

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

**Public Hearing - Case Study 54
(Day 259)**

Level 17, Governor Macquarie Tower
1 Farrer Place, Sydney

On Friday, 10 March 2017 at 10am

Before:

The Chair:	Justice Peter McClellan AM
Before Commissioners:	Justice Jennifer Ann Coate
	Mr Bob Atkinson AO APM
	Mr Robert Fitzgerald AM
	Professor Helen Milroy
	Mr Andrew Murray

Counsel Assisting: Mr Angus Stewart SC

1 MR STEWART: Your Honour, Commissioners, this is the
2 Royal Commission's 54th case study. This will inquire into
3 the Jehovah's Witnesses and the Watchtower Bible and Tract
4 Society of Australia Limited, which I will refer to as
5 Watchtower Australia.
6

7 It follows the Royal Commission's inquiry into the
8 Jehovah's Witnesses and Watchtower Australia in Case Study
9 29. That case study concerned the responses of the
10 Jehovah's Witnesses and Watchtower Australia to
11 allegations, reports and complaints of child sexual abuse
12 within the organisation.
13

14 That public hearing took place in Sydney in July
15 and August 2015. The report was tabled in Parliament on
16 28 November 2016.
17

18 In this hearing, the Royal Commission will inquire
19 into the following topics: the current policies and
20 procedures of the Jehovah's Witnesses and Watchtower
21 Australia in relation to child protection and child safe
22 standards, including responding to allegations of child
23 sexual abuse; factors that may have affected the
24 institutional response of the Jehovah's Witnesses and
25 Watchtower Australia to child sexual abuse; the responses
26 of the Jehovah's Witnesses and Watchtower Australia to Case
27 Study 29 and other Royal Commission reports; how the
28 Jehovah's Witnesses and Watchtower Australia have
29 addressed, or propose to address, each of the elements that
30 the Royal Commission considers necessary in creating
31 a child safe institution; and the issue of redress and the
32 responses of the Jehovah's Witnesses and Watchtower
33 Australia to civil claims by survivors of child sexual
34 abuse.
35

36 The Royal Commission will hear evidence from two
37 senior members of the Jehovah's Witnesses. Mr Terrence
38 O'Brien, a Director of Watchtower Australia and a member
39 and the Coordinator of the Australian Branch Committee, and
40 Mr Rodney Spinks, a Senior Service Desk Minister of
41 Watchtower Australia.
42

43 I will now briefly explain the structure and
44 governance of the Jehovah's Witness organisation. The
45 Jehovah's Witnesses were founded in the United States in
46 the late 19th century and have been active in Australia
47 since 1896. Watchtower Australia is the legal entity of

1 the Jehovah's Witnesses in Australia.

2
3 The worldwide activities of the Jehovah's Witnesses
4 are overseen by the Governing Body, which is a counsel of
5 elders based in the United States. The Governing Body is
6 responsible for providing definitive and authoritative
7 interpretation of the scriptures and for developing and the
8 disseminating the policies of the Jehovah's Witnesses.
9 The Governing Body supervises more than 90 bodies
10 worldwide, including the Australia branch.

11
12 Given that the Governing Body is based in the United
13 States, the Royal Commission does not have the power to
14 compel a member of the Governing Body to give evidence in
15 this hearing. Nevertheless, on 16 January this year, the
16 Royal Commission wrote to Watchtower Australia requesting
17 that a member of the Governing Body be available to give
18 evidence at this hearing, whether in person or via
19 videolink.

20
21 On 31 January, Watchtower Australia informed the
22 Royal Commission that a member of the Governing Body would
23 not be available to give evidence. That is a matter of
24 considerable regret, given the degree to which the
25 Australia Branch is subject to the control of the Governing
26 Body on matters of policy, procedure and practice.

27
28 The Australia Branch Office is the headquarters for
29 the Jehovah's Witnesses in Australia. It is managed by the
30 Australia Branch Committee and coordinates the activities
31 of all congregations in Australia.

32
33 Congregations are groups of members of the Jehovah's
34 Witnesses comprising "publishers", "ministerial servants"
35 and "elders". Currently, there are about 821 congregations
36 in Australia, with approximately 67,000 active members.

37
38 Congregational responsibilities sit with "elders" and
39 "ministerial servants", who can only be male members of the
40 congregation. Each congregation is overseen by a Body of
41 Elders, who, as it is put, "shepherd" the congregation and
42 oversee spiritual matters. Ministerial servants provide
43 ministerial support and practical assistance to the elders
44 and service to the congregation.

45
46 The key beliefs of the Jehovah's Witnesses include
47 literal interpretation of the Bible and reliance on first

1 century Biblical principles to set practice, policy and
2 procedure.
3

4 Among other matters, Case Study 29 inquired into the
5 experiences of some survivors of child sexual abuse within
6 the Jehovah's Witness organisation. This involved an
7 examination of the systems, policies and procedures in
8 place within the organisation for raising and responding to
9 allegations of child sexual abuse and for the prevention of
10 child sexual abuse within the organisation.
11

12 The Royal Commission found that the Jehovah's
13 Witnesses did not respond adequately to child sexual abuse
14 and did not adequately protect children from the risk of
15 sexual abuse. In particular, the Royal Commission found
16 the following problematic policies and practices in the
17 Jehovah's Witnesses response to child sexual abuse: first,
18 the organisation does not have a practice of reporting
19 child sexual abuse to police or any other authority;
20 second, before 1998, a survivor of child sexual abuse was
21 required to make her allegation in the presence of her
22 abuser; third, if the accused does not confess, there is an
23 inflexible requirement that there be at least two
24 eyewitnesses to an incident of child sexual abuse, or two
25 or more witnesses to a different incident of child sexual
26 abuse, before the accused can be dealt with by internal
27 disciplinary system of the organisation. I will refer to
28 this as the two-witness rule; fourth, women are absent from
29 the decision-making process of the internal disciplinary
30 system; fifth, there is no clear provision for a survivor
31 to be accompanied by a support person during the internal
32 disciplinary process; sixth, the organisation has limited
33 and ineffective risk management practices; and, seventh,
34 the organisation has a policy and practice of socially
35 shunning those who wish to leave the organisation,
36 including survivors of child sexual abuse.
37

38 During the course of the public hearing in Case
39 Study 29, senior representatives of the Jehovah's Witnesses
40 gave a series of commitments in relation to proposed
41 reforms to Jehovah's Witnesses' child protection policies
42 and procedures, including in relation to: mandatory
43 reporting, the consolidation of multiple sources of
44 policies and procedures into a user-friendly source, not
45 only for elders, but also for survivors and parents; and
46 the role of women in the investigation of child sexual
47 abuse. Each of these matters will be explored during the

1 course of this hearing.

2

3 This review hearing will examine the actions taken by
4 the Jehovah's Witnesses in response to the findings,
5 recommendations and commitments made during Case Study 29.

6

7 The Royal Commission is expected to hear evidence that
8 the Jehovah's Witnesses learnt from their participation in
9 Case Study 29 that "some of their policies and procedures
10 on child sexual abuse were not correctly understood and
11 needed to be better communicated to elders and members of
12 the congregation".

13

14 The Royal Commission will hear that in response to
15 Case Study 29, the Jehovah's Witnesses have reviewed,
16 clarified, refined and consolidated their policies and
17 procedures on child sexual abuse to ensure, as they put it,
18 as far as possible the safety of children as far as the
19 Jehovah's Witnesses are able to do so, consistent with
20 their Bible-based beliefs.

21

22 The Royal Commission will hear evidence that since
23 Case Study 29, the Jehovah's Witnesses have published two
24 new documents which together outline how the organisation
25 is child safe: first, a letter from Watchtower Australia
26 to All Bodies of Elders entitled "Protecting minors from
27 abuse", dated 1 August 2016, which, as the Royal Commission
28 will hear, was sent in similar form to congregation elders
29 worldwide to assist elders to respond to allegations of
30 child sexual abuse; and, secondly, Child Protection
31 Guidelines for Branch Office Service Desks, which was sent
32 to Branch Offices worldwide to promote compliance with the
33 policies and procedures recorded in the letter of 1 August
34 2016.

35

36 In addition, the Royal Commission is expected to hear
37 that the Jehovah's Witnesses have published and distributed
38 articles and videos to educate parents and children about
39 the dangers of child sexual abuse and to promote child
40 safety.

41

42 This public hearing will examine the adequacies of
43 these policies. The Royal Commission will hear that there
44 is a difference in the level of policy detail communicated
45 to Service Desks and elders, as compared to the
46 congregations.

47

1 This week, Watchtower Australia furnished the
2 Royal Commission a document titled "Child Safeguarding
3 Policy of Jehovah's Witnesses in Australia". It is
4 understood to be a recently adopted policy for distribution
5 to congregations in Australia. There will be evidence
6 about this document.

7
8 The Royal Commission is expected to hear evidence that
9 the Jehovah's Witnesses believe there are no impediments to
10 developing and implementing responses to most of the
11 concerns in Case Study 29. Despite this evidence, the
12 Royal Commission will hear that the Jehovah's Witnesses
13 have failed to address many of the recommendations arising
14 from Case Study 29.

15
16 First, the Royal Commission recommended that the
17 Jehovah's Witnesses' written policies should clearly state
18 that a complainant of child sexual abuse is no longer
19 required to confront the abuser, and that members of the
20 organisation should be informed of this right. The
21 Royal Commission is expected to hear that although this
22 policy has been amended accordingly, it has, to date, only
23 been communicated in writing to elders and not to members
24 of the Jehovah's Witnesses more generally.

25
26 Secondly, the Royal Commission recommended that the
27 Jehovah's Witnesses revise and modify their application of
28 the two-witness rule in cases involving complaints of child
29 sexual abuse. The Royal Commission is expected to hear
30 that Jehovah's Witnesses consider that they are "prohibited
31 by Scripture from altering the application of the
32 two-witness rule".

33
34 Thirdly, the Royal Commission recommended that the
35 Jehovah's Witnesses explore ways to involve women in the
36 investigation and assessment of the credibility of
37 allegations of child sexual abuse. The Royal Commission is
38 expected to hear that the Jehovah's Witnesses restrict the
39 participation of women to presenting allegations to elders
40 and supporting the complainant.

41
42 Fourthly, the Royal Commission recommended that the
43 Jehovah's Witnesses formally document their stated policy
44 of allowing survivors to have a support person present
45 during the internal disciplinary process. The
46 Royal Commission is expected to hear that the new
47 guidelines for Service Desks provide that mature minors now

1 have the right to have a non-parent adult present with them
2 during an interview in the investigation of an allegation
3 of child sexual abuse. However, the Royal Commission will
4 hear that the policies remain silent as to the provision of
5 support to younger survivors, other than by a parent during
6 the investigation stage and to any survivors appearing
7 before a judicial hearing.
8

9 Fifthly, the Royal Commission recommended that the
10 Jehovah's Witnesses report to authorities all allegations
11 of child sexual abuse where the complainant is a minor or
12 there is an ongoing risk to children; and that they
13 actively seek the consent of adult victims to report their
14 alleged child sexual abuse to authorities.
15

16 In Case Study 29, Watchtower Australia produced
17 5,000 documents comprising, among other things, case
18 files relating to 1,006 alleged perpetrators of child
19 sexual abuse dating back to 1950. Officers at the
20 Royal Commission reviewed these case files and, as
21 a result, the Royal Commission referred information in
22 relation to 514 alleged perpetrators to police, in
23 accordance with its powers under section 6P(1) of the Royal
24 Commissions Act of 1902.
25

26 Of the remaining 492 alleged perpetrators identified
27 in the case files, officers of the Royal Commission
28 determined that there was either insufficient evidence in
29 the case files to warrant referring matters to the police
30 or that the matters had already come to the attention of
31 the police.
32

33 The Jehovah's Witnesses will give evidence that they
34 comply with mandatory reporting laws. The Royal Commission
35 is expected to hear that the policies of the Jehovah's
36 Witnesses now provide that the victim and her parents have
37 the absolute right to report an allegation to the
38 authorities. Further, the Royal Commission will hear that
39 when responding to allegations of child sexual abuse,
40 elders are required to inform the victim, or, in the case
41 of a child victim, his or her parents, that he or she has
42 the absolute right to report the matter to the authorities,
43 and that he or she will be supported by the elders in that
44 decision.
45

46 The Royal Commission will hear evidence that of the
47 17 allegations of child sexual abuse that the Jehovah's

1 Witnesses in Australia have received since Case Study 29,
2 they have reported 15 allegations to the authorities. In
3 both cases that were not reported, the adult survivors of
4 historical abuse elected not to report and the Jehovah's
5 Witness organisation abided their decisions.
6

7 Finally, the Royal Commission found that the Jehovah's
8 Witnesses' practice of shunning members who disassociate
9 from the organisation potentially puts survivors in an
10 untenable position. It is anticipated that the
11 Royal Commission will hear that while it is not the
12 Jehovah's Witnesses' policy to shun a victim of child
13 sexual abuse, the organisation has failed to address the
14 particularly devastating practice of shunning survivors who
15 disassociate from the organisation because of their abuse.
16

17 In July 2016, the Royal Commission published
18 10 elements which should be present in a child safe
19 organisation, which I will refer to as "the child safe
20 elements". Those elements are the following: that child
21 safety is embedded in institutional leadership, governance
22 and culture; that children participate in decisions
23 affecting them and are taken seriously; that families and
24 communities are informed and involved; that equity is
25 promoted and diversity respected; that people working with
26 children are suitable and supported; that processes to
27 respond to complaints of child sexual abuse are child
28 focused; that staff are equipped with the knowledge, skills
29 and awareness to keep children safe through continual
30 education and training; that physical and online
31 environments minimise the opportunity for abuse to occur;
32 that implementation of child safe standards is continuously
33 reviewed and improved; and that policies and procedures
34 document how the institution is child safe.
35

36 The Royal Commission is expected to hear evidence that
37 the Jehovah's Witnesses consider that many of the child
38 safe elements have limited application to the Jehovah's
39 Witnesses because the organisation does not operate or
40 sponsor programs or activities which separate children from
41 their families, nor does it have any positions that provide
42 access to children without their parents. As a result, the
43 Jehovah's Witnesses will give evidence that the
44 organisation does not maintain or operate the institutional
45 settings that present opportunities for predatory sexual
46 behaviour.
47

1 The Royal Commission will hear evidence that the child
2 safe standards promoted and promulgated to the Jehovah's
3 Witnesses' community by the organisation are derived from
4 the Bible. The level of compliance of the Jehovah's
5 Witnesses with the child safe elements will be examined
6 during the course of this hearing.

