
37 MR BECKETT: If Mr Roland could come back into the witness
38 box, please.

39
40 <PETER JOHN ROLAND, on former oath: [10am]

41
42 <EXAMINATION BY MR BECKETT CONTINUING:

43
44 MR BECKETT: Q. I wonder if SJH-13 could be put up on
45 the screen, please. Mr Roland, this is a letter I think
46 I took you to yesterday. I failed to ask you a question
47 about the letter. Perhaps you could familiarise yourself

1 with it again.

2 A. Yes.

3

4 Q. In the second paragraph there, there is a reference to
5 an issue about counselling for Mr Campion.

6 A. Yes.

7

8 Q. It says that Reverend Comben has informed you that his
9 discretion is limited to situations of urgent or immediate
10 support or situations where there is a clear movement or
11 closeness to resolution of any matters at issue.

12 A. Yes.

13

14 Q. The phrase "situations of urgent or immediate support"
15 seems clear. I just want to ask you about the second part
16 of that sentence, "situations where there is a clear
17 movement or closeness to resolution of any matters at
18 issue". Is that a reference to the claims that were then
19 on foot, particularly the claim of Mr Campion?

20 A. Well, it's not exactly clear from that whether it's
21 referring just to Mr Campion or matters in general, because
22 Mr Campion, of course, initially was represented by Nicol
23 Robinson Halletts, so I couldn't say definitely whether it
24 just related to Mr Campion or more general matters, I'm
25 afraid.

26

27 Q. Do you recall the then Reverend Comben expressing to
28 you that counselling for Mr Campion was to be provided
29 either in urgent or immediate occasions or, alternatively,
30 if he was getting close - that is to say, the diocese was
31 getting close - to resolution of Mr Campion's claim?

32 A. Well, it seems to be suggesting that Reverend Comben
33 could only continue to deal with it if there was an
34 indication that the matter was approaching some sort of
35 resolution. In other words, presumably if there were to be
36 long-term assistance for Mr Campion, or perhaps of a more
37 significant order, then he would have to defer to other
38 people, presumably the bishop or professional standards;
39 I'm not sure.

40

41 Q. Indeed, and that would be rolled up, if you like, in
42 any global settlement of the claim?

43 A. Yes, I think that's reasonable, yes.

44

45 Q. Yesterday there was some mention of the [CH]
46 litigation. I should indicate to you, Mr Roland, that
47 there is a list of pseudonyms taped to the table in front

1 of you there.

2 A. Yes. [CH], of course, was not a matter that was ever
3 referred to me. It was dealt with, as I recall it, by the
4 church's insurers.

5

6 Q. I think I can clarify that with some brief questions.
7 As I understand it, certainly from the documentation we've
8 received, you did not have instructions with respect to the
9 [CH] litigation; that's correct?

10 A. That's correct, yes.

11

12 Q. In fact, the [CH] litigation, we know, was not
13 launched in the sense of proceedings being filed in the
14 Supreme Court until 2006, but there is some indication of
15 some pre-litigation steps in 2005. Were you aware of
16 those?

17 A. No, I don't believe I was. They weren't referred to
18 me at all.

19

20 Q. But you came to know that the diocese had made a claim
21 upon its insurance with respect to [CH]?

22 A. I became aware of that during the subsequent claims,
23 yes.

24

25 Q. I think on 17 March 2006, if exhibit 3-2, tab 27 could
26 be brought up on the screen, you received a letter from
27 Abbott Tout, who were acting for the insurer in the [CH]
28 matter. Do you recall that letter?

29 A. Yes, I do. I think I made inquiries in relation to
30 the question of insurance, and I had contact with I think
31 it's EIG referred to there, and I received a letter
32 I believe from that insurer to say that in fact the diocese
33 wasn't covered for the claims in question. And I think in
34 the course of that, I may have sought out Mr Wade to get
35 his opinion of the situation of the diocese regarding this
36 North Coast Children's Home.

37

38 Q. I think I can deal with it reasonably quickly in the
39 sense that the [CH] litigation was covered by a policy that
40 did not appear to cover the group claims; is that --

41 A. That was the advice I was given, yes.

42

43 Q. To your knowledge, was that because the [CH]
44 litigation was covered by a policy which was a claims made
45 policy? I wonder if you could just read that letter and
46 see if that refreshes your memory.

47 A. Yes, yes. I had forgotten the detail of that letter,

1 but that's what it appears to say, yes.

2

3 Q. In any event, the [CH] litigation, to your
4 understanding, at least, was covered by a claims made
5 policy of insurance, which had an extension for molestation
6 claims?

7 A. That's what it states.

8

9 Q. But by the time that you came to deal with the group
10 claims, there was only an occurrence based insurance policy
11 in place?

12 A. That's what I understood, yes.

13

14 Q. I wonder if exhibit 3-2, tab 49 could also be brought
15 up. Do you recall receiving this letter on about
16 6 December 2006, enclosing the insurance policy that
17 applied up until 2003?

18 A. Yes.

19

20 Q. If you go over the page, you will see that there is
21 a premium of some \$140,000 that was due with respect to
22 that cover, at least on 21 January 2000. Do you see that?

23 A. Yes.

24

25 Q. Was there any discussion between you and
26 Reverend Comben about insurance generally, and particularly
27 the financial obligation upon the diocese?

28 A. It would have been behind my initial inquiry regarding
29 the question of insurance, and I think we realised that
30 that previous insurance would not assist.

31

32 Q. Was there any discussion between you and
33 Reverend Comben about why that policy had been allowed to
34 lapse?

35 A. The policy expired in 2000, by the look of that, and
36 I don't think Reverend Comben became registrar until some
37 time after that.

38

39 Q. Did it come to your knowledge, though, and certainly
40 the covering letter that is there indicates that the
41 policy, which I've referred you to, the 2000 version,
42 covered the period 1999 through to 2003. So what I'm
43 asking really is did it come to your knowledge why, whether
44 it was Reverend Comben or somebody else at the diocese, the
45 insurance had not been maintained after 2003?

46 A. No, I'm not aware of the reason.

47

1 Q. At the end of yesterday I was taking you to
2 Mr Harrison's letter of 15 September 2006, if that could be
3 brought up, SJH-14. Mr Roland, are you able to see that?
4 We can enlarge it for you.

5 A. I'll have to move forward because it's smaller print.
6

7 Q. Sorry, perhaps it should be enlarged.

8 A. Thank you. Yes.
9

10 Q. We have some evidence elsewhere that this letter was
11 accompanied by a substantial number of statutory
12 declarations and that together with this substantial
13 document it meant that a total of 450 pages had been
14 received by yourself. Does that approximately sound right?

15 A. It sounds right. My recollection of the size of the
16 files, yes, it sounds right. And of course they were
17 referred immediately to the registry.
18

19 Q. In essence, this letter appears to be a response to
20 requests previously made by the diocese that it was:

21
22 *... not in a position to undertake open*
23 *ended investigations without having details*
24 *of the identity of the persons making the*
25 *allegations or the timeframe and extent to*
26 *which inquiry should be made.*
27

28 Do you see that?

29 A. Yes.
30

31 Q. Is that a reasonable summary of the position up until
32 September 2006?

33 A. I think it is. I think it reflects the view that this
34 was a very complicated matter, in that, as we discussed
35 yesterday, it involved not only issues of possible
36 professional standards issues but it also involved major
37 legal issues in relation to claimants who were not alleging
38 sexual abuse by members of the clergy.
39

40 Q. But you were aware, certainly in September 2006, that
41 even though there were claims of both psychological and
42 physical abuse, there were also claims of sexual abuse;
43 that's correct, isn't it?

44 A. Yes, I think - that's certainly correct, and I believe
45 in retrospect that my somewhat - somewhat slang-like
46 comment about a "fair cop" in yesterday's file note must
47 have been intended to refer to the fact that where clergy

1 were alleged to have abused people, that would be a matter
2 for professional standards independently of any association
3 with the running of the home. I think that's probably what
4 that was intended to refer to.

5
6 Q. But did you take any steps, then, once you had these
7 allegations - those of 15 September 2006 - and you would
8 agree, wouldn't you, that they included specific
9 allegations of sexual abuse against clergy?

10 A. I was aware that the registry and, I believe,
11 Bishop-in-Council were fully aware of these matters, and
12 I didn't personally make any special reference to them.

13
14 Q. Essentially what occurred between September 2006 and
15 the settlement of the claims in March and April 2007 was
16 that all of the claims, irrespective of who the perpetrator
17 may have been alleged to have been, were dealt with in one
18 group, were they not?

19 A. That's right, that's right.

20
21 Q. There was no hiving off of sexual abuse allegations -
22 just let me finish my question. There was no hiving off of
23 the allegations of sexual abuse against clergy into
24 a separate process, was there?

25 A. Not that I'm aware, no, although I am aware, I should
26 say, that the matters referring to clergy were in fact
27 referred to the director of professional standards and of
28 course were referred to the police.

29
30 Q. When were they referred to the director of
31 professional standards?

32 A. That was done by Reverend Comben.

33
34 Q. How do you know that?

35 A. Well, he told me.

36
37 Q. What did he say? What did he refer to the
38 professional standards director?

39 A. I think he referred matters where there were
40 allegations against clergy - they were referred to the
41 director, and in due course I think were referred to the
42 police.

43
44 Q. There are a couple of different things there. Did you
45 hear Mr Gerber's evidence yesterday?

46 A. Yes, I did.

47

1 Q. And Mr Gerber, I think, said that he did not receive
2 any allegations, in the sense of detailed allegations,
3 against clergy with respect to sexual abuse?

4 A. Well, I can't understand that response, with all due
5 respect to Mr Gerber, because I understood that he had been
6 made aware.

7
8 Q. He said that he was generally aware of the group
9 claims but had not received, and we have not been able to
10 locate any specific document which indicates that he was
11 advised of, sexual abuse claims against clergy, save for
12 a professional standards committee meeting in November
13 2006. I'll go to that in a moment. It's slightly out of
14 order, but in November 2006 there was a professional
15 standards committee meeting which considered the North
16 Coast Children's Home matters. We have evidence of that.
17 And it also indicates that there was a discussion at that
18 meeting about referring certain matters, particularly
19 involving clergy, to the police. We also have evidence
20 that although Reverend Comben was to undertake certain
21 tasks, for one reason or another Mr Gerber, on 19 December,
22 so the same date as the settlement negotiations, referred
23 three matters to the police. Is that perhaps what you're
24 referring to?

25 A. It may be. I wasn't involved in the dealings between
26 the professional standards committee and Mr Gerber.

27
28 Q. Do you remember a specific conversation between you
29 and Reverend Comben where he indicated to you that he had
30 referred those matters to the professional standards
31 director?

32 A. That is my recollection, yes. I couldn't say exactly
33 when it happened, but I think he either volunteered the
34 remark or I may have asked him; one or the other.

35
36 Q. At about this time, I think you were receiving some
37 advice from time to time both from Justice Windeyer and
38 also from Garth Blake SC?

39 A. Well, specifically from Mr Garth Blake SC.
40 Reverend Comben and I, and also another barrister,
41 Mr Sheaffe, who was from Brisbane, attended a conference in
42 Mr Blake's chambers in Phillip Street.

43
44 You refer also to Justice Windeyer, and he had - I had
45 had a couple of discussions perhaps by phone with him and
46 he'd sent me a couple of emails, and these really related
47 generally to the question of legal liability for an

1 institution which, on my instructions and according to the
2 information I had, had not been run or managed or
3 controlled by the church.
4

5 Q. We have at tender bundle 39 - I wonder if that could
6 be brought up - a letter to you, still in September 2006,
7 from Mr Comben, the then Reverend Comben, setting out what
8 appears to be a summary table of the claims. If we could
9 go to the next page?

10 A. Yes, I see that.

11
12 Q. Do you recall this particular document?

13 A. Yes, I do.
14

15 Q. If we could scroll through, you will see that each of
16 the claimants - they're redacted now, but in any event each
17 of the claimants on the left-hand side, the detail of the
18 physical, psychological and sexual abuse is set out there.

19 A. Correct.
20

21 Q. Then we come to a summary of the table towards the
22 end.

23 A. Yes.
24

25 Q. Total number of claims, 41. I count 40.

26 A. Yes.
27

28 Q. In any event, it's noted there on that second-last
29 page that there were 20 matters involving sexual abuse.

30 A. Yes.
31

32 Q. That's correct, and if we go on to the next page, we
33 see that the relevant members of staff and clergy are set
34 out there.

35 A. Yes.
36

37 Q. You spoke a moment ago about the conversations you had
38 with Reverend Comben. Do I take it that in terms of
39 referring matters to the police, that was a matter you left
40 for Reverend Comben to act on?

41 A. Well, I - yes, yes.
42

43 Q. With respect to any relevant disciplinary proceedings,
44 that was also a matter that you relied upon Reverend Comben
45 to take appropriate action on?

46 A. Yes, I didn't see my responsibility to be involved in
47 internal church matters.

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Q. The next response we have is SJH-19. By this stage, Mr Comben had provided you with a substantial document, including further material, which was sent back to Nicol Robinson Halletts to set out the position taken by the diocese about the issue of liability.

A. Yes.

Q. Can you please cast your mind back to any conversation you may have had with Reverend Comben and his reaction to that substantial letter of 15 September 2006 and the statutory declarations that accompanied it? What was his reaction to that?

A. Well, I think it was part of his reaction, as I recall it, that many of the allegations of sexual abuse did not involve members of the clergy but other people either working at the home or people who looked after children at weekends or holidays or something. I think the whole thing was being handled as a group claim, and as I said before, I was really only looking at the question of legal liability.

Q. I'm asking you about what Reverend Comben - what was his reaction? I mean, there's 450 pages --

A. Well, I - sorry.

Q. It's a 450-page dossier, if I can call it that, or at least a collection of a substantial amount of evidence and submissions with respect to that evidence. What was his reaction to it?

A. Well, I think he obviously would have been greatly concerned at the extent of the material being provided and the nature of the allegations.

Q. You think he was. What did he say to you?

A. Well, I don't recall, with respect. It's several years ago now.

Q. By 10 October, he had obviously gone away and done his own research?

A. Yes, he did. He did quite a bit of research, I believe.

Q. Together with a Mr Foley, I understand?

A. Yes.

Q. They'd prepared a weighty document themselves, had

1 they not?

2 A. Yes, I recall that. I believe we onforwarded it to
3 the other solicitors.

4

5 Q. So was the position taken by the diocese, by the time
6 we come to 10 October, that effectively the diocese was
7 going to push on with opposing the claim and denying
8 liability for it?

9 A. Denying liability in terms of any proposed court
10 action, yes.

11

12 Q. What about in terms of denying the basis upon any
13 liability in the circumstances of the claims generally
14 rather than litigation?

15 A. Are you referring to the protocol, are you?

16

17 Q. Well, please tell me if a different position was taken
18 about the protocol?

19 A. I think it becomes apparent from subsequent
20 correspondence that although the diocese was denying legal
21 liability, they indicated that they would accept some sort
22 of moral responsibility.

23

24 Q. But, Mr Roland, that may have been the case by the
25 time we get to 14 December. Prior to that, the position
26 had been, had it not, as stated in that letter of
27 10 October?

28 A. Well, certainly that's what the letter says.

29

30 *Our client remains of the opinion that your*
31 *clients face insurmountable obstacles in*
32 *the prosecution of litigation in this*
33 *matter.*

34

35 THE CHAIR: Q. What about (c), "Our client does not
36 consider that the protocols"?

37 A. Well, I think the reason for that comment is that they
38 were seen in the context of possibly major civil litigation
39 involving a whole lot of matters that involved other
40 abuses, and the question was, well, to be frank about it,
41 if these matters had been successfully litigated, the
42 outcome for the diocese in a financial sense could have
43 been calamitous.

44

45 Q. Yes, I know, but I assume paragraph (c) you wrote on
46 instructions from Mr Comben, didn't you?

47 A. Oh, it would have been, yes, your Honour.

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Q. And you understood that you were being instructed to say to the solicitors that for any one of the persons they represented, the protocol was not appropriate; is that right?

A. Well, I take your Honour's point, that there should have been a distinction made in regard to those specific ones, yes, I accept that.

Q. And were you instructed not to make that distinction?

A. I can't say definitely that that would have been the case, no.

Q. So you yourself interpreted your instructions that way; is that what it means?

A. I interpreted the instructions as referring to the question of legal liability, not professional standards.

Q. I'm not sure I understand that, because you expressly refer to the protocol.

A. I think the point I was trying to make was that many of the allegations were not covered by the protocol, in the sense that they did not involve clergy or church workers, et cetera, even though they may have involved allegations of, in some cases, sexual abuse. I accept that in terms of named clergy, or allegations involving clergy, that statement was too broadly worded.

Q. Well, with no disrespect to you, what you've just said no-one would have understood from what you wrote, would they?

A. I accept that comment, your Honour.

THE CHAIR: Yes, Mr Beckett.

MR BECKETT: Q. If you go to the next page, you say, first of all, that there is some willingness now to engage in an informal conference. Do you see that?

A. Yes.

Q. But that your position is that the informal conference was to deal with the issues of liability and time limits, not the making of any financial offer to the claimants?

A. That would have been on the basis of instructions I had received, yes.

Q. Then the issues that you raised there at the next

1 paragraph in those four points there, (a), (b), (c) and
2 (d), indicate that you were going to pursue some fairly
3 fundamental issues in the litigation, such as the identity
4 of the proposed defendant, basis of liability, duty of care
5 and limitation issues?

6 A. Yes.

7
8 Q. So there is no indication there, is there, about any
9 pastoral approach or any moral obligation to accept the
10 claims?

11 A. I think the thinking behind that particular
12 communication was that there were some 40, 41 claimants
13 who - and not just - yes, 41 claimants seeking, presumably,
14 or suggested, fairly substantial amounts of compensation,
15 and so it was basically to protect the diocese in terms of
16 legal liability.

17
18 Q. By the time we come to November of --

19
20 THE CHAIR: Q. Just before you move from that document,
21 can we go to annexure 17, I think it is. The reference is
22 001.0245. It's the constitution. You must have looked at
23 this many times?

24 A. I am familiar with the document, your Honour.

25
26 Q. This is the constitution adopted in 1951. You will
27 see that I think on the second page.

28 A. Yes.

29
30 Q. "Lismore, 21st April 1951". I first of all want to
31 take you to page 4, which is under the heading "Trustees".
32 Do you see on the right-hand side, "Trustees"?

33 A. Yes, I'm familiar with that.

34
35 Q. What that told you is that the corporate trustees of
36 the Diocese of Grafton were the effective owners of the
37 property; correct?

38 A. Yes, and of course also I am aware of the land sale
39 ordinance, which was passed in 1935, when the children's
40 home was relocated on to church land, and it effectively
41 stated that the land was held as a bare trustee and not on
42 behalf of the church; it was held on behalf of the
43 children's home.

44
45 Q. Maybe, but let's just work this through. Those
46 trustees are bound by the Church of England Trust Property
47 Act; correct?

1 A. Yes.
2
3 Q. That's what the second clause says. So that bare
4 trust or not, the simple proposition is that the same
5 trustees who were responsible for the property of the
6 Diocese of Grafton were responsible for this property;
7 correct?
8 A. They were responsible - well, in terms of what it
9 spells out, they were responsible, but as I understand it,
10 they saw their role as holding it as a bare trustee.
11 Obviously, this constitution gives them certain powers
12 regarding mortgaging, leasing, et cetera, but as I read it,
13 it doesn't refer to the management.
14
15 Q. We'll come to that. The objects, if we go, then, to
16 the top of the page, 2(a):
17
18 *To provide and carry on a home within the*
19 *Diocese of Grafton in connection with the*
20 *Church of England ...*
21
22 A. Yes, it says that, yes.
23
24 Q. That's expressly connecting the existence of this
25 facility to the Church of England?
26 A. Yes, it does say that.
27
28 Q. And then what we find, if you go across the page,
29 there is to be a president of the organisation, and that is
30 the rector for the time being of St Andrew's, Lismore; do
31 you see that?
32 A. Yes.
33
34 Q. He's the president?
35 A. That's true.
36
37 Q. If you then go down the page for me to pick up clause
38 13, as you would expect, the president is the chairman of
39 the meetings of the executive?
40 A. That's true.
41
42 Q. It's the executive that's responsible for this
43 facility, isn't it?
44 A. That's true - executive, yes.
45
46 Q. So that we have the rector of the Anglican Church,
47 St Andrew's Lismore, as the chairman of the executive; is

1 that right?
2 A. That's true.
3
4 Q. Then if we go to clause 15, the executive is empowered
5 to employ the relevant officers; correct?
6 A. True. That's correct.
7
8 Q. So, as you would expect, the executive effectively
9 runs the place?
10 A. That's true.
11
12 Q. If we go back up the page again, we'll see that there
13 is a provision for the management of the home, and again,
14 as you would expect, it's under the control of the
15 executive; correct?
16 A. Yes, your Honour.
17
18 Q. And furthermore, that executive not only has as its
19 president the rector; it must have two-thirds of its
20 members as members of the Anglican Church or the Church of
21 England?
22 A. That's true, your Honour.
23
24 Q. And furthermore, the bishop may appoint to the
25 executive four additional members?
26 A. That's true.
27
28 Q. So inevitably, as required by this document, it's the
29 Church of England, through both its rector and the members
30 of the executive, that has the control and management of
31 this facility; correct?
32 A. Well, that's a matter of interpretation, your Honour.
33
34 Q. I'm asking for your interpretation.
35 A. Well, my interpretation is that the actual running and
36 management of control was by the executive committee as an
37 independent group and not representing the diocese.
38
39 Q. That's a bit hard to sustain, isn't it, against what
40 we've just looked at?
41 A. Your Honour, senior counsel has sighted this document
42 and he, as I recall it, was of a similar view.
43
44 Q. Very well. The document continues on: the chaplain
45 is to be the rector for the time being of the parish of
46 Lismore; correct?
47 A. Your Honour, there is no doubt that the home was

1 associated in many ways with the church; that's true.

2

3 Q. And furthermore, the visitor - in other words, the
4 ultimate supervisor, if you like - is to be the bishop;
5 correct?

6 A. Where is that, your Honour?

7

8 Q. Just scroll back up the page a bit, paragraph 3.
9 Correct?

10 A. Yes, your Honour.

11

12 Q. And finally if we go across or come down the page to
13 clause 28, it provides that:

14

15 *THIS CONSTITUTION shall not be altered, or*
16 *amended ... so as to sever the connection*
17 *of the Home with the Church of England.*

18

19 Do you see that?

20 A. Yes, your Honour.

21

22 Q. Did senior counsel talk about that clause when he gave
23 you advice?

24 A. I can't specifically recall whether that particular
25 clause was discussed, but I don't think it is disputed that
26 there were links between the church and this home. The
27 question was whether the church was actually - the
28 management committee was actually running the church -
29 sorry, running the home or whether it was the church
30 running the home.

31

32 Q. Very well. You said earlier that you had the view
33 that the facility was not run, managed or controlled by the
34 church.

35 A. That's true.

36

37 Q. Do you still seek to sustain that view?

38 A. Well, that has been the view that I have taken
39 throughout. I realise that in more recent times people
40 have - some people have queried that interpretation, but it
41 was the view that I and others had at that time based on
42 the material that was provided.

43

44 Q. Holding that view, did you nevertheless discuss with
45 those instructing you what this document might reveal in
46 the way of moral responsibility?

47 A. I think the question of moral responsibility was

1 eventually reflected in the settlements that took place.

2

3 Q. When you say "eventually", but what about at the
4 beginning? When you first became aware of this document,
5 did you talk to those instructing you about moral
6 responsibility?

7 A. I would believe that I was confining my comments to
8 the question of liability in a legal - in the case of
9 possible legal action.

10

11 Q. Two more questions at this stage. You came to a view
12 about the legal position, and I infer from what you're
13 saying you were confident the church could defend a common
14 law claim. Is that right?

15 A. Well, yes, that was only after I obtained senior
16 counsel's opinion, your Honour.

17

18 Q. Very well.

19 A. Well, put it this way, that was the view that I had
20 come to, and it was confirmed not only by senior counsel
21 but also by the chancellor and another barrister who had
22 been engaged in the matter as well.

23

24 Q. The chancellor being Justice Windeyer?

25 A. Justice Windeyer.

26

27 Q. Did he see the document we've just looked at?

28 A. No, I couldn't say definitely.

29

30 Q. Given your view as to the strength of the legal
31 position, I'd like to know whether you engaged in telephone
32 discussion with the solicitors acting on behalf of the
33 potential claimants, or was it confined to written
34 correspondence?

35 A. Oh, there were several - there were quite a few
36 telephone conversations. I think Mr Beckett produced some
37 file notes yesterday, which were earlier than this, of
38 course.

39

40 Q. What I'm wondering is whether you ever suggested to
41 the solicitor, "Look, we have a strong position, we
42 believe, in relation to liability. Amongst other things,
43 there's the statute of limitations "?

44 A. That's true, your Honour.

45

46 Q. "But we're going to waste a lot of people's time and
47 money unless we address the real issues quickly and we

1 should do that in some sort of conference face to face" -
2 did you ever suggest that?
3 A. Well, I think there was a letter there that suggested
4 having a conference to discuss questions of liability.
5
6 Q. That's a liability. I'm talking about the whole of
7 the issue.
8 A. Well, eventually of course there was such a meeting.
9
10 Q. But at this stage, as you formed this confident view,
11 did you suggest, "We could waste a lot of time and a lot of
12 money. Why don't we sit down and talk about it now so that
13 all the cards are on the table and people can try and come
14 to some rational and sensible position"? Did you speak in
15 those terms?
16 A. Well, there is discussion about having a meeting, and
17 one was eventually scheduled and took place.
18
19 Q. I think you know what I'm saying, don't you, that
20 really what should have happened at an early stage was
21 people should have been frank and open about what their
22 respective positions were - both in terms of legal
23 responsibility and moral obligation; do you agree?
24 A. That seems reasonable, yes, your Honour.
25
26 Q. I don't know whether you know the answer to this, but
27 I'd like to know it: how much in the way of fees have you
28 charged or did you charge the diocese for the advice and
29 work that you did for them?
30 A. In this particular matter?
31
32 Q. Yes.
33 A. Your Honour, I regret to say I don't have that
34 information available, but I was engaged on a contractual
35 basis and I believe my fees would be considered very
36 reasonable.
37
38 Q. I'm sure they were, but presumably someone can work
39 that out for us, can they?
40 A. Well, I no longer have the files, your Honour --
41
42 Q. Someone can do it. The church no doubt can --
43 A. It could be referred to. It could be looked up.
44 I wouldn't feel in any way embarrassed at the level of fees
45 that I was charging.
46
47 THE CHAIR: I'm not suggesting you would, but I think we

1 would like to know how much was spent with the lawyers.
2 We'll find out in due course.

3
4 Yes, Mr Beckett.

5
6 MR BECKETT: Q. Just following that line, I will show
7 a document we received I think yesterday afternoon or this
8 morning. If I could have this brought up on ELMO, which is
9 the device over there, just the first page, please. If
10 this could be enlarged, please. This relates to 2007.
11 Clearly you had been engaged in the claim throughout 2006;
12 that's correct, isn't it?

13 A. Yes.

14
15 Q. We have a financial income statement for the calendar
16 year 2007. You will see in the middle of the page there is
17 a line item "Professional Standards", and then we have
18 legal costs of \$27,296 there. Do you see that?

19 A. Yes, I do.

20
21 Q. First of all, the professional standards matters you
22 were dealing with in 2007 for the Diocese of Grafton were
23 essentially the group claims; is that correct?

24 A. To the best of my recollection, that would be right,
25 yes.

26
27 Q. Is it reasonable to assume that that \$27,000 in 2007
28 was entirely, or at least the majority of it, with respect
29 to the North Coast Children's Home group claim?

30 A. That's - that would probably be right. I see it's
31 under the heading of "Professional Standards", so without
32 actually having been able to verify it myself, I would just
33 accept that that is probably the case.

34
35 MR BECKETT: Hopefully we will have the 2006 financial
36 statements later today.

37
38 THE CHAIR: Yes.

39
40 MR BECKETT: Q. Mr Roland, you knew, didn't you, by
41 8 December that Dr Aspinall had been approached by the
42 claimants' solicitors with respect to the group claim?

43 A. Certainly I'm aware of it now. I don't know when
44 I became aware of it.

45
46 Q. Perhaps I'll bring up that letter. If AP-2 could be
47 brought up.

1 A. Yes, I see that.
2
3 Q. Was that a letter that you were shown by
4 Reverend Comben or somebody else at the diocese?
5 A. What was the date of it again?
6
7 Q. 8 December 2006.
8 A. Without being able to refer to my files, I don't
9 recall having seen that letter.
10
11 Q. I'll take you to some additional documents. I'll show
12 you another document, TB-50. That's exhibit 3-2, tab 50.
13 This is dated the day before and it's addressed to you.
14 It's a short letter from Mr Blake setting out what his view
15 was following the conference that you had with him,
16 Reverend Comben and Mr Sheaffe, the other barrister, on
17 6 December 2006. Do you remember that?
18 A. Yes, I remember that, yes.
19
20 Q. If we scroll down, there were two draft letters that
21 Mr Blake had provided to you. This is a formal denial of
22 liability.
23 A. Yes.
24
25 Q. And an indication of an intention to strike out any
26 proceedings that may be commenced.
27 A. Yes.
28
29 Q. Then the next page --
30
31 THE CHAIR: Q. Just before you leave that one - I'm sure
32 you appreciated that that letter doesn't actually address
33 all of the elements in the constitution we just had a look
34 at, does it?
35 A. No, but I know Mr Blake made further inquiries over
36 a period of some time seeking all sorts of documents
37 relating to the history of the home, and I don't believe
38 that he - as far as I'm aware - resiled from his original
39 opinion. I mean, obviously I can't speak for Mr Blake, but
40 that was --
41
42 Q. But there is no reference in the letter to how the
43 executive is constituted, the appointment of the rector,
44 the role of the bishop as visitor, the nature of the
45 executive and how it is to comprise people from the Church
46 of England. None of that's referred to, is it?
47 A. Certainly not in the letter to Mr Harrison, no.

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MR BECKETT: Q. Just going on to the next page, then, senior counsel provided you with a draft letter offering a way forward in terms of the pastoral care and assistance scheme?

A. Yes.

Q. We have there some indication that - it looks somewhat similar to what Mr Gerber was saying yesterday about the position of a facilitating panel to assess the recommendations that it would wish to make to diocesan representatives?

A. Yes, I see that.

Q. Just reading, if you would, through (a), (b), (c), (d) and (e), please confirm my understanding there was no indication there of consideration of liability or limitations issues in that process?

A. That's true - well, that seems to be true, yes.

Q. Do you recall that there were some discussions between you and Reverend Comben about whether to reply, and in what terms, to Mr Harrison with respect to a proposal for settlement negotiations?

A. I believe there were, yes.

Q. In the context of that, there is a letter of 14 December, if that could be brought up, please. SJH-31.

A. Yes.

Q. And over the page, if you wouldn't mind.

A. Yes.

Q. I just want to ask you some questions about the genesis of this letter. It appears that Bishop Slater has received Dr Aspinall's letter of 8 December setting out those six principles that you read a moment ago?

A. Yes.

Q. And that those, or at least a variation of those principles, were adopted by the diocese and you included them in your letter?

A. Yes, I do recall Reverend Comben discussing with me what response was to be made.

Q. Did he mention to you or did you have a conversation with him or with Bishop Slater about Dr Aspinall contacting

1 the bishop about the negotiations with Simon Harrison?

2 A. Well, he may have. As I say, it's some years ago. I
3 just don't recall, but that is possible.

4
5 Q. Reverend Comben instructed you, did he, to incorporate
6 a variation of those principles into this particular
7 letter; is that correct?

8 A. I do recall that I was instructed to vary a letter.

9
10 Q. Let's have a look at TB-54, exhibit 3-2. You will see
11 that's what appears to be a file note - that's your
12 handwriting, is it not?

13 A. Yes, it is, and I see it does refer to a letter from
14 the primate, yes.

15
16 Q. So attending Reverend Pat Comben, so you were speaking
17 to him by telephone or in person?

18 A. One or the other, yes.

19
20 Q. And then:

21
22 *(a) "Without Prejudice" letter to*
23 *incorporate dot points from Primate's*
24 *letter dated 8 Dec.*

25
26 A. Yes.

27
28 Q. And then "(delete number 4)"?

29 A. Yes.

30
31 Q. Is that a reference to deleting the fourth of the
32 principles?

33 A. It must have been, yes.

34
35 Q. And I wonder if you could read the next one?

36 A. It seems to say:

37
38 *Number 5. While the diocese acknowledges*
39 *the right of your clients to take legal*
40 *action, ... (as before).*

41
42 Q. Then if we go to SJH-31 and if we could scroll down,
43 you will see the first principle was on the previous page,
44 and then principles 2, 3, 4 and 5. The primate had said
45 that one of the principles he adopted was an assurance that
46 they have - that is, the claimants have - recourse to legal
47 advice and court processes at any time and that the diocese

1 would do nothing to stand in their way. That was the
2 principle that was to be deleted from your response to
3 Mr Harrison; is that correct?

4 A. Well, I assume that's right, yes.

5
6 Q. And it's replaced with the one that we see at point 4:

7
8 *While the Church acknowledges the rights of*
9 *your clients to take legal action, the*
10 *Church is open and willing to mediation and*
11 *reconciliation processes ...*

12
13 A. That's right, yes.

14
15 Q. Do I take it from that that you did not want to
16 indicate to Mr Harrison that you would waive the diocese's
17 rights to rely on, for example, a limitation clause?

18 A. The amendment to the primate's letter, as I recall it,
19 was in accordance with my instructions from
20 Reverend Comben.

21
22 Q. If we go down the page, then, you have suggested two
23 options - at (a):

24
25 *... an immediate offer of settlement (to be*
26 *finalized prior to Christmas) including ...*
27 *Counselling*
28 *An acknowledgment ...*
29 *Payment of past medical expenses ...*
30 *Reasonable legal costs*
31 *Modest ex gratia payment ...*

32
33 Do you see that?

34 A. Yes.

35
36 Q. Option one. What was the modest ex gratia payment?
37 Did that have a dollar figure by the time of this letter?

38 A. I wasn't aware of any - well, if I - certainly it's
39 not reflected there. I'm not aware of any dollar figure
40 specifically.

41
42 THE CHAIR: Q. Mr Roland, the words used there are
43 "modest ex gratia payment for the clients' inconvenience".
44 Are they your words or are they Mr Comben's words?

45 A. I couldn't recall specifically.

46
47 Q. How did you think someone who you knew said they had

1 been very seriously affected by what happened would view
2 a letter which said they would be compensated for their
3 "inconvenience"?

4 A. Well, your Honour, with respect, this letter wasn't
5 addressed to those people personally, and moreover I was
6 acting in a legal capacity, not in a pastoral care.
7

8 Q. I know it wasn't sent to them directly, but you could
9 expect their solicitors to show it to them, couldn't you?

10 A. Well, I accept your comment - your Honour's comment.
11

12 Q. Well, how do you think one of these people would react
13 to being told they would be compensated for their
14 "inconvenience"?

15 A. Well, I think, your Honour, the second dot point
16 refers to the "hurt alleged and appropriate pastoral
17 response". I think it is possible the "inconvenience" was
18 in regard to the negotiations rather than the abuse that
19 they had apparently suffered.
20

21 Q. I see, so you had in mind --

22 A. I don't think that reference to "inconvenience" was in
23 relation to the original allegations but more or less to
24 deal with the question of the negotiations. That's the way
25 I read it.
26

27 Q. So, in fact, this was not making any offer of payment
28 for the hurt and suffering that people had experienced; is
29 that right?

30 A. That's - that would appear to be correct, yes.
31

32 Q. Could I just take you back to the previous page, where
33 you refer to the resources being confined "to discuss
34 a settlement", and so on, "could be totally meaningless".
35 Do you see that?

36 A. Yes, your Honour.
37

38 Q. Presumably you had discussions about the resources
39 that might be available; is that right?

40 A. Well, that's true, your Honour, but also it was
41 probably made in the context of a possible range of
42 compensation referred to in earlier correspondence, which
43 was of a very substantial nature.
44

45 Q. I wanted to ask you whether or not the discussions
46 that you had that led you to write in those terms spoke of
47 available cash resources or --

1 A. Well, it would have been on the basis of instructions.

2

3 Q. Just a minute - available cash resources or did it
4 include the possibility of the sale of some assets?

5 A. At that stage, your Honour, the question of sale of
6 assets wasn't discussed, but that paragraph would have
7 been - would have been inserted on the basis of
8 instructions that I had.

9

10 Q. I understand that, but I'm trying to find out just
11 what was motivating, as far as you knew, the instructions.

12 A. Well --

13

14 Q. I take it from your answer that no-one instructing you
15 was contemplating that at that stage the church might have
16 to meet an obligation by the sale of some assets?

17 A. I think that is a reasonable conclusion. The amounts
18 that could have been sought or may have been sought may
19 well have been beyond the resources of the diocese without
20 the sale of significant assets.

21

22 MR BECKETT: Q. Just going through to page 2, you will
23 see that there is an option there, which includes at the
24 bottom of the page labelled (b) something referred to as
25 a pastoral care and assistance proposal with two
26 facilitators; do you see that?

27 A. Yes.

28

29 Q. This was loosely based on the advice that you received
30 from Mr Blake as to an appropriate letter to send to the
31 claimants?

32 A. That's correct.

33

34 Q. If you could go down to (d), please, you can see that
35 it reads this way:

36

37 *That the facilitators may consider the*
38 *prospects of the claim's success, the delay*
39 *in making the claim and any other factor*
40 *they consider appropriate in making the*
41 *recommendation.*

42

43 Do you see that?

44 A. Yes.

45

46 Q. You would agree that that had been inserted into the
47 proposal that Mr Blake had provided to you?

1 A. Yes, I do recall being instructed to add - to vary his
2 letter in one or two respects.
3
4 Q. Was it Reverend Comben who instructed you to add that
5 element?
6 A. It was Reverend Comben that I was receiving my
7 instructions from, so I guess that would be right, yes.
8
9 Q. Did you indicate to him that if you inserted that sort
10 of provision into a facilitation mechanism, effectively it
11 meant that the entirety of the claim would be the subject
12 of the facilitation?
13 A. I think that's a reasonable interpretation, yes.
14
15 Q. Presumably you told Reverend Comben that that was
16 likely to make it less attractive to the claimants if
17 a liability was included in the facilitation?
18 A. I don't recall any specific comment along those lines.
19
20 Q. Over on to page 3, you will see the first paragraph
21 there, indicating that in the event that Mr Harrison's
22 clients are prepared to accept either of the above
23 alternative proposals, the clients will need to enter into
24 a deed of release releasing all church persons in any way
25 connected with the home. Do you see that?
26 A. Yes.
27
28 Q. So the idea was that if the claimants were to accept
29 either of those proposals, then they would enter into
30 a deed of release; is that correct?
31 A. That's what it states. That must have been the
32 instructions, yes.
33
34 Q. So do I take it from that that counselling, for
35 example, was not something that was being provided separate
36 to the settlement negotiations but was in fact part of the
37 two proposals that you included in this letter?
38 A. Well, I'm not sure whether counselling might otherwise
39 have been provided, but it was part of the proposal set out
40 in this letter.
41
42 Q. That is to say, is it unreasonable to assume that if
43 one of the clients wanted to accept the offer of
44 counselling, they had to enter into a deed of release?
45 A. Not - I think the deed of release would be on the
46 basis of all the items in the --
47

1 Q. And one of those items included counselling, at least
2 in option (a)?
3 A. That's one of them, yes.
4
5 Q. Following this letter, you convened I think about
6 five days later at the diocesan centre to have settlement
7 negotiations --
8 A. Yes.
9
10 Q. -- with Mr Harrison?
11 A. Yes, that took place over two days, I recall.
12
13 Q. Mr Roland. You're smiling. I wonder why you're
14 smiling about that.
15 A. Because I think that was a critical part of the
16 history of the matter, yes.
17
18 Q. Those negotiations continued over two days, did they
19 not?
20 A. They did.
21
22 Q. There are some indications that we have had, evidence
23 from particularly Mr Harrison, about the way in which
24 Mr Comben was acting at that particular settlement
25 conference. Did you hear that evidence?
26 A. Oh, yes, I did, and I also recall it being raised at
27 the private hearing as well. My --
28
29 Q. Just let me ask you some questions first about that.
30 In any event, there was a bit of toing and froing in terms
31 of the financial amounts offered by both parties at those
32 settlement negotiations?
33 A. That's correct, yes.
34
35 Q. And the opening position of the diocese was that each
36 claimant would be offered, was it \$5,000 or \$10,000, do you
37 recall?
38 A. Well, I just don't specifically recall, but whatever
39 that - whatever that recollection stated was probably
40 right.
41
42 Q. By the end of 20 December, the diocese had offered
43 \$750,000 to settle all claims; that's correct, isn't it?
44 A. I believe it would be, yes.
45
46 Q. And Mr Harrison had made an offer of \$1.2 million to
47 settle all claims?

1 A. I accept that was - would be the case, yes.
2
3 Q. Yesterday or perhaps the day before, we heard some
4 evidence that Mr Comben, at the start of the proceedings,
5 was sitting in the room where Mr Harrison came in, with his
6 feet up on a chair. Do you recall that evidence?
7 A. I recall the evidence. I don't recall the incident.
8
9 Q. You don't recall him with his feet up on a chair at
10 all?
11 A. I don't recall it, apart from this context. I do
12 remember the evidence, yes. But I don't recall
13 specifically the incident.
14
15 Q. Do you recall Reverend Comben reading a book at some
16 stage at the start of the negotiations?
17 A. No, I don't.
18
19 Q. Do you remember Reverend Comben walking out at
20 a particular stage of the settlement negotiations?
21 A. I think he may have.
22
23 Q. Was that in response to Mr Harrison putting forward
24 a copy of his letter to Mr Campion of 2 September 2005,
25 which referred to abuse having occurred in "an Anglican
26 place"?
27 A. I don't recall what preceded the incident you refer
28 to.
29
30 Q. Do you remember that letter being shown to you and to
31 Mr Comben?
32 A. Without referring to my own notes, no, I don't.
33
34 Q. I'll take you to your notes and see if you have it
35 there. TB-55, exhibit 3-2.
36 A. I don't see any reference there to the incident you
37 refer to, I'm afraid.
38
39 Q. It's unlikely that you would record such an incident;
40 is that correct?
41 A. I think that's correct, yes. Whether I should or not
42 is a different matter, but I don't recall.
43
44 Q. Do you remember Reverend Comben also saying at one
45 stage in relation to the commencement of proceedings, using
46 the words "Bring it on"?
47 A. I don't - I don't recall that, no.

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Q. Mr Roland, you're smiling again. Is that because that was indicative of Reverend Comben's attitude at the conference?

A. No, it wasn't at all. And I'm sorry if my response created that impression.

Q. In any event, after this particular settlement conference, the settlement negotiations continued for some time in January, February and March 2007; is that correct?

A. Yes, that's true.

Q. I think by 22 February the matter had been taken to the Bishop-in-Council for consideration. Were you aware of Bishop-in-Council considering approval of an amount with respect to settling the North Coast Children's Home claims?

A. I understand that's right, yes.

Q. And by 22 February they had approved an amount of \$950,000?

A. As I recall it, that approval was directed to Reverend Comben, in liaison with myself, being authorised to settle the matters up to an amount of \$950,000.

Q. Indeed. So effectively your instructions were, obviously, to minimise, if you like, the financial contribution to the claim but to reach a settlement if that was possible; is that right?

A. Yes, yes.

Q. The negotiations were conducted on the basis that even though you had approval for \$950,000, if you could achieve a lower amount, then that was what your instructions were?

A. Well, that's the way I interpreted it, yes.

Q. And Reverend Comben had instructed you to, I think at various stages, try to minimise any additional payments beyond the \$750,000 that had originally been agreed to in December?

A. I think - yes, I think Reverend Comben, in giving me those instructions, was mindful of the overall cost of the proceedings, including legal costs.

Q. If you could have a look at SJH-54, this is a letter dated four days after the Bishop-in-Council meeting on 22 February 2007. You wrote to Mr Harrison rejecting the latest offer from him dated 22 February 2007 and

1 withdrawing all offers previously made save for the without
2 prejudice pastoral care and assistance package made on that
3 earlier document of 14 December. Do you see that?

4 A. Yes, I do.

5
6 Q. Do I take it from that that the words "withdraws all
7 offers" meant that the \$800,000 or so that had been offered
8 up until that date was withdrawn?

9 A. That's the way it was read and it would have been
10 written on instructions.

11
12 Q. So essentially all the negotiations that had occurred
13 between December and February had come to nil at that
14 stage?

15 A. I would imagine that that letter was written with
16 a view to perhaps bringing the matter to a head. In other
17 words, instead of drifting on indefinitely, it was sort of
18 a --

19
20 Q. It was a commercial tactic, wasn't it?

21 A. Yes, well, I think that is a reasonable description,
22 yes.

23
24 Q. Did you realise that that withdrawal of all offers was
25 likely to be communicated to the claimants on the other
26 side?

27 A. I - well, I assume that that would follow, yes.

28
29 Q. And you knew that those people had alleged not only
30 that they had suffered from sexual abuse but that many of
31 them were suffering from some form of mental illness or
32 psychological trauma as a result of that abuse?

33 A. I think that's reasonable, yes.

34
35 Q. Did you consider what the effect of this letter might
36 be upon them?

37 A. That letter was written on instructions.

38
39 Q. Did you bring to the attention of Reverend Comben the
40 effect that such a tactic might have upon the claimants?

41 A. I don't recall specifically making that comment, no.

42
43 Q. Did he indicate to you that there was some concern
44 about adopting that particular tactic in negotiations?

45 A. I really can't speak for Reverend Comben. I don't
46 recall him commenting.

47

1 Q. If we could go to SJH-57, please. Perhaps, instead,
2 tender bundle 67 could be brought up. You will see that's
3 a file note apparently from your file of 6 March 2007,
4 indicating some general discussion?
5 A. Yes.
6
7 Q. So do I take it from that that an offer was then put
8 back on the table in the amount of about \$820,000 on that
9 day?
10 A. It appears to be, yes.
11
12 Q. So having withdrawn it, it was now back on the table?
13 A. Yes.
14
15 Q. So it wasn't really a very serious withdrawal, was it,
16 the one of 26 February?
17 A. I think - I think that is probably correct. I think
18 it was probably a tactical move rather than reflecting the
19 long-term resolution of the matter.
20
21 Q. Then we have tab 69 in exhibit 3-2. This, as
22 I understand it, was the final instructions you received
23 from Reverend Comben about settlement, in the sense that
24 that \$825,000 was the agreed amount but not a penny more?
25 A. Yes, that's what it says.
26
27 Q. That is the amount agreed on with Mr Harrison?
28 A. I think it was. I see Simon Harrison, in that file
29 note, said he couldn't accept the amount and would be
30 writing to his clients.
31
32 Q. But you know now, don't you, that some time after
33 that --
34 A. It was settled in that order, yes.
35
36 Q. -- it was settled for that amount?
37 A. Yes, it was something like that.
38
39 Q. In that period from December 2006 through to March
40 2007, Mr Harrison had made a number of attempts to have the
41 amount increased, including by asking the diocese to cover
42 the HIC component of his clients' obligations, hadn't he?
43 A. I take it you have some reference to that, do you?
44
45 Q. Yes, I can take you to the relevant documentation.
46 A. I accept that that was --
47

1 Q. Yes, and do you accept also that he had attempted to
2 obtain some contribution to legal costs as part of the
3 global amount that the matter was going to be settled for?
4 A. Sorry, could you just repeat that?
5
6 Q. Perhaps I'll put it another way. While he was trying
7 to reach an agreed price with you, he also attempted to
8 have the diocese cover some of the legal costs?
9 A. That would be probably right, yes.
10
11 Q. But both the HIC component and the legal costs were
12 resisted by the diocese; is that correct?
13 A. I would say that would be correct, yes.
14
15 Q. So you understood that out of the \$825,000 would have
16 to come any legal fees?
17 A. Yes.
18
19 Q. And would also have to come any HIC component?
20 A. Yes.
21
22 Q. And it would also have to include any counselling that
23 an individual may wish to spend their money on?
24 A. I think that's right, yes.
25
26 Q. You had 41 or so claimants there, so my rough
27 estimation would be that each claimant would receive about
28 \$20,000, on average, each?
29 A. On average, yes.
30
31 Q. Less whatever their costs may have been?
32 A. Yes.
33
34 Q. I wonder if the witness could be shown exhibit 3-5.
35 A. Yes, I see that. Yes.
36
37 Q. So by this stage, by 28 March 2007, you had agreed
38 with the claimants' solicitors a global amount for
39 settlement of the claim?
40 A. Yes.
41
42 Q. And that there remained some elements to be concluded,
43 namely, the deed of release?
44 A. Yes.
45
46 Q. And also proposals about an apology from the diocese
47 to individuals?

1 A. Yes, yes.

2

3 Q. Mr Comben wrote to you in these terms, did he not, to
4 provide you with future instructions?

5 A. Yes.

6

7 Q. He says at the bottom of that first page, which is on
8 the screen now:

9

10 *... we do not admit liability and part of*
11 *what we believe to be a generous settlement*
12 *offer is provided by the "saved" legal*
13 *costs of litigation, it is our intention to*
14 *treat this as a one-off ex gratia payment.*

15

16 Do you see that?

17

A. Yes.

18

19 Q. So I presume, by that, you understood that to mean
20 that that was the conclusion, at least generally speaking,
21 of the group claims?

22

A. Yes, I think there's a reference, somewhere in that
23 letter, to two of the claimants not being part of the
24 settlement.

25

26 Q. I'll come to that in a moment. If you go to the first
27 paragraph on the second page, I understand by this stage
28 you knew, did you, that two of the claimants, particularly
29 Mr Campion and [CA], had rejected the offer of the diocese?

