

Royal Commission into Institutional Responses to Child Sexual Abuse

Submissions on behalf of
Watchtower Bible and Tract Society
of Australia & Others

9 November 2015

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1. Executive Summary of Submissions

- 1.1 Jehovah's Witnesses do not condone or cover up the abhorrent sin and crime of child sexual abuse. In fact, as is clear from the statistical summary quoted by Counsel Assisting the Royal Commission in his opening address, it is quite apparent that Jehovah's Witnesses have for at least the last 65 years taken a proactive role in investigating and documenting such abuse and taking action against proved abusers.
- 1.2 The investigation and judicial findings by Jehovah's Witnesses are part of an ecclesiastical process and are not intended to be a replacement for any criminal and/or civil inquiry.
- 1.3 Elaboration of these submissions and the reasons for them are set out in the sections below.

2. Organisation of submissions

2.1 These submissions are organised as follows:

- (a) Part I is in the following sections:
 - (i) Part IA is an overview of the submissions and deals with some preliminary matters;
 - (ii) Part IB addresses the Royal Commission's Terms of Reference;
 - (iii) Part IC addresses the approach of Jehovah's Witnesses to child sexual abuse matters;
 - (iv) Part ID addresses some other important related matters; and
 - (v) Part IE is an overview of the appropriateness of Counsel Assisting's suggested findings and systemic considerations.
- (b) Part II addresses each of the 77 findings that Counsel Assisting considers are available to be made on the evidence before the Royal Commission.
- (c) Part III addresses further matters that Jehovah's Witnesses consider are appropriate for the Royal Commission to take into account.
- (d) Part IV summarises the findings that Jehovah's Witnesses accept, those that they reject and those that they consider should be amended.

3. Part IA: An overview of the submissions and some preliminary matters

- 3.1 Below we set out, by way of an overview, matters that are relevant to the broader context in which the Royal Commission is operating and specific matters that are relevant to its findings and ultimately to its recommendations.

The significance of religious beliefs

- 3.2 It is estimated that there are over two billion persons around the world who, like Jehovah's Witnesses, believe in the existence of God and Jesus Christ. They rely principally upon the words of the Bible to guide them in their beliefs and their daily lives. They find comfort in their lives from their religious beliefs and look to the government to respect their religious beliefs. In this regard, Jehovah's Witnesses are no different in their expectations of the secular authorities than others.
- 3.3 Jehovah's Witnesses, like the members of other faiths, are law-abiding citizens of the countries in which they live. However, like all imperfect humans, an individual within the faith may commit a serious sin that is also a violation of the secular law. Jehovah's Witnesses invariably address such a breach according to their Bible-based religious beliefs and practices. For the reasons developed further below, it would be wrong to conclude that the religious principles, procedures and practices of Jehovah's Witnesses applied in dealing with matters of sin within their congregations were intended to supplant the criminal law or to provide an alternative system for dealing with criminal conduct.
- 3.4 Based on their understanding of the Bible's teachings, Jehovah's Witnesses are taught to respect the government and they do not isolate themselves from human society.¹ As was pointed out during the public hearings of the Royal Commission, Jehovah's Witnesses have as members, amongst others, lawyers, doctors, psychologists, policemen and policewomen, and members of many other occupations and callings.² When needed, Jehovah's Witnesses seek help from qualified professionals in the fields of law, medicine and

¹ Romans 13:1; 1 Corinthians 5:10.

² Exhibit 29-0019, First statement of R P Spinks, STAT.0591.001.0001_R at [54]-[56]; Exhibit 29-0023, Statement of V J Toole, STAT.0593.001.0001_R at [22]; Exhibit 29-0024, First statement of T J O'Brien, STAT.0592.001.0001_R at [25]; Transcript of R P Spinks, T15741:22-23 and T15674:7-10 (Day 152); Transcript of T J O'Brien, T15858:19-21 and T15861:29-38 (Day 153).

mental health. Most Jehovah's Witnesses have family members who belong to other religions or who are atheists.³

Misconceptions about Jehovah's Witnesses

- 3.5 At times, Jehovah's Witnesses are the subject of misconceptions. When examined objectively, such views are found to be distorted or untrue.
- 3.6 For example, the relationship of Jehovah's Witnesses to the government is forthright. Jehovah's Witnesses obey the law and strongly advocate respect for government officials. Only in the rare instance when a secular law conflicts with God's law would one of Jehovah's Witnesses disobey a governmental authority.⁴ This can be seen in the case of Jehovah's Witnesses in Nazi Germany who endured imprisonment and even execution rather than submit to the Nazi regime. On the other hand, as evidence of their respect for governmental authority, Jehovah's Witnesses report crimes to the authorities when required by law to do so, they seek legal recourse through the judicial system when they are wronged and they conscientiously pay their taxes.⁵

Religious Freedom in Australia

- 3.7 We are thankful that the Australian government is not antithetical to the holding of or the free exercise of religious beliefs. Indeed, many persons, such as the German Lutherans in South Australia, came to Australia to escape religious persecution in their homeland. Notably, section 116 of the *Commonwealth of Australia Constitution Act* ("the Constitution") protects the free exercise of religion and precludes interference from Commonwealth laws.
- 3.8 It is in that broader context of freedom that one must understand religious practices. A person is free to practice his/her religious beliefs to the extent that such practice is not *prohibited* by law and not only to the extent that it is *permitted* by law. Logically, unless a religious practice or procedure is prohibited by law, a question that assumes an obligation to do something proceeds upon a false premise as to the free exercise of religion in Australia. Some of the questions asked and some of the points made by Counsel Assisting assumed that such an obligation existed.⁶ The problem with this assumption is that an example was often offered as proof of the truth of an

³ Exhibit 29-0024, First statement of T J O'Brien, STAT.0592.001.0001_R at [4]; Transcript of T J O'Brien, T15845:12-14 (Day 153).

⁴ Acts 5:29.

⁵ Romans 13:1.

⁶ See, for example, the exchange at Transcript of V J Toole, T15763.10-11 (Day 153).

assumption, but the opposite is demonstrated by reliance upon another example, as the Commissioner, the Hon. Justice McClellan observed when he referred to the fact that some might desire a matter to be dealt with confidentially:⁷

“But, Mr Jackson, many of these people don't want to go to the police because that involves potentially a public process, trial, and so on. It's very common that people don't want to go to the police.”

- 3.9 We trust that the findings and recommendations made by the Commission will have a secure foundation and respect the freedom of belief and the free exercise of religion, as Constitutionally protected. It would, however, be unfortunate if findings or recommendations had the effect of denying to members of a faith the right to adhere to their beliefs or to freely exercise their religious choice. For example, an adherent may prefer that a matter be cared for within his/her faith. It would be unfortunate if findings or recommendations of the Royal Commission had a “chilling effect” on the disclosure of cases of abuse to ministers.
- 3.10 The High Court of Australia has often emphasised the need to protect minorities from the misuse of power.⁸ Unpopular views do not necessarily equate to unlawful or illegal conduct. From an uninformed point of view, it is easy to say that a crime should always be reported to the authorities, but the legal system is not that simple. A number of factors may be involved, for example: What does the law require? What does the victim or his/her parents want to be done about the matter? What is the morally right thing to do? What do the Scriptures say about the matter? Ignoring any of these questions oversimplifies relevant considerations and results in positing a simplistic, untenable solution.

Two Universes of Discourse – two different concerns

Sins and Crimes

- 3.11 In the universe of discourse that is concerned with religious beliefs, a sin is a thought or conduct contrary to the tenets of a faith, as understood and practiced by its adherents. A sin is not always the same thing as a crime. Although, in many instances, it can, and obviously will, be. Jehovah's

⁷ Transcript of G W Jackson, T15987:32-35 (Day 155) (The Hon. Justice McClellan speaking).

⁸ See, for example, *Adelaide Co. of Jehovah's Witnesses Inc. v. The Commonwealth* (1943) 67 CLR 116 at 124 per Latham J.

Witnesses regard child sexual abuse as both an abhorrent sin and a crime.⁹ Sinning does not have the same consequences either for a survivor of the conduct or for the sinner in the world of faith as a crime does in the criminal justice system. Within most religions, avoiding sinning, repentance for one's sins, the forgiveness of sins and compassion for the victim and sinner are central tenets. Many non-religious people sometimes will not, or cannot, understand how or why a Christian may forgive a repentant sinner and exercise compassion in so doing.

- 3.12 On the other hand, in the criminal law, repentance, forgiveness and compassion are not centrally important concepts, although they sometimes have a role to play in the sentencing and rehabilitation of convicted persons. Rather, the central concerns of the criminal law are with the prevention, investigation, prosecution, punishment of crimes and the rehabilitation of the criminal.¹⁰ In that universe of discourse, the rules of evidence and the burden of persuasion are also central concepts.
- 3.13 One cannot equate the responses taken in a religious context involving a sinner and the responses/consequences for a perpetrator in the criminal context. One cannot measure the utility of the responses to child sexual abuse by a comparative exercise between the religious and secular arenas, as the Commissioner, the Hon. Justice McClellan observed.¹¹ To do so would be to proceed upon a false assumption, namely, that the two universes of discourse share the same objectives and processes and that the *raison d'être* for them is the same. Neither time, nor space, unfortunately permits us to give all of the reasons why that is not so.¹²
- 3.14 When two universes of discourse co-exist, they can sometimes overlap but they do not necessarily share the same concerns, objectives, or means by which to achieve their ends. The appearance of Jehovah's Witnesses before the Royal Commission demonstrated something of the truth of the proposition. Jehovah's Witnesses sought to assist the Commission by explaining what

⁹ Exhibit 29-0019, First statement of R P Spinks, STAT.0591.001.0001_R at [13]; Exhibit 29-0024, First statement of T J O'Brien, STAT.0592.001.0001_R at [47]; Exhibit 29-0003, WAT.0001.004.0306 at 0309 (*The Watchtower*, January 1, 1997 p. 29).

¹⁰ See e.g. Criminal Law by Gillies (The Law Book Co. Ltd. 1985) page 2.

¹¹ Transcript of Dr M L Applewhite, T15500:46-T15501:1, 13-17 (Day 10) (The Hon. Justice McClellan speaking).

¹² For example, and, to begin with, the world of religion is concerned with the avoidance of sin because it offends God and prevents a person from leading a virtuous life as a prelude to future blessings from God. In the criminal world, the avoidance of crime is seen as beneficial to the common good and not as a prelude to future blessings from God. "Repentance" is essential to a religion because once a person has sinned, it is essential that they realise the error of their ways, repent of their wrongdoing and seek forgiveness from God. Recognition of wrongdoing is relevant in the criminal law principally to the question of sentencing and rehabilitation of the individual. Whilst it may have had a religious origin, it is not used for that purpose in the criminal law.

they believe to be the appropriate way to deal with the sin of child sexual abuse. The Royal Commission, by contrast, is entrusted with, amongst other things, the responsibility for determining what institutions and governments do and should do, to better protect children, and not comparing religious approaches to dealing with sin.

- 3.15 Jehovah's Witnesses do not purport to offer an alternative process to the secular authorities' approach to the protection of children and to the punishment of criminal conduct. Nor do they seek to interfere with that process. The extent to which they are able to cooperate with governments is guided by their belief in the Scriptures and by such considerations as the establishing of wrongdoing and the role of repentance.
- 3.16 If governments wish for greater assistance in dealing with child abuse matters, they must say so, because it is unrealistic to expect that people of faith are attempting to achieve the same objectives as the criminal law in their dealings with, and treatment of, sinners. There is nothing new in that statement and governments are well aware of the need to balance the different approaches — the sanctity of what is said in the confessional being a well-known example.

Religious belief and another's "reality"

- 3.17 In the universe of religious discourse, belief and reality are two central distinctions that it is important to observe. A person is entitled to have a belief in the existence of a thing or an event even if someone else does not share that belief. Our laws proceed upon the assumption that, for the most part, a person is entitled to have his/her beliefs respected even if those beliefs do not apparently conform with that which is perceived to be someone else's "reality".
- 3.18 The fact that not all share the beliefs of Jehovah's Witnesses (such as the belief in the existence of God and that the Bible is the Word of God) does not mean that the beliefs of Jehovah's Witnesses are wrong, misguided, or unworthy of respect. Whether they are approved by secular authorities is a different question, involving different considerations.
- 3.19 Many of the questions asked of witnesses in the Royal Commission proceeded upon an unstated and false assumption that, at all times, both questioner and witness either shared or should share the same views and objectives.¹³ As a result of that assumption, the questioner and witness were often at cross-purposes. The two universes of discourse do not readily

¹³ For example, Transcript of R P Spinks, T15715:4-T15716:1 (Day 152).

overlap. Moreover, acknowledging the force of a particular point of view of a questioner or respecting that point of view about the efficacy of the criminal law is not synonymous with acknowledging wrongdoing by one of Jehovah's Witnesses, or that it is wrong to hold a different view about their faith's response to sinners.

Religious doctrine and freedom of religious belief

- 3.20 A significant amount of time was spent in the Commission considering and debating doctrinal matters. It is understood that such doctrinal matters were considered relevant by Counsel Assisting to a consideration of the response by Jehovah's Witnesses to child sexual abuse.
- 3.21 To the extent that such doctrinal matters were relevant to the Commission's Terms of Reference then, of course, there was not, nor could there be, any objection to, or legitimate complaint about the time spent investigating such matters.
- 3.22 To the extent that there was debate about whether Jehovah's Witnesses views or interpretation of Scripture was wrong,¹⁴ such debate went beyond what was necessary, and will, in our view, not ultimately prove to be helpful to the Commission. It could also be perceived as betraying personal prejudice and was apt to give the wrong impression of the good work that the Commission is doing.
- 3.23 For example, whether a sinner's guilt is determined by congregation elders (men) appears to have no causal connection to whether child sexual abuse occurs within a family or outside of the family. It is a different question whether some insensitivity on the part of a man may cause hurt to another person's feelings. Such feelings are not to be ignored, but they do not amount to sexual abuse as understood. Moreover, no empirical or credible evidence, suggesting that a decision being made only by men was, or is, necessarily problematic, was placed before the Commission. Male judges (many of whom may be fathers) determine the guilt or innocence of defendants all over the world. No empirical evidence suggesting that men are not intellectually or emotionally equipped to determine the guilt or innocence of someone accused of child abuse was presented to the Commission. No empirical evidence suggesting that women are necessarily better equipped either intellectually or emotionally to do so was presented to the Commission. In the absence of evidence one way or the other, the choice of the gender of the persons

¹⁴ Compare *Church of the New Faith v Commissioner of Pay-roll Tax (Vict.)* (1983) 154 CLR 120 at 150 per Murphy J: "[t]he truth or falsity of religions is not the business of officials or the courts".

involved in the decision-making process is an aspect of the free exercise of religion, which means that a person is entitled to believe and act in accordance with their beliefs,¹⁵ even if those beliefs mean that congregation elders (men) determine a sinner's guilt.