7
8 Since the Royal Commission's commencement, 57 private
9 sessions have been held with survivors of child sexual
10 abuse within the Jehovah's Witness organisation.

11
12 Since 2015, the Royal Commission has received more
13 than 1,165 items of correspondence in relation to the
14 Jehovah's Witnesses and Watchtower Australia. This
15 correspondence has been received from all over the world,
16 including from the United Kingdom, Austria, France,
17 Germany, Italy, Spain, Belgium, the Netherlands,
18 New Zealand, South Africa, Brazil, the Dominican Republic,
19 Canada, and the United State of America. The
20 correspondence has been overwhelmingly critical of the
21 Jehovah's Witnesses' institutional response to child sexual
22 abuse.

23
24 In November 2016 the Royal Commission called for
25 submissions from individuals and institutions on the
26 current child protection policies and procedures and child
27 safe standards of a number of institutions, including the
28 Jehovah's Witnesses and Watchtower Australia. A number of
29 submissions were received. Nearly all the submissions
30 called for major changes to the Jehovah's Witnesses'
31 policies and procedures for responding to child sexual
32 abuse.

33
34 Concerns were expressed over the institutional culture
35 of not reporting allegations of child sexual abuse to
36 secular authorities and instead having elders conduct
37 internal investigations into those allegations.

38
39 The conduct of internal investigations was also
40 a major issue of concern. In particular, the most
41 problematic policies and procedures of the Jehovah's
42 Witnesses' internal disciplinary system were considered to
43 be the following: survivors being required to confront
44 their abusers; the application of the two-witness rule;
45 women being absent from positions of authority; and the
46 absence of clear provision for a survivor to have a support
47 person.

1
2 The practice of "shunning" anyone, including a victim
3 of child sexual abuse, who wishes to leave the Jehovah's
4 Witnesses was considered to be one of the most damaging
5 practices. Great concern was also expressed over the
6 practice of reproof, which allows a repentant perpetrator
7 to remain within a congregation and consequently at risk of
8 re-offending.

9
10 The submissions also raised concerns that the
11 Jehovah's Witnesses are yet to establish any redress scheme
12 or communicate what processes and procedures apply to
13 claims arising from child sexual abuse. These matters will
14 be examined during the course of this hearing.

15
16 During the public hearing in case study 29, Mr O'Brien
17 gave evidence that the Jehovah's Witnesses in Australia do
18 not have a redress scheme for victims of child sexual abuse
19 because, at that time, the organisation had never received
20 a redress claim. Mr O'Brien also gave evidence that he
21 would recommend that the Jehovah's Witnesses implement
22 their own redress scheme to care for victims of child
23 sexual abuse.

24
25 The Royal Commission will hear evidence that since
26 Case Study 29, the Jehovah's Witnesses continue to handle
27 redress for victims of child sexual abuse on a case-by-case
28 basis. We are also expected to hear that the Australia
29 Branch Office will consider the details of any National
30 Redress Scheme that the government may propose to enact.

31
32 In November 2016, the Commonwealth Government
33 announced a Commonwealth Redress Scheme for survivors of
34 child sexual abuse in institutional contexts. The approach
35 that the Jehovah's Witnesses intend to take to the
36 government's national scheme will be explored in this
37 hearing.

38
39 THE CHAIR: Thank you, Mr Stewart. I think we might
40 adjourn briefly while the cameras are removed and we will
41 come back and start the evidence.

42
43 MR STEWART: As your Honour pleases.

44
45 **SHORT ADJOURNMENT**

46
47 THE CHAIR: Does anyone appear for the Jehovah's

1 Witnesses?
2
3 MR TOKLEY: Yes. Unfortunately Mr Stewart launched into
4 his opening and I didn't want to interrupt. I am
5 Mr Tokley, with Mr Gibson, for the society, your Honour.
6
7 THE CHAIR: Is that the only appearance?
8
9 MR TOKLEY: Yes, it is, your Honour.
10
11 THE CHAIR: Yes, thank you.
12
13 MR STEWART: Your Honour, I call Terrence John O'Brien and
14 Rodney Peter Spinks.
15
16 <TERRENCE JOHN O'BRIEN, sworn [10.30am]
17
18 <RODNEY PETER SPINKS, sworn: [10.30am]
19
20 <EXAMINATION BY MR STEWART:
21
22 MR STEWART: Mr O'Brien, I will start with you. Would you
23 state your full names, your position in the organisation
24 and your address?
25
26 MR O'BRIEN: Yes. My name is Terrence John O'Brien. My
27 position with the organisation, as you mentioned, I'm a
28 Director of the Watchtower Bible and Tract Society of
29 Australia. I am currently not serving as the coordinator
30 of the Branch Committee in Australasia. I have an
31 assignment in Papua New Guinea for 12 months, but I've kept
32 up to date with the information to do with the
33 Royal Commission. That's why I've come back for the
34 hearing. So presently, I reside in the Branch facilities
35 in Port Moresby in Papua New Guinea.
36
37 MR STEWART: When did you cease having the responsibility
38 of coordinator of the Branch Committee?
39
40 MR O'BRIEN: Beginning in October 2016.
41
42 MR STEWART: And who is the current coordinator?
43
44 MR O'BRIEN: The name is Winston Payne.
45
46 MR STEWART: Mr Spinks, coming to you, would you state
47 your full names and your position in the organisation?

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MR SPINKS: Yes, Rodney Peter Spinks. I'm the Senior Service Desk Elder in the Service Department.

MR STEWART: I take it that you are based at the Jehovah's Witness Bethel in New South Wales?

MR SPINKS: That's correct.

MR STEWART: Mr O'Brien, that would be true of you - oh, you are now in Papua New Guinea, sorry.

MR O'BRIEN: Yes, I'm here temporarily just for this two weeks but otherwise in Papua New Guinea.

MR STEWART: Thank you. Mr O'Brien, if I can refer you in the tender bundle to the document at tab 1, it is a response to the Royal Commission. It is dated 3 January 2017 and it is signed by you. Are you familiar with that document?

MR O'BRIEN: Yes.

MR STEWART: Is it true and correct?

MR O'BRIEN: Yes.

MR STEWART: Then, Mr O'Brien and Mr Spinks, I refer you to your joint statement, which is at tab 2, dated 24 February 2017. Mr O'Brien, to the best of your knowledge and ability, is it true and correct?

MR O'BRIEN: Yes.

MR STEWART: Mr Spinks?

MR SPINKS: Yes.

THE CHAIR: Mr Stewart, we might just mark the tender bundle.

MR STEWART: That was my proposal.

EXHIBIT #54-001 TENDER BUNDLE

MR STEWART: Mr O'Brien, I take it that following the hearing in Case Study 29 there was discussion at the Branch

1 Committee level in relation to various of the points and
2 issues that had risen in the Royal Commission hearing; is
3 that right?

4
5 MR O'BRIEN: Yes.

6
7 MR STEWART: Can you explain what process Watchtower
8 Australia went through in order to address the issues that
9 had been raised?

10
11 MR O'BRIEN: So as a Branch Committee, we considered the
12 various issues as they applied to us as a Branch Committee,
13 what areas of responsibility we could implement any
14 suggested changes.

15
16 As you would know, we had representatives from our
17 World Headquarters' legal department here at Case Study 29
18 and they returned with the case reports, and they have
19 obviously looked at the reports in between. We've also,
20 since, had members of our legal department here in
21 Australia spend time at World Headquarters. So many of
22 these issues have been discussed, and that's where we are
23 at present with them.

24
25 MR STEWART: Was there consultation between the Branch
26 Committee and World Headquarters in relation to any of the
27 issues?

28
29 MR O'BRIEN: Yes, definitely.

30
31 MR STEWART: In what way did that consultation take place?

32
33 MR O'BRIEN: Well, firstly, as I mentioned, the two legal
34 representatives who were here took back the information,
35 after conferring with the Branch Committee, before leaving.
36 Then we had members of our legal department over there in
37 consultation, and then, in between, we've had - prior to my
38 going to Papua New Guinea I was involved in some, but since
39 then, too - quite a number of video conferences with
40 personnel from World Headquarters legal, our legal, our
41 Branch Committee.

42
43 MR STEWART: Those discussions, I take it, were exploring
44 what, between you, you regarded to be necessary or
45 advisable changes; would that be right?

46
47 MR O'BRIEN: Yes, where we could improve in our policy and

1 practices and procedures - that was the content of the
2 discussions.
3
4 MR STEWART: I suppose you also identified what you
5 regarded to be scriptural impediments to any changes?
6
7 MR O'BRIEN: Yes. That was part of the subject of
8 discussion, but the scriptural content of any change, that
9 would be referred back to a different committee of the
10 Governing Body. That's not something the Branch Committee
11 would review.
12
13 MR STEWART: Which committee of the Governing Body would
14 that be?
15
16 MR O'BRIEN: Probably the teaching committee of the
17 Governing Body.
18
19 MR STEWART: Did the organisation in Australia take any
20 external advice with regard to what procedures should be
21 introduced or what changes should be made?
22
23 MR O'BRIEN: We considered the many reference materials
24 that were provided to and by the Royal Commission. We
25 reasoned that these are the ones with expertise that the
26 Royal Commission has confidence in, so we have considered
27 the various reports and case studies that were provided.
28
29 MR STEWART: So if I'm to understand your answer
30 correctly, you didn't take specific external expert advice
31 with regard to changing your policies or procedures?
32
33 MR O'BRIEN: Not outside of what was presented to the
34 Royal Commission, no.
35
36 MR STEWART: The upshot of that process you have
37 described, as I understand it, is that initially, at least,
38 two new documents were produced, one a guide to Service
39 Desks and one, a letter to elders; is that correct?
40
41 MR O'BRIEN: Yes, that's correct.
42
43 MR STEWART: It's just as well to identify them, because
44 they become the critical documents. So if I can refer you
45 to the document at tab 6, or, actually, let's start, if
46 I may, at tab 7, I beg your pardon.
47

1 It will come up on the screen. It should be on the
2 screen in front of you. You can use either the screen or
3 a physical representation, as you choose.
4

5 That is a letter to All Bodies of Elders dated
6 1 August 2016. It is on the letterhead of the Watchtower
7 Bible and Tract Society of Australia. Now, first, I take
8 it it was sent to All Bodies of Elders under the
9 responsibility of the Australia Branch; is that right?

10
11 MR O'BRIEN: That's correct.
12

13 MR STEWART: It is in identical or near identical form to
14 a letter which was, to the best of your knowledge, sent to
15 All Bodies of Elders around the world; is that right?
16

17 MR O'BRIEN: Yes, with - obviously there would be some
18 local adjustments, depending on the legal aspects of
19 different Branch territories.
20

21 MR STEWART: And so this letter was specifically
22 authorised by the World Headquarters; is that right?
23

24 MR O'BRIEN: Yes.
25

26 MR STEWART: Then the other document, at tab 6, is the
27 Child Protection Guidelines for Branch Office Service
28 Desks, and it is referred to as the S-66 document; is that
29 right?
30

31 MR O'BRIEN: That's correct.
32

33 MR STEWART: That, as I understand it, was sent to
34 particular officers at Service Desks of Branch offices
35 around the world; is that right?
36

37 MR O'BRIEN: As I understand, yes.
38

39 MR STEWART: So if I understand this correctly, neither of
40 these two documents go to ordinary congregants of the
41 Jehovah's Witnesses; is that correct?
42

43 MR O'BRIEN: No, they have a particular audience, so the
44 Branch guidelines were prepared specifically to assist
45 Service Desks at branches in knowing how to respond to
46 elders who would call in for direction. The letter to the
47 Bodies of Elders was provided for that audience,

1 specifically for elders, so they would know their
2 obligations or how to best handle any accusations of child
3 abuse and consequent shepherding - shepherding of the
4 victims.

5
6 MR STEWART: I will come in a moment to the document dated
7 7 March 2017, in other words, just a bit earlier this week,
8 but leaving that very recent document to one side, is it
9 the case, then, that insofar as the organisational response
10 to allegations of child sexual abuse is concerned, ordinary
11 congregants who are not elders and not deskmen, as they are
12 referred to, at the Service Desk, would have regard to the
13 publication "Organised to Do Jehovah's Will", to find the
14 organisational response.

15
16 MR O'BRIEN: Yes, although that document - whilst these
17 two documents are dealing specifically with child abuse
18 matters, the "Organised to Do Jehovah's Will" is
19 a publication that has very little to do with child sexual
20 abuse. It's basically talking about the general ministry
21 of Jehovah's Witnesses.

22
23 MR STEWART: Yes, I understand that. So still leaving
24 aside the document of 7 March 2017, if a congregant wanted
25 to know what processes there are that the organisation
26 follows, in the event that an allegation of child sexual
27 abuse is raised, there is no specific policy document that
28 they can have any access to; is that right?

29
30 MR O'BRIEN: No, leaving aside that document which now
31 corrects that, yes.

32
33 MR STEWART: And so, to the extent that they could learn
34 anything about, for example, the two-witness rule or the
35 judicial process within the organisation, they would be
36 left with "Organised to Do Jehovah's Will"?

37
38 MR O'BRIEN: No, I think the average member of
39 a congregation has exhaustive references to what we call
40 The Watchtower Library and subjects such as those you have
41 mentioned are considered in Watchtower articles that
42 everyone has access to.

43
44 MR STEWART: And many of those going back over a long
45 period of time?

46
47 MR O'BRIEN: And recent, yes. The most recent, back to,

1 I think, as far as 1930.

2

3 MR STEWART: So by the recent ones, are you referring to
4 articles referenced by you in your response and in your
5 joint statement that have been published since Case
6 Study 29?

7

8 MR O'BRIEN: Yes, some, but then there are other
9 Watchtower study articles that are reviewed at congregation
10 meetings which would contain other relevant information,
11 but not specifically only dealing with the - the same as
12 those reference materials, which are specific on child
13 abuse.

14

15 MR STEWART: So an ordinary congregant would have to go
16 doing their own research through those various publications
17 you have mentioned to find the answer on any particular
18 topic related to child sexual abuse; is that right?

19

20 MR O'BRIEN: Yes, but The Watchtower Library is very much
21 a user friendly program which most of Jehovah's Witnesses
22 have little trouble finding their way through the research.

23

24 MR STEWART: I think you accepted on the previous
25 occasion, Mr O'Brien, that there was an absolute need in
26 the organisation to bring these policies and procedures
27 together in an easily accessible place for congregants; do
28 you recall that?