30

A. I think that would follow, yes.

31

32 Q. And that Mr Comben's view appears to be stated in that
33 first letter, namely, that he had asked you "to close your
34 file" and that "any further inquiries from the present
35 group of former residents will only be legally responded to
36 if a Writ of Summons is issued"?

37

A. That's what it says, yes.

38

39 Q. In other words, you had no further instructions save
40 for when legal proceedings were commenced by any such
41 people?

42

A. That's true.

43

44 Q. There were to be no further negotiations with those
45 people?

46

A. That's true.

47

1 Q. Then in the second part of that paragraph, it says:

2

3 *Our instructions to your firm will from the*
4 *time of this settlement be to ask that all*
5 *inquiries be passed to the Diocese and we*
6 *will respond pastorally, but not with*
7 *further settlement negotiations.*

8

9 A. Yes.

10

11 Q. Do I take that to mean that if there were any further
12 claims, the approach that you were to adopt was to (a)
13 refer it to the diocese to be dealt with pastorally and (b)
14 that there would be no further settlement negotiations?

15 A. I think that's a reasonable interpretation, yes.

16

17 MR BECKETT: Is that a suitable time?

18

19 THE CHAIR: Yes. We'll take the morning adjournment.

20

21 **SHORT ADJOURNMENT**

22

23 MR BECKETT: Your Honour, we have been able to locate some
24 documentation with respect to legal fees, particularly
25 Mr Roland's legal fees. They are with ELMO at the moment.
26 I will go briefly through them. Unfortunately I only have
27 one copy.

28

29 THE CHAIR: That's all right. The global sum will do for
30 our purposes.

31

32 MR BECKETT: Q. Mr Roland, just before the Royal
33 Commission came back on, I showed you a document.

34 A. Yes.

35

36 Q. I am more than happy to show it to you again, but
37 perhaps if I can just go directly to the evidence --

38 A. Yes, I can recall the document.

39

40 Q. You had in I think about July 2006 issued an estimate
41 of fees?

42 A. Yes, I had.

43

44 Q. You made an estimate of about \$60,000?

45 A. Was that all professional fees or did that include
46 counsel's fees?

47

1 Q. Just excuse me for a moment. I'll go and grab the
2 document. Professional fees, \$30,000. Barristers fees,
3 \$20,000. Expenses, disbursements and so forth, for a total
4 of \$62,000.

5 A. Yes, that would have been made on the anticipated
6 basis of actually a litigated situation, I would say. In
7 fact I don't believe the fees came to anything like that,
8 in the event.

9

10 Q. Indeed. We have your tax invoice for 20 October 2006
11 in the amount of \$8,236 for work until that point in time.

12 A. Yes, I saw that.

13

14 Q. You set out a substantial schedule as to what your
15 attendances and so forth were. Do you recall whether you
16 sent a further invoice for your fees at some later point
17 with respect to the North Coast Children's Home?

18 A. I probably would have when the initial group claim was
19 settled. Whether I charged for anything after that is
20 unlikely - I don't know, but I think it's unlikely.

21

22 Q. We also have a tax invoice from Mr Garth Blake,
23 22 December 2006, in the amount of \$11,742.

24 A. What date was that again?

25

26 Q. 22 December 2006.

27 A. Yes, well, that's right. In addition, he would have
28 submitted a further invoice, I would imagine, because he
29 was involved in it for some time after that.

30

31 MR BECKETT: I tender that document.

32

33 THE CHAIR: Those documents together, being fee documents,
34 will be exhibit 3-8.

35

36 **EXHIBIT #3-8 FEE DOCUMENTS**

37

38 MR BECKETT: Q. I want to take you now, Mr Roland, to
39 tab 78A of the tender bundle. It's exhibit 3-2. It's
40 a deed of release. This one is dated 26 April 2007.

41 A. Yes.

42

43 Q. If we could scroll through that so you can familiarise
44 yourself with the document?

45 A. Yes. Yes, I have seen that. Yes.

46

47 Q. This is a deed of release signed by Mr [CK] with the

1 diocese following his acceptance of the settlement offer
2 that had been provided to him. That's correct, isn't it?
3 A. I would say that's right, yes.
4
5 Q. This is the general form of the deed of release that
6 was --
7 A. Yes, the majority of those --
8
9 Q. Sorry, just let me ask the question, if you don't
10 mind, and then the transcript will set out adequately what
11 it was. This is a deed of release that was adopted with
12 respect to all, if not all, then the majority, of the group
13 claimants in the North Coast Children's Home matter?
14 A. Certainly the majority.
15
16 Q. I see if we go back to page 1 that the releasees -
17 that is to say, those parties that were protected by the
18 deed - include the corporate trustees of the Diocese of
19 Grafton; is that correct?
20 A. Yes.
21
22 Q. And then the committee from time to time of the
23 unincorporated association known as North Coast Children's
24 Home?
25 A. Yes.
26
27 Q. Staff employed there?
28 A. Yes.
29
30 Q. And also volunteers?
31 A. Yes.
32
33 Q. And then also staff or clergy providing pastoral
34 ministry?
35 A. Yes.
36
37 Q. Do I take it from that that your advice to
38 Reverend Comben and the Diocese of Grafton was that the
39 corporate trustees of the Diocese of Grafton were not
40 liable for the acts alleged by the group claimants; is that
41 right?
42 A. That's right, yes.
43
44 Q. And if there was some liability, it was with respect
45 to the committee members of the unincorporated association;
46 is that correct?
47 A. Yes, I think that's what it's meant to say, yes.

1 There's a provision not including any persons alleged to
2 have been engaged in the events.

3

4 Q. But in any event you had received instructions from
5 Reverend Comben to enter into a deed of release which
6 protected those members of the committee of the
7 unincorporated association?

8 A. It would appear from that document, yes.

9

10 Q. And other people, such as staff employed and
11 volunteers at the home, were also protected by that?

12 A. Yes, yes.

13

14 Q. And you received those instructions from the diocese?

15 A. Yes.

16

17 Q. In other words, the diocese had instructed you to
18 draft a deed in such a way as to protect all those
19 particular groups?

20 A. Yes.

21

22 Q. Notwithstanding that the position at law that you had
23 taken in the advice provided to the diocese was that, save
24 for the committee members, the others were not legally
25 responsible; is that right?

26 A. Yes, yes.

27

28 Q. Did you consider any irony in adopting that position?

29 A. No, because the question of the actual legal liability
30 had not been - had been contended by us but had never been
31 decided by any judicial authority, so it was, I suppose,
32 written in that way as a precautionary measure.

33

34 Q. So in case there was some issue about ultimate
35 liability resting with the corporate trustees, for example,
36 you wanted to advise your client to protect that particular
37 entity from liability?

38 A. Yes, in respect of that particular releasor - yes.

39

40 Q. If exhibit 3-2, tab 73 could be brought up, please.
41 You had written to Mr Harrison on 3 April 2007 saying that
42 a written apology from the bishop will be available in
43 respect of each settled matter. Is that --

44 A. Yes.

45

46 Q. I haven't seen that expressly prior to this, but do
47 I take it that part of the agreement with Mr Harrison was

1 not only that there would be financial settlement which
2 globally had been determined at \$825,000 but also that
3 there would be a form of apology provided to the claimants;
4 is that right?

5 A. Yes, yes.

6
7 Q. And then he wrote to you on 15 May 2007, SJH-69, if
8 that could come up, please. You'll see that Mr Harrison
9 had instructions from the claimants that are named in those
10 numbered paragraphs there?

11 A. Yes.

12
13 Q. Who had expressed that they wanted a written apology?

14 A. Yes.

15
16 Q. And then over the page, up to 29 had expressed such an
17 indication?

18 A. Yes.

19
20 Q. And then some additional members of the claim group
21 had expressed a desire for a personal apology from the
22 bishop?

23 A. Yes.

24
25 Q. And/or Reverend Comben. Do you see that?

26 A. Yes.

27
28 Q. That included [CL] and an unnamed person, if we go
29 over the page, a third person, and then some of the
30 claimants said they did not wish to receive an apology. As
31 I understand it, Reverend Comben then drafted an apology
32 for that purpose; is that right?

33 A. I believe - well, I believe he would have, yes.

34
35 Q. If tender bundle 81, that's exhibit 3-2, could come
36 up, please, and the first page of that. Then
37 Reverend Comben wrote to you indicating what the position
38 of the diocese was with respect to apologies?

39 A. Yes.

40
41 Q. And that the bishop had confirmed his willingness to
42 meet with and hear the stories of three of the named people
43 and to provide them with an apology, but the suggestion of
44 an apology at a church service was said to be
45 inappropriate. Do you see that?

46 A. Yes.

47

1 Q. Do you understand why it was said to be inappropriate?
2 A. Well, the explanation is against the spirit of the
3 mutually signed deed.
4
5 Q. There was no pastoral reason for --
6 A. Not that I was involved in. Not that I was instructed
7 about, I should say.
8
9 Q. Then if we go over the page, Reverend Comben appears
10 to have provided a draft form of that apology; is that
11 right?
12 A. Yes.
13
14 Q. The words "community based facility" - I presume that
15 was a phrase that Reverend Comben had adopted?
16 A. I would say that that was based on his understanding
17 of the question of the ownership and management of the
18 home.
19
20 Q. It wasn't a phrase that you had adopted, was it?
21 A. I'm not personally aware of having adopted the phrase,
22 no.
23
24 Q. Then in the next paragraph:
25
26 *Whilst I am advised by the lawyers that the*
27 *Home was not our responsibility ...*
28
29 A. Sorry --
30
31 Q. I'll let you read it.
32 A. Sorry, I do see that. Yes.
33
34 Q. That was your legal advice - that the home was not the
35 lawful responsibility of the diocese?
36 A. That's right, yes.
37
38 Q. I presume you read this draft apology at the time?
39 A. I would have, yes.
40
41 Q. Did you make any comment to Reverend Comben as to
42 whether use of the phrase "community based facility" was
43 likely to assist with the healing, if you like, of the
44 group claimants?
45 A. I'm not sure whether the "community based facility"
46 was - I assume it was Mr Comben's choice of words. But, to
47 me, it was not inconsistent with what I understood to be

1 the case.

2

3 Q. Did you consider that that was an appropriate phrase
4 to use in an apology to group claimants, many of whom, if
5 not all of whom, had asserted that the home was in fact the
6 Church of England North Coast Children's Home?

7 A. Yes, I considered it obviously - I must have
8 considered it appropriate.

9

10 THE CHAIR: Q. Mr Roland, I took you through the
11 constitution before.

12 A. Yes.

13

14 Q. We worked out how it was owned, who was responsible
15 for managing it, who was responsible for appointing the
16 people to the executive. Do you still say it was
17 appropriate to respond to these people, who were asserting
18 that this was the church's responsibility, to frame it in
19 terms of a "community based facility" and to confine the
20 church's role, as the second paragraph does, to "support
21 and chaplaincy" as opposed to having a direct role in the
22 management and provision of the facility? Do you think
23 that was appropriate?

24 A. Well, I obviously accepted that form of wording, so
25 I must have, yes.

26

27 Q. What about now?

28 A. Well, obviously with hindsight, some of the - some of
29 the correspondence perhaps could have been more sensitively
30 worded.

31

32 Q. Do you mean that you accept now that this should not
33 have been worded as it was?

34 A. Well, at the time this was worded, it was consistent
35 with the position that we had taken in regard to threatened
36 legal proceedings.

37

38 Q. No, I'm asking you now. Now that you know, as you did
39 then, what the constitution provided and you know now, as
40 you did then, that one of the issues for these people was
41 that the church was denying responsibility for the
42 facility. Do you think now it was appropriate to respond
43 in those terms?

44 A. Well, as I said, it perhaps could have been worded
45 more sensitively, and if you're asking me if I would
46 redraft it in the same way - or if Mr Comben would, he may
47 not have worded it - chosen those words.

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MR BECKETT: Q. Mr Roland, I'll show you a further document, SJH-70. This is a letter 14 June 2007 from you to Mr Harrison.

A. Yes. Yes.

Q. This conveyed with it, as you will see from the annexure, if we could go to the next page, please, you sent to Mr Harrison a copy of the draft letter that Reverend Comben had sent to you?

A. It looks like it, yes.

Q. Mr Roland, we've had some difficulty - in fact, we haven't received any copies of any signed apologies from the bishop to individual claimants. Do you recall receiving any --

A. I --

Q. Sorry, just let me ask. Do you recall receiving from Reverend Comben or Bishop Slater copies of signed apologies?

A. If I had, they would have been reflected in our file and I would have onforwarded them accordingly.

Q. But, in any event, do you remember receiving, or at least seeing, copies of the written apologies sent by Bishop Slater to individual claimants from the North Coast Children's Home?

A. I can't recall having seen such apologies.

Q. Can you assist at all as to whether written apologies were sent to individual claimants or not?

A. I don't know.

Q. We have some evidence from the claimants that we've heard from who provided their evidence at the start of this hearing that they did not receive an apology. Do you know whether that is in fact not the case, that is to say, whether [CK], for example, received a written apology from the bishop?

A. I don't know. If they had been referred to me, I would have certainly acted on them and forwarded them on.

Q. To your knowledge, it was an important part of the settlement process that a written apology would come from the bishop to individuals?

A. I believe that's a fair comment, yes.

1
2 Q. I think we have some evidence that ultimately on
3 19 June 2007 a cheque for \$698,000 was sent to Mr Harrison
4 for a number of the claimants?
5 A. Yes.
6
7 Q. And that reflected the fact that I think two, perhaps
8 even three, claimants at that stage, at least, had not
9 accepted --
10 A. I think that's correct, yes.
11
12 Q. -- the settlement, and so therefore the \$825,000 was
13 reduced accordingly; is that right?
14 A. Yes, pro rata. Yes, I think, from memory, two of the
15 claimants had withdrawn and a third one - I don't know
16 whether they had withdrawn or simply couldn't be contacted.
17 I just don't recall that specifically.
18
19 Q. In 2007 we have some contact between Mr Campion and
20 [CA] with Bishop Slater, particularly a meeting on 3 July
21 2007. Were you involved in the remainder of 2007 with
22 further negotiations that occurred between the Diocese of
23 Grafton and Mr Campion?
24 A. I don't believe so. I was later, but I don't believe
25 so at that point.
26
27 Q. So for the remainder of 2007, did you have any further
28 contact with Mr Campion or with Simon Harrison on behalf of
29 Mr Campion?
30 A. I don't recall having.
31
32 Q. Can you assist as to why it is that it appears
33 Bishop Slater is dealing directly with Mr Campion by July
34 and August 2007?
35 A. I think Mr Campion had been writing to the bishop
36 direct. I'm not sure. It certainly didn't come through
37 me, anyway.
38
39 Q. Do I take it particularly from exhibit 3-5, which
40 indicated Reverend Comben's position about future claims
41 and certainly his position with respect to those claimants
42 who had not settled - remember that correspondence I took
43 you to?
44 A. That was at the conclusion of the group claim, is
45 that --
46
47 Q. Yes.

1 A. Yes.
2
3 Q. A letter of 28 March 2007.
4 A. Yes.
5
6 Q. Do I take it from that that at least as far as you
7 were aware, Reverend Comben's involvement in future claims
8 ceased, or at least he took a backwards step, if you like?
9 A. I'm aware that at some stage Bishop Keith was handling
10 these matters himself.
11
12 Q. Are you saying he took over the carriage of those
13 matters from Reverend Comben?
14 A. In relation to some of those, yes, I believe so.
15
16 Q. And did that occur at about the time of the conclusion
17 of the group claims?
18 A. I can't say exactly when it occurred.
19
20 Q. But in 2007?
21 A. I am aware that - I think I did see a letter that came
22 from Mr Campion that he didn't want to be involved with
23 Mr Comben. I assume that's the reason that bishop --
24
25 Q. When you say you've seen, is that as part of these
26 proceedings?
27 A. I think so, yes.
28
29 Q. If I could just briefly ask you about the involvement
30 of Bishop Slater, you said earlier that your instructions
31 came overwhelmingly from Reverend Comben and you were in
32 frequent contact with him, particularly in that period of
33 December, January and February?
34 A. Yes.
35
36 Q. Did you have contact during that time with
37 Bishop Slater?
38 A. I can't recall having done so, no.
39
40 Q. We have some file notes of yours with respect to the
41 negotiations over the final amount for the group claim,
42 which indicate that you spoke with Bishop Slater or at
43 least close contact was provided through Reverend Comben
44 with Bishop Slater. You don't dispute that that was the
45 case?
46 A. No, I don't dispute that, no.
47

1 Q. Had Bishop Slater been involved in the settlement of
2 these negotiations prior to December 2006?
3 A. I know that Bishop Slater was contacted at the time of
4 the negotiations at the meeting, but I don't know the
5 extent of his involvement in negotiating figures.
6 I believe that Bishop-in-Council was aware of the
7 proceedings, and so bishop would have been aware of them
8 through that.
9
10 Q. We certainly know that on 22 February there was
11 a Bishop-in-Council meeting - you referred to it earlier -
12 where they approved a ceiling --
13 A. Yes.
14
15 Q. -- for settlement of \$950,000?
16 A. Yes.
17
18 Q. And we know that Bishop Slater was presiding at that,
19 at least from the minutes. But apart from that, he was
20 involved with Reverend Comben in settling individual
21 amounts, offers as they arose, during 2007?
22 A. Sorry, you're referring to the group claims or
23 subsequent?
24
25 Q. The group claims.
26 A. Group claims. I imagine he would have been, but my
27 contact up until that time had been mainly with
28 Reverend Comben.
29
30 Q. Do you recall having a meeting directly with
31 Bishop Slater to gain his instructions about the settling
32 of the group claims?
33 A. I think the contact with Bishop Keith was by
34 telephone, I think, rather than a separate meeting. As
35 I say, I can't be absolutely sure.
36
37 Q. All right. If I could take you, then, to tender
38 bundle 112, exhibit 3-2. This is in relation to a man by
39 the name of [CD], who was formerly a resident of the North
40 Coast Children's Home. Just refer to the pseudonyms in
41 front of you. That might assist with remembering his name.
42 A. Yes.
43
44 Q. This is a letter that you wrote?
45 A. This letter - you say that I wrote it? Is it not from
46 Bishop Slater?
47

1 Q. I apologise, yes. Sorry, I hadn't seen the heading
2 there. I presumed it was from you. All right, I'll ask
3 you is this a letter that you've seen before?
4 A. Only in the course of these proceedings. I don't
5 believe I was involved with this particular claimant.
6
7 Q. Did you draft that particular letter?
8 A. I don't believe so.
9
10 Q. Are you aware of who drafted that letter?
11 A. No, I'm not.
12
13 Q. At tab 116 we have a further letter from Bishop Slater
14 to [CD], and that annexes a deed of release, which is at
15 116A. Do you see that there is an offer in the third
16 paragraph there indicating that [CD] had accepted the
17 amount of \$22,658, which was the top band negotiated?
18 A. Yes.
19
20 Q. And enclosing a deed of release. Do you see that?
21 A. Yes.
22
23 Q. Then if we go over to 116A, it is a deed of release in
24 [CD]'s name, not signed, I might say. Are you aware of
25 that?
26 A. I wasn't involved in those negotiations.
27
28 Q. You weren't involved at all?
29 A. No.
30
31 Q. All right. If SJH-74 could be brought up, please. By
32 2 October you had received a further letter from
33 Mr Harrison, who was now with a firm called Herbert Geer,
34 concerning three new claimants. Do you recall receiving
35 this letter?
36 A. Yes, I do.
37
38 Q. He was saying that he had three new claimants who were
39 physically and psychologically abused by the former matron
40 of the North Coast Children's Home. That's right, isn't
41 it?
42 A. Yes.
43
44 Q. You replied, I think on 19 January - perhaps it was
45 earlier, but in any event if you could have a look at
46 tab 123 in exhibit 3-2.
47 A. Yes, I see that letter. That's addressed to

1 Mr Richard "Tommy" Campion, I see.

2

3 Q. Yes. Please ignore that for the moment, and if we
4 could go on to SJH-80, please. This appears to be
5 a follow-up letter from Mr Harrison to his letter of
6 2 October. In it, he names three people, [CE], [CF] and
7 [CG]. Do you see that?

8 A. Yes.

9

10 Q. He was following up his earlier correspondence.

11 A. Yes, I see that.

12

13 Q. He expresses his concern at the fifth paragraph of
14 that letter - that is, the paragraph beginning:

15

16 *It therefore is iniquitous to seek, if that*
17 *is what your client is wishing to do, to*
18 *prevent these three former residents from*
19 *seeking settlement simply because 40*
20 *matters settled earlier.*

21

22 Do you see that?

23 A. Yes, I do.

24

25 Q. So do I take it that your instructions were in January
26 2009 from the Diocese of Grafton to refuse offers of
27 financial settlement to these three additional claimants
28 who had come forward?

29 A. I believe that is correct, yes.

30

31 Q. I'll just take you to your letter, SJH-81. You say
32 there in that letter of 12 February 2009 that:

33

34 *With regard to the forty previous claims by*
35 *clients of -*

36

37 Mr Harrison -

38

39 *it was always our client's -*

40

41 that is, the Diocese of Grafton's -

42

43 *opinion that there was no basis in law for*
44 *such claims as regards the Diocese or the*
45 *Bishop or The Corporate Trustees ...*

46

47 Do you see that?

1 A. Yes.
2
3 Q. Then you say:
4
5 *The previous matters were, as you are*
6 *aware, the subject of "ex gratia"*
7 *settlements on a "Without Prejudice" ...*
8 *basis. In agreeing to a range of*
9 *negotiated settlements, our client had*
10 *regard to both pastoral care and practical*
11 *considerations. It was not our client's*
12 *intention that such "ex gratia" settlements*
13 *should be used as a basis for any future*
14 *claims.*
15
16 Do you see that?
17 A. Yes, I see that.
18
19 Q. So in essence you were saying to [CE], [CF], and [CG]
20 that no financial settlement would be offered to them; that
21 is correct?
22 A. That's so, and that's obviously as I was instructed.
23
24 Q. Is this part of that instruction that you received on
25 28 March 2007 from Reverend Comben with respect to future
26 claims?
27 A. I believe that this matter would have been referred to
28 the registry for instructions and not simply based on the
29 previous - on a previous letter.
30
31 Q. In any event, it was a continuation of the same
32 instructions?
33 A. In effect, yes.
34
35 Q. Do I take it that by this stage you were not aware of
36 the settlement of [CD] that I just referred you to?
37 A. No, I wasn't, no.
38
39 Q. And that is a matter that you knew had been handled,
40 or you know now perhaps --
41 A. I know now. I wasn't aware of it at the time, no.
42
43 Q. As far as you were aware, no payment, no financial
44 settlement, was made with [CE], [CF] and [CG]?
45 A. That's my understanding, yes.
46
47 Q. If I could just go to Tommy Campion's material. RC-90

1 is a letter of 17 June 2010. Just to shortcut matters, the
2 letter of 14 June 2010 from Mr Campion was an indication
3 that he was willing to accept an offer of settlement from
4 the Diocese of Grafton?
5 A. It appears to be, yes.
6
7 Q. You had received instructions to reply in those terms
8 to Mr Campion; is that right?
9 A. Yes.
10
11 Q. I think Reverend Comben had moved on, at least from
12 the position of registrar, by this stage, so do you recall
13 who you got your instructions from?
14 A. It may have been the bishop. I'm not sure when the
15 new registrar commenced, actually. I can't answer for
16 certain. It would have been either the bishop or the new
17 registrar.
18
19 Q. But as a result of this letter, the matter was settled
20 for that amount; is that correct?
21 A. Yes.
22
23 Q. And a deed of release was entered into?
24 A. Yes.
25
26 Q. In 2011 you also received instructions in relation to
27 two further claimants, and if you could just refer to your
28 pseudonym list there, [CB] and [CC]?
29 A. Yes, I recall that.
30
31 Q. Do you recall with respect to [CC], for example,
32 seeing her handwritten letters?
33 A. I would have, yes.
34
35 Q. Would it assist if I showed you a copy of them?
36 A. No, I have seen the material in relation to these
37 proceedings, and I can only accept it must have been
38 referred to me.
39
40 Q. There was a letter from [CB], if AH-13 could be
41 brought up, please. I'll deal with [CC] first. In any
42 event, we have two letters, AH-13 and AH-14, both of which
43 are dated 4 April 2011. Do you see those?
44 A. Sorry, I see a letter dated 4 April from our office
45 addressed to [CC].
46
47 Q. Yes. So do I take it that in relation to [CC], she

1 had written to the Bishop of Grafton indicating in
2 handwriting that she wished to express to him what had
3 occurred to her in North Coast Children's Home?
4 A. Yes, I recall that letter, yes.
5
6 Q. And it was in some quite emotional terms, was it not?
7 A. It was indeed, yes.
8
9 Q. And then similarly with respect to [CB], he had
10 written to the bishop in typewritten form, I think it was,
11 in some detail setting out again in quite emotional terms?
12 A. It was a long letter and it was, frankly, a very sad
13 letter.
14
15 Q. Yes, indeed. Who did you receive instructions from to
16 make this reply?
17 A. The bishop.
18
19 Q. Directly from the bishop?
20 A. Yes.
21
22 Q. I'll just take you through it. Shortly after [CC],
23 for example, had written to him on 7 March 2011, you
24 received instructions within three weeks to write back to
25 [CC] denying liability. Is that correct?
26 A. Yes.
27
28 Q. Why was he so intent, to your knowledge, to deny
29 liability so early on in receipt of [CC]'s claim?
30 A. Well, obviously I can't speak for the bishop himself,
31 but I am aware that the diocese was concerned about any
32 further claims arising from this - from the children's
33 home, because of its financial situation.
34
35 Q. Was there any involvement with the then registrar,
36 Mr Newby, or with --
37 A. Mr Newby --
38
39 Q. Sorry, just let me ask the question first - or with
40 the professional standards director?
41 A. With regards Mr Newby, he was present at the meeting
42 I had with the bishop. As regards professional standards,
43 these matters had been handled by the bishop for some time
44 and that question didn't come up.
45
46 Q. Let me go to the next paragraph. So going to the
47 fourth paragraph there, the bishop had also instructed you

1 on a without prejudice basis:

2

3 *... that the Diocese is prepared to offer*
4 *a pastoral support package ...*

5

6 That's correct, isn't it?

7 A. I see that, yes.

8

9 Q. And that included two, I presume, alternative
10 elements?

11 A. Yes.

12

13 Q. First of all, if the person wanted to accept that
14 pastoral support package within the Diocese of Grafton,
15 then, "the appointment of a support person to meet with you
16 and seek to assist you to move towards wholeness" would be
17 made?

18 A. Yes.

19

20 Q. And then (b) if the person was outside the diocese,
21 and I think this applied to both [CC] and [CB], that's
22 correct, isn't it; they were both outside the diocese?

23 A. Yes.

24

25 Q. That there would be negotiations with the bishop of
26 the particular diocese in which they resided to facilitate
27 the appointment of such a person?

28 A. Yes.

29

30 Q. So do I take it from that that there was no offer of
31 counselling?

32 A. Well, in terms of the wording --

33

34 Q. Well, was there in this particular letter any
35 indication --

36 A. No, it refers to a pastoral --

37

38 Q. Sorry, just let me ask the question first, please.
39 Was there any mention in this letter of an offer of
40 counselling?

41 A. Not in so many words.

42

43 Q. Well, not in any words?

44 A. No, but there's a reference to a pastoral support
45 package, which may have - may have been intended to --

46

47 Q. Mr Roland, "pastoral support package" is set out

1 there, is it not? That is, it's the appointment of
2 a support person.
3 A. That's what it says, yes.
4
5 Q. There's no indication that the pastoral support
6 package was anything more than that, is there?
7 A. Not specifically, no.
8
9 Q. Any person reading this letter would understand that
10 the pastoral support package consisted entirely of the
11 appointment of a support person?
12 A. I think that's a fair comment, yes.
13
14 Q. And there was no indication there that an apology
15 would be offered to the person?
16 A. I believe that's a fair comment, too.
17
18 Q. And there's no indication that any acknowledgment by
19 the diocese of the claims of abuse which had clearly
20 psychologically affected these people would be made by the
21 diocese; is that correct?
22 A. I agree with that.
23
24 Q. Did you suggest to Bishop Slater that a letter such as
25 this and his approach might be poorly received by the
26 claimant that had come forward?
27 A. I agree that - what you say in terms of how this
28 letter would be received, but I do not recall discussing
29 the likely impact on the recipient.
30
31 Q. Mr Roland, you were the diocesan advocate. You had
32 been involved with attending synod and Bishop-in-Council
33 meetings for many, many years by this stage, had you not?
34 A. That's true.
35
36 Q. And you consider yourself a committed Christian?
37 A. That's --
38
39 Q. At that stage and now, today, would you not?
40 A. Yes, I would say that.
41
42 Q. You were concerned, irrespective of what legal advice
43 you might provide, about the pastoral effect, if you like,
44 the appropriate pastoral response that the diocese should
45 adopt with respect to these sorts of claims?
46 A. I agree that that letter could have been far more
47 sensitively expressed.

1
2 Q. Yes, and were you aware of the responses that arrived
3 from [CB] and [CC] to this particular letter?
4 A. From memory, there was an email from [C --
5
6 Q. [CB].
7 A. [CB], which I think I responded to by saying, "This
8 matter has been referred to the registry for an appropriate
9 response", and I don't believe I saw a response to [CC].
10
11 Q. Are you aware that at some point subsequent to this
12 letter, [CB] discovered that financial settlements had been
13 paid as part of the group claim in 2007?
14 A. I don't know that I had any further contact with [CB].
15
16 Q. We have what sounds like it's an email that was not
17 provided to you, but I'll ask you about it, in any event.
18 [CB], we have evidence, wrote an email to the bishop,
19 having discovered that a financial settlement had been
20 offered to other people, and saying that he was "appalled
21 at the response of the bishop", referring to this
22 particular letter.
23 A. Yes. I don't think that email came to my attention.
24
25 Q. Are you surprised by that response?
26 A. No, I'm not.
27
28 Q. In fact, it was entirely predictable, given the terms
29 of this letter of 4 April 2011, to [CB], that it would
30 elicit that response?
31 A. I think that's a reasonable comment, yes.
32
33 Q. If we could go to [CA]-21. Do you recall that on or
34 about 21 February 2012 you received a letter from [CA] with
35 respect to the North Coast Children's Home?
36 A. I don't recall whether that letter came to me direct
37 or from the registry.
38
39 Q. In any event, you had seen a copy and received
40 instructions to reply to it by that stage; is that correct?
41 A. That's true.
42
43 Q. I'll show you that letter. It's [CA]-20. So just
44 going back in time.
45 A. Yes, I see that.
46
47 Q. It's addressed to Foott Law & Co.

1 A. Yes, I see that.

2

3 Q. [CA] is there writing to inform you that she would
4 like to arrange acceptance of the moneys awarded in action
5 against the Anglican Church. Do you see that?

6 A. Yes, I do.

7

8 Q. [CA] had been one of the group claimants in 2006 and
9 2007, hadn't she?

10 A. That's true.

11

12 Q. And this was a substantial period, in fact almost
13 five years, after the settlement had been reached?

14 A. That's true.

15

16 Q. Had you had any contact with [CA] in that time between
17 2007 and 2012?

18 A. Not that I recall.

19

20 Q. If we could then return to the previous document. You
21 say there in a reasonably short letter that:

22

23 *There have been no Court proceedings*
24 *against the Anglican Church in relation to*
25 *the North Coast Children's Home and no*
26 *moneys have been awarded against the*
27 *church.*

28

29 Do you see that?

30 A. Yes.

31

32 Q. In fact, there had been proceedings against the
33 diocese by [CH], hadn't there, at that stage?

34 A. [CH]?

35

36 Q. [CH], not handled by you.

37 A. Oh, not handled by me, no.

38

39 Q. In any event, you say you:

40

41 *... were advised by your former*
42 *Solicitors -*

43

44 that is, [CA]'s former solicitors -

45

46 *that they no longer acted for you. No*
47 *further communication has been received ...*

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Then you say:

Our file in this matter is now closed.

Do you see that?

A. Yes.

Q. Was that an implementation again of the instruction from Reverend Comben back on 28 March 2007 to effectively close your files with respect to any of the claimants who had not agreed with the settlement?

A. Well, it's consistent with that instruction, but I would have sought further instructions before answering it in those terms, I believe.

Q. I have one more letter to show you, AN-16. If you could just read that letter.

A. Yes.

Q. I'm sorry, I should have showed you an earlier letter. If [CA]-22 could be brought up, and then I'll go to that 27 April letter. If you would read through that letter to you.

A. Yes.

Q. So you'll see at the second paragraph there that she says:

Firstly I would like you to know I did not appreciate your letter in that dismissive tone.

A. Yes, I see that.

Q. That's a reasonable response, is it not, in terms of the brief way in which you had couched your letter of 27 February?

A. I can't disagree with that, no.

Q. Was it an appropriate response, looking at it now, to somebody who was one of the claimants from the North Coast Children's Home?

A. In retrospect, it should have been more compassionately worded.

Q. Did you refer that particular letter to the bishop for

1 instructions or for him to handle?

2 A. I believe I would have.

3

4 Q. And then she says, I think:

5

6 *Your file may be closed but not mine.*

7

8 That is on the second page there. Given that she had
9 received no settlement and no apology from the diocese at
10 that stage, that's a reasonable comment to have made, is it
11 not?

12 A. I believe so, yes.

13

14 Q. And then just returning to the letter of 27 April
15 2012, you nonetheless reply on 27 April, I presume, having
16 received further instructions from the bishop?

17 A. Yes.

18

19 Q. This is about 12 months after your letter to [CB] and
20 [CC] in the terms that we just discussed, but, in effect,
21 you were providing the same offer to her of a pastoral
22 support package that consisted of the appointment of
23 a support person; is that correct?

24 A. Yes, that's true.

25

26 Q. Similarly with the correspondence to [CB] and [CC], do
27 you now consider that to be an abrupt and inappropriate way
28 in which to deal with a person who had come to the Diocese
29 of Grafton claiming that they had been sexually abused as
30 a child?

31 A. I certainly would have used different wording.

32

33 MR BECKETT: Those are my questions for Mr Roland.

34

35 <EXAMINATION BY MS WASS:

36

37 MS WASS: Q. Mr Roland, my name is Wass. I appear in
38 the Commission for Mr Gerber, so I just want to ask you
39 some questions about some evidence you gave this morning.
40 I just want to clarify one thing, if I might. Do you
41 recall some evidence you gave this morning that you
42 understood Mr Gerber to have been given details of the
43 allegations made in the group claims?

44 A. I may well have said that, yes.

45

46 Q. Was it your evidence that it was Reverend Comben who
47 gave you that information?

1 A. I think - yes, it was. I'd had no direct contact with
2 Mr Gerber.
3
4 Q. When you gave evidence this morning about Mr Gerber
5 receiving details of the allegations, were you referring to
6 your evidence about the fact that Reverend Comben had told
7 you simply that he had referred those group claims to the
8 professional standards director?
9 A. I believe so, yes.
10
11 Q. Do you recall anything about that conversation other
12 than the evidence you gave this morning?
13 A. Not really at this stage, no.
14
15 MS WASS: Thank you.
16
17 THE CHAIR: Nothing for you, Mr Griffin?
18
19 MR GRIFFIN: No, thank you.
20
21 THE CHAIR: Mr Taylor, do you have any questions?
22
23 MS K McGLINCHEY: Your Honour, could I use this moment to
24 seek leave to appear for Archdeacon Ezzy?
25
26 THE CHAIR: Have I already granted leave?
27
28 MS McGLINCHEY: I haven't sought leave to appear except by
29 email this morning.
30
31 THE CHAIR: So there has been no communication previously
32 on your client's behalf?
33
34 MR BECKETT: There has, in fact, your Honour. The
35 situation is that Archdeacon Ezzy sought leave to appear in
36 his personal capacity some weeks ago, I think, from memory,
37 and he was granted leave by your Honour. Ms McGlinchey
38 I think is newly instructed in the matter and I think that
39 her application just relates to herself.
40
41 THE CHAIR: Sorry?
42
43 MR BECKETT: I think the application is that she appear,
44 be able to appear for Archdeacon Ezzy.
45
46 THE CHAIR: You have that leave.
47

1 MS McGLINCHEY: Thank you.

2

3 THE CHAIR: Mr Taylor?

4

5 <EXAMINATION BY MR TAYLOR:

6

7 MR TAYLOR: Q. Might Mr Roland be shown document
8 [CA]-21, please. Mr Roland, I appear on behalf of
9 Bishop Slater. Do you remember being shown that by counsel
10 assisting a short time ago?

11 A. Yes.

12

13 Q. I think you said you would have sought further
14 instructions in drafting that letter?

15 A. I do recall saying that, yes.

16

17 Q. Do you have any specific recollection of doing so?

18 A. I can't say I have a specific recollection, no.

19

20 Q. In the course of dealing with this matter, was it the
21 situation that you were able to obtain instructions very
22 quickly or did it take some time usually?

23 A. Our office in Grafton was almost adjacent to the
24 registry, so it would have - I could easily have got quick
25 instructions, yes.

26

27 Q. Do you have any specific recollection about getting
28 instructions to write this letter in a very quick manner?

29 A. I cannot recall a specific discussion regarding the
30 matter, as I said, it would be my normal practice to do so.

31

32 Q. Might the witness be shown document [CA]-20.

33 Mr Roland, do you recognise that that is the letter to
34 which the previous one you were taken to is in response?

35 A. Yes.

36

37 Q. That date stamp appearing on there, 27 February 2012 -
38 that's the usual date stamp that was used in your office at
39 that time?

40 A. It would have been, yes.

41

42 Q. That's the very same day that you replied; correct?

43 A. If you say so, yes.

44

45 Q. If you have any doubt, please let me know, but it's my
46 understanding that [CA]-21, the previous letter, was dated
47 27 February 2012.

1 A. Yes.
2
3 Q. Does that assist you in having any recollection about
4 whether you actually sought any instruction from
5 Bishop Slater in sending that letter?
6 A. I don't believe I would have written that letter
7 without some form of instruction or authorisation.
8
9 Q. The subsequent letter, [CA]-22, if that could be
10 shown, please - you did, I think, say that you believe that
11 you would have sought instructions from Bishop Slater in
12 relation to that?
13 A. Yes.
14
15 Q. You did in fact respond to that letter?
16 A. Yes.
17
18 Q. Let me know if you need to see the letter. In that
19 letter, there was the offer of the pastoral support
20 package --
21 A. That's right.
22
23 Q. -- which was described as a support person?
24 A. Yes.
25
26 Q. Do you remember having a conversation with
27 Bishop Slater about making that proposal?
28 A. I would have, I believe, because it obviously
29 contained a provision which hadn't been referred to in the
30 earlier letter.
31
32 Q. When you say you "would have", is it that you have no
33 actual recollection?
34 A. No, but my normal practice would have been.
35
36 Q. You said I think in evidence yesterday that it was
37 your usual practice to attend Bishop-in-Council meetings,
38 although you were not a member of the council as such;
39 correct?
40 A. That's true.
41
42 Q. Do you recall when it was that you first started
43 attending Bishop-in-Council meetings on a regular basis?
44 A. It was - it was in more recent years. For many years
45 I was not in the - I was not expected to attend
46 Bishop-in-Council meetings, but in more recent years I did
47 make a practice of going, if not for the whole meeting, at

1 least for parts of the meeting.

2

3 Q. Can you assist the Royal Commission in giving us an
4 approximate date when you started attending on a regular
5 basis?

6 A. I would say it was for several years. I just can't
7 recall.

8

9 Q. Would it be before or after, say for instance, the
10 settlement conference in relation to the group claim?

11 A. I think it probably would have been before then, yes.

12

13 Q. Some time before?

14 A. Probably, yes.

15

16 Q. A matter of years?

17

18 MR BECKETT: I can assist with that, I think. There are
19 certainly some Bishop-in-Council meeting minutes from
20 September and November 2005 which indicate that Mr Roland
21 was in attendance then, at least.

22

23 THE WITNESS: Thank you.

24

25 MR TAYLOR: I'm indebted to counsel assisting.

26

27 Q. It was the situation that you were well informed, if
28 I can use that term, about what transpired in the meetings?

29 A. Oh, yes, yes.

30

31 Q. I think you've already said in relation to the group
32 claim overwhelmingly your instructions came from
33 Reverend Comben; is that correct?

34 A. Yes.

35

36 Q. By "overwhelmingly", do you mean almost invariably?

37 A. Yes.

38

39 Q. Might the witness be shown the document in exhibit 3-2
40 which is TB-55. This will be your file note, Mr Roland,
41 from 19 December. Do you recognise that as such?

42 A. Yes.

43

44 Q. Can you tell the Royal Commission the names listed on
45 the top right-hand corner under "Reverend Pat Comben"?

46 A. Yes, "Reverend Pat Comben", my own name, "PJ Roland",
47 and "JA Fahey", who was my partner.

1
2 Q. Do I assume that these were notes you were making
3 during the course of the settlement conference to keep
4 a record of what was transpiring?
5 A. Yes.
6
7 Q. If we could have that document scrolled down, please,
8 I think it's the top of the next page, does that indicate
9 to you that the conference, which was spread over
10 two days - there was an offer made at the end of the first
11 day?
12 A. Yes.
13
14 Q. And that was, on instructions from Reverend Comben, in
15 an amount of \$600,000 in toto?
16 A. Yes.
17
18 Q. And the conference continued the next day?
19 A. Yes.
20
21 Q. If the document could be scrolled down, please, to the
22 top of the next page, please. At the top of that document
23 there are various calculations. Are they calculations that
24 you were making during the course of the conference?
25 A. Must have been, yes.
26
27 Q. Does that represent what was being put to you by
28 Mr Harrison on behalf of the various claimants?
29 A. I would imagine so, yes.
30
31 Q. Then there's a reference to the VCT. Is that the
32 Victims Compensation Tribunal?
33 A. Yes, it is.
34
35 Q. Then you have a note "Telephone conversation with
36 bishop"?
37 A. Yes.
38
39 Q. It's the case that Bishop Slater did not attend the
40 settlement conference in person; correct?
41 A. That's true, yes.
42
43 Q. You had a conversation with him on the telephone and
44 made those notes; is that correct?
45 A. It looks like it, yes.
46
47 Q. Can you interpret it for me, please? The first line

1 seems to say, "Increase" --
2 A. "Increase to \$650,000. Bottom line \$1,500,000", it
3 looks like. "Rejected. We offer \$750,000. Rejected".
4 I think the other - the \$1,500,000 is the bottom line of
5 the other side, as I think that's meant to say, so that our
6 \$650,000 was rejected and we then offered \$750,000, which
7 was rejected.
8
9 Q. Does that assist you to say that, on instruction from
10 Bishop Slater, that offer was put?
11 A. It looks like it, yes.
12
13 Q. That was the figure that was left at the end of the
14 conference, wasn't it?
15 A. Certainly at the end of the - at that time, yes, that
16 figure was put.
17
18 Q. Were you present at the Bishop-in-Council meeting on
19 22 February 2007?
20 A. I assume I was, but I --
21
22 Q. Do you recall that that was the meeting where it was
23 discussed that an offer up to \$950,000 --
24 A. Yes, that seems --
25
26 Q. -- or an amount of \$950,000 would be available for the
27 purposes of the group claim?
28 A. That seems familiar, yes.
29
30 Q. But you were not instructed by Reverend Comben to
31 actually put that amount, were you?
32 A. No, no. As I read the directive, it was - a figure of
33 \$950,000 was a ceiling.
34
35 Q. Do you have any recollection of any input that
36 Bishop Slater had in relation to that amount?
37 A. No, I don't.
38
39 Q. Would you agree with the proposition that
40 Bishop Slater was relying upon yourself, various senior
41 counsel and other counsel who were briefed, and also
42 Reverend Comben to make recommendations to him about actual
43 dollars and cents?
44 A. I made no recommendations whatsoever regarding the
45 amount of money being offered.
46
47 Q. Would you agree with the proposition that

1 Bishop Slater, other than instructing you to put that
2 \$750,000 offer on the second day of the settlement
3 conference, never provided you with instructions in
4 relation to a specific amount?

5 A. I think that's reasonable, yes.

6

7 Q. Any discussions about specific amounts, payments to
8 the group, came from Reverend Comben?

9 A. Yes, as directed in this case by Bishop-in-Council.

10

11 Q. Do I understand from what you just said a few moments
12 ago that at no stage did you give any recommendation to the
13 diocese, either the bishop, the Bishop-in-Council or even
14 Reverend Comben about what an appropriate payment would be?

15 A. That's true.

16

17 Q. Is it the case that you didn't turn your mind to
18 providing advice to your clients about the range within
19 which they should be looking to settle the matter?

20 A. No, I did not - I did not seek to involve myself in
21 that issue at all. It was to do with the finances of the
22 diocese, and I was merely attending these meetings as the
23 diocesan solicitor advocate.

24

25 Q. But in the course of your duties as solicitor
26 providing advice, you didn't see it appropriate for you to
27 give a recommendation to your clients about the likely
28 range of settlement figures?

29 A. That's true.

30

31 MR TAYLOR: Thank you, your Honour.

32

33 THE CHAIR: Ms McGlinchey, do you have any questions?

34

35 MS McGLINCHEY: No, I don't, your Honour.

36

37 MR BECKETT: Nothing arising.

38

39 THE CHAIR: Thank you. You may step down. You're
40 excused.

41

42 <THE WITNESS WITHDREW

43

44 THE CHAIR: We will take the luncheon adjournment.

45

46 **LUNCHEON ADJOURNMENT**

47

1 **UPON RESUMPTION**

2

3 THE CHAIR: Yes, Mr Beckett.

4

5 MR BECKETT: I tender three documents. They are tax
6 invoices from Foott Law & Co, dated 22 March, 23 April and
7 31 July 2007, which indicate invoices for almost \$18,000,
8 \$4,600 and almost \$4,000.

9

10 THE CHAIR: We will mark those as exhibit 3-9. You can
11 keep them and make sure they find their way to the right
12 place.

13

14 **EXHIBIT #3-9 TAX INVOICES FROM FOOTT LAW & CO, DATED**
15 **22/07/2007, 23/04/2007 AND 31/07/2007**

16

17 MR BECKETT: I also tender a document that was put up on
18 ELMO during Mr Roland's examination. This is an excerpt
19 from the "Detailed Function Income Statement" for the
20 Diocese of Grafton for the calendar year 2007 indicating
21 legal costs of \$27,000.

22

23 THE CHAIR: You can hang on to that, too. Have these back
24 so that they don't get lost. What was it called?

25

26 MR BECKETT: The second document is titled "Detailed
27 Function Income Statement".

28

29 THE CHAIR: Do you know how we read the two together?

30

31 MR BECKETT: The two, that is to say, the tax invoices --

32

33 THE CHAIR: The invoices as against the income statement.

34

35 MR BECKETT: No, I do not, because they don't seem to
36 tally.

37

38 THE CHAIR: We will need to get someone to help you tell
39 us what they actually mean.

40

41 MR BECKETT: Yes, and I will attempt to do that next week.

42

43 THE CHAIR: If you would. We will mark the income
44 statement exhibit 3-10, but we will look forward to an
45 explanation.

46

47

1 EXHIBIT #3-10 EXCERPT FROM "DETAILED FUNCTION INCOME
2 STATEMENT" FOR THE DIOCESE OF GRAFTON FOR THE CALENDAR YEAR
3 2007 INDICATING LEGAL COSTS OF \$27,000
4

5 MR BECKETT: I call Patrick Comben.
6

7 <PATRICK COMBEN, sworn: [2.04pm]
8

9 <EXAMINATION BY MR BECKETT:
10

11 MR BECKETT: Q. Mr Comben, I wonder if you could state
12 your full name and occupation for the Royal Commission?

13 A. Patrick Comben. I am a small business proprietor.
14

15 Q. When did you come to assume the position of registrar
16 at the Grafton Diocese?

17 A. Early 2004, I think.
18

19 Q. And you were there until what year?

20 A. Depending on what occupation I had, until the end of
21 2009 or early 2010.
22

23 Q. But as registrar, you were there until the end of
24 2009; is that correct?

25 A. That's when I resigned, yes.
26

27 Q. Prior to becoming the registrar of the Diocese of
28 Grafton, one part of your career included being a minister
29 of the Crown in the Queensland government; is that correct?

30 A. That's correct.
31

32 Q. What was the portfolio that you had at that stage?

33 A. The portfolios were Minister For Environment between
34 1989 and 1992 and then Minister for Education from 1992 to
35 1995.
36

37 Q. And then after 1995?

38 A. I worked with a number of community organisations.
39 I specialised in organisations going downhill and helping
40 turn them around; Autism Queensland; National Trust; some
41 consulting, et cetera.
42

43 Q. By the time you came to be the registrar in 2004, do
44 I take it that you had some experience with financial
45 management, perhaps not as an accountant but as a manager
46 of medium-sized businesses?

47 A. Yes, and I also have a Master of Business

1 Administration.

2

3 Q. You joined the Diocese of Grafton in 2004. No doubt
4 you are aware that in that year the Professional Standards
5 Ordinance was adopted by the Diocese of Grafton?

6 A. Yes.

7

8 Q. And also the related protocol that goes with it?

9 A. I wrote that protocol, in terms - or I redacted it
10 from a Brisbane sample.

11

12 Q. You were the author of that particular document; is
13 that correct?

14 A. Yes.

15

16 Q. I will just show you a copy of that document.
17 I wonder if exhibit 3-3, tab 2, could be put on the screen,
18 please. Is that the document you have just referred to
19 now?

20 A. Yes.

21

22 Q. I will take you to page 12 of that document. I don't
23 have the Ringtail number, but it is clause 14. Do you see
24 that from clause 14, the protocol sets out what the
25 director of professional standards does?

26 A. Yes. That's assuming that the document is not amended
27 or overridden by Bishop-in-Council, yes.

28

29 Q. Indeed. Perhaps I should ask you some foundation
30 questions. You understand that the Professional Standards
31 Ordinance establishes the position of, first of all,
32 a professional standards committee?