The correct interpretation of Scripture is not relevant in this context

- 3.24 The outcome of an investigation into the causes of child sexual abuse and into institutional responses to the same need not, nor should it, depend upon whether a person's interpretation of a particular passage in Scripture is correct or not. The interpretation, right or wrong, is what it is. The correctness of Scriptural interpretation is not within the Terms of Reference of this Commission. More to the point, Jehovah's Witnesses abhor child sexual abuse as a sin and a crime, and have published significant amounts of literature about the subject over several decades.¹⁶ Unlike some, Jehovah's Witnesses did not and do not deny the existence of the problem, they keep records concerning such conduct, they investigate such conduct, and in accordance with their religious beliefs, they discipline members of their faith who abuse minors.
- 3.25 For the reasons given above, it would be an error to consider that Jehovah's Witnesses adhere to their principles, procedures, and practices with the intent of supplanting the criminal law or to provide an alternative system for dealing with criminal conduct.

Adulthood and preserving the dignity of choice

- 3.26 It is trite that our laws also assume that an adult person is free to make choices and to accept personal responsibility for their actions. An adult

¹⁵ See above (1943) 67 CLR 116 at page 124 per Latham J.

¹⁶ Exhibit 29-0019, First statement of R P Spinks, STAT.0591.001.0001_R at [13] and [21a]; Exhibit 29-0024, First statement of T J O'Brien, STAT.0592.001.0001_R at [47] and [65]; Transcript of R P Spinks, T15730:40-T15731:2 (Day 152); Examples of such literature include, but are not limited to: Exhibit 29-0003, WAT.0001.004.0223 (*Awake!* June 22, 1982 - "To End Child Abuse"); Exhibit 29-0003, WAT.0001.004.0325 (*The Watchtower*, October 1, 1983 - "Help for the Victims of Incest"); Exhibit 29-0003, WAT.0001.004.0205 (*Awake!* January 22, 1985 - "Child Molesting: Every Mother's Nightmare"); Exhibit 29-0003, WAT.0001.004.0238 (*Awake!* October 8, 1993 - "Your Child is in Danger", "How Can We Protect Our Children?" and "Prevention in the Home"); Exhibit 29-0003, WAT.0001.004.0310 (*The Watchtower*, November 1, 1995 - "Comfort for Those with a Stricken Spirit"); Exhibit 29-0003, WAT.0001.004.0306 (*The Watchtower*, January 1, 1997 - "Let Us Abhor What is Wicked"); Exhibit 29-0003, WAT.0001.004.0128 (January 1, 2003 - "Learn From the Great Teacher", Chapter 32 "How Jesus was Protected"); Exhibit 29-0003, WAT.0001.004.0253 (October 1, 2007 - "A Danger that Concerns Every Parent").

survivor of sexual abuse should not be denied the choice to initiate or make a complaint to the secular authorities. Two points may immediately be made. First, the Commission's own literature accepts that anonymous complaints of abuse can be made.¹⁷ Secondly, it is a relevant consideration that not all sexual misconduct, although morally repugnant, can be equated. As the evidence of the former prosecutor Mr Davies revealed, the secular authorities in Queensland appeared not to have the resources to deal with all complaints of sexual misconduct that were reported.¹⁸ Inevitably, government resources for the investigation and prosecution of child sexual abuse are limited.

- 3.27 Our laws also assume that it is the right of a parent to initiate or make a complaint on behalf of a child. Jehovah's Witnesses are correct in respecting parental rights and such rights are recognised by Australian laws and international instruments.

¹⁷ For example, question 3 in "Practice Guidelines 3" issued by the Royal Commission into Institutional Child Sexual Abuse, accessed on 4/11/2015 at: <http://childabuseroyalcommission.gov.au/about-us/practice-guidelines/guide-to-gathering-information>

See also the brochure "Sharing your story: A guide to your private session" published by the Royal Commission into Institutional Child Sexual Abuse, accessed on 4/11/2015 at: <http://www.childabuseroyalcommission.gov.au/share-your-story/private-sessions>

¹⁸ Transcript of J P Davies, T15426:45-T15427:4 (Day 149).

4. Part IB: The Royal Commission's Terms of Reference

- 4.1 While the scope of the Royal Commission's Terms of Reference is broad, we believe that they can be summarized by two key questions: (1) What can and should be done to better protect children from sexual abuse? and (2) What are, and what should be, the best responses to take when it occurs? In our view, all findings and recommendations ought ultimately be relevant to those two questions and the efficacy of any suggested responses ought to be measured against the achievement of the objectives implicit in those two questions. To do otherwise would distract from the objectives of the Commission.
- 4.2 Jehovah's Witnesses sought to address such questions with the assistance of the highly qualified independent expert, Dr Monica Applewhite. Dr Applewhite's views are consistent with the views of experts already called by the Commission, and her 22 years of experience in the study of child sexual abuse matters, which exceeds many others, should be helpful. In such circumstances, it would be most unfortunate if the Commission were to accept the suggested finding by Counsel Assisting that her report should be rejected.
- 4.3 We take the view, for the reasons set out at length below, that many of the suggested findings made by Counsel Assisting will not, in fact, assist the Commission in its task, and ought not to be made for that and other reasons. Where we consider that the suggested finding or an amended finding will be of assistance to the Commission because they assist the Commission in answering those relevant questions, then either the findings suggested are not opposed, are amended, or a new finding is suggested. As was stated at the outset, Jehovah's Witnesses are endeavouring to fully cooperate with the Commission.

Constraints of the Terms of Reference

- 4.4 The Commission's Terms of Reference impose constraints upon its investigations, the most obvious being that it is investigating child sexual abuse and not sexual misconduct towards adults. It is also investigating "institutions", not families, and "institutional contexts", not family contexts. It must also have regard for the fact that many religious organisations provide services and support for children and their families that are beneficial to the children's development. The Commission should be principally concerned with systemic failures.

- 4.5 The two cases investigated to some extent fell inside the Commission's Terms of Reference, but they both, to some extent also fell outside those Terms of Reference, as will be elaborated upon in more detail below. A significant point that should be made about these cases is that they could not purport to be representative of all of the issues that require investigation and the way they are now addressed by Jehovah's Witnesses. First, because of the introduction of mandatory reporting in some Australian states; second, because with the passage of time more has been learned about dealing with such matters, and responses have changed since the late 1980's and early 1990's. Third, the cases highlighted the circumstances of only the two individuals concerned.
- 4.6 Child sexual abuse is a matter of concern to any right thinking parent or adult, and to see it *only* as an "institutional" problem would be to miss an essential truth: that much abuse occurs within families. The reasons why one person within a family might abuse another vary. That is not to say that institutions cannot be helpful in addressing the problem, but it helps to put the response of institutions into context.

5. Part IC: The approach of Jehovah's Witnesses

Co-operation and assistance

- 5.1 Watchtower Bible and Tract Society of Australia, the legal entity used by Jehovah's Witnesses to facilitate their worship in Australia, co-operated fully with the Royal Commission. It provided some 65 years of records and three witnesses who testified before the Commission. In addition, several congregation elders flew in from around Australia to give evidence in the form of witness statements and oral evidence.
- 5.2 Congregation elders who gave evidence did so to the best of their ability, in some instances about events occurring some 27 to 33 years ago, including whether conversations even occurred. The witnesses readily acknowledged the force of the different points of view expressed by Counsel Assisting and other counsel, and they acknowledged where appropriate, not only perceived shortcomings in responses, but they also expressed a genuine willingness to learn from past shortcomings.
- 5.3 One of the difficulties the witnesses encountered in answering questions was with the passage of time. The two cases concerned events occurring between 1982 and 1988. That is between 27 to 33 years ago. It would be surprising, given the passage of time, if a person could remember any details, let alone the precise details, of conversations or events occurring so long ago. No Court today would expect such accuracy of memory of an adult survivor or of a witness to whom the adult survivor spoke, given the lengthy passage of time.
- 5.4 Moreover, as is well known to the Commission, many of the attitudes, values, and beliefs of 27 to 33 years ago are quite different from those commonly held today towards the prevention, investigation, and prosecution of child sexual abuse. In the context of the criminal justice system, much has changed in the last 30 years concerning the investigation and prosecution of crimes against children. Such crimes are now investigated much more sympathetically and there are procedures in place to enable the giving of evidence by video link or with support. Such procedures did not exist 27 to 33 years ago in all Australian states. In a similar way, Jehovah's Witnesses have improved how they handle the matter of child abuse.

Prevention of Child Sexual Abuse (“CSA”) and parental responsibility

- 5.5 Jehovah’s Witnesses consider that the prevention of child sexual abuse must start with educating parents, so that they can actively educate their children about the dangers of abuse and protect them from the same even from within the family.¹⁹ In that regard, their approach is supported both as a matter of common sense and by specialists in the field of prevention of child sexual abuse. It is self-evident that the State simply does not have the resources to prevent child sexual abuse from occurring and it must look to others, including individuals, parents, families, and institutions to assist in that regard. The State is far more likely to achieve that objective if it respects the role of parents than if it shifts the responsibility to the shoulders of others. Indeed many international and national laws recognise that parents and care-givers have the primary responsibility in such matters.²⁰ The position of Jehovah’s Witnesses is consistent with that approach. They believe that parents are in the best position to protect their children.
- 5.6 When child sexual abuse does occur, Jehovah’s Witnesses take the matter seriously. Congregation elders investigate every instance or complaint whether involving a meeting attender, a congregation member, a ministerial servant, or an elder.

Reporting to the secular authorities

- 5.7 Jehovah’s Witnesses regard child abuse as both an abhorrent sin and a crime. Jehovah’s Witnesses consider it is the right of the victim and/or the victim’s parents to report. The reporting of the crime to the secular authorities by victims or their parents is not discouraged. Elders report such matters to the secular authorities in those States where it is required by law to be reported (mandatory reporting). Regardless of reporting requirements, an

¹⁹ Exhibit 29-0019, First statement of R P Spinks, STAT.0591.001.0001_R at [48]-[49]; Exhibit 29-0024, First statement of T J O’Brien, STAT.0592.001.0001_R at [55] and [67]; Transcript of V J Toole, T15796:33-36 (Day 153); Transcript of T J O’Brien, T15859:26-30,38-42 (Day 153); Transcript of G W Jackson, T15988:15-22 (Day 155); Exhibit 29-0003, WAT.0001.004.0238 (*Awake!* October 8, 1993 - “Your Child is in Danger”, “How Can We Protect Our Children?” and “Prevention in the Home”); Exhibit 29-0003, WAT.0001.004.0253 at 0253-0260 (*Awake!* October 1, 2007 - “A Danger that Concerns Every Parent”). To similar effect is the view taken by the Royal Commission. See e.g. Royal Commission Interim Report Vol 1 at page 9, paragraph 4.3.

²⁰ For example, the *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss. 4(b), 9(2)(a)-(c), 10(1) and 31; similar legislation exists in other States/Territories of Australia; Convention on the Rights of the Child 1989 (entered into force for Australia on 16 January 1991), Articles 12, 14 and 16; and Economic and Social Council (ECOSOC) Resolution 2005/20, annex, Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime 2005, Articles 5, 6 and 8.

elder can report a crime to secular authorities if he believes there is a risk to a child.²¹

- 5.8 The decision to take away that right from a victim or the parents of a child must be left to the legislatures of each State or the Federal Parliament. The consequences of doing so may be thought to be good or adverse. It may reveal more cases of abuse, in which case the question will be whether the governments will provide the resources to ensure that such matters will be investigated and followed through (only 20% of the matters reported in Queensland could be followed up, according to the testimony of Mr Davies)²². On the other hand, victims and their families may hesitate to seek the assistance of ministers out of fear of the consequences of coming forward (hence the need for anonymity in some cases of reporting).²³
- 5.9 Recognition of the right of the adult survivor to make the decision whether to report is important or the adult survivor may feel disempowered and further traumatised.
- 5.10 If a child is unable to report the matter to the secular authorities and the parents are unable or unwilling to do so,²⁴ then an elder may feel compelled to report the matter to the authorities, particularly if he believes there is a risk to a child.²⁵ Furthermore, it is apparent from the number of cases where the secular authorities have been involved that reporting to the authorities by Jehovah's Witnesses takes place.²⁶

²¹ Exhibit 29-0019, First statement of R P Spinks, STAT.0591.001.0001_R at [29]-[30]; Exhibit 29-0019, Annexure 2 to First statement of R P Spinks, STAT.0591.001.0018_R at [1.8]; Exhibit 29-0024, First statement of T J O'Brien, STAT.0592.001.0001_R at [74]; Transcript of V J Toole, T15776:30-35 (Day 153); Transcript of G W Jackson, T15967:15-17 (Day 155).

²² Transcript of J P Davies, T15426:46-47 (Day 149).

²³ See footnote 17 above.

²⁴ Exhibit 29-0019, Annexure 2 to First statement of R P Spinks, STAT.0591.001.0018_R at [1.8]; Exhibit 29-0024, First statement of T J O'Brien, STAT.0592.001.0001_R at [56]; Transcript of T J O'Brien, T15860:34-37 (Day 153).

²⁵ Exhibit 29-0024, First statement of T J O'Brien, STAT.0592.001.0001_R at [74]; Exhibit 29-0035, Statement of G W Jackson, STAT.0670.001.0001 at [13]-[14] quoting from p.223 in the book "Keep Yourselves in God's Love" published by Jehovah's Witnesses (an extract of this book is Exhibit 29-0003, WEB.0053.001.0001); Transcript of R P Spinks, T15671:26-37 (Day 152); Transcript of V J Toole, T15776:31-35 (Day 153); Transcript of G W Jackson, T15967:15-17 (Day 155).

²⁶ Some 383 complaints were made to and investigated by the secular authorities: See Exhibit 29-0021, WAT.0018.001.0001_R at 0009 [10] (the letter from Milton Bray & Associates to the Commission dated 20 July 2015) wherein it stated: "by searching key words (ie. police, child services, authorities, charge, court, welfare etc.) in the Case Files and upon careful review of the information contained therein, my client was able to establish that 383 alleged perpetrators have been dealt with by either the police or secular authorities in the respective States or Territories in which they reside." No evidence was put to the contrary.

Reporting within the faith

- 5.11 As was acknowledged in the Commission, there are times when victims may wish to have their matter dealt with confidentially within the faith.²⁷ To deny them that opportunity may disempower the victims and may lead to further traumatising.
- 5.12 As explained above and elsewhere, Jehovah's Witnesses do not purport to offer a competing or alternative process for dealing with crime; rather their internal religious process deals with sin and its consequences based on their religious beliefs and practices.

Investigation of CSA by elders: procedural matters

- 5.13 There are established practices and procedures within the Jehovah's Witnesses faith for dealing with the abhorrent sin of child abuse. The present day practices and procedures were canvassed in some detail by Mr Rodney Spinks in his evidence.²⁸ As was readily apparent from his evidence, the procedures are flexible and can be adapted to the individual's circumstances.²⁹
- 5.14 A victim of child sexual abuse is not required to confront his/her abuser.³⁰ It is possible that in the past, on occasion, local elders asked victims to confront the accused, just as happened within the criminal justice system at that time.³¹

²⁷ See footnotes 7 and 17 above.