29

30 MR O'BRIEN: Yes, which is what we have done.

31

32 MR STEWART: And that's what has led to the 7 March 2017
33 document; is that right?

34

35 MR O'BRIEN: Yes, because now it is specifically dealing
36 with child abuse matters.

37

38 MR STEWART: Yes. So let's go to that, then. At tab 11
39 there is a letter from the solicitors. It is the first
40 document at tab 11. That is a solicitor's letter dated
41 8 March 2017, which, in the main paragraph, says.

42

43 *... we have been working on developing*
44 *a policy statement of Jehovah's Witnesses*
45 *in Australia in relation to child*
46 *protection. As the final draft has only*
47 *just been completed for distribution to*

1 *congregations, we are pleased to provide*
2 *a copy of the Child Safeguarding Policy of*
3 *Jehovah's Witnesses in Australia.*
4

5 And then that's the document that follows. Now, firstly in
6 relation to this document, has it yet been published or
7 made available to congregants generally in Australia?
8

9 MR O'BRIEN: No, it's dated for release in March. It had
10 been planned some time, with wanting to get it to the
11 Royal Commission before this. This is the final version,
12 it has been approved now by the Branch Committee. It is an
13 Australia document. It is not a worldwide document, so
14 we've been able to give approval for that now. So we
15 anticipate in the next week or so it will now be made
16 available to congregations throughout Australia.
17

18 MR STEWART: And when you say you got approval for it,
19 that's from the World Headquarters or the Governing Body;
20 is that right?
21

22 MR O'BRIEN: Yes, a draft was obviously sent to the
23 coordinators committee, who look after legal matters for
24 the worldwide field, but the Australia document here gained
25 final approval by the Branch Committee for release.
26

27 MR STEWART: When was it adopted by the Branch Committee?
28

29 MR O'BRIEN: Just this last week, we've given the final
30 version of it. That's the one you have here.
31

32 MR STEWART: Do you mean this week or last week?
33

34 MR O'BRIEN: No, this week we finally finalised the final
35 edits of it, just a few minor edits.
36

37 MR STEWART: Was there a meeting of the Branch Committee
38 this week that approved and adopted this version?
39

40 MR O'BRIEN: I think the meeting was held previously. We
41 would have just circulated it for final review, but it only
42 had a couple of minor edits to make on it.
43

44 MR STEWART: And when did work on this document commence?
45

46 MR O'BRIEN: Well, I'm not sure on that. That has
47 happened since my transfer to Papua New Guinea. But

1 I think Mr Spinks has been involved in that and he could
2 give you a much better answer to the question.

3

4 MR SPINKS: So immediately following the public hearing in
5 Case Study 29, we went away with a clear picture - as did
6 the representatives from headquarters here - that we needed
7 to make some adjustments with documentation, which we
8 incrementally did.

9

10 So there has been a lot of discussion about this. It
11 is actually based on a policy that was under development
12 and issued for the UK, but obviously there are some
13 different implications here. It has been a drawn-out
14 process, and towards the end we wanted to have it available
15 for the Royal Commission. When our hearing date got
16 brought forward, we have had to move quickly. We didn't
17 send it to the congregations this week, for the obvious
18 reason, that if there's a suggestion or discussion, we just
19 wanted to reserve the right to make any minor adjustments
20 before it is distributed. But we actually - it has taken
21 some time, but we've actually brought it forward a little
22 bit so we could present it to the Royal Commission.

23

24 MR STEWART: And how long ago, Mr Spinks, was it in a form
25 similar to the one that we see now - in other words,
26 leaving minor changes aside?

27

28 MR SPINKS: I'm not certain with regard to the UK, but
29 I would think over the last three or four months there has
30 been discussion and video conferences, and that, to get it
31 into the shape that it is in. We wanted some specific
32 inclusions, which we are glad have been included. We have
33 referred to it as a living document. We want to make
34 whatever adjustments need to be made to it, further
35 adjustments if necessary, so that it is applicable for
36 Australia.

37

38 MR STEWART: Back to you, Mr O'Brien. Is there any plan,
39 to your knowledge, to revise "Organised to Do Jehovah's
40 Will", at least in relation to policies and procedures
41 responding to child sexual abuse?

42

43 MR O'BRIEN: I'm unaware of any plans along that line.

44

45 MR STEWART: In relation to S-66 - that's the Guidelines
46 for Branch Office Service Desks - I would like to refer you
47 to tab 21. Now, this, if I understand how to read it

1 correctly, starting to read at one-third of the way down
2 the page where the "World Headquarters" heading appears,
3 there is a letter from World Headquarters to Branch
4 Committees of all branches; is that right?

5
6 MR O'BRIEN: That's correct.

7
8 MR STEWART: Then, above that, there are two other
9 entries. Can you just explain what those are and the time
10 sequence in which they occurred?

11
12 MR O'BRIEN: Yes. That's the standard way we respond. So
13 the initial letter that you referred to there from World
14 Headquarters to all branches is the first mailing. Then,
15 if there is a brief response, not requiring a second letter
16 as a response, then the letter note, we refer to that as,
17 above, is provided. Then, if there is another brief
18 response, which is the top one, it is another response to
19 that.

20
21 MR STEWART: So one reads this in reverse order, like
22 email chains; is that right?

23
24 MR O'BRIEN: Yes, that's correct.

25
26 MR STEWART: In the letter itself, and the second bullet
27 point, you will see it says that the letter of 1 August -
28 2016 - that's the document we looked at earlier at tab 7:

29
30 *... will replace the letter dated October*
31 *12012 to All Bodies of Elders.*

32
33 So I take it that is right, it replaces the earlier letter?

34
35 MR O'BRIEN: That's correct, yes.

36
37 MR STEWART: So as at the date of the 1 August 2016
38 letter, the 1 October 2012 letter no longer applies?

39
40 MR O'BRIEN: That's correct.

41
42 MR STEWART: In the main paragraph in that letter -
43 I don't intend reading it - you will see that much emphasis
44 is placed on the confidentiality of the S-66 document, and
45 it says to whom specifically it can be given, including
46 that it is not to be given to Service Desk secretaries.
47 Now, can you just explain - I know this structure didn't

1 come from you, it came from World Headquarters, but I'm
2 hoping you can assist us.

3
4 MR O'BRIEN: Yes.

5
6 MR STEWART: What's the secrecy or confidentiality concern
7 with regard to this guide to Service Desks?

8
9 MR O'BRIEN: Once again, I could defer to Mr Spinks, who
10 will give you more a accurate answer than I would be able
11 to.

12
13 MR STEWART: He works in the Service Desk. Mr Spinks?

14
15 MR SPINKS: Again, I probably can't answer for the reason
16 that it was written there, but I guess those of us on
17 Service Desks have been given a heavy responsibility, as we
18 see it, to ensure that we meld together the August 1 letter
19 and the Service Desk guidelines - it is a responsibility we
20 take very seriously in giving advice out. So my reading of
21 it was simply that it's the responsibility of the Service
22 Desks to make application of it, and hence ownership of the
23 document. Beyond that, I couldn't comment.

24
25 MR STEWART: Do you appreciate that someone from outside
26 the organisation might struggle to understand why there
27 should be such secrecy with regard to something which is
28 a procedural document as to how matters should handled
29 procedurally - do you see that?

30
31 MR SPINKS: I recognise that - and this came up in the
32 earlier public hearing - there is no doubt that some of our
33 correspondence, it is well understood by the audience it is
34 intended for, but read from a critical perspective - and we
35 appreciate that - that it could be seen that way.

36
37 Our understanding of it, or our application of it, is
38 the elders have a letter that applies to their function and
39 role; the Service Desks have guidelines that are specific
40 to their function and role; and there is some reasonable
41 amount of discretion required in the application of that on
42 a case-by-case basis, but I take your point.

43
44 MR STEWART: You see, it might leave someone with the
45 impression that there is really a dual practice here: that
46 congregants are being kept from information with regard to
47 processes that govern their lives or govern issues that

1 arise in their lives; do you see that?
2
3 MR SPINKS: I understand that criticism that has been
4 made. From our perspective, it is audience-specific. The
5 instructions are there for a Service Desk to make
6 application of it. But again, I take your point.
7
8 MR STEWART: Mr Spinks, while we are with you, you may
9 wish to answer this question, although, Mr O'Brien, if you
10 have something you wish to say about it, by all means do so
11 now. You say, both of you, in your statement, that the
12 Jehovah's Witnesses teach that child sexual abuse is an
13 abhorrent sin - that's right, isn't it?
14
15 MR SPINKS: That's correct.
16
17 MR O'BRIEN: That's correct.
18
19 MR STEWART: It is that teaching of the Jehovah's
20 Witnesses that you rely on as an important element of your
21 strategy to make the organisation a child safe
22 organisation; is that right?
23
24 MR SPINKS: That and making sure that we conform with
25 whatever legal requirements there are. We've taken the
26 recommendations of the Royal Commission seriously.
27
28 MR STEWART: Mr Spinks, I said it is "an important
29 element". What I'm saying is one of the things you say
30 with regard to what you do to make your organisation child
31 safe is that you teach Jehovah's Witnesses that child
32 sexual abuse is an abhorrent sin; is that right?
33
34 MR SPINKS: That's correct.
35
36 MR STEWART: Of course, just what child sexual abuse is,
37 in the eyes and in the teaching of the organisation, is
38 therefore important; do you accept that?
39
40 MR SPINKS: Yes.
41
42 MR STEWART: And to the Royal Commission, child sexual
43 abuse includes sexual or sexualised activity by an adult
44 with anyone under the age of consent; do you accept that?
45
46 MR SPINKS: Yes.
47

1 MR STEWART: Now, I would like to refer you to the letter
2 to elders at tab 7 and seek your clarification with regard
3 to something. In particular, if, on page 2, you would look
4 at paragraph 10, which is headed "Congregation
5 Considerations", you will see some distinctions are drawn.
6 In particular, the sentence I want to ask you about is the
7 last sentence, but by all means read the whole lot. The
8 last sentence says:

9
10 *Rather --*

11
12 this is in relation to what is child sexual abuse --

13
14 *we are referring to an adult guilty of*
15 *sexually abusing a minor who is a young*
16 *child --*

17
18 I don't think there is any question about that, and it goes
19 on --

20
21 *or an adult guilty of sexual involvement*
22 *with a minor who is approaching adulthood*
23 *but was not a willing participant.*

24
25 Now, the question there is really this: this seems to be
26 saying that, within the eyes of the organisation and the
27 teaching of the organisation, a minor consenting to sexual
28 involvement with an adult - sorry, a more mature minor or,
29 as it is put here, a minor who is approaching adulthood, is
30 not regarded as child sexual abuse.

31
32 MR SPINKS: No, that's not correct. That's not the intent
33 of that, and if I could briefly explain?

34
35 MR STEWART: Yes, so what I'm getting at is to understand
36 the organisation's teaching or understanding as to where
37 the line is drawn - with regard to looking at the question
38 of age or majority, where the line is drawn with regard to
39 what is child sexual abuse.

40
41 MR SPINKS: I think if you go back to earlier in the
42 paragraph, if I could, to give that context.

43
44 MR STEWART: Of course.

45
46 MR SPINKS: Remembering that this is in addition to
47 whatever legal implication. This is a congregation

1 consideration. It says:

2

3

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10

When discussing child sexual abuse from a congregation standpoint, we are not discussing a situation in which a minor who is a willing participant and who is approaching adulthood is involved in sexual activity with an adult who is a few years older than the minor.

11

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25

So while that is a broad expression, our experience has been, for example, where we have seen it as child sexual abuse - one of the reports that we provided to the Royal Commission where we viewed it that way - the elders have reported it that way, but the authorities don't necessarily view it that way, where the age gap is close. So that's not to be interpreted to say if the minor is willing. There are situations where, for example, a 19-year-old and a 16-year-old may have a consensual relationship. Now, there may be an implication under law, there may not, and the same with the congregation. Were these close ages and consensual, or was the age gap such that there is either a legal implication or a congregation implication?

26

27

28

29

MR STEWART: Basically you are saying that the final sentence must be read as qualified by the first sentence that is talking about two people relatively close in age?

30

31

MR SPINKS: Correct.

32

33

34

THE CHAIR: What is understood by a participant who is "approaching adulthood"? What does that mean?

35

36

37

38

39

40

41

42

MR SPINKS: For example, your Honour, it may be a 16-year-old whose age of consent - while we promote high moral standards, we're not so naive as to think that 16 and 18-year-olds aren't having sex. So we appreciate that there are circumstances where you have two consenting people, one is technically, by law, an adult; one is approaching adulthood. So it is in that context.

43

44

45

THE CHAIR: I again ask you, what do you understand to be someone "approaching adulthood's?"

46

47

MR SPINKS: So that was the example I used, your Honour where --

1
2 THE CHAIR: A 16-year-old?
3
4 MR SPINKS: Well, not necessarily.
5
6 THE CHAIR: That's what I'm trying to find out.
7
8 MR SPINKS: Well, I think the law is probably clear to us
9 on that. For example, a 16-year-old may be able to
10 consent. And so, again, if it was a 16 and an
11 18-year-old - we are not talking about, here, young
12 teenagers with adults. We're talking about where there is
13 a similar age.
14
15 THE CHAIR: I understand what you are talking about. I'm
16 still trying to find out what you understand to be
17 a participant "approaching adulthood".
18
19 MR SPINKS: It would always be someone of a close age to
20 18, your Honour. That's our understanding. That's how we
21 view it, taking into account whatever legal implications
22 there are too.
23
24 THE CHAIR: So it wouldn't include a 16-year-old in your
25 understanding?
26
27 MR SPINKS: I did mention the example that the law would
28 permit a 16-year-old in some states to have sex with an
29 18-year-old. We're not going to necessarily view it
30 differently if it is a consensual relationship between
31 a 16-year-old and an 18-year-old.
32
33 THE CHAIR: Let's test it further, what about
34 a 15-year-old?
35
36 MR SPINKS: I think in most cases the law would have an
37 implication there as well that we would take into account.
38 Each situation - we would get legal advice, but also make
39 a determination: is this two young people of a similar age
40 that have a consensual relationship or is one using his,
41 for example, authority or older age to take advantage of
42 the younger person?
43
44 MR STEWART: The difficulty, Mr Spinks, that you face,
45 isn't it, is that, according to your teachings, the Bible
46 doesn't specify an age as to when one reaches adulthood?
47

1 MR SPINKS: That's correct.

2

3 MR STEWART: And I suppose in ancient times - you will
4 correct me if I am wrong - it may have been at the time
5 that the scriptures were written that someone, who in
6 modern times would be regarded as very young, like a 13 or
7 14-year-old, might be able to marry; would that be right?