33 A. Yes.

34

35 Q. It also establishes a professional standards director?

36 A. Yes.

37

38 Q. And also, thirdly, it establishes a professional
39 standards board; is that correct?

40 A. Yes.

41

42 Q. Some importance is given in that protocol to the
43 independent operation of those entities; is that correct?

44 A. That is correct, subject to what Bishop-in-Council
45 would say about that at the time when it was being
46 considered, yes.

47

1 Q. Are you saying that the ordinance was in some ways
2 accepted by synod - I presume it was adopted by synod?

3 A. The ordinance was adopted by synod.
4

5 Q. That's right. Are you saying that at that time in
6 2004, Bishop-in-Council amended in some way that particular
7 ordinance?

8 A. No, I'm talking about the protocol.
9

10 Q. In terms of the operation of those three entities -
11 the committee, the director and the board - they are to
12 operate, in general form, independently of the executive of
13 the diocese; is that correct?

14 A. Subject to the views of Bishop-in-Council at the time,
15 yes.
16

17 THE CHAIR: Q. Can I just understand that. You have
18 used the expression a number of times; I'm not sure what
19 you are talking about. When you say these documents were
20 adopted "subject to the views of the Bishop-in-Council at
21 the time", what do you mean?

22 A. That regularly I or members of the professional
23 standards committee were asked to do tasks which were not
24 in line with this, and so the only view we could take was
25 that Bishop-in-Council had either impliedly overridden it
26 or changed it. I point you specifically to the decision of
27 Bishop-in-Council in mid-2006 when it said that the
28 diocesan advocate and the registrar, in consultation with
29 the professional standards committee, had carriage of the
30 matter of the North Coast Children's Home. It was never
31 run just on this. It was what Bishop-in-Council told us to
32 do.
33

34 Q. So there is a resolution of Bishop-in-Council to that
35 effect, is there?

36 A. Yes, it's the one in, I think, June 2006 - it is.
37 July 2006. Page - I have ANG.9320. Actually, that's not
38 the one, but there is.
39

40 THE CHAIR: I think we now understand the concept. I will
41 leave it to Mr Beckett to adduce the evidence in
42 a sequence.
43

44 THE WITNESS: Thank you, your Honour.
45

46 MR BECKETT: Q. Just returning, then, to the protocol
47 which is on the screen, this sets out the role of the

1 professional standards director, does it not?
2 A. Yes, it does.
3
4 Q. And that the professional standards director reports
5 to the professional standards committee?
6 A. Yes, sir.
7
8 Q. And certainly in terms of the way claims are handled,
9 the initial contact with a claimant would be handled by the
10 professional standards director?
11 A. According to the protocol, yes.
12
13 Q. Then one of their duties is to organise counselling,
14 certainly immediate counselling, if you like; is that
15 correct?
16 A. That's what the protocol says.
17
18 Q. They are also involved in reporting, for example, to
19 the police?
20 A. Yes.
21
22 Q. In fact, they have an obligation to report to the
23 police any allegations of criminal conduct; is that
24 correct?
25 A. Yes.
26
27 Q. And to provide a pastoral support person to the
28 claimant?
29 A. Yes.
30
31 Q. To be involved in making a recommendation to the
32 professional standards committee about some form of
33 internal assessment?
34 A. Yes.
35
36 Q. To organise - I think I asked you this earlier - some
37 form of, certainly immediate and perhaps long-term,
38 counselling?
39 A. I don't think you asked me, but yes.
40
41 Q. And then to assist with providing a more detailed
42 package of redress, I think it is referred to at 14.13?
43 A. Yes.
44
45 Q. Do you see that?
46 A. Yes.
47

1 Q. The process, certainly under the protocol, was that
2 the director would take a number of recommendations which
3 would comprise the kinds of redress that he or she
4 recommended to the professional standards committee; is
5 that right?
6 A. Yes.
7
8 Q. And that the non-financial components could be agreed
9 to by the committee?
10 A. Yes.
11
12 Q. And that if there was a financial component, then
13 a recommendation would go to the registrar?
14 A. That's correct.
15
16 Q. If we go through to paragraph 21 of the protocol, if
17 that could be brought up, please, the role of the registrar
18 is set out there at 21.3 and includes liaison, first of
19 all, with the property and finance board. Was that a board
20 that existed in the Diocese of Grafton when you were there?
21 A. Yes.
22
23 Q. The role was also to instruct external lawyers on
24 a needs basis, I presume?
25 A. Yes.
26
27 Q. To propose a budget and to comply with insurance
28 obligations; is that correct?
29 A. Yes.
30
31 Q. I suppose one should add, on the basis of what
32 recommendation might come from the professional standards
33 committee, that that would also be to include decisions
34 about the payment of any financial settlement to a claimant
35 who had come through the PSD and the PSC?
36 A. That's the sort of thing which got added by
37 Bishop-in-Council from time to time, yes.
38
39 Q. But in fact it is implied from the protocol, isn't it,
40 that if the PSC is not committing to financial settlement,
41 then essentially it is a matter for the registrar to advise
42 as to the availability of funds?
43 A. I'm not quite sure that I can imply that from there,
44 but it was certainly implied at times by Bishop-in-Council,
45 yes.
46
47 Q. Then the bishop oversees the protocol, if we go down

1 to 22.3?

2 A. Yes.

3

4 Q. Bishop is the one who is to take disciplinary action
5 where a licensed person is involved, and then, in terms of
6 duties, to receive regular reports from the PSC and to
7 initiate disciplinary action; do you see that?

8 A. Yes.

9

10 Q. So do I take it that in terms of the way that the
11 protocol is drafted, the central person appears to be, in
12 terms of the liaising with claimants at least, the
13 professional standards director; is that correct?

14 A. That's the way the protocol is written, yes.

15

16 Q. That was your intention when it was written, that that
17 was what would be adopted?

18 A. Yes. We amended it in a number of ways from the
19 Brisbane one, but that was certainly the intention.

20 I don't think anyone in the office at that time, or on
21 Bishop-in-Council, had a real understanding of what this
22 meant.

23

24 Q. In terms of the position from 2004, you say that the
25 Bishop-in-Council expressed some views from time to time
26 about the operation of the protocol. Could you please
27 provide us an example? You have given us one from the
28 middle of 2006. Were any concerns raised about the way in
29 which this operated in 2004 and 2005?

30 A. Well, at the time it was adopted, there were some
31 concerns about how it would work. A number of people on
32 Bishop-in-Council said, "Well, what does this really mean?
33 Who is going to do this?", and we made some changes.

34

35 I remember going to the bishop and the prior
36 registrar - I did it in the two weeks when I first arrived
37 there and was supposed to be having some handover time -
38 and had a number of points which I wanted guidance on. So
39 it was changed then, and then Bishop-in-Council - I don't
40 know that there were actually changes made at
41 Bishop-in-Council, but certainly there were a lot of
42 questions around it.

43

44 Q. In any event, both the ordinance and the protocol had
45 been adopted at the synod level?

46 A. No.

47

1 Q. Had they not?

2 A. No.

3

4 Q. In terms of the operation of the Diocese of Grafton,
5 as I understand it, an ordinance can only be adopted by
6 synod --

7 A. You said "ordinance and protocol".

8

9 Q. Let me take them one by one. The ordinance had been
10 adopted at synod level?

11 A. Yes, yes.

12

13 Q. Had the protocol been adopted at synod level?

14 A. No, it's a motion of Bishop-in-Council. That's how
15 Bishop-in-Council would change it.

16

17 Q. We haven't, in evidence, any amended documents for the
18 protocol. Are you aware of any amendments that were made
19 to the protocol during the time that you were registrar?

20 A. At the time it was introduced or later?

21

22 Q. Well, from the time of its introduction on through.

23 A. I would have thought that there were some changes made
24 at the moment it was introduced at Bishop-in-Council, but
25 I stand to be corrected on that. Later, however, when we
26 had instructions from Bishop-in-Council that the general
27 manager and the diocesan advocate would liaise with the
28 professional standards committee to answer the claims being
29 brought, the only interpretation I could put on that was
30 that this was separate to this; it was overriding it.
31 I could not understand how the two could be put together.

32

33 Q. When you say "amended", you say that a position was
34 taken by the middle of 2006 which, to your mind, would in
35 fact have required an amendment to the protocol; is that
36 correct?

37 A. That implicitly either overrode it or the shorthand
38 form was passed by Bishop-in-Council, instead of saying,
39 "Notwithstanding what's in the 2004 protocol, the registrar
40 and the diocesan advocate shall now conduct, with the
41 professional standards committee, the carriage of this
42 matter."

43

44 Q. Let's have a look. I will take you to that and then
45 I will come back to 2005 in a moment. If we could have
46 brought up on the screen tab 34AD of exhibit 3-2. Could we
47 go over to the second page, please. There is a reference

1 there, you will see, in the second paragraph to you
2 reporting that three matters of sexual abuse had been
3 recently resolved, with payments made to victims, and then
4 a lack of knowledge about how many actual matters will be
5 brought forward.

6 A. Yes.

7
8 Q. This document being from July 2006. Then the motion
9 is simply:

10
11 *that Bishop-in-Council recognises that the*
12 *Professional Standards Committee should*
13 *start to move into a wider range of "abuse"*
14 *responsibilities but presently the*
15 *Committee will continue to work together*
16 *with the General Manager and the Diocesan*
17 *Advocate on matters pertaining to claims of*
18 *abuse, particularly those relevant to the*
19 *North Coast Children's Home.*

20
21 A. Yes.

22
23 Q. To what degree does that represent an amendment, as
24 you seem to indicate, or an implicit or implied amendment
25 of the protocol?

26 A. I don't think that one implies any sort of amendment
27 of the protocol, other than it was a flexible document in
28 terms of the wider thing. There is another mention of
29 professional standards over the page, on training. There
30 is another one over the page about training and
31 faithfulness in service, where they clearly show their
32 view.

33
34 Q. I see. That is not a document I have.

35 A. Well, it is about faithfulness in service. It may not
36 be relevant.

37
38 Q. In any event, Mr Comben, the position doesn't seem to
39 have indicated that at least that motion was in any way
40 seeking to amend the protocol; would that be correct?

41 A. Yes. You asked me that question earlier. I can now
42 refer you to 22/2/2007, where the motion "that
43 Bishop-in-Council authorise the registrar, in consultation
44 with the advocate and bishop, to attempt to settle the
45 claims by former residents" - and there is one earlier than
46 that.

1 Q. Mr Comben, we will come to that in due course. Let's
2 go back, if you wouldn't mind, to 2005.

3

4 THE CHAIR: Mr Beckett, where can we find a full copy of
5 the protocol?

6

7 MR BECKETT: In exhibit 3-3, the slim policies, procedures
8 and canon law volume, at tab 2.

9

10 THE CHAIR: Thank you.

11

12 MR BECKETT: I was going on to another issue. Did
13 your Honour wish to make --

14

15 THE CHAIR: No, you keep going.

16

17 MR BECKETT: Q. Mr Comben, when you assumed the position
18 of registrar at the Diocese of Grafton, I presume you
19 became aware fairly soon of the Clarence Valley Anglican
20 School debt; is that correct?

21 A. No, I did not.

22

23 Q. When did you become aware of it?

24 A. When I had been looking at that school for two and
25 a half years, wondering how it survived and how much the
26 debt was.

27

28 Q. Did you not refer to the financial statements that may
29 have included, particularly in the investment fund,
30 a sizeable debt that was being carried by the Clarence
31 Valley Anglican School?

32 A. I eventually did.

33

34 Q. When you say "eventually", when did you become aware
35 of that?

36 A. I started in 2004. I would have become aware of it
37 somewhere - middle of 2006.

38

39 Q. So not until 2006 did you become aware of the debt?

40 A. No, and the debt was denied to me by the chair of the
41 board and the principal.

42

43 Q. So in terms of the financial position of the Diocese
44 of Grafton, let's start in 2004, what did you consider the
45 financial health or otherwise of the diocese at that stage?

46 A. When I first arrived, I was told it was a very poor
47 diocese; they had no money. When you examined the books,

1 there was money squirreled away in all sorts of different
2 accounts. I spent some time then trying to bring it
3 together and was of the view that whilst there were some
4 queries about the way that some property speculation was
5 going on, or trust funds, that in actual fact we had some
6 reasonable money.

7

8 Q. That money was held by the investment funds?

9 A. Yes.

10

11 Q. When you say "squirreled away", were there a number
12 of amounts of money, if you like, that were on the --

13 A. Yes, internal accounts.

14

15 Q. -- internal accounts that indicated the financial
16 state of the Diocese of Grafton?

17 A. Yes, there would have been two and a half pages of
18 individual accounts saying \$50,000 here, \$100,000 there,
19 for no apparent reason, and then also the things such as
20 the insurance account, et cetera.

21

22 Q. So by the time we come to 2005, are you saying that
23 the Diocese of Grafton was in a reasonably healthy
24 position?

25 A. Yes.

26

27 THE CHAIR: Q. Does that mean there were cash reserves
28 that were available?

29 A. I think there would have been cash reserves at that
30 time of a couple of million dollars. But then, before the
31 Anglican school hit the stumps, the speculation about land
32 hit, and that then lost that money.

33

34 MR BECKETT: Q. Mr Comben, what do you mean by that?

35 A. That the trustees were speculating in land development
36 at Port Macquarie, at South West Rocks, and they had
37 achieved quite a bit of money. That's where, roughly, the
38 \$2 million or so, a very in globo figure, had perhaps come
39 from. Perhaps a million of that was from land speculation.

40

41 Then they continued and put about \$1 million into
42 a development which didn't sell and which had about
43 a 10 per cent, maybe more, interest rate on it. So the
44 debt of that went up, and we eventually sold it for
45 probably a loss of \$300,000, \$400,000. And there were
46 a number of other smaller properties. I think over that
47 period of time - and it was convoluted accounting - we

1 would have lost a million bucks - I apologise, \$1 million.

2
3 THE CHAIR: Q. So the \$1 million was lost by when?

4 A. Late 2006, about the same time - I think what happened
5 was that in my mind I was asking why. I started, when
6 I realised that there was going to be some money lost,
7 looking harder and demanding, rather than just a verbal
8 report from the principal of the school and the chair of
9 the board, that I be shown some accounts and find out what
10 was happening. And I think at that moment I realised
11 there's a big problem here and one that had been hidden
12 fairly carefully in terms of, "It'll be all right next
13 year." That was the line from the principal, who had
14 convinced the chair of the board that the numbers would be
15 there and therefore it would be okay.

16
17 Thankfully, I was able - I walked past that school for
18 a year and a half looking at it, as a former Minister for
19 Education, saying, "There's no way that place is viable."
20 And yet, to some extent, I wasn't allowed to go in there,
21 as such, because it was independently incorporated.

22
23 MR BECKETT: Q. So the debts to the Grafton Diocese
24 investment fund did not come to your attention until the
25 middle of 2006; is that correct?

26 A. About that. I would stand to be corrected on it, but
27 I think that's about it, yes.

28
29 Q. So you had been there --

30 A. Maybe early 2006, yes.

31
32 Q. You had been at the Diocese of Grafton as the
33 registrar for approximately 18 months by that stage?

34 A. Yes.

35
36 Q. And this very substantial debt had not come to your
37 attention at all?

38 A. Well, the debt within the Grafton Diocese investment
39 fund I knew about, and that's why I used to walk past,
40 saying, "This can't be so."

41
42 Q. But what steps did you take to investigate why the
43 investment fund was carrying such a large debt?

44 A. I asked if it was secured and was the school all
45 right. I was assured it was.

46
47 Q. Who assured you of that?

1 A. The manager, the secretary of the investment fund.
2 I then made further --
3
4 Q. And who was that, or who was that at the time?
5 A. Yes, Greg - Greg. I have forgotten. I will think of
6 it in a moment.
7
8 Q. Do you mean Archdeacon Ezzy?
9 A. No, I do not, no. He was a third of Greg Ezzy's age.
10
11 Q. I will take you to the position in 2005. I will take
12 you, first of all, to tender bundle 24. You will see this
13 is a memorandum to Bishop Slater dated the end of December
14 2005, but if we could just scroll down to --
15 A. I'm aware of that document. I know its contents.
16
17 Q. If we could continue down, you will see right at the
18 end of the document that there was a recommendation for,
19 first of all, the care and support package to be referred
20 to the executive of Bishop-in-Council, but I want to take
21 you to item 2, which is that the bishop seek, on your
22 recommendation, that the executive grant an ex gratis
23 payment of \$54,500 as part of the care and assistance
24 support package?
25 A. Yes.
26
27 Q. That related to a man - we don't need to name the
28 gentleman, but unrelated to the North Coast Children's
29 Home, the diocese had been handling a claim of sexual
30 abuse; is that not right?
31 A. Yes, that's correct.
32
33 Q. Was it child sexual abuse?
34 A. Yes.
35
36 Q. Did it relate to a claim of some antiquity?
37 A. Yes.
38
39 Q. You had been handling that for a number of months by
40 the time you wrote this memo in December 2005?
41 A. Yes. We had handled it fairly intently for probably
42 12 months before that, for a period of three or four
43 months. We had brought it to a conclusion, including
44 defrocking the priest involved, or the recommendation -
45 yes. But then we had to wait because the board that was
46 considering the matter didn't actually report back to us
47 for quite a long period. So four months intensive, and

1 then six months of waiting.

2

3 Q. I appreciate that the payment of a financial
4 settlement of \$54,000 was a matter for you to recommend to
5 the bishop. Was this particular matter handled by the
6 professional standards director at the time?

7 A. No.

8

9 Q. Why was that?

10 A. It was being handled by the - well, I'm not sure that
11 I can say it wasn't being handled - no, that's not right.
12 Was the professional standards director aware of this
13 matter and did he provide a contact person for that person?
14 Yes, I think he did. Was he active on a day-to-day basis?
15 No. That was the situation.

16

17 Q. But in terms of the way in which the ordinance and the
18 protocol operated, a proposal had come forward to the
19 professional standards committee, which included
20 a financial settlement of this amount?

21 A. Well, there was a lot of work that we'd put into it
22 and we took the matter all the way through from the
23 committee to the board to judgment to defrocking.

24

25 Q. In any event, is it reasonable to assume that this was
26 an application of the care and assistance support package
27 that applied at the time and that the payment of \$54,000
28 was in accordance with the way in which that package
29 worked?

30 A. You are referring to the Sydney package?

31

32 Q. Well, I'm referring to the care and assistance package
33 that is referred to in this document.

34 A. Yes, that is the Sydney package. It was passed by
35 Bishop-in-Council about ten days before. I had asked
36 Ms Skamp to present something. She asked me to prepare
37 a document for her to present something. That was how we
38 settled \$54,500, after hours, with phone calls at home.

39

40 Q. Let's go back in time somewhat. Could PG-12 be
41 brought up. You will see that this is the letter from
42 Mr Campion, dated 29 August 2005. You are familiar with
43 this letter, are you not?

44 A. Is this the original letter?

45

46 Q. This is the original letter.

47 A. Yes.

1
2 Q. It has been redacted, obviously.
3 A. Yes. Yes.
4
5 Q. Do you need to refer to more of it, or you know
6 letter?
7 A. I actually never read it from the first day I read it
8 and responded to it. It upset me too much. So I have
9 never read it since. I will take your questions, sir.
10
11 Q. In any event, this particular letter did set out in
12 quite some detail the abuse that Mr Champion had received?
13 A. It certainly did.
14
15 Q. If we go over to the second page, do you see in those
16 underlined portions there is reference to abuse by
17 Matron Martin and Reverend Morgan; do you see that?
18 A. Yes.
19
20 Q. Then there is also reference to child sexual abuse by
21 Reverend Brown; do you see that?
22 A. Yes.
23
24 Q. Are those markings, those underlinings, yours?
25 A. I think that they would be. I would often use a red
26 pen to underline things, and I was very interested,
27 immediately, as to who these people were, yes. So I think
28 it may be.
29
30 Q. This letter was obviously addressed to the Anglican
31 Diocese of Sydney, but fairly shortly, I presume, after it
32 was provided to them, you were sent a copy; is that
33 correct?
34 A. That's correct.
35
36 Q. We heard yesterday from Mr Gerber that he saw a copy
37 of it as well, it having come to the Diocese of Sydney.
38 Did you take any steps to ask Mr Gerber to handle this
39 particular matter?
40 A. No, it would have first had to have gone to the
41 professional standards committee.
42
43 Q. At the very initial stages; is that correct?
44 A. I think so, yes.
45
46 Q. I wonder if you could look at your reply of
47 2 September 2005, PG-13.

1 A. Yes.
2
3 Q. I think you indicate, first of all, some sadness and
4 sorrow about the matters that are set out in Mr Campion's
5 letter, do you not?
6 A. Yes.
7
8 Q. Then in the second paragraph, you accept, or at least
9 impliedly, that the actions, the abuse, occurred in an
10 "Anglican place"; do you see that?
11 A. I don't think I implied it. It says "which was caused
12 in an Anglican place". I said it.
13
14 Q. You had had some discussion with Mr Campion about
15 counselling, or how had Ms Jackson's name come to be
16 mentioned?
17 A. Could you just take that down? Is this my initial
18 response? No, the other way, the top. I would like to see
19 the date. All right. Yes. I don't remember - "Should you
20 need further counselling from Ms" - oh, Ms Jackson. He
21 wrote about Ms Jackson. Sorry, I thought that was the
22 contact person from Sydney. Sorry.
23
24 Q. I think essentially Ms Jackson was his --
25 A. His counsellor, yes.
26
27 Q. A counselling arrangement that he had already?
28 A. That's right, sorry. Sorry.
29
30 Q. You included, if we could scroll down, the contact
31 details for Mr Gerber there?
32 A. Yes, so that we could put them in touch as soon as
33 possible.
34
35 Q. And then, over the page, you offered your home number
36 and then you also said, "If you wish to meet with the
37 bishop", then you would be happy to put the request
38 forward; that's right, isn't it?
39 A. Yes.
40
41 Q. At about this time, 20 September, PG-15, if that could
42 be brought up, please, and if we could scroll down, you
43 noted on the next page that Mr Campion's complaint had been
44 received and that a Sydney contact person would be
45 organised and the seeking of further and better
46 particulars. You say:
47

1 *Further investigation of the generalised*
2 *complaints against a cleric will be*
3 *made ...*
4

5 Do you recall what you did as a result of that? What was
6 the further investigation?

7 A. Yes. Why I hesitated earlier when you said, "Is that
8 underlining yours", is that I didn't realise for some time
9 that Campbell Brown was on there, and I was very interested
10 in the other one, and I did some chasing of him, and it was
11 only later that I realised that Campbell Brown was involved
12 with Mr Campion's matter as well. And it would have made
13 a big difference, had I really gone home at the time.
14 I suspect that I was so overawed, concerned about the
15 actual letter, that it didn't sink in to me, and
16 I certainly wasn't aware, as an individual, Campbell Brown.

17
18 Q. If we just continue down that page to "care and
19 assistance package". The proposal at that stage from the
20 professional standards committee was to adopt the care and
21 assistance package which was in operation at the Sydney
22 Diocese; that's correct?

23 A. That only says that they resolved to obtain a copy of
24 it.

25
26 Q. And seek to have --

27 A. And seek to have Bishop-in-Council endorse the
28 package, yes.

29
30 Q. That is in fact what occurred, that is, that it was
31 raised at the September Bishop-in-Council meeting. I can
32 take you to those minutes. In any event, you would accept
33 that it was raised at Bishop-in-Council meeting in
34 September?

35 A. I actually thought it was the next one, because it was
36 only days before I was able to settle that other matter
37 which you referred to earlier, so it was a fairly short
38 time period. But, yes, we got it just in time.

39
40 Q. Let's go to it. Tender bundle 22A. You will see
41 that's the minutes of the Bishop-in-Council of 29 September
42 2005?

43 A. Yes.

44
45 Q. If we go down to the second page - it should say that
46 you are noted as being there, as is the bishop.

47 A. Yes.

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Q. Under "Safe ministry", if we keep going down, Bishop-in-Council received the report?

A. Yes.

Q. Authorised the PSC to investigate joining the Sydney care and assistance package, and agreed to the formation of the safe ministry working party. Then a further motion was carried that the Sydney pastoral care and assistance scheme be adopted as the process to be applied as an interim measure; the case being presently considered was brought within the PSC area. What's the second part of that a reference to?

A. That measure which you referred to earlier, when someone, who has been redacted, received \$54,500. I think there was still another Bishop-in-Council meeting after this, which then said, "We adopt it." I think I had forgotten there was an interim measure, and we then used that as the basis on which a settlement was reached with the historical abuse by a cleric.

Q. Tender bundle 23C. That is the minutes of Bishop-in-Council from 24 November 2005.

A. I think that's the one.

Q. It is a meeting of Bishop-in-Council where Bishop Slater was presiding, where you were present, and so was Mr Roland. If we go down to the bottom of the second page?

A. Yes, the motion is over the page, yes.

Q. So at that stage, the Diocese of Grafton becoming part of the Sydney diocesan care and assistance appraisal program was the motion that was adopted; is that right?

A. Yes, certainly is.

Q. Can I just, then, confirm that the relevant document that was being adopted was the one at - I will just have it brought up on the screen - exhibit 3-3, particularly tab 4A. Do you see it seems to say in handwriting up the top, "Table BIC", and it could be "19" or it could be "29" September 2005. Do you see that?

A. Yes.

Q. Is that the pastoral care and assistance package that was adopted at Bishop-in-Council?

A. Yes.

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Q. If we go to PG-18, you had written to Mr. Campion already, expressing some sympathy and sorrow with respect to the terms of that very emotional letter that he had sent through. On 2 October you wrote further to him and provided him with a copy of the pastoral care and assistance package; do you see that?

A. Yes.

Q. I presume that what you were saying was that this would be the pastoral care and assistance package that would be applied with respect to the processing of Mr. Campion's claim; is that right?

A. That is correct, as we did with the other one.

Q. If you go, then, to a letter which was received shortly thereafter, on 20 October 2005, from [CA]. If PG-20 could be brought up, please. I won't take you to all the details of it. Do you remember this letter, Mr. Comben?

A. Yes.

Q. Do you remember that it set out in equally harrowing terms Ms. [CA]'s experience of her time at North Coast Children's Home?

A. I don't think they were equal. Hers was worse, I thought.

Q. Then you replied on 22 November 2005, if PG-21 could be brought up, please.

A. Yes.

Q. Is that the letter that you received?

A. No, I sent.

Q. I am sorry, thank you. That was the letter you sent. The proposal at that stage was that the professional standards committee would handle it?

A. Yes.

Q. And that the professional standards director would be involved in the carriage of her particular claim; is that right?

A. I think that was a hope, but by that time we knew the system wasn't working.

Q. Well, hold on, I thought the system had only just been adopted?

1 A. No, the professional standards director, et cetera -
2 he had been around for a little while by then.
3
4 Q. Let me ask you some questions about that.
5 A. Yes.
6
7 Q. First of all, you had inherited Mr Gerber as the
8 professional standards director, that is to say, he was in
9 place before you assumed the position of registrar in 2004;
10 is that correct?
11 A. I listened to Mr Gerber yesterday afternoon. I had
12 the same queries as him as to when he actually came on, but
13 I think he was in place, because I think the first contacts
14 he and I had were over the phone and I remember introducing
15 myself to him. So I think he was in place, yes. Then by
16 the time of this letter, having him in place, and that
17 system under the protocol, et cetera, was clearly not
18 working very well.
19
20 Q. If the process was not working very well, why did you
21 move ahead to adopt this new pastoral care and assistance
22 package from Sydney?
23 A. Because I wanted some objective measure by which
24 I could actually go forward with people who had been
25 waiting for a long time to get some settlement.
26
27 Q. So you wanted to return, if you like, to the position
28 that had been put in 2004 in the ordinance and the
29 protocol; is that right?
30 A. No.
31
32 Q. You wanted to depart from the position in the protocol
33 and the ordinance, did you?
34 A. No, I wanted a system which would work and give people
35 some closure.
36
37 Q. Well, what was wrong? What was wrong with the system,
38 as far as you were concerned, by November 2005?
39 A. Mr Philip Gerber and Jenni Woodhouse were excellent
40 people who were clearly massively overworked. We managed
41 to get them up at times to give us some assistance, but we
42 had got to the stage where we were taking advice over the
43 phone and getting on with it ourselves. We could not have
44 worked a system if they had been required to come to
45 Grafton, et cetera.
46
47 Q. Why didn't you move, then, to appoint a professional

1 standards director to fulfil those obligations rather than
2 relying upon Mr Gerber and the Diocese of Sydney?

3 A. Because we didn't have the money.

4

5 Q. So effectively you decided at that stage to abandon
6 the system that was mandated under the ordinance and the
7 protocol and run the system yourself; is that right?

8 A. No.

9

10 Q. Well, what did you do, then?

11 A. We certainly didn't abandon any system. We did our
12 best to run it according to the protocol, using every means
13 that we could, including the professional standards
14 director and the contact person and other contact people
15 that we employed in the place, and to get on with doing it.
16 The negotiations for the first one that you showed me,
17 which has been redacted, from \$54,500 --

18

19 Q. But, Mr Comben, I presume that means that you brought
20 many of the duties of the professional standards director
21 in-house, in the sense that you assumed the role of
22 professional standards director with respect to the
23 operation of the protocol and the ordinance?

24 A. No.

25

26 Q. No?

27 A. No.

28

29 Q. Well, who did, then?

30 A. Mr Gerber. I might have acted as his agent at times,
31 but Mr Gerber was the professional standards director.

32

33 Q. But you said a moment ago that the system wasn't
34 working and that you wanted to bring it up to Grafton so
35 that it could be handled there in the, presumably, diocesan
36 headquarters; is that correct?

37 A. No, I did not say I wanted to bring it up to Grafton.
38 I said that they were - we were having difficulties getting
39 them up to Grafton. No, we wanted the system to work, and
40 we tried very hard, and I have to admire Mr Gerber and
41 Mrs Woodhouse for all the work they put in at the time when
42 they were stretched already. So we did the best we could
43 in terms of agency, "Tell me what I've got to do. Tell us
44 what we've got to do." We appointed Col as another contact
45 person to make contacts, and we did the best that we could.

46

47 THE CHAIR: Q. Mr Comben, you said you didn't employ

1 your own professional person because you didn't have the
2 money. Now, you told us, I think, that the school hit the
3 stumps.

4 A. Yes.

5

6 Q. When did the school hit the stumps?

7 A. I think - well, the school was already hitting the
8 stumps. When did I become aware of it hitting the stumps?

9

10 Q. Yes.

11 A. At about 2006.

12

13 Q. You told us that the \$1 million wasn't lost until the
14 end of 2006?

15 A. No, that's correct, so there was some money around.

16

17 Q. Well, you told us that the diocese had money --

18 A. Yes.

19

20 Q. -- at the relevant time. How is it, then, that you
21 now tell us that there wasn't the money?

22 A. For two reasons: one that we were trying to get the
23 system to work. The protocol had only just been adopted.
24 It was still fairly experimental. We were talking to
25 Brisbane and other places about how they were working. So
26 we wanted it to work.

27

28 Secondly, the diocese was not keen on spending money.
29 I suppose I could have gone, but - there also wasn't the
30 work for a professional standards director in Grafton at
31 that time, so there was a psychologist in town called Col,
32 who we used as a contact person. I suppose that person
33 could have been used as professional standards director but
34 had no investigative history or anything like that. So to
35 find someone with the sort of acumen of Mr Gerber would
36 have been very difficult.

37

38 Q. So it wasn't a question of money?

39 A. No, I think it was a wider question, and I think that
40 was a - both a slip of my tongue and being a bit
41 simplistic, yes. It wasn't just money, but I think I would
42 have had trouble going to Bishop-in-Council and getting
43 money for that position, especially - I wouldn't have got
44 it for a full-time position. I couldn't have justified it.

45

46 MR BECKETT: Q. Mr Comben, just going to the letter that
47 is in front of you, paragraph 3, you will see that it says:

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The Professional Standards Committee ... wishes to investigate the matter to ensure that those responsible are held to account and also to provide you with an opportunity of seeking assistance and an appropriate response.

Let's just take that one point at a time. What steps were taken, following this letter, for the professional standards committee to investigate the matter?

A. I don't think any were taken immediately. It was more about trying to get some resolution for this person and another person.

Q. So are you saying that no steps were taken to investigate the particular matter?

A. Steps were taken to investigate the matter, because until these two letters --

Q. Well, by whom? Were they taken by you?

A. Yes.

Q. What did you do?

A. Until these two letters came in, I had never heard of the North Coast Children's Home, so the first thing I did was to drive up there. The second thing I did was to start looking to find out what this thing was and who Reverend Morgan was. So they were the first investigations.

Q. You say:

... to ensure that those responsible are held to account ...

Did you take any additional steps at that stage so that those responsible were held to account?

A. Not at that stage. We were in the middle of the professional standards board matter, with a proper hearing, professional standards board, barrister, presentation by another barrister, et cetera. But certainly in my mind, when I wrote that, was that we are defrocking one person; let's find out about this one, although my immediate belief was that Reverend Morgan was probably not going to be fit to be able to plead or to attend. But that is certainly what I was thinking about: how do we line up the priests

1 to be able to make them accountable?

2

3 THE CHAIR: Q. Mr Comben, I am very sorry to do this,
4 but this letter is dated 22 November 2005.

5 A. Yes.

6

7 Q. You told us this is the first time you had heard of
8 the North Coast Children's Home.

9 A. Yes.

10

11 Q. You wrote a letter to Mr Campion on 2 September.

12

13 A. I said when I got these two letters was the first
14 time, yes. When I got Mr Campion's was the first time. So
15 September. I did refer to two letters, meaning
16 Mr Campion's and this letter.

16

17

17 THE CHAIR: All right.

18

19

19 MR BECKETT: Q. Had you been to Lismore and done those
20 investigations after you received the letter from
21 Mr Campion, or did that have to wait until you received the
22 second letter, from Ms [CA]?

23

23 A. I think that when [CA] wrote, it became - I would have
24 probably treated Mr Campion's letter, as I was, as
25 accepting that that had happened, how do we move this
26 forward so that we can properly provide a care and
27 assistance package and provide him with closure?

28

29

29 The second letter comes. Start to look and think,
30 what is this? And a bit more investigation was starting to
31 go on then. I had also made inquiries of people, like
32 Archdeacon Ezzy and the former secretary of the North Coast
33 Children's Home, and they had vastly different views as to
34 the status of the home and also what had perhaps actually
35 occurred up there.

36

37

37 Q. Archdeacon Ezzy had been, in fact, the rector at
38 Lismore and chair of the executive committee which ran the
39 home for a period of ten years, hadn't he?

40

40 A. Yes, he had.

41

42

42 Q. Was his opinion that in fact there had been no abuse

43

43 at the home?

44

44 A. Yes. He raised very squarely with me the matter of

45

45 his wife, which he now describes as a trivial matter.

46

47

47 Q. Did he indicate that that was the position with

1 respect to what had happened in the 1950s and 1960s, well
2 before Mr Ezzy took over?
3 A. Yes.
4
5 Q. And that as far as he knew, there had been no abuse at
6 the home?
7 A. Yes.
8
9 Q. Does that mean that you became sceptical of [CA]'s
10 letter of 22 November 2005; is that correct?
11 A. No, that's not correct, but --
12
13 Q. Sorry, I will come to that in a moment. Could I take
14 you to PG-9. There was an earlier set of minutes of the
15 professional standards committee at which, on the second
16 page, you will see "In the matter [CH]", so that by the
17 time we get to April 2005, at a meeting you had apparently
18 attended - if we could go down to the second page, please,
19 you will see "In the matter of [CH]" at the top there?
20 A. Yes.
21
22 Q. If you just refer to the pseudonym list in front of
23 you?
24 A. Yes, I realise that.
25
26 Q. You are aware of that?
27 A. Yes.
28
29 Q. [CH] had been a resident of the North Coast Children's
30 Home, hadn't he?
31 A. That's certainly correct. Was I aware of that at that
32 moment --
33
34 Q. In fact, the allegation was that Reverend Kitchingman
35 had abused him at the North Coast Children's Home, or
36 thereabouts, in 1975. You knew that, didn't you?
37 A. At about that time - this was raised yesterday, when
38 the diocesan advocate was told that this was a matter of
39 some notoriety. I found out about Reverend Kitchingman at
40 about the same time when someone said to me, "There's got
41 to be a file in your office about this", and I found it in
42 the bottom of a filing cabinet, but it wasn't at that
43 stage - because other people were acting for him, it
44 wasn't --
45
46 Q. But, Mr Comben, the issue is that you knew about the
47 North Coast Children's Home as early as April 2005; is that

1 correct?
2 A. No, I don't believe it was. I knew that there was
3 a matter going on.
4
5 Q. So there was a matter with respect to [CH] that was
6 being handled by the insurers --
7 A. By the diocesan insurers' solicitors.
8
9 Q. And you knew that was the case?
10 A. Yes.
11
12 Q. And you never asked what the substance of the claim
13 was?
14 A. No, because I was so pleased that an insurance company
15 was covering one of the claims.
16
17 Q. You weren't concerned, in your role as registrar and
18 to handle potentially other matters coming forward, that
19 there might be other claims similar to the one in respect
20 of [CH]?
21 A. I think that is what actually coloured my views, that
22 I was hoping that somehow the diocesan insurers - and we
23 were trying to get a handle on why they were covering this
24 one claim.
25
26 Q. So you are saying that by the time we get to August
27 2005, Mr Campion's letter comes out of the blue to inform
28 you that there are allegations of abuse at the North Coast
29 Children's Home?
30 A. I think what you have put to me until now must make me
31 question it, but it was not a major part; it was not
32 something which I thought of as part of day-to-day duties
33 or oversight of the diocese.
34
35 Q. I want to then ask you about the letter from
36 Mr Harrison of 5 January 2006. Could SJH-1 come up,
37 please.
38 A. I'm familiar with that letter.
39
40 Q. Do you recall receiving this letter of 5 January 2006
41 from Mr Harrison?
42 A. I think I was waiting for it, yes.
43
44 Q. You were waiting for it, were you?
45 A. Yes. There had been quite a bit of publicity from
46 Mr Harrison before.
47

1 Q. By this stage, you were aware that Mr Campion was
2 seeking other members to join a group action; is that
3 correct?
4 A. Yes.
5
6 Q. Then you received this letter on 5 January 2006?
7 A. Yes.
8
9 Q. What did you do as a result of this particular letter?
10 A. Referred it to the diocesan advocate - I think
11 everyone else was on holiday - and eventually referred it
12 to all the other agencies within the diocese.
13
14 Q. By this stage, we know that certainly Mr Campion had
15 written to you in August and you had written back to him
16 and that Ms [CA] had written to you and you had written
17 back to her; that's correct, isn't it?
18 A. Yes.
19
20 Q. Sorry, I need your acknowledgment for the transcript.
21 And Mr Campion had been offered counselling at this stage?
22 A. Yes.
23
24 Q. And you had provided, I think, some transport money
25 for him as well?
26 A. Yes. The taxi that was mentioned yesterday was quite
27 expensive; it wasn't a \$10 taxi fare.
28
29 Q. In any event, what had happened with respect to
30 Mr Campion's claim between August 2005 and January 2006,
31 particularly with respect to the pastoral care and
32 assistance package that had been adopted in the Diocese of
33 Grafton?
34 A. We were trying to move it forward.
35
36 Q. How were you trying to move it forward?
37 A. By trying to work out exactly where it fitted in.
38
39 Q. What does that mean?
40 A. By talking to Mr Campion about where that should be in
41 terms of the Sydney package.
42
43 Q. What does that mean - "where that should be"?
44 A. Well, there's a bit of a black hole here because --
45
46 Q. There is a bit of a black hole there, Mr Comben.
47 I wonder if you can assist us with what steps were taken by

1 the Diocese of Grafton to deal with or process Mr Campion's
2 claim under the diocesan pastoral care and assistance
3 package?
4 A. We continued the counselling, and my belief is that
5 Jenni Woodhouse was a contact person for him, and that
6 continued, and certainly in my mind was the belief that we
7 would be able to get a resolution in terms of the Sydney
8 system for Mr Campion by Christmas time.
9
10 Q. You heard, no doubt, yesterday Mr Gerber's explanation
11 of how the Sydney process worked in terms of there being,
12 for want of a better term, a hearing before a facilitation
13 panel?
14 A. Yes.
15
16 Q. And that the person - that is to say, the claimant -
17 is able to meet with the panel and provide evidence to them
18 in terms of medical evidence and perhaps a statement, that
19 process?
20 A. Yes, I heard that.
21
22 Q. We certainly haven't seen any documentation to that
23 extent, so that did not take place, did it, between August
24 2005 and January 2006?
25 A. But what did take place was the settlement of the
26 other matter, which --
27
28 Q. So is that a "yes"?
29 A. I don't think it had got to that stage, and Mr --
30
31 Q. Well, what steps had been taken to move it along?
32 A. Well, Mr Campion had gone off and was doing a lot of
33 media stuff.
34
35 Q. Did you write to Mr Campion and say, "Here is an
36 application. Please fill out an application form so that
37 we can process your matter through the Sydney care and
38 assistance package"?
39 A. My belief was that he was still having counselling and
40 was still in communication with us.
41
42 Q. So do I take it that you didn't take that step to --
43 A. I did not take that step.
44
45 Q. Did you ask the professional standards director to
46 speak with Mr Campion, perhaps through the support person,
47 Jenni Woodhouse, so that the process could move along?

1 A. I certainly was talking to Jenni Woodhouse and was
2 hoping it would move long. I don't remember having
3 a conversation saying, "Please move it along."
4

5 Q. These things don't go into stasis, do they, Mr Comben?
6 There is a process that's set out there under both the
7 protocol and the care and assistance package. It doesn't
8 seem to have advanced at all over a period of about
9 six months; is that right?

10 A. It didn't advance because suddenly, eventually during
11 that six months, Mr Campion was legally represented and was
12 telling the world that he had employed solicitors and that
13 there would be a huge class action.
14

15 Q. So you are saying that this effectively sidelined the
16 process under the care and assistance package?

17 A. Tragically, absolutely, sadly, yes, it did.
18

19 Q. With respect to [CA], you have indicated that you
20 wrote to her on 22 November 2005, and I took you to PG-21
21 before. What happened with respect to her claim after
22 November 2005?

23 A. I think we took it in the same light, that they were
24 about to be represented by lawyers, who were certainly
25 speaking on their behalf to the media.
26

27 Q. Did you write to the lawyers to indicate to them that
28 there was a process under the care and assistance package
29 which they may wish to avail themselves of?

30 A. I don't believe anyone raised that suggestion.
31 I certainly didn't think of it.
32

33 Q. There was no contact person, was there, appointed with
34 respect to [CA]?

35 A. I don't know at what point Ms Woodhouse would have
36 been appointed to her. She was later there. No, I don't
37 believe there was.
38

39 Q. And there was no counselling provided to Ms [CA], was
40 there?

41 A. No.
42

43 Q. So you received a letter, 5 January 2006, and you say
44 you immediately instructed --

45 A. Foott Law & Co.
46

47 Q. -- Foott Law & Co to act for the diocese; is that

1 right?
2 A. That's correct.
3
4 Q. Could tender bundle 25 be brought up, please.
5 A. Yes, sir.
6
7 Q. Have you read that now?
8 A. Yes.
9
10 Q. This was the first communication, at least in writing,
11 that you had had with Mr Roland; is that right?
12 A. In writing, yes.
13
14 Q. You indicated there, I think in the third paragraph,
15 that you considered the claim put forward by Mr Harrison as
16 a fishing expedition; do you see that?
17 A. Yes.
18
19 Q. Do I take it from that that you were deeply sceptical
20 of the claim that Mr Harrison was putting forward to the
21 diocese?
22 A. I don't know why you would say I would be "deeply
23 sceptical". That's not my view, no.
24
25 Q. Well, what are we to make of the term "fishing
26 expedition"?
27 A. That I was a little sceptical.
28
29 Q. A little sceptical?
30 A. Yes. I had an archdeacon of the diocese telling me
31 that nothing had occurred. I also had some former
32 residents of the home phoning me, and going into the media,
33 saying it was a great place.
34
35 Q. So you had read the claims of abuse in Mr Campion's
36 letter --
37 A. Yes.
38
39 Q. -- and Ms [CA]'s letter, hadn't you?
40 A. Yes.
41
42 Q. Did you think, having read those letters, that the
43 claims of abuse that they put forward were a fishing
44 expedition?
45 A. No.
46
47 Q. You knew, didn't you, that Mr Harrison was

1 representing both Mr Campion and Ms [CA]?

2 A. Tragically, that's so.

3

4 Q. Why is that "tragically" so?

5 A. Because I believe we would have managed to settle the
6 matter with considerable compassion and speed had the
7 lawyers not got involved. You read the material in the
8 front page of the Northern Times and you find that there is
9 going to be this huge class action and they have been
10 settling matters in Queensland for \$150,000 each - yes,
11 I got cynical about the lawyers, not about Mr Campion.

12

13 Q. So your position was, was it, that the fact that
14 Mr Campion and [CA] and other claimants had gone to
15 a lawyer had effectively ratcheted the whole matter up to
16 an entirely different level; is that --

17 A. No, my position was that a system which was moving
18 forward to hopefully a reasonable settlement in a short
19 period of time had been derailed by that --

20

21 Q. Derailed, what, by seeking the representation of
22 a lawyer?

23 A. Yes.

24

25 Q. There was no process, if you like, for a lawyer to be
26 involved in assisting those particular claimants to go
27 through the process adopted by the Diocese of Grafton?

28 A. That was not the mood of the material publicly
29 published by the lawyers involved.

30

31 Q. But this is very early on in the piece, Mr Comben?

32 A. Yes, but they had been in the media for three months
33 before that.

34

35 Q. Well, Mr Campion had been in the media before that?

36 A. And so had the lawyers.

37

38 Q. What had Mr Harrison said in the media with respect to
39 that?

40 A. I've forgotten. I haven't got a --

41

42 Q. So do I take it from that that you were quite
43 incensed, by the time that you received the letter of
44 6 January 2006, that the lawyers were involved and that
45 they were going to obstruct a process that had been adopted
46 by the diocese?

47 A. The two propositions you put, no. I was neither

1 incensed, nor did I think the lawyers were going to stop
2 the process.

3

4 Q. You said just earlier on, I thought, with respect to
5 the involvement of the lawyers, that they were at least
6 going to be obstructive in the processing of these matters
7 under the diocesan protocol; is that right?

8 A. That does not make me incensed. I might have been
9 disappointed.

10

11 Q. No, I asked you do you agree --

12 A. That was the term you used to me, sir.

13

14 Q. I asked you about obstruction and whether the lawyers
15 were going to be obstructive with respect to the processing
16 of the claim; is that correct?

17 A. Yes.

18

19 Q. And you formed the view that therefore you would meet
20 this claim from the lawyers, from Mr Harrison, by
21 instructing your own lawyers - that is to say, Mr Roland -
22 to represent the Diocese of Grafton; is that correct?

23 A. Yes.

24

25 Q. And that by the time we get to 16 January, you wanted
26 to explore, with some vigour perhaps, the basis upon which
27 the diocese could deny liability; is that correct?

28 A. Yes. But I'm still not incensed.

29

30 Q. Very well.

31 A. I'm just disappointed. We had achieved a great number
32 of settlements the year before, very well, very happily.
33 I still receive correspondence from one of those
34 settlements. And now suddenly we had this fairly
35 interesting firm of lawyers telling us how good and how big
36 they were and the success they were going to have.

37

38 Q. Mr Comben, did you write to Mr Harrison to express
39 that particular concern, that is to say, that there was
40 a process within the diocese, which had been commenced with
41 respect to Mr Campion and Ms [CA], and that you wanted to
42 proceed further with that?

43 A. No.

44

45 Q. Why not?

46 A. Because we had received a letter from lawyers.
47 Everyone else was on holiday. I referred it to the

1 diocesan solicitors.

2

3 Q. Did you take any steps subsequently to indicate,
4 either through your lawyers or directly, that there was
5 a process under the care and assistance package which was
6 available to those claimants and which you would encourage
7 them to proceed through?

8 A. No.

9

10 Q. Is there any particular reason why you did not do
11 that?

12 A. Well, I said "no" very quickly, but there were
13 continual references to care and concern packages,
14 et cetera. I think we were just overwhelmed suddenly by
15 this Brisbane group coming and telling us all the matters
16 that were going on, and I think, for a while, we didn't
17 know what to do.

18

19 Q. So essentially you adopted a defensive position, did
20 you --

21 A. Yes.

22

23 Q. -- on behalf of the Grafton Diocese?

24 A. Yes.

25

26 Q. And your instructions to Mr Roland were to defend the
27 claim, certainly in those first few months of 2006; is that
28 correct?

29 A. No, I don't think I gave instructions to defend, but
30 to respond. Until the Bishop-in-Council would have met,
31 I would not have given him instructions to defend.

32

33 Q. In terms of the correspondence that we have from
34 Mr Roland, we know that you had instructed him certainly to
35 seek out the basis upon which the claim was being
36 established; is that not right?

37 A. That is correct, so that we could properly brief
38 Bishop-in-Council.

39

40 Q. If you could go to SJH-4, you were aware that the
41 position taken by your lawyers was that the Diocese of
42 Grafton, for example, was not a juridical person?

43 A. That's correct.

44

45 Q. And that there was a concern at that stage about
46 limitations, that is to say, that a statute of limitations
47 may apply to the claims?

1 A. Yes, I think there was a Bishop-in-Council meeting
2 between that last letter you were showing and this one.

3

4 Q. What was the approach taken at Bishop-in-Council,
5 then?

6 A. Defend it.

7

8 Q. So you are saying that the idea to defend the claim
9 was not from you but in fact came from Bishop-in-Council?

10 A. I was an employee. I did what I was told.

11

12 Q. We don't seem to have any resolution with respect to
13 that at Bishop-in-Council level until somewhat later in the
14 year. Are you saying that there was a meeting of
15 Bishop-in-Council and they instructed you to defend?

16 A. I can remember the discussion at Bishop-in-Council
17 where we were asked by members of Bishop-in-Council what
18 could be done, because I think on the table was the view
19 that the solicitors for the group were going to be claiming
20 something over six figures for everyone, so that was
21 \$4 million, maybe more.