The Hon. Justice McClellan also acknowledged, "We have now conducted more than 3,800 private sessions as part of the Royal Commission's work": Transcript of R P Spinks, T15679:40-41 (Day 152).

²⁸ Exhibit 29-0019, First statement of R P Spinks, STAT.0591.001.0001 at [23]-[40]; Exhibit 29-0019, Annexure 2 to First statement of R P Spinks, STAT.0591.001.0018-0022; Transcript of R P Spinks, T15683:23-T15684:7 (Day 152).

²⁹ Exhibit 29-0019, Annexure 2 to First statement of R P Spinks, STAT.0591.001.0018, for example, the procedures at [1.4], [1.8], [1.9], [2.2(d)], [3.4] and [4.13]; Transcript of R P Spinks, T15696:30-41 (Day 152); Transcript of R P Spinks, T15678:26-32, 41-47 (Day 152) [Tokley/McClellan]; Transcript of V J Toole, T15763:32-37 (Day 153).

³⁰ Transcript of R P Spinks, T15683:45-T15684:2, T15686:26-40, T15695:12-14, and T15704:3-14, 33-37 (Day 152); Transcript of T J O'Brien, T15827:39-41, T15834:1-26 (Day 153); Transcript of G W Jackson, T15951:29-33 and T15954:40-44 (Day 155); Exhibit 29-0003, WAT.0001.004.0310 at 0313, second column (*The Watchtower*, November 1, 1995 – "Comfort for Those with a Stricken Spirit").

³¹ In their inquiry into children and the legal process, the ALRC and HREOC heard significant and distressing evidence that child witnesses, particularly in child sexual assault cases, are often berated and harassed to the point of breakdown during cross-examination: Australian Law Reform Commission and Human Rights and Equal Opportunity Commission, *Seen and Heard: Priority for Children in the Legal Process*, ALRC 84 (1997), [14.111] and [14.50].

The Wood Royal Commission heard a number of similar complaints in relation to treatment of child witnesses: Royal Commission into the New South Wales Police Service, *Final Report*, Vol 5 (1997), [15.92].

Similar comments were also made to the VLRC in its inquiry into reform of sexual offences law and

Since at least 1998, elders have been instructed not to require victims of molestation to confront the accused.³²

- 5.15 Although not demonstrably a problem for elders in practice, the fact that all of the practices and procedures are not contained in one document was acknowledged as an area for improvement, and Jehovah's Witnesses are in the process of considering that suggestion.

Evidential matters

- 5.16 It is not an evidential requirement that a child or adult survivor confront their abuser and, unfortunately, there was some confusion about that aspect of the matter during the Royal Commission hearings.³³
- 5.17 The evidential requirements for the establishment of sin are based upon Scripture.³⁴ In the absence of a confession, the testimony of two witnesses is required to prove the charge.³⁵ However, sin can also be established if there are two witnesses to the same kind of wrongdoing even though each individual is a witness to a separate incident. The admission of guilt by the sinner is sufficient and no eyewitnesses are required.³⁶
- 5.18 Jehovah's Witnesses consider that the requirement for two witnesses is not a matter for debate as it is based on Scriptural requirements found in the Mosaic Law and reiterated by Jesus Christ and the Apostle Paul.³⁷ Even when the requisite Scriptural evidence is lacking, elders nevertheless take precautionary measures.

procedure: Victorian Law Reform Commission, *Sexual Offences: Final Report* (2004).

In NSW, child complainants (who were under the age of 16 at the time of the alleged offence and are currently under the age of 18 years) have only recently, since after 2003, been exempt from giving oral evidence under any circumstances at committal proceedings thus saving them from being cross-examined at committal: s.91(8) *Criminal Procedure Act 1986* (NSW).

³² Exhibit 29-0020, EXH.029.020.0001 at 0003 (Circuit Overseer's Outline for the Elders' Meeting, Form S-337)

³³ See, for example, Transcript of R P Spinks, T15685:42-T15686:40 (Day 152).

³⁴ Exhibit 29-0019, First statement of R P Spinks, STAT.0591.001.0001 at [36];
Exhibit 29-0019, Annexure 2 to First statement of R P Spinks, STAT.0591.001.0018 at [2.2];
Exhibit 29-0024, First statement of T J O'Brien, STAT.0592.001.0001_R at [61];
Transcript of T J O'Brien, T15833:26-28 (Day 153);
Transcript of G W Jackson, T15967:33-T15968:7 (Day 155).

³⁵ Exhibit 29-0019, Annexure 2 to First statement of R P Spinks, STAT.0591.001.0018 at [2.2(a)];

³⁶ Exhibit 29-0019, Annexure 2 to First statement of R P Spinks, STAT.0591.001.0018 at [2.2(b)].

³⁷ See Deuteronomy 19:15, Matthew 18:16 and 1 Timothy 5:19.

- 5.19 If ministers of religion are covered by a mandatory reporting regime, Jehovah's Witnesses comply with the legislation.³⁸ As was stated at the Royal Commission on several occasions, where reporting is mandated congregation elders report even in those cases where there is insufficient Scriptural evidence to take congregation judicial action.

Responses

Handling CSA offenders within the faith

- 5.20 Jehovah's Witnesses handle the sin of child sexual abuse based on Scripture and the circumstances of each case. This may result in a variety of disciplinary measures based on the circumstances of the sin, the circumstances of the victim, repentance or the lack of it on the part of the sinner, and other related Scriptural considerations.³⁹
- 5.21 So long as there is no violation of the secular law, the handling of the sin of child abuse by Jehovah's Witnesses based on Scripture cannot be faulted from a secular point of view. The principles are somewhat analogous to those operating in the criminal justice system, save that, once a person has served his/her time in prison and is released, there is often no supervision of that person and no further assistance offered to such a person let alone protection for the community. That is not the case within the Jehovah's Witnesses organisation. The communities of Jehovah's Witnesses are small enough that a sinner will be understood to have sinned by those within the community. A truly repentant sinner will cooperate with the elders in respecting any restrictions imposed for the protection of others.

Mr Davies' evidence

- 5.22 Mr Davies' evidence has to be understood in light of the following matters. First, Mr Davies was a relatively inexperienced lawyer in a junior supporting role and was expressing a personal point of view based on his experience in one case.⁴⁰ Secondly, his view about the admissibility of evidence was not

³⁸ Transcript of R P Spinks, T15665:37-42, T15690:16-19, and T15743:11-14 (Day 152); Transcript of V J Toole, T15764:18-20, T15771:21-26 and T15790:13-20 (Day 153); Transcript of G W Jackson, T15965:16-19 and T15966:25-28 (Day 155).

³⁹ Exhibit 29-0019, First statement of R P Spinks, STAT.0591.001.0001 at [41]-[47]; Exhibit 29-0019, Annexure 2 to First statement of R P Spinks, STAT.0591.001.0018 at [4.5]-[4.21]; Exhibit 29-0024, First statement of T J O'Brien, STAT.0592.001.0001_R at [62], [86], [88]-[92],[94],[95]; Transcript of R P Spinks, T15707:3-13 and T15714:23-T15715:2 (Day 152); Exhibit 29-0003, WAT.0001.004.0306 at 0308-0309 (*The Watchtower*, January 1, 1997 - "Let Us Abhor What is Wicked").

⁴⁰ Exhibit 29-0011, First statement of J Davies, STAT.0595.001.0001_R at [1] and [4]-[9]. Mr Davies was admitted to practice in 1998 and was involved in the BCH proceedings in late 2001.

shared by his immediate senior.⁴¹ Thirdly, his observation was a truism of no real consequence in the prosecution of the matter, although it gave context. The same observation could be made about abuse occurring within any faith in which all of the persons involved shared the same faith. Fourthly, it would be wrong to draw, based upon the limited evidence presented, some general conclusions applicable to all future cases involving Jehovah's Witnesses as the quality and quantity of the evidence could not justify a generalised conclusion.

Expert's assistance

- 5.23 As part of Case Study 29, Jehovah's Witnesses offered the assistance of Dr Monica Applewhite, an independent expert from the United States. Dr Applewhite is not a member of the Jehovah's Witnesses organisation. She gained her three academic qualifications from universities that are not associated with the Jehovah's Witnesses organisation and she had 22 years of relevant field experience.⁴² Although a challenge was made to her independence, there was no evidence that she was not independent, nor that she was not suitably qualified. In fact, Dr Applewhite made several concessions that some might have thought were adverse to Jehovah's Witnesses.
- 5.24 Dr Applewhite, because of her travelling constraints, gave evidence before Mr Spinks gave his evidence. Several of her comments that may appear to be concessions need to be revisited in light of Mr Spinks' subsequent evidence. Her testimony and the suggested findings by Counsel Assisting are examined in greater detail in Part II below.

⁴¹ Exhibit 29-0012, Second statement of J Davies, STAT.0595.002.0001_R at [7].

⁴² Exhibit 29-0013, Statement of Dr M L Applewhite, STAT.0606.001.0001 at [2]; Exhibit 29-0013, Annexure 2 to the Statement of Dr M L Applewhite, STAT.0606.001.0017 – Curriculum Vitae.

6. Part ID: Some other important matters

Then and Now

- 6.1 The abuse in the two cases occurred between 1982 and 1988. The attitudes, values and beliefs surrounding child sexual abuse 27 to 33 years ago in the criminal justice system were quite different then to the way they are now.⁴³ In the 1980's, a female complainant might have or would have had her allegations investigated by male detectives, most likely have a male prosecution counsel, be cross-examined by male defence counsel, give evidence in public before a jury comprising men and women, all of whom would be strangers and, given the requirement of proving guilt beyond a reasonable doubt, sometimes see a perpetrator walk free from the courtroom. Until the law changed, it used to be a requirement that evidence given by a child complainant always required corroboration and juries were warned not to act upon their evidence unless it was corroborated.⁴⁴
- 6.2 The point is that, in the last 27 years the criminal justice system has come to understand that the way in which it dealt with sexual abuse cases could have resulted in further trauma to victims. It would be unfair to judge what occurred in the cases of BCB and BCG in light of contemporary attitudes, values, and beliefs, when 27 years ago the secular authorities either offered or delivered no better response.⁴⁵

The two cases and improving responses

- 6.3 Jehovah's Witnesses are sympathetic to victims who experience traumatic events. If abuse is to be prevented from happening, then why it occurred in the two cases and the motivations of those who perpetrated these wrongs need to be considered.
- 6.4 In terms of the responses to the accounts of abuse brought forward by the two victims, the responses by the elders were, in part, a product of their backgrounds, in part a product of the times, and in part, a product of the connections between the victims and the abusers. Whether the secular authorities would have acted differently is open to question⁴⁶ as we did not

⁴³ These are matters of public record and were part of the impetus for changing the way in which the criminal justice system dealt with sexual abuse cases.

⁴⁴ See, e.g. *B v The Queen* (1992) 175 CLR 599.

⁴⁵ See e.g. Royal Commission Interim Report Vol 2 at page 5 concerning the "Criminal Justice System".

⁴⁶ Professor K. Daly, Australian Centre for the study of sexual assault (ACSSA), no12 of 2011 page 6: "It is little surprise that victim's experiences with and judgments of the criminal process are not positive"; and "Research on victim's experiences with the legal process in common law countries like Australia ...

hear from any prosecutor of his/her experience in the 1980's of prosecuting sexual abuse cases.

- 6.5 Improving responses to child sexual abuse is something that can be achieved, and Jehovah's Witnesses have improved and will continue to do so. The fact that Jehovah's Witnesses respond to the sin of child sexual abuse is something that should not be discouraged, but encouraged. Material published under the auspices of the Australian Government revealed that in one study of sexual assault cases between 1990 and 2005, possibly only 1 in 10 matters were seen through to conclusion by prosecutorial authorities.⁴⁷ In other words, resorting to the criminal justice system is not a "cure-all" of the problem.

Section 316 *Crimes Act 1900* (NSW)

- 6.6 Counsel Assisting raised a question about s.316 of the *Crimes Act 1900* (NSW). Jehovah's Witnesses presently consider that s.316 does not apply where a victim complains to an elder that he or she has been abused, because, at that stage, the elder's knowledge is not the "knowledge" required by the section, although it may satisfy the "belief" required by the section. Nevertheless, the elder is not required to report the same to the authorities because of the application of the qualification in s.316(1) of "without reasonable excuse" when those words are considered and understood in light of the requirements of s.316(4) of the Act, s.127 of the *Evidence Act 1995* (NSW) and the beliefs and practices of Jehovah's Witnesses.
- 6.7 The combined effect of the qualification in s.316(1) and s.316(4) of the Act and s.127 of the *Evidence Act 1995* (NSW) is that where an elder forms the belief in the "course of practising or following a profession, calling or vocation ..." he has a "reasonable excuse" within the meaning of s.316(1) to not report the information and thus no offence is committed; that interpretation is supported by the section's natural meaning, the highest common law authorities, its legislative history, and a consideration of the section by the NSW Law Reform Commission.
- 6.8 Consequently, Mr Toole was correct in thinking that elders who were informed of complaints were not required to report the matter to the authorities. In any event, in the absence of an authoritative determination by a Court of competent jurisdiction about whether a requirement exists in the

and civil law countries ... shows that, despite legal and procedural reforms, victims/survivors are dissatisfied with the criminal justice system."

⁴⁷ Professor K. Daly, Australian Centre for the study of sexual assault (ACSSA), no12 of 2011 pages 4-5.

circumstances contemplated (and none is referred to by Counsel Assisting) there is no basis for any criticism or referral to the Law Society of New South Wales even if questions of professional competence to advise on such matters were within the Commission's Terms of Reference, which, clearly, they are not.

7. Part IE: The suggested findings of Counsel Assisting

- 7.1 The suggested findings by Counsel Assisting are problematic in the sense that, they often seem to assume a connection between child sexual abuse and beliefs of Jehovah's Witnesses in circumstances where there is no obvious connection and none is identified by Counsel Assisting.
- 7.2 For example, consider the suggested findings on "shunning" in F69 and F70. One can ask rhetorically, if an adult person is "shunned" or avoided because he or she has formally disassociated or resigned from the faith, how is the same connected to the prevention of sexual abuse of a child or a response to child sexual abuse? In our submission, it is not or at least, it is not obvious that it is and no evidence connecting the same was placed before the Commission. In fact, the opposite was the case. Mr Monty Baker, an adult who was disfellowshipped, said that being shunned "... wasn't really a problem for me ...".⁴⁸ Indeed, as a matter of common sense, an adult person who makes a decision must expect that the consequences that ordinarily follow upon such a decision will be attracted.
- 7.3 When considered against the broader matters mentioned above, it will be seen that several of the findings suggested by Counsel Assisting are indeed problematic. The problems with the findings can be broken down into the following broad categories.
- 7.4 First, some of the findings are too broadly stated to be of assistance to the Commission. An example is suggested finding F1. The finding does not identify what is the "teaching" that is supposed to be "conflicting" and "ambiguous". It does not refer to relevant literature of Jehovah's Witnesses which address the view taken of the superior authorities⁴⁹ and, in any event, one may ask rhetorically, how does or would such a broad finding assist the Royal Commission in its difficult task of making recommendations that will be acted upon by governments so as to reduce the incidence of sexual abuse and to better respond to it?