8

9 MR SPINKS: Certainly not in the Bible. Thank you for -
10 I appreciate that is the case in some cultures, but the
11 Bible teaches very clearly that it would be someone who has
12 passed youth. But your point is taken that there is no
13 strict ruling in the scriptures.

14

15 MR STEWART: That leads us to the question of when is
16 "passed youth"?

17

18 MR SPINKS: I'm probably not understanding your question.
19 I don't want to be evasive because again, we've had - and
20 I would be very happy to provide the details of this to the
21 Commission - we've had situations recently, because of our
22 heightened awareness of issues, where the elders have taken
23 a young couple - one recently in Victoria where the girl
24 was 15 and the young man was in his early 20s, they were
25 from a culture outside Australia, courting young. They
26 were obligated under law to go to the police. The elders
27 went with the family to interpret and the police said, in
28 that instance, that they didn't view it as a sexual assault
29 of the minor. So there are complications. From
30 a congregation point of view, we probably have a stricter
31 view than the law.

32

33 MR STEWART: Mr Spinks, I don't want to spend time on it.
34 The simple point is this: the law, perhaps for reasons of
35 pragmatism as much as anything else, draws clear lines
36 between when one can consent and when one can't consent
37 legally, to sexual intercourse, whereas the Jehovah's
38 Witnesses don't. Would it not make your approach to things
39 a lot easier and a lot clearer if you just followed the
40 clear lines of the law in relation to this?

41

42 MR SPINKS: That's a complete misunderstanding.
43 I apologise, Mr Stewart. This is a secondary consideration
44 to the law. Jehovah's Witnesses will always abide by the
45 law. So this expression relates to where the law doesn't
46 have an implication, the congregation may still view it as
47 child sexual abuse or not, but it's always secondary to the

1 law. So I can't see a situation where that would occur.

2

3 MR STEWART: As you will be aware, Mr O'Brien, coming back
4 to you, in Case Study 29 the Royal Commission found that
5 it's a general practice of the Jehovah's Witness
6 organisation in Australia not to report allegations of
7 child sexual abuse to the police or other authorities
8 unless required by law to do so. You are aware of that
9 finding, of course?

10

11 MR O'BRIEN: I'm aware of the finding, but we have never
12 had a practice of not reporting.

13

14 MR STEWART: Mr O'Brien, we went through this on
15 a previous occasion, so I don't want spend time on it, but
16 of 1,006 cases, if I recall correctly, not one was reported
17 by the Jehovah's Witness organisation.

18

19 MR O'BRIEN: I think the point was brought out that
20 hundreds were reported not by the organisation, because the
21 organisation doesn't report. That's left to the elders
22 handling the case. They are the ones who take the matter
23 to the authorities or encourage the parents to.

24

25 MR STEWART: The simple point is this: it is your policy
26 to not report unless the law requires it. That's the
27 policy, simply put, isn't it?

28

29 MR O'BRIEN: No, that is not the policy, if I could
30 correct you again, and if you excuse me for doing that.
31 Our policy is if it is mandatory reporting, we report; if
32 the child or other children are at risk because of
33 a perpetrator, we will report; and, thirdly, we will always
34 inform the parents, or if it is an adult survivor, that
35 they have the absolute right to report. So to suggest we
36 have a policy of not reporting is quite inaccurate.

37

38 MR STEWART: You have qualified it in one respect, then.
39 You have said you have a policy to not report unless you
40 assess that a child is at risk of harm?

41

42 MR O'BRIEN: So we - referring to the elders in the
43 congregation, not the organisation, and keeping in mind
44 that even if there is no risk and it is not mandatory
45 reporting - still inform the parent or the survivor, if it
46 is an adult, that they have the absolute right to report,
47 and we will support them if they do that.

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MR STEWART: Yes, but that's then a case of them reporting, not the elders or the organisation reporting - not so?

MR O'BRIEN: No, because the law allows --

MR STEWART: In relation to reporting where there is an assessment of harm, can you identify, for ease of reference, where in the three documents that is reflected?

MR O'BRIEN: Again, if I could refer that to Mr Spinks. He has more expertise on that.

MR SPINKS: Sure. If I could just momentarily - we mentioned previously that it has been our practice at the Branch Office to inform the elders on every occasion that if there is a risk to a child or other for this bit children, that the matter is to be reported to the police, and we have documented that policy in the Child Safeguarding Policy of Jehovah's Witnesses in Australia, but it has also been documented by the Legal Department and by the Service Department, in each case, where we get a report, that the elders and subsequently the parents are informed of that.

MR STEWART: I understand, Mr Spinks. I'm just asking you to assist and identify where in these documents that guide the Service Desk, that guide the elders and that guide the congregation - those are the three documents we're looking at --

MR SPINKS: Sure.

MR STEWART: -- where that is recorded.

MR SPINKS: Would you just give me a moment, thank you. In the Child Safeguarding Policy dated March 7.

MR STEWART: That's the one at tab 11, yes?

MR SPINKS: That's correct, and point number 9. It says:

If congregation elders learn of a case of child abuse in which a child may still be at risk of harm, they will ensure that a report to the police or other appropriate

1 *authorities is made immediately.*

2
3 MR STEWART: Right. Thank you. And then the other
4 documents?

5
6 MR SPINKS: Obviously in the publications, which were
7 tendered at the previous public hearing, our publications
8 have been saying that for decades, that if a child is at
9 risk, whatever the cost, that is the procedure that we
10 followed, it is documented in the reports that the Service
11 Department receives, it is documented in the Legal
12 Department's documents, but we recognised that it needed to
13 be also put into this safeguarding policy.

14
15 THE CHAIR: When the document says the elders "learn of
16 a case of child abuse", are we to understand that as "learn
17 of an allegation"?

18
19 MR SPINKS: Correct.

20
21 THE CHAIR: Why doesn't it say that?

22
23 MR SPINKS: I think that is a good suggestion. It's
24 a poor choice of words. But that's the reference, is of an
25 allegation.

26
27 THE CHAIR: You see 8 and 7 speak in terms of
28 "allegation"?

29
30 MR SPINKS: Yes.

31
32 THE CHAIR: There was no intention to have a different
33 meaning, was there?

34
35 MR SPINKS: Again, the practice is clear, your Honour. And
36 I think that's testified to by the fact that, in each case
37 over recent years, as we've documented, policy is
38 significantly, or practice is significantly different to
39 30 years ago, but certainly each of the cases, for example,
40 in the period prior to and subsequent to the public
41 hearing, that has been documented in every instance.

42
43 THE CHAIR: Tell me this: if you receive an allegation of
44 abuse and you initiate your processes, but you don't get
45 a confession, but you get a very clear statement from the
46 victim that you would rationally believe, but for the fact
47 that you don't have a confession or two witnesses,

1 I appreciate that you would tell the adult victim that they
2 can go to the police, but with the knowledge that you would
3 have in that circumstance, do you have any understanding of
4 the law that might require you to report to the police?

5
6 MR SPINKS: You mean there, if I could, your Honour, an
7 adult survivor?

8
9 THE CHAIR: Yes.

10
11 MR SPINKS: Yes, and in every instance - and there was
12 discussion, your Honour, as you will recall, in relation
13 to 316 in New South Wales, which has been extensively
14 considered. So in each allegation, the responsibility of
15 our Legal Department, regardless of whether it is a child
16 or an adult, is to determine, firstly, is there a reporting
17 requirement under law, and obviously that then supersedes
18 any other consideration.

19
20 THE CHAIR: So in the circumstance I put to you, you would
21 tell the police?

22
23 MR SPINKS: You mentioned an adult survivor, so I just may
24 be confused.

25
26 THE CHAIR: Yes, an adult survivor who comes to you and
27 says, "I've been abused", and it's pretty clear, but for
28 the fact that you don't have a second witness, that this
29 person's telling you the truth.

30
31 MR SPINKS: Your Honour, at the Commission, in
32 publications, your Honour himself has said that some
33 individuals, adults, choose not to report and recognise
34 that --

35
36 THE CHAIR: No, no, no, no. What obligation do you think
37 you have under law in that circumstance?

38
39 MR SPINKS: With an adult survivor?

40
41 THE CHAIR: Yes.

42
43 MR SPINKS: To comply with whatever mandatory reporting
44 requirement there is, your Honour. Whether that be
45 a specific mandatory reporting requirement or 316 or
46 similar, we're absolutely obligated to comply with that.

47

1 THE CHAIR: And you would comply with it?

2

3 MR SPINKS: Absolutely.

4

5 MR STEWART: I will come to the legal guidelines shortly,
6 but just getting back to this point, so you have identified
7 in paragraph 9 of this 7 March document, but the fact of
8 the matter is, isn't it - and by all means, I'm asking the
9 question so you can show me if I have misread it or
10 overlooked it - the other two documents, the one that
11 guides Service Desks and the one that guides elders, don't
12 have any statement to this effect, in other words, that
13 a report should be made to the authorities if a child is
14 considered to be at harm or at risk?

15

16 MR SPINKS: That's not as clearly stated in those - it's
17 not clearly stated in those documents. It is a valid
18 point, and our reason for wanting it included in this one -
19 and, in fact, just in the last two weeks in a video
20 conference I raised the very same issue, you know, why have
21 we all agreed to put it in the public document, which is
22 great, but we need to retrospectively use the same
23 expression in those two letters, and that absolutely has to
24 happen.

25

26 MR STEWART: It's more than just a valid point. It is
27 a very critical point, isn't it. The policy which guides
28 the Service Desk and the elders in the organisation in
29 Australia is to not report to the authorities unless
30 required to do so. I accept the caveat to encourage people
31 to report and tell them they have a right to report
32 themselves. I accept that caveat. But it is actually not
33 a caveat that applies, the other one that Mr O'Brien added,
34 which was also if the child is at risk of harm.

35

36 MR SPINKS: That's incorrect. It's correct that it's not
37 in the document, but the evidence - and we're happy to make
38 that available to you, Mr Stewart - shows that our practice
39 has been to make that assessment in every situation.

40

41 MR STEWART: That may be the practice. My point is in
42 relation to the policy, and it's not stated, and you would
43 agree it should be revisited and addressed?

44

45 MR SPINKS: I've already raised that myself. I absolutely
46 agree.

47

1 MR STEWART: In fact, the Royal Commission recommended, as
2 you would be aware, that the organisation should always
3 report allegations of child sexual abuse to authorities
4 where the complainant is still a minor at the time that the
5 abuse comes to the attention of the organisation or where
6 there are others who may still be at risk at the hands of
7 the alleged abuser. Now, you haven't adopted that
8 recommendation. Can you explain why?
9

10 MR SPINKS: We have, with respect, Mr Stewart. Again, if
11 it's documentation, that may be the case, but you are aware
12 that each of the incidents that have been reported to us,
13 whatever the seriousness of it, since the public hearing
14 have been reported to the police, for the very reason that
15 you raise.
16

17 MR STEWART: Mr Spinks, the best evidence of what the
18 policies are of the organisation is to look at the policy
19 documents and if it is not there, then it is not the
20 policy. Would that not be right?
21

22 MR SPINKS: With regard to documentation, that's correct.
23 But, with respect, Mr Stewart, if you looked at the
24 incidents that have been reported to Jehovah's Witnesses
25 since the public hearing, each of those has been reported
26 to the police. So, with respect, the documentation part of
27 it, I totally agree with and have made that recommendation
28 myself.
29

30 MR STEWART: Mr Spinks, while the documents now make it
31 clear that survivors or their parents should be told that
32 they have, as it is put, an absolute right to report, it's
33 not the policy to actually encourage them to report, is it?
34

35 MR SPINKS: I think that's again not correct, because, as
36 the reports on each matter that has been reported to us
37 since the public hearing - both the Legal Department and
38 the Service Department use the same expression, that it's
39 their absolute right to report, and the elders will fully
40 support you in doing that.
41

42 THE CHAIR: Mr O'Brien, I think the point that is being
43 made is that it's one thing to have responded, since we
44 looked at you; another thing as to what you will be doing
45 in five years time. Do you understand?
46

47 MR O'BRIEN: Yes.

1
2 MR SPINKS: Five years future, your Honour?
3
4 THE CHAIR: Unless the intent is reflected clearly in your
5 policy documents, there is a very good chance you will just
6 fall backwards. Do you understand?
7
8 MR SPINKS: The point is well taken, your Honour. We've
9 put it in the most recent document and, retrospectively, it
10 has to be adjusted in the other documents. I take that
11 point.
12
13 THE CHAIR: We discussed a moment ago your reporting
14 obligations even in relation to an adult victim. That is
15 not referred to in this document either, is it?
16
17 MR SPINKS: That would be a matter for the Legal
18 Department, your Honour, because every state is --
19
20 THE CHAIR: It might be, but surely it is a matter for the
21 policy document, isn't it? If that's the policy of the
22 organisation, that's what you should follow.
23
24 MR SPINKS: Could I ask you to repeat the specific point,
25 your Honour?
26
27 THE CHAIR: Yes. The obligation to report, where the law
28 requires knowledge of an adult victim, is not referred to
29 in here.
30
31 MR SPINKS: With respect, your Honour, the most recent
32 document says in paragraph 5 --
33
34 THE CHAIR: When you say "the most recent document", I'm
35 still looking at --
36
37 MR SPINKS: The Child Safeguarding Policy?
38
39 THE CHAIR: Yes.
40
41 MR SPINKS: Yes, paragraph 5 says that:
42
43 *The elders will consult with the*
44 *Australasia Branch Office of Jehovah's*
45 *Witnesses and will comply with any relevant*
46 *secular reporting laws.*
47

1 So the other documents --

2

3 THE CHAIR: So that is where it is to be found, is it?

4

5 MR SPINKS: Will you just give me a moment, your Honour.
6 So in the August 1, 2016 letter, "Protecting minors from
7 abuse", the letter to elders --

8

9 MR STEWART: Tab 7.

10

11 MR SPINKS: -- paragraph 5 says:

12

13 *Legal considerations in some jurisdictions,*
14 *individuals who learn of an allegation of*
15 *child abuse may be obligated by law to*
16 *report the allegation to the secular*
17 *authorities.*

18

19 And then paragraph 7 says:

20

21 *The Legal Department will provide legal*
22 *advice based on the facts and the*
23 *applicable law.*

24

25 So in every case, that is considered.

26

27 THE CHAIR: I will leave Mr Stewart to explore what that
28 actually means.

29

30 MR STEWART: The lens through which one might explore that
31 is to look at what the Legal Department guidelines might
32 say. Because the position, to recap, is when elders learn
33 of an allegation of child sexual abuse, they are to
34 immediately phone the Legal Department; is that right?