22

23 Q. Mr Comben, there is no material that indicates,
24 certainly in writing, that Mr Harrison or the claimants
25 were seeking a six-figure sum or other figure at that
26 stage?

27 A. They were still seeking that figure in November of
28 that year.

29

30 Q. Perhaps in November. We are just at the start of the
31 year. Would you look at page 2 of that document, please,
32 under "Procedural issues".

33 A. Yes.

34

35 Q. It says:

36

37 *Our client has instructed us that it does*
38 *not see the value of any general conference*
39 *until the matters alleged are better*
40 *particularised.*

41

42 Do you see that?

43 A. Yes.

44

45 Q. You had taken the position - I assume you are
46 instructing Mr Roland at this stage?

47 A. Bishop-in-Council was instructing Mr Roland.

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Q. Mr Comben, let's just go through it then. In terms of the communications between the Diocese of Grafton and Mr Roland, instructions were communicated by you to Peter Roland to act in the proceedings?

A. Yes.

Q. That's correct, isn't it?

A. Yes.

Q. Then the day-to-day instructions that Mr Roland sought with respect to responding to correspondence, and so forth, were obtained from you, were they not?

A. The day-to-day instructions, the thrust of the matters, were outlined by Bishop-in-Council.

Q. Where were they outlined by Bishop-in-Council? Are you saying that there is a particular minute that sets out what those instructions were?

A. No, but the discussions with Bishop-in-Council - it was a matter of every meeting of Bishop-in-Council.

Q. Mr Comben, is it not the case that you received very general instructions from Bishop-in-Council, if any, about the way in which the claim was to be defended?

A. No.

Q. Are you saying you received specific instructions from Bishop-in-Council?

A. Yes, yes.

Q. By way of motion?

A. No.

Q. By way of discussions that were held at those meetings of Bishop-in-Council?

A. Yes.

Q. Mr Comben, are you relying on that just because the minutes are unlikely to record that sort of detailed instructions?

A. No, I am not. I have clear recollections of the discussions taking place and whether or not we would defend the matter, and, if we were going to defend the matter, did we have a defensible situation. The only question I could raise with that is whether or not I was actually putting a defensible position before I was asked to, but certainly

1 Bishop-in-Council had in front of it a figure of
2 \$4 million-plus.

3

4 Q. That figure didn't arise until much later in the year,
5 did it?

6 A. No, it arose very early in the year. That was the
7 problem, early in the year. Your material is only showing
8 that that was still being bandied around as a figure
9 in November/December of that year, but the public stuff had
10 indicated that sort of line. Whether it was specifically
11 to North Coast Children's Home or, "This is what we have
12 achieved elsewhere in Queensland", I'm not sure, but that
13 was the sort of figure that was being talked about at
14 Bishop-in-Council early in the year.

15

16 THE CHAIR: Q. Mr Comben, this letter that you are
17 looking at is dated 1 March.

18 A. Yes.

19

20 Q. You continued, of course, yourself to correspond with
21 Mr Campion, didn't you?

22 A. From time to time, yes.

23

24 Q. You wrote to him on 15 February when you sent him the
25 cheque for \$500?

26 A. Yes.

27

28 Q. Is that right?

29 A. Yes.

30

31 Q. That letter is RC-9. Can we bring that up? Do you
32 see the letter?

33 A. Yes.

34

35 Q. It's plain from the letter, from the second paragraph,
36 that you are there speaking on behalf of the professional
37 standards committee; do you see that?

38 A. Yes, yes.

39

40 Q. There is to be "no open ended" - there are limits?

41 A. Yes.

42

43 Q. Do you see that?

44 A. Yes.

45

46 Q. This is said to be an "emergency support". Now, do
47 you see what you say in the next two paragraphs?

1 A. Yes, sir.
2
3 Q. I rather have the impression, from what you have
4 already told us about the state of the diocesan finances,
5 that those paragraphs aren't correct.
6 A. I think the second line of the first paragraph you are
7 referring to, the second sentence, "discretionary
8 reserves" --
9
10 Q. Let's just start sentence by sentence:
11
12 *The Diocese of Grafton is a small ...*
13
14 A. Yes.
15
16 Q.
17 *... six years ago considered joining with*
18 *the Diocese of Newcastle because of its*
19 *total lack of money.*
20
21 A. That is what I understand to have happened. There was
22 actually a meeting between the two bishops, and the then
23 Bishop of Newcastle wanted that to occur and there was
24 a lot of thought of it. That's only hearsay to me, before
25 my time.
26
27 Q. You told us, however, that you knew there was quite
28 a lot of money?
29 A. Yes, that was six years ago, and there had been that
30 speculation in land, which had built up --
31
32 Q. Just let's take it piece by piece. Your evidence is
33 clear as to what you knew and when.
34 A. Yes.
35
36 Q. That evidence certainly didn't suggest that you
37 thought there was other than at least \$2 million available
38 at the beginning of 2006; correct?
39 A. Yes, yes.
40
41 Q. So is that first sentence - well, you say that was
42 what you understood to have happened in the past, the first
43 sentence?
44 A. Yes. And I think I said in my evidence earlier that
45 when I had first come to the diocese, people said we had no
46 money, but my view was that there was actually \$1 million.
47 At the time they were looking to join together, firstly,

1 the view would have been, "We don't have any money", and,
2 secondly, after that occurred, there was some money coming
3 in from the speculation on real estate.
4

5 Q. Well, I think we talked about \$2 million before.

6 A. Yes.

7

8 Q. And the next sentence:

9

10 *The Diocese still has no capital account or*
11 *discretionary reserves and consequently*
12 *even the small sums such as we are*
13 *discussing are found only with difficulty.*

14

15 This letter is discussing \$500, isn't it?

16 A. Yes.

17

18 Q. Now, was that a correct statement?

19 A. I don't think it was.

20

21 Q. In fact, it was just wrong, wasn't it?

22 A. No, because, actually, finding 500 bucks and getting -
23 \$500 and getting someone to actually agree that we could
24 just pay it wasn't always easy. But --

25

26 Q. But you are not saying that there. You are saying
27 that the diocese doesn't have the money to pay even \$500?

28 A. No, I agree with you there, yes.

29

30 Q. Was that an honest thing to say to Mr Campion?

31 A. Well, there were certainly no discretionary reserves.
32 I will say, no, it was not an honest thing to say to
33 Mr Campion.

34

35 Q. Well, then, why did you say it?

36 A. Because I think that we were all scared and I was
37 conscious that we - I would not have been viewed well as an
38 employee had I just gone out there and said, "The diocese
39 has \$2 million." This was also the time when I was
40 beginning to think there's something going wrong here with
41 that school and the GDIF. So I think I was being coloured
42 by that, if anything. Had I written that three months
43 earlier, that would not have been written. I think by that
44 time, then, there had started to be some problems.

45

46 Q. The last sentence of the letter:

47

1 *Please do not assume the Professional*
2 *Standards Committee will continue to*
3 *provide funds ...*

4
5 Do you see that?

6 A. Yes.

7
8 Q.

9 *... the nature of their support at this*
10 *point is Christian care and assistance.*

11
12 Do you see that?

13 A. Yes.

14
15 Q. What did you mean by "Christian care and assistance"?

16 A. That on one hand, we were clearly, by now, taking
17 a view that the matter would be defended, but we didn't
18 want to be saying, "Here's \$500; we're admitting
19 a liability." And I think that term was actually used by
20 William Wade to me about matters concerning someone else
21 who was insured, and I was concerned at one stage that we
22 had given some money to that person and that we might have
23 admitted liability, and William Wade said to me - the
24 solicitor - "It is Christian care and assistance, Pat." So
25 I think I used that term there.

26
27 Q. I know what the words say. I want to know what you
28 believed you were representing to Mr Campion you would
29 provide for him --

30 A. Money to help.

31
32 Q. -- through Christian care and assistance?

33 A. Five hundred dollars to help with the travel costs.

34
35 Q. And that's it?

36 A. Well, at that moment, yes. There were a number of
37 letters.

38
39 Q. You say you won't continue to provide funds:

40
41 *... the nature of their support at this*
42 *point is Christian care and assistance.*

43
44 Were you saying to him, "Mr Campion, I am sorry, there will
45 be no more money"?

46 A. All that we're saying to him is, "Just be aware there
47 is not going to be an endless bucket. Please do not assume

1 we will continue." We didn't say it would stop. And we
2 kept funding him.

3
4 THE CHAIR: Very well. Yes, Mr Beckett.

5
6 MR BECKETT: Q. Mr Comben, we've been able to locate
7 a file note of yours - it is ANG.9320.00013.0133 - dated
8 22 December 2004. I wonder if that could come up. Would
9 you just read through that, please?

10 A. Yes, yes.

11
12 Q. Do I take it from that that by December 2004, you were
13 well aware of at least the acts of a Reverend Kitchingman
14 at North Coast Children's Home; is that correct?

15 A. By that, I must have been aware, yes.

16
17 Q. So this is approximately nine months before you
18 received Mr Campion's letter, wasn't it?

19 A. Yes.

20
21 Q. So you were well aware of allegations of abuse that
22 occurred at North Coast Children's Home prior to that?

23 A. I was aware of, yes.

24
25 MR BECKETT: I tender that file note.

26
27 THE CHAIR: We will make the file note exhibit 3-11.

28
29 **EXHIBIT #3-11 FILE NOTE PREPARED BY MR COMBEN**
30 **DATED 22/12/2004**

31
32 MR BECKETT: Q. Could I return to SJH-4, please, the
33 letter of 1 March 2006, particularly page 2. You will see
34 point 6 "Procedural Issues"?

35 A. Yes.

36
37 Q. You provided instructions to Mr Roland to say that
38 a general conference was not of any value until the matter
39 had been better particularised. Do you see that?

40 A. Yes.

41
42 Q. We have had evidence from Mr Harrison and I think
43 Mr Roland agreed with it, that the push for a conference
44 had come from Mr Harrison?

45 A. Yes.

46
47 Q. Do you agree with that?

1 A. Yes.
2
3 Q. And that the position that you had put back - at least
4 your instructions to Mr Roland - was that no conference
5 should go ahead; is that right?
6 A. That's correct.
7
8 Q. Such a conference would have been an ideal time,
9 wouldn't it, to reinforce the care and assistance package
10 and the process under the protocol?
11 A. It could have been.
12
13 Q. But you didn't avail yourself of such an opportunity?
14 A. No.
15
16 Q. Why was that the case, that you denied the opportunity
17 of a conference to consider such matters?
18 A. We were still trying to get to the bottom of what the
19 basis of the claim was.
20
21 Q. All right. So when you say "the basis of the claim" -
22 and I think that is a term that is used throughout the
23 documentation; you would agree with that - when you say
24 "basis of the claim", that means the association between
25 the North Coast Children's Home and the Diocese of Grafton;
26 is that correct?
27 A. Yes.
28
29 Q. And you are referring to the liability of the Diocese
30 of Grafton, or one of its constituent bodies, for acts that
31 occurred at North Coast Children's Home; is that right?
32 A. I was actually referring to the fact that the
33 long-time secretary of the home said that they didn't see
34 themselves as part of the Anglican Church.
35
36 Q. The long-time secretary? Who are you referring to
37 there?
38 A. Reverend Greg Foley.
39
40 Q. When was he at the home?
41 A. He was secretary of the home from late 1980s to the
42 early 2000s, I think. It is in the material you have
43 supplied.
44
45 Q. So on that basis, you wanted to have before you
46 a solid basis, in your mind, at least, as to why you should
47 go through any form of negotiations with the claimants'

1 lawyers before such an issue had been resolved in your
2 mind; is that right?
3 A. Because there were 41 people coming at us, yes. Had
4 there not been 41, I think we would have paid out very
5 quickly, as we were intending to do with Mr Campion, and as
6 we had done with five other people, without any questions
7 of liability.
8
9 Q. At that particular stage, you had Mr Gerber available
10 to you, didn't you, down in Sydney?
11 A. Yes.
12
13 Q. And he was the professional standards director, not
14 just for Sydney but for the Diocese of Grafton?
15 A. Yes.
16
17 Q. And he was a man who had a wealth of experience with
18 respect to handling these sorts of claims, wasn't he?
19 A. He was a wonderful resource, yes.
20
21 Q. Did you ever call him and say, "Mr Gerber, can you
22 assist with providing a structured way in which we can
23 process this group of" - I think by March we're talking
24 about 30, if not more - "claims; provide a structured
25 approach to processing these people through the Sydney care
26 and assistance package" that had been adopted?
27 A. The preliminary question still was being asked by the
28 diocesan - by Bishop-in-Council, "Are we liable?"
29
30 Q. So are you saying, then, that the position taken at
31 Bishop-in-Council level was that if the Diocese of Grafton,
32 or one of its constituent bodies, was not liable, then
33 there was no obligation to proceed under the pastoral care
34 and assistance package?
35 A. No, because we had proceeded on five other matters
36 where we hadn't raised the question of strict liability or
37 statute of limitations, et cetera.
38
39 Q. But now it seems that you were raising that issue?
40 A. Yes, because of the size of the claims and fear.
41
42 Q. So there was a fear about the amount of money that
43 might be obtained through the care and assistance package;
44 is that what you are saying?
45 A. Well, through the approach, yes.
46
47 Q. So effectively, by as early as March or April of 2006,

1 you had put to one side the operation of the protocol,
2 because of fear of the financial ramifications; is that
3 correct?

4 A. I hadn't put the protocol to one side, but we were
5 trying to establish the basis of the claim.

6
7 Q. Well, no, it was more than that, though. I thought
8 you indicated a moment ago that you, following the position
9 taken by Bishop-in-Council, were not going to go ahead with
10 the care and assistance package, at least the process
11 adopted under that, because of the question of liability;
12 is that not correct?

13 A. Yes.

14
15 Q. Yes, it is correct, or it is not correct?

16 A. That is correct taking into account the provisions in
17 the ordinance - not the protocol - about protecting alleged
18 perpetrators and verifying claims.

19
20 Q. Sorry, I wonder if you could just explain that?

21 A. Which piece? Taking into account the - we were being
22 asked to throw away any assumption of innocence,
23 presumption of innocence, and the ordinance certainly
24 referred to the matters of belief, to matters of
25 presumption of innocence, and that you had to protect
26 those, and there was also the question from time to time of
27 verified claims.

28
29 Q. You were attempting to deal with these, were you not,
30 in the sense that you were providing instructions to
31 Mr Roland on that particular issue?

32 A. Yes.

33
34 Q. Which included testing whether the particular facts
35 were true, that is to say the acts of abuse that had been
36 alleged; is that correct?

37 A. I don't think there was ever any great testing of the
38 alleged acts. So - yes. It was the other questions.

39
40 Q. It was the other questions. So you are saying that
41 the issue about whether the acts occurred or not was not
42 being tested. If that's the case, what was the impediment
43 to proceeding by way of processing, perhaps through
44 Mr Gerber, all of those claims?

45 A. The size of the claim being made against us - the
46 amount of money.

47

1 Q. Wouldn't it simply have been a case that if you could
2 allocate somebody, perhaps to assist with processing these
3 claims in Sydney or in Grafton, you could have dealt with
4 these particular claims through processing under the
5 ordinance and the protocol?

6 A. Yes, but I think that we were still of the view that
7 the solicitors acting were seeking very large settlements.
8

9 Q. But in any event, you were happy to spend funds on
10 legal fees from Mr Roland's activities but not upon
11 boosting Mr Gerber's capacity to actually handle these
12 particular claims?

13 A. Mr Roland's fees were always very modest. Compared
14 with - if there were 41 claimants, as there were, that's
15 \$500 a head. We were looking at figures - we were told of
16 in the region of \$100,000. So I don't think that I was
17 spending the money; it was half a per cent.
18

19 Q. Mr Comben, you do agree that the Diocese of Grafton
20 spent in excess of \$50,000 on legal fees with respect to
21 Mr Roland and counsel that were engaged in the settlement
22 of North Coast Children's Home matters?

23 A. Eventually over a long period of time, yes.
24

25 Q. Over 18 months period of time?

26 A. Yes.
27

28 Q. There was no consideration, I presume, as I asked you
29 before, to expanding the services of the professional
30 standards director or supplementing them, in any event, so
31 that those claims could be processed under the care and
32 assistance package?

33 A. There was no suggestion of that.
34

35 Q. So essentially, you had adopted the route of relying
36 on Mr Roland to engage in correspondence and negotiations
37 with Mr Harrison --

38 A. That's correct.
39

40 Q. -- to settle the claims?

41 A. That's correct.
42

43 Q. That was the route that you obtained?

44 A. Not to settle the claims, but to bring the claims down
45 to a reasonable level and not the public level which was
46 still being expected.
47

1 Q. And in any event, you had raised the issue with
2 Bishop-in-Council, I think on a number of occasions; is
3 that right?

4 A. I would report to the Bishop-in-Council every time
5 they met.
6

7 Q. And before September, or leading up to September of
8 2006, that included, of course, Bishop Slater, who chaired
9 Bishop-in-Council?

10 A. Well, up to and beyond, I think, yes.
11

12 Q. I want to ask you about insurance matters. Mr Roland
13 was taken to some evidence earlier today - you may well
14 have heard him saying that he was advised in March 2006
15 that the insurance policies adopted by the Diocese of
16 Grafton did not cover the North Coast Children's Home
17 matters. Do you agree that that was the position in March
18 2006?

19 A. That was the advice we all received, yes.
20

21 Q. I will just show you some documentation that was given
22 to Mr Roland dated 6 December 2006. It is tender
23 bundle 49, if that could be brought up, please. This is
24 a letter that was sent to Mr Roland enclosing a number of
25 policies of insurance. If we go to the second page there?

26 A. Yes, sir.
27

28 Q. This was an insurer confirmation. It sets out the
29 premium for the Diocese of Grafton with respect to
30 insurance offered by Zuellig Insurance Brokers. This
31 concerns the period for the calendar year 2000. You can
32 see the premium at \$140,000; do you see that?

33 A. Yes.
34

35 Q. One page further on you will see that the insured
36 include not just the Diocese of Grafton but the North Coast
37 Children's Home - on the left-hand side there. And then,
38 on the next page, you will see that there is an extension
39 of molestation cover up to \$5 million for any one
40 occurrence; do you see that?

41 A. Yes.
42

43 Q. It appears that this policy lapsed on 30 November
44 2003. Could we just go back to the covering page, please.
45 Mr Comben, we saw from the protocol, at least, that
46 insurance was one of the things that fell within your
47 responsibilities; is that correct?

1 A. Yes.

2

3 Q. Were you aware that this policy had lapsed when you
4 accepted the position in 2004?

5 A. No.

6

7 Q. What steps did you take to consider the degree to
8 which the Diocese of Grafton had sufficient cover for
9 public liability matters?

10 A. I checked with the national office, which employed or
11 had agency with an insurance - I will call him a broker,
12 but effectively the national church is insured under
13 a contract of insurance, and each diocese puts in a certain
14 amount - and it continued to be about \$140,000, which we
15 put in. We also had to put to one side some money which
16 could be used for the smaller claims. But we were all in -
17 one in all in, and I think I accepted that the heavyweight
18 metropolitan dioceses, who were part of that system, were
19 protecting our interests. I had never seen this document
20 before.

21

22 Q. Were you aware, certainly by 2006, as to whether there
23 was any coverage for claims, on a claims made basis, for
24 molestation claims, particularly?

25 A. At the time that it was raised, I was hoping it was,
26 but we were told straightaway not for that long ago.

27

28 Q. Does that mean that the first time that you considered
29 the issue was when the claims had come in, rather than at
30 some stage prior to that?

31 A. On molestation?

32

33 Q. Yes.

34 A. No. It was raised in some - there were at least an
35 annual meeting about insurance, whenever the registrars got
36 together annually. There was always discussion with the
37 insurers, and that was a regular topic.

38

39 Q. So were you aware that there was no molestation cover
40 before receiving this letter of 2006?

41 A. No.

42

43 Q. And is that because you hadn't asked the question as
44 to whether there was such cover for the diocese?

45 A. Well, I understood that there was actually molestation
46 cover, but not that far back.

47

1 Q. Well, that was with respect to an occurrence base?
2 A. Yes.
3
4 Q. In other words, the occurrence had to occur during the
5 term of the contract?
6 A. Yes.
7
8 Q. And that new system, the national system that had been
9 adopted, only covered occurrences that dated from on or
10 about 2003?
11 A. Yes.
12
13 Q. So it was clear, wasn't it, by 2006 that the Diocese
14 of Grafton was inadequately insured in terms of historic
15 claims of abuse?
16 A. It was clear by then that the Anglican Church in
17 Australia was inadequately insured.
18
19 Q. Do you consider that you had failed in your duties as
20 the registrar by failing to ensure that there was
21 appropriate insurance to cover such claims?
22 A. I would refer that to the people engaging insurance
23 and those who advised us that we were adequately ensured.
24
25 Q. So you didn't consider it was something that you
26 should have considered, as the registrar, to prevent
27 exposure of the Diocese of Grafton to such claims?
28 A. At the time that you are referring to, I was acting
29 four days a week and returning to Brisbane. Insurance was
30 not brought up with me at all during that period of time.
31
32 Q. We know from the December 2006 letter that the premium
33 was \$140,000.
34 A. Yes.
35
36 Q. Is that likely, to your knowledge, to have influenced
37 whether the diocese had molestation cover or not?
38 A. That figure alone would not have meant anything to me
39 other than there's some pretty big coverage there
40 somewhere.
41
42 Q. Indeed, it is a very substantial premium, is it not?
43 A. Yes, I agree.
44
45 Q. It is obviously of that magnitude because it covers
46 molestation historically for the particular diocese?
47 A. Yes.

1
2 Q. Could I take you now to SJH-14. That's Mr Harrison's
3 letter to Mr Roland. Do you recall this letter arriving
4 and the 450 pages that accompanied it?
5 A. Yes.
6
7 Q. So there was not just this 14-page letter but also
8 a substantial number of annexures with it?
9 A. Yes.
10
11 Q. There were also at least 40 or so statutory
12 declarations from each of the claimants?
13 A. That's right.
14
15 Q. Up until that stage, you had been asking for
16 particularisation of the claim, hadn't you?
17 A. Yes.
18
19 Q. That included both the allegations that were made by
20 the claimants --
21 A. Yes.
22
23 Q. -- and the names and circumstances of the
24 perpetrators?
25 A. Yes.
26
27 Q. As well as some basis upon which the Diocese of
28 Grafton could be held liable for those acts; that's
29 correct, isn't it?
30 A. That's correct.
31
32 Q. So it is reasonable to say, then, that this was the
33 document which, in some great detail, in fact, provided you
34 with that particularisation?
35 A. It made many general comments. I'm not sure that it
36 provided us with clear particularisation, and nor was that
37 the view of senior counsel.
38
39 Q. If we go to page 3 of that letter, you will see that
40 there is detail about the church home and its association
41 with the Anglican Church; do you see that?
42 A. Yes.
43
44 Q. Then, if we go through to page 7 of that document,
45 there is a very substantial discussion on the issue of
46 liability?
47 A. Well, you are saying there is "substantial

1 discussion". There's lots of words, yes.

2

3 Q. Are you saying, then, that what this was, in fact, was
4 something that you didn't agree with, rather than it was
5 particularisation?

6 A. That was not for me to determine. That was for
7 lawyers and senior counsel, William Webb, two barristers
8 involved, and also the obiter dicta of his Honour
9 Justice Windeyer.

10

11 Q. We'll come to that. Certainly Justice Windeyer was
12 involved in some informal way at that stage; that's
13 correct, isn't it?

14 A. That's correct.

15

16 Q. He had been conversing at least with Mr Roland?

17 A. Yes.

18

19 Q. The counsel you referred to, Mr Sheaffe and Mr Blake,
20 were not engaged until sometime after this letter had been
21 received?

22 A. Well, because this letter was received, so we went to
23 check it, yes.

24

25 Q. In any event, in this letter, it is clear that the
26 claimants have put forward an argument, if you like,
27 a basis upon which they say that the Anglican Church should
28 be liable for the abuse that occurred at the North Coast
29 Children's Home; is that not right?

30 A. They have indeed, yes.

31

32 Q. Was that not the particularisation that you were
33 seeking up until September 2006?

34 A. Yes.

35

36 Q. On the basis of that, was that not the time at which
37 you could then engage in a process under the care and
38 assistance package to process each of the claims that had
39 been put forward by Mr Harrison?

40 A. It could have been. It was not considered at the
41 time.

42

43 Q. Was that because you were intent on refusing
44 responsibility and liability for that claim?

45 A. I was never intent on refusing or reducing liability.
46 I was always intent on making sure that when we finally sat
47 down to have the discussions and the negotiations, we would

1 know from what point we were discussing it.

2

3 Q. So you wanted established to your satisfaction that
4 the Anglican Diocese of Grafton was responsible or liable
5 for such matters before you would engage in a process of
6 meeting those claims; is that right?

7 A. Because there were 40 claims and because
8 Bishop-in-Council had indicated that, yes.

9

10 Q. In fact, when you replied to this letter, or at least
11 Mr Roland replied on your behalf, you in fact put forward
12 a large collection of documents, which effectively refuted
13 the claim that had been put forward by Mr Harrison; is that
14 not correct?

15 A. Oh, it was to put the other view. I don't think it
16 effectively refuted, but nevertheless we said, "There's
17 another view."

18

19 Q. In that letter at SJH-19, if we go through to page 2 -
20 I will come back to page 1 in a moment - the position that
21 had been adopted by the Diocese of Grafton was, first of
22 all, that there were a number of threshold issues which
23 needed to be considered before you would engage in some
24 form of financial settlement, if you like; is that right?

25 A. That is certainly what was said there, yes.

26

27 Q. Well, what was said there was based on your
28 instructions, was it not?

29 A. Yes, my instructions were along those lines. What we
30 were intending to do was to try to make sure that we
31 realised that there were two sides to this argument and
32 that we were not just going to roll over and have our
33 tummies tickled.

34

35 Q. On page 2, then, so as to avoid "having your tummy
36 tickled", you said that you were requiring the threshold
37 issues set out there to be cleared or have you satisfied
38 before going to the next stage of discussing any form of
39 financial settlement; is that right?

40 A. Yes.

41

42 Q. That included, first of all, the identity of the
43 proposed defendant?

44 A. Yes.

45

46 Q. The basis for the liability, which I think you have
47 indicated?

1 A. Yes.
2
3 Q. The basis of any duty of care?
4 A. Yes.
5
6 Q. And the limitation issues, effectively?
7 A. Yes.
8
9 Q. So you would agree that that's a fairly hard-line
10 approach to be taking in terms of claims, irrespective of
11 how many there were?
12
13 THE CHAIR: Mr Beckett, it is the issues that
14 a responsible lawyer would raise if being asked to give
15 legal advice. The question is quite a different question,
16 I think.
17
18 Q. Mr Comben, I don't suggest you drafted those.
19 A. No.
20
21 MR BECKETT: All right.
22
23 Q. Perhaps I will return to page 1, then. You will see
24 at paragraph (c) Mr Roland has said:
25
26 *Our client does not consider that the*
27 *protocols set up by the Anglican Church are*
28 *an appropriate procedure in the present*
29 *case given the large number of*
30 *allegations ...*
31
32 Do you see that?
33 A. Yes.
34
35 Q. I think this accords with your evidence to date that
36 effectively, by October 2006, the Diocese of Grafton had
37 put to one side the operation of the ordinance and the
38 protocol for the handling of these matters?
39 A. For these 41, yes.
40
41 Q. And it was being dealt with solely through the
42 lawyers?
43 A. Yes.
44
45 Q. On your instructions?
46 A. Bishop-in-Council's.
47

1 THE CHAIR: Q. Mr Comben, the Commissioners find that
2 somewhat troubling.

3 A. Yes, sir.
4

5 Q. The processes that were developed by the church, which
6 your diocese adopted, were of course adopted at the time
7 when no-one knew how many people might say they were
8 abused, in due course; correct?

9 A. Yes, sir. Yes, sir.
10

11 Q. The intention, recognising that there were legal
12 impediments to people recovering, perhaps, was nevertheless
13 to recognise the need for the churches, in a true Christian
14 spirit, to meet with and provide appropriately for people
15 who were abused within - or by people within the church;
16 correct?

17 A. Yes.
18

19 Q. When a significant number of people arrived to ask
20 your church to deal with their claims, why did your church
21 say, "Well, sorry, there are too many. We are going to
22 abandon the process that has been adopted"? Why did you do
23 that?

24 A. The church, when it was dealing with the first claims
25 apart from these, dealt with them exactly as you have
26 described using the Sydney protocol. I don't think there
27 is any doubt that there was fear around Bishop-in-Council
28 table when 41 came and the figure of \$4 million-plus was
29 being bandied around, and when it was raised that there was
30 a suggestion that these matters could be defended, that was
31 accepted.
32

33 Q. But this is to confuse two concepts.

34 A. Yes.
35

36 Q. The \$4 million was being spoken of in terms of common
37 law liability, as this letter makes plain. But the
38 protocols that had been adopted by the Anglican Church,
39 including your diocese, are looking at the matter in quite
40 a different way.

41 A. We had no belief or comfort of any sort that the
42 lawyers working for the 41 would accept anything except
43 what they believed was the highest level at common law for
44 a tortious action, and that's what was scaring us. Had we
45 had any comfort about mediating them within one of the
46 church systems, I think it would have been dealt with very
47 differently, and, in hindsight, perhaps we should have been

1 active in doing two things: one is to say, "Here is the
2 Sydney system. Will you negotiate on that?", and,
3 secondly, "Please parcel out those who are clearly the
4 servants of the church, the priests involved." Had that
5 been done, a vastly different result would have occurred.
6

7 Q. The fact of the matter is that you never tried that,
8 did you?

9 A. No, we did not, and with all the foresight of
10 hindsight, we were wrong to do that. But we can't - we can
11 only apologise.
12

13 Can I just, in one bit of defence that I could raise,
14 say I adopt totally Mr Campion's comments about his own
15 lawyers at the end of the process, when he said that they
16 were fighting strong words. That's what we were facing,
17 constantly. There was no reasonable interaction, and
18 perhaps I was in part responsible for that, but I think
19 Mr Harrison also conceded that he was at times strong.
20

21 Had there been two different people involved, then
22 maybe a different result would have come, but we certainly
23 made a mistake in that, and I have no difficulty in saying
24 that and apologising to the victims.
25

26 THE CHAIR: I have some more questions about those
27 letters, but we might leave those until Monday, Mr Beckett.
28

29 We will adjourn until 10 o'clock on Monday morning.
30

31 **AT 4PM THE COMMISSION WAS ADJOURNED TO MONDAY, 25 NOVEMBER**
32 **2013 AT 10AM**
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<p>#3-10 [1] - 2102:1 #3-11 [1] - 2140:29</p> <p>\$</p> <p>\$1,500,000 [2] - 2099:2, 2099:4 \$10 [1] - 2127:27 \$10,000 [1] - 2065:36 \$100,000 [2] - 2111:18, 2144:16 \$11,742 [1] - 2073:23 \$140,000 [4] - 2043:21, 2145:32, 2146:14, 2147:33 \$150,000 [1] - 2131:10 \$18,000 [1] - 2101:7 \$20,000 [2] - 2070:28, 2073:3 \$22,658 [1] - 2083:17 \$27,000 [3] - 2057:27, 2101:21, 2102:3 \$27,296 [1] - 2057:18 \$30,000 [1] - 2073:2 \$300,000 [1] - 2111:45 \$4,000 [1] - 2101:8 \$4,600 [1] - 2101:8 \$400,000 [1] - 2111:45 \$5,000 [1] - 2065:36 \$50,000 [2] - 2111:18, 2144:20 \$500 [6] - 2136:25, 2138:15, 2138:23, 2138:27, 2139:18, 2144:15 \$54,000 [2] - 2114:4, 2114:27 \$54,500 [4] - 2113:23, 2114:38, 2118:15, 2121:17 \$60,000 [1] - 2072:44 \$600,000 [1] - 2098:15 \$62,000 [1] - 2073:4 \$650,000 [2] - 2099:2, 2099:6 \$698,000 [1] - 2080:3 \$750,000 [5] - 2065:43, 2067:38, 2099:3, 2099:6, 2100:2 \$8,236 [1] - 2073:11 \$800,000 [1] - 2068:7 \$820,000 [1] - 2069:8 \$825,000 [4] - 2069:24, 2070:15, 2076:2, 2080:12 \$950,000 [7] - 2067:20, 2067:23, 2067:32, 2082:15, 2099:23, 2099:26, 2099:33</p> <p>0</p> <p>001.0245 [1] - 2051:22</p>	<p>1</p> <p>1 [10] - 2074:16, 2111:41, 2112:1, 2112:3, 2122:13, 2136:17, 2137:46, 2140:33, 2150:20, 2151:23 1.2 [1] - 2065:46 10 [5] - 2048:39, 2049:6, 2049:27, 2111:43, 2153:29 10AM [1] - 2153:32 10am [2] - 2039:27, 2040:40 112 [1] - 2082:38 116 [1] - 2083:13 116A [2] - 2083:15, 2083:23 12 [4] - 2084:32, 2093:19, 2103:22, 2113:42 123 [1] - 2083:46 13 [1] - 2052:38 14 [7] - 2049:25, 2059:28, 2068:3, 2079:3, 2086:2, 2103:23, 2103:24 14-page [1] - 2148:7 14.13 [1] - 2105:42 15 [6] - 2044:2, 2045:7, 2048:11, 2053:4, 2076:7, 2136:24 16 [1] - 2132:25 17 [4] - 2039:21, 2042:25, 2051:21, 2086:1 18 [2] - 2112:33, 2144:25 19 [5] - 2046:21, 2080:3, 2083:44, 2097:41, 2118:41 1935 [1] - 2051:39 1950s [1] - 2125:1 1951 [1] - 2051:26 1951" [1] - 2051:30 1960s [1] - 2125:1 1975 [1] - 2125:36 1980s [1] - 2141:41 1989 [1] - 2102:34 1992 [2] - 2102:34 1995 [2] - 2102:35, 2102:37 1999 [1] - 2043:42</p> <p>2</p> <p>2 [19] - 2060:44, 2063:22, 2066:24, 2083:32, 2084:6, 2103:17, 2110:8, 2111:38, 2113:21, 2115:47, 2119:5, 2124:11, 2134:31, 2137:37, 2138:5, 2138:39, 2140:33, 2150:19, 2150:35 2(a) [1] - 2052:16 2.04pm [1] - 2102:7 20 [6] - 2039:18, 2047:29,</p>	<p>2065:42, 2073:10, 2116:41, 2119:17 2000 [4] - 2043:22, 2043:35, 2043:41, 2145:31 2000s [1] - 2141:42 2003 [5] - 2043:17, 2043:42, 2043:45, 2145:44, 2147:10 2004 [14] - 2102:17, 2102:43, 2103:3, 2104:6, 2107:24, 2107:29, 2108:39, 2110:36, 2110:44, 2120:9, 2120:28, 2140:8, 2140:12, 2146:4 2005 [27] - 2042:15, 2066:24, 2097:20, 2107:29, 2108:45, 2110:2, 2111:22, 2113:11, 2113:14, 2113:40, 2114:42, 2115:47, 2117:42, 2118:23, 2118:42, 2119:17, 2119:28, 2120:38, 2124:4, 2125:10, 2125:17, 2125:47, 2126:27, 2127:30, 2128:24, 2129:20, 2129:22 2006 [56] - 2042:14, 2042:25, 2043:16, 2044:2, 2044:32, 2044:40, 2045:7, 2045:14, 2046:13, 2046:14, 2047:6, 2048:11, 2057:11, 2057:35, 2058:7, 2058:17, 2069:39, 2072:40, 2073:10, 2073:23, 2073:26, 2082:2, 2091:8, 2104:36, 2104:37, 2107:28, 2108:34, 2109:8, 2110:37, 2110:39, 2112:4, 2112:25, 2112:30, 2122:11, 2122:14, 2126:36, 2126:40, 2127:6, 2127:30, 2128:24, 2129:43, 2131:44, 2133:27, 2137:38, 2140:33, 2142:47, 2145:8, 2145:14, 2145:18, 2145:22, 2146:22, 2146:40, 2147:13, 2147:32, 2149:33, 2151:36 2007 [33] - 2045:15, 2057:10, 2057:16, 2057:22, 2057:27, 2067:10, 2067:46, 2067:47, 2069:3, 2069:40, 2070:37, 2073:40, 2075:41, 2076:7, 2079:3, 2080:3, 2080:19, 2080:21,</p>	<p>2080:27, 2080:34, 2081:3, 2081:20, 2082:21, 2085:25, 2090:13, 2091:9, 2091:17, 2092:10, 2099:19, 2101:7, 2101:20, 2102:3 2009 [4] - 2084:26, 2084:32, 2102:21, 2102:24 2010 [3] - 2086:1, 2086:2, 2102:21 2011 [4] - 2086:26, 2086:43, 2087:23, 2090:29 2012 [5] - 2090:34, 2091:17, 2093:15, 2095:37, 2095:47 2013 [2] - 2039:27, 2153:32 21 [3] - 2043:22, 2090:34, 2106:16 21.3 [1] - 2106:18 21st [1] - 2051:30 22 [15] - 2039:27, 2067:13, 2067:19, 2067:46, 2067:47, 2073:23, 2073:26, 2082:10, 2099:19, 2101:6, 2119:28, 2124:4, 2125:10, 2129:20, 2140:8 22.3 [1] - 2107:1 22/07/2007 [1] - 2101:15 22/12/2004 [1] - 2140:30 22/2/2007 [1] - 2109:42 22A [1] - 2117:40 23 [1] - 2101:6 23/04/2007 [1] - 2101:15 23C [1] - 2118:22 24 [2] - 2113:12, 2118:23 25 [2] - 2130:4, 2153:31 26 [2] - 2069:16, 2073:40 27 [7] - 2042:25, 2092:23, 2092:38, 2093:14, 2093:15, 2095:37, 2095:47 28 [5] - 2054:13, 2070:37, 2081:3, 2085:25, 2092:10 29 [4] - 2076:16, 2114:42, 2117:41, 2118:41</p> <p>3</p> <p>3 [7] - 2054:8, 2060:44, 2064:20, 2075:41, 2080:20, 2122:47, 2148:39 3-10 [1] - 2101:44 3-11 [1] - 2140:27 3-2 [13] - 2042:25, 2043:14, 2058:12, 2060:10, 2066:35, 2069:21, 2073:39, 2075:40, 2076:35,</p>	<p>2082:38, 2083:46, 2097:39, 2108:46 3-3 [3] - 2103:17, 2110:7, 2118:39 3-5 [2] - 2070:34, 2080:39 3-8 [2] - 2073:34, 2073:36 3-9 [2] - 2101:10, 2101:14 30 [2] - 2142:24, 2145:43 31 [1] - 2101:7 31/07/2007 [1] - 2101:15 34AD [1] - 2108:46 39 [1] - 2047:5</p> <p>4</p> <p>4 [11] - 2051:31, 2060:28, 2060:44, 2061:6, 2086:43, 2086:44, 2090:29, 2134:21, 2136:2, 2152:28, 2152:36 40 [5] - 2047:25, 2051:12, 2084:19, 2148:11, 2150:7 41 [10] - 2047:25, 2051:12, 2051:13, 2070:26, 2142:3, 2142:4, 2144:14, 2151:39, 2152:28, 2152:42 450 [3] - 2044:13, 2048:24, 2148:4 450-page [1] - 2048:27 49 [2] - 2043:14, 2145:23 4A [1] - 2118:40 4PM [1] - 2153:31</p> <p>5</p> <p>5 [7] - 2060:38, 2060:44, 2126:36, 2126:40, 2127:6, 2129:43, 2145:39 50 [1] - 2058:12 500 [1] - 2138:22</p> <p>6</p> <p>6 [6] - 2043:16, 2058:17, 2069:3, 2131:44, 2140:34, 2145:22 67 [1] - 2069:2 69 [1] - 2069:21</p> <p>7</p> <p>7 [2] - 2087:23, 2148:44 73 [1] - 2075:40 78A [1] - 2073:39</p> <p>8</p> <p>8 [4] - 2057:41, 2058:7, 2059:36, 2060:24 81 [1] - 2076:35</p>

A

abandon [3] - 2121:5, 2121:11, 2152:22
Abbott [1] - 2042:27
able [14] - 2044:3, 2046:9, 2057:32, 2058:8, 2072:23, 2094:44, 2095:21, 2112:17, 2117:36, 2123:46, 2124:1, 2128:7, 2128:17, 2140:6
abrupt [1] - 2093:27
absolutely [2] - 2082:35, 2129:17
abuse [36] - 2044:38, 2044:42, 2045:9, 2045:21, 2045:23, 2046:3, 2046:11, 2047:18, 2047:29, 2048:15, 2050:25, 2062:18, 2066:25, 2068:30, 2068:32, 2089:19, 2109:2, 2109:13, 2109:18, 2113:30, 2113:33, 2115:12, 2115:16, 2115:20, 2116:9, 2118:20, 2124:42, 2125:5, 2126:28, 2130:35, 2130:43, 2140:21, 2143:35, 2147:15, 2149:28
ABUSE [1] - 2039:13
abused [6] - 2045:1, 2083:39, 2093:29, 2125:35, 2152:8, 2152:15
abuses [1] - 2049:40
accept [21] - 2049:21, 2050:8, 2050:25, 2050:32, 2051:9, 2057:33, 2062:10, 2064:22, 2064:28, 2064:43, 2066:1, 2069:29, 2069:46, 2070:1, 2078:32, 2086:3, 2086:37, 2088:13, 2116:8, 2117:32, 2152:42
acceptance [2] - 2074:1, 2091:4
accepted [7] - 2078:24, 2080:9, 2083:16, 2104:2, 2146:4, 2146:17, 2152:31
accepting [1] - 2124:25
accompanied [3] - 2044:11, 2048:12, 2148:4
accordance [2] - 2061:19, 2114:28
according [3] - 2047:1, 2105:11, 2121:12
accordingly [2] - 2079:23, 2080:13
accords [1] - 2151:35

account [7] - 2111:20, 2123:4, 2123:35, 2123:38, 2138:10, 2143:16, 2143:21
accountable [1] - 2124:1
accountant [1] - 2102:45
accounting [1] - 2111:47
accounts [5] - 2111:2, 2111:13, 2111:15, 2111:18, 2112:9
achieve [1] - 2067:32
achieved [3] - 2111:37, 2132:31, 2136:12
acknowledges [2] - 2060:38, 2061:8
acknowledgment [3] - 2061:28, 2089:18, 2127:20
Act [1] - 2051:47
act [3] - 2047:40, 2129:47, 2135:5
acted [3] - 2079:42, 2091:46, 2121:30
acting [7] - 2042:27, 2055:32, 2062:6, 2065:24, 2125:43, 2144:7, 2147:28
action [12] - 2047:45, 2049:10, 2055:9, 2060:40, 2061:9, 2091:4, 2107:4, 2107:7, 2127:2, 2129:13, 2131:9, 2152:44
actions [1] - 2116:9
active [2] - 2114:14, 2153:1
activities [1] - 2144:10
acts [7] - 2074:40, 2140:13, 2141:30, 2143:35, 2143:38, 2143:41, 2148:28
actual [7] - 2053:35, 2075:29, 2096:33, 2099:42, 2109:4, 2111:5, 2117:15
acumen [1] - 2122:35
add [3] - 2064:1, 2064:4, 2106:31
added [1] - 2106:36
addition [1] - 2073:27
additional [6] - 2053:25, 2058:11, 2067:37, 2076:20, 2084:27, 2123:37
address [2] - 2055:47, 2058:32
addressed [6] - 2058:13, 2062:5, 2083:47, 2086:45, 2090:47, 2115:30
adduce [1] - 2104:41
adequately [2] - 2074:10, 2147:23
adjacent [1] - 2095:23
adjourn [1] - 2153:29
ADJOURNED [1] - 2153:31

adjournment [2] - 2072:19, 2100:44
ADJOURNMENT [2] - 2072:21, 2100:46
Administration [1] - 2103:1
admire [1] - 2121:40
admit [1] - 2071:10
admitted [1] - 2139:23
admitting [1] - 2139:18
adopt [6] - 2072:12, 2089:45, 2117:20, 2118:17, 2120:21, 2153:14
adopted [37] - 2051:26, 2059:41, 2060:45, 2074:11, 2077:15, 2077:20, 2077:21, 2103:5, 2104:2, 2104:3, 2104:20, 2107:17, 2107:30, 2107:45, 2108:5, 2108:10, 2108:13, 2118:10, 2118:34, 2118:38, 2118:46, 2119:47, 2122:23, 2127:32, 2131:27, 2131:45, 2133:19, 2142:26, 2143:11, 2144:35, 2145:15, 2147:9, 2150:21, 2152:6, 2152:22, 2152:38
adopting [2] - 2068:44, 2075:28
advance [1] - 2129:10
advanced [1] - 2129:8
advice [15] - 2042:41, 2046:37, 2054:23, 2056:28, 2060:47, 2063:29, 2074:37, 2075:23, 2077:34, 2089:42, 2100:18, 2100:26, 2120:42, 2145:19, 2151:15
advise [2] - 2075:36, 2106:41
advised [5] - 2046:11, 2077:26, 2091:41, 2145:14, 2147:23
advocate [8] - 2089:31, 2100:23, 2104:28, 2108:27, 2108:40, 2109:44, 2125:38, 2127:10
Advocate [1] - 2109:17
affected [2] - 2062:1, 2089:20
afraid [2] - 2041:25, 2066:37
afternoon [2] - 2057:7, 2120:11
age [1] - 2113:9
agencies [1] - 2127:12
agency [2] - 2121:43, 2146:11
agent [1] - 2121:30
ago [12] - 2047:37,

2048:37, 2059:37, 2060:2, 2094:36, 2095:10, 2100:12, 2121:33, 2137:17, 2137:29, 2143:8, 2146:26
agree [18] - 2045:8, 2056:23, 2063:46, 2089:22, 2089:27, 2089:46, 2099:39, 2099:47, 2132:11, 2138:23, 2138:28, 2140:47, 2141:23, 2144:19, 2145:17, 2147:43, 2149:4, 2151:9
agreed [9] - 2067:38, 2069:24, 2069:27, 2070:7, 2070:37, 2092:12, 2106:8, 2118:7, 2140:43
agreeing [1] - 2085:8
agreement [1] - 2075:47
AH-13 [2] - 2086:40, 2086:42
AH-14 [1] - 2086:42
ahead [3] - 2120:21, 2141:5, 2143:9
allegation [1] - 2125:34
allegations [21] - 2044:25, 2045:7, 2045:9, 2045:21, 2045:23, 2045:40, 2046:2, 2048:15, 2048:33, 2050:22, 2050:24, 2050:26, 2062:23, 2093:43, 2094:5, 2105:23, 2126:28, 2140:21, 2148:19, 2151:30
alleged [10] - 2045:1, 2045:17, 2062:16, 2068:29, 2074:40, 2075:1, 2134:39, 2143:17, 2143:36, 2143:38
alleging [1] - 2044:37
allocate [1] - 2144:2
allowed [2] - 2043:33, 2112:20
almost [5] - 2091:12, 2095:23, 2097:36, 2101:7, 2101:8
alone [1] - 2147:38
altered [1] - 2054:15
alternative [2] - 2064:23, 2088:9
alternatively [1] - 2041:29
AM [2] - 2039:32, 2039:34
amend [1] - 2109:40
amended [6] - 2054:16, 2103:26, 2104:6, 2107:18, 2108:17, 2108:33
amendment [5] - 2061:18, 2108:35, 2109:23, 2109:24, 2109:26
amendments [1] -

2108:18
amount [28] - 2048:28, 2067:15, 2067:19, 2067:23, 2067:33, 2069:8, 2069:24, 2069:27, 2069:29, 2069:36, 2069:41, 2070:3, 2070:38, 2073:11, 2073:23, 2081:41, 2083:17, 2086:20, 2098:15, 2099:26, 2099:31, 2099:36, 2099:45, 2100:4, 2114:20, 2142:42, 2143:46, 2146:14
amounts [6] - 2051:14, 2063:17, 2065:31, 2082:21, 2100:7, 2111:12
AN-16 [1] - 2092:17
AND [1] - 2101:15
Andrew's [2] - 2052:30, 2052:47
ANG.9320 [1] - 2104:37
ANG.9320.00013.0133 [1] - 2140:7
Anglican [18] - 2052:46, 2053:20, 2066:25, 2091:5, 2091:24, 2110:19, 2110:31, 2111:31, 2115:30, 2116:10, 2116:12, 2141:34, 2147:16, 2148:41, 2149:27, 2150:4, 2151:27, 2152:38
annexes [1] - 2083:14
annexure [2] - 2051:21, 2079:8
annexures [1] - 2148:8
announce [1] - 2040:3
annual [1] - 2146:35
annually [1] - 2146:36
answer [4] - 2056:26, 2063:14, 2086:15, 2108:28
answering [1] - 2092:14
anticipated [1] - 2073:5
antiquity [1] - 2113:36
anyway [1] - 2080:37
AP-2 [1] - 2057:46
apart [3] - 2066:11, 2082:19, 2152:25
apologies [6] - 2076:38, 2079:14, 2079:21, 2079:26, 2079:29, 2079:31
apologise [3] - 2083:1, 2112:1, 2153:11
apologising [1] - 2153:24
apology [17] - 2070:46, 2075:42, 2076:3, 2076:13, 2076:21, 2076:30, 2076:31, 2076:43, 2076:44, 2077:10, 2077:38,