⁴⁸ Transcript of M Baker T15614:28-38 (Day 151).

⁴⁹ Exhibit 29-0019, Annexure 2 to First statement of R P Spinks, STAT.0591.001.0018 at [1.6]; Exhibit 29-0024, Annexure 2 to First statement of T J O'Brien, STAT.0592.001.0024 at 0028 (extract from *The Watchtower*, May 1, 2012); Exhibit 29-0035, Statement of G W Jackson, STAT.0670.001.0001 at [14] (quoting from p.223 in the book *Keep Yourselves in God's Love* published by Jehovah's Witnesses; an extract of this book is Exhibit 29-0003, WEB.0053.001.0001); Transcript of R P Spinks, T15742:13-34 (Day 152) (quoting Romans 13:1-4); Exhibit 29-0003, WAT.0001.004.0306 at 0309 [first paragraph] (*The Watchtower*, January 1, 1997 - "Let Us Abhor What is Wicked").

- 7.5 Secondly, some of the suggested findings are based on events that occurred 27 years ago and they do not reflect what Jehovah's Witnesses do today, nor are they reflective of any systemic issues within the faith. In such circumstances, the Commission is not given the assistance to which it is entitled.
- 7.6 Thirdly, some of the findings are either not supported by any reliable, credible or empirical evidence or are inconsistent with evidence given in the Commission, in some cases by persons called by Counsel Assisting. For example, suggested findings F43(a) and (b). No evidence was presented which could support such a finding, nor is it within the Commission's Terms of Reference.
- 7.7 Fourthly, some of the findings even if, arguably, within purview of the Terms of Reference could not realistically, or meaningfully, be properly investigated because there is no means by which any reliable evidence could be ascertained. For example, suggested finding F70. There appears to be no Term of Reference that requires the Commission to investigate the "shunning" of adults. Nor could, or will such a finding, assist the Commission in making recommendations about what changes ought to be made so as to reduce the incidence of child sexual abuse or to better respond to child sexual abuse, as the so-called "shunning" arises not because of any abuse of a child but because of a decision to reject the beliefs of a faith.⁵⁰

Appropriate findings and systemic considerations

- 7.8 Jehovah's Witnesses have repeatedly expressed the desire to cooperate fully with the Commission and are sympathetic to victims of child sexual abuse.
- 7.9 One of the most important questions is: What should be done today to better protect children? Another is: What can be done to better respond to cases of child sexual abuse when they occur? In answer to those two questions, findings addressed to systemic issues could be made.
- 7.10 It has also been accepted that, whatever procedure is adopted, the procedure should respect the rights of the victim and should not further traumatise the victim. The present-day practices of Jehovah's Witnesses attempt to address such concerns.

⁵⁰ Exhibit 29-0024, First statement of T J O'Brien, STAT.0592.001.0001_R at [93];
Transcript of T J O'Brien, T15852:28-39 (Day 153);
Transcript of G W Jackson, T15981:19-23, T15982:16-31 (Day 155).

- 7.11 If it is borne in mind that the Commission’s findings and recommendations will be read by persons around the world, it emphasises the importance of dealing with “systemic”, and not isolated, issues.
- 7.12 The Commission’s task of studying institutional responses to child abuse requires findings as to what Jehovah’s Witnesses do:
- (a) to prevent child sexual abuse from occurring;
 - (b) to protect children from further abuse when it occurs;
 - (c) to report such abuse to the authorities;
 - (d) to deal with the perpetrators of such abuse; and
 - (e) to alleviate the impact of such abuse.
- 7.13 In respect of such questions, the short answers are:
- (a) Jehovah’s Witnesses have for several decades published and disseminated literature warning of the dangers of child abuse and helping parents to protect their children from abuse.⁵¹ Jehovah’s Witnesses will continue to do so.
 - (b) Jehovah’s Witnesses endeavour to protect children from abuse.⁵² To that end, they encourage parents to protect their children. They respect that the victim or his/her parents may decide to seek professional help.
 - (c) While most of the 1,006 case files of abuse occurred in jurisdictions where there was no legal obligation for ministers of religion to report, contrary to Counsel Assisting’s assertion, the files on hand confirm that close to 400 cases of abuse have been reported to secular authorities by victims or others. In some cases, the victims or their families have exercised their right not to report the matter to the secular authorities and their decision has been respected by congregation elders. In still other instances, the victims or their families have later decided to report the matter and congregation elders have provided support.
- Jehovah’s Witnesses, consistent with Australian and international instruments, consider that it is the right of the survivor and/or the

⁵¹ See footnote 16 above.

⁵² Exhibit 29-0019, First statement of R P Spinks, STAT.0591.001.0001 at [19], [28-30], [33], [37], [41]-[49];
Exhibit 29-0019, Annexure 2 to First statement of R P Spinks, STAT.0591.001.0018 at [1.8];
Exhibit 29-0024, First statement of T J O’Brien, STAT.0592.001.0001_R at [55]-[57];
Transcript of R P Spinks, T15660:26-31, 40-47 (Day 152);
Transcript of V J Toole, T15763:32-40 (Day 153);
Transcript of G W Jackson, T15968:26-32 (Day 155).

survivor's family to report the matter to secular authorities.⁵³ Where the secular authorities require that it be reported by elders, the elders report the matter to the authorities.⁵⁴

- (d) Those who commit the sin of child abuse are reprovved and placed under restrictions or disfellowshipped.⁵⁵ Even if reinstated, the wrongdoer will be placed under continuing restrictions in order to protect children.⁵⁶
- (e) Like organisations in the secular arena, the procedures and practices of Jehovah's Witnesses have been improved and changed over the last 27 years in an endeavour to better respond to and alleviate the impact of child sexual abuse.

7.14 Detailed answers are contained in Part II which Part responds to the proposed findings by Counsel Assisting.

⁵³ Exhibit 29-0019, First statement of R P Spinks, STAT.0591.001.0001 at [30];
Exhibit 29-0019, Annexure 2 to First statement of R P Spinks, STAT.0591.001.0018 at [1.4];
Exhibit 29-0023, Statement of V J Toole, STAT.0593.001.0001_R at [15];
Exhibit 29-0024, First statement of T J O'Brien, STAT.0592.001.0001_R at [56], [59] and [60];
Transcript of R P Spinks, T15709:2-4 and T15720:40-45 (Day 152);
Transcript of V J Toole, T15766:23-40 (Day 153);
Transcript of G W Jackson, T15966:6-23 (Day 155);
Exhibit 29-0003, WAT.0004.001.0001 (Letter dated August 28, 2002 from Watchtower Australia read to All Congregations in Australia regarding reporting of child sexual abuse to secular authorities).

⁵⁴ Exhibit 29-0019, First statement of R P Spinks, STAT.0591.001.0001 at [30];
Exhibit 29-0019, Annexure 2 to First statement of R P Spinks, STAT.0591.001.0018 at [1.6];
Exhibit 29-0023, Statement of V J Toole, STAT.0593.001.0001_R at [13], [14], [29] and [30];
Exhibit 29-0024, First statement of T J O'Brien, STAT.0592.001.0001_R at [77];
Transcript of V J Toole, T15760:32-38, T15766:36-40 (Day 153).

⁵⁵ Exhibit 29-0019, First statement of R P Spinks, STAT.0591.001.0001 at [41], [43], [45]-[47];
Exhibit 29-0019, Annexure 2 to First statement of R P Spinks, STAT.0591.001.0018 at [4.5]-[4.13], [4.16]-[4.21];
Exhibit 29-0024, First statement of T J O'Brien, STAT.0592.001.0001_R at [62], [70], [89]-[91];
Transcript of R P Spinks, T15711:27-46 (Day 152);
Exhibit 29-0003, WAT.0001.004.0306 at 0307-0309 (*The Watchtower*, January 1, 1997 – "Let Us Abhor What is Wicked").

⁵⁶ Exhibit 29-0019, Annexure 2 to First statement of R P Spinks, STAT.0591.001.0018 at [4.16], [4.17] and [4.21];
Exhibit 29-0024, First statement of T J O'Brien, STAT.0592.001.0001_R at [95].

8. Conclusions to Part I

- 8.1 All of the matters referred to above are relevant to the context in which the Commission operates, to the findings that it will or should make and to whether the Commission's report and recommendations will receive the reception they ought fairly to receive. Some of them are of greater importance than others in their impact upon the two principal questions identified above concerning prevention and responses to child abuse.
- 8.2 The Commission's report will be read by many in Australia and around the world as it would seem to be both the largest and most thorough inquiry of its type anywhere in the world. Its views will no doubt influence future generations of Australian legislators and others.
- 8.3 If the Commission's views are to be respected around the world, as they undoubtedly will and should be, it is of the utmost importance that those reading the Commission's report and recommendations understand that its approach to the universal problem of child sexual abuse is free of any perception that the findings and recommendations it makes are antithetical to the religious beliefs and practices of Jehovah's Witnesses.
- 8.4 Ultimately, any findings or recommendations ought to be measured against their practical efficacy in achieving the objectives of the Commission as set out in its Terms of Reference namely, to better protect children from sexual abuse and to have better responses if it should occur.
- 8.5 Jehovah's Witnesses view child sexual abuse as both a sin and a crime. They have fully cooperated with the Commission in fulfilling its task, and are committed to continuing their efforts to prevent child sexual abuse.

9. Part II Summary of available findings

- 9.1 Part II responds in detail to the proposed findings of Counsel Assisting in Parts 1-10 of Counsel Assisting's Submissions ("CAS"); reference to a paragraph within Counsel Assisting's Submissions are identified as "CAP" followed by the paragraph number, for example "CAP 114".

CAS Part 1: Overview of Jehovah's Witnesses

Available findings on Jehovah's Witnesses' relationship with secular authorities

- 9.2 Counsel Assisting considers that the following finding is available on the evidence:

F1 The Jehovah's Witness organisation presents its members with conflicting and ambiguous teachings regarding their relationship with secular authorities, thereby fostering a distrust of such authorities.

- 9.3 The evidence referred to by Counsel Assisting at CAS 1.3 does not and, could not, justify such a finding. The suggested finding is not, in any way, relevantly connected to either preventing or responding to child sexual abuse by Jehovah's Witnesses. It follows, the proposed finding, has little direct bearing on the Terms of Reference.
- 9.4 The tangential relevance appears to be that if the finding that Jehovah's Witnesses have a "distrust of authority" is accepted, it justifies a further implied finding that Jehovah's Witnesses only deal with child sexual abuse internally and are reluctant to report child abuse to authorities because of that distrust. The logic is flawed. It is based on the conflation between dealing with the sin of sexual abuse and the crime of sexual abuse and Counsel Assisting's lack of understanding of the faith's teachings on the Scriptures.
- 9.5 Counsel Assisting selectively refers in CAS 1.3 to "doctrinal teachings" as supporting the proposed finding. Counsel Assisting does not, however, identify with any specificity the "teachings" or in what way they are "conflicting" or "ambiguous" such as to justify a conclusion that Jehovah's Witnesses 'mistrust' such authorities (or that they only deal internally with sexual abuse matters or would not report child sexual abuse to the secular authorities because of that mistrust).

- 9.6 The relationship between Jehovah’s Witnesses and secular authorities is set out in Mr O’Brien’s first statement.⁵⁷ In Annexure 2, he clearly sets out the position of Jehovah’s Witnesses in society. In part it notes (emphasis added):
-Jehovah’s Witnesses believe that it is their **Christian responsibility to be good citizens. Hence they honour and respect government authority. Through their publications and witnessing work, they encourage their neighbours to be law-abiding.** However, when a government demands what is in direct conflict with what God commands, the Witnesses do not comply. They “obey God as ruler rather than men.”— Acts 5:29; Romans 13:1-7.⁵⁸
- 9.7 This position is consistent with Mr Spinks’ evidence as to obedience to Scripture over secular law. That evidence, relied upon by Counsel Assisting, was given in the context of a discussion of Jehovah’s Witnesses currently being imprisoned because of their beliefs in several countries and, historically, in Nazi Germany.
- 9.8 In harmony with Romans 13:1-7, Jehovah’s Witnesses comply with mandatory reporting laws. Thus, Counsel Assisting’s reliance on the text cited from *Keep Yourselves in God’s Love* is mistaken.⁵⁹ The reference to “governments” and “authorities” in the cited passage is directly relevant to a Jehovah’s Witnesses’ response where such institutions demand obedience to what is in direct conflict with God’s commands. Any attempt to use such texts to support an implied proposition that Jehovah’s Witnesses’ response to child sexual abuse is explained by a “mistrust of authority”, is disingenuous and a blatant misapplication of the text.
- 9.9 The belief of Jehovah’s Witnesses that God’s law supersedes man’s law in no way prevents them from reporting child sexual abuse when required to do so by secular law. Relevantly, as regards child sexual abuse, the position of Jehovah’s Witnesses is unequivocal: they encourage obedience to the law.⁶⁰
- 9.10 It is also to be kept firmly in mind that a misunderstanding and misrepresentation of the faith’s official position by a member of the faith (or a former member) as to the relationship between Jehovah’s Witnesses and the secular authorities does not represent the official teachings of Jehovah’s

⁵⁷ Exhibit 29-0024, First statement of T J O’Brien, STAT.0592.001.0001_R at [24]-[28].

⁵⁸ Exhibit 29-0024, Annexure 2 to First statement of T J O’Brien, STAT.0592.001.0024, page 5, citing *The Watchtower*, May 1, 2012 p3-11.

⁵⁹ Exhibit 29-0003, WEB.0053.001.0001 at 0016;
Exhibit 29-0003, WEB.0053.001.0001 at 0017.

⁶⁰ Exhibit 29-0023, Statement of V J Toole, STAT.0593.001.0001_R at [13]-[14];
Exhibit 29-0024, First statement of T J O’Brien, STAT.0592.001.0001_R at [77];
Transcript of G W Jackson, T15965:11-19, T15966:25-28 (Day 155).

Witnesses, just as a misrepresentation by a legal practitioner of the relevant principle to be extracted from a case would not represent the official view of, for example, the High Court or the New South Wales Court of Appeal.

CAS Part 2: Historical Child Sexual Abuse

Available findings on historical child sexual abuse data

- 9.11 Counsel Assisting considers that the following two findings are available on the evidence:

F2 Since 1950, the Jehovah’s Witness organisation in Australia has received allegations of child sexual abuse against 1,006 of its members relating to at least 1,800 victims, and has in that period not reported a single allegation to the police or other authorities, even though 579 of those against whom an allegation was made confessed to having committed child sexual abuse.