35

36 MR SPINKS: That's correct.

37

38 MR STEWART: And the Legal Department will give advice on
39 their legal obligations?

40

41 MR SPINKS: That's correct.

42

43 MR STEWART: And then pass it on to the Service
44 Department?

45

46 MR SPINKS: Yes. They also have some advice that they
47 give in addition to the law, but in principle, that's

1 correct.

2

3 MR STEWART: And we called for, and we have been furnished
4 with, the guidelines that the Legal Department uses in
5 fielding those calls; is that right?

6

7 MR SPINKS: That's correct.

8

9 MR STEWART: So if we look at the one for New South Wales,
10 for example, at tab 13, and perhaps before we even look at
11 it, we can address some bigger pictures. There are
12 differences in the legal requirements across the states and
13 territories; is that right?

14

15 MR SPINKS: Correct.

16

17 MR STEWART: And it is a complex environment?

18

19 MR SPINKS: Very much so.

20

21 MR STEWART: Would the Jehovah's Witnesses support
22 national uniformity to the extent that that can be
23 achieved?

24

25 MR SPINKS: Absolutely.

26

27 MR STEWART: Now, if one has a look at this guideline,
28 which is headed "Reporting Obligations in New South Wales",
29 and then there is a number of standard points set out under
30 the heading "Taking Calls Concerning Abuse Matters"; do you
31 see that?

32

33 MR SPINKS: Yes.

34

35 MR STEWART: As I understand it, those are general points
36 said to apply across the states and territories and then
37 the more specific provisions are dealt with on the next
38 page; would that be right?

39

40 MR SPINKS: That appears to be correct, yes.

41

42 MR STEWART: In paragraph 7 it says:

43

44 *If the victim is still a child (under 16),*
45 *is he/she still in danger?*

46

47 In other words, this is the question that must be asked:

1
2 *If so, the Service Department will provide*
3 *necessary direction to ensure the child's*
4 *protection.*

5
6 You see that it doesn't ask whether there is another child
7 in danger?

8
9 MR SPINKS: I think, again, these are notes. I'm not in
10 the Legal Department. These are the notes of the Legal
11 Department. But I think the Safeguarding Policy uses the
12 generic "child", but I agree, again, that should say "if
13 a child, or any child, is still in danger" - that's a good
14 point.

15
16 MR STEWART: And related to that is even if the victim at
17 the time that the call is taken is an adult, it doesn't
18 deal with the question of what to do if other children are
19 still at harm. So, in other words, if a 20-something or
20 30-something-year-old reports abuse by someone who is still
21 in the congregation, the particular person's abuse occurred
22 many, many years before, but there are other children
23 potentially at harm because of that abuser still being
24 there - this doesn't deal with that?

25
26 MR SPINKS: You would have to excuse my ignorance, I'm not
27 a lawyer, Mr Stewart, but does the Act that supports this
28 advice make that point? I'm not certain. This is only the
29 legal advice is the point I'm making.

30
31 MR STEWART: Mr Spinks, you are effectively making the
32 point which is this: why do you legalise it all the time
33 and rely always on what the law provides? Why do you as an
34 organisation not just adopt the policy, as many other
35 organisations do, of reporting as a matter of course if
36 there are still children who might be in harm's way?

37
38 MR SPINKS: Again, with respect, Mr Stewart, that's a very
39 isolated point. This is the specific legal advice that is
40 given. When the call comes through to the Service
41 Department, in every situation, that is the advice that's
42 given. This is purely the legal requirements. So why do
43 we legalise the matter? Because they are getting legal
44 advice. When it comes through to the Service Department,
45 then we assess this.

46
47 MR STEWART: Mr Spinks, the trouble is you have taken us

1 straight back to where we were. We were talking about the
2 Service Department guidelines a minute ago, which doesn't
3 have the kind of policy recorded that I'm speaking of,
4 which is uniform reporting where there is any risk of harm,
5 and you referred us to the legal obligations. Now we're on
6 the legal obligations, you are referring us back to the
7 Service Desk.

8
9 MR SPINKS: I respect that is how you are viewing it.
10 Could I clarify it again?

11
12 MR STEWART: Let me put the question again: why is it
13 that the Jehovah's Witness organisation has not adopted
14 a standard policy to report allegations of child sexual
15 abuse to the authorities where there is still or an ongoing
16 risk of harm to any child?

17
18 MR SPINKS: We do, Mr Stewart. If it needs to be better
19 documented - this is simply an extract of the applicable
20 legal advice. This has nothing to do with our spiritual
21 process, our scriptural process in the Service Department.

22
23 MR STEWART: Mr Spinks, when you say "we do", what you
24 mean to say is "We do, as a matter of practice, report
25 where a child might still be at risk"; is that what you
26 mean to say?

27
28 MR SPINKS: Correct.

29
30 MR STEWART: And I'm addressing this at the level of
31 policy. Why do you not adopt it clearly in your policy
32 that guides your Service Desk to report in all cases of
33 allegations of child sexual abuse where there is a risk of
34 a child still being at harm?

35
36 MR SPINKS: Again, we do, Mr Stewart, and we will put that
37 in that document, and that has been the practice. It is
38 the policy. We've put it in the most recent policy
39 document, and it has to be added in to the others.

40
41 MR STEWART: This legal landscape - and I understand, if
42 I'm not mistaken, that neither of you are lawyers - is
43 complex. You have agreed and accepted that. And there are
44 distinctions between different types of reporting. There
45 may be reporting where there is a risk of significant harm,
46 perhaps to the child protection authority; there may be
47 reportable conduct schemes, for example, to the ombudsman

1 overseeing how organisations are themselves dealing with
2 reports that are made; and there are also, like section 316
3 of the Crimes Act in New South Wales, concealment offences
4 where a serious offence has been committed or there is
5 knowledge with regard to the commission of a serious
6 offence and it's then an offence not to report that. So
7 there are these different regimes.

8
9 Has the Jehovah's Witness organisation in Australia
10 taken a view as to what the best way of dealing with these
11 matters in the law is so that you are able to make
12 submissions or recommendations to the Royal Commission as
13 to what the Commissioners should be saying about these
14 matters?

15
16 MR SPINKS: I think all along we have said that we would
17 totally support a simplified mandatory reporting scheme
18 that is uncomplicated for all organisations. We've
19 repeatedly said that, and that is still our position.

20
21 MR STEWART: And beyond that, you haven't looked at these
22 different possibilities that I've mentioned to you?

23
24 MR SPINKS: I think we've made the point, if I could
25 repeat what Mr O'Brien said earlier: we comply with
26 mandatory reporting requirements, whether that's a specific
27 one or there is an implication under law. I believe the
28 folder that we provided for the tender bundle - we've
29 simply got the summation sheets here, but the Legal
30 Department obviously has the various Acts and laws, which
31 are understandably not included. But we completely comply
32 with mandatory reporting. We will report if there is
33 a child or children at risk, and, in the absence of that,
34 anyone has the right to report.

35
36 MR STEWART: I'm sorry, you misunderstand me. I'm only
37 asking you what assistance you can give to the
38 Commissioners in their deliberations in making
39 recommendations as to what the law should be, and am I to
40 understand you correctly, beyond saying it should be
41 national, uniform and simple, you don't have anything more
42 to say on that?

43
44 MR SPINKS: I should come back to my first and most
45 accurate statement, and that was I'm not a lawyer. But we
46 would love to have our Legal Department, who would be
47 better qualified to do that, provide our observations, if

1 that is the wish of the Commission.

2

3 MR STEWART: Just in relation to the specific legal
4 advice, there are various errors that occur in these
5 documents. I will just take you to two to demonstrate
6 them, and then leave you with, hopefully you will agree, an
7 acceptance that they need to be looked at again.

8

9 If we go to tab 14, which is headed "Reporting
10 Obligations in Queensland", you will see that it says:

11

12 *The age of consent is 16 for heterosexuals*
13 *and 18 for homosexuals.*

14

15 Do you see that?

16

17 MR SPINKS: Yes.

18

19 MR STEWART: Firstly, are you aware that the law in
20 Queensland in relation to age of consent changed last year?

21

22 MR SPINKS: I'm not. If this is inaccurate, then that
23 needs to be addressed, but I wasn't aware of that.

24

25 MR STEWART: It is inaccurate in that respect, and that is
26 that, at 16, there is no longer a distinction. It is
27 inaccurate in another respect, and that is that the law
28 draws no distinction, or drew no distinction prior to its
29 change and subsequently, between heterosexuals and
30 homosexuals. In other words, the age of consent at 18 was
31 set for anal intercourse, man or a woman. You are not
32 aware of that?

33

34 MR SPINKS: No, obviously. I see there is a reference
35 there, Mr Stewart. The Criminal Code is not attached, but
36 I wouldn't be able to interpret it anyway. But if that is
37 incorrect, then I'm happy to report that back and have that
38 adjusted.

39

40 MR STEWART: Going on now to address the two-witness rule,
41 Mr O'Brien, you are aware, of course, that the
42 Royal Commission found that the application of the
43 two-witness rule in cases involving child sexual abuse is
44 wrong - you are aware of that finding?

45

46 MR O'BRIEN: Yes, I'm aware of the finding.

47

1 MR STEWART: And the recommendation that the Jehovah's
2 Witness organisation should revise and modify its
3 application of the two-witness rule, at least in cases
4 involving complaints of child sexual abuse - you are aware
5 of that recommendation?
6

7 MR O'BRIEN: Yes, I'm aware.
8

9 MR STEWART: I take it that that finding and that
10 recommendation were the subject of the discussions you
11 referred to earlier in the organisation with regard to its
12 response to the Royal Commission?
13

14 MR O'BRIEN: Yes. So we considered the implications of
15 that finding.
16

17 MR STEWART: And your response is to say that the
18 two-witness rule is required by the scriptures and can't be
19 changed or avoided; is that correct?
20

21 MR O'BRIEN: That's correct. That's our stand.
22

23 MR STEWART: Your Honour, I'm not sure what your Honour's
24 intention is --
25

26 THE CHAIR: How much longer will you be?
27

28 MR STEWART: I will take us to 1 o'clock, your Honour.
29

30 THE CHAIR: We had better take the morning adjournment,
31 then. And we will take that adjournment now.
32

33 **SHORT ADJOURNMENT**

34
35 MR STEWART: Mr O'Brien - or indeed Mr Spinks, if you wish
36 to answer - I'm just dealing with the two-witness rule, you
37 will recall, and I would like to take you to your response
38 document, Mr O'Brien, at tab 1, at page 14, paragraph 7.4.
39 You say:
40

41 *Moreover, it should be noted that*
42 *sufficient Scriptural evidence to establish*
43 *a serious sin may consist of two or more*
44 *witnesses to the same sin or two or more*
45 *witnesses to the same type of sin committed*
46 *on different occasions.*
47

1 So the rule, in the absence of a confession, requires
2 corroboration of an allegation; is that right?

3
4 MR O'BRIEN: That's correct scripturally.

5
6 MR STEWART: And a particular type of corroboration, being
7 another witness, or, as it is put here, another witness to
8 a different occasion of a similar type of sin; is that
9 right?

10
11 MR O'BRIEN: That's how I understand it, yes.

12
13 MR STEWART: Then you say:

14
15 *On this basis, the Scriptural rule of*
16 *evidence, as applied by Jehovah's*
17 *Witnesses, is already in harmony with the*
18 *Model Bill, Evidence (Tendency and*
19 *Coincidence) Model Provisions by admitting*
20 *tendency or coincidence evidence when*
21 *establishing sin ...*

22
23 Now, leaving aside the admission of evidence, let's just
24 deal with this question of corroboration. You are aware,
25 I take it, that criminal courts do not require
26 corroboration of child sexual abuse or, indeed, the most
27 heinous of sins?

28
29 MR O'BRIEN: Yes, I'm not clear on that particular point,
30 but I will take your word for it.

31
32 MR STEWART: I will ask you to accept that section 164 of
33 the Evidence Act abolished the corroboration rule. So it
34 is just misleading to say that this scriptural rule, the
35 two-witness rule, is in harmony with the law of evidence.
36 It is not in any way, is it?

37
38 MR O'BRIEN: I would defer to your knowledge of the law on
39 that.

40
41 MR STEWART: Mr Geoffrey Jackson of the Governing Body
42 gave evidence in Case Study 29 suggesting that there may be
43 a role for circumstantial or corroborating evidence such as
44 the evident trauma suffered by a victim in determining the
45 truth of an allegation. For those who are following,
46 that's at transcript 15973, starting at line 37.

47

1 Now, subsequent to Case Study 29, the rule has not
2 been modified so as to allow circumstantial or
3 corroborating evidence, such as evident trauma suffered by
4 a victim. Was that, nevertheless, considered?

5
6 MR O'BRIEN: I'm sure Mr Jackson would have taken that
7 back for consideration in the United States, but I'm not
8 aware of discussions on the particular point.

9
10 MR STEWART: So are we to deduce, I take it, that he was
11 wrong in saying that there may be a role for such evidence,
12 that it turned out there isn't a role for such evidence; is
13 that right?

14
15 MR O'BRIEN: I couldn't answer that on behalf of
16 Mr Jackson, sorry.

17
18 MR STEWART: If you go to the Service Desk guidelines at
19 tab 6, paragraph 8, you will see that it says there:

20
21 *For an accusation of serious wrongdoing to*
22 *be established from a Scriptural*
23 *standpoint, there must be sufficient*
24 *Scriptural evidence, either a confession or*
25 *testimony from two credible witnesses ...*

26
27 Now, you will accept, of course, that what is not included
28 in the statement of the rule there is the additional
29 component to it, which you speak to, which is admissibility
30 of another witness to a separate incident of the same type
31 of wrongdoing.

32
33 MR O'BRIEN: But that would be understood. That's our
34 policy on two witnesses.

35
36 MR STEWART: So one has a statement here to guide the
37 Service Desk, but it doesn't state the second component to
38 the rule?

39
40 MR SPINKS: If I could, Mr Stewart?

41
42 MR STEWART: Yes, Mr Spinks.

43
44 MR SPINKS: Without looking it up there, but paragraph 8
45 references ks10, which is the elders Shepherding manual,
46 and those paragraphs referred to there specifically state
47 those points. So confession --

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MR STEWART: Yes, I'm aware of that. So it's there but one has to go to another document to find it - is that your point?