<p>2078:4, 2079:37, 2079:39, 2079:45, 2089:14, 2093:9 appalled [1] - 2090:20 apparent [2] - 2049:19, 2111:19 appear [11] - 2040:6, 2042:40, 2062:30, 2075:8, 2093:37, 2094:24, 2094:28, 2094:35, 2094:43, 2094:44, 2095:8 appearance [3] - 2040:3, 2040:17 appearing [1] - 2095:37 application [6] - 2040:11, 2094:39, 2094:43, 2114:26, 2128:36 applied [5] - 2043:17, 2088:21, 2114:27, 2118:10, 2119:12 apply [1] - 2133:47 appoint [2] - 2053:24, 2120:47 appointed [3] - 2121:44, 2129:33, 2129:36 appointing [1] - 2078:15 appointment [6] - 2058:43, 2088:15, 2088:27, 2089:1, 2089:11, 2093:22 appraisal [1] - 2118:33 appreciate [3] - 2040:30, 2092:31, 2114:3 appreciated [1] - 2058:32 approach [7] - 2051:9, 2072:12, 2089:25, 2134:4, 2142:25, 2142:45, 2151:10 approached [1] - 2057:41 approaching [1] - 2041:34 appropriate [18] - 2047:45, 2050:4, 2062:16, 2063:30, 2063:40, 2078:3, 2078:8, 2078:17, 2078:23, 2078:42, 2089:44, 2090:8, 2092:41, 2100:14, 2100:26, 2123:6, 2147:21, 2151:28 appropriately [1] - 2152:14 approval [3] - 2067:15, 2067:21, 2067:32 approved [2] - 2067:19, 2082:12 approximate [1] - 2097:4 April [14] - 2045:15, 2051:30, 2073:40, 2075:41, 2086:43, 2086:44, 2090:29, 2092:23, 2093:14, 2093:15, 2101:6, 2125:17, 2125:47, 2142:47 archdeacon [1] - 2130:30</p>	<p>Archdeacon [6] - 2094:24, 2094:35, 2094:44, 2113:8, 2124:32, 2124:37 area [1] - 2118:12 argument [2] - 2149:26, 2150:31 arise [1] - 2136:4 arising [2] - 2087:32, 2100:37 arose [2] - 2082:21, 2136:6 arrange [1] - 2091:4 arrangement [1] - 2116:27 arrived [4] - 2090:2, 2107:36, 2110:46, 2152:19 arriving [1] - 2148:3 Aspinall [2] - 2057:41, 2059:47 Aspinall's [1] - 2059:36 asserted [1] - 2078:5 asserting [1] - 2078:17 assess [1] - 2059:10 assessment [1] - 2105:33 assets [4] - 2063:4, 2063:6, 2063:16, 2063:20 assist [16] - 2040:32, 2043:30, 2077:43, 2079:31, 2080:32, 2082:41, 2086:35, 2088:16, 2096:3, 2097:3, 2097:18, 2099:9, 2105:41, 2127:47, 2142:22, 2144:2 assistance [38] - 2041:36, 2059:4, 2063:25, 2068:2, 2113:23, 2114:26, 2114:32, 2117:19, 2117:21, 2118:7, 2118:9, 2118:33, 2118:45, 2119:7, 2119:11, 2120:21, 2120:41, 2123:6, 2124:27, 2127:32, 2128:2, 2128:38, 2129:7, 2129:16, 2129:28, 2133:5, 2139:10, 2139:15, 2139:24, 2139:32, 2139:42, 2141:9, 2142:26, 2142:34, 2142:43, 2143:10, 2144:32, 2149:38 Assisting [1] - 2039:38 assisting [3] - 2095:10, 2097:25, 2131:26 associated [1] - 2054:1 association [6] - 2045:2, 2074:23, 2074:45, 2075:7, 2141:24, 2148:40 assume [14] - 2049:45, 2057:27, 2061:4,</p>	<p>2064:42, 2068:27, 2077:46, 2081:23, 2098:2, 2099:20, 2102:15, 2114:25, 2134:45, 2139:1, 2139:47 assumed [3] - 2110:17, 2120:9, 2121:21 assuming [1] - 2103:26 assumption [1] - 2143:22 assurance [1] - 2060:45 assured [2] - 2112:45, 2112:47 AT [2] - 2153:31, 2153:32 attempt [2] - 2101:41, 2109:44 attempted [2] - 2070:1, 2070:7 attempting [1] - 2143:29 attempts [1] - 2069:40 attend [4] - 2096:37, 2096:45, 2098:39, 2123:46 attendance [1] - 2097:21 attendances [1] - 2073:15 attended [2] - 2046:41, 2125:18 attending [5] - 2060:16, 2089:32, 2096:43, 2097:4, 2100:22 attention [4] - 2068:39, 2090:23, 2112:24, 2112:37 attitude [1] - 2067:3 attractive [1] - 2064:16 August [6] - 2080:34, 2114:42, 2126:26, 2127:15, 2127:30, 2128:23 Australia [1] - 2147:17 author [1] - 2103:12 authorisation [1] - 2096:7 authorise [1] - 2109:43 authorised [2] - 2067:22, 2118:6 authority [1] - 2075:31 Autism [1] - 2102:40 avail [2] - 2129:29, 2141:13 availability [1] - 2106:42 available [10] - 2056:34, 2062:39, 2062:47, 2063:3, 2075:42, 2099:26, 2111:28, 2133:6, 2137:37, 2142:9 average [2] - 2070:28, 2070:29 avoid [1] - 2150:35 awarded [2] - 2091:4, 2091:26 aware [57] - 2040:19, 2042:15, 2042:22, 2043:46, 2044:40, 2045:10, 2045:11, 2045:25, 2046:6, 2046:8, 2051:38, 2055:4, 2057:43,</p>	<p>2057:44, 2058:38, 2061:38, 2061:39, 2067:14, 2077:21, 2081:7, 2081:9, 2081:21, 2082:6, 2082:7, 2083:10, 2083:24, 2085:6, 2085:35, 2085:41, 2085:43, 2087:31, 2090:2, 2090:11, 2103:4, 2108:18, 2110:19, 2110:23, 2110:34, 2110:36, 2110:39, 2113:15, 2114:12, 2117:16, 2122:8, 2125:26, 2125:31, 2127:1, 2133:40, 2139:46, 2140:13, 2140:15, 2140:21, 2140:23, 2146:3, 2146:22, 2146:39</p> <p style="text-align: center;">B</p> <p>backwards [1] - 2081:8 band [1] - 2083:17 bandied [2] - 2136:8, 2152:29 bare [3] - 2051:41, 2052:3, 2052:10 barrister [5] - 2046:40, 2055:21, 2058:16, 2123:41, 2123:42 barristers [2] - 2073:2, 2149:7 base [1] - 2147:1 based [10] - 2043:10, 2054:41, 2063:29, 2077:14, 2077:16, 2077:42, 2077:45, 2078:19, 2085:28, 2150:27 basis [33] - 2049:12, 2050:44, 2051:4, 2056:35, 2063:1, 2063:7, 2064:46, 2067:31, 2073:6, 2084:43, 2085:8, 2085:13, 2088:1, 2096:43, 2097:5, 2106:24, 2106:31, 2114:14, 2118:19, 2132:26, 2133:35, 2141:19, 2141:21, 2141:24, 2141:45, 2141:46, 2143:5, 2146:23, 2148:27, 2149:27, 2149:36, 2150:46, 2151:3 became [7] - 2042:22, 2043:36, 2055:4, 2057:44, 2110:19, 2124:23, 2125:9 Beckett [10] - 2039:39, 2050:34, 2055:36, 2057:4, 2101:3,</p>	<p>2104:41, 2110:4, 2140:4, 2151:13, 2153:27 BECKETT [42] - 2040:1, 2040:37, 2040:42, 2040:44, 2050:36, 2057:6, 2057:35, 2057:40, 2059:2, 2063:22, 2072:17, 2072:23, 2072:32, 2073:31, 2073:38, 2079:2, 2093:33, 2094:34, 2094:43, 2097:18, 2100:37, 2101:5, 2101:17, 2101:26, 2101:31, 2101:35, 2101:41, 2102:5, 2102:9, 2102:11, 2104:46, 2110:7, 2110:12, 2110:17, 2111:34, 2112:23, 2122:46, 2124:19, 2140:6, 2140:25, 2140:32, 2151:21 become [5] - 2110:23, 2110:34, 2110:36, 2110:39, 2122:8 becomes [1] - 2049:19 becoming [2] - 2102:27, 2118:32 before [1] - 2060:40 beginning [4] - 2055:4, 2084:14, 2137:38, 2138:40 behalf [13] - 2040:6, 2040:17, 2051:42, 2055:32, 2080:28, 2094:32, 2095:8, 2098:28, 2129:25, 2133:23, 2136:36, 2150:11 behind [2] - 2043:28, 2051:11 belief [6] - 2123:44, 2128:4, 2128:6, 2128:39, 2143:24, 2152:41 best [5] - 2040:33, 2057:24, 2121:12, 2121:42, 2121:45 better [4] - 2116:45, 2128:12, 2134:39, 2140:39 between [18] - 2043:25, 2043:32, 2045:14, 2046:25, 2046:28, 2054:26, 2059:21, 2068:13, 2080:19, 2080:22, 2091:16, 2102:33, 2127:30, 2128:23, 2134:2, 2135:3, 2137:22, 2141:24 beyond [3] - 2063:19, 2067:38, 2145:10 BIC [1] - 2118:41</p>
---	--	---	---	---

<p>big [4] - 2112:11, 2117:13, 2132:35, 2147:39</p> <p>bishop [39] - 2041:38, 2053:24, 2054:4, 2058:44, 2060:1, 2075:42, 2076:22, 2076:41, 2079:15, 2079:40, 2079:46, 2080:35, 2081:23, 2082:7, 2084:45, 2086:14, 2086:16, 2087:10, 2087:17, 2087:19, 2087:30, 2087:42, 2087:43, 2087:47, 2088:25, 2090:18, 2090:21, 2092:47, 2093:16, 2098:36, 2100:13, 2106:47, 2107:4, 2107:35, 2109:44, 2113:21, 2114:5, 2116:37, 2117:46</p> <p>Bishop [116] - 2040:2, 2040:6, 2040:10, 2040:17, 2040:19, 2040:31, 2045:11, 2059:35, 2059:47, 2067:14, 2067:15, 2067:45, 2079:20, 2079:27, 2080:20, 2080:33, 2081:9, 2081:30, 2081:37, 2081:42, 2081:44, 2082:1, 2082:3, 2082:6, 2082:11, 2082:18, 2082:31, 2082:33, 2082:46, 2083:13, 2087:1, 2089:24, 2089:32, 2095:9, 2096:5, 2096:11, 2096:27, 2096:37, 2096:43, 2096:46, 2097:19, 2098:39, 2099:10, 2099:18, 2099:36, 2099:40, 2100:1, 2100:9, 2100:13, 2103:27, 2103:44, 2104:6, 2104:14, 2104:20, 2104:25, 2104:27, 2104:31, 2104:34, 2106:37, 2106:44, 2107:21, 2107:25, 2107:32, 2107:39, 2107:41, 2108:14, 2108:24, 2108:26, 2108:38, 2109:11, 2109:43, 2113:20, 2113:13, 2113:20, 2114:35, 2117:27, 2117:31, 2117:33, 2117:41, 2118:3, 2118:16, 2118:23, 2118:26, 2118:27, 2118:46, 2122:42, 2133:38, 2134:1, 2134:4, 2134:9, 2134:13, 2134:15, 2134:16, 2134:17, 2134:47, 2135:15, 2135:17, 2135:20, 2135:21, 2135:24, 2135:29, 2135:36, 2136:1, 2136:14, 2142:28, 2142:31, 2143:9, 2145:2, 2145:4, 2145:8, 2145:9, 2150:8, 2151:46, 2152:27</p> <p>Bishop-in-Council [76] - 2045:11, 2067:14, 2067:15, 2067:45, 2082:6, 2082:11, 2089:32, 2096:37, 2096:43, 2096:46, 2097:19, 2099:18, 2100:9, 2100:13, 2103:27, 2103:44, 2104:6, 2104:14, 2104:20, 2104:25, 2104:27, 2104:31, 2104:34, 2106:37, 2106:44, 2107:21, 2107:25, 2107:32, 2107:39, 2107:41, 2108:14, 2108:15, 2108:24, 2108:26, 2108:38, 2109:11, 2109:43, 2113:20, 2114:35, 2117:27, 2117:31, 2117:33, 2117:41, 2118:3, 2118:16, 2118:23, 2118:26, 2118:46, 2122:42, 2133:30, 2133:38, 2134:1, 2134:4, 2134:9, 2134:13, 2134:15, 2134:16, 2134:17, 2134:47, 2135:15, 2135:17, 2135:20, 2135:21, 2135:24, 2135:29, 2135:36, 2136:1, 2136:14, 2142:28, 2142:31, 2143:9, 2145:2, 2145:4, 2145:8, 2145:9, 2150:8, 2152:27</p> <p>Bishop-in-Council's [1] - 2151:46</p> <p>bishops [1] - 2137:22</p> <p>bit [11] - 2048:41, 2053:39, 2054:8, 2065:30, 2111:37, 2122:40, 2124:30, 2126:45, 2127:44, 2127:46, 2153:13</p> <p>black [2] - 2127:44, 2127:46</p> <p>Blake [10] - 2046:38, 2046:39, 2058:14, 2058:21, 2058:35, 2058:39, 2063:30, 2063:47, 2073:22, 2149:19</p> <p>Blake's [1] - 2046:42</p> <p>blue [1] - 2126:27</p>	<p>2134:16, 2134:17, 2134:47, 2135:15, 2135:17, 2135:20, 2135:21, 2135:24, 2135:29, 2135:36, 2136:1, 2136:14, 2137:23, 2142:28, 2142:31, 2143:9, 2145:2, 2145:4, 2145:8, 2145:9, 2150:8, 2151:46, 2152:27</p> <p>Bishop-in-Council [76] - 2045:11, 2067:14, 2067:15, 2067:45, 2082:6, 2082:11, 2089:32, 2096:37, 2096:43, 2096:46, 2097:19, 2099:18, 2100:9, 2100:13, 2103:27, 2103:44, 2104:6, 2104:14, 2104:20, 2104:25, 2104:27, 2104:31, 2104:34, 2106:37, 2106:44, 2107:21, 2107:25, 2107:32, 2107:39, 2107:41, 2108:14, 2108:15, 2108:24, 2108:26, 2108:38, 2109:11, 2109:43, 2113:20, 2114:35, 2117:27, 2117:31, 2117:33, 2117:41, 2118:3, 2118:16, 2118:23, 2118:26, 2118:46, 2122:42, 2133:30, 2133:38, 2134:1, 2134:4, 2134:9, 2134:13, 2134:15, 2134:16, 2134:17, 2134:47, 2135:15, 2135:17, 2135:20, 2135:21, 2135:24, 2135:29, 2135:36, 2136:1, 2136:14, 2142:28, 2142:31, 2143:9, 2145:2, 2145:4, 2145:8, 2145:9, 2150:8, 2152:27</p> <p>Bishop-in-Council's [1] - 2151:46</p> <p>bishops [1] - 2137:22</p> <p>bit [11] - 2048:41, 2053:39, 2054:8, 2065:30, 2111:37, 2122:40, 2124:30, 2126:45, 2127:44, 2127:46, 2153:13</p> <p>black [2] - 2127:44, 2127:46</p> <p>Blake [10] - 2046:38, 2046:39, 2058:14, 2058:21, 2058:35, 2058:39, 2063:30, 2063:47, 2073:22, 2149:19</p> <p>Blake's [1] - 2046:42</p> <p>blue [1] - 2126:27</p>	<p>board [11] - 2103:39, 2104:11, 2106:19, 2110:41, 2112:9, 2112:14, 2113:45, 2114:23, 2123:40, 2123:41</p> <p>bodies [2] - 2141:30, 2142:32</p> <p>book [1] - 2066:15</p> <p>books [1] - 2110:47</p> <p>boosting [1] - 2144:11</p> <p>bottom [7] - 2063:24, 2071:7, 2099:2, 2099:4, 2118:28, 2125:42, 2141:18</p> <p>bound [1] - 2051:46</p> <p>box [1] - 2040:38</p> <p>brief [3] - 2042:6, 2092:37, 2133:37</p> <p>briefed [1] - 2099:41</p> <p>briefly [2] - 2072:26, 2081:29</p> <p>bring [8] - 2057:46, 2066:46, 2068:39, 2111:2, 2121:34, 2121:37, 2136:31, 2144:44</p> <p>bringing [1] - 2068:16</p> <p>Brisbane [6] - 2046:41, 2103:10, 2107:19, 2122:25, 2133:15, 2147:29</p> <p>broadly [1] - 2050:27</p> <p>broker [1] - 2146:11</p> <p>Brokers [1] - 2145:30</p> <p>brought [27] - 2042:26, 2043:14, 2044:3, 2047:6, 2057:8, 2057:47, 2059:28, 2069:2, 2075:40, 2083:31, 2086:41, 2092:22, 2106:17, 2108:29, 2108:46, 2109:5, 2113:43, 2114:41, 2116:42, 2118:11, 2118:39, 2119:18, 2119:29, 2121:19, 2130:4, 2145:23, 2147:30</p> <p>Brown [4] - 2115:21, 2117:9, 2117:11, 2117:16</p> <p>bucket [1] - 2139:47</p> <p>bucks [2] - 2112:1, 2138:22</p> <p>budget [1] - 2106:27</p> <p>built [1] - 2137:30</p> <p>bundle [10] - 2047:5, 2069:2, 2073:39, 2076:35, 2082:38, 2113:12, 2117:40, 2118:22, 2130:4, 2145:23</p> <p>business [1] - 2102:13</p> <p>Business [1] - 2102:47</p> <p>businesses [1] - 2102:46</p> <p>BY [5] - 2040:42, 2093:35,</p>	<p>2095:5, 2102:9, 2140:29</p> <p style="text-align: center;">C</p> <p>CA [15] - 2071:29, 2080:20, 2090:34, 2091:3, 2091:8, 2091:16, 2124:22, 2124:23, 2127:16, 2129:19, 2129:34, 2129:39, 2131:1, 2131:14, 2132:41</p> <p>CAJ [1] - 2119:17</p> <p>CAJ's [4] - 2091:44, 2119:23, 2125:9, 2130:39</p> <p>CAJ-20 [2] - 2090:43, 2095:32</p> <p>CAJ-21 [3] - 2090:33, 2095:8, 2095:46</p> <p>CAJ-22 [2] - 2092:22, 2096:9</p> <p>cabinet [1] - 2125:42</p> <p>calamitous [1] - 2049:43</p> <p>calculations [2] - 2098:23</p> <p>calendar [3] - 2057:15, 2101:20, 2145:31</p> <p>CALENDAR [1] - 2102:2</p> <p>Campbell [3] - 2117:9, 2117:11, 2117:16</p> <p>Campion [45] - 2041:5, 2041:19, 2041:21, 2041:22, 2041:24, 2041:28, 2041:36, 2066:24, 2071:29, 2080:19, 2080:23, 2080:28, 2080:29, 2080:33, 2080:35, 2081:22, 2084:1, 2086:2, 2086:8, 2114:42, 2115:12, 2116:14, 2119:2, 2124:11, 2124:21, 2127:1, 2127:14, 2127:21, 2127:40, 2128:8, 2128:32, 2128:35, 2128:46, 2129:11, 2131:1, 2131:11, 2131:14, 2131:35, 2132:41, 2136:21, 2138:30, 2138:33, 2139:28, 2139:44, 2142:5</p> <p>Campion's [15] - 2041:31, 2085:47, 2116:4, 2116:43, 2117:12, 2119:13, 2124:13, 2124:15, 2124:24, 2126:27, 2127:30, 2128:1, 2130:35, 2140:18, 2153:14</p> <p>cannot [1] - 2095:29</p> <p>canon [1] - 2110:8</p> <p>capacity [4] - 2040:27, 2062:6, 2094:36, 2144:11</p> <p>capital [1] - 2138:10</p>	<p>cards [1] - 2056:13</p> <p>care [41] - 2051:4, 2059:4, 2062:6, 2063:25, 2068:2, 2085:10, 2113:19, 2113:23, 2114:26, 2114:32, 2117:18, 2117:20, 2118:7, 2118:9, 2118:33, 2118:45, 2119:6, 2119:11, 2120:21, 2124:26, 2127:31, 2128:2, 2128:37, 2129:7, 2129:16, 2129:28, 2133:5, 2133:13, 2139:10, 2139:15, 2139:24, 2139:32, 2139:42, 2141:9, 2142:25, 2142:33, 2142:43, 2143:10, 2144:31, 2149:37, 2151:3</p> <p>career [1] - 2102:28</p> <p>carefully [1] - 2112:12</p> <p>carriage [4] - 2081:12, 2104:29, 2108:41, 2119:41</p> <p>carried [2] - 2110:30, 2118:9</p> <p>carry [1] - 2052:18</p> <p>carrying [1] - 2112:43</p> <p>case [19] - 2049:24, 2050:12, 2055:8, 2057:33, 2066:1, 2075:34, 2078:1, 2079:38, 2081:45, 2098:39, 2100:9, 2100:17, 2118:11, 2126:9, 2135:23, 2141:16, 2143:42, 2144:1, 2151:29</p> <p>cases [1] - 2050:25</p> <p>cash [4] - 2062:47, 2063:3, 2111:27, 2111:29</p> <p>cast [1] - 2048:9</p> <p>caused [1] - 2116:11</p> <p>CB [11] - 2086:28, 2086:40, 2087:9, 2088:21, 2090:3, 2090:7, 2090:12, 2090:18, 2090:29, 2093:19, 2093:26</p> <p>CBJ [2] - 2090:6, 2090:14</p> <p>CC [10] - 2086:28, 2086:31, 2086:41, 2086:47, 2087:22, 2087:25, 2088:21, 2090:3, 2093:20, 2093:26</p> <p>CCJ [2] - 2086:45, 2090:9</p> <p>CCJ's [1] - 2087:29</p> <p>CD [4] - 2082:39, 2083:14, 2083:16, 2085:36</p> <p>CDJ's [1] - 2083:24</p> <p>CE [3] - 2084:6, 2085:19, 2085:44</p>
---	--	---	---	--

<p>ceased [1] - 2081:8 ceiling [2] - 2082:12, 2099:33 cent [2] - 2111:43, 2144:17 central [1] - 2107:11 centre [1] - 2065:6 cents [1] - 2099:43 certain [5] - 2046:18, 2046:20, 2052:11, 2086:16, 2146:13 certainly [47] - 2042:7, 2043:39, 2044:40, 2044:44, 2049:28, 2057:43, 2058:47, 2061:38, 2074:14, 2079:42, 2080:36, 2080:41, 2082:10, 2093:31, 2097:19, 2099:15, 2105:8, 2105:14, 2105:37, 2106:1, 2106:44, 2107:19, 2107:41, 2115:13, 2117:16, 2118:35, 2121:11, 2123:42, 2123:46, 2125:31, 2127:14, 2128:6, 2128:22, 2129:1, 2129:24, 2129:31, 2133:27, 2133:34, 2134:24, 2135:47, 2137:36, 2138:31, 2143:23, 2146:22, 2149:11, 2150:25, 2153:22 cetera [10] - 2050:24, 2052:12, 2102:41, 2111:20, 2120:1, 2120:17, 2120:45, 2123:42, 2133:14, 2142:37 CF [3] - 2084:6, 2085:19, 2085:44 CG [2] - 2085:19, 2085:44 CG] [1] - 2084:7 CH [17] - 2041:45, 2042:2, 2042:9, 2042:12, 2042:21, 2042:27, 2042:39, 2042:43, 2043:3, 2091:33, 2091:34, 2091:36, 2125:16, 2125:19, 2125:29, 2126:5, 2126:20 chair [6] - 2066:6, 2066:9, 2110:40, 2112:8, 2112:14, 2124:38 CHAIR [48] - 2040:8, 2040:13, 2040:24, 2040:35, 2049:35, 2050:34, 2051:20, 2056:47, 2057:38, 2058:31, 2061:42, 2072:19, 2072:29, 2073:33, 2078:10, 2094:17, 2094:21, 2094:26, 2094:31,</p>	<p>2094:41, 2094:46, 2095:3, 2100:33, 2100:39, 2100:44, 2101:3, 2101:10, 2101:23, 2101:29, 2101:33, 2101:38, 2101:43, 2104:17, 2104:40, 2110:4, 2110:10, 2110:15, 2111:27, 2112:3, 2121:47, 2124:3, 2124:17, 2136:16, 2140:4, 2140:27, 2151:13, 2152:1, 2153:26 Chair [1] - 2039:32 chaired [1] - 2145:8 chairman [2] - 2052:38, 2052:47 chambers [1] - 2046:42 chancellor [2] - 2055:21, 2055:24 change [1] - 2108:15 changed [2] - 2104:26, 2107:39 changes [3] - 2107:33, 2107:40, 2108:23 chaplain [1] - 2053:44 chaplancy [1] - 2078:21 charge [1] - 2056:28 charged [2] - 2056:28, 2073:19 charging [1] - 2056:45 chasing [1] - 2117:10 check [1] - 2149:23 checked [1] - 2146:10 cheque [2] - 2080:3, 2136:25 CHILD [1] - 2039:13 child [3] - 2093:30, 2113:33, 2115:20 children [1] - 2048:17 children's [3] - 2051:39, 2051:43, 2087:32 Children's [35] - 2042:36, 2046:16, 2057:29, 2067:16, 2073:17, 2074:13, 2074:23, 2078:6, 2079:28, 2082:40, 2083:40, 2087:3, 2090:35, 2091:25, 2092:43, 2104:30, 2109:19, 2113:28, 2119:24, 2123:26, 2124:8, 2124:33, 2125:29, 2125:35, 2125:47, 2126:29, 2136:11, 2140:14, 2140:22, 2141:25, 2141:31, 2144:22, 2145:16, 2145:37, 2149:29 choice [1] - 2077:46 chosen [1] - 2078:47 Christian [7] - 2089:36, 2139:10, 2139:15, 2139:24, 2139:32,</p>	<p>2139:42, 2152:13 Christmas [2] - 2061:26, 2128:8 church [29] - 2047:3, 2047:47, 2050:23, 2051:40, 2051:42, 2054:1, 2054:26, 2054:27, 2054:28, 2054:29, 2054:34, 2055:13, 2056:42, 2061:8, 2061:10, 2063:15, 2064:24, 2076:44, 2078:41, 2091:27, 2146:12, 2148:40, 2152:5, 2152:15, 2152:20, 2152:24, 2152:46, 2153:4 Church [18] - 2051:46, 2052:20, 2052:25, 2052:46, 2053:20, 2053:29, 2054:17, 2058:45, 2078:6, 2091:5, 2091:24, 2141:34, 2147:16, 2148:41, 2149:27, 2151:27, 2152:38 church's [3] - 2042:4, 2078:18, 2078:20 churches [1] - 2152:13 circumstances [2] - 2049:13, 2148:23 civil [1] - 2049:38 CK [2] - 2073:47, 2079:39 CL [1] - 2076:28 claim [48] - 2041:19, 2041:31, 2041:42, 2042:20, 2048:19, 2049:7, 2055:14, 2057:11, 2057:29, 2057:42, 2063:39, 2064:11, 2067:27, 2070:39, 2073:18, 2076:20, 2080:44, 2081:41, 2087:29, 2090:13, 2097:10, 2097:32, 2099:27, 2113:29, 2113:36, 2119:13, 2119:41, 2126:12, 2126:24, 2127:30, 2128:2, 2129:21, 2130:15, 2130:20, 2132:16, 2132:20, 2133:27, 2133:35, 2134:8, 2135:25, 2141:19, 2141:21, 2141:24, 2143:5, 2143:45, 2148:16, 2149:44, 2150:13 claim's [1] - 2063:38 claimant [8] - 2065:36, 2070:27, 2083:5, 2089:26, 2105:9, 2105:28, 2106:34, 2128:16 claimants [48] - 2044:37, 2047:16, 2047:17,</p>	<p>2050:43, 2051:12, 2051:13, 2055:33, 2060:46, 2063:31, 2064:16, 2064:28, 2068:25, 2068:40, 2070:26, 2071:23, 2071:28, 2074:13, 2074:40, 2076:3, 2076:9, 2076:30, 2077:44, 2078:4, 2079:15, 2079:27, 2079:32, 2079:35, 2080:4, 2080:8, 2080:15, 2080:41, 2083:34, 2083:38, 2084:27, 2086:27, 2091:8, 2092:11, 2092:42, 2098:28, 2107:12, 2131:14, 2131:26, 2133:6, 2134:24, 2144:14, 2148:12, 2148:20, 2149:26 claimants' [3] - 2057:42, 2070:38, 2141:47 claiming [2] - 2093:29, 2134:19 claims [76] - 2041:18, 2042:22, 2042:33, 2042:40, 2042:44, 2043:4, 2043:6, 2043:10, 2044:41, 2044:42, 2045:15, 2045:16, 2046:9, 2046:11, 2047:8, 2047:25, 2049:13, 2051:10, 2057:23, 2065:43, 2065:47, 2067:16, 2071:21, 2072:12, 2080:40, 2081:7, 2081:17, 2082:22, 2082:25, 2082:26, 2082:32, 2084:34, 2084:44, 2085:14, 2085:26, 2087:32, 2089:19, 2089:45, 2093:43, 2094:7, 2105:8, 2108:28, 2109:17, 2109:45, 2126:15, 2126:19, 2130:35, 2130:43, 2133:47, 2142:18, 2142:24, 2142:40, 2143:18, 2143:27, 2143:44, 2144:3, 2144:4, 2144:12, 2144:31, 2144:40, 2144:44, 2146:16, 2146:23, 2146:24, 2146:29, 2147:15, 2147:21, 2147:27, 2149:38, 2150:6, 2150:7, 2151:10, 2152:20, 2152:24 Clarence [2] - 2110:19, 2110:30 clarify [2] - 2042:6,</p>	<p>2093:40 class [2] - 2129:13, 2131:9 clause [9] - 2052:3, 2052:37, 2053:4, 2054:13, 2054:22, 2054:25, 2061:17, 2103:23, 2103:24 clear [10] - 2041:10, 2041:15, 2041:16, 2041:20, 2135:42, 2137:33, 2147:13, 2147:16, 2148:36, 2149:25 cleared [1] - 2150:37 clearly [7] - 2057:11, 2089:19, 2109:31, 2120:17, 2120:40, 2139:16, 2153:3 clergy [15] - 2044:38, 2044:47, 2045:9, 2045:23, 2045:26, 2045:40, 2046:3, 2046:11, 2046:19, 2047:33, 2048:16, 2050:23, 2050:26, 2074:33 cleric [2] - 2117:2, 2118:20 client [7] - 2049:30, 2049:35, 2075:36, 2084:17, 2085:9, 2134:37, 2151:26 client's [3] - 2084:39, 2085:11, 2094:32 clients [10] - 2049:31, 2060:39, 2061:9, 2064:22, 2064:23, 2064:43, 2069:30, 2084:35, 2100:18, 2100:27 clients' [2] - 2061:43, 2069:42 close [5] - 2041:30, 2041:31, 2071:33, 2081:43, 2092:11 closed [2] - 2092:4, 2093:6 closeness [2] - 2041:11, 2041:17 closure [2] - 2120:35, 2124:27 CO [1] - 2101:14 Co [4] - 2090:47, 2101:6, 2129:45, 2129:47 Coast [35] - 2042:36, 2046:16, 2057:29, 2067:16, 2073:17, 2074:13, 2074:23, 2078:6, 2079:27, 2082:40, 2083:40, 2087:3, 2090:35, 2091:25, 2092:42, 2104:30, 2109:19, 2113:28, 2119:23, 2123:26, 2124:8, 2124:32, 2125:29, 2125:35, 2125:47,</p>
--	--	--	--	---

2126:28, 2136:11,
2140:14, 2140:22,
2141:25, 2141:31,
2144:22, 2145:16,
2145:36, 2149:28
Coate [1] - 2039:33
Col [2] - 2121:44, 2122:31
collection [2] - 2048:28,
2150:12
coloured [2] - 2126:21,
2138:41
Comben [100] - 2041:8,
2041:27, 2041:32,
2043:26, 2043:33,
2043:36, 2043:44,
2045:32, 2046:20,
2046:29, 2046:40,
2047:7, 2047:38,
2047:40, 2047:44,
2048:3, 2048:10,
2048:23, 2049:46,
2058:4, 2058:16,
2059:22, 2059:43,
2060:5, 2060:16,
2061:20, 2064:4,
2064:6, 2064:15,
2065:24, 2066:4,
2066:15, 2066:19,
2066:31, 2066:44,
2067:22, 2067:36,
2067:40, 2068:39,
2068:45, 2069:23,
2071:3, 2074:38,
2075:5, 2076:25,
2076:31, 2076:37,
2077:9, 2077:15,
2077:41, 2078:46,
2079:10, 2079:20,
2081:13, 2081:23,
2081:31, 2081:43,
2082:20, 2082:28,
2085:25, 2086:11,
2092:10, 2093:46,
2094:6, 2097:33,
2097:45, 2097:46,
2098:14, 2099:30,
2099:42, 2100:8,
2100:14, 2102:5,
2102:11, 2102:13,
2109:38, 2110:1,
2110:17, 2111:34,
2119:19, 2121:19,
2121:47, 2122:46,
2124:3, 2125:46,
2127:46, 2129:5,
2131:31, 2132:38,
2134:23, 2135:2,
2135:23, 2135:39,
2136:16, 2140:6,
2144:19, 2145:45,
2151:18, 2152:1
COMBEN [2] - 2102:7,
2140:29
Comben's [6] - 2061:44,
2067:3, 2071:32,
2077:46, 2080:40,
2081:7
comfort [2] - 2152:41,

2152:45
coming [4] - 2126:18,
2133:15, 2138:2, 2142:3
commenced [4] - 2058:26,
2071:40, 2086:15,
2132:40
commencement [1] -
2066:45
comment [13] - 2044:46,
2049:37, 2050:32,
2062:10, 2064:18,
2068:41, 2077:41,
2079:47, 2089:12,
2089:16, 2090:31,
2093:10
commenting [1] - 2068:46
comments [3] - 2055:7,
2148:35, 2153:14
commercial [1] - 2068:20
COMMISSION [2] -
2039:12, 2153:31
Commission [6] - 2040:5,
2072:33, 2093:38,
2097:3, 2097:44,
2102:12
Commissioners [2] -
2039:33, 2152:1
committed [1] - 2089:36
committee [30] - 2046:12,
2046:15, 2046:26,
2053:36, 2054:28,
2074:22, 2074:45,
2075:6, 2075:24,
2103:32, 2104:11,
2104:23, 2104:29,
2105:5, 2105:32,
2106:4, 2106:9,
2106:33, 2108:28,
2108:41, 2109:15,
2114:19, 2114:23,
2115:41, 2117:20,
2119:37, 2123:11,
2124:38, 2125:15,
2136:37
Committee [3] - 2109:12,
2123:2, 2139:2
committing [1] - 2106:40
common [3] - 2055:13,
2152:36, 2152:43
communicated [2] -
2068:25, 2135:4
communication [5] -
2051:12, 2091:47,
2094:31, 2128:40,
2130:10
communications [1] -
2135:3
community [5] - 2077:14,
2077:42, 2077:45,
2078:19, 2102:38
company [1] - 2126:14
compared [1] - 2144:13
compassion [1] - 2131:6
compassionately [1] -
2092:45
compensated [2] -
2062:2, 2062:13

Compensation [1] -
2098:32
compensation [2] -
2051:14, 2062:42
complaint [1] - 2116:43
complaints [1] - 2117:2
complicated [1] - 2044:34
comply [1] - 2106:27
component [4] - 2069:42,
2070:11, 2070:19,
2106:12
components [1] - 2106:8
comprise [2] - 2058:45,
2106:3
conceded [1] - 2153:19
concept [1] - 2104:40
concepts [1] - 2152:33
concern [5] - 2068:43,
2084:13, 2132:39,
2133:13, 2133:45
concerned [7] - 2048:32,
2087:31, 2089:42,
2117:14, 2120:38,
2126:17, 2139:21
concerning [2] - 2083:34,
2139:20
concerns [3] - 2107:28,
2107:31, 2145:31
concluded [1] - 2070:42
conclusion [5] - 2063:17,
2071:20, 2080:44,
2081:16, 2113:43
conduct [2] - 2105:23,
2108:40
conducted [1] - 2067:31
conference [23] - 2046:41,
2050:38, 2050:41,
2056:1, 2056:4,
2058:15, 2065:25,
2067:4, 2067:9,
2097:10, 2098:3,
2098:9, 2098:18,
2098:24, 2098:40,
2099:14, 2100:3,
2134:38, 2140:38,
2140:43, 2141:4,
2141:8, 2141:17
confident [2] - 2055:13,
2056:10
confine [1] - 2078:19
confined [2] - 2055:33,
2062:33
confining [1] - 2055:7
confirm [2] - 2059:16,
2118:37
confirmation [1] - 2145:28
confirmed [2] - 2055:20,
2076:41
confuse [1] - 2152:33
connected [1] - 2064:25
connecting [1] - 2052:24
connection [2] - 2052:19,
2054:16
conscious [1] - 2138:37
consequently [1] -
2138:11
consider [14] - 2049:36,

2063:37, 2063:40,
2068:35, 2075:28,
2078:3, 2089:36,
2093:27, 2110:44,
2141:17, 2146:7,
2147:19, 2147:25,
2151:26
considerable [1] - 2131:6
consideration [3] -
2059:17, 2067:14,
2144:28
considerations [1] -
2085:11
considered [12] - 2046:15,
2056:35, 2078:7,
2078:8, 2103:46,
2118:11, 2130:15,
2137:17, 2146:28,
2147:26, 2149:40,
2150:23
considering [2] - 2067:15,
2113:46
consisted [2] - 2089:10,
2093:22
consistent [2] - 2078:34,
2092:13
constantly [1] - 2153:17
constituent [2] - 2141:30,
2142:32
constituted [1] - 2058:43
CONSTITUTION [1] -
2054:15
constitution [6] - 2051:22,
2051:26, 2052:11,
2058:33, 2078:11,
2078:39
consultation [2] -
2104:28, 2109:43
consulting [1] - 2102:41
contact [22] - 2042:30,
2080:19, 2080:28,
2081:32, 2081:36,
2081:43, 2082:27,
2082:33, 2090:14,
2091:16, 2094:1,
2105:9, 2114:13,
2116:22, 2116:30,
2116:44, 2121:14,
2121:44, 2122:32,
2128:5, 2129:33
contacted [2] - 2080:16,
2082:3
contacting [1] - 2059:47
contacts [2] - 2120:13,
2121:45
contained [1] - 2096:29
contemplating [1] -
2063:15
contended [1] - 2075:30
contents [1] - 2113:15
context [4] - 2049:38,
2059:27, 2062:41,
2066:11
continual [1] - 2133:13
continuation [1] - 2085:31
continue [7] - 2041:33,
2109:15, 2113:17,

2117:18, 2139:2,
2139:39, 2140:1
continued [8] - 2065:18,
2067:9, 2098:18,
2111:41, 2128:4,
2128:6, 2136:20,
2146:14
continues [1] - 2053:44
CONTINUING [1] -
2040:42
contract [2] - 2146:13,
2147:5
contractual [1] - 2056:34
contribution [2] - 2067:27,
2070:2
control [3] - 2053:14,
2053:30, 2053:36
controlled [2] - 2047:3,
2054:33
convened [1] - 2065:5
conversation [8] -
2046:28, 2048:9,
2059:46, 2094:11,
2096:26, 2098:35,
2098:43, 2129:3
conversations [2] -
2047:37, 2055:36
conversing [1] - 2149:16
conveyed [1] - 2079:7
convinced [1] - 2112:14
convoluted [1] - 2111:47
cop [1] - 2044:46
copies [3] - 2079:14,
2079:20, 2079:26
copy [11] - 2066:24,
2072:27, 2079:9,
2086:35, 2090:39,
2103:16, 2110:4,
2115:32, 2115:36,
2117:23, 2119:6
corner [1] - 2097:45
corporate [4] - 2051:35,
2074:18, 2074:39,
2075:35
Corporate [1] - 2084:45
correct [111] - 2042:9,
2042:10, 2044:43,
2044:44, 2047:19,
2047:32, 2051:37,
2051:47, 2052:7,
2053:5, 2053:6,
2053:15, 2053:31,
2053:46, 2054:5,
2054:9, 2057:12,
2057:23, 2060:7,
2061:3, 2062:30,
2063:32, 2064:30,
2065:33, 2065:43,
2066:40, 2066:41,
2067:10, 2069:17,
2070:12, 2070:13,
2074:2, 2074:19,
2074:46, 2080:10,
2084:29, 2085:21,
2086:20, 2087:25,
2088:6, 2088:22,
2089:21, 2090:40,

<p>2093:23, 2095:42, 2096:39, 2097:33, 2098:40, 2098:44, 2102:24, 2102:29, 2102:30, 2103:13, 2103:39, 2103:43, 2103:44, 2104:13, 2105:15, 2105:24, 2106:14, 2106:28, 2107:13, 2108:36, 2109:40, 2110:20, 2112:25, 2113:31, 2115:33, 2115:34, 2115:43, 2117:22, 2119:14, 2120:10, 2121:36, 2122:15, 2125:10, 2125:11, 2125:31, 2126:1, 2127:3, 2127:17, 2130:2, 2132:16, 2132:22, 2132:27, 2133:28, 2133:37, 2133:43, 2135:8, 2137:5, 2137:38, 2138:18, 2140:14, 2141:6, 2141:26, 2143:3, 2143:12, 2143:15, 2143:16, 2143:36, 2144:38, 2144:41, 2145:47, 2148:29, 2148:30, 2149:13, 2149:14, 2150:14, 2152:8, 2152:16</p> <p>corrected [2] - 2108:25, 2112:26</p> <p>correspond [1] - 2136:20</p> <p>correspondence [11] - 2049:20, 2055:34, 2062:42, 2078:29, 2080:42, 2084:10, 2093:26, 2132:33, 2133:33, 2135:12, 2144:36</p> <p>cost [1] - 2067:41</p> <p>COSTS [1] - 2102:3</p> <p>costs [10] - 2057:18, 2061:30, 2067:42, 2070:2, 2070:8, 2070:11, 2070:31, 2071:13, 2101:21, 2139:33</p> <p>couched [1] - 2092:37</p> <p>council [1] - 2096:38</p> <p>Council [76] - 2045:11, 2067:14, 2067:15, 2067:45, 2082:6, 2082:11, 2089:32, 2096:37, 2096:43, 2096:46, 2097:19, 2099:18, 2100:9, 2100:13, 2103:27, 2103:44, 2104:6, 2104:14, 2104:20, 2104:25, 2104:27, 2104:31, 2104:34, 2106:37, 2106:44, 2107:21, 2107:25,</p>	<p>2107:32, 2107:39, 2107:41, 2108:14, 2108:15, 2108:24, 2108:26, 2108:38, 2109:11, 2109:43, 2113:20, 2114:35, 2117:27, 2117:31, 2117:33, 2117:41, 2118:3, 2118:16, 2118:23, 2118:26, 2118:46, 2122:42, 2133:30, 2133:38, 2134:1, 2134:4, 2134:9, 2134:13, 2134:15, 2134:16, 2134:17, 2134:47, 2135:15, 2135:17, 2135:20, 2135:21, 2135:24, 2135:29, 2135:36, 2136:1, 2136:14, 2142:28, 2142:31, 2143:9, 2145:2, 2145:4, 2145:9, 2150:8, 2152:27</p> <p>Council's [1] - 2151:46</p> <p>Counsel [1] - 2039:38</p> <p>counsel [12] - 2053:41, 2054:22, 2055:20, 2059:3, 2095:9, 2097:25, 2099:41, 2144:21, 2148:37, 2149:7, 2149:19</p> <p>counsel's [2] - 2055:16, 2072:46</p> <p>Counselling [1] - 2061:27</p> <p>counselling [19] - 2041:5, 2041:28, 2064:34, 2064:38, 2064:44, 2065:1, 2070:22, 2088:31, 2088:40, 2105:13, 2105:14, 2105:38, 2116:15, 2116:20, 2116:27, 2127:21, 2128:4, 2128:39, 2129:39</p> <p>counsellor [1] - 2116:25</p> <p>count [1] - 2047:25</p> <p>couple [4] - 2045:44, 2046:45, 2046:46, 2111:30</p> <p>course [20] - 2041:22, 2042:2, 2042:34, 2044:16, 2045:28, 2045:41, 2051:38, 2055:38, 2056:8, 2057:2, 2083:4, 2095:20, 2098:3, 2098:24, 2100:25, 2110:1, 2136:20, 2145:8, 2152:6, 2152:8</p> <p>Court [1] - 2042:14</p> <p>court [3] - 2049:9, 2060:47, 2091:23</p> <p>cover [12] - 2042:40, 2043:22, 2069:41, 2070:8, 2145:16, 2145:39, 2146:8, 2146:39, 2146:44, 2146:46, 2147:21,</p>	<p>2147:37</p> <p>coverage [2] - 2146:23, 2147:39</p> <p>covered [7] - 2042:33, 2042:39, 2042:44, 2043:4, 2043:42, 2050:22, 2147:9</p> <p>covering [4] - 2043:40, 2126:15, 2126:23, 2145:44</p> <p>covers [1] - 2147:45</p> <p>created [1] - 2067:6</p> <p>criminal [1] - 2105:23</p> <p>critical [1] - 2065:15</p> <p>Crown [1] - 2102:29</p> <p>cynical [1] - 2131:11</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>date [9] - 2046:22, 2058:5, 2068:8, 2073:24, 2095:37, 2095:38, 2097:4, 2116:19, 2151:35</p> <p>dated [16] - 2058:13, 2060:24, 2067:45, 2067:47, 2073:40, 2086:43, 2086:44, 2095:46, 2101:6, 2113:13, 2114:42, 2124:4, 2136:17, 2140:7, 2145:22, 2147:9</p> <p>DATED [2] - 2101:14, 2140:30</p> <p>day-to-day [4] - 2114:14, 2126:32, 2135:11, 2135:14</p> <p>days [8] - 2065:6, 2065:11, 2065:18, 2067:45, 2098:10, 2114:35, 2117:36, 2147:29</p> <p>deal [10] - 2041:33, 2042:38, 2043:9, 2050:42, 2062:24, 2086:41, 2093:28, 2128:1, 2143:29, 2152:20</p> <p>dealing [4] - 2057:22, 2080:33, 2095:20, 2152:24</p> <p>dealings [1] - 2046:25</p> <p>dealt [7] - 2042:3, 2045:17, 2072:13, 2144:3, 2151:41, 2152:25, 2152:46</p> <p>debt [9] - 2110:20, 2110:26, 2110:30, 2110:39, 2110:40, 2111:44, 2112:36, 2112:38, 2112:43</p> <p>debts [1] - 2112:23</p> <p>Dec [1] - 2060:24</p> <p>December [24] - 2043:16, 2046:21, 2049:25, 2057:41, 2058:7, 2058:17, 2059:28,</p>	<p>2059:36, 2065:42, 2067:39, 2068:3, 2068:13, 2069:39, 2073:23, 2073:26, 2081:33, 2082:2, 2097:41, 2113:13, 2113:40, 2140:8, 2140:12, 2145:22, 2147:32</p> <p>decided [2] - 2075:31, 2121:5</p> <p>decision [1] - 2104:26</p> <p>decisions [1] - 2106:33</p> <p>declarations [3] - 2044:12, 2048:12, 2148:12</p> <p>deed [17] - 2064:24, 2064:30, 2064:44, 2064:45, 2070:43, 2073:40, 2073:47, 2074:5, 2074:11, 2074:18, 2075:5, 2075:18, 2077:3, 2083:14, 2083:20, 2083:23, 2086:23</p> <p>deeply [2] - 2130:19, 2130:22</p> <p>defence [1] - 2153:13</p> <p>defend [9] - 2055:13, 2133:26, 2133:29, 2133:31, 2134:6, 2134:8, 2134:15, 2135:43, 2135:44</p> <p>defendable [1] - 2135:45</p> <p>defendant [2] - 2051:4, 2150:43</p> <p>defended [3] - 2135:25, 2139:17, 2152:30</p> <p>defensible [1] - 2135:47</p> <p>defensive [1] - 2133:19</p> <p>defer [1] - 2041:37</p> <p>definitely [3] - 2041:23, 2050:11, 2055:28</p> <p>defrocking [3] - 2113:44, 2114:23, 2123:43</p> <p>degree [2] - 2109:23, 2146:7</p> <p>delay [1] - 2063:38</p> <p>delayed [1] - 2040:2</p> <p>delete [1] - 2060:28</p> <p>deleted [1] - 2061:2</p> <p>deleting [1] - 2060:31</p> <p>demanding [1] - 2112:7</p> <p>denial [1] - 2058:21</p> <p>denied [2] - 2110:40, 2141:16</p> <p>deny [2] - 2087:28, 2132:27</p> <p>denying [6] - 2049:7, 2049:9, 2049:12, 2049:20, 2078:41, 2087:25</p> <p>depart [1] - 2120:32</p> <p>derailed [2] - 2131:19, 2131:21</p> <p>described [2] - 2096:23, 2152:26</p>	<p>describes [1] - 2124:45</p> <p>description [1] - 2068:21</p> <p>desire [1] - 2076:21</p> <p>detail [6] - 2042:47, 2047:17, 2087:11, 2115:12, 2148:33, 2148:40</p> <p>detailed [4] - 2046:2, 2101:26, 2105:41, 2135:40</p> <p>Detailed [1] - 2101:19</p> <p>DETAILED [1] - 2102:1</p> <p>details [5] - 2044:23, 2093:42, 2094:5, 2116:31, 2119:19</p> <p>determine [1] - 2149:6</p> <p>determined [1] - 2076:2</p> <p>developed [1] - 2152:5</p> <p>development [2] - 2111:35, 2111:42</p> <p>device [1] - 2057:9</p> <p>dicta [1] - 2149:8</p> <p>difference [1] - 2117:13</p> <p>different [12] - 2045:44, 2049:17, 2066:42, 2093:31, 2111:1, 2124:33, 2131:16, 2151:15, 2152:40, 2153:5, 2153:21, 2153:22</p> <p>differently [1] - 2152:47</p> <p>difficult [1] - 2122:36</p> <p>difficulties [1] - 2121:38</p> <p>difficulty [3] - 2079:13, 2138:13, 2153:23</p> <p>Diocesan [1] - 2109:16</p> <p>diocesan [18] - 2059:11, 2065:6, 2089:31, 2100:23, 2104:28, 2108:27, 2108:40, 2118:33, 2121:35, 2125:38, 2126:7, 2126:22, 2127:10, 2128:2, 2132:7, 2133:1, 2137:4, 2142:28</p> <p>Diocese [57] - 2051:36, 2052:6, 2052:19, 2057:22, 2074:18, 2074:38, 2074:39, 2080:22, 2084:26, 2084:41, 2086:4, 2088:14, 2093:28, 2101:20, 2102:16, 2102:27, 2103:3, 2103:5, 2106:20, 2108:4, 2110:18, 2110:43, 2111:16, 2111:23, 2112:23, 2112:32, 2112:38, 2115:31, 2115:37, 2117:22, 2118:32, 2121:2, 2127:32, 2128:1, 2131:27, 2132:22, 2133:23, 2133:41, 2135:3, 2137:12, 2137:18, 2138:10, 2141:25,</p>
---	---	--	--	--