- 9.12 The actual statistic referred to (1,006) needs to be understood in the following context for the following reasons.
- 9.13 First, it is wrong to assert that 1,006 were “members” since, of those, approximately 200 persons were involved in child abuse, or were the subject of an allegation, prior to their becoming Jehovah’s Witnesses.⁶¹
- 9.14 Secondly, there is no evidence that 1,800 persons were, in fact, victims. An allegation does not mean that a person is a victim. It is well known that in parenting disputes in the context of family law, unfounded allegations of sexual abuse of children may be made.⁶² Not all such allegations are substantiated, nor are they necessarily true.
- 9.15 Thirdly, Jehovah’s Witnesses have a broad definition of sexual misconduct that includes, for example, “sexting” between minors.⁶³ Elders are instructed to call the branch office if they learn that a minor is involved in “sexting”.
- 9.16 Fourthly, when an allegation is made by an adult survivor of child sexual abuse, it is not the right of an organisation to make a report on that adult’s behalf unless the adult requests that it be done. Adults have the right to make such a choice and organisations are not entitled to deny them that right.

⁶¹ Transcript of R P Spinks, T15663:40-44 (Day 152).

⁶² See e.g. *Sullivan v Moody* (2001) 207 CLR 562 at 570 [12].

⁶³ Transcript of R P Spinks, T15713:7-11 (Day 152);
Transcript of T J O’Brien, T15835:8-11 (Day 153).

- 9.17 Fifthly, becoming one of Jehovah's Witnesses is voluntary. Its organisational structure, modelled on the first century Christian congregation, exists to serve God's purposes. The faith is not an agency or instrumentality of government entrusted with the responsibility for the supervision and care of children.
- 9.18 Sixthly, while most of the 1,006 case files referred to by Counsel Assisting occurred in jurisdictions where ministers of religion were not mandated reporters, congregation elders are directed to adhere to mandatory reporting regimes when they apply to ministers of religion.⁶⁴
- 9.19 While Watchtower Bible and Tract Society of Australia is not legally obligated to report allegations of child sexual abuse to the secular authorities, since August 25, 1989, congregation elders have been directed to contact the branch office in relation to compliance with reporting requirements.⁶⁵ Further, congregation members are free to report such matters to the secular authorities and many have done so, as is apparent from information provided to the Commission.⁶⁶
- 9.20 The suggested finding is unlikely to assist the Commission in making appropriate recommendations about what can be done to better respond to child sexual abuse because it is not placed into any factual context. A mere recitation of numbers will not assist the Commission.
- 9.21 It should be noted that in many cases, victims or their families did not want the secular authorities involved. In still other cases, the victim may have chosen not to report the abuse until later in life, by which time he or she is an adult.

F3 The Jehovah's Witness organisation in Australia receives approximately three to four reports of allegations of child sexual abuse each month.

- 9.22 In order to ensure that allegations of child sexual abuse are properly handled by congregation elders, they are instructed to contact the branch office if they learn of any broadly-defined sexual misconduct involving minors. The evidence given by Mr Toole was, when read in context, that he received three

⁶⁴ Transcript of R P Spinks, T15709:2-11, 17-22 (Day 152)
Transcript of V J Toole, T15766:32-40 (Day 153).

⁶⁵ Exhibit 29-0034, CORR 0182.001.005, which refers to the letter AB:AS To All Bodies of Elders, August 25, 1989, page 3.

⁶⁶ Just under 400 cases (383) involved the secular authorities: Transcript of R P Spinks, T15663:25-26 and T15717:32-41 (Day 152).

to four calls a month about “allegations” of child sexual abuse and not reports of “actual” child sexual abuse.⁶⁷

- 9.23 No inquiry was made during the public hearing as to the circumstances of each of the calls made by the elders to the branch office in order to determine if the report involved a non-Witness perpetrator, occurred before the wrongdoer’s association with Jehovah’s Witnesses, if the allegation was historical in nature, or if it was in fact, by definition, child sexual abuse.

CAS Part 3: BCB

Available findings on BCB’s first disclosure

- 9.24 Counsel Assisting considers that the following 11 findings are available on the evidence:

F4 The elders bringing the man whom BCB accused of abusing her to her home was unjustified and traumatising for BCB and should not have occurred.

F5 Although the elders may have been following the documented procedure at the time and they may have believed that Scriptural principle required that the accuser face the accused with her allegations, it was distressing to and unsupportive of BCB to require that of her.

F6 It was distressing for BCB to be required by the elders to tell of what had happened to her to a group of men, including the man whom she accused of abusing her, and it was not likely to, nor did it, result in BCB disclosing the full extent of her abuse.

F7 It was inconsistent with the elders’ professed sympathy for BCB for them not to have offered her the opportunity of the support and involvement of women in the process of investigating her allegations of abuse.

F8 The elders did not explain to BCB the purpose of their investigation and the meetings with her such as to ensure that she had an understanding of that purpose, which left her confused and disempowered.

F9 The application of the two-witness rule meant that there was insufficient evidence for the elders to act against BCB’s abuser even though they believed her, which left her feeling disbelieved and unsupported, and it left the abuser in the congregation where he may have been a risk to other children.

F10 Mr Horley telling BCB that she should not discuss her abuse with anyone left her feeling silenced and unsupported.

F11 BCB was not told by the elders that she could, let alone should, report her abuse to the authorities.

F12 In circumstances where both investigating elders agreed that there was substance to BCB’s allegations, they should have taken steps against Bill Neill, at least by imposing some

⁶⁷ Transcript of V J Toole, T15760.23-30 (Day 153).

restrictions on his activities involving children and thereby addressing the potential risk that he posed to other children.

F13 It was traumatic for BCB and inappropriate of Mr Horley for him to have required BCB to attend Bible study at Bill Neill's home when he knew that BCB accused Bill Neill of abusing her.

F14 The recommendation of the elders to the Branch Office that Bill Neill be reinstated as an elder 'once this has died down' and their expressed concern 'that there may also be worldly people who also know' demonstrates that they were more concerned about the reputation of Bill Neill and the congregation than about the risk that he posed to children.

- 9.25 It is submitted that the evidential basis for suggested findings F4 to F14 contained in paragraphs 109 to 152 of the submission by Counsel Assisting require the following additions, deletions and amendments.
- 9.26 On a global basis the honesty, candour, and quality of the elders' evidence should be acknowledged by the Commission along the lines of that reported by Janet Fife-Yeomans at page 32 of "The Daily Telegraph" on 1 August, 2015: *While people from other churches dragged to the Royal Commission have obviously been coached by PR gurus and lawyers in how to present themselves and say the right thing, the Jehovah's Witnesses were totally devoid of artifice.*
- 9.27 CAP 111: For accurate context, it should be added that the offending conduct occurred when BCB was staying at the Neill home. BCB was staying at the Neill home because of her friendship with Bill Neill's daughter. As such it is submitted that the offending conduct did not arise because of Bill Neill being in a position of authority over BCB.
- 9.28 Without minimising its offensiveness, it is submitted that the offending conduct (inappropriate kissing and the touching of BCB's breasts through her clothing) committed when BCB was under the age of 18 would amount in criminal law to indecent assault. This point is made, not to condone or minimise the conduct, but to put it into its correct legal context. Counsel Assisting did not comment on or clarify this fact with the Commission. Even so, it should be noted that the congregation viewed the wrongdoing seriously and took congregation action.
- 9.29 Further, the offending conduct initially reported to the congregation was that of indecent assaults and not sexual assaults.
- 9.30 It is also submitted that BCB was a married adult when the congregation elders learned of the misconduct of Bill Neill and subsequently met with her.

- 9.31 CAP 112: The statement that *Bill Neill discouraged BCB from forming friendships with non-Jehovah's Witnesses* is of no particular significance to child sexual abuse.⁶⁸ Many years ago (and even in some cultures today), a relationship or even a friendship with a person of a different faith was frowned upon.
- 9.32 Further, the statement that *BCB left high school encouraged by the Neill family* has no evidential basis, but even if it did, it has no causal connection to child sexual abuse.⁶⁹
- 9.33 Further, the implication that the Neills discouraged BCB from fraternising with non-Jehovah's Witnesses is contradicted by the fact that BCB had non-Jehovah's Witness friends whilst at school and was working in a bank with non-Jehovah's Witnesses at the time of the offending conduct.⁷⁰
- 9.34 CAP 113: The statement that Bill Neill *groomed and sexually abused* BCB is legally inaccurate and should be amended to *indecently assaulted*.
- 9.35 Further, the statement that *BCB felt unable to disclose the abuse because of Bill Neill's position of authority in the congregation* is incomplete. In paragraph [25] of her statement, BCB states that Bill Neill was the head of the household and that she felt that she could not tell anyone as if she did it would upset Bill Neill's wife, Bronwyn, and their daughter, BCE, as well as members of the congregation.⁷¹ According to her own statement, all of these factors influenced BCB's decision not to disclose what was happening to her.
- 9.36 CAP 115: For accurate context it should be added that BCB was an adult, of 23 or 24 years of age, when she first disclosed this matter.
- 9.37 CAP 116: For accurate context it should be added that at the time of receiving the complaint Mr Horley was 31 years of age, he had been an elder for only 3 years⁷² and it was the first time that he had dealt with a complaint of sexual abuse.⁷³

⁶⁸ Exhibit 29-0001, Statement of BCB, STAT.0603.001.0001_R at [17].

⁶⁹ Transcript of BCB, T15171:9-14 (Day 141).

⁷⁰ Transcript of BCB, T15170:32-39 (Day 141).

⁷¹ Exhibit 29-0001, Statement of BCB, STAT.0603.001.0001_R at [25].

⁷² Transcript of M Horley, T15180:45 to T15181:1 (Day 147).

⁷³ Exhibit 29-0002, Statement of M Horley, STAT.0601.001.0001_R at [4.1]; Transcript of M Horley T15184:32-35 (Day 147).

- 9.38 CAP 118: For accurate context it should be added that when this matter was reported to Mr Horley he immediately sought the advice and guidance of the circuit overseer, Mr Douglas Jackson.⁷⁴
- 9.39 CAP 122: For accurate context it should be added that BCB's evidence was that "*Max [Horley] was very supportive and kind*".⁷⁵
- 9.40 It should also be added that BCB's evidence as to being "*pressed*" by Mr Horley amounted to BCB saying that Mr Horley simply repeated what BCB had previously told him and that she confirmed this.⁷⁶
- 9.41 CAP 123: For accurate context, BCB's reference to "*a room full of men*" in her statement should be understood to mean Mr Douglas Jackson, Mr Horley and her abuser, Bill Neill. It should also be added that BCB's husband, BCC, was also present to support BCB. It should also be noted that BCB knew Mr Douglas Jackson and Mr Horley at that time.
- 9.42 CAP 127: For accurate context, it should be added that BCB did not feel comfortable disclosing the full extent of her abuse to anyone at that time, including her husband, BCC.⁷⁷
- 9.43 CAP 128: For accuracy it should be added that the assertion of BCB that *nobody explained to her the purpose of either meeting* should be contrasted with Mr Douglas Jackson's evidence, which is cited at CAP 134.⁷⁸
- 9.44 For accuracy, it should also be stated that:
- (a) BCB gave evidence that she did understand that it was her word against Bill Neill's and that the elders were trying to find out what happened.⁷⁹
 - (b) As one of Jehovah's Witnesses, BCB would have received a copy of the publication "*Organised to Accomplish Our Ministry*"⁸⁰ at some point before her baptism in 1986. At page 145 of that publication, an

⁷⁴ Exhibit 29-0002, Statement of M Horley, STAT.0601.001.0001_R at [5.1]; Exhibit 29-0001, Statement of BCB, STAT.0603.001.0001_R at [53]-[54]; Transcript of M Horley, T15189:28-31 (Day 147).

⁷⁵ Exhibit 29-0001, Statement of BCB, STAT.0603.001.0001_R at [50]; Transcript of BCB, T15164:4-5 (Day 147).

⁷⁶ Transcript of BCB, T15173:34-35 (Day 147) and T15175:45-T15176:1.

⁷⁷ Exhibit 29-0001, Statement of BCB, STAT.0603.001.0001_R at [47] and [77].

⁷⁸ Transcript of D Jackson, T15227:23-27, and T15227:29-33 (Day 147).

⁷⁹ Transcript of BCB, T15177:19-21 (Day 147).

⁸⁰ Exhibit 29-0032, WAT.0020.001.0001.

overview is provided of the process of how the elders investigate and deal with cases of wrongdoing within the congregation.⁸¹

- 9.45 CAP 129: For accurate context the following should be added:
- (a) Within weeks of BCB's complaint, Bill Neill was removed as an elder in the congregation and BCB was present at the congregation meeting when this fact was announced;
 - (b) This announcement conveyed that Bill Neill had been disciplined, and/or sanctioned,⁸²
 - (c) Those with knowledge of the investigation of Bill Neill, including BCB, would have known why Bill Neill had been removed,⁸³ and
 - (d) The publication "Organised to Accomplish Our Ministry" at page 141⁸⁴ explains that the removal of an elder is reflective of his failing to meet Scriptural standards for elders.
- 9.46 CAP 132: Accordingly, for accurate context the statement "*and prevented her from disclosing the full extent of her abuse*" should be removed.⁸⁵
- 9.47 CAP 133: It is submitted that the adjective "*totally*" should be removed.
- 9.48 CAP 136: It is submitted that the statement, *Mr Horley denied that he was trying to cover the matter up*, should be removed as the question and answer surrounding this are not relevant or based on any evidence in the proceedings.
- 9.49 Further, it should be added that Mr Horley gave evidence that the purpose of his request was to limit the spread of gossip⁸⁶ and that BCB was free to talk to others within the congregation including the elders or a mature woman from within the congregation.⁸⁷
- 9.50 CAP 137: In light of the previous submission, this paragraph should be amended to read, *Mr Horley accepted that BCB could have felt silenced and unsupported by his instruction not to speak with others about her abuse.*
- 9.51 CAP 143: For accuracy, the following should be added:

⁸¹ Transcript of D Jackson, T 15263:3-44 and T 15266:6-12 (Day 148).

⁸² Transcript of M Horley, T15203:29-T15204:1 (Day 147).

⁸³ Transcript of M Horley, T15204:14-18 (Day 147).

⁸⁴ Exhibit 29-0032, WAT.0020.001.0001.

⁸⁵ Exhibit 29-0001, Statement of BCB, STAT.0603.001.0001_R at [47] and [77].

⁸⁶ Transcript of M Horley, T15201:10-16, T15202:5-12 (Day 147).

⁸⁷ Transcript of M Horley, T15201:20-36 (Day 147).

- (a) BCB said that there was at least one other Bible study group held at the Kingdom Hall in Narrogin.⁸⁸
- (b) BCB did not recall who it was that conveyed to her that she had to continue attending the Bible study group at Bill Neill's house, and it might have been her mother. BCB said that BCC had said to her it might have been Mr Horley but BCC was not called to give evidence as to this even though he was present at the public hearing in a support role.⁸⁹ Further, this was not put to Mr Horley before the Royal Commission.
- (c) There was no compulsion as to which Bible study group, if any, BCB should attend.