MR SPINKS: I think if I could, by way of example, again, it's about audience, Mr Stewart. The Service Desks know that ks10 well. So we understand that somebody else looking in would say that's the case, but if I could, by way of example, I've done my best to read almost every issue paper and report from the Royal Commission, and hundreds of hours of wading through, and there is invariably, you know, an executive summary. Now, I'm not using this as a direct parallel, but this is simply an outline, an overview. The extracts of all those publications are not put in there. But that reference - could I refer to it - in the ks10 manual?

MR STEWART: Yes. I have got it here. It is tab 9, Ringtail 75 at the foot of the page. It states what we have just spoken about, if there are two or three witnesses to the same kind of wrongdoing but each one is witness to a separate incident, the elders can consider their testimony. That's what you are referring to?

MR SPINKS: Correct.

MR STEWART: Yes. Where you refer to this in your joint statement - let me take you to that, tab 2, paragraph 26. That's on page Ringtail 7. Paragraph 26. The second sentence:

However, in the absence of a confession of more than one witness to a single incident, the Scriptural rule of evidence to establish sin allows for the admissibility of another witness to a separate incident of the same kind of wrongdoing.

And you see you have put a footnote 15 there and it references three different document - do you see that?

MR SPINKS: Yes.

MR STEWART: The third of those documents, which has Ringtail WAT.0001.004.0068 at paragraph 11 - I beg your pardon. The middle of those documents is the ks10 - the

1 Shepherd book?
2
3 MR SPINKS: Correct.
4
5 MR STEWART: At the paragraph we were looking at a minute
6 ago, paragraph 37?
7
8 MR SPINKS: Correct.
9
10 MR STEWART: But the first of those documents is a 1991
11 document, "Pay attention to yourselves and all the flock";
12 is that right?
13
14 MR SPINKS: I have no reason to doubt that.
15
16 MR STEWART: And the 1991 document is of the nature of
17 a document that going to all the congregations - all the
18 congregants; is that right?
19
20 MR SPINKS: I would need to see the document. I have no
21 reason to question what you are saying. I'm not saying --
22
23 MR STEWART: You will be familiar with the document - it's
24 the 1991 "Pay attention to yourselves and all the flock".
25
26 MR SPINKS: I am familiar with that publication, yes.
27
28 MR STEWART: Is that for elders or for congregants?
29
30 MR SPINKS: For elders.
31
32 MR STEWART: The current elders document is the Shepherd
33 document 2010?
34
35 MR SPINKS: Correct. So the 1991 document you reference
36 is an out-of-date document?
37
38 MR SPINKS: That superseded - the Shepherd manual
39 superseded. That was a previous version.
40
41 MR STEWART: On February 24, when you sign the statement,
42 you give an old superseded reference?
43
44 MR SPINKS: Followed by the current reference, and
45 I believe the purpose at the time was to show a consistent
46 process there. I mean, if you put the two together you
47 will find they're similar, but I don't have it in front of

1 me.

2

3 MR STEWART: The third reference you give is the 1 October
4 2012 letter, which was replaced by the 1 August 2016
5 letter.

6

7 MR SPINKS: Correct.

8

9 MR STEWART: And the August 2016 letter doesn't state this
10 rule in this fashion. You see, Mr Spinks, we're back to
11 where we were in Case Study 29 of really struggling with
12 just what the position is, because there are so many
13 different conflicting documents, and we're given documents
14 which have been superseded as authority for what is said to
15 be current policy.

16

17 MR SPINKS: Mr Stewart, that's just incorrect.

18

19 MR STEWART: Please explain why.

20

21 MR SPINKS: Let me take you back to paragraph 8 again, if
22 I could.

23

24 MR STEWART: Paragraph 8 of what?

25

26 MR SPINKS: Of the Guidelines for Branch Office Service
27 Desks.

28

29 MR STEWART: Yes. That's tab 6.

30

31 MR SPINKS: The current guidelines, the current reference,
32 ks10, chapter 5, is the Shepherding textbook. I take your
33 point that when you are reading a statement, we have
34 provided historical background. But I recall in the
35 preparation of that, that was to overcome what we thought
36 would be an obvious objection that that has not always been
37 the case, but the latest reference is in the footnote
38 there, and it certainly is in the paragraph 8 of the
39 Service Desk guidelines.

40

41 Now, if the suggestion is that every one of those
42 extracts should be pasted in to the document, we would be
43 happy to consider that. But again, we are extremely
44 familiar with that source material, and it's there in the
45 current letter.

46

47 MR STEWART: The suggestion is that you reference out of

1 date and superseded policies in support of your statement
2 as to what the current policy is.

3

4 MR SPINKS: Mr Stewart, again, with respect, I have just
5 very clearly explained that the reason for that, the
6 current policy is there, and to address what we felt would
7 have been an obvious objection from the Commission that
8 that hadn't previously been our policy, so that's simply
9 a footnote reference to show the existence of the policy.

10

11 MR STEWART: Dealing with the subject of a victim having
12 to confront the abuser, you know, of course, that the
13 Royal Commission found that the Jehovah's Witnesses'
14 written policies and procedures should clearly state that
15 it is not a requirement, in cases of child sexual abuse,
16 that the victim must confront her alleged abuser; you know
17 that?

18

19 MR SPINKS: Yes.

20

21 MR STEWART: And it was recommended that members of the
22 organisation more generally should be advised in writing of
23 the specific exemption that applies in cases of child
24 sexual abuse; you are aware of that?

25

26 MR SPINKS: Yes.

27

28 MR STEWART: And the letters to elders now make it clear
29 that this is not required; is that right?

30

31 MR SPINKS: That's correct.

32

33 MR STEWART: Paragraph 13?

34

35 MR SPINKS: That's correct.

36

37 MR STEWART: But not the Service Desk guidelines - am
38 I right, or have I overlooked it?

39

40 MR SPINKS: Just give me a moment, thank you. That's
41 correct. The August 1 letter is a wider audience.
42 The August 1 letter is to all elders and, obviously,
43 Service Desks. So there is quite a few examples of where
44 the same items are not repeated in the Service Desk
45 guidelines. All the Service Desks, by the way, and
46 secretaries, have those two items bound together, because
47 we read them together.

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MR STEWART: On the specific point, this point of a victim having a right not to have to face the abuser, which is, as I've said, clarified in the 1 August letter, it is also clarified in the 7 March policy?

MR SPINKS: Correct.

MR STEWART: But it has not been addressed in the Shepherd book, has it?

MR SPINKS: In those words, no. There was lengthy discussion at the original hearing where we went to the ks textbook and looked at what was a few brief expressions in the context of dealing with allegations in general. But I don't believe that same wording is exactly transposed into the ks10, which, I think as we made aware to the Commission, is actually partway through editing as we speak. We provided the Commission with the adjustments that have been made to date, and we are expecting that there will be an entire adjustment of that made available to all elders. But it's certainly much clearer in the documents.

MR STEWART: Mr Spinks, that is new to me at least so let's just unpack that. Firstly, you have made available to us, which is now tab 9, a copy of the 2010 "Shepherd the Flock of God", which is also referred to as "ks10", with marginal annotations referring to certain letters to elders and other documents; that's right, isn't it?

MR SPINKS: Correct.

MR STEWART: But no actual changes to the substantive text. But if one goes to the letters, one can see where the text might have been qualified?

MR SPINKS: And I believe on your copy there as well, those are marked beside it, and that has been distributed to every elder around the world. It's actually a live document electronically now, where, as those changes are being made to that book, they are made live to every congregation elder. So we've simply given you a PDF version of the live copy.

MR STEWART: Yes, I understand that. But now the actual text of this document - am I to understand what you have

1 just said now - is that it is in a process, a current
2 process, of revision, and there is expected to be a new
3 "Shepherd the Flock of God" edition to be produced?
4

5 MR SPINKS: That's my understanding, and that's the reason
6 for these ongoing edits. So I would anticipate that while
7 that is referred to in the Shepherding manual - I'm happy
8 to go there again, as we did at the previous hearing - but
9 it will certainly be clearer, using the language of the
10 current policy in any future edition.
11

12 MR STEWART: I do wish to go there. It's at tab 9,
13 Ringtail 0076, typed page 72, paragraph 39. Accepting that
14 this is not dealing specifically with child sexual abuse,
15 it's dealing with serious sin generally - that's right,
16 isn't it?
17

18 MR SPINKS: That's correct.
19

20 MR STEWART: It says, under the heading "If the accused
21 denies the accusation":
22

23 *The investigating elders should try to*
24 *arrange a meeting with him and the accuser*
25 *together.*
26

27 And then there is a note:
28

29 *If the accusation involves child sexual*
30 *abuse and the victim is currently a minor,*
31 *the elders should contact the Branch Office*
32 *before arranging a meeting with the child*
33 *and the alleged abuser.*
34

35 And that would then be to the Service Desk?
36

37 MR SPINKS: That's correct.
38

39 MR STEWART: And it is the Service Desk guidelines which,
40 unlike the letter to elders, that don't have the position
41 clearly stated that a victim has a right not to have to
42 face her accuser?
43

44 MR SPINKS: The Service Desk guidelines are very, very
45 clear on that, and if I could also, if I could just have
46 one moment, please, Mr Stewart. I apologise if I'm
47 repeating something that you have clearly stated here, but

1 in the August 1, 2016 letter, "Protecting minors from
2 abuse", on paragraph 13 --
3
4 MR STEWART: Yes, but that's the letter to elders.
5
6 MR SPINKS: Correct.
7
8 MR STEWART: Yes. So I've just addressed not that letter,
9 but the Guidelines for the Branch Office Service Desks,
10 which is where the elders here, in paragraph 39, are
11 referred to - they are referred to the Service Desk.
12
13 MR SPINKS: Correct.
14
15 MR STEWART: And the guideline to the Service Desk doesn't
16 contain an articulation of this right.
17
18 MR SPINKS: As I said to you, in the letter --
19
20 MR STEWART: The letter to the elders contains it.
21
22 MR SPINKS: Sorry, if I could read, Mr Stewart, to you
23 paragraph 1 of the Service Desk guidelines?
24
25 MR STEWART: Yes.
26
27 MR SPINKS: It says:
28
29 *The August 1, 2016 letter to All Bodies of*
30 *Elders provides direction in connection*
31 *with protecting children from abuse. The*
32 *Service Desks should be thoroughly familiar*
33 *with that letter and pertinent information*
34 *in the Shepherding textbook.*
35
36 So again, it's audience. The letter is for all elders; the
37 Service Desk guidelines are for the Service Desks.
38
39 MR STEWART: I accept, Mr Spinks, you say you know
40 that and that it therefore doesn't have to be in the
41 guidelines - not so?
42
43 MR SPINKS: It is in the guidelines in that -- -
44
45 MR STEWART: By reference?
46
47 MR SPINKS: The letter is attached. There are two

1 documents side by side that we use together.

2

3 MR STEWART: Now, Mr Spinks, going on to the next sentence
4 at paragraph 39 of Shepherd:

5

6 *If the accuser or the accused is unwilling*
7 *to meet with the elders, or if the accused*
8 *continues to deny the accusation of*
9 *a single witness and the wrongdoing is not*
10 *established ...*

11

12 So I take it not established scripturally, ie, under the
13 two-witness rule; would that be right?

14

15 MR SPINKS: That's correct.

16

17 MR STEWART:

18

19 *... the elders will leave matters in*
20 *Jehovah's hands.*

21

22 So the result of that is this, isn't it - and I think it is
23 stated in the recent policy document - that even if someone
24 who is accused of child sexual abuse is convicted beyond
25 reasonable doubt by a criminal court, if the scriptural
26 rule of evidence, the two-witness rule, is not met within
27 the Jehovah's Witnesses' internal processes, then the
28 matter is left in Jehovah's hands?

29

30 MR SPINKS: That's again totally incorrect. I apologise
31 for being direct with it, Mr Stewart, but - and I'm sure it
32 is unintentional, but the transcript will show, we've had
33 this lengthy discussion at the first hearing. If I could
34 be permitted to say, that bracketed section - you have gone
35 on and read the part after it. The bracketed section is
36 inserted there to say, when it relates to child sexual
37 abuse, contact the branch. End of bracket. It now
38 continues with what would be the normal judicial process,
39 that is perfectly clear to elders. I appreciate again,
40 it's about audience. But the bit that you read after that
41 is not stating with regard to child sexual abuse. And, in
42 addition, you have added in to the end of that statement
43 that you just made, that regardless of what the secular
44 authorities would do, that that wouldn't permit the
45 congregation to act, when the documentation shows that's
46 just completely incorrect.

47

1 MR STEWART: Well, the documentation says that the Service
2 Desk may then impose restrictions.

3

4 MR SPINKS: And can I - again I appreciate the different
5 audience, Mr Stewart, but can I say to you that that does
6 not relate, for example, to a person in a position of
7 responsibility. This is, as you would refer to them,
8 meeting attenders or congregation members. But in every
9 case, steps are taken where the authorities are involved.
10 There would be no individual who is continuing, for
11 example, in a position of responsibility, where the secular
12 authorities have established guilt - that situation doesn't
13 exist.

14

15 MR STEWART: Do you have a system of monitoring compliance
16 with that right, in other words, the right of a victim not
17 to face her abuser?

18

19 MR SPINKS: Yes.

20

21 MR STEWART: What is your system of monitoring?

22

23 MR SPINKS: In every situation, as set out in these
24 documents, and as you have stated yourself, the elders call
25 the Legal Department, they call the Service Department, and
26 in every case, those key issues are repeated and now, of
27 course, in the more publicly available document.

28

29 MR STEWART: Mr O'Brien, you are aware that the
30 Royal Commission found that members of the organisation who
31 no longer wanted to be subject to its rules and discipline
32 have no alternative but to actively leave or disassociate
33 from the organisation, and that it found that the Jehovah's
34 Witnesses' practice of shunning members who disassociate
35 from the organisation potentially puts survivors in the
36 untenable position of having to choose between constant
37 re-traumatisation and having to share a community with
38 their abuser or losing their entire community. Those are
39 two findings of the Case Study 29 report - you are aware of
40 those findings?

41

42 MR O'BRIEN: Yes, I'm aware of the findings, but I think
43 we disagreed with the findings, but, respectfully, I can
44 say that. I think Mr Jackson, in his testimony, made the
45 same point as I did in my testimony, that we don't believe
46 it's an impossible choice. A person can stop associating
47 with Jehovah's Witnesses, have nothing more to do with

1 Jehovah's Witnesses, without taking the step of
2 disassociation. We've tried to make that very clear.

3
4 MR STEWART: I'm not going to go back down that path now,
5 having exhausted it on a previous occasion. But what
6 I expect to find is the organisation's response to these
7 findings in your response document of 3 January 2017; would
8 that be right? That's where we should go to; is that
9 right?