2141:29, 2142:14,
2142:31, 2144:19,
2145:15, 2145:29,
2145:36, 2146:8,
2147:13, 2147:27,
2148:27, 2150:4,
2150:21, 2151:36
DIOCESE [1] - 2102:2
diocese [71] - 2041:30,
2042:20, 2042:32,
2042:35, 2043:27,
2043:44, 2044:20,
2048:6, 2049:5, 2049:6,
2049:20, 2049:42,
2051:15, 2053:37,
2056:28, 2058:4,
2059:41, 2060:38,
2060:47, 2063:19,
2065:35, 2065:42,
2069:41, 2070:8,
2070:12, 2070:46,
2071:29, 2072:5,
2072:13, 2074:1,
2075:14, 2075:17,
2075:23, 2076:38,
2077:35, 2084:44,
2087:31, 2088:3,
2088:20, 2088:22,
2088:26, 2089:19,
2089:21, 2089:44,
2091:33, 2093:9,
2100:13, 2100:22,
2104:13, 2110:45,
2110:47, 2113:29,
2122:17, 2122:28,
2126:33, 2127:12,
2129:47, 2130:21,
2130:30, 2131:46,
2132:27, 2132:40,
2137:45, 2138:27,
2138:38, 2146:13,
2146:44, 2147:37,
2147:46, 2152:6,
2152:39
dioceses [1] - 2061:16
dioceses [1] - 2146:18
direct [4] - 2078:21,
2080:36, 2090:36,
2094:1
directed [2] - 2067:21,
2100:9
directive [1] - 2099:32
directly [6] - 2062:8,
2072:37, 2080:33,
2082:30, 2087:19,
2133:4
director [30] - 2045:27,
2045:30, 2045:38,
2045:41, 2046:31,
2087:40, 2094:8,
2103:25, 2103:35,
2104:11, 2105:1,
2105:4, 2105:10,
2106:2, 2107:13,
2114:6, 2114:12,
2119:40, 2120:1,
2120:8, 2121:1,
2121:14, 2121:20,

2121:22, 2121:31,
2122:30, 2122:33,
2128:45, 2142:13,
2144:30
disagree [1] - 2092:39
disappointed [2] - 2132:9,
2132:31
disbursements [1] -
2073:3
disciplinary [3] - 2047:43,
2107:4, 2107:7
discovered [2] - 2090:12,
2090:19
discretion [1] - 2041:9
discretionary [3] - 2137:7,
2138:11, 2138:31
discuss [3] - 2054:44,
2056:4, 2062:33
discussed [5] - 2044:34,
2054:25, 2063:6,
2093:20, 2099:23
discussing [6] - 2059:43,
2089:28, 2138:13,
2138:15, 2150:1,
2150:38
discussion [11] - 2043:25,
2043:32, 2046:17,
2055:32, 2056:16,
2069:4, 2095:29,
2116:14, 2134:16,
2146:36, 2148:45
discussion" [1] - 2149:1
discussions [9] - 2046:45,
2059:21, 2062:38,
2062:45, 2100:7,
2135:20, 2135:35,
2135:43, 2149:47
dismissive [1] - 2092:31
dispute [2] - 2081:44,
2081:46
disputed [1] - 2054:25
disrespect [1] - 2050:29
distinction [2] - 2050:7,
2050:10
document [49] - 2044:13,
2046:10, 2047:12,
2048:3, 2048:47,
2051:20, 2051:24,
2053:28, 2053:41,
2053:44, 2054:45,
2055:4, 2055:27,
2057:7, 2058:12,
2068:3, 2072:33,
2072:38, 2073:2,
2073:31, 2073:44,
2075:8, 2079:3,
2091:20, 2095:7,
2095:32, 2097:39,
2098:7, 2098:21,
2098:22, 2101:17,
2101:26, 2103:12,
2103:16, 2103:18,
2103:22, 2103:26,
2109:8, 2109:27,
2109:34, 2113:15,
2113:18, 2114:33,
2114:37, 2118:37,

2134:31, 2146:19,
2148:33, 2148:44
documentation [6] -
2042:7, 2069:45,
2072:24, 2128:22,
2141:23, 2145:21
DOCUMENTS [1] -
2073:36
documents [8] - 2058:11,
2058:36, 2073:33,
2101:5, 2104:19,
2108:17, 2150:12
dollar [2] - 2061:37,
2061:39
dollars [3] - 2099:43,
2111:30, 2139:33
done [7] - 2045:32,
2048:39, 2081:38,
2124:19, 2134:18,
2142:6, 2153:5
dossier [1] - 2048:27
dot [2] - 2060:23, 2062:15
doubt [6] - 2053:47,
2056:42, 2095:45,
2103:3, 2128:10,
2152:27
down [24] - 2052:37,
2054:12, 2056:12,
2058:20, 2060:42,
2061:22, 2063:34,
2098:7, 2098:21,
2100:39, 2106:47,
2113:14, 2113:17,
2116:17, 2116:30,
2116:42, 2117:18,
2117:45, 2118:2,
2118:28, 2125:18,
2142:10, 2144:44,
2149:47
downhill [1] - 2102:39
Dr [3] - 2057:41, 2059:36,
2059:47
draft [7] - 2058:20, 2059:3,
2075:18, 2077:10,
2077:38, 2079:9, 2083:7
drafted [4] - 2076:31,
2083:10, 2107:11,
2151:18
drafting [1] - 2095:14
drifting [1] - 2068:17
drive [1] - 2123:27
due [7] - 2040:21,
2043:21, 2045:41,
2046:4, 2057:2, 2110:1,
2152:8
during [10] - 2042:22,
2081:36, 2082:21,
2098:3, 2098:24,
2101:18, 2108:19,
2129:10, 2147:4,
2147:30
duties [6] - 2100:25,
2105:13, 2107:6,
2121:20, 2126:32,
2147:19
duty [2] - 2051:4, 2151:3

E

2122:14, 2153:15
ended [2] - 2044:23,
2136:40
endless [1] - 2139:47
endorse [1] - 2117:27
engage [5] - 2050:37,
2144:36, 2149:37,
2150:5, 2150:23
engaged [7] - 2055:22,
2055:31, 2056:34,
2057:11, 2075:2,
2144:21, 2149:20
engaging [1] - 2147:22
England [8] - 2051:46,
2052:20, 2052:25,
2053:21, 2053:29,
2054:17, 2058:46,
2078:6
enlarge [1] - 2044:4
enlarged [2] - 2044:7,
2057:10
ensure [3] - 2123:3,
2123:34, 2147:20
ensured [1] - 2147:23
enter [4] - 2064:23,
2064:29, 2064:44,
2075:5
entered [1] - 2086:23
entirely [4] - 2057:28,
2089:10, 2090:28,
2131:16
entirety [1] - 2064:11
entities [2] - 2103:43,
2104:10
entity [1] - 2075:37
Environment [1] - 2102:33
equal [1] - 2119:25
equally [1] - 2119:22
especially [1] - 2122:43
essence [2] - 2044:19,
2085:19
essentially [7] - 2045:14,
2057:23, 2068:12,
2106:41, 2116:24,
2133:19, 2144:35
establish [1] - 2143:5
established [2] - 2133:36,
2150:3
establishes [3] - 2103:31,
2103:35, 2103:38
estate [1] - 2138:3
estimate [2] - 2072:40,
2072:44
estimation [1] - 2070:27
et [10] - 2050:24, 2052:12,
2102:41, 2111:20,
2120:1, 2120:17,
2120:45, 2123:42,
2133:14, 2142:37
event [25] - 2043:3,
2047:16, 2047:28,
2064:21, 2065:30,
2067:8, 2073:8, 2075:4,
2079:25, 2083:45,
2085:31, 2086:42,
2090:17, 2090:39,
2091:39, 2107:44,

<p>2109:38, 2114:25, 2115:11, 2117:32, 2127:29, 2144:9, 2144:30, 2145:1, 2149:25</p> <p>events [1] - 2075:2</p> <p>eventually [10] - 2055:1, 2055:3, 2056:8, 2056:17, 2110:32, 2110:34, 2111:44, 2127:11, 2129:10, 2144:23</p> <p>evidence [34] - 2044:10, 2045:45, 2046:16, 2046:19, 2048:28, 2048:29, 2065:22, 2065:25, 2066:4, 2066:6, 2066:7, 2066:12, 2072:37, 2079:35, 2079:36, 2080:2, 2090:18, 2093:39, 2093:41, 2093:46, 2094:4, 2094:6, 2094:12, 2096:36, 2104:41, 2108:17, 2128:17, 2128:18, 2137:32, 2137:36, 2137:44, 2140:42, 2145:13, 2151:35</p> <p>ex [7] - 2061:31, 2061:36, 2061:43, 2071:14, 2085:6, 2085:12, 2113:22</p> <p>exactly [5] - 2041:20, 2046:32, 2081:18, 2127:37, 2152:25</p> <p>examination [1] - 2101:18</p> <p>EXAMINATION [4] - 2040:42, 2093:35, 2095:5, 2102:9</p> <p>examined [1] - 2110:47</p> <p>example [9] - 2061:17, 2064:35, 2075:35, 2079:39, 2086:31, 2087:23, 2105:18, 2107:27, 2133:42</p> <p>excellent [1] - 2120:39</p> <p>except [2] - 2094:28, 2152:42</p> <p>excerpt [1] - 2101:18</p> <p>EXCERPT [1] - 2102:1</p> <p>excess [1] - 2144:20</p> <p>excuse [1] - 2073:1</p> <p>excused [1] - 2100:40</p> <p>executive [18] - 2052:39, 2052:42, 2052:44, 2052:47, 2053:4, 2053:8, 2053:15, 2053:18, 2053:25, 2053:30, 2053:36, 2058:43, 2058:45, 2078:16, 2104:12, 2113:20, 2113:22, 2124:38</p> <p>exhibit [22] - 2042:25, 2043:14, 2058:12,</p>	<p>2060:10, 2066:35, 2069:21, 2070:34, 2073:34, 2073:39, 2075:40, 2076:35, 2080:39, 2082:38, 2083:46, 2097:39, 2101:10, 2101:44, 2103:17, 2108:46, 2110:7, 2118:39, 2140:27</p> <p>EXHIBIT [4] - 2073:36, 2101:14, 2102:1, 2140:29</p> <p>existed [1] - 2106:20</p> <p>existence [1] - 2052:24</p> <p>expanding [1] - 2144:29</p> <p>expect [4] - 2052:38, 2053:8, 2053:14, 2062:9</p> <p>expected [2] - 2096:45, 2144:46</p> <p>expedition [3] - 2130:16, 2130:26, 2130:44</p> <p>expenses [2] - 2061:29, 2073:3</p> <p>expensive [1] - 2127:27</p> <p>experience [3] - 2102:44, 2119:23, 2142:17</p> <p>experienced [1] - 2062:28</p> <p>experimental [1] - 2122:24</p> <p>expired [1] - 2043:35</p> <p>explain [1] - 2143:20</p> <p>explanation [3] - 2077:2, 2101:45, 2128:10</p> <p>explore [1] - 2132:26</p> <p>exposure [1] - 2147:27</p> <p>express [2] - 2087:2, 2132:38</p> <p>expressed [5] - 2076:13, 2076:16, 2076:21, 2089:47, 2107:25</p> <p>expresses [1] - 2084:13</p> <p>expressing [2] - 2041:27, 2119:3</p> <p>expression [1] - 2104:18</p> <p>expressly [3] - 2050:19, 2052:24, 2075:46</p> <p>extension [2] - 2043:5, 2145:38</p> <p>extent [5] - 2044:25, 2048:32, 2082:5, 2112:20, 2128:23</p> <p>external [1] - 2106:23</p> <p>Ezzy [7] - 2094:24, 2094:35, 2094:44, 2113:8, 2124:32, 2124:37, 2125:2</p> <p>Ezzy's [1] - 2113:9</p>	<p>2128:12</p> <p>facilitators [2] - 2063:26, 2063:37</p> <p>facility [10] - 2052:25, 2052:43, 2053:31, 2054:33, 2077:14, 2077:42, 2077:45, 2078:19, 2078:22, 2078:42</p> <p>facing [1] - 2153:16</p> <p>fact [34] - 2042:12, 2042:32, 2044:47, 2045:26, 2062:27, 2064:36, 2073:7, 2078:5, 2079:13, 2079:38, 2080:7, 2090:28, 2091:12, 2091:32, 2094:6, 2094:34, 2096:15, 2105:22, 2106:39, 2108:35, 2111:5, 2117:30, 2124:37, 2124:42, 2125:34, 2131:13, 2134:9, 2138:21, 2141:32, 2148:33, 2149:3, 2150:10, 2150:11, 2153:7</p> <p>factor [1] - 2063:39</p> <p>facts [1] - 2143:34</p> <p>Fahey [1] - 2097:47</p> <p>failed [2] - 2040:46, 2147:19</p> <p>failing [1] - 2147:20</p> <p>fair [4] - 2044:46, 2079:47, 2089:12, 2089:16</p> <p>fairly [10] - 2051:2, 2051:14, 2110:19, 2112:12, 2113:41, 2115:31, 2117:37, 2122:24, 2132:34, 2151:9</p> <p>faithfulness [2] - 2109:31, 2109:35</p> <p>familiar [5] - 2051:24, 2051:33, 2099:28, 2114:42, 2126:38</p> <p>familiarise [2] - 2040:47, 2073:43</p> <p>far [8] - 2058:38, 2063:11, 2081:6, 2085:43, 2089:46, 2120:38, 2125:5, 2146:46</p> <p>fare [1] - 2127:27</p> <p>Farrer [1] - 2039:22</p> <p>fear [4] - 2142:40, 2142:42, 2143:2, 2152:27</p> <p>February [16] - 2067:10, 2067:13, 2067:19, 2067:46, 2067:47, 2068:13, 2069:16, 2081:33, 2082:10, 2084:32, 2090:34, 2092:38, 2095:37, 2095:47, 2099:19, 2136:24</p>	<p>fee [1] - 2073:33</p> <p>FEE [1] - 2073:36</p> <p>fees [16] - 2056:27, 2056:35, 2056:44, 2070:16, 2072:24, 2072:25, 2072:41, 2072:45, 2072:46, 2073:2, 2073:7, 2073:16, 2144:10, 2144:13, 2144:20</p> <p>feet [2] - 2066:6, 2066:9</p> <p>fell [1] - 2145:46</p> <p>few [3] - 2055:35, 2100:11, 2133:27</p> <p>fifth [1] - 2084:13</p> <p>fighting [1] - 2153:16</p> <p>figure [15] - 2061:37, 2061:39, 2099:13, 2099:16, 2099:32, 2111:38, 2134:25, 2134:27, 2136:1, 2136:4, 2136:8, 2136:13, 2147:38, 2152:28</p> <p>figures [4] - 2082:5, 2100:28, 2134:20, 2144:15</p> <p>FILE [1] - 2140:29</p> <p>file [16] - 2044:46, 2055:37, 2060:11, 2069:3, 2069:28, 2071:34, 2079:22, 2081:40, 2092:4, 2093:6, 2097:40, 2125:41, 2140:7, 2140:25, 2140:27</p> <p>filed [1] - 2042:13</p> <p>files [4] - 2044:16, 2056:40, 2058:8, 2092:11</p> <p>filing [1] - 2125:42</p> <p>fill [1] - 2128:36</p> <p>final [2] - 2069:22, 2081:41</p> <p>finalized [1] - 2061:26</p> <p>finally [2] - 2054:12, 2149:46</p> <p>finance [1] - 2106:19</p> <p>finances [2] - 2100:21, 2137:4</p> <p>financial [28] - 2043:27, 2049:42, 2050:43, 2057:15, 2057:35, 2065:31, 2067:26, 2076:1, 2084:27, 2085:20, 2085:43, 2087:33, 2090:12, 2090:19, 2102:44, 2106:8, 2106:12, 2106:34, 2106:40, 2110:28, 2110:43, 2110:45, 2111:15, 2114:3, 2114:20, 2143:2, 2150:24, 2150:39</p> <p>finish [1] - 2045:22</p> <p>firm [3] - 2072:3, 2083:33,</p>	<p>2132:35</p> <p>first [46] - 2050:37, 2051:30, 2055:4, 2057:9, 2057:21, 2060:43, 2064:20, 2065:29, 2071:7, 2071:26, 2071:33, 2076:36, 2086:41, 2087:39, 2088:13, 2088:38, 2096:42, 2098:10, 2098:47, 2103:31, 2106:18, 2107:36, 2110:46, 2113:12, 2113:19, 2115:7, 2115:40, 2116:3, 2120:7, 2120:13, 2121:16, 2123:26, 2123:29, 2124:7, 2124:12, 2124:13, 2130:10, 2133:27, 2137:6, 2137:41, 2137:42, 2137:45, 2146:28, 2150:21, 2150:42, 2152:24</p> <p>firstly [2] - 2092:30, 2137:47</p> <p>fishing [3] - 2130:16, 2130:25, 2130:43</p> <p>fit [1] - 2123:45</p> <p>fitted [1] - 2127:37</p> <p>Fitzgerald [1] - 2039:34</p> <p>five [5] - 2065:6, 2091:13, 2139:33, 2142:6, 2142:35</p> <p>flexible [1] - 2109:27</p> <p>Foley [2] - 2048:44, 2141:38</p> <p>follow [3] - 2068:27, 2071:30, 2084:5</p> <p>following-up [1] - 2084:5</p> <p>following [9] - 2040:20, 2040:31, 2057:6, 2058:15, 2065:5, 2074:1, 2084:10, 2123:10, 2143:8</p> <p>foot [1] - 2041:19</p> <p>Foott [4] - 2090:47, 2101:6, 2129:45, 2129:47</p> <p>FOOTT [1] - 2101:14</p> <p>FOR [2] - 2102:2</p> <p>foresight [1] - 2153:9</p> <p>forgotten [4] - 2042:47, 2113:5, 2118:18, 2131:40</p> <p>form [15] - 2068:31, 2074:5, 2076:3, 2077:10, 2078:24, 2087:10, 2096:7, 2104:12, 2105:32, 2105:37, 2108:38, 2128:36, 2141:47, 2150:24, 2150:38</p> <p>formal [2] - 2040:11, 2058:21</p> <p>formation [1] - 2118:7</p>
.22/11/2013 (20)		9		

formed [2] - 2056:10, 2132:19
former [10] - 2040:40, 2071:35, 2083:39, 2084:18, 2091:41, 2091:44, 2109:45, 2112:18, 2124:32, 2130:31
formerly [1] - 2082:39
forth [3] - 2073:3, 2073:15, 2135:12
forty [1] - 2084:34
forward [22] - 2044:5, 2059:4, 2066:23, 2084:28, 2089:26, 2101:44, 2109:5, 2114:18, 2116:38, 2120:24, 2124:26, 2126:18, 2127:34, 2127:36, 2130:15, 2130:20, 2130:43, 2131:18, 2149:26, 2149:39, 2150:11, 2150:13
forwarded [1] - 2079:42
foundation [1] - 2103:29
four [6] - 2051:1, 2053:25, 2067:45, 2113:42, 2113:47, 2147:29
fourth [2] - 2060:31, 2087:47
frame [1] - 2078:18
frank [2] - 2049:40, 2056:21
frankly [1] - 2087:12
frequent [1] - 2081:32
Friday [1] - 2039:27
froing [1] - 2065:30
FROM [2] - 2101:14, 2102:1
front [6] - 2041:47, 2082:41, 2122:47, 2125:22, 2131:8, 2136:1
fulfil [1] - 2121:1
full [3] - 2102:12, 2110:4, 2122:44
full-time [1] - 2122:44
fully [1] - 2045:11
Function [2] - 2101:19, 2101:27
FUNCTION [1] - 2102:1
fund [5] - 2110:29, 2112:24, 2112:39, 2112:43, 2113:1
fundamental [1] - 2051:3
funding [2] - 2040:19, 2140:2
funds [6] - 2106:42, 2111:5, 2111:8, 2139:3, 2139:39, 2144:9
Furness [1] - 2039:38
furthermore [3] - 2053:18, 2053:24, 2054:3
future [5] - 2071:4, 2080:40, 2081:7, 2085:13, 2085:25

G

Gail [1] - 2039:38
gain [1] - 2082:31
Garth [3] - 2046:38, 2046:39, 2073:22
GDIF [1] - 2138:41
Geer [1] - 2083:33
general [11] - 2041:21, 2041:24, 2069:4, 2074:5, 2104:12, 2108:26, 2109:16, 2134:38, 2135:24, 2140:38, 2148:35
generalised [1] - 2117:1
generally [5] - 2043:26, 2046:8, 2046:47, 2049:13, 2071:20
generous [1] - 2071:11
genesis [1] - 2059:35
gentleman [1] - 2113:28
Gerber [23] - 2046:1, 2046:5, 2046:21, 2046:26, 2059:9, 2093:38, 2093:42, 2094:2, 2094:4, 2115:36, 2115:38, 2116:31, 2120:7, 2120:11, 2120:39, 2121:2, 2121:30, 2121:31, 2121:40, 2122:35, 2142:9, 2142:21, 2143:44
Gerber's [3] - 2045:45, 2128:10, 2144:11
given [11] - 2042:41, 2055:30, 2090:28, 2093:8, 2093:42, 2103:42, 2107:27, 2133:31, 2139:22, 2145:21, 2151:29
global [4] - 2041:42, 2070:3, 2070:38, 2072:29
globally [1] - 2076:2
globo [1] - 2111:38
government [1] - 2102:29
Governor [1] - 2039:21
grab [1] - 2073:1
GRAFTON [1] - 2102:2
Grafton [58] - 2051:36, 2052:6, 2052:19, 2057:22, 2074:19, 2074:38, 2074:39, 2080:23, 2084:26, 2086:4, 2087:1, 2088:14, 2093:29, 2095:23, 2101:20, 2102:16, 2102:28, 2103:3, 2103:5, 2106:20, 2108:4, 2110:18, 2110:44, 2111:16, 2111:23, 2112:23, 2112:32, 2112:38, 2118:32, 2120:45, 2121:34,

2121:37, 2121:39, 2122:30, 2127:33, 2128:1, 2131:27, 2132:22, 2133:23, 2133:42, 2135:3, 2137:12, 2141:25, 2141:30, 2142:14, 2142:31, 2144:3, 2144:19, 2145:16, 2145:29, 2145:36, 2146:8, 2147:14, 2147:27, 2148:28, 2150:4, 2150:21, 2151:36
Grafton's [1] - 2084:41
grant [1] - 2113:22
granted [3] - 2040:8, 2094:26, 2094:37
gratia [6] - 2061:31, 2061:36, 2061:43, 2071:14, 2085:6, 2085:12
gratis [1] - 2113:22
great [4] - 2130:33, 2132:31, 2143:37, 2148:33
greatly [1] - 2048:31
Greg [4] - 2113:5, 2113:9, 2141:38
Griffin [1] - 2094:17
GRIFFIN [1] - 2094:19
group [36] - 2042:40, 2043:9, 2045:18, 2046:8, 2048:19, 2053:37, 2057:23, 2057:29, 2057:42, 2071:21, 2071:35, 2073:18, 2074:12, 2074:40, 2076:20, 2077:44, 2078:4, 2080:44, 2081:17, 2081:41, 2082:22, 2082:25, 2082:26, 2082:32, 2090:13, 2091:8, 2093:43, 2094:7, 2097:10, 2097:31, 2099:27, 2100:8, 2127:2, 2133:15, 2134:19, 2142:23
groups [1] - 2075:19
guess [1] - 2064:7
guidance [1] - 2107:38

H

half [4] - 2110:25, 2111:17, 2112:18, 2144:17
Halletts [2] - 2041:23, 2048:5
hand [5] - 2047:17, 2051:32, 2097:45, 2139:16, 2145:37
handle [6] - 2093:1, 2115:38, 2119:37, 2126:18, 2126:23,

2144:11
handled [13] - 2048:19, 2085:39, 2087:43, 2091:36, 2091:37, 2105:8, 2105:9, 2113:41, 2114:5, 2114:10, 2114:11, 2121:35, 2126:6
handling [5] - 2081:9, 2113:29, 2113:39, 2142:18, 2151:38
handover [1] - 2107:37
handwriting [3] - 2060:12, 2087:2, 2118:40
handwritten [1] - 2086:32
hang [1] - 2101:23
happily [1] - 2132:32
happy [3] - 2072:36, 2116:37, 2144:9
hard [3] - 2053:39, 2121:40, 2151:9
hard-line [1] - 2151:9
harder [1] - 2112:7
Harrison [41] - 2058:47, 2059:23, 2060:1, 2061:3, 2061:16, 2065:10, 2065:23, 2065:46, 2066:5, 2066:23, 2067:46, 2069:27, 2069:28, 2069:40, 2075:41, 2075:47, 2076:8, 2079:4, 2079:9, 2080:3, 2080:28, 2083:33, 2084:5, 2084:37, 2098:28, 2126:36, 2126:41, 2126:46, 2130:15, 2130:20, 2130:47, 2131:38, 2132:20, 2132:38, 2134:24, 2140:42, 2140:44, 2144:37, 2149:39, 2150:13, 2153:19
Harrison's [3] - 2044:2, 2064:21, 2148:2
harrowing [1] - 2119:22
head [2] - 2068:16, 2144:15
heading [3] - 2051:31, 2057:31, 2083:1
headquarters [1] - 2121:36
healing [1] - 2077:43
health [1] - 2110:45
healthy [1] - 2111:23
hear [3] - 2045:45, 2065:25, 2076:42
heard [8] - 2066:3, 2079:36, 2115:36, 2123:25, 2124:7, 2128:10, 2128:20, 2145:14
hearing [4] - 2065:27, 2079:37, 2123:40, 2128:12
Hearing [1] - 2039:17

hearsay [1] - 2137:24
heavyweight [1] - 2146:17
held [8] - 2051:41, 2051:42, 2111:8, 2123:4, 2123:35, 2123:38, 2135:35, 2148:28
help [3] - 2101:38, 2139:30, 2139:33
helping [1] - 2102:39
Herbert [1] - 2083:33
herself [1] - 2094:39
hesitated [1] - 2117:7
HIC [3] - 2069:42, 2070:11, 2070:19
hidden [1] - 2112:11
highest [1] - 2152:43
himself [2] - 2081:10, 2087:30
hindsight [3] - 2078:28, 2152:47, 2153:10
historic [1] - 2147:14
harder [1] - 2118:20
historically [1] - 2147:46
history [3] - 2058:37, 2065:16, 2122:34
hit [4] - 2111:31, 2111:32, 2122:2, 2122:6
hitting [2] - 2122:7, 2122:8
hiving [2] - 2045:21, 2045:22
hold [1] - 2119:46
holding [2] - 2052:10, 2054:44
hole [2] - 2127:44, 2127:46
holiday [2] - 2127:11, 2132:47
holidays [1] - 2048:18
Home [36] - 2042:36, 2046:16, 2054:17, 2057:29, 2067:16, 2073:17, 2074:13, 2074:24, 2078:6, 2079:28, 2082:40, 2083:40, 2087:3, 2090:35, 2091:25, 2092:43, 2104:30, 2109:19, 2113:29, 2119:24, 2123:26, 2124:8, 2124:33, 2125:30, 2125:35, 2125:47, 2126:29, 2136:11, 2140:14, 2140:22, 2141:25, 2141:31, 2144:22, 2145:16, 2145:37, 2149:29
home [30] - 2045:3, 2048:17, 2051:40, 2051:43, 2052:18, 2053:13, 2053:47, 2054:26, 2054:29, 2054:30, 2058:37, 2064:25, 2075:11, 2077:18, 2077:27, 2077:34, 2078:5,

<p>2087:33, 2114:38, 2116:35, 2117:13, 2124:34, 2124:39, 2124:43, 2125:6, 2130:32, 2141:33, 2141:40, 2141:41, 2148:40</p> <p>honest [2] - 2138:30, 2138:32</p> <p>Honour [32] - 2040:16, 2040:30, 2049:47, 2050:32, 2051:24, 2053:16, 2053:22, 2053:32, 2053:41, 2053:47, 2054:6, 2054:10, 2054:20, 2055:16, 2055:44, 2056:24, 2056:33, 2056:40, 2062:4, 2062:15, 2062:36, 2062:40, 2063:5, 2072:23, 2094:23, 2094:34, 2094:37, 2100:31, 2100:35, 2104:44, 2110:13, 2149:8</p> <p>Honour's [2] - 2050:6, 2062:10</p> <p>hope [1] - 2119:43</p> <p>hopefully [2] - 2057:35, 2131:18</p> <p>hoping [3] - 2126:22, 2129:2, 2146:25</p> <p>hours [1] - 2114:38</p> <p>house [1] - 2121:21</p> <p>huge [2] - 2129:13, 2131:9</p> <p>hundred [1] - 2139:33</p> <p>hurt [2] - 2062:16, 2062:28</p>	<p>implied [4] - 2106:39, 2106:44, 2109:24, 2116:11</p> <p>impliedly [2] - 2104:25, 2116:9</p> <p>implies [1] - 2109:26</p> <p>imply [1] - 2106:43</p> <p>importance [1] - 2103:42</p> <p>important [1] - 2079:44</p> <p>impression [2] - 2067:6, 2137:3</p> <p>in-house [1] - 2121:21</p> <p>inadequately [2] - 2147:14, 2147:17</p> <p>inappropriate [3] - 2076:45, 2077:1, 2093:27</p> <p>incensed [4] - 2131:43, 2132:1, 2132:8, 2132:28</p> <p>incident [5] - 2066:7, 2066:13, 2066:27, 2066:36, 2066:39</p> <p>include [6] - 2063:4, 2070:22, 2072:45, 2074:18, 2106:33, 2145:36</p> <p>included [15] - 2045:8, 2059:41, 2064:17, 2064:37, 2065:1, 2076:28, 2088:9, 2102:28, 2110:29, 2114:19, 2116:30, 2143:34, 2145:8, 2148:19, 2150:42</p> <p>includes [2] - 2063:23, 2106:18</p> <p>including [8] - 2048:4, 2061:26, 2067:42, 2069:41, 2075:1, 2113:43, 2121:13, 2152:39</p> <p>income [3] - 2057:15, 2101:33, 2101:43</p> <p>Income [2] - 2101:19, 2101:27</p> <p>INCOME [1] - 2102:1</p> <p>inconsistent [1] - 2077:47</p> <p>inconvenience [4] - 2062:3, 2062:14, 2062:17, 2062:22</p> <p>inconvenience" [1] - 2061:43</p> <p>incorporate [2] - 2060:5, 2060:23</p> <p>incorporated [1] - 2112:21</p> <p>increase [2] - 2099:1, 2099:2</p> <p>increased [1] - 2069:41</p> <p>indebted [1] - 2097:25</p> <p>indeed [8] - 2041:41, 2067:25, 2073:10, 2087:7, 2087:15, 2103:29, 2147:42, 2149:30</p> <p>indefinitely [1] - 2068:17</p> <p>independent [2] - 2053:37, 2103:43</p>	<p>independently [3] - 2045:2, 2104:12, 2112:21</p> <p>indicate [16] - 2040:18, 2040:31, 2041:46, 2051:2, 2061:16, 2064:9, 2068:43, 2081:42, 2097:20, 2098:8, 2101:7, 2109:24, 2116:3, 2124:47, 2129:27, 2133:3</p> <p>indicated [11] - 2046:29, 2049:21, 2080:40, 2109:39, 2111:15, 2129:19, 2130:14, 2136:10, 2143:8, 2150:8, 2150:47</p> <p>indicates [4] - 2043:40, 2046:10, 2046:17, 2134:23</p> <p>INDICATING [1] - 2102:3</p> <p>indicating [6] - 2064:21, 2069:4, 2076:37, 2083:16, 2087:1, 2101:20</p> <p>indication [12] - 2041:34, 2042:14, 2051:8, 2058:25, 2059:8, 2059:17, 2076:17, 2086:2, 2088:35, 2089:5, 2089:14, 2089:18</p> <p>indications [1] - 2065:22</p> <p>indicative [1] - 2067:3</p> <p>individual [7] - 2070:23, 2079:15, 2079:27, 2079:32, 2082:20, 2111:18, 2117:16</p> <p>individuals [2] - 2070:47, 2079:46</p> <p>inevitably [1] - 2053:28</p> <p>infer [1] - 2055:12</p> <p>influenced [1] - 2147:36</p> <p>inform [2] - 2091:3, 2126:27</p> <p>informal [3] - 2050:38, 2050:41, 2149:12</p> <p>information [3] - 2047:2, 2056:34, 2093:47</p> <p>informed [2] - 2041:8, 2097:27</p> <p>inherited [1] - 2120:7</p> <p>iniquitous [1] - 2084:16</p> <p>initial [5] - 2043:28, 2073:18, 2105:9, 2115:43, 2116:17</p> <p>initiate [1] - 2107:7</p> <p>innocence [3] - 2143:22, 2143:23, 2143:25</p> <p>input [1] - 2099:35</p> <p>inquiries [5] - 2042:29, 2058:35, 2071:34, 2072:5, 2124:31</p> <p>inquiry [2] - 2043:28, 2044:26</p> <p>inserted [3] - 2063:7,</p>	<p>2063:46, 2064:9</p> <p>instance [1] - 2097:9</p> <p>instead [3] - 2068:17, 2069:1, 2108:38</p> <p>institution [1] - 2047:1</p> <p>INSTITUTIONAL [1] - 2039:12</p> <p>instruct [1] - 2106:23</p> <p>instructed [17] - 2050:2, 2050:10, 2060:5, 2060:8, 2064:1, 2064:4, 2067:36, 2075:17, 2077:6, 2085:22, 2087:47, 2094:38, 2099:30, 2129:44, 2133:34, 2134:15, 2134:37</p> <p>instructing [7] - 2054:45, 2055:5, 2063:14, 2100:1, 2132:21, 2134:46, 2134:47</p> <p>instructing [6] - 2085:24, 2092:9, 2092:13, 2096:4, 2096:7, 2099:9</p> <p>instructions [63] - 2042:8, 2047:1, 2049:46, 2050:14, 2050:16, 2050:44, 2061:19, 2063:1, 2063:8, 2063:11, 2064:7, 2064:32, 2067:25, 2067:33, 2067:41, 2068:10, 2068:37, 2069:22, 2071:4, 2071:39, 2072:3, 2075:4, 2075:14, 2076:9, 2081:30, 2082:31, 2084:25, 2085:28, 2085:32, 2086:7, 2086:13, 2086:26, 2087:15, 2087:24, 2090:40, 2092:14, 2093:1, 2093:16, 2095:14, 2095:21, 2095:25, 2095:28, 2096:11, 2097:32, 2098:14, 2100:3, 2108:26, 2133:26, 2133:29, 2133:31, 2135:4, 2135:11, 2135:14, 2135:19, 2135:24, 2135:28, 2135:41, 2140:37, 2141:4, 2143:30, 2150:28, 2150:29, 2151:45</p> <p>Insurance [1] - 2145:30</p> <p>insurance [23] - 2042:21, 2042:30, 2043:5, 2043:10, 2043:16, 2043:26, 2043:29, 2043:30, 2043:45, 2106:27, 2111:20, 2126:14, 2145:12, 2145:15, 2145:25, 2145:30, 2145:46, 2146:11, 2146:13, 2146:35, 2147:21,</p>	<p>2147:22, 2147:29</p> <p>insured [5] - 2139:21, 2145:35, 2146:12, 2147:14, 2147:17</p> <p>insurer [3] - 2042:27, 2042:32, 2145:28</p> <p>insurers [4] - 2042:4, 2126:6, 2126:22, 2146:37</p> <p>insurers' [1] - 2126:7</p> <p>insurmountable [1] - 2049:31</p> <p>intended [3] - 2044:47, 2045:4, 2088:45</p> <p>intending [2] - 2142:5, 2150:30</p> <p>intensive [1] - 2113:47</p> <p>intent [4] - 2087:28, 2149:43, 2149:45, 2149:46</p> <p>intention [6] - 2058:25, 2071:13, 2085:12, 2107:16, 2107:19, 2152:11</p> <p>intently [1] - 2113:41</p> <p>interaction [1] - 2153:17</p> <p>interest [1] - 2111:43</p> <p>interested [3] - 2040:26, 2115:26, 2117:9</p> <p>interesting [1] - 2132:35</p> <p>interests [1] - 2146:19</p> <p>interim [2] - 2118:10, 2118:18</p> <p>internal [4] - 2047:47, 2105:33, 2111:13, 2111:15</p> <p>interpret [1] - 2098:47</p> <p>interpretation [7] - 2053:32, 2053:34, 2053:35, 2054:40, 2064:13, 2072:15, 2108:29</p> <p>interpreted [3] - 2050:14, 2050:16, 2067:34</p> <p>INTO [1] - 2039:12</p> <p>introduced [2] - 2108:20, 2108:24</p> <p>introducing [1] - 2120:14</p> <p>introduction [1] - 2108:22</p> <p>invariably [1] - 2097:36</p> <p>investigate [6] - 2112:42, 2118:6, 2123:3, 2123:11, 2123:17, 2123:18</p> <p>investigation [3] - 2117:1, 2117:6, 2124:30</p> <p>investigations [3] - 2044:23, 2123:30, 2124:20</p> <p>investigative [1] - 2122:34</p> <p>investment [6] - 2110:29, 2111:8, 2112:24, 2112:38, 2112:43, 2113:1</p> <p>invoice [4] - 2073:10, 2073:16, 2073:22, 2073:28</p>			
I							
<p>idea [2] - 2064:28, 2134:8</p> <p>ideal [1] - 2141:8</p> <p>identity [3] - 2044:24, 2051:3, 2150:42</p> <p>ignore [1] - 2084:3</p> <p>illness [1] - 2068:31</p> <p>illusion [1] - 2040:26</p> <p>imagine [4] - 2068:15, 2073:28, 2082:26, 2098:29</p> <p>immediate [7] - 2041:9, 2041:14, 2041:29, 2061:25, 2105:14, 2105:37, 2123:44</p> <p>immediately [4] - 2044:17, 2115:27, 2123:12, 2129:44</p> <p>impact [1] - 2089:29</p> <p>impediment [1] - 2143:42</p> <p>impediments [1] - 2152:12</p> <p>implementation [1] - 2092:9</p> <p>implicit [1] - 2109:24</p> <p>implicitly [1] - 2108:37</p>							

invoices [4] - 2101:6, 2101:7, 2101:31, 2101:33
INVOICES [1] - 2101:14
involve [3] - 2048:16, 2050:23, 2100:20
involved [30] - 2044:35, 2044:36, 2046:25, 2047:46, 2049:39, 2050:24, 2073:29, 2077:6, 2080:21, 2081:22, 2082:1, 2082:20, 2083:5, 2083:26, 2083:28, 2089:32, 2105:18, 2105:31, 2107:5, 2113:44, 2117:11, 2119:41, 2131:7, 2131:26, 2131:29, 2131:44, 2149:8, 2149:12, 2153:4, 2153:21
involvement [5] - 2081:7, 2081:29, 2082:5, 2087:35, 2132:5
involving [4] - 2046:19, 2047:29, 2049:39, 2050:26
irony [1] - 2075:28
irrespective [3] - 2045:16, 2089:42, 2151:10
issue [16] - 2040:16, 2041:5, 2041:11, 2048:6, 2056:7, 2075:34, 2100:21, 2110:12, 2125:46, 2142:1, 2142:39, 2143:31, 2143:41, 2145:1, 2146:29, 2148:45
issue" [1] - 2041:18
issued [2] - 2071:36, 2072:40
Issues [1] - 2140:34
issues [14] - 2044:35, 2044:36, 2044:37, 2050:42, 2050:47, 2051:3, 2051:5, 2055:47, 2059:18, 2078:40, 2150:22, 2150:37, 2151:6, 2151:13
issues" [1] - 2134:32
it'll [1] - 2112:12
item [2] - 2057:17, 2113:21
items [2] - 2064:46, 2065:1

J

JA [1] - 2097:47
Jackson [3] - 2116:20, 2116:21, 2116:24
Jackson's [1] - 2116:15
January [13] - 2043:22, 2067:10, 2081:33,

2083:44, 2084:25, 2126:36, 2126:40, 2127:6, 2127:30, 2128:24, 2129:43, 2131:44, 2132:25
Jenni [4] - 2120:39, 2128:5, 2128:47, 2129:1
Jennifer [1] - 2039:33
JOHN [1] - 2040:40
join [2] - 2127:2, 2137:47
joined [1] - 2103:3
joining [2] - 2118:6, 2137:17
judgment [1] - 2114:23
judicial [1] - 2075:31
July [6] - 2072:40, 2080:20, 2080:33, 2101:7, 2104:37, 2109:8
June [5] - 2079:3, 2080:3, 2086:1, 2086:2, 2104:36
juridical [1] - 2133:42
Justice [4] - 2039:32, 2039:33, 2149:9, 2149:11
justice [4] - 2046:37, 2046:44, 2055:24, 2055:25
justified [1] - 2122:44

K

keen [1] - 2122:28
keep [4] - 2098:3, 2101:11, 2110:15, 2118:2
Keith [3] - 2040:6, 2081:9, 2082:33
kept [1] - 2140:2
kinds [1] - 2106:3
Kitchingman [3] - 2125:34, 2125:39, 2140:13
knowledge [7] - 2042:43, 2043:39, 2043:43, 2079:44, 2087:28, 2109:4, 2147:36
known [1] - 2074:23

L

labelled [1] - 2063:24
lack [2] - 2109:4, 2137:19
land [7] - 2051:38, 2051:40, 2051:41, 2111:31, 2111:35, 2111:39, 2137:30
lapse [1] - 2043:34
lapsed [2] - 2145:43, 2146:3
large [4] - 2112:43, 2144:7, 2150:12, 2151:29
last [3] - 2047:28, 2134:2, 2138:46
late [2] - 2112:4, 2141:41
latest [1] - 2067:47

launched [1] - 2042:13
Law [4] - 2090:47, 2101:6, 2129:45, 2129:47
law [6] - 2055:14, 2075:22, 2084:43, 2110:8, 2152:37, 2152:43
LAW [1] - 2101:14
lawful [1] - 2077:35
lawyer [4] - 2131:15, 2131:22, 2131:25, 2151:14
lawyers [24] - 2057:1, 2077:26, 2106:23, 2129:24, 2129:27, 2131:7, 2131:11, 2131:29, 2131:36, 2131:44, 2132:1, 2132:5, 2132:14, 2132:20, 2132:21, 2132:35, 2132:46, 2133:4, 2133:41, 2142:1, 2149:7, 2151:42, 2152:42, 2153:15
leading [1] - 2145:7
leasing [1] - 2052:12
least [31] - 2043:4, 2043:22, 2048:28, 2057:28, 2059:40, 2065:1, 2071:20, 2079:26, 2080:8, 2081:6, 2081:8, 2081:43, 2082:19, 2086:11, 2097:1, 2097:21, 2107:12, 2109:39, 2116:8, 2130:10, 2132:5, 2137:37, 2140:13, 2141:3, 2141:46, 2143:10, 2145:45, 2146:34, 2148:11, 2149:16, 2150:10
leave [11] - 2040:6, 2040:8, 2058:31, 2094:24, 2094:26, 2094:28, 2094:35, 2094:37, 2094:46, 2104:41, 2153:27
led [1] - 2062:46
left [4] - 2047:17, 2047:39, 2099:13, 2145:37
left-hand [2] - 2047:17, 2145:37
LEGAL [1] - 2102:3
legal [35] - 2044:37, 2046:47, 2048:20, 2049:20, 2050:17, 2051:16, 2055:8, 2055:9, 2055:12, 2055:30, 2056:22, 2057:18, 2060:39, 2060:46, 2061:9, 2061:30, 2062:6, 2067:42, 2070:2, 2070:8, 2070:11, 2070:16, 2071:12, 2071:40, 2072:24,

2072:25, 2075:29, 2077:34, 2078:36, 2089:42, 2101:21, 2144:10, 2144:20, 2151:15, 2152:11
legally [3] - 2071:35, 2075:24, 2129:11
less [3] - 2062:23, 2064:16, 2070:31
letter [171] - 2040:45, 2040:47, 2042:26, 2042:28, 2042:31, 2042:45, 2042:47, 2043:15, 2043:40, 2044:2, 2044:10, 2044:19, 2047:6, 2048:11, 2049:26, 2049:28, 2056:3, 2057:46, 2058:3, 2058:9, 2058:14, 2058:32, 2058:42, 2058:47, 2059:3, 2059:27, 2059:35, 2059:36, 2059:42, 2060:7, 2060:8, 2060:13, 2060:22, 2060:24, 2061:18, 2061:37, 2062:2, 2062:4, 2063:30, 2064:2, 2064:37, 2064:40, 2065:5, 2066:24, 2066:30, 2067:44, 2068:15, 2068:35, 2068:37, 2071:23, 2071:33, 2079:3, 2079:9, 2081:3, 2081:21, 2082:44, 2082:45, 2083:3, 2083:7, 2083:10, 2083:13, 2083:32, 2083:35, 2083:47, 2084:5, 2084:14, 2084:31, 2084:32, 2085:29, 2086:1, 2086:2, 2086:19, 2086:40, 2086:44, 2087:4, 2087:12, 2087:13, 2088:34, 2088:39, 2089:9, 2089:24, 2089:28, 2089:46, 2090:3, 2090:12, 2090:22, 2090:29, 2090:34, 2090:36, 2090:43, 2091:21, 2092:17, 2092:18, 2092:21, 2092:23, 2092:31, 2092:37, 2092:47, 2093:14, 2093:19, 2095:14, 2095:28, 2095:33, 2095:46, 2096:5, 2096:6, 2096:9, 2096:15, 2096:18, 2096:19, 2096:30, 2114:41, 2114:43, 2114:44, 2114:46, 2115:6, 2115:11, 2115:30, 2116:5,

2117:15, 2119:4, 2119:16, 2119:19, 2119:32, 2119:35, 2120:16, 2122:46, 2123:10, 2124:4, 2124:11, 2124:15, 2124:20, 2124:22, 2124:24, 2124:29, 2125:10, 2126:27, 2126:35, 2126:38, 2126:40, 2127:6, 2127:9, 2129:43, 2130:36, 2130:39, 2131:43, 2132:46, 2134:2, 2136:16, 2136:31, 2136:32, 2136:35, 2138:15, 2138:46, 2140:18, 2140:33, 2145:24, 2146:40, 2147:32, 2148:3, 2148:7, 2148:39, 2149:20, 2149:22, 2149:25, 2150:10, 2150:19, 2152:37
letters [10] - 2058:20, 2086:32, 2086:42, 2123:19, 2123:25, 2124:12, 2124:14, 2130:42, 2139:37, 2153:27
Level [1] - 2039:21
level [10] - 2056:44, 2107:45, 2108:10, 2108:13, 2131:16, 2134:13, 2142:31, 2144:45, 2152:43
liability [38] - 2046:47, 2048:6, 2048:21, 2049:8, 2049:9, 2049:13, 2049:21, 2050:17, 2050:42, 2051:4, 2051:16, 2055:8, 2055:42, 2056:4, 2056:6, 2058:22, 2059:17, 2064:17, 2071:10, 2074:44, 2075:29, 2075:35, 2075:37, 2087:25, 2087:29, 2132:27, 2139:19, 2139:23, 2141:29, 2142:7, 2142:36, 2143:11, 2146:9, 2148:46, 2149:44, 2149:45, 2150:46, 2152:37
liable [6] - 2074:40, 2142:28, 2142:32, 2148:28, 2149:28, 2150:4
liaise [1] - 2108:27
liaising [1] - 2107:12
liaison [2] - 2067:22, 2106:18
licensed [1] - 2107:5
light [1] - 2129:23
likely [6] - 2064:16,