- 9.52 It is further submitted that the statement that Mr Horley organised the Bible study held at Bill Neill's house should be removed as it is not based on any evidence in the proceedings.
- 9.53 In light of the previous submissions, it is submitted that CAP 143 be amended to read, *BCB gave evidence that even after she had disclosed her abuse by Bill Neill, she continued to see Bill Neill several times a week at congregational meetings.*
- 9.54 CAP 144: For accuracy, it should be added that BCB's evidence was that Mr Horley asked her not to talk out of respect for the Neill family. The other members of the Neill family were her friends, including Mrs Neill, whom BCB said she "*loved like a mother*".⁹⁰
- 9.55 The evidence does not support the assertion that BCB was in fact encouraged to respect her abuser.
- 9.56 In light of the foregoing submissions, it is submitted that CAP 144 be amended to read, *BCB gave evidence that she was left feeling unsupported by the congregation and that she felt she was instead being encouraged to respect her abuser.*
- 9.57 CAP 149: For accurate context, it should be added that Mr Horley gave evidence that it would take many years for that to occur, if ever,⁹¹ and that in fact Bill Neill was not reappointed until 2001 to the Warnbro Congregation, a period of 10 years.

⁸⁸ Transcript of BCB, T15170:8, 9 (Day 147).

⁸⁹ Transcript of BCB, T15170:17-19 (Day 147).

⁹⁰ Exhibit 29-0001, Statement of BCB, STAT.0603.001.0001_R at [62] and [64].

⁹¹ Transcript of M Horley, T15209:39-43 (Day 147).

- 9.58 CAP 152: For accuracy, it should be added that:
- (a) Mr Horley's evidence was that his aim in removing Bill Neill as an elder was to protect every member of the congregation from Bill Neill,⁹² and
 - (b) Mr Douglas Jackson's evidence was that in dealing with Bill Neill, steps would have been taken to ensure *that he wouldn't get into that situation again.*⁹³

Suggested revised and amended findings

- 9.59 In the light of the foregoing submissions, it is submitted that the following additions, deletions and amendments are required to Counsel Assisting's recommended findings contained at F4 to F14.
- 9.60 Suggested finding F7 should be amended to: *As BCB had the support of her husband who was present with her, the fact that the elders did not offer her the opportunity to have women involved in the process is not inconsistent with the elders' professed sympathy for BCB.*
- 9.61 Suggested finding F8 should be amended to: *Elders investigating BCB's complaints could have ensured that BCB understood the purpose of their investigation and the meetings with her.*
- 9.62 Suggested finding F9 is contrary to the evidence and should not be made for the reasons set out in paragraphs 9.197 to 9.227.
- 9.63 Suggested finding F10 is not supported by the evidence before the Commission and as such should not be made for the reasons set out in paragraphs 9.48 and 9.50.
- 9.64 Suggested finding F11 should be amended to: *Elders investigating BCB's complaints could have advised BCB of her right to report abuse to authorities.*
- 9.65 Suggested finding F12 should be amended to: *After Bill Neill was removed as an elder, the elders could also have imposed appropriate restrictions on his involvement with children.*
- 9.66 Suggested finding F13 is not supported by the evidence and as such should not be found by the Commission. See also paragraph 9.51 and 9.52 above.

⁹² Transcript of M Horley, T15217:9-24 (Day 147).

⁹³ Transcript of D Jackson, T15253:26-29 (Day 148).

9.67 Suggested finding F14 should be amended to: *The recommendation of the elders to the branch office that Bill Neill be reappointed as an elder ‘once this has died down’ and their expressed concern ‘that there may also be worldly people who also know’ were inappropriate and did not reflect the policy and practice of Jehovah’s Witnesses.*

Available findings on BCB’s second disclosure

9.68 Counsel Assisting considers that the following two findings are available on the evidence:

F15 It was wrong of Joe Bello, and contrary to the Jehovah’s Witness organisation’s own direction in that regard, to discourage BCB from reporting to the Royal Commission by asking whether she ‘really wants to drag Jehovah’s name through the mud’.

F16 The elders in BCB’s present congregation should have supported BCB in her reporting to the Royal Commission if that is what she wanted to do.

9.69 It is submitted that the evidential basis for suggested findings F15 and F16 contained in CAP 153 to 159 of the submission of Counsel Assisting require the following additions, deletions and amendments set out below in order that they fairly and accurately represent the evidence given before the Commission.

9.70 CAP 155: For accurate context, the following evidence given by Mr Bello should be added:

- (a) that the conversation was an informal conversation with BCB’s husband, BCC, not BCB;
- (b) that the question was rhetorical;
- (c) that the words used by Mr Bello were, not *did BCB really want to drag Jehovah’s name through the mud*, but, *what would that accomplish other than dragging Jehovah’s name through the mud*; and
- (d) that when BCC said that it was about closure and financial compensation Mr Bello accepted BCB’s right to do so and said he could see BCC’s point that it could achieve a measure of closure for BCB.⁹⁴

9.71 BCC did not give evidence on this issue.

⁹⁴ Transcript of J Bello, T15273:11-26 (Day 148).

- 9.72 CAP 156. This paragraph is not supported by the evidence before the Commission and should not be asserted by the Commission.⁹⁵
- 9.73 CAP 157: The reference to *Upset by Mr Bello's visit*, should be removed. There was no evidence that this was the reason for BCB writing her letter.
- 9.74 CAP 159: It is submitted that this paragraph is irrelevant and should be removed.
- 9.75 For greater accuracy, it should be added that Mr Bello gave evidence that the elders in Kingsley Congregation gave a great deal of support to BCB and BCC, as well as forwarding BCB's letters to the branch office.⁹⁶
- 9.76 In the light of the foregoing submissions, we now submit that the following additions, deletions and amendments are necessary to Counsel Assisting's recommended findings contained at F15 to F16.
- 9.77 For the reasons stated above, suggested finding F15 is not supported by the evidence given before the Commission and should not be made.
- 9.78 For the reasons stated above, suggested finding F16 is not supported by the evidence given before the Commission and should not be made.

CAS Part 5: BCG

Available findings on the investigation and judicial committee processes following BCG's disclosure

- 9.79 Counsel Assisting considers that the following 13 findings are available on the evidence:

F17 The elders did not explain to BCG the purpose of their investigation and their meetings with BCG such as to ensure that she had an understanding of that purpose, which left her confused and disempowered.

F18 It was traumatising for BCG to be required by the elders to tell what had happened to her to a group of men, including the man whom she accused of sexually abusing her, and it was not likely to, nor did it, result in BCG disclosing the full extent her abuse.

F19 It would have been supportive of the elders to offer BCG the opportunity of the support and involvement of other women in the process of investigating her allegations of abuse.

⁹⁵ Transcript of J Bello, T15273:11-36 (Day 148).

⁹⁶ Exhibit 29-0005, Statement of Joseph Bello, STAT.0594.001.0001_R at [5.5] and [5.10].

F20 During their judicial committee investigation or proceedings the elders received evidence that BCH had abused BCG's elder sister and her two younger sisters, but they took no action in relation to that evidence.

F21 The evidence presented to the judicial committee of BCH having abused his other daughters satisfied the Jehovah's Witness organisation's own rules with regard to sufficiency of evidence to establish that BCH had abused BCG, but the elders wrongly ignored that evidence and accordingly failed to uphold BCG's complaint against BCH.

F22 In the course of the judicial committee process, and before the elders reached a conclusion on BCH's guilt in relation to his extra-marital conduct, BCH confessed to having abused BCG.

F23 The elders inexplicably and wrongly ignored BCH's confession to having abused BCG and thereby, within the precepts of the Jehovah's Witness organisation's own rules and procedures, failed to uphold BCG's complaint against BCH.

F24 BCG was not told by the elders that she could, let alone should, report her abuse to the authorities.

F25 The appeal committee's requirement that BCG give evidence of her sexual abuse by her father to a group of seven men including her named abuser was unjustified and traumatising to BCG and should never have happened.

F26 The failure by the elders to report BCH's sexual abuse of BCG to the police had the result that BCH remained at large in the community and a risk to children, and reflects that the elders were not concerned with child safety but rather with keeping their organisation 'clean'.

F27 The judicial committee's failure to uphold BCG's complaint of abuse by BCH conveyed to BCG that the organisation tolerated child sexual abuse within its ranks.

F28 The advice given by the elders to BCG that she not speak about her abuse to anyone had the effect of silencing her.

F29 The elders' treatment of BCG was unsympathetic and unsupportive and left her feeling worthless and helpless.

9.80 It is submitted that the evidential basis for suggested findings F17 to F29 contained in CAPs 164 to 219 require the following additions, deletions and amendments.

9.81 CAP 167: For accurate context, it should be added that the offending conduct was committed by BCG's father, BCH. As such it is submitted that the offending conduct did not arise from BCH being in a position of authority linked to the Jehovah's Witnesses' faith.

9.82 CAP 167: Further, the only evidence of these assertions came from BCG. As such, it is submitted that they should be preceded by, *BCG gave evidence that*.

- 9.83 CAP 168: The only evidence of these assertions came from BCG. As such, it is submitted that they should be preceded by, *BCG gave evidence that*.
- 9.84 CAP 170: Paragraphs 37 and 38 of BCG's statement indicate that BCG did not, at any time, indicate that she wished to discuss sexual abuse allegations with the elders. In her statement BCG states only:
- (a) *I need to talk about some stuff that's happened between me and dad,*⁹⁷
and
- (b) *I want to talk to you about things in my family that you don't know about. What my father is doing.*⁹⁸
- 9.85 Consistent with this, in 2001 at the committal proceedings against BCH, BCG gave evidence of a conversation she had with Mr Ali. BCG's evidence was that she told Mr Ali that, *you need to come and talk to the family, there's things you don't know about in the family, you need to come and talk to us.*⁹⁹
- 9.86 CAP 171: For accuracy, Mr Ali's evidence in relation to BCG's complaint should be added. Mr Ali's evidence in this regard was:
- (a) *I'm sorry, but I can't recollect that,*¹⁰⁰
- (b) *Generally, if it was something of a minor concern, yes,*¹⁰¹ and
- (c) *If this did really happen – I'm not doubting that it did – then it would be consistent with myself to follow through and have a discussion with her, and to also approach the parent if it was something of concern, yes.*¹⁰²
- 9.87 CAP 172: For accuracy, it should be added that when Mr Bowditch was asked by Counsel Assisting whether he would have told BCG that he could not talk to her without BCH being present he answered categorically, *I would never have said that.*¹⁰³
- 9.88 Further it should be added that, during questioning by Counsel Assisting on this issue, Mr Bowditch answered variously:

⁹⁷ Exhibit 29-0006, Statement of BCG, STAT.0590.001.0001_R at [37].

⁹⁸ Exhibit 29-0006, Statement of BCG, STAT.0590.001.0001_R at [38].

⁹⁹ Transcript of BCG at committal proceedings against BCH, QLD.0068.001.0732:19-37.

¹⁰⁰ Transcript of D Ali, T15325:28-29 (Day 148).

¹⁰¹ Transcript of D Ali, T15325:34-35 (Day 148).

¹⁰² Transcript of D Ali, T15326:11-15 (Day 148).

¹⁰³ Transcript of K Bowditch, T15394:8 (Day 149).

- (a) *I didn't know how serious it was, and as she was a young adult, I would have spoken to her anyway.*¹⁰⁴;
- (b) *No, I would speak to her with somebody else, like my wife, in a room that's close or – you know – in an adjoining room;*¹⁰⁵ and
- (c) *I still would not have said that. I would have let the person talk to me.*¹⁰⁶

9.89 It is therefore submitted that CAPs 170 to 172 are without foundation and should be removed.

9.90 CAP 174: It should be added that BCG gave evidence in 2001 at the committal proceedings against BCH. BCG stated that her allegations arose in the context of another investigation of BCH, saying *[another woman] was involved...so was BCK, so was Mum. BCJ was there...lots of people in there. There were lots of other events going on as well.*¹⁰⁷

9.91 CAP 175: BCG's statement that she was alone and without support is not accurate. It should be added that BCG had the support of her then fiancé BCJ, who was present at the Kingdom Hall during the judicial committee meeting.¹⁰⁸ In this regard Mr Ali stated that BCJ was present all the time.¹⁰⁹ At times during the judicial process BCG's mother, BCI, and sister, BCK, were also present.¹¹⁰

9.92 Further it is submitted that the elders dealing with this matter had a close association with BCG¹¹¹ and at all times sought to put BCG at ease. Further, the elders sought to reassure and support BCG during this process.¹¹²

9.93 Mr de Rooy gave evidence that, *"We had known her for such a long time, she was like our family",*¹¹³ and that the elders *"felt very much for her".*¹¹⁴ Mr Ali

¹⁰⁴ Transcript of K Bowditch, T15394:18-19 (Day 149).

¹⁰⁵ Transcript of K Bowditch, T15394:23-26 (Day 149).

¹⁰⁶ Transcript of K Bowditch, T15395:17-18 (Day 149).

¹⁰⁷ Transcript of BCG at committal proceedings against BCH, QLD.0068.001.0735:21-34.

¹⁰⁸ Transcript of D Ali, T15330:28-29 (Day 148).

¹⁰⁹ Transcript of D Ali, T15378:33-38 (Day 149).

¹¹⁰ Transcript of BCG, T15288:40-41 and T15310:14-18 (Day 148).

¹¹¹ Transcript of BCG, T15288:3-4 (Day 148).

¹¹² Transcript of D Ali, T15365:13-31, T15376:15, 37-42 (Day 148); Exhibit 29-0016, Statement of R de Rooy, STAT.0597.001.0001_R at [9.1].

¹¹³ Transcript of R de Rooy, T15546:2-11 (Day 151).

¹¹⁴ Transcript of R de Rooy, T15546:32-36 (Day 151).

and Mr Bowditch also gave evidence that the elders were well known to BCG and that they were there to protect her.¹¹⁵

- 9.94 CAP 177: BCG's statement that the elders were friends of her father requires context. There was no evidence before the Commission of any particular relationship. To the contrary, the evidence was that all members of the congregation, including BCG, were treated similarly.¹¹⁶
- 9.95 BCG's evidence in 2001 at the committal proceedings against BCH should also be added, being that she was reluctant to speak of BCH's abuse to the elders because, "*they're not supposed to say anything to anyone else but sometimes they tell their wives and it will get around to everybody*".¹¹⁷
- 9.96 It should be added that all of the elders gave evidence that they believed BCG.¹¹⁸ Mr Bowditch gave evidence that he told BCG that he believed her one hundred percent.¹¹⁹
- 9.97 Further, the elders did not drop BCG's allegations once the decision was made to disfellowship BCH, but rather continued to investigate and press the allegations at BCH's appeal relating to the other matter before the judicial and appeal committees.¹²⁰
- 9.98 CAP 178: The verb "*forced*" should be changed to "*required*" consistent with CAP 179.
- 9.99 CAP 179: It should be added that the elders gave evidence that BCG involved herself voluntarily in the process of confronting her father and wanted to put her allegations to him face-to-face.¹²¹
- 9.100 CAP 181: For accurate context it should be added that at the first meeting the elders were concluding an investigation, which had been on foot for some time in relation to BCH's alleged marital infidelity.¹²²

¹¹⁵ Transcript of D Ali, T15378:10-20 (Day 149).