10
11 MR O'BRIEN: That's correct, yes.

12
13 MR STEWART: So if we look at that document at tab 1,
14 page 16, which is Ringtail 31, right at the foot of the
15 page, 7.14.

16
17 MR O'BRIEN: Our January document, is it?

18
19 MR STEWART: You have that?

20
21 MR O'BRIEN: This is the January document?

22
23 MR STEWART: Yes.

24
25 MR O'BRIEN: 7.14?

26
27 MR STEWART: You say there in the first sentence:

28
29 *Shunning a disfellowshipped child molester*
30 *is, and will continue to be, Jehovah's*
31 *Witnesses' Bible-based response to this*
32 *serious sin.*

33
34 Well, that depends, of course, on whether the person was
35 disfellowshipped or reprovved, doesn't it? If they were
36 reprovved, then they are not shunned?

37
38 MR O'BRIEN: Yes, that's correct. But here it is talking
39 about the child molester is disfellowshipped.

40
41 MR STEWART: He is disfellowshipped. I beg your pardon.
42 But if they are not disfellowshipped, then they are not
43 shunned?

44
45 MR O'BRIEN: No.

46
47 MR STEWART: It then goes on:

1
2 *This practice is an effective mechanism for*
3 *protecting children in the congregation.*
4

5 I think we canvassed before that that doesn't do anything
6 for children outside the congregation; would that be right?
7

8 MR O'BRIEN: Well, that's a position that has been taken,
9 but again we say that the congregation arrangement is one
10 to protect the congregation from sin. We judge the matter
11 of sin. We're not in competition with the legal justice
12 system, and I think we've been down the road a little
13 earlier, that with reporting, we will report that. If it
14 was mandatory reporting, that's a completely separate
15 issue. If it's not, then we will leave that to the parent
16 or the victim. But certainly --
17

18 MR STEWART: So, Mr O'Brien, that's the first of the three
19 paragraphs response. If we go to the next one, 7.15, you
20 say:
21

22 *It is not and has never been Jehovah's*
23 *Witnesses' policy to shun a victim of child*
24 *sexual abuse.*
25

26 That says what it says. That's fine. That doesn't meet
27 the point that has been made, which is that the victim of
28 child sexual abuse who wants to and does leave the
29 organisation is shunned. And then 7.16 says:
30

31 *The policies and procedures on how elders*
32 *should respond to victims have been*
33 *consolidated and clarified. Elders have*
34 *been reminded and encouraged to*
35 *be empathetic and compassionate with*
36 *victims and their families. They have also*
37 *been directed to provide on-going*
38 *shepherding to comfort both the victim and*
39 *his/her family. If elders are approached*
40 *by a survivor of child sexual abuse, they*
41 *should speak consolingly to the person and*
42 *manifest an empathetic, compassionate,*
43 *patient, and supportive response. In*
44 *exhorting congregation elders to lovingly*
45 *and kindly serve as spiritual shepherds to*
46 *victims of child sexual abuse, Jehovah's*
47 *Witnesses confirmed their long-standing*

1 *policy that a victim will not be shunned.*

2
3 I suggest to you, none of that answers the point, the point
4 being that it is particularly damaging when a child sexual
5 abuse victim leaves the organisation, disassociates from
6 the organisation and is then shunned.

7
8 MR O'BRIEN: Well, that would be true - if they
9 disassociate themselves, you are referring to?

10
11 MR STEWART: Yes.

12
13 MR O'BRIEN: Because that is the policy. But again, as
14 I think I pointed out in my evidence, and I think
15 Mr Jackson did as well, here we're talking about somebody
16 who is of an age where they have qualified for baptism, so
17 they are somebody who is either approaching adulthood or an
18 adult, making that decision, understanding the implications
19 of choosing either to disassociate themselves, knowing the
20 consequences will be shunning, or simply ceasing activity
21 with the congregation but not taking the stand of
22 disassociation. So it is a choice on the part of the
23 person.

24
25 MR STEWART: In brief, what you are saying is you haven't
26 changed - in response to the Royal Commission report in
27 Case Study 29, you haven't changed anything in relation to
28 shunning; is that right?

29
30 MR O'BRIEN: Could I just read one scriptural point,
31 because not all of the Commissioners were here for the
32 hearing, and I - this is really the basis for our thinking
33 on these scriptural matters on which we find disagreement.
34 So we appreciate there is disagreement. This is in the
35 Bible Book of Isaiah, chapter 33, and it talks about the
36 laws under which Jehovah's Witnesses believe we come.
37 Chapter 33, verse 22. It says:

38
39 *For Jehovah is our judge. Jehovah is our*
40 *lawgiver. Jehovah is our king.*

41
42 So that covers every aspect of the legislative, the
43 executive, the judicial process, all Jehovah God reserves
44 to himself. Now, we understand scripturally he delegates
45 some of that authority to congregations, to families,
46 husbands, wives, parents. But ultimately, if God's word
47 provides a direction on a certain doctrine, Jehovah's

1 Witnesses are bound by that, regardless of how others may
2 view that.

3
4 MR STEWART: I understand that's the position you take,
5 and I'm not going to enter into a debate with you, as I did
6 on the previous occasion, about how the Jehovah's
7 Witnesses' position on a range of things has changed over
8 the years, on blood transfusions and blood fractions, by
9 way of example, and on a number of other things. We will
10 leave all that to one side. But just to get back to my
11 question, to which I understand the answer is yes, and the
12 question was: in response to the Royal Commission's
13 findings and recommendations in relation to shunning, in
14 the report for Case Study 29, you have not made any
15 changes?

16
17 MR O'BRIEN: Well, the Branch Committee, or the directors
18 of the Watchtower Bible and Tract Society of Australia, are
19 not authorised to be able to do that, Mr Stewart. That was
20 a matter Mr Jackson would have taken back to the Governing
21 Body, as he said he would.

22
23 MR STEWART: That's the point that you make, is you regard
24 yourself bound by those policies or to those policies by
25 the scriptures and you can't change them and therefore
26 haven't changed them; is that right?

27
28 MR O'BRIEN: Scriptural understanding most definitely.

29
30 MR SPINKS: May I comment, Mr Stewart?

31
32 MR STEWART: Yes.

33
34 MR SPINKS: I think, again, if it is about how it is
35 presented, we accept that. It is not our intention to be
36 defensive. But Counsel Assisting is repeating what was an
37 incorrect conclusion from our perspective - and I say that
38 with respect - where you are actually asking have Jehovah's
39 Witnesses changed something that they never did. So
40 I think where the confusion comes in - and Mr O'Brien has
41 nicely explained that if somebody chooses to take
42 a different course and remove themselves, disassociate,
43 that's a matter for them. But victims of child sexual
44 abuse are not shunned. There is no evidence --

45
46 MR STEWART: Unless they disassociate, then they are.
47 That's the point.

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MR SPINKS: But again, what you are suggesting there is that the congregation makes a decision to shun a victim. If a victim or a survivor makes that decision themselves, then they understand the implications. There is not a situation where someone has disassociated because they are a victim of child sexual abuse. But we just wanted to make that point again.

THE CHAIR: I think the real issue is that, for some people, the circumstances will be such that they just can't stay, and they will find it necessary, for their own survival, effectively, to disassociate. But the consequence of that is they are shunned and lose all of their prior social structure. That's the issue. And you heard the evidence that some people gave about that issue. That's the problem.

MR SPINKS: If I could, your Honour, with respect --

THE CHAIR: That doesn't happen in other parts of society, generally.

MR SPINKS: Again, your Honour, with respect - and I certainly don't want to be protesting the point --

THE CHAIR: Say what you believe to be true.

MR SPINKS: Thank you for that. The Commission has consistently - and we respect the right of the Commission to draw the conclusions, and Counsel Assisting. The Commission has consistently failed to acknowledge that individuals who want to leave the organisation of Jehovah's Witnesses, no longer be an active member, can do that, by conflating someone choosing to no longer be an active member and someone specifically disassociating themselves, saying, "I just don't agree with the organisation anymore, I don't want to be a part of it" - they are two totally separate things. Again, with respect, we just make the point.

THE CHAIR: That was inherent in what I put to you. But the consequence of disassociating, as we understand it, is that that person will be shunned. That means they will lose contact with family, friends, and everyone else who remains inside the Jehovah's Witness organisation; is that right?

1
2 MR SPINKS: Again, your Honour, the person can --
3
4 THE CHAIR: Your colleague is nodding; is that right or
5 not?
6
7 MR SPINKS: Because you have said "disassociated",
8 your Honour, but he or she can choose to be no longer an
9 active member of the congregation.
10
11 THE CHAIR: I understand that, but if they are so unable
12 to cope with what has happened and the way they have been
13 treated inside the organisation that they disassociate,
14 then they lose all of their previous social structure; is
15 that right?
16
17 MR SPINKS: That could be the case, and we respect their
18 right to make that decision.
19
20 THE CHAIR: It is a pretty cruel way of dealing with
21 someone, isn't it, who has suffered sexual abuse?
22
23 MR SPINKS: I could only repeat what I have said,
24 your Honour.
25
26 THE CHAIR: I know, but it is cruel, isn't it; to take
27 away, by reason of the rules that you impose, all of their
28 social structure, that's cruel?
29
30 MR O'BRIEN: Could I just interrupt, your Honour?
31 I believe the difference between disfellowshipping and
32 disassociation, the congregation takes the action in
33 disfellowshipping somebody, who is then shunned. The
34 person who disassociates themselves, they are taking the
35 action. Now, for whatever reason - I agree - not even with
36 regards to being a victim, others make the same decision -
37 they are actually the taking the stand to shun the
38 congregation from themselves, and they understand the
39 implications of that. Now, it is - I agree, it puts them
40 in a difficult situation, but it is a choice.
41
42 THE CHAIR: You see, someone who comes to you and says
43 "I was sexually abused", but because there are no two
44 witnesses you don't accept that, you don't make that
45 finding, they are left in a very difficult position, aren't
46 they?
47

1 MR O'BRIEN: If they choose not to report it to the
2 authorities, then --

3

4 THE CHAIR: For whatever reason. If the organisation
5 doesn't acknowledge that they were abused, that imposes
6 a great burden on them, doesn't it?

7

8 MR O'BRIEN: If I could again respectfully say,
9 your Honour, we don't disbelieve a person who makes an
10 accusation. That's why we investigate every accusation
11 brought forward by the elders.

12

13 THE CHAIR: Yes. But if there are not two witnesses, you
14 don't accept it, do you?

15

16 MR O'BRIEN: Because scripturally we're not able to.

17

18 THE CHAIR: I know. And that, you would understand, can
19 be very, very distressing for someone who has come to you
20 with that complaint, can't it?

21

22 MR O'BRIEN: Certainly. We acknowledge being a victim is
23 very distressing, whatever consequences come, yes, we
24 agree.

25

26 THE CHAIR: And that can lead to a chain of circumstances
27 where that person feels unable to do other than
28 disassociate from your organisation; correct?

29

30 MR SPINKS: Could I respectfully, your Honour, say we
31 don't want to be defensive and we acknowledge that
32 disassociation or disfellowshipping certainly have
33 implications. An individual can choose to be inactive.
34 Could I use very briefly a parallel? In my careful reading
35 of the issue papers from the Commission - and some of it
36 I don't understand; most of it I have. It has been very
37 well put together in the summaries - one reference said
38 that reporting is low across the community. One study -
39 we're not suggesting the Commission validated it, but it
40 was just referenced - in this country suggested that only
41 10 per cent of child abuse allegations - and I believe it
42 was in New South Wales, but I will be corrected on that -
43 lead to a conviction, and only around half of those lead to
44 a custodial sentence.

45

46 I mention that simply to say that if, on an occasion,
47 a victim of child abuse has felt that, where Jehovah's

1 Witnesses have taken a Bible-based stand, my heart also
2 goes out to the thousands of victims who have come forward
3 and asked for help, it has not resulted in a conviction or,
4 if it has, only half of those result in a custodial
5 sentence - so I just put it in the context that we are
6 extremely aware of the damage that is done where the
7 victim - it's compounded by the action that we, the police
8 or the courts take. And in that context, we absolutely,
9 absolutely agree with you.

10
11 THE CHAIR: I understand what you say, but can I just ask
12 you this simple question: why is it necessary, when
13 someone feels that they can no longer abide the
14 organisation and has to disassociate - why is it necessary
15 to shun them? Why can't they keep having social contact
16 with those people who happen to remain in the organisation?
17

18 MR SPINKS: I say again - and we're going to appear very
19 repetitive, and I apologise, your Honour, but the
20 individual can choose --
21

22 THE CHAIR: No, no, why is it necessary for the
23 organisation to tell all of its adherents, "You must shun
24 that person"?
25

26 MR SPINKS: Because the individual has not taken the
27 decision to no longer associate or to no longer be involved
28 with congregation activities, which is their right; they've
29 taken the decision to say, "I'm shunning the congregation,
30 I'm no longer a part of the congregation. I've put it in
31 writing." So the individual takes that action, and we
32 understand the implications. When someone is
33 disfellowshipped, the congregation takes that action. So
34 the individual does not need to put themselves in a
35 position where they are shunned. They can walk away. They
36 can go to another congregation. That's their personal
37 choice. But we understand and agree with the point you are
38 making, your Honour.
39

40 THE CHAIR: You haven't answered the point, but we'll move
41 on.
42

43 MR STEWART: Just answer the question, Mr Spinks. You
44 have not answered his Honour's question. His Honour's
45 question is: why is it necessary to shun the person who
46 disassociates? And before you answer, can you clarify one
47 thing: the person who disassociates, both you and Mr Brian

1 have now said it, you have said that they shun the
2 organisation. They don't necessarily at all. You are
3 talking about someone who just doesn't want to be part of
4 it any more. They still want to have their friends, their
5 family and everything else, their social network, but they
6 disassociate. Why is it necessary to have a policy that
7 everyone else must now shun them?
8
9 MR SPINKS: Again, that's a decision the person makes,
10 because that individual --
11
12 MR STEWART: Mr Spinks, that is not the question --
13
14 THE CHAIR: Mr Stewart, I don't think we will get
15 anywhere. I think we should move on.
16
17 MR STEWART: The real answer to the question is because
18 you say the Bible says so; that's the answer, isn't it?
19
20 MR O'BRIEN: Yes, that's our understanding of the
21 scriptural disfellowshipping disassociation doctrine.
22
23 MR STEWART: Yes. I should just say also, in relation to
24 the point that Mr O'Brien, you made, and Mr Spinks as well,
25 I think, and that is that a person can become inactive
26 without disassociating and, in that way, not be shunned -
27 now, without going through that evidence again, I just want
28 to say to you that that is highly contested by a lot of
29 people as to whether that is possible. I know you say that
30 is the case, but a lot of other people say it isn't.
31
32 MR O'BRIEN: I'm sorry, I misunderstood.
33
34 MR STEWART: The simple point - and I will let you respond
35 but I'm not going to go down this path; we went down it
36 before - is this: a person who does not want to be active
37 in the organisation anymore, in order to avoid being
38 shunned, must disassociate. There isn't a category of
39 membership of inactive and nevertheless welcome.
40
41 MR SPINKS: I'm sorry, Mr Stewart, that's --
42
43 MR STEWART: I know you disagree. That's fine.
44
45 MR SPINKS: Well, when we have put it in print --
46
47 MR STEWART: The only point I'm making is that that is not

1 accepted.