2068:25, 2077:43,
2089:29, 2100:27,
2147:36
limitation [3] - 2051:5,
2061:17, 2151:6
limitations [5] - 2055:43,
2059:18, 2133:46,
2142:37
limited [1] - 2041:9
limits [2] - 2050:42,
2136:40
line [11] - 2057:6, 2057:17,
2098:47, 2099:2,
2099:4, 2104:24,
2112:13, 2123:47,
2136:10, 2137:6, 2151:9
lines [2] - 2064:18,
2150:29
links [1] - 2054:26
Lismore [6] - 2051:30,
2052:30, 2052:47,
2053:46, 2124:19,
2124:38
list [3] - 2041:47, 2086:28,
2125:22
listed [1] - 2097:44
listened [1] - 2120:11
litigated [2] - 2049:41,
2073:6
litigation [12] - 2041:46,
2042:9, 2042:12,
2042:15, 2042:39,
2042:44, 2043:3,
2049:14, 2049:32,
2049:38, 2051:3,
2071:13
locate [3] - 2046:10,
2072:23, 2140:6
logistical [1] - 2040:18
long-term [3] - 2041:36,
2069:19, 2105:37
long-time [2] - 2141:33,
2141:36
look [11] - 2043:35,
2055:41, 2058:33,
2060:10, 2067:44,
2083:45, 2101:44,
2108:44, 2115:46,
2124:29, 2134:31
looked [5] - 2048:17,
2051:22, 2053:40,
2055:27, 2056:43
looking [11] - 2048:20,
2092:41, 2100:19,
2110:24, 2112:7,
2112:18, 2123:28,
2136:17, 2137:47,
2144:15, 2152:39
looks [5] - 2059:8,
2079:11, 2098:45,
2099:3, 2099:11
loosely [1] - 2063:29
loss [1] - 2111:45
lost [6] - 2101:24,
2111:32, 2112:1,
2112:3, 2112:6, 2122:13
lower [1] - 2067:33

luncheon [1] - 2100:44
LUNCHEON [1] - 2100:46

M

Macquarie [2] - 2039:21,
2111:36
magnitude [1] - 2147:45
maintained [1] - 2043:45
major [3] - 2044:36,
2049:38, 2126:31
majority [4] - 2057:28,
2074:7, 2074:12,
2074:14
man [3] - 2082:38,
2113:27, 2142:17
managed [4] - 2047:2,
2054:33, 2120:40,
2131:5
management [8] -
2052:13, 2053:13,
2053:30, 2053:36,
2054:28, 2077:17,
2078:22, 2102:45
manager [4] - 2102:45,
2108:27, 2109:16,
2113:1
managing [1] - 2078:15
mandated [1] - 2121:6
manner [1] - 2095:28
March [17] - 2042:25,
2045:15, 2067:10,
2069:3, 2069:39,
2070:37, 2081:3,
2085:25, 2087:23,
2092:10, 2101:6,
2136:17, 2140:33,
2142:23, 2142:47,
2145:14, 2145:17
mark [2] - 2101:10,
2101:43
markings [1] - 2115:24
Martin [1] - 2115:17
massively [1] - 2120:40
Master [1] - 2102:47
material [10] - 2048:4,
2048:32, 2054:42,
2085:47, 2086:36,
2131:7, 2131:28,
2134:23, 2136:7,
2141:42
Matron [1] - 2115:17
matron [1] - 2083:39
matter [64] - 2040:25,
2041:34, 2042:2,
2042:28, 2044:34,
2045:1, 2047:39,
2047:44, 2049:33,
2053:32, 2055:22,
2056:30, 2065:16,
2066:42, 2067:13,
2068:16, 2069:19,
2070:3, 2074:13,
2075:43, 2085:27,
2085:39, 2086:19,
2090:8, 2092:4,
2094:38, 2095:20,

2095:30, 2097:16,
2100:19, 2104:30,
2106:41, 2108:42,
2113:46, 2114:4,
2114:5, 2114:13,
2114:22, 2115:39,
2117:12, 2117:36,
2123:3, 2123:11,
2123:17, 2123:18,
2123:40, 2124:44,
2124:45, 2125:16,
2125:19, 2125:38,
2126:3, 2126:5,
2128:26, 2128:37,
2131:6, 2131:15,
2135:21, 2135:44,
2139:17, 2140:38,
2152:39, 2153:7
matters [46] - 2041:11,
2041:17, 2041:21,
2041:24, 2045:11,
2045:26, 2045:39,
2046:16, 2046:18,
2046:23, 2046:30,
2047:29, 2047:39,
2047:47, 2049:39,
2049:41, 2057:21,
2067:23, 2081:10,
2081:13, 2084:20,
2085:5, 2086:1,
2087:43, 2109:2,
2109:4, 2109:17,
2116:4, 2126:18,
2131:10, 2132:6,
2133:15, 2134:39,
2135:15, 2139:20,
2141:17, 2142:35,
2143:24, 2144:22,
2145:12, 2145:17,
2146:9, 2150:5,
2151:38, 2152:30
McClellan [1] - 2039:32
McGlinchey [6] - 2094:23,
2094:28, 2094:37,
2095:1, 2100:33,
2100:35
mean [17] - 2048:24,
2058:39, 2071:19,
2072:11, 2078:32,
2097:36, 2101:39,
2104:21, 2107:32,
2111:27, 2111:34,
2113:8, 2125:9,
2127:39, 2127:43,
2139:15, 2146:28
meaning [1] - 2124:14
meaningless [1] -
2062:34
means [4] - 2050:15,
2121:12, 2121:19,
2141:24
meant [7] - 2044:13,
2064:11, 2068:7,
2074:47, 2099:5,
2107:22, 2147:38
measure [5] - 2075:32,
2118:11, 2118:14,
2118:18, 2120:23

mechanism [1] - 2064:10
media [6] - 2128:33,
2129:25, 2130:32,
2131:32, 2131:35,
2131:38
mediating [1] - 2152:45
mediation [1] - 2061:10
medical [2] - 2061:29,
2128:18
medium [1] - 2102:46
medium-sized [1] -
2102:46
meet [7] - 2063:16,
2076:42, 2088:15,
2116:36, 2128:17,
2132:19, 2152:14
meeting [28] - 2046:12,
2046:15, 2046:18,
2056:8, 2056:16,
2067:45, 2080:20,
2082:4, 2082:11,
2082:30, 2082:34,
2087:41, 2096:47,
2097:1, 2097:19,
2099:18, 2099:22,
2117:31, 2117:33,
2118:16, 2118:26,
2125:17, 2134:1,
2134:14, 2135:21,
2137:22, 2146:35,
2150:6
meetings [8] - 2052:39,
2089:33, 2096:37,
2096:43, 2096:46,
2097:28, 2100:22,
2135:35
member [1] - 2096:38
members [14] - 2044:38,
2047:33, 2048:16,
2053:20, 2053:25,
2053:29, 2074:45,
2075:6, 2075:24,
2076:20, 2104:22,
2127:2, 2134:17
memo [1] - 2113:40
memorandum [1] -
2113:13
memory [4] - 2042:46,
2080:14, 2090:4,
2094:36
mental [1] - 2068:31
mention [4] - 2041:45,
2059:46, 2088:39,
2109:28
mentioned [2] - 2116:16,
2127:26
merely [1] - 2100:22
met [2] - 2133:30, 2145:5
metropolitan [1] - 2146:18
mid-2006 [1] - 2104:27
middle [6] - 2057:16,
2107:28, 2108:34,
2110:37, 2112:25,
2123:39
might [24] - 2040:25,
2040:27, 2054:45,
2062:39, 2063:15,

2064:38, 2068:35,
2068:40, 2082:41,
2083:24, 2089:25,
2089:43, 2093:40,
2095:7, 2095:32,
2097:39, 2106:32,
2121:30, 2126:19,
2132:8, 2139:22,
2142:43, 2152:7,
2153:27
million [18] - 2065:46,
2111:30, 2111:38,
2111:39, 2111:41,
2112:1, 2112:3,
2122:13, 2134:21,
2136:2, 2137:37,
2137:46, 2138:5,
2138:39, 2145:39,
2152:28, 2152:36
million-plus [2] - 2136:2,
2152:28
mind [12] - 2048:9,
2059:31, 2062:21,
2074:10, 2100:17,
2108:34, 2110:2,
2112:5, 2123:42,
2128:6, 2141:46, 2142:2
mindful [1] - 2067:41
mine [1] - 2093:6
minimise [2] - 2067:26,
2067:37
minister [1] - 2102:28
Minister [3] - 2102:33,
2102:34, 2112:18
ministry [3] - 2074:34,
2118:2, 2118:8
minute [2] - 2063:3,
2135:18
minutes [7] - 2082:19,
2097:19, 2117:32,
2117:41, 2118:22,
2125:14, 2135:40
mistake [1] - 2153:23
modest [4] - 2061:31,
2061:36, 2061:43,
2144:13
molestation [8] - 2043:5,
2145:39, 2146:24,
2146:31, 2146:39,
2146:45, 2147:37,
2147:46
moment [18] - 2046:13,
2047:37, 2059:37,
2071:26, 2072:25,
2073:1, 2084:3,
2094:23, 2108:24,
2108:45, 2112:10,
2113:6, 2121:33,
2125:13, 2125:32,
2139:36, 2143:8,
2150:20
moments [1] - 2100:11
Monday [2] - 2153:27,
2153:29
MONDAY [1] - 2153:31
money [35] - 2055:47,
2056:12, 2070:23,

<p>2099:45, 2110:47, 2111:1, 2111:6, 2111:8, 2111:12, 2111:32, 2111:37, 2112:6, 2121:3, 2122:2, 2122:15, 2122:17, 2122:21, 2122:28, 2122:38, 2122:41, 2122:43, 2127:24, 2137:19, 2137:28, 2137:46, 2138:1, 2138:2, 2138:27, 2139:22, 2139:30, 2139:45, 2142:42, 2143:46, 2144:17, 2146:15</p> <p>moneys [2] - 2091:4, 2091:26</p> <p>months [14] - 2093:19, 2112:33, 2113:39, 2113:42, 2113:43, 2113:47, 2114:1, 2129:9, 2129:11, 2131:32, 2133:27, 2138:42, 2140:17, 2144:25</p> <p>mood [1] - 2131:28</p> <p>moral [6] - 2049:22, 2051:9, 2054:46, 2054:47, 2055:5, 2056:23</p> <p>moreover [1] - 2062:5</p> <p>Morgan [3] - 2115:17, 2123:29, 2123:45</p> <p>morning [8] - 2057:8, 2072:19, 2093:39, 2093:41, 2094:4, 2094:12, 2094:29, 2153:29</p> <p>mortgaging [1] - 2052:12</p> <p>motion [8] - 2108:14, 2109:8, 2109:39, 2109:42, 2118:8, 2118:30, 2118:34, 2135:32</p> <p>motivating [1] - 2063:11</p> <p>move [14] - 2044:5, 2051:20, 2069:18, 2088:16, 2109:13, 2120:21, 2120:47, 2124:25, 2127:34, 2127:36, 2128:31, 2128:47, 2129:2, 2129:3</p> <p>moved [1] - 2086:11</p> <p>movement [2] - 2041:10, 2041:17</p> <p>moving [1] - 2131:17</p> <p>MR [52] - 2040:1, 2040:5, 2040:10, 2040:15, 2040:30, 2040:37, 2040:42, 2040:44, 2050:36, 2057:6, 2057:35, 2057:40, 2059:2, 2063:22, 2072:17, 2072:23, 2072:32, 2073:31, 2073:38, 2079:2,</p>	<p>2093:33, 2094:19, 2094:34, 2094:43, 2095:5, 2095:7, 2097:18, 2097:25, 2100:31, 2100:37, 2101:5, 2101:17, 2101:26, 2101:31, 2101:35, 2101:41, 2102:5, 2102:9, 2102:11, 2104:46, 2110:7, 2110:12, 2110:17, 2111:34, 2112:23, 2122:46, 2124:19, 2140:6, 2140:25, 2140:29, 2140:32, 2151:21</p> <p>MS [7] - 2093:35, 2093:37, 2094:15, 2094:23, 2094:28, 2095:1, 2100:35</p> <p>must [11] - 2044:46, 2051:22, 2053:19, 2060:33, 2064:31, 2078:7, 2078:25, 2086:37, 2098:25, 2126:30, 2140:15</p> <p>mutually [1] - 2077:3</p>	<p>2072:7, 2072:14, 2080:22, 2081:41, 2082:2, 2082:4, 2083:26, 2088:25, 2121:16, 2141:47, 2144:36, 2149:47</p> <p>never [10] - 2075:30, 2100:3, 2104:30, 2115:7, 2115:9, 2123:25, 2126:12, 2146:19, 2149:45, 2153:7</p> <p>nevertheless [3] - 2054:44, 2150:16, 2152:12</p> <p>new [6] - 2083:34, 2083:38, 2086:15, 2086:16, 2120:21, 2147:8</p> <p>Newby [3] - 2087:36, 2087:37, 2087:41</p> <p>Newcastle [2] - 2137:18, 2137:23</p> <p>newly [1] - 2094:38</p> <p>next [22] - 2047:9, 2047:32, 2048:2, 2050:36, 2050:47, 2058:29, 2059:2, 2060:35, 2077:24, 2079:8, 2087:46, 2098:8, 2098:18, 2098:22, 2101:41, 2112:12, 2116:43, 2117:35, 2136:47, 2138:8, 2145:38, 2150:38</p> <p>Nicol [2] - 2041:22, 2048:4</p> <p>nil [1] - 2068:13</p> <p>nine [1] - 2140:17</p> <p>no-one [3] - 2050:30, 2063:14, 2152:7</p> <p>non [1] - 2106:8</p> <p>non-financial [1] - 2106:8</p> <p>none [1] - 2058:46</p> <p>nonetheless [1] - 2093:15</p> <p>normal [2] - 2095:30, 2096:34</p> <p>North [35] - 2042:36, 2046:15, 2057:29, 2067:16, 2073:17, 2074:13, 2074:23, 2078:6, 2079:27, 2082:39, 2083:40, 2087:3, 2090:35, 2091:25, 2092:42, 2104:30, 2109:19, 2113:28, 2119:23, 2123:26, 2124:8, 2124:32, 2125:29, 2125:35, 2125:47, 2126:28, 2136:11, 2140:14, 2140:22, 2141:25, 2141:31, 2144:22, 2145:16, 2145:36, 2149:28</p> <p>Northern [1] - 2131:8</p> <p>note [9] - 2044:46,</p>	<p>2060:11, 2069:3, 2069:29, 2097:40, 2098:35, 2140:7, 2140:25, 2140:27</p> <p>NOTE [1] - 2140:29</p> <p>noted [3] - 2047:28, 2116:43, 2117:46</p> <p>notes [6] - 2055:37, 2066:32, 2066:34, 2081:40, 2098:2, 2098:44</p> <p>nothing [4] - 2061:1, 2094:17, 2100:37, 2130:31</p> <p>notoriety [1] - 2125:39</p> <p>Notwithstanding [1] - 2108:39</p> <p>notwithstanding [1] - 2075:22</p> <p>NOVEMBER [1] - 2153:31</p> <p>November [15] - 2039:27, 2046:12, 2046:14, 2051:18, 2097:20, 2118:23, 2119:28, 2120:38, 2124:4, 2125:10, 2129:20, 2129:22, 2134:27, 2134:30, 2145:43</p> <p>November/December [1] - 2136:9</p> <p>number [25] - 2044:11, 2047:25, 2060:28, 2060:38, 2069:40, 2080:4, 2102:38, 2103:23, 2104:18, 2106:2, 2107:18, 2107:31, 2107:38, 2111:11, 2111:46, 2113:39, 2116:35, 2132:31, 2139:36, 2145:2, 2145:24, 2148:8, 2150:22, 2151:29, 2152:19</p> <p>numbered [1] - 2076:10</p> <p>numbers [1] - 2112:14</p>	<p>obtained [4] - 2055:15, 2135:13, 2142:43, 2144:43</p> <p>obtaining [1] - 2040:19</p> <p>obviously [14] - 2048:31, 2048:39, 2052:11, 2058:39, 2067:26, 2078:7, 2078:24, 2078:28, 2085:22, 2087:30, 2096:28, 2115:2, 2115:30, 2147:45</p> <p>occasions [2] - 2041:29, 2145:2</p> <p>occupation [2] - 2102:12, 2102:20</p> <p>occur [3] - 2081:16, 2137:23, 2147:4</p> <p>occurred [16] - 2045:14, 2066:25, 2068:12, 2080:22, 2081:18, 2087:3, 2116:9, 2117:30, 2124:35, 2130:31, 2138:2, 2140:22, 2141:31, 2143:41, 2149:28, 2153:5</p> <p>occurrence [4] - 2043:10, 2145:40, 2147:1, 2147:4</p> <p>occurrences [1] - 2147:9</p> <p>October [9] - 2048:39, 2049:6, 2049:27, 2073:10, 2083:32, 2084:6, 2119:5, 2119:17, 2151:36</p> <p>OF [2] - 2102:2, 2102:3</p> <p>offer [22] - 2050:43, 2061:25, 2062:27, 2064:43, 2065:46, 2067:47, 2069:7, 2071:12, 2071:29, 2074:1, 2083:15, 2086:3, 2088:3, 2088:30, 2088:39, 2093:21, 2096:19, 2098:10, 2099:3, 2099:10, 2099:23, 2100:2</p> <p>offered [12] - 2065:31, 2065:36, 2065:42, 2068:7, 2085:20, 2089:15, 2090:20, 2099:6, 2099:45, 2116:35, 2127:21, 2145:30</p> <p>offering [1] - 2059:3</p> <p>offers [5] - 2068:1, 2068:7, 2068:24, 2082:21, 2084:26</p> <p>office [6] - 2086:44, 2095:23, 2095:38, 2107:20, 2125:41, 2146:10</p> <p>officers [1] - 2053:5</p> <p>often [1] - 2115:25</p> <p>once [1] - 2045:6</p> <p>one [75] - 2045:17,</p>
N		O		
<p>name [8] - 2082:39, 2082:41, 2083:24, 2093:37, 2097:46, 2102:12, 2113:27, 2116:15</p> <p>named [3] - 2050:26, 2076:9, 2076:42</p> <p>namely [2] - 2070:43, 2071:33</p> <p>names [3] - 2084:6, 2097:44, 2148:23</p> <p>National [1] - 2102:40</p> <p>national [3] - 2146:10, 2146:12, 2147:8</p> <p>nature [5] - 2048:33, 2058:44, 2062:43, 2139:9, 2139:41</p> <p>need [8] - 2064:23, 2096:18, 2101:38, 2113:27, 2115:5, 2116:20, 2127:20, 2152:13</p> <p>needed [1] - 2150:23</p> <p>needs [1] - 2106:24</p> <p>negotiate [1] - 2153:2</p> <p>negotiated [2] - 2083:17, 2085:9</p> <p>negotiating [1] - 2082:5</p> <p>negotiations [28] - 2046:22, 2059:24, 2060:1, 2062:18, 2062:24, 2064:36, 2065:7, 2065:18, 2065:32, 2066:16, 2066:20, 2067:9, 2067:31, 2068:12, 2068:44, 2071:44,</p>		<p>North [35] - 2042:36, 2046:15, 2057:29, 2067:16, 2073:17, 2074:13, 2074:23, 2078:6, 2079:27, 2082:39, 2083:40, 2087:3, 2090:35, 2091:25, 2092:42, 2104:30, 2109:19, 2113:28, 2119:23, 2123:26, 2124:8, 2124:32, 2125:29, 2125:35, 2125:47, 2126:28, 2136:11, 2140:14, 2140:22, 2141:25, 2141:31, 2144:22, 2145:16, 2145:36, 2149:28</p> <p>Northern [1] - 2131:8</p> <p>note [9] - 2044:46,</p>	<p>o'clock [1] - 2153:29</p> <p>oath [1] - 2040:40</p> <p>obiter [1] - 2149:8</p> <p>objective [1] - 2120:23</p> <p>objects [1] - 2052:15</p> <p>obligation [6] - 2043:27, 2051:9, 2056:23, 2063:16, 2105:22, 2142:33</p> <p>obligations [3] - 2069:42, 2106:28, 2121:1</p> <p>obstacles [1] - 2049:31</p> <p>obstruct [1] - 2131:45</p> <p>obstruction [1] - 2132:14</p> <p>obstructive [2] - 2132:6, 2132:15</p> <p>obtain [3] - 2070:2, 2095:21, 2117:23</p>	<p>offered [12] - 2065:31, 2065:36, 2065:42, 2068:7, 2085:20, 2089:15, 2090:20, 2099:6, 2099:45, 2116:35, 2127:21, 2145:30</p> <p>offering [1] - 2059:3</p> <p>offers [5] - 2068:1, 2068:7, 2068:24, 2082:21, 2084:26</p> <p>office [6] - 2086:44, 2095:23, 2095:38, 2107:20, 2125:41, 2146:10</p> <p>officers [1] - 2053:5</p> <p>often [1] - 2115:25</p> <p>once [1] - 2045:6</p> <p>one [75] - 2045:17,</p>

<p>2046:21, 2046:34, 2050:3, 2050:30, 2056:17, 2058:31, 2060:18, 2060:35, 2060:45, 2061:6, 2061:36, 2062:12, 2063:14, 2064:2, 2064:43, 2065:1, 2065:3, 2066:44, 2069:16, 2071:14, 2072:27, 2073:40, 2078:40, 2080:15, 2091:8, 2092:17, 2092:42, 2093:40, 2095:34, 2102:28, 2104:36, 2104:38, 2105:13, 2106:31, 2107:4, 2107:19, 2107:27, 2108:9, 2109:26, 2109:30, 2109:45, 2112:11, 2117:10, 2117:35, 2118:24, 2118:38, 2119:14, 2121:16, 2122:22, 2123:9, 2123:43, 2123:44, 2126:15, 2126:19, 2126:24, 2132:33, 2134:2, 2139:16, 2139:21, 2141:30, 2142:32, 2143:1, 2143:4, 2145:35, 2145:39, 2145:46, 2146:15, 2146:17, 2151:37, 2152:7, 2152:45, 2153:1, 2153:13</p> <p>one-off [1] - 2071:14</p> <p>ones [1] - 2050:8</p> <p>onforwarded [2] - 2049:2, 2079:23</p> <p>open [4] - 2044:22, 2056:21, 2061:10, 2136:40</p> <p>opening [1] - 2065:35</p> <p>operate [1] - 2104:12</p> <p>operated [2] - 2107:29, 2114:18</p> <p>operation [8] - 2103:43, 2104:10, 2107:26, 2108:4, 2117:21, 2121:23, 2143:1, 2151:37</p> <p>opinion [6] - 2042:35, 2049:30, 2055:16, 2058:39, 2084:43, 2124:42</p> <p>opportunity [3] - 2123:5, 2141:13, 2141:16</p> <p>opposed [1] - 2078:21</p> <p>opposing [1] - 2049:7</p> <p>option [3] - 2061:36, 2063:23, 2065:2</p> <p>options [1] - 2061:23</p> <p>order [3] - 2041:37, 2046:14, 2069:34</p> <p>Ordinance [2] - 2103:5,</p>	<p>2103:31</p> <p>ordinance [17] - 2051:39, 2104:1, 2104:3, 2104:7, 2107:44, 2108:5, 2108:7, 2108:9, 2114:17, 2120:28, 2120:33, 2121:6, 2121:23, 2143:17, 2143:23, 2144:5, 2151:37</p> <p>organisation [1] - 2052:29</p> <p>organisations [2] - 2102:38, 2102:39</p> <p>organise [2] - 2105:13, 2105:36</p> <p>organised [1] - 2116:45</p> <p>original [4] - 2058:38, 2062:23, 2114:44, 2114:46</p> <p>originally [1] - 2067:38</p> <p>otherwise [2] - 2064:38, 2110:45</p> <p>ourselves [1] - 2120:43</p> <p>outcome [1] - 2049:42</p> <p>outlined [2] - 2135:15, 2135:17</p> <p>outside [2] - 2088:20, 2088:22</p> <p>overall [1] - 2067:41</p> <p>overawed [1] - 2117:14</p> <p>overridden [2] - 2103:27, 2104:25</p> <p>overriding [1] - 2108:30</p> <p>overrode [1] - 2108:37</p> <p>oversees [1] - 2106:47</p> <p>oversight [1] - 2126:33</p> <p>overwhelmed [1] - 2133:14</p> <p>overwhelmingly [3] - 2081:31, 2097:32, 2097:36</p> <p>overworked [1] - 2120:40</p> <p>own [6] - 2048:40, 2066:32, 2097:46, 2122:1, 2132:21, 2153:14</p> <p>owned [1] - 2078:14</p> <p>owners [1] - 2051:36</p> <p>ownership [1] - 2077:17</p>	<p>2128:3, 2128:38, 2129:7, 2129:16, 2129:28, 2133:5, 2141:9, 2142:26, 2142:34, 2142:43, 2143:10, 2144:32, 2149:38</p> <p>package" [1] - 2117:19</p> <p>packages [1] - 2133:13</p> <p>page [62] - 2043:20, 2047:9, 2047:29, 2047:32, 2050:36, 2051:27, 2051:31, 2052:16, 2052:28, 2052:37, 2053:12, 2054:8, 2054:12, 2057:9, 2057:16, 2058:29, 2059:2, 2059:31, 2060:43, 2061:22, 2062:32, 2063:22, 2063:24, 2064:20, 2071:7, 2071:27, 2074:16, 2076:16, 2076:29, 2076:36, 2077:9, 2079:8, 2093:8, 2098:8, 2098:22, 2103:22, 2104:37, 2108:47, 2109:29, 2109:30, 2115:15, 2116:35, 2116:43, 2117:18, 2117:45, 2118:29, 2118:30, 2125:16, 2125:18, 2131:8, 2134:31, 2140:33, 2145:25, 2145:35, 2145:38, 2145:44, 2148:39, 2148:44, 2150:19, 2150:20, 2150:35, 2151:23</p> <p>pages [4] - 2044:13, 2048:24, 2111:17, 2148:4</p> <p>paid [2] - 2090:13, 2142:4</p> <p>panel [3] - 2059:10, 2128:13, 2128:17</p> <p>paragraph [24] - 2041:4, 2049:45, 2051:1, 2054:8, 2063:6, 2064:20, 2071:27, 2072:1, 2077:24, 2078:20, 2083:16, 2084:13, 2084:14, 2087:46, 2087:47, 2092:27, 2106:16, 2109:1, 2116:8, 2122:47, 2130:14, 2136:35, 2137:6, 2151:24</p> <p>paragraphs [3] - 2076:10, 2136:47, 2137:5</p> <p>parcel [1] - 2153:3</p> <p>parish [1] - 2053:45</p> <p>part [23] - 2041:15, 2048:14, 2064:36, 2064:39, 2065:15, 2070:2, 2071:10, 2071:23, 2072:1,</p>	<p>2075:47, 2079:44, 2081:25, 2085:24, 2090:13, 2102:28, 2113:23, 2118:12, 2118:32, 2126:31, 2126:32, 2141:34, 2146:18, 2153:18</p> <p>particular [37] - 2047:12, 2051:11, 2054:24, 2056:30, 2060:6, 2065:24, 2066:20, 2067:8, 2068:44, 2075:19, 2075:36, 2075:38, 2083:5, 2083:7, 2088:26, 2088:34, 2090:3, 2090:22, 2092:47, 2103:12, 2104:6, 2114:5, 2115:11, 2115:39, 2119:41, 2123:17, 2127:9, 2131:26, 2132:39, 2133:10, 2135:18, 2142:9, 2143:31, 2143:34, 2144:4, 2144:12, 2147:46</p> <p>particularisation [5] - 2148:16, 2148:34, 2148:36, 2149:5, 2149:32</p> <p>particularised [2] - 2134:40, 2140:39</p> <p>particularly [15] - 2041:19, 2043:26, 2046:18, 2065:23, 2071:28, 2072:24, 2080:20, 2080:39, 2081:32, 2109:18, 2110:29, 2118:39, 2127:31, 2140:33, 2146:24</p> <p>particulars [1] - 2116:46</p> <p>parties [2] - 2065:31, 2074:17</p> <p>partner [1] - 2097:47</p> <p>parts [1] - 2097:1</p> <p>party [1] - 2118:8</p> <p>passed [4] - 2051:39, 2072:5, 2108:38, 2114:34</p> <p>past [4] - 2061:29, 2112:17, 2112:39, 2137:42</p> <p>pastoral [29] - 2051:9, 2059:4, 2062:6, 2062:16, 2063:25, 2068:2, 2074:33, 2077:5, 2085:10, 2088:4, 2088:14, 2088:36, 2088:44, 2088:47, 2089:5, 2089:10, 2089:43, 2089:44, 2093:21, 2096:19, 2105:27, 2118:9, 2118:45, 2119:6, 2119:11, 2120:21, 2127:31, 2128:2, 2142:33</p> <p>pastorally [2] - 2072:6,</p>	<p>2072:13</p> <p>Pat [4] - 2060:16, 2097:45, 2097:46, 2139:24</p> <p>Patrick [2] - 2102:5, 2102:13</p> <p>PATRICK [1] - 2102:7</p> <p>pay [2] - 2138:24, 2138:27</p> <p>payment [12] - 2061:29, 2061:31, 2061:36, 2061:43, 2062:27, 2071:14, 2085:43, 2100:14, 2106:34, 2113:23, 2114:3, 2114:27</p> <p>payments [3] - 2067:37, 2100:7, 2109:3</p> <p>pen [1] - 2115:26</p> <p>penny [1] - 2069:24</p> <p>people [43] - 2040:27, 2041:38, 2045:1, 2048:16, 2048:17, 2054:39, 2054:40, 2056:13, 2056:21, 2058:45, 2062:5, 2062:12, 2062:28, 2068:29, 2071:41, 2071:45, 2075:10, 2076:42, 2078:16, 2078:17, 2078:40, 2084:6, 2089:20, 2090:20, 2107:31, 2115:27, 2120:24, 2120:34, 2120:40, 2121:14, 2124:31, 2125:43, 2137:45, 2142:3, 2142:6, 2142:25, 2147:22, 2152:7, 2152:12, 2152:14, 2152:15, 2152:19, 2153:21</p> <p>people's [1] - 2055:46</p> <p>per [2] - 2111:43, 2144:17</p> <p>perhaps [32] - 2040:47, 2041:36, 2044:7, 2046:23, 2046:45, 2057:46, 2066:3, 2068:16, 2069:1, 2070:6, 2072:37, 2078:29, 2078:44, 2080:7, 2083:44, 2085:40, 2102:45, 2103:29, 2105:37, 2111:38, 2111:39, 2124:34, 2128:18, 2128:46, 2132:26, 2134:30, 2143:43, 2144:2, 2151:23, 2152:12, 2152:47, 2153:18</p> <p>period [16] - 2043:42, 2058:36, 2069:39, 2081:32, 2091:12, 2111:47, 2113:42, 2113:47, 2117:38, 2124:39, 2129:8, 2131:19, 2144:23, 2144:25, 2145:31, 2147:30</p>
P				
<p>.22/11/2013 (20)</p>	<p>package [40] - 2068:2, 2088:4, 2088:14, 2088:45, 2088:47, 2089:6, 2089:10, 2093:22, 2096:20, 2105:42, 2113:19, 2113:24, 2114:26, 2114:28, 2114:30, 2114:32, 2114:34, 2117:21, 2117:28, 2118:7, 2118:45, 2119:7, 2119:11, 2120:22, 2124:27, 2127:32, 2127:41,</p>	<p>2072:1, 2077:24, 2078:20, 2083:16, 2084:13, 2084:14, 2087:46, 2087:47, 2092:27, 2106:16, 2109:1, 2116:8, 2122:47, 2130:14, 2136:35, 2137:6, 2151:24</p> <p>paragraphs [3] - 2076:10, 2136:47, 2137:5</p> <p>parcel [1] - 2153:3</p> <p>parish [1] - 2053:45</p> <p>part [23] - 2041:15, 2048:14, 2064:36, 2064:39, 2065:15, 2070:2, 2071:10, 2071:23, 2072:1,</p>	<p>2075:47, 2079:44, 2081:25, 2085:24, 2090:13, 2102:28, 2113:23, 2118:12, 2118:32, 2126:31, 2126:32, 2141:34, 2146:18, 2153:18</p> <p>particular [37] - 2047:12, 2051:11, 2054:24, 2056:30, 2060:6, 2065:24, 2066:20, 2067:8, 2068:44, 2075:19, 2075:36, 2075:38, 2083:5, 2083:7, 2088:26, 2088:34, 2090:3, 2090:22, 2092:47, 2103:12, 2104:6, 2114:5, 2115:11, 2115:39, 2119:41, 2123:17, 2127:9, 2131:26, 2132:39, 2133:10, 2135:18, 2142:9, 2143:31, 2143:34, 2144:4, 2144:12, 2147:46</p> <p>particularisation [5] - 2148:16, 2148:34, 2148:36, 2149:5, 2149:32</p> <p>particularised [2] - 2134:40, 2140:39</p> <p>particularly [15] - 2041:19, 2043:26, 2046:18, 2065:23, 2071:28, 2072:24, 2080:20, 2080:39, 2081:32, 2109:18, 2110:29, 2118:39, 2127:31, 2140:33, 2146:24</p> <p>particulars [1] - 2116:46</p> <p>parties [2] - 2065:31, 2074:17</p> <p>partner [1] - 2097:47</p> <p>parts [1] - 2097:1</p> <p>party [1] - 2118:8</p> <p>passed [4] - 2051:39, 2072:5, 2108:38, 2114:34</p> <p>past [4] - 2061:29, 2112:17, 2112:39, 2137:42</p> <p>pastoral [29] - 2051:9, 2059:4, 2062:6, 2062:16, 2063:25, 2068:2, 2074:33, 2077:5, 2085:10, 2088:4, 2088:14, 2088:36, 2088:44, 2088:47, 2089:5, 2089:10, 2089:43, 2089:44, 2093:21, 2096:19, 2105:27, 2118:9, 2118:45, 2119:6, 2119:11, 2120:21, 2127:31, 2128:2, 2142:33</p> <p>pastorally [2] - 2072:6,</p>	<p>2072:13</p> <p>Pat [4] - 2060:16, 2097:45, 2097:46, 2139:24</p> <p>Patrick [2] - 2102:5, 2102:13</p> <p>PATRICK [1] - 2102:7</p> <p>pay [2] - 2138:24, 2138:27</p> <p>payment [12] - 2061:29, 2061:31, 2061:36, 2061:43, 2062:27, 2071:14, 2085:43, 2100:14, 2106:34, 2113:23, 2114:3, 2114:27</p> <p>payments [3] - 2067:37, 2100:7, 2109:3</p> <p>pen [1] - 2115:26</p> <p>penny [1] - 2069:24</p> <p>people [43] - 2040:27, 2041:38, 2045:1, 2048:16, 2048:17, 2054:39, 2054:40, 2056:13, 2056:21, 2058:45, 2062:5, 2062:12, 2062:28, 2068:29, 2071:41, 2071:45, 2075:10, 2076:42, 2078:16, 2078:17, 2078:40, 2084:6, 2089:20, 2090:20, 2107:31, 2115:27, 2120:24, 2120:34, 2120:40, 2121:14, 2124:31, 2125:43, 2137:45, 2142:3, 2142:6, 2142:25, 2147:22, 2152:7, 2152:12, 2152:14, 2152:15, 2152:19, 2153:21</p> <p>people's [1] - 2055:46</p> <p>per [2] - 2111:43, 2144:17</p> <p>perhaps [32] - 2040:47, 2041:36, 2044:7, 2046:23, 2046:45, 2057:46, 2066:3, 2068:16, 2069:1, 2070:6, 2072:37, 2078:29, 2078:44, 2080:7, 2083:44, 2085:40, 2102:45, 2103:29, 2105:37, 2111:38, 2111:39, 2124:34, 2128:18, 2128:46, 2132:26, 2134:30, 2143:43, 2144:2, 2151:23, 2152:12, 2152:47, 2153:18</p> <p>period [16] - 2043:42, 2058:36, 2069:39, 2081:32, 2091:12, 2111:47, 2113:42, 2113:47, 2117:38, 2124:39, 2129:8, 2131:19, 2144:23, 2144:25, 2145:31, 2147:30</p>
.22/11/2013 (20)		15		
Transcript produced by Merrill Corporation				

perpetrator [1] - 2045:16
perpetrators [2] -
 2143:18, 2148:24
person [36] - 2060:17,
 2076:28, 2076:29,
 2088:13, 2088:15,
 2088:20, 2088:27,
 2089:2, 2089:9,
 2089:11, 2089:15,
 2093:23, 2093:28,
 2096:23, 2098:40,
 2105:27, 2107:5,
 2107:11, 2114:13,
 2116:22, 2116:44,
 2121:14, 2121:45,
 2122:1, 2122:32,
 2123:13, 2123:14,
 2123:43, 2128:5,
 2128:16, 2128:46,
 2129:33, 2133:42,
 2139:22
personal [2] - 2076:21,
 2094:36
personally [3] - 2045:12,
 2062:5, 2077:21
persons [4] - 2044:24,
 2050:3, 2064:24, 2075:1
pertaining [1] - 2109:17
PETER [1] - 2040:40
Peter [2] - 2039:32, 2135:5
PG-12 [1] - 2114:40
PG-13 [1] - 2115:47
PG-15 [1] - 2116:41
PG-18 [1] - 2119:2
PG-20 [1] - 2119:18
PG-21 [2] - 2119:28,
 2129:20
PG-9 [1] - 2125:14
Phillip [1] - 2120:39
Phillip [1] - 2046:42
phone [4] - 2046:45,
 2114:38, 2120:14,
 2120:43
phoning [1] - 2130:32
phrase [6] - 2041:14,
 2077:15, 2077:20,
 2077:21, 2077:42,
 2078:3
physical [2] - 2044:42,
 2047:18
physically [1] - 2083:39
pick [1] - 2052:37
piece [4] - 2131:31,
 2137:32, 2143:21
PJ [1] - 2097:46
place [19] - 2040:15,
 2043:11, 2053:9,
 2055:1, 2056:17,
 2065:11, 2066:26,
 2101:12, 2112:19,
 2116:10, 2120:9,
 2120:13, 2120:15,
 2120:16, 2121:15,
 2128:23, 2128:25,
 2130:33, 2135:43
Place [1] - 2039:22
place" [1] - 2116:12

places [1] - 2122:25
plain [2] - 2136:35,
 2152:37
plead [1] - 2123:46
pleased [1] - 2126:14
pleases [1] - 2040:5
plus [2] - 2136:2, 2152:28
point [15] - 2050:6,
 2050:21, 2061:6,
 2062:15, 2073:11,
 2073:16, 2080:25,
 2090:11, 2104:26,
 2123:9, 2129:35,
 2139:10, 2139:42,
 2140:34, 2150:1
points [3] - 2051:1,
 2060:23, 2107:38
police [7] - 2045:28,
 2045:42, 2046:19,
 2046:23, 2047:39,
 2105:19, 2105:23
policies [3] - 2110:7,
 2145:15, 2145:25
policy [11] - 2042:39,
 2042:44, 2042:45,
 2043:5, 2043:10,
 2043:16, 2043:33,
 2043:35, 2043:41,
 2145:43, 2146:3
poor [1] - 2110:46
poorly [1] - 2089:25
Port [1] - 2111:36
portfolio [1] - 2102:32
portfolios [1] - 2102:33
portions [1] - 2115:16
position [48] - 2040:32,
 2044:22, 2044:31,
 2048:5, 2049:5,
 2049:17, 2049:25,
 2050:41, 2055:12,
 2055:31, 2055:41,
 2056:14, 2059:10,
 2065:35, 2075:22,
 2075:28, 2076:37,
 2078:35, 2080:40,
 2080:41, 2086:12,
 2102:15, 2103:31,
 2107:24, 2108:33,
 2109:38, 2110:17,
 2110:43, 2111:24,
 2113:11, 2120:9,
 2120:27, 2120:32,
 2122:43, 2122:44,
 2124:47, 2131:13,
 2131:17, 2133:19,
 2133:41, 2134:45,
 2135:47, 2141:3,
 2142:30, 2143:8,
 2145:17, 2146:4,
 2150:20
positions [1] - 2056:22
possibility [1] - 2063:4
possible [7] - 2044:35,
 2055:9, 2060:3,
 2062:17, 2062:41,
 2067:28, 2116:33
possibly [1] - 2049:38

potential [1] - 2055:33
potentially [1] - 2126:18
powers [1] - 2052:11
practical [2] - 2040:21,
 2085:10
practice [4] - 2095:30,
 2096:34, 2096:37,
 2096:47
pre [1] - 2042:15
pre-litigation [1] - 2042:15
precautionary [1] -
 2075:32
preceded [1] - 2066:27
predictable [1] - 2090:28
Prejudice [2] - 2060:22,
 2085:7
prejudice [2] - 2068:2,
 2088:1
preliminary [1] - 2142:27
premium [5] - 2043:21,
 2145:29, 2145:32,
 2147:32, 2147:42
prepare [1] - 2114:36
prepared [3] - 2048:47,
 2064:22, 2088:3
PREPARED [1] - 2140:29
present [7] - 2071:34,
 2087:41, 2099:18,
 2114:36, 2114:37,
 2118:27, 2151:28
presentation [1] - 2123:41
presently [2] - 2109:14,
 2118:11
president [4] - 2052:29,
 2052:34, 2052:38,
 2053:19
presiding [2] - 2082:18,
 2118:27
presumably [7] - 2041:35,
 2041:38, 2051:13,
 2056:38, 2062:38,
 2064:15, 2121:35
presume [12] - 2071:19,
 2077:14, 2077:38,
 2088:9, 2093:15,
 2104:2, 2106:24,
 2110:18, 2115:31,
 2119:10, 2121:19,
 2144:28
presumed [1] - 2083:2
presumption [2] -
 2143:23, 2143:25
pretty [1] - 2147:39
prevent [2] - 2084:18,
 2147:26
previous [10] - 2043:30,
 2060:43, 2062:32,
 2084:34, 2085:5,
 2085:29, 2091:20,
 2095:34, 2095:46
previously [3] - 2044:20,
 2068:1, 2094:31
price [1] - 2070:7
priest [1] - 2113:44
priests [2] - 2123:47,
 2153:4
primate [2] - 2060:14,
 2060:44

primate's [1] - 2061:18
Primate's [1] - 2060:23
principal [3] - 2110:41,
 2112:8, 2112:13
principle [2] - 2060:43,
 2061:2
principles [6] - 2059:37,
 2059:41, 2060:6,
 2060:32, 2060:44,
 2060:45
print [1] - 2044:5
private [1] - 2065:27
pro [1] - 2080:14
problem [4] - 2040:18,
 2040:21, 2112:11,
 2136:7
problems [1] - 2138:44
procedural [1] - 2134:32
Procedural [1] - 2140:34
procedure [1] - 2151:28
procedures [1] - 2110:7
proceed [3] - 2132:42,
 2133:7, 2142:33
proceeded [1] - 2142:35
proceeding [1] - 2143:43
proceedings [19] -
 2040:20, 2040:26,
 2040:32, 2042:13,
 2047:43, 2058:26,
 2066:4, 2066:45,
 2067:42, 2071:40,
 2078:36, 2081:26,
 2082:7, 2083:4,
 2086:37, 2091:23,
 2091:32, 2135:5
process [28] - 2045:24,
 2059:18, 2079:45,
 2106:1, 2118:10,
 2120:20, 2128:1,
 2128:11, 2128:19,
 2128:37, 2128:47,
 2129:6, 2129:16,
 2129:28, 2131:25,
 2131:27, 2131:45,
 2132:2, 2132:40,
 2133:5, 2141:10,
 2142:23, 2143:10,
 2149:37, 2149:38,
 2150:5, 2152:22,
 2153:15
processed [1] - 2144:31
processes [3] - 2060:47,
 2061:11, 2152:5
processing [7] - 2119:12,
 2132:6, 2132:15,
 2142:25, 2143:43,
 2144:2, 2144:4
produced [1] - 2055:36
professional [59] -
 2041:38, 2044:36,
 2045:2, 2045:27,
 2045:31, 2045:38,
 2046:12, 2046:14,
 2046:26, 2046:30,
 2050:17, 2057:21,
 2072:45, 2073:2,
 2087:40, 2087:42,
 2094:8, 2103:25,
 2103:32, 2103:35,
 2103:38, 2104:22,
 2104:29, 2105:1,
 2105:4, 2105:5,
 2105:10, 2105:32,
 2106:4, 2106:32,
 2107:13, 2108:28,
 2108:41, 2109:29,
 2114:6, 2114:12,
 2114:19, 2115:41,
 2117:20, 2119:36,
 2119:40, 2120:1,
 2120:8, 2120:47,
 2121:13, 2121:20,
 2121:22, 2121:31,
 2122:1, 2122:30,
 2122:33, 2123:10,
 2123:40, 2123:41,
 2125:15, 2128:45,
 2136:36, 2142:13,
 2144:29
Professional [7] -
 2057:17, 2057:31,
 2103:4, 2103:30,
 2109:12, 2123:2, 2139:1
program [1] - 2118:34
proper [1] - 2123:40
properly [2] - 2124:26,
 2133:37
properties [1] - 2111:46
property [5] - 2051:37,
 2052:5, 2052:6,
 2106:19, 2111:4
Property [1] - 2051:46
proposal [8] - 2059:23,
 2063:25, 2063:47,
 2064:39, 2096:27,
 2114:18, 2117:19,
 2119:36
proposals [4] - 2064:23,
 2064:29, 2064:37,
 2070:46
propose [1] - 2106:27
proposed [3] - 2049:9,
 2051:4, 2150:43
proposition [3] - 2052:4,
 2099:39, 2099:47
propositions [1] - 2131:47
proprietor [1] - 2102:13
prosecution [1] - 2049:32
prospects [1] - 2063:38
protect [4] - 2051:15,
 2075:18, 2075:36,
 2143:25
protected [3] - 2074:17,
 2075:6, 2075:11
protecting [2] - 2143:17,
 2146:19
protocol [48] - 2049:15,
 2049:18, 2050:4,
 2050:20, 2050:22,
 2103:8, 2103:9,
 2103:24, 2103:42,
 2104:8, 2104:46,
 2105:11, 2105:16,

2106:1, 2106:16,
2106:39, 2106:47,
2107:11, 2107:14,
2107:26, 2107:44,
2108:13, 2108:18,
2108:19, 2108:35,
2108:39, 2109:25,
2109:27, 2109:40,
2110:5, 2114:18,
2120:17, 2120:29,
2120:32, 2121:7,
2121:12, 2121:23,
2122:23, 2129:7,
2132:7, 2141:10,
2143:1, 2143:4,
2143:17, 2144:5,
2145:45, 2151:38,
2152:26
protocol^[1] - 2108:7
protocols^[3] - 2049:36,
2151:27, 2152:38
provide^[16] - 2052:18,
2071:4, 2076:43,
2089:43, 2105:27,
2107:27, 2114:13,
2123:5, 2124:26,
2124:27, 2128:17,
2139:3, 2139:29,
2139:39, 2142:24,
2152:14
provided^[26] - 2041:28,
2048:3, 2048:32,
2054:42, 2058:21,
2059:3, 2063:47,
2064:35, 2064:39,
2071:12, 2074:2,
2075:23, 2076:3,
2077:10, 2078:39,
2079:36, 2081:43,
2090:17, 2100:3,
2115:32, 2119:6,
2127:24, 2129:39,
2140:37, 2148:33,
2148:36
provides^[1] - 2054:13
providing^[7] - 2074:33,
2093:21, 2100:18,
2100:26, 2105:41,
2142:22, 2143:30
provision^[5] - 2053:13,
2064:10, 2075:1,
2078:22, 2096:29
provisions^[1] - 2143:16
PSC^[5] - 2106:35,
2106:40, 2107:6,
2118:6, 2118:12
PSD^[1] - 2106:35
pseudonym^[2] - 2086:28,
2125:22
pseudonyms^[2] -
2041:47, 2082:40
psychological^[3] -
2044:41, 2047:18,
2068:32
psychologically^[2] -
2083:39, 2089:20
psychologist^[1] -

2122:31
Public^[1] - 2039:17
public^[3] - 2136:9,
2144:45, 2146:9
publicity^[1] - 2126:45
publicly^[1] - 2131:28
published^[1] - 2131:29
purpose^[1] - 2076:32
purposes^[2] - 2072:30,
2099:27
pursue^[1] - 2051:2
push^[2] - 2049:7, 2140:43
put^[34] - 2040:44,
2055:19, 2069:7,
2070:6, 2098:27,
2099:10, 2099:16,
2099:31, 2100:1,
2101:17, 2103:17,
2108:29, 2108:31,
2111:41, 2114:21,
2116:32, 2116:37,
2120:28, 2121:41,
2126:30, 2130:15,
2130:43, 2131:47,
2141:3, 2143:1, 2143:4,
2146:15, 2149:26,
2149:39, 2150:11,
2150:13, 2150:15,
2151:37
puts^[1] - 2146:13
putting^[3] - 2066:23,
2130:20, 2135:46

Q

Queensland^[4] - 2102:29,
2102:40, 2131:10,
2136:12
queried^[1] - 2054:40
queries^[2] - 2111:4,
2120:12
questions^[17] - 2042:6,
2055:11, 2056:4,
2059:34, 2065:29,
2093:33, 2093:39,
2094:21, 2100:33,
2103:30, 2107:42,
2115:9, 2120:4, 2142:6,
2143:38, 2143:40,
2153:26
quick^[2] - 2095:24,
2095:28
quickly^[5] - 2042:38,
2055:47, 2095:22,
2133:12, 2142:5
quite^[14] - 2048:41,
2055:35, 2087:6,
2087:11, 2106:43,
2111:37, 2113:47,
2115:12, 2126:45,
2127:26, 2131:42,
2137:27, 2151:15,
2152:39

R

raise^[3] - 2135:46,
2151:14, 2153:13
raised^[15] - 2040:16,
2040:24, 2050:47,
2065:26, 2107:28,
2117:31, 2117:33,
2124:44, 2125:37,
2129:30, 2142:36,
2145:1, 2146:25,
2146:34, 2152:29
raising^[1] - 2142:39
ramifications^[1] - 2143:2
ran^[1] - 2124:38
range^[5] - 2062:41,
2085:8, 2100:18,
2100:28, 2109:13
rata^[1] - 2080:14
ratcheted^[1] - 2131:15
rate^[1] - 2111:43
rather^[9] - 2049:14,
2062:18, 2069:18,
2082:34, 2112:7,
2121:1, 2137:3,
2146:29, 2149:4
rational^[1] - 2056:14
RC-9^[1] - 2136:31
RC-90^[1] - 2085:47
reach^[2] - 2067:27,
2070:7
reached^[2] - 2091:13,
2118:19
react^[1] - 2062:12
reaction^[5] - 2048:10,
2048:13, 2048:14,
2048:24, 2048:30
read^[20] - 2042:45,
2052:12, 2059:37,
2060:35, 2062:25,
2068:9, 2077:31,
2077:38, 2092:18,
2092:23, 2099:32,
2101:29, 2115:7,
2115:9, 2130:7,
2130:35, 2130:42,
2131:7, 2140:9
reading^[3] - 2059:15,
2066:15, 2089:9
reads^[1] - 2063:35
real^[3] - 2055:47,
2107:21, 2138:3
realise^[4] - 2054:39,
2068:24, 2117:8,
2125:24
realised^[5] - 2043:29,
2112:6, 2112:10,
2117:11, 2150:31
really^[9] - 2043:43,
2046:46, 2048:20,
2056:20, 2068:45,
2069:15, 2094:13,
2107:32, 2117:13
reason^[8] - 2040:24,
2043:46, 2046:21,
2049:37, 2077:5,