Transcript of K Bowditch, T15399:29-33, T15414:46 and following (Day 149).

¹¹⁶ Transcript of D Ali, T15318:15-16 and T15331:10-15 (Day 148).

¹¹⁷ Transcript of BCG at committal proceedings against BCH, QLD.0068.001.0733:51-56.

¹¹⁸ Transcript of D Ali, T15331:17-22 (Day 148), T15353:6-13 (Day 149);

Transcript of K Bowditch, T15404:5-9 (Day 149).

Transcript of R de Rooy, T15547:1-5, T15548:45 (Day 151).

¹¹⁹ Transcript of K Bowditch, T15413:37-43 (Day 149).

¹²⁰ Transcript of R de Rooy, T15560:18-T15561:21 (Day 151).

¹²¹ Transcript of D Ali, T15374:33-43, T15376:7-10 (Day 149);

Transcript of K Bowditch, T15397:35-39, T15398:16-19, 27-31 (Day 149).

- 9.101 That meeting was formed to deal with that earlier complaint.¹²³
- 9.102 The complaint was dealt with and a finding made against BCH.¹²⁴
- 9.103 During that judicial committee meeting BCG made her more serious complaint against BCH.¹²⁵
- 9.104 During that judicial committee BCG made hearsay allegations relating to BCH and her sisters.¹²⁶
- 9.105 During that judicial committee meeting, at all times, BCH denied the allegations.¹²⁷
- 9.106 Following the judicial committee meeting the elders continued to investigate BCG's complaints.¹²⁸
- 9.107 BCH appealed the earlier judicial committee findings regarding his marital infidelity.¹²⁹
- 9.108 During the subsequent appeal committee meeting, the elders questioned BCH at length about BCG's complaints following which BCH confessed.¹³⁰
- 9.109 It should be added that BCG gave evidence-in-chief in 2001 at the committal proceedings against BCH, concerning the appeal committee meeting.¹³¹

And then Kevin Bowditch said – he said, “Before you close up can we – can BCG just” – he called me BCG, I think. Just he gave – admit it ‘cause I never heard him admit it. In there Joe Marazza [sic] said “Yeah”. I think – and he –

¹²² Exhibit 29-0007, Statement of D Ali, STAT.0598.001.0003_R at [5.1]; Transcript of D Ali, T15339; 13-46 (Day 149); Exhibit 29-0010, Statement of K Bowditch, STAT.0602.001.0003_R at [4.3]; and Exhibit 29-0016, Statement of R de Rooy, STAT.0597.001.0001_R at [5(iv)].

¹²³ Exhibit 29-0007, Statement of D Ali, STAT.0598.001.0003_R at [5.1]; Transcript of D Ali, T15339; 13-19 (Day 149); and Exhibit 29-0016, Statement of R de Rooy, STAT.0597.001.0001_R at [5(iv)].

¹²⁴ Exhibit 29-0003, WAT.0001.002.0134_R.

¹²⁵ Exhibit 29-0006, Statement of BCG STAT.0590.001.0001_R at [50].

¹²⁶ Exhibit 29-0006, Statement of BCG, STAT.0590.001.0001_R at [51].

¹²⁷ Exhibit 29-0007, Statement of D Ali, STAT.0598.001.0003_R at [5.5]; Exhibit 29-0010, Statement of K Bowditch, STAT.0602.001.0001_R at [4.8].

¹²⁸ Exhibit 29-0008, QLD.0068.001.1478_R. QLD.0068.001.1484; and Transcript of D Ali, T15380:33-37 (Day 149).

¹²⁹ Exhibit 29-0003, QLD.0068.001.1474_R (Tab 4).

¹³⁰ Exhibit 29-0016, Statement of R de Rooy, STAT.0597.001.0001_R at [6.2]; Exhibit 29-0010, Statement of K Bowditch, STAT.0602.001.0001_R at [4.12].

¹³¹ Transcript of BCG at committal proceedings against BCH, QLD.0068.001.0736:15-40.

Kevin Bowditch said that, "I think that it would be good for BCG's sake", or for my sake, BCG's sake to hear that. And I was like absolutely bowled over because the last one he kept saying that I was lying and everything. In the second committee they – they asked him well – they asked him, did he abuse me, something to that effect, and he said, "Yes". He had his head down like this. I did—

You're indicating that he had his hands over his face? – Yeah, like that, with his hands on his knees and he said, "Yes, I did step out of line". And then another thing that Joe Marazza [sic] said, because one of his things – his little things was that I seduced him. Joe Marazza [sic] said, "Okay". Not – he said this was no – no insult at me and it's not that they didn't believe me, they do believe me, that he said to BCH, my father, that if that was the case, which it wasn't, that it would be his right as a father to not do that. He would still be wrong in doing that and he fairly gave him heaps. Well, I thought he did. I thought it was good to see. And they still decided to disfellowship him.

9.110 It should be added that during cross-examination at the committal proceedings against BCH, BCG gave the following evidence, concerning the appeal committee meeting:

...Kevin Bowditch said, "Before you finish up or before" you know they go on "Can BCG or BCG just hear him admit what he's done for her sake" and then they asked him the question did he touch me or molest or whatever to that effect and he said, "Yes, I did. I did step out of line" and he had his hands on his forehead bending over on his knees.

All right?- - And I was quite surprised that he actually admitted it because he was adamant that he didn't do it.

Okay. Any other conversations you recall that evening? - - Yes. A – Joe Morassis [sic] really got cranky at him. I remember that and said to him how disgusting it was that I had to turn to some other young brother in the congregation to – for protection from my own father and as the matter with the seducing business brother Joe Morrasis [sic] said to me that he knows that it did not happen – that I did not seduce my father. So, he was in no way saying that I did. So, I – you know, that was clear and he said to my father that if it was the case that that did happen that it was his job as a father not to be

*doing that and it was wrong for him to do that anyway but acknowledged that it did not happen like that.*¹³²

- 9.111 The appeal committee then confirmed the earlier judicial committee findings and added the more serious finding of *porneia* in relation to BCG's complaints.¹³³
- 9.112 CAP 183: For accurate context it should be added that, although the elders were bound by their Biblical principles, Mr Spinks¹³⁴ and Mr Geoffrey Jackson both gave evidence that the elders were always encouraged to act in harmony with their consciences to protect the victim and that their individual conscientious decisions would be respected. The elders in BCG's matter demonstrated this to be the case, since they continued to pursue BCG's allegations in spite of insufficient evidence at the time, until further evidence became available in the form of a confession by BCH.
- 9.113 CAP 184 to CAP 193: Counsel Assisting's submission relating to Mr Ali's notes and the evidence relating to BCK appearing at the judicial committee appear to be framed in such a way as to unfairly impugn the evidence of Mr Ali, Mr de Rooy and Mr Bowditch. The fact that BCK did attend at some point and did make a complaint against BCH is conceded and not in issue. As such, this should simply be stated as a fact leading to Counsel Assisting's suggested findings at F20 and F21 on that issue.
- 9.114 CAP 194 to CAP 196: Counsel Assisting's submission relating to Mr Ali's notes and the evidence relating to whether BCH confessed during the earlier judicial committee meeting also appear to be framed in such a way as to unfairly impugn the evidence of Mr Ali, Mr de Rooy and Mr Bowditch.
- 9.115 Counsel Assisting's reliance on the notes and Mr Ali's and Mr de Rooy's evidence relating to them is ill-conceived and likely to mislead the Commission.
- 9.116 The notes did not form part of the proposed tender bundle for the public hearing.
- 9.117 The notes were written in 1989.

¹³² Transcript of BCG at committal proceedings against BCH, QLD.0068.001.0787:38-60.

¹³³ Exhibit 29-0003, WAT.0001.002.0135_R (Tab 3).

¹³⁴ Transcript of R P Spinks, T15671:33-37, T15672:1-4 (Day 152).

- 9.118 Without notice, Mr Ali and then Mr de Rooy were questioned in relation to those 26 year old notes.
- 9.119 Both Mr Ali and Mr de Rooy had little recollection of the notes and did their best to assist the Commission.
- 9.120 It should be added that Mr Ali and Mr de Rooy were witnesses of truth consistent with the earlier submission at 9.26.
- 9.121 For context in relation to those notes, Mr Ali gave evidence in 2003 at the first trial of BCH where he was asked about the alleged confessions contained on page 14 of the notes. Mr Ali's evidence was as follows:¹³⁵

Now, I'm also going down to the bottom of that page, and I'm trying to find out when this refers to. "BCH has admitted to all things and also said that whatever BCG had said on molesting was true." Do you see that there? - - I do.

Do you have some independent recollection now having looked at that note as to what was said and when it was said? - - This was the so-called witnesses that had on hearsay. Apparently BCG had mentioned to them that what had happened to her concerning her dad, what her dad did to her, this is the individuals mentioned there were - if you noticed on the fourth line on the bottom, "Ian and Janette", his wife ---

Yeah? - - and "Janette tells BCH that he tells her" ---

I understand, I understand. So that's some hearsay comment that you've recorded? - - Yes.

---of witnesses? - - Yes.

That's not anything that you heard said by BCH? - - No, she had claimed BCH had molested her.

That's okay, But you didn't hear her say anything to that effect? - - No, no.

Because all these notes concern times before we get to the appeals committee, don't they? - - They do.

¹³⁵ Transcript of Mr Ali at first trial of BCH, QLD.0068.001.1017:50 - 1018:22.

HER HONOUR: Who are Ian and Janette? - - They are friends of the family, of the BCG's family.

- 9.122 Mr Ali also gave evidence at the first trial of BCH that the notes were taken at some point while the judicial committee meetings were in progress, including the meeting in which the decision to disfellowship BCH was taken, after the investigative stage had concluded, and were not contemporaneous to all the events described therein.¹³⁶
- 9.123 In their statements to the Commission, Mr Ali, Mr de Rooy and Mr Bowditch each stated that BCH's confession only occurred at the appeal committee hearing.
- 9.124 The evidence of Mr Ali, Mr de Rooy and Mr Bowditch was consistent with that position.
- 9.125 Paragraphs 43 to 53 of BCG's statement are clearly inconsistent with any confession being forthcoming from BCH at the judicial committee meeting.
- 9.126 It should also be noted that during BCG's evidence at the trial of BCH, BCG volunteered matters that could adversely affect the reliability of her evidence in that and any subsequent proceedings.¹³⁷
- 9.127 The evidence of BCG at the Commission did not address this issue, nor did Counsel Assisting ask any questions relating to an alleged admission by BCH at the judicial committee meeting.
- 9.128 It would be clearly unfair for Counsel Assisting to rely on the notes to make findings of fact in these circumstances.
- 9.129 Further, it is implausible that BCH would have appealed the judicial committee findings relating to loose conduct if he had confessed to these more serious allegations.
- 9.130 Further, it is implausible that the appeal committee would have noted and acted on BCH's confession to these allegations during the appeal committee meeting if BCH had already made such confessions.

¹³⁶ QLD.0068.001.1004:35-50

¹³⁷ BCG's evidence at the first trial of BCH in 2003 [QLD.0068.001.1106:20-30 and QLD.0068.001.1116:40-50].

- 9.131 It is therefore submitted that CAPs 194 to 202 should be removed.
- 9.132 It is therefore submitted that suggested findings F22 and F23 should not be made.
- 9.133 CAP 200: For abundant caution, the submission of Counsel Assisting should not be accepted and should be removed.
- 9.134 CAP 202: For abundant caution it should be added that at the conclusion of the judicial committee meeting into BCH's marital infidelity, the elders continued to investigate BCG's allegations until such time as BCH confessed at the appeal committee meeting.
- 9.135 Further, the only sister of BCG to give any evidence to the elders was BCK.¹³⁸
- 9.136 CAP 203: The word "*ultimately*" should be replaced with "*immediately*".
- 9.137 CAP 204: This submission is not relevant and is misleading. The report related to the concluded investigation into BCH's marital infidelity. Investigations were continuing into BCG's complaint. The report was received by the Service Desk on 7 August 1989. The Service Desk also received, on 7 August 1989, the report of the appeal committee which dealt with BCG's complaint.¹³⁹
- 9.138 CAP 206: The sentence, *He agreed however that there can be no ongoing investigation of a disfellowshipped person* is not relevant, is misleading and should not be made. There is clear evidence that following the judicial committee meeting the investigation into BCG's complaints continued and the complaints were taken up during the appeal committee meeting.
- 9.139 Further, Mr de Rooy's evidence should be added, that the disfellowshipping of BCH would only have taken effect after an announcement to the congregation that BCH was disfellowshipped, which would only be made after the expiration of the 7 day period to appeal the decision of the judicial committee.¹⁴⁰
- 9.140 CAP 208: It is submitted that this paragraph is not relevant and should be removed.

¹³⁸ Transcript of D Ali, T15347;13, 46-47, and T15347;1 (Day 149).

¹³⁹ Exhibit 29-0003, WAT.001.002.0135_R (Tab 5).

¹⁴⁰ Transcript of R de Rooy, T15605:3-7 (Day 151);
See also Exhibit 29-0032, WAT.0020.001.0001 at pages 147-148.

- 9.141 CAP 210: For accuracy, it should be added that BCG's then fiancé, BCJ accompanied BCG to the Kingdom Hall and remained at the premises to support BCG.¹⁴¹
- 9.142 It should also be stated that of the 6 elders, Mr Ali, Mr de Rooy and Mr Bowditch were well known to BCG (see 9.92 and 9.93 above) and Mr Don Wilson was the father of BCG's best friend.¹⁴²
- 9.143 CAP 213: For accuracy it should be added that this document appears to be the original notification from the judicial committee that had not been updated to reflect the subsequent finding of the appeal committee.
- 9.144 CAP 216: It is submitted that this statement is inaccurate and should be removed.
- 9.145 CAP 219: It should be added that Mr de Rooy emphatically denied that he would have chastised BCG for her attempted suicide, and stated, *I would not ... at all think of chastising someone who felt like that. That is just not part of how I shepherd and help ones who are distressed like that.*¹⁴³
- 9.146 In light of the foregoing, we now submit that the following additions, deletions and amendments are necessary to Counsel Assisting's recommended findings contained at F17 to F29.
- 9.147 F17: This suggested finding is not supported by the evidence and should not be made.
- 9.148 F18: This suggested finding should be amended to remove, *and it was not likely to, nor did it, result in BCG disclosing the full extent of her abuse.*
- 9.149 F19: This suggested finding should be amended to reflect the evidence in relation to BCG.
- 9.150 F20: This suggested finding should be amended to remove, *but they took no action in relation to that evidence.*¹⁴⁴
- 9.151 F21: This suggested finding should be amended to: *The evidence presented to the judicial committee of BCH having abused BCG's elder sister satisfied*

¹⁴¹ Transcript of D Ali, T15330:28-29 (Day 148).

¹⁴² Transcript of BCG, T15290:7-8 (Day 148).

¹⁴³ Transcript of R de Rooy, T15565:43 to T15566:13 (Day 151).

¹⁴⁴ Transcript of D Ali, T15353:18-23 and 32-33.

the Scriptural standard with regard to sufficiency of evidence to establish that BCH had abused BCG.

- 9.152 F22: This suggested finding is not supported by the evidence and should be amended to: *In the course of the appeal committee hearing, BCH confessed to having abused BCG*
- 9.153 F23: This suggested finding is not supported by the evidence and should not be made.
- 9.154 F24: This suggested should be disregarded.
- 9.155 F25: This suggested finding should be amended to remove: *“The appeal committee’s requirement”, “was unjustified” and “and should never have happened”.*
- 9.156 F26: This suggested finding should be amended to remove: *and a risk to children and reflects that the elders were not concerned with child safety but rather with keeping their organisation “clean”.*
- 9.157 F27: This suggested finding is not supported by the evidence and should be disregarded.
- 9.158 F28: This suggested finding should be amended by replacing ‘*anyone*’ with ‘*everyone*’.
- 9.159 F29: This suggested finding is not supported by the evidence and should not be made.

Available findings on the reinstatement of BCH

- 9.160 Counsel Assisting considers that the following four findings are available on the evidence:

F30 BCH was reinstated as a Jehovah’s Witness little more than three years after he had been disfellowshipped for, amongst other things, five or six counts of sexual abuse of his daughter.

F31 The decision to reinstate BCH took no account of the risk that BCH posed to children, paid little regard to the fact that he had been disfellowshipped because of child sexual abuse, and was focussed principally on his extra-marital relationship.

F32 The decision to reinstate BCH took no account of BCH's failure to apologise to BCG, a factor relevant to consideration of sincere repentance, or of what BCG might have had to say about BCH being reinstated.

F33 The decision to reinstate BCH was disrespectful and unsupportive of BCG.

F34 The Branch Office's response to BCG on 26 February 1996 caused BCG to feel angry, upset and let down, and did not convey support and concern to BCG on the part of the Jehovah's Witness organisation.

9.161 It is submitted that the evidential basis for suggested findings F30 to F34 contained in CAP 220 to 233 require the following additions, deletions and amendments.

9.162 CAP 220: replace *less than* with *almost*.

9.163 CAP 231: replace *BCH was reinstated in 13 November 1992 with 3 years after being disfellowshipped by the Mareeba Congregation BCH was reinstated in the St George Congregation*.

9.164 CAP 234: replace *Mr de Rooy could not recall this conversation with BCG and did not accept that he might have said that to BCG with Mr de Rooy's evidence was:*

- (a) *That he did not recall the question of going to the Police being discussed at any time;*
- (b) *That he did not make any comment as to this; and*
- (c) *That he was not surprised that BCG reported the abuse to the Police some years later.*¹⁴⁵

9.165 Further, when cross-examined at length by Counsel Assisting on this matter, Mr de Rooy maintained his position and added further support for his position by explaining that in his opinion the prohibition on taking legal action against fellow Jehovah's Witnesses did not apply in the case of matters such as child sexual abuse.¹⁴⁶

9.166 It is therefore submitted that the last two sentences of CAP 234 should be removed.

¹⁴⁵ Exhibit 29-0016, Statement of R de Rooy, STAT.0597.001.0001_R_at [5.2].

¹⁴⁶ Transcript of R de Rooy, T15584:6-T15587:27 (Day 151).

- 9.167 In the light of the foregoing, we now submit that the following additions, deletions and amendments are necessary to Counsel Assisting's suggested findings contained at F30 to F34.
- 9.168 F30: should be replaced with: *BCH was reinstated as one of Jehovah's Witnesses three years after he had been disfellowshipped for, amongst other things, child sexual abuse of his daughter and adultery.*
- 9.169 F31: should be replaced with: *The religious decision to reinstate BCH as a member of the congregation was based on his demonstration of repentance, rather than on other factors.*
- 9.170 F32: should be replaced with: *BCG felt that the decision to reinstate BCH as a member of the congregation did not take into consideration whether BCH had personally apologised to BCG for child sexual abuse.*
- 9.171 F33: should be replaced with: *BCG felt that the decision to reinstate BCH in the St George Congregation did not take her feelings into consideration.*
- 9.172 F34: should be replaced with: *Although the letter from Watchtower Bible & Tract Society of Australia to BCG dated 26 February 1996 acknowledges her feelings and conveys concern for BCG, due to a misunderstanding of the meaning of the Scripture shared with her, BCG felt, angry, upset, and unsupported.*¹⁴⁷

Available findings on the impact of the judicial committee process on criminal proceedings against BCH

- 9.173 Counsel Assisting considers that the following finding is available on the evidence:

F35 The judicial committee and appeal committee processes that preceded BCG reporting her abuse by her father to the police complicated the criminal proceedings because of the numbers of people involved in those processes and the telling and retelling of the experience.

- 9.174 The suggested finding will not assist the Commission in its task of making recommendations on systemic issues concerning either the prevention of, or better responses to, child sexual abuse. The suggested finding seems to be based upon the views of an inexperienced lawyer (Mr Davies) in the one case

¹⁴⁷ Exhibit 29-0003, QLD.0068.001.1409_R;
Transcript of G W Jackson, T15993 (Day 155).

involving BCG. One example does not reflect the existence of a systemic problem in responding to complaints of child sexual abuse. Moreover, it is important to see things in context. It is sometimes a feature of criminal trials that they can be factually and legally complicated and evidence can be contaminated by speaking to others, but, as is evident from the testimony of many adult survivors, it does not necessarily prevent the conviction of a perpetrator. Furthermore, some adult survivors will want to speak to someone about what has happened to them. Not listening to an adult survivor, or informing them that they ought not speak about what has happened to them, has the potential to further traumatise a survivor.

9.175 The problem is not that a survivor should not speak to several persons,¹⁴⁸ it is whether the listener may influence or contaminate the survivor's views about what occurred. For example, it is well known that if a matter is reported to the police, the survivor may have to tell their story to several persons including the investigating officer, the medical examiner, one or more detectives, prosecution counsel and possibly others. In the case of young children who often first report such matters to their parents, some degree of contamination may be inevitable. Speaking out is often the first step to recovery for a victim and the suggested finding, if made, has the potential to have a "chilling effect" on speaking out simply because of the way in which ideas are conveyed in short hand by persons.

Available findings on the risk management and second disfellowshipping of BCH

9.176 Counsel Assisting considers that the following three findings are available on the evidence:

F36 When BCH was reinstated no restrictions were placed on him which were relevant to his risk to children despite his established history of child sexual abuse.

F37 BCH was disfellowshipped a second time for lying in relation to child sexual abuse rather than for child sexual abuse itself.

F38 The reasons canvassed and then given for the second disfellowshipping of BCH show that those from the Jehovah's Witness organisation who were involved were more concerned about a charge of lying than they were about BCH's sexual abuse of his daughters.

9.177 The evidence concerning BCH was that he abused only his own children when they were vulnerable to abuse. There was no evidence that BCH

¹⁴⁸ As the Royal Commission observed in its Interim Report Vol 2 at page 4, one of the factors that encourages disclosure of abuse includes being asked in a sensitive and appropriate way by a trusted adult. Elders within the Jehovah's Witnesses are trusted adults and it is noteworthy that 1,006 cases were disclosed to the organisation.

abused any child apart from his own. There was no evidence given that BCH was a risk to any other children and there is, therefore, no evidential, or any other basis, for suggested finding F36 and it ought not be made. BCH's actions should be condemned with a finding but, in the absence of evidence, there is no basis for a broader finding.

- 9.178 It will be recalled that one of the witnesses¹⁴⁹ gave evidence that it is not possible to separate out the lie from the content of the lie¹⁵⁰ and an attempt to do so is artificial. If a person lies about being a child abuser, when they have been found to have committed the sin of child abuse, the lie is evidence that the person is unrepentant and, an unrepentant person will be disfellowshipped for the failure to admit their first wrongdoing and not for the lying. It follows that, suggested finding F37 proceeds upon an artificial distinction and it will not be of assistance to the Commission in its task of making recommendations on systemic issues.
- 9.179 The Commission ought not make suggested finding F38 because it relies upon a view of the evidence that was expressly denied by the elders involved in making the relevant decisions.¹⁵¹ In this case, Counsel Assisting misinterprets the reasons why the elders disfellowshipped BCH. This exemplifies why secular bodies should not second-guess the reasons for disciplinary decisions of ecclesiastical bodies.
- 9.180 It should be noted that Counsel Assisting, according to F35, criticises the elders for interviewing BCG which he contends "complicated the criminal proceedings" and then takes exception to the fact that the elders did not speak to her two young sisters who were also victimised by BCH. Mr Pencheff testified that the judicial committee refrained from interviewing these two other victims out of deference to the ongoing criminal proceedings.¹⁵²

CAS Part 6: A Scriptural Approach to Child Sexual Abuse Policy

Available findings on the authority of the Governing Body

- 9.181 Counsel Assisting considers that the following two findings are available on the evidence:

¹⁴⁹ Mr A C Pencheff.

¹⁵⁰ See the evidence of Mr A C Pencheff: Transcript of A C Pencheff, T15650:30-40 (Day 152).

¹⁵¹ See the evidence of Mr A C Pencheff: Transcript of A C Pencheff, T15650:30-T15651:12 (Day 152).

¹⁵² Transcript of A C Pencheff, T15647:8-10 (Day 152).

F39 Mr Spinks' evidence that the Australia Branch has full authority to produce documents, seminars, letters to elders and letters to publishers without the approval or agreement of the Governing Body is rejected.

9.182 It may be recalled that the tenor of Mr Spinks' evidence was that, from a Scriptural perspective, the Governing Body has primacy regarding the response to sexual abuse but each branch office, including the Australia branch office, had responsibility to ensure compliance with the local legal requirements and other sensitivities of the jurisdiction, and several examples of where that had occurred were given to the Commission by Mr Toole and Mr Spinks.¹⁵³ It follows from the foregoing that, the suggested finding F39 proceeds upon an inaccurate view of Mr Spinks' evidence and, in fairness to him and Jehovah's Witnesses, it should not be made.

9.183 In any event, however, the suggested finding is not, in any way, relevantly connected to either preventing or responding to child sexual abuse by Jehovah's Witnesses. It follows that, the proposed finding, has little direct bearing on the Terms of Reference and is of no real assistance to the Commission.

9.184 The proposed finding misrepresents Mr Spinks' evidence in several respects:

- (a) First, Counsel Assisting fails to include in the finding the important qualification that Mr Spinks makes (despite referring to that qualification in CAS 280). The qualification is in the following terms that:¹⁵⁴

“As long as we [that is, the Australia branch] don't stray from the Scriptures which is the primary role of the Governing Body worldwide, the Australia branch has full authority to produce documents, to clearly set out ... what needs to be made clear locally”.

- (b) Secondly, Counsel Assisting does not refer to Mr Spinks' evidence that elaborates on the proposition that Governing Body approval is not required where, by way of example, there is a mandatory reporting requirement.¹⁵⁵
- (c) Thirdly, Counsel Assisting takes out of context the statement that the “Australian branch does have that authority”.¹⁵⁶ The statement is referable to ensuring that “things that are specific to the countries –

¹⁵³ Transcript of R P Spinks, T15688:15-21, T15691:15-22 and T15692:36-T15693:3 (Day 152).

¹⁵⁴ Transcript of R P Spinks, T15688:15-21 (Day 152).

¹⁵⁵ Transcript of R P Spinks, T15690:12-23 (Day 152).

¹⁵⁶ Transcript of R P Spinks, T15692:35 (Day 152).

sensitivities, cultural issues, legal implications” are taken into account in publications and policies.¹⁵⁷

9.185 There is no justification for a finding that Mr Spinks gave evidence to the effect that the Australia branch had full authority to publish without approval or agreement of the Governing Body.

9.186 To the contrary, it leads ineluctably to the conclusion that the process was collaborative. Further, Mr Spinks’ evidence was consistent with the evidence of Messrs Jackson, Toole and O’Brien. As Mr Geoffrey Jackson stated:¹⁵⁸

...we would expect the general framework of what we do to be published as approved by the Governing Body. But, you see, when we say “published” letters are published by the local branches that indicate any variance that may need to take place with regard to those policies.

9.187 Furthermore, the finding fails to distinguish between a branch office publishing documents where there was established Scriptural direction and where local requirements entailed deliberations and correspondence between the Governing Body and the branch.

9.188 As to the former, the evidence shows the Australia branch regularly produced letters to elders and letters to publishers without seeking the review or approval of the Governing Body.¹⁵⁹ As the content of such letters is based on Bible principles and the publications and guidelines provided by the Governing Body, and the Service Department is giving specific directions in a local context, there is no expectation or requirement on the part of the Governing Body to review or approve such letters.

9.189 Finally, the suggested finding is not, in any way, relevantly connected to either preventing or responding to child sexual abuse by Jehovah Witnesses. It follows that, the proposed finding, has little direct bearing on the Terms of Reference and is of no real assistance to the Commission.

¹⁵⁷ Transcript of R P Spinks, T15692:17-18 (Day 152).

¹⁵⁸ Transcript of G W Jackson, T15953:18-24 (Day 155).

¹⁵⁹ Examples of such letters are the letters from the Service Department to the Body of Elders at Kalamunda Congregation:
 Exhibit 29-0003, WAT.0001.002.0091_R;
 Exhibit 29-0003, WAT.0001.002.0092_R;
 Exhibit 29-0003, WAT.0001.002.0095_R; and
 Exhibit 29-0003, WAT.0001.002.0099_R.

F40 The Governing Body retains authority in respect of all publications in the name of the Jehovah’s Witness organisation and any view or perspective contrary to that of the Governing Body is not tolerated.

- 9.190 The submissions in response to suggested finding F39 above are repeated. It is inaccurate to suggest that “all” publications in the name of the organisation of Jehovah’s Witnesses are subject to the Governing Body’s authority. It was clear from the evidence given before the Commission that the Governing Body allows local branch offices to modify letters as necessary to conform with local requirements and circumstances. Therefore, it is inaccurate to suggest that “all” publications in the name of the organisation of Jehovah’s Witnesses are subject to the Governing Body’s authority.
- 9.191 However, an available finding F40 concerning the authority of the Governing Body, which is consistent with the evidence of Mr Geoffrey Jackson and Mr Spinks, is that:

“The Governing Body retains authority in respect of the general principle and framework of all publications in the name of Jehovah’s Witnesses, and any view or perspective contrary to the Bible is not tolerated.”

CAS Part 7: Current Systems, Policies and Procedures for Responding to Allegations of Child Sexual Abuse

Available findings on the investigation process

- 9.192 Counsel Assisting considers that the following three findings are available on the evidence:

F41 There are no circumstances in which the survivor of a sexual assault should