2

3 MR SPINKS: Again and I apologise, as your Honour has
4 said, we're repeating the point, but we have a very clear
5 understanding of the difference between someone being
6 inactive, no longer an active member of the congregation,
7 and someone who takes a decision to disassociate. That is
8 clear to us, but we agree to disagree.

9

10 MR STEWART: Going now to the question of redress, you
11 don't actually have a policy with regard to how to handle
12 claims that are brought against the organisation or claims
13 made not necessarily in a court but someone says, "Look,
14 I was abused in the organisation", one way or another,
15 "I want compensation for this. I want it to be dealt
16 with." You don't have a policy that deals with that, do
17 you?

18

19 MR O'BRIEN: We're certainly in the process of developing
20 that, particularly since the release of the paper on
21 redress from the Royal Commission. We have studied that
22 and we are basically in agreement with many of the
23 proposals in there.

24

25 We don't take the view that we're waiting just until
26 we hear the final thing, but there are still a number of
27 questions that it seems have to be resolved.

28

29 MR STEWART: And that's this 2015 Royal Commission Report
30 on Redress and Civil Litigation that you are referring to?

31

32 MR O'BRIEN: Yes, that's right.

33

34 MR STEWART: That has been around for a couple of years
35 now but, in short, you are, working on a policy that we can
36 expect at some stage?

37

38 MR O'BRIEN: It is only in recent months - we have had one
39 recent request, sometime ago, probably more than a year
40 ago, that we corresponded back with. The claimant change
41 the solicitors they were using, so it's only just in the
42 last - this week, the last few days, that we've received
43 a report back from the legal firm that we've been using to
44 deal with the requests that have come in.

45

46 MR STEWART: Never mind individual cases. Can I just
47 understand this from you: is it the case that you are

1 working on a redress policy and one can expect to see one
2 in due course?

3
4 MR O'BRIEN: Yes. Definitely.

5
6 MR STEWART: Thank you. And has the organisation engaged
7 with or reached a position on the Commonwealth Government's
8 proposed National Redress Scheme that was announced
9 in November last year?

10
11 MR O'BRIEN: No, not at this stage. Could I raise
12 a question on this, which is of concern to us in being able
13 to address this issue of redress, Mr Stewart - would that
14 be acceptable?

15
16 MR STEWART: Let's hear what it is, Mr O'Brien, and then
17 I can tell you whether we can answer it or not.

18
19 MR O'BRIEN: Okay. So with regard to the finding of the
20 Royal Commission, with our bringing in all of the case
21 files that we had, because of their being investigated, the
22 finding was that that makes all of them institutional
23 abuse, even though the greater majority of them were not,
24 actually, according to the terms outlined in the redress
25 scheme as being institutional.

26
27 So there are two implications for that that I would
28 see. One of them, for us as an organisation, if the number
29 of case files is the basis for determining maybe our share
30 in a redress scheme, we would feel that would be not in the
31 interests of being fair and adequate, because --

32
33 THE CHAIR: You need not worry about that. Your
34 organisation came clearly within our terms of reference
35 because we are required to look at the response of your
36 organisation.

37
38 MR O'BRIEN: Certainly, which we don't contest.

39
40 THE CHAIR: And that response, of course, when inadequate,
41 will cause damage to people. You understand that?

42
43 MR O'BRIEN: We understand, yes. That's the response.

44
45 THE CHAIR: And from the evidence that we have had, that
46 is likely to have happened. You may not be an
47 organisational abuser as such, but the response of your

1 organisation may have compounded, indeed, very much
2 compounded, the damage to that individual.

3
4 As far as the redress scheme is concerned, if it takes
5 the form, or roughly the form, the Commission has
6 recommended, your liability will be determined on
7 a case-by-case basis and you will be contributing on
8 a case-by-case basis.

9
10 MR O'BRIEN: Right, so that's - yes.

11
12 THE CHAIR: The files that we sent off to the police,
13 well, may or may not represent a part of your liability.
14 I don't know.

15
16 MR O'BRIEN: Okay. So according to, then, the terms set
17 out, I think on page 38 on the Redress and Civil Litigation
18 Report, the recommendations, it outlined just what
19 constituted institutional abuse. If that's as we
20 understand it, then that would be something that would
21 resolve some of the issues we have in our minds.

22
23 MR STEWART: Understand, Mr O'Brien, that this was the
24 recommendation of the Royal Commission. This has now been
25 taken up by the Commonwealth Government, and the government
26 is in the process of consulting with the states and
27 territories and organisations, and how it will end up may
28 be close, or not so close, to what was recommended. One
29 doesn't know.

30
31 So my simple question is: to what extent is your
32 organisation engaging in that process or taking a position
33 on whether it should engage in that process?

34
35 MR O'BRIEN: So, at the moment, we haven't had any actual
36 statements of claim, but we have had correspondence from
37 six individuals. So we are formulating on the basis, at
38 the moment, still trying to determine what sort of extent
39 of claims we would have, because I do understand from the
40 report that each organisation would still be responsible
41 for their own claims, which is part of the recommendation.
42 If that was what the National Redress Scheme brought in,
43 that possibly will affect which institutions and states
44 would opt in for that.

45
46 So I think it's still a little bit too unclear for us
47 to commit ourselves definitively. We are still working

1 through the process of determining just how we will handle
2 redress.

3
4 MR STEWART: But you haven't ruled it out?

5
6 MR O'BRIEN: We haven't ruled it out, and certainly if
7 there are any victims who are victims through institutional
8 abuse from Jehovah's Witnesses, we would do everything in
9 our power to assist them financially and spiritually.

10
11 MR STEWART: Then, finally, dealing with the question of
12 the involvement of women in decision-making in the
13 organisation - you are aware of the findings in relation to
14 that. I won't repeat them. Your response is given at
15 tab 1, paragraph 7.5 and 7.6. Paragraph 7.5 is a broad
16 statement. Then in 7.6, you say:

17
18 *Women can and do participate in the process*
19 *of presenting allegations of child sexual*
20 *abuse to the elders.*

21
22 So I take it you mean that as a matter of ongoing practice
23 that happens; is that what you are saying, Mr O'Brien?

24
25 MR O'BRIEN: This is to do, again, with the entire process
26 of receiving an accusation, to the completing of giving
27 support to a victim. So the role of women in the process -
28 the only restriction that Jehovah's Witnesses have on that
29 is in the actual judicial committee, which is dealing with
30 the perpetrator, not dealing with the victim. So women can
31 be involved in the entire process. The victim never has to
32 confront the perpetrator, doesn't have to sit in on the
33 judicial committee.

34
35 MR STEWART: That's the point, isn't it. Your answer in
36 relation to decision-making is that you are scripturally
37 bound, that the decisions can only be made by men.

38
39 MR O'BRIEN: Yes, once again, that's a scriptural
40 requirement that we adhere to.

41
42 MR STEWART: At the end of that paragraph, 7.6, you say:

43
44 *See paragraph 13 of the August 1, 2016*
45 *letter ...*

46
47 I take it that is in support of the statement that the

1 complainant may be accompanied by a confidant, et cetera.
2 That reference seems to be wrong, because paragraph 13 at
3 tab 7 doesn't say anything about that.

4
5 MR O'BRIEN: I might just get Mr Spinks to comment on
6 that. He has the expertise in the letter.

7
8 MR SPINKS: Again, for the very reason you raised,
9 Mr Stewart, we have acknowledged that. So in the current
10 Australian safeguarding policy - we've made the very
11 recommendation that you have just raised, if I can, in
12 the March 2017 Child Safeguarding Policy --.

13
14 MR STEWART: That is tab 11.

15
16 MR SPINKS: At paragraph number 10. It says, again, that
17 a victim is never required to confront his or her alleged
18 abuser; the allegation can be made in the form of a written
19 statement. And then, two sentences on:

20
21 *Adults who were victims of child abuse may*
22 *be accompanied by a confidant of either*
23 *gender to provide them with moral support*
24 *when meeting with the elders.*

25
26 So again, it is a valid point.

27
28 MR STEWART: I just want to come back to something raised
29 earlier on in case I didn't understand it. This document
30 that you are looking at now has been approved by the Branch
31 Committee but not yet finalised in case you want to make
32 alterations following this hearing; is that right?

33
34 MR SPINKS: We were ready to distribute it and made the
35 observation that if something is said at the public hearing
36 that needs to be clarified, then that's what we want to do.
37 But our understanding at this stage is it's completed and -
38 subject to any other observations that we can include in
39 it, but that's correct.

40
41 MR STEWART: So you anticipate, then, finalising it
42 shortly, in the next week or two. Would that be right?

43
44 MR SPINKS: That's correct, yes.

45
46 MR STEWART: Then to whom is it going to be published,
47 exactly?

1
2 MR SPINKS: To congregation members?
3
4 MR STEWART: To all congregation members?
5
6 MR SPINKS: That's the audience for this document, is all
7 congregation members.
8
9 MR STEWART: How will that be done?
10
11 MR SPINKS: That's the decision the Branch Committee has
12 to make, whether we're going to do that in a printed form
13 or whether it's going to be distributed electronically,
14 through the electronic mailing system for each
15 congregation, and made available locally. Either way, it's
16 available to all congregation members.
17
18 MR STEWART: But do you give the undertaking now that the
19 intention is that it be distributed to all congregation
20 members?
21
22 MR O'BRIEN: Yes.
23
24 MR SPINKS: That's the audience for this document.
25
26 MR O'BRIEN: Yes, I can speak on behalf of the Branch
27 Committee on that. They have authorised to make that
28 available, that it will be available to every member of
29 every congregation in Australia.
30
31 MR STEWART: Making it available may be something
32 different to what I'm speaking about, because making it
33 available could be if someone asks for it they can have it.
34 I'm just seeking to determine whether it is actually going
35 to be actively distributed so that people have access to it
36 without having to ask for it.
37
38 MR SPINKS: If I could, I'm not a part of the Branch
39 Committee, but the recommendation that we have made, and
40 I believe will be acceptable, is that every congregation
41 member will have it made available to them. Whether that's
42 through a paper distribution or an announcement, or made
43 available at the Kingdom Hall - that's the only decision
44 that has to be made. But every congregation member will be
45 made aware of it and a copy made available to them in each
46 of the 800 congregations around the country.
47

1 MR STEWART: Because you will understand and accept that
2 to the extent that people's rights within the organisation
3 are articulated in this document, they need to know what
4 those are.

5
6 MR SPINKS: Absolutely.

7
8 MR STEWART: I have nothing further, your Honour.

9
10 THE CHAIR: Mr Tokley, do you have any questions?

11
12 MR TOKLEY: No, your Honour, there is no re-examination.

13
14 COMMISSIONER MURRAY: Before we close, I have one
15 question. I want to refer you back to paragraph 7.16 of
16 tab 1. I would summarise that, in its totality, as
17 indicating what we would describe as a pastoral response.
18 Do you think that is an accurate description?

19
20 MR SPINKS: I don't understand the question. I apologise.

21
22 MR O'BRIEN: Our religious response.

23
24 COMMISSIONER MURRAY: Yes, "pastoral" means looking after
25 the flock. This is about empathy and compassion, and so
26 on. That is all very well as it goes, but you would now
27 understand from the Royal Commission's work that the often
28 very grievous effects of child sexual abuse are
29 life-changing and life-affecting, and, therefore, people
30 need - and I stress "independent" - expert independent
31 therapeutic intervention, sometimes called counselling, but
32 it can be better described as I have put it.

33
34 I want to know, in terms of your response to the 1,006
35 files of victims and the subsequent victims that have come
36 to your attention, whether the Jehovah's Witnesses branch
37 in Australia have assisted or decided to assist or plan to
38 assist victims or survivors with respect to therapeutic
39 intervention by independent experts?

40
41 MR O'BRIEN: Yes. So on that, Commissioner, we of course
42 allow the individual to decide who they would like to use,
43 but certainly we will assist in funding. Any of the
44 victims who fall into that category automatically under the
45 terms of reference of the redress scheme - we would see
46 part of the redress would be covering medical and ongoing
47 psychological or psychiatric help or some other form of --

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COMMISSIONER MURRAY: And do you do that presently?

MR O'BRIEN: No, because we haven't had any actual claims or correspondence, until this last - mainly six, eight months, and it's only just at the point now that the legal firm we are using, Gilchrist Connell, have now written to the solicitors of the victims and have now presented us with some suggestions for consultation.

COMMISSIONER MURRAY: This is not really about the law. It's about going further than compassion and actually providing people help for grievous psychological harm. Surely you are not going to wait until 2018 when the redress scheme finally comes out to reach out to victims and survivors?

MR O'BRIEN: No, not at all, Commissioner, because we have already now been in contact with these, the ones who have made claims. We're not actively going out looking for other victims, because we don't know what the situation is with them. But those who have corresponded to us who have sought some form of redress or compensation, we're at the point now where we can address that long before 2018.

COMMISSIONER MURRAY: Perhaps I could ask, through Mr Stewart, if you could give us some formal advice as to whether you are assisting anyone at present with financial help for independent therapeutic advice, as a branch.

MR STEWART: We will follow that up, Commissioner. Nothing further.

THE CHAIR: Nothing further? Nothing arising from that, Mr Tokley?

MR TOKLEY: No, your Honour. No, there is nothing further.

THE CHAIR: Thank you. That brings this particular hearing to an end. Thank you both for your contribution and you are now excused and we will adjourn until 2 o'clock.

<THE WITNESSES WITHDREW

**AT 1PM THE COMMISSION WAS ADJOURNED TO
FRIDAY, 10 APRIL 2016 AT 2PM**

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