2081:23, 2111:19,
2133:10
Reasonable^[1] - 2061:30
reasonable^[20] - 2041:43,
2044:31, 2056:24,
2056:36, 2057:27,
2063:17, 2064:13,
2068:21, 2068:33,
2072:15, 2090:31,
2092:36, 2093:10,
2100:5, 2111:6,
2114:25, 2131:18,
2144:45, 2148:32,
2153:17
reasonably^[3] - 2042:38,
2091:21, 2111:23
reasons^[1] - 2122:22
receipt^[1] - 2087:29
receive^[7] - 2046:1,
2070:27, 2076:30,
2079:37, 2087:15,
2107:6, 2132:33
received^[44] - 2042:8,
2042:26, 2042:31,
2044:14, 2046:9,
2050:45, 2057:7,
2059:36, 2063:29,
2069:22, 2075:4,
2075:14, 2079:14,
2079:39, 2083:32,
2085:24, 2086:7,
2086:26, 2087:24,
2089:25, 2089:28,
2090:34, 2090:39,
2091:47, 2093:9,
2093:16, 2115:12,
2116:44, 2118:3,
2118:15, 2119:16,
2119:32, 2124:20,
2124:21, 2127:6,
2129:43, 2131:43,
2132:46, 2135:23,
2135:28, 2140:18,
2145:19, 2149:21,
2149:22
receiving^[10] - 2043:15,
2046:36, 2064:6,
2079:16, 2079:19,
2079:25, 2083:34,
2094:5, 2126:40,
2146:40
recent^[3] - 2054:39,
2096:44, 2096:46
recently^[1] - 2109:3
recipient^[1] - 2089:29
recognise^[3] - 2095:33,
2097:41, 2152:13
recognises^[1] - 2109:11
recognising^[1] - 2152:11
recollection^[10] -
2044:15, 2046:32,
2057:24, 2065:39,
2095:17, 2095:18,
2095:27, 2096:3,
2096:33, 2099:35
recollections^[1] -
2135:42

recommend^[1] - 2114:4
recommendation^[9] -
2063:41, 2100:12,
2100:27, 2105:31,
2106:13, 2106:32,
2113:18, 2113:22,
2113:44
recommendations^[4] -
2059:11, 2099:42,
2099:44, 2106:2
recommended^[1] -
2106:4
reconciliation^[1] -
2061:11
record^[4] - 2040:15,
2066:39, 2098:4,
2135:40
recourse^[1] - 2060:46
recovering^[1] - 2152:12
rector^[7] - 2052:30,
2052:46, 2053:19,
2053:29, 2053:45,
2058:43, 2124:37
red^[1] - 2115:25
redacted^[5] - 2047:16,
2103:9, 2115:2,
2118:15, 2121:17
redraft^[1] - 2078:46
redress^[2] - 2105:42,
2106:3
reduced^[1] - 2080:13
reducing^[1] - 2149:45
refer^[21] - 2044:47,
2045:4, 2045:37,
2046:44, 2050:20,
2052:13, 2058:8,
2060:13, 2062:33,
2066:27, 2066:37,
2072:13, 2082:40,
2086:27, 2092:47,
2109:42, 2110:28,
2115:5, 2124:14,
2125:22, 2147:22
reference^[16] - 2041:4,
2041:18, 2045:12,
2051:21, 2058:42,
2060:31, 2062:22,
2066:36, 2069:43,
2071:22, 2088:44,
2098:31, 2108:47,
2115:16, 2115:20,
2118:13
references^[1] - 2133:13
referred^[37] - 2042:3,
2042:17, 2042:31,
2043:41, 2044:17,
2045:27, 2045:28,
2045:30, 2045:39,
2045:40, 2045:41,
2046:22, 2046:30,
2056:43, 2058:46,
2062:42, 2063:24,
2066:25, 2079:41,
2082:11, 2085:27,
2085:36, 2086:38,
2090:8, 2094:7,
2096:29, 2103:18,

2105:42, 2113:19,
2114:33, 2117:37,
2118:14, 2127:10,
2127:11, 2132:47,
2143:24, 2149:19
referring [18] - 2041:21,
2045:26, 2046:18,
2046:24, 2047:39,
2049:15, 2050:16,
2066:32, 2082:22,
2090:21, 2094:5,
2114:30, 2114:32,
2137:7, 2141:29,
2141:32, 2141:36,
2147:28
refers [2] - 2062:16,
2088:36
reflected [4] - 2055:1,
2061:39, 2079:22,
2080:7
reflecting [1] - 2069:18
reflects [1] - 2044:33
refreshes [1] - 2042:46
refuse [1] - 2084:26
refusing [2] - 2149:43,
2149:45
refuted [2] - 2150:12,
2150:16
regard [5] - 2050:7,
2062:18, 2078:35,
2084:34, 2085:10
regarding [5] - 2042:35,
2043:28, 2052:12,
2095:29, 2099:44
regards [3] - 2084:44,
2087:41, 2087:42
region [1] - 2144:16
registrar [23] - 2043:36,
2086:12, 2086:15,
2086:17, 2087:35,
2102:15, 2102:23,
2102:27, 2102:43,
2104:28, 2106:13,
2106:17, 2106:41,
2107:36, 2108:19,
2108:39, 2109:43,
2110:18, 2112:33,
2120:9, 2126:17,
2147:20, 2147:26
registrars [1] - 2146:35
registry [6] - 2044:17,
2045:10, 2085:28,
2090:8, 2090:37,
2095:24
regret [1] - 2056:33
regular [4] - 2096:43,
2097:4, 2107:6, 2146:37
regularly [1] - 2104:22
reinforce [1] - 2141:9
rejected [4] - 2071:29,
2099:3, 2099:6, 2099:7
rejected" [1] - 2099:3
rejecting [1] - 2067:46
relate [1] - 2113:36
related [4] - 2041:24,
2046:46, 2103:8,
2113:27

relates [2] - 2057:10,
2094:39
relating [1] - 2058:37
relation [16] - 2042:29,
2044:37, 2055:42,
2062:23, 2066:45,
2081:14, 2082:38,
2086:26, 2086:36,
2086:47, 2091:24,
2096:12, 2097:10,
2097:31, 2099:36,
2100:4
release [14] - 2064:24,
2064:30, 2064:44,
2064:45, 2070:43,
2073:40, 2073:47,
2074:5, 2074:11,
2075:5, 2083:14,
2083:20, 2083:23,
2086:23
releasees [1] - 2074:16
releasing [1] - 2064:24
releaser [1] - 2075:38
relevant [8] - 2047:33,
2047:43, 2053:5,
2069:45, 2109:18,
2109:36, 2118:37,
2122:20
relied [1] - 2047:44
relocated [1] - 2051:40
rely [1] - 2061:17
relying [4] - 2099:40,
2121:2, 2135:39,
2144:35
remainder [2] - 2080:21,
2080:27
remained [1] - 2070:42
remains [1] - 2049:30
remark [1] - 2046:34
remember [18] - 2046:28,
2058:17, 2058:18,
2066:12, 2066:19,
2066:30, 2066:44,
2079:25, 2080:42,
2095:9, 2096:26,
2107:35, 2116:19,
2119:19, 2119:22,
2120:14, 2129:2,
2134:16
remembering [1] -
2082:41
repeat [1] - 2070:4
replaced [1] - 2061:6
replied [5] - 2083:44,
2095:42, 2119:28,
2150:10, 2150:11
reply [6] - 2059:22,
2086:7, 2087:16,
2090:40, 2093:15,
2115:46
report [5] - 2105:22,
2112:8, 2113:46,
2118:3, 2145:4
reporting [2] - 2105:18,
2109:2
reports [2] - 2105:4,
2107:6

represent [3] - 2098:27,
2109:23, 2132:22
representation [1] -
2131:21
representatives [1] -
2059:12
represented [5] - 2040:28,
2041:22, 2050:4,
2129:11, 2129:24
representing [3] -
2053:37, 2131:1,
2139:28
request [1] - 2116:37
requests [1] - 2044:20
required [3] - 2053:28,
2108:35, 2120:44
requiring [1] - 2150:36
research [2] - 2048:40,
2048:41
reserves [5] - 2111:27,
2111:29, 2137:8,
2138:11, 2138:31
resided [1] - 2088:26
resident [2] - 2082:39,
2125:29
residents [4] - 2071:35,
2084:18, 2109:45,
2130:32
resigned [1] - 2102:25
resiled [1] - 2058:38
resisted [1] - 2070:12
resolution [9] - 2041:11,
2041:17, 2041:31,
2041:35, 2069:19,
2104:34, 2123:13,
2128:7, 2134:12
resolved [3] - 2109:3,
2117:23, 2142:1
resource [1] - 2142:19
resources [5] - 2062:33,
2062:38, 2062:47,
2063:3, 2063:19
respect [49] - 2042:8,
2042:21, 2043:21,
2046:3, 2046:5,
2047:43, 2048:29,
2048:36, 2057:28,
2057:42, 2059:23,
2062:4, 2067:16,
2072:24, 2073:17,
2074:12, 2074:44,
2075:38, 2075:43,
2076:38, 2080:41,
2081:40, 2085:25,
2086:31, 2087:9,
2089:45, 2090:35,
2092:11, 2119:3,
2119:12, 2121:22,
2125:1, 2126:5,
2126:19, 2127:29,
2127:31, 2129:19,
2129:21, 2129:34,
2131:38, 2132:4,
2132:15, 2132:41,
2134:12, 2135:12,
2142:18, 2144:20,
2145:29, 2147:1

respective [1] - 2056:22
respects [1] - 2064:2
respond [5] - 2072:6,
2078:17, 2078:42,
2096:15, 2133:30
responded [3] - 2071:35,
2090:7, 2115:8
responding [1] - 2135:12
response [18] - 2044:19,
2046:4, 2048:2,
2059:44, 2061:2,
2066:23, 2067:5,
2089:44, 2090:9,
2090:21, 2090:25,
2090:30, 2092:36,
2092:41, 2095:34,
2116:18, 2123:7
response" [1] - 2062:17
responses [1] - 2090:2
RESPONSES [1] -
2039:13
responsibilities [2] -
2109:14, 2145:47
responsibility [1] -
2047:46, 2049:22,
2054:46, 2054:47,
2055:6, 2056:23,
2077:27, 2077:35,
2078:18, 2078:41,
2149:44
responsible [14] - 2052:5,
2052:6, 2052:8, 2052:9,
2052:42, 2075:25,
2078:14, 2078:15,
2123:4, 2123:34,
2123:38, 2150:4,
2151:14, 2153:18
resting [1] - 2075:35
result [6] - 2068:32,
2086:19, 2117:5,
2127:9, 2153:5, 2153:22
RESUMPTION [1] - 2101:1
retrospect [2] - 2044:45,
2092:44
return [4] - 2091:20,
2120:27, 2140:32,
2151:23
returning [3] - 2093:14,
2104:46, 2147:29
reveal [1] - 2054:45
reverend [1] - 2141:38
Reverend [74] - 2041:8,
2041:27, 2041:32,
2043:26, 2043:33,
2043:36, 2043:44,
2045:32, 2046:20,
2046:29, 2046:40,
2047:7, 2047:38,
2047:40, 2047:44,
2048:10, 2048:23,
2058:4, 2058:16,
2059:22, 2059:43,
2060:5, 2060:16,
2061:20, 2064:4,
2064:6, 2064:15,
2066:15, 2066:19,
2066:44, 2067:3,

2067:22, 2067:36,
2067:40, 2068:39,
2068:45, 2069:23,
2074:38, 2075:5,
2076:25, 2076:31,
2076:37, 2077:9,
2077:15, 2077:41,
2079:10, 2079:20,
2080:40, 2081:7,
2081:13, 2081:31,
2081:43, 2082:20,
2082:28, 2085:25,
2086:11, 2092:10,
2093:46, 2094:6,
2097:33, 2097:45,
2097:46, 2098:14,
2099:30, 2099:42,
2100:8, 2100:14,
2115:17, 2115:21,
2123:29, 2123:45,
2125:34, 2125:39,
2140:13
Richard [1] - 2084:1
right-hand [2] - 2051:32,
2097:45
rights [2] - 2061:8,
2061:17
Ringtail [1] - 2103:23
Robert [1] - 2039:34
Robinson [2] - 2041:23,
2048:5
Rocks [1] - 2111:36
Roland [47] - 2040:37,
2040:45, 2041:46,
2044:3, 2049:24,
2057:40, 2061:42,
2065:13, 2067:2,
2072:32, 2073:38,
2078:10, 2079:2,
2079:13, 2088:47,
2089:31, 2093:33,
2093:37, 2095:7,
2095:8, 2095:33,
2097:20, 2097:40,
2097:46, 2118:28,
2130:11, 2132:21,
2133:26, 2133:34,
2134:46, 2134:47,
2135:4, 2135:5,
2135:11, 2140:37,
2140:43, 2141:4,
2143:31, 2144:21,
2144:36, 2145:12,
2145:22, 2145:24,
2148:3, 2149:16,
2150:11, 2151:24
ROLAND [1] - 2040:40
Roland's [4] - 2072:25,
2101:18, 2144:10,
2144:13
role [9] - 2052:10,
2058:44, 2078:20,
2078:21, 2104:47,
2106:17, 2106:23,
2121:21, 2126:17
roll [1] - 2150:32
rolled [1] - 2041:41
room [1] - 2066:5

rough [1] - 2070:26
roughly [1] - 2111:37
route [2] - 2144:35, 2144:43
ROYAL [1] - 2039:12
Royal [5] - 2040:5, 2072:32, 2097:3, 2097:44, 2102:12
run [5] - 2047:2, 2054:33, 2104:31, 2121:7, 2121:12
running [5] - 2045:3, 2053:35, 2054:28, 2054:29, 2054:30
runs [1] - 2053:9

S

sad [1] - 2087:12
sadly [1] - 2129:17
sadness [1] - 2116:3
safe [2] - 2118:2, 2118:8
sale [5] - 2051:38, 2063:4, 2063:5, 2063:16, 2063:20
sample [1] - 2103:10
sat [1] - 2149:46
satisfaction [1] - 2150:3
satisfied [1] - 2150:37
save [4] - 2046:11, 2068:1, 2071:39, 2075:23
saved [1] - 2071:12
saw [5] - 2052:10, 2073:12, 2090:9, 2115:36, 2145:45
SC [3] - 2039:38, 2046:38, 2046:39
scared [1] - 2138:36
scaring [1] - 2152:44
sceptical [4] - 2125:9, 2130:19, 2130:27, 2130:29
sceptical" [1] - 2130:23
schedule [1] - 2073:14
scheduled [1] - 2056:17
scheme [2] - 2059:5, 2118:9
School [2] - 2110:20, 2110:31
school [9] - 2110:24, 2111:31, 2112:8, 2112:17, 2112:44, 2122:2, 2122:6, 2122:7, 2138:41
screen [7] - 2040:45, 2042:26, 2071:8, 2103:17, 2104:47, 2108:46, 2118:39
scroll [8] - 2047:15, 2054:8, 2058:20, 2060:42, 2073:43, 2113:14, 2116:30, 2116:42
scrolled [2] - 2098:7, 2098:21
second [29] - 2041:4,

2041:15, 2047:28, 2051:27, 2052:3, 2062:15, 2071:27, 2072:1, 2078:20, 2092:27, 2093:8, 2100:2, 2101:26, 2108:47, 2109:1, 2115:15, 2116:8, 2117:45, 2118:12, 2118:28, 2123:27, 2124:22, 2124:29, 2125:15, 2125:18, 2136:35, 2137:6, 2137:7, 2145:25
second-last [1] - 2047:28
secondly [3] - 2122:28, 2138:2, 2153:3
secretary [5] - 2113:1, 2124:32, 2141:33, 2141:36, 2141:41
secured [1] - 2112:44
see [111] - 2042:46, 2043:20, 2043:22, 2044:3, 2044:28, 2047:10, 2047:15, 2047:33, 2047:46, 2050:38, 2051:27, 2051:32, 2052:31, 2053:12, 2054:19, 2055:27, 2057:16, 2057:18, 2057:30, 2058:1, 2059:13, 2060:10, 2060:13, 2060:43, 2061:6, 2061:33, 2062:21, 2062:35, 2063:23, 2063:26, 2063:34, 2063:43, 2064:20, 2064:25, 2066:34, 2066:36, 2068:3, 2069:2, 2069:28, 2070:35, 2071:16, 2074:16, 2076:8, 2076:25, 2076:45, 2077:32, 2079:7, 2081:21, 2083:15, 2083:20, 2083:47, 2084:1, 2084:7, 2084:11, 2084:22, 2084:47, 2085:16, 2085:17, 2086:43, 2086:44, 2088:7, 2090:45, 2091:1, 2091:5, 2091:29, 2092:6, 2092:27, 2092:34, 2096:18, 2100:26, 2103:23, 2105:45, 2107:7, 2109:1, 2109:34, 2113:12, 2113:17, 2114:41, 2115:15, 2115:17, 2115:21, 2116:10, 2116:18, 2117:40, 2118:40, 2118:42, 2119:7, 2122:47, 2125:16, 2125:19, 2130:16, 2134:38, 2134:42,

2136:32, 2136:37, 2136:43, 2136:47, 2139:5, 2139:12, 2140:33, 2140:39, 2141:33, 2145:32, 2145:35, 2145:38, 2145:40, 2148:39, 2148:41, 2151:23, 2151:32
seeing [2] - 2079:26, 2086:32
seek [10] - 2040:5, 2054:37, 2084:16, 2088:16, 2094:24, 2100:20, 2113:21, 2117:26, 2117:27, 2133:35
seeking [12] - 2051:13, 2058:36, 2084:19, 2109:40, 2116:45, 2123:6, 2127:2, 2131:21, 2134:25, 2134:27, 2144:7, 2149:33
seem [5] - 2101:35, 2109:24, 2109:38, 2129:8, 2134:12
sell [1] - 2111:42
send [1] - 2063:30
sending [1] - 2096:5
senior [8] - 2053:41, 2054:22, 2055:15, 2055:20, 2059:3, 2099:40, 2148:37, 2149:7
sense [8] - 2042:13, 2042:39, 2046:2, 2049:42, 2050:23, 2069:23, 2121:21, 2143:30
sensible [1] - 2056:14
sensitively [3] - 2078:29, 2078:45, 2089:47
sent [15] - 2046:46, 2048:4, 2062:8, 2073:16, 2079:8, 2079:10, 2079:26, 2079:32, 2080:3, 2115:32, 2119:4, 2119:33, 2119:35, 2136:24, 2145:24
sentence [8] - 2041:16, 2137:7, 2137:10, 2137:41, 2137:43, 2138:8, 2138:46
separate [4] - 2045:24, 2064:35, 2082:34, 2108:30
September [20] - 2044:2, 2044:32, 2044:40, 2045:7, 2045:14, 2047:6, 2048:11, 2066:24, 2097:20, 2115:47, 2116:41, 2117:31, 2117:34, 2117:41, 2118:42, 2124:11, 2124:14,

2145:7, 2149:33
sequence [1] - 2104:42
serious [1] - 2069:15
seriously [1] - 2062:1
servants [1] - 2153:4
service [3] - 2076:44, 2109:31, 2109:35
services [1] - 2144:29
set [15] - 2047:18, 2047:33, 2048:5, 2064:39, 2073:14, 2074:10, 2088:47, 2106:18, 2115:11, 2116:4, 2119:22, 2125:14, 2129:6, 2150:37, 2151:27
sets [4] - 2103:24, 2104:47, 2135:18, 2145:28
setting [4] - 2047:7, 2058:14, 2059:36, 2087:11
settle [9] - 2065:43, 2065:47, 2067:23, 2100:19, 2109:44, 2117:36, 2131:5, 2144:40, 2144:44
settled [9] - 2069:34, 2069:36, 2070:3, 2073:19, 2075:43, 2080:42, 2084:20, 2086:19, 2114:38
settlement [53] - 2041:42, 2045:15, 2046:22, 2059:24, 2061:25, 2062:34, 2064:36, 2065:6, 2065:24, 2065:32, 2066:20, 2067:8, 2067:9, 2067:27, 2069:23, 2070:39, 2071:11, 2071:24, 2072:4, 2072:7, 2072:14, 2074:1, 2076:1, 2079:45, 2080:12, 2082:1, 2082:15, 2084:19, 2084:27, 2085:20, 2085:36, 2085:44, 2086:3, 2090:19, 2091:13, 2092:12, 2093:9, 2097:10, 2098:3, 2098:40, 2100:2, 2100:28, 2106:34, 2106:40, 2114:4, 2114:20, 2118:19, 2120:25, 2128:25, 2131:18, 2144:21, 2150:24, 2150:39
settlements [8] - 2055:1, 2085:7, 2085:9, 2085:12, 2090:12, 2132:32, 2132:34, 2144:7
settling [4] - 2067:16, 2082:20, 2082:31, 2131:10

sever [1] - 2054:16
several [3] - 2048:37, 2055:35, 2097:6
SEXUAL [1] - 2039:13
sexual [16] - 2044:38, 2044:42, 2045:9, 2045:21, 2045:23, 2046:3, 2046:11, 2047:18, 2047:29, 2048:15, 2050:25, 2068:30, 2109:2, 2113:29, 2113:33, 2115:20
sexually [1] - 2093:29
shall [2] - 2054:15, 2108:40
Sheaffe [3] - 2046:41, 2058:16, 2149:19
SHORT [1] - 2072:21
short [5] - 2058:14, 2091:21, 2095:10, 2117:37, 2131:18
shortcut [1] - 2086:1
shorthand [1] - 2108:37
shortly [3] - 2087:22, 2115:31, 2119:17
show [10] - 2057:6, 2058:11, 2062:9, 2072:36, 2079:2, 2090:43, 2092:17, 2103:16, 2109:31, 2145:21
showed [4] - 2072:33, 2086:35, 2092:21, 2121:16
showing [2] - 2134:2, 2136:7
shown [9] - 2058:3, 2066:30, 2070:34, 2095:7, 2095:9, 2095:32, 2096:10, 2097:39, 2112:9
side [9] - 2047:17, 2051:32, 2068:26, 2099:5, 2143:1, 2143:4, 2145:37, 2146:15, 2151:37
sidelined [1] - 2129:15
sides [1] - 2150:31
sighted [1] - 2053:41
signed [5] - 2073:47, 2077:3, 2079:14, 2079:20, 2083:24
significant [3] - 2041:37, 2063:20, 2152:19
Simeon [1] - 2039:39
similar [3] - 2053:42, 2059:9, 2126:19
similarly [2] - 2087:9, 2093:26
Simon [3] - 2060:1, 2069:28, 2080:28
simple [1] - 2052:4
simplistic [1] - 2122:41
simply [6] - 2080:16, 2084:19, 2085:28, 2094:7, 2109:9, 2144:1

sink [1] - 2117:15
sit [1] - 2056:12
sitting [1] - 2066:5
situation [8] - 2042:35, 2073:6, 2087:33, 2094:35, 2095:21, 2097:27, 2114:15, 2135:45
situations [4] - 2041:9, 2041:10, 2041:14, 2041:16
six [8] - 2059:37, 2114:1, 2129:9, 2129:11, 2134:20, 2134:25, 2137:17, 2137:29
six-figure [1] - 2134:25
size [3] - 2044:15, 2142:40, 2143:45
sizeable [1] - 2110:30
sized [1] - 2102:46
SJH-1 [1] - 2126:36
SJH-13 [1] - 2040:44
SJH-14 [2] - 2044:3, 2148:2
SJH-19 [2] - 2048:2, 2150:19
SJH-31 [2] - 2059:28, 2060:42
SJH-4 [2] - 2133:40, 2140:32
SJH-54 [1] - 2067:44
SJH-57 [1] - 2069:1
SJH-69 [1] - 2076:7
SJH-70 [1] - 2079:3
SJH-74 [1] - 2083:31
SJH-80 [1] - 2084:4
SJH-81 [1] - 2084:31
Skamp [1] - 2114:36
slang [1] - 2044:45
slang-like [1] - 2044:45
Slater [35] - 2040:2, 2040:6, 2040:10, 2040:17, 2040:19, 2040:31, 2059:35, 2059:47, 2079:20, 2079:27, 2080:20, 2080:33, 2081:30, 2081:37, 2081:42, 2081:44, 2082:1, 2082:3, 2082:18, 2082:31, 2082:46, 2083:13, 2089:24, 2095:9, 2096:5, 2096:11, 2096:27, 2098:39, 2099:10, 2099:36, 2099:40, 2100:1, 2113:13, 2118:27, 2145:8
slightly [2] - 2040:2, 2046:13
slim [1] - 2110:7
slip [1] - 2122:40
small [3] - 2102:13, 2137:12, 2138:12
smaller [3] - 2044:5, 2111:46, 2146:16
smiling [3] - 2065:13,

2065:14, 2067:2
sold [1] - 2111:44
solely [1] - 2151:41
solicitor [4] - 2055:41, 2100:23, 2100:25, 2139:24
solicitors [13] - 2049:3, 2050:3, 2055:32, 2057:42, 2062:9, 2070:38, 2091:42, 2091:44, 2126:7, 2129:12, 2133:1, 2134:19, 2144:7
solid [1] - 2141:46
someone [9] - 2056:38, 2056:42, 2061:47, 2101:38, 2118:15, 2122:35, 2125:40, 2138:23, 2139:20
sometime [1] - 2149:20
somewhat [6] - 2044:45, 2059:8, 2114:40, 2134:13, 2152:2
somewhere [3] - 2071:22, 2110:37, 2147:40
soon [2] - 2110:19, 2116:32
sorrow [2] - 2116:4, 2119:3
sorry [27] - 2044:7, 2048:25, 2054:29, 2067:5, 2070:4, 2074:9, 2077:29, 2077:32, 2079:19, 2082:22, 2083:1, 2086:44, 2087:39, 2088:38, 2092:21, 2094:41, 2116:21, 2116:22, 2116:28, 2119:35, 2124:3, 2125:13, 2127:20, 2139:44, 2143:20, 2152:21
sort [12] - 2041:34, 2049:21, 2056:1, 2064:9, 2068:17, 2106:36, 2109:26, 2122:35, 2135:40, 2136:10, 2136:13, 2152:41
sorts [4] - 2058:36, 2089:45, 2111:1, 2142:18
sought [10] - 2042:34, 2063:18, 2092:14, 2094:28, 2094:35, 2095:13, 2096:4, 2096:11, 2135:11
sound [1] - 2044:14
sounds [3] - 2044:15, 2044:16, 2090:16
South [1] - 2111:36
speaking [4] - 2060:16, 2071:20, 2129:25, 2136:36
special [1] - 2045:12
specialised [1] - 2102:39
specific [12] - 2045:8,

2046:10, 2046:28, 2050:7, 2064:18, 2095:17, 2095:18, 2095:27, 2095:29, 2100:4, 2100:7, 2135:28
specifically [11] - 2046:39, 2054:24, 2061:40, 2061:45, 2065:38, 2066:13, 2068:41, 2080:17, 2089:7, 2104:26, 2136:10
speculating [1] - 2111:35
speculation [5] - 2111:4, 2111:31, 2111:39, 2137:30, 2138:3
speed [1] - 2131:6
spells [1] - 2052:9
spend [2] - 2070:23, 2144:9
spending [2] - 2122:28, 2144:17
spent [3] - 2057:1, 2111:2, 2144:20
spirit [2] - 2077:2, 2152:14
spoken [2] - 2040:27, 2152:36
spread [1] - 2098:9
squarely [1] - 2124:44
squirreled [1] - 2111:1
squirreled [1] - 2111:11
St [2] - 2052:30, 2052:47
staff [4] - 2047:33, 2074:27, 2074:33, 2075:10
stage [47] - 2048:2, 2055:11, 2056:10, 2056:20, 2063:5, 2063:15, 2066:16, 2066:20, 2066:45, 2068:14, 2070:37, 2071:27, 2080:8, 2081:9, 2085:35, 2086:12, 2089:33, 2089:39, 2090:40, 2091:33, 2093:10, 2094:13, 2100:12, 2102:32, 2110:45, 2112:33, 2117:19, 2118:32, 2119:36, 2120:42, 2121:5, 2123:37, 2123:39, 2125:43, 2127:1, 2127:14, 2127:21, 2128:29, 2133:45, 2134:26, 2134:46, 2139:21, 2142:9, 2146:30, 2148:15, 2149:12, 2150:38
stages [2] - 2067:37, 2115:43
stamp [2] - 2095:37, 2095:38
stand [3] - 2061:1, 2108:25, 2112:26
standards [56] - 2041:38, 2044:36, 2045:2, 2045:27, 2045:31,

2045:38, 2046:12, 2046:15, 2046:26, 2046:30, 2050:17, 2057:21, 2087:40, 2087:42, 2094:8, 2103:25, 2103:32, 2103:35, 2103:39, 2104:23, 2104:29, 2105:1, 2105:4, 2105:5, 2105:10, 2105:32, 2106:4, 2106:32, 2107:13, 2108:28, 2108:41, 2109:29, 2114:6, 2114:12, 2114:19, 2115:41, 2117:20, 2119:37, 2119:40, 2120:1, 2120:8, 2121:1, 2121:13, 2121:20, 2121:22, 2121:31, 2122:30, 2122:33, 2123:11, 2123:40, 2123:41, 2125:15, 2128:45, 2136:37, 2142:13, 2144:30
Standards [7] - 2057:17, 2057:31, 2103:4, 2103:30, 2109:12, 2123:2, 2139:2
start [10] - 2040:1, 2066:4, 2066:16, 2079:36, 2109:13, 2110:44, 2123:27, 2124:29, 2134:30, 2137:10
started [5] - 2096:42, 2097:4, 2110:36, 2112:5, 2138:44
starting [1] - 2124:30
stasis [1] - 2129:5
state [3] - 2102:11, 2111:16, 2137:4
Statement [1] - 2101:19
statement [6] - 2050:27, 2057:15, 2101:33, 2101:44, 2128:18, 2138:18
STATEMENT [1] - 2102:2
Statement" [1] - 2101:27
statements [2] - 2057:36, 2110:28
states [2] - 2043:7, 2064:31
status [1] - 2124:34
statute [3] - 2055:43, 2133:46, 2142:37
statutory [3] - 2044:11, 2048:12, 2148:11
step [4] - 2081:8, 2100:39, 2128:42, 2128:43
steps [12] - 2042:15, 2045:6, 2112:42, 2115:38, 2123:9, 2123:16, 2123:18, 2123:37, 2127:47, 2128:31, 2133:3, 2146:7
still [16] - 2047:6, 2054:37, 2078:16, 2118:16,

2122:24, 2128:39, 2128:40, 2132:28, 2132:33, 2134:27, 2136:8, 2138:10, 2141:18, 2142:27, 2144:6, 2144:46
stop [2] - 2132:1, 2140:1
stories [1] - 2076:42
straightaway [1] - 2146:26
Street [1] - 2046:42
strength [1] - 2055:30
stretched [1] - 2121:42
strict [1] - 2142:36
strike [1] - 2058:25
strong [3] - 2055:41, 2153:16, 2153:19
structured [2] - 2142:22, 2142:24
stuff [2] - 2128:33, 2136:9
stumps [5] - 2111:31, 2122:3, 2122:6, 2122:8
subject [5] - 2064:11, 2085:6, 2103:44, 2104:14, 2104:20
submissions [1] - 2048:29
submitted [1] - 2073:28
subsequent [5] - 2042:22, 2049:19, 2082:23, 2090:11, 2096:9
subsequently [1] - 2133:3
substance [1] - 2126:12
substantial [14] - 2044:11, 2044:12, 2048:3, 2048:11, 2048:28, 2051:14, 2062:43, 2073:14, 2091:12, 2112:36, 2147:42, 2148:8, 2148:45, 2148:47
success [2] - 2063:38, 2132:36
successfully [1] - 2049:41
suddenly [3] - 2129:10, 2132:34, 2133:14
suffered [2] - 2062:19, 2068:30
suffering [2] - 2062:28, 2068:31
sufficient [1] - 2146:8
suggest [5] - 2056:2, 2056:11, 2089:24, 2137:36, 2151:18
suggested [4] - 2051:14, 2055:40, 2056:3, 2061:22
suggesting [2] - 2041:32, 2056:47
suggestion [4] - 2076:43, 2129:30, 2144:33, 2152:30
suitable [1] - 2072:17
sum [2] - 2072:29, 2134:25
summary [3] - 2044:31, 2047:8, 2047:21
Summons [1] - 2071:36
sums [1] - 2138:12

<p>supervisor [1] - 2054:4 supplementing [1] - 2144:30 supplied [1] - 2141:43 support [23] - 2041:10, 2041:14, 2078:20, 2088:4, 2088:14, 2088:15, 2088:44, 2088:47, 2089:2, 2089:5, 2089:10, 2089:11, 2093:22, 2093:23, 2096:19, 2096:23, 2105:27, 2113:19, 2113:24, 2114:26, 2128:46, 2139:9, 2139:41 support" [1] - 2136:46 suppose [4] - 2075:31, 2106:31, 2122:29, 2122:32 supposed [1] - 2107:37 Supreme [1] - 2042:14 surprised [1] - 2090:25 survived [1] - 2110:25 suspect [1] - 2117:14 sustain [2] - 2053:39, 2054:37 sworn [1] - 2102:7 Sydney [23] - 2039:22, 2114:30, 2114:34, 2115:31, 2115:37, 2116:22, 2116:44, 2117:21, 2118:6, 2118:9, 2118:33, 2120:22, 2121:2, 2127:41, 2128:7, 2128:11, 2128:37, 2142:10, 2142:14, 2142:25, 2144:3, 2152:26, 2153:2 sympathy [1] - 2119:3 synod [8] - 2089:32, 2104:2, 2104:3, 2107:45, 2108:6, 2108:10, 2108:13 system [18] - 2119:44, 2119:46, 2120:17, 2120:34, 2120:37, 2120:44, 2121:6, 2121:7, 2121:11, 2121:33, 2121:39, 2122:23, 2128:8, 2131:17, 2146:18, 2147:8, 2153:2 systems [1] - 2152:46</p>	<p>2056:13, 2069:8, 2069:12, 2118:41, 2134:18, 2152:28 tactic [3] - 2068:20, 2068:40, 2068:44 tactical [1] - 2069:18 tally [1] - 2101:36 taped [1] - 2041:47 tasks [2] - 2046:21, 2104:23 tax [4] - 2073:10, 2073:22, 2101:5, 2101:31 TAX [1] - 2101:14 taxi [2] - 2127:26, 2127:27 Taylor [4] - 2040:2, 2040:13, 2094:21, 2095:3 TAYLOR [8] - 2040:5, 2040:10, 2040:15, 2040:30, 2095:5, 2095:7, 2097:25, 2100:31 TB-50 [1] - 2058:12 TB-54 [1] - 2060:10 TB-55 [2] - 2066:35, 2097:40 telephone [5] - 2055:31, 2055:36, 2060:17, 2082:34, 2098:43 Telephone [1] - 2098:35 ten [2] - 2114:35, 2124:39 tender [14] - 2047:5, 2069:2, 2073:31, 2073:39, 2076:35, 2082:37, 2101:5, 2101:17, 2113:12, 2117:40, 2118:22, 2130:4, 2140:25, 2145:22 term [11] - 2041:36, 2069:19, 2097:28, 2105:37, 2128:12, 2130:25, 2132:12, 2139:19, 2139:25, 2141:22, 2147:5 terms [48] - 2047:38, 2049:9, 2049:12, 2050:25, 2051:15, 2052:8, 2056:15, 2056:22, 2059:4, 2059:23, 2062:46, 2065:30, 2071:3, 2078:19, 2078:43, 2086:7, 2087:6, 2087:11, 2088:32, 2089:27, 2090:28, 2092:15, 2092:36, 2093:20, 2103:9, 2104:10, 2105:8, 2107:5, 2107:10, 2107:12, 2107:24, 2108:4, 2109:28, 2110:43, 2112:12, 2114:17, 2119:4, 2119:23, 2121:43, 2127:41, 2128:7, 2128:11, 2128:18,</p>	<p>2133:33, 2135:2, 2147:14, 2151:10, 2152:36 tested [1] - 2143:42 testing [2] - 2143:34, 2143:37 thankfully [1] - 2112:17 THE [54] - 2040:8, 2040:13, 2040:24, 2040:35, 2049:35, 2050:34, 2051:20, 2056:47, 2057:38, 2058:31, 2061:42, 2072:19, 2072:29, 2073:33, 2078:10, 2094:17, 2094:21, 2094:26, 2094:31, 2094:41, 2094:46, 2095:3, 2097:23, 2100:33, 2100:39, 2100:42, 2100:44, 2101:3, 2101:10, 2101:23, 2101:29, 2101:33, 2101:38, 2101:43, 2102:2, 2104:17, 2104:40, 2104:44, 2110:4, 2110:10, 2110:15, 2111:27, 2112:3, 2121:47, 2124:3, 2124:17, 2136:16, 2140:4, 2140:27, 2151:13, 2152:1, 2153:26, 2153:31 themselves [3] - 2048:47, 2129:29, 2141:34 thereabouts [1] - 2125:36 thereafter [1] - 2119:17 therefore [4] - 2080:12, 2084:16, 2112:15, 2132:19 thinking [2] - 2051:11, 2123:47 third [5] - 2076:29, 2080:15, 2083:15, 2113:9, 2130:14 thirdly [1] - 2103:38 thirds [1] - 2053:19 THIS [1] - 2054:15 threatened [1] - 2078:35 three [15] - 2046:23, 2076:42, 2080:8, 2083:34, 2083:38, 2084:6, 2084:18, 2084:27, 2087:24, 2101:5, 2104:10, 2109:2, 2113:42, 2131:32, 2138:42 threshold [2] - 2150:22, 2150:36 throughout [3] - 2054:39, 2057:11, 2141:22 throw [1] - 2143:22 thrust [1] - 2135:14 tickled [2] - 2150:33, 2150:36 timeframe [1] - 2044:25</p>	<p>titled [1] - 2101:26 TO [3] - 2039:13, 2052:18, 2153:31 today [4] - 2040:22, 2057:36, 2089:39, 2145:13 together [9] - 2044:12, 2048:44, 2073:33, 2101:29, 2108:31, 2109:15, 2111:3, 2137:47, 2146:36 toing [1] - 2065:30 Tommy [2] - 2084:1, 2085:47 tone [1] - 2092:32 tongue [1] - 2122:40 took [12] - 2040:46, 2055:1, 2056:17, 2065:11, 2078:10, 2080:42, 2081:8, 2081:12, 2114:22, 2125:2, 2129:20, 2129:23 top [9] - 2052:16, 2083:17, 2097:45, 2098:8, 2098:22, 2116:18, 2118:41, 2125:19 topic [1] - 2146:37 tortious [1] - 2152:44 total [4] - 2044:13, 2047:25, 2073:3, 2137:19 totally [2] - 2062:34, 2153:14 toto [1] - 2098:15 touch [1] - 2116:32 Tout [1] - 2042:27 towards [2] - 2047:21, 2088:16 Tower [1] - 2039:21 town [1] - 2122:31 tragically [3] - 2129:17, 2131:2, 2131:4 training [2] - 2109:29, 2109:30 transcript [2] - 2074:10, 2127:20 transpired [1] - 2097:28 transpiring [1] - 2098:4 transport [1] - 2127:24 trauma [1] - 2068:32 travel [1] - 2139:33 treat [1] - 2071:14 treated [1] - 2124:24 Tribunal [1] - 2098:32 tried [2] - 2121:40, 2153:7 trivial [1] - 2124:45 trouble [1] - 2122:42 troubling [1] - 2152:2 true [27] - 2052:35, 2052:40, 2052:44, 2053:2, 2053:10, 2053:22, 2053:26, 2054:1, 2054:35, 2055:44, 2059:19, 2062:40, 2067:11, 2071:42, 2071:46,</p>	<p>2089:34, 2090:41, 2091:10, 2091:14, 2093:24, 2096:40, 2098:41, 2100:15, 2100:29, 2143:35, 2152:13 True [1] - 2053:6 Trust [2] - 2051:46, 2102:40 trust [2] - 2052:4, 2111:5 trustee [2] - 2051:41, 2052:10 trustees [8] - 2051:32, 2051:35, 2051:46, 2052:5, 2074:18, 2074:39, 2075:35, 2111:35 Trustees [1] - 2084:45 Trustees" [1] - 2051:31 try [3] - 2056:13, 2067:37, 2150:30 trying [11] - 2050:21, 2063:10, 2070:6, 2111:2, 2122:22, 2123:13, 2126:23, 2127:34, 2127:36, 2127:37, 2141:18 tummies [1] - 2150:33 tummy [1] - 2150:35 turn [2] - 2100:17, 2102:40 two [36] - 2053:19, 2055:11, 2058:20, 2061:22, 2063:25, 2064:2, 2064:37, 2065:11, 2065:18, 2071:23, 2071:28, 2080:7, 2080:14, 2086:27, 2086:42, 2088:9, 2098:10, 2101:29, 2101:31, 2107:36, 2108:31, 2110:24, 2111:17, 2122:22, 2123:19, 2123:25, 2124:12, 2124:14, 2131:47, 2136:47, 2137:22, 2149:7, 2150:31, 2152:33, 2153:1, 2153:21 two-thirds [1] - 2053:19 tying [1] - 2143:5 typewritten [1] - 2087:10</p> <p style="text-align: center;">U</p> <p>ultimate [2] - 2054:4, 2075:34 ultimately [1] - 2080:2 under [23] - 2040:26, 2051:31, 2053:14, 2057:31, 2097:45, 2106:1, 2118:2, 2120:17, 2121:6, 2128:2, 2129:6, 2129:16, 2129:28, 2132:7, 2133:5, 2134:32, 2141:10,</p>
---	--	--	--	--

<p>2142:33, 2143:11, 2144:4, 2144:31, 2146:12, 2149:37 underline [1] - 2115:26 underlined [1] - 2115:16 underlining [1] - 2117:8 underlinings [1] - 2115:24 understood [11] - 2040:10, 2043:12, 2046:5, 2050:2, 2050:30, 2070:15, 2071:19, 2077:47, 2093:42, 2137:42, 2146:45 undertake [2] - 2044:22, 2046:20 unfortunately [1] - 2072:26 unincorporated [3] - 2074:23, 2074:45, 2075:7 unless [1] - 2055:47 unlikely [4] - 2066:39, 2073:20, 2135:40 unnamed [1] - 2076:28 unreasonable [1] - 2064:42 unrelated [1] - 2113:28 up [64] - 2040:44, 2041:41, 2042:26, 2043:15, 2043:17, 2044:3, 2044:31, 2047:6, 2052:37, 2053:12, 2054:8, 2056:43, 2057:8, 2057:46, 2057:47, 2059:28, 2066:6, 2066:9, 2067:23, 2068:8, 2069:2, 2075:40, 2076:8, 2076:16, 2076:36, 2082:27, 2083:31, 2084:5, 2084:10, 2086:41, 2087:44, 2092:22, 2099:23, 2101:17, 2106:17, 2108:46, 2111:44, 2114:41, 2116:42, 2118:39, 2118:40, 2119:18, 2119:29, 2120:41, 2121:34, 2121:37, 2121:39, 2123:27, 2123:47, 2124:35, 2126:36, 2130:4, 2131:15, 2136:31, 2137:30, 2140:8, 2145:7, 2145:10, 2145:23, 2145:39, 2147:30, 2148:15, 2149:33, 2151:27 UPON [1] - 2101:1 upset [1] - 2115:8 urgent [3] - 2041:9, 2041:14, 2041:29 usual [2] - 2095:38, 2096:37</p>	<p style="text-align: center;">V</p> <p>Valley [2] - 2110:19, 2110:31 value [2] - 2134:38, 2140:38 variation [2] - 2059:40, 2060:6 various [4] - 2067:37, 2098:23, 2098:28, 2099:40 vary [2] - 2060:8, 2064:1 vastly [2] - 2124:33, 2153:5 VCT [1] - 2098:31 verbal [1] - 2112:7 verified [1] - 2143:27 verify [1] - 2057:32 verifying [1] - 2143:18 version [1] - 2043:41 viable [1] - 2112:19 victims [2] - 2109:3, 2153:24 Victims [1] - 2098:32 view [28] - 2044:33, 2053:42, 2054:32, 2054:37, 2054:38, 2054:41, 2054:44, 2055:11, 2055:19, 2055:30, 2056:10, 2058:14, 2062:1, 2068:16, 2071:32, 2104:24, 2109:32, 2111:3, 2130:23, 2132:19, 2134:18, 2137:46, 2138:1, 2139:17, 2144:6, 2148:37, 2150:15, 2150:17 viewed [1] - 2138:37 views [5] - 2104:14, 2104:20, 2107:25, 2124:33, 2126:21 vigour [1] - 2132:26 visitor [2] - 2054:3, 2058:44 volume [1] - 2110:8 volunteered [1] - 2046:33 volunteers [2] - 2074:30, 2075:11</p> <p style="text-align: center;">W</p> <p>Wade [2] - 2139:20, 2139:23 wade [1] - 2042:34 wait [2] - 2113:45, 2124:21 waiting [4] - 2114:1, 2120:25, 2126:42, 2126:44 waive [1] - 2061:16 walk [1] - 2112:39 walked [1] - 2112:17 walking [1] - 2066:19 wants [1] - 2040:3</p>	<p>WAS [1] - 2153:31 WASS [3] - 2093:35, 2093:37, 2094:15 Wass [2] - 2040:1, 2093:37 waste [2] - 2055:46, 2056:11 ways [3] - 2054:1, 2104:1, 2107:18 wealth [1] - 2142:17 Webb [1] - 2149:7 week [2] - 2101:41, 2147:29 weekends [1] - 2048:18 weeks [3] - 2087:24, 2094:36, 2107:36 weighty [1] - 2048:47 West [1] - 2111:36 whatsoever [1] - 2099:44 whilst [2] - 2077:26, 2111:3 whole [5] - 2048:18, 2049:39, 2056:6, 2096:47, 2131:15 wholeness [1] - 2088:16 wider [3] - 2109:13, 2109:28, 2122:39 wife [1] - 2124:45 William [3] - 2139:20, 2139:23, 2149:7 willing [2] - 2061:10, 2086:3 willingness [2] - 2050:37, 2076:41 Windeyer [6] - 2046:37, 2046:44, 2055:24, 2055:25, 2149:9, 2149:11 wish [6] - 2059:11, 2070:23, 2076:30, 2110:13, 2116:36, 2129:29 wished [1] - 2087:2 wishes [1] - 2123:3 wishing [1] - 2084:17 withdrawal [2] - 2068:24, 2069:15 withdrawing [1] - 2068:1 withdrawn [4] - 2068:8, 2069:12, 2080:15, 2080:16 withdraws [1] - 2068:6 WITHDREW [1] - 2100:42 witness [4] - 2040:37, 2070:34, 2095:32, 2097:39 WITNESS [3] - 2097:23, 2100:42, 2104:44 wonder [13] - 2040:44, 2042:45, 2043:14, 2047:5, 2060:35, 2065:13, 2070:34, 2102:11, 2103:17, 2115:46, 2127:47, 2140:8, 2143:20 wonderful [1] - 2142:19 wondering [2] - 2055:40,</p>	<p>2110:25 Woodhouse [6] - 2120:39, 2121:41, 2128:5, 2128:47, 2129:1, 2129:35 worded [7] - 2050:27, 2078:30, 2078:33, 2078:34, 2078:44, 2078:47, 2092:45 wording [3] - 2078:24, 2088:32, 2093:31 words [19] - 2041:35, 2054:3, 2061:42, 2061:44, 2066:46, 2068:6, 2068:17, 2071:39, 2075:17, 2077:14, 2077:46, 2078:47, 2088:41, 2088:43, 2139:27, 2147:4, 2149:1, 2153:16 workers [1] - 2050:23 world [1] - 2129:12 worse [1] - 2119:25 Writ [1] - 2071:36 write [6] - 2062:46, 2087:24, 2095:28, 2128:35, 2129:27, 2132:38 writing [6] - 2069:30, 2080:35, 2091:3, 2130:10, 2130:12, 2134:24 written [25] - 2055:33, 2068:10, 2068:15, 2068:37, 2075:32, 2075:41, 2075:42, 2076:13, 2079:26, 2079:31, 2079:39, 2079:45, 2087:1, 2087:10, 2087:23, 2096:6, 2107:14, 2107:16, 2119:2, 2127:15, 2127:16, 2138:42, 2138:43 wrote [18] - 2049:45, 2050:30, 2067:46, 2071:3, 2076:7, 2076:37, 2082:44, 2082:45, 2090:18, 2103:9, 2113:40, 2116:21, 2119:5, 2123:43, 2124:11, 2124:23, 2129:20, 2136:24</p> <p style="text-align: center;">Y</p> <p>YEAR [1] - 2102:2 year [16] - 2057:16, 2101:20, 2102:19, 2103:4, 2112:13, 2112:18, 2132:32, 2134:14, 2134:28, 2134:31, 2136:4, 2136:6, 2136:7, 2136:9, 2136:14, 2145:31 years [13] - 2048:37,</p>	<p>2060:2, 2089:33, 2091:13, 2096:44, 2096:46, 2097:6, 2097:16, 2110:25, 2124:39, 2137:17, 2137:29 yesterday [15] - 2040:46, 2041:45, 2044:1, 2044:35, 2045:45, 2055:37, 2057:7, 2059:9, 2066:3, 2096:36, 2115:36, 2120:11, 2125:37, 2127:26, 2128:10 yesterday's [1] - 2044:46 yourself [9] - 2040:47, 2044:14, 2050:14, 2073:44, 2089:36, 2099:40, 2121:7, 2136:20, 2141:13</p> <p style="text-align: center;">Z</p> <p>Zuellig [1] - 2145:30</p>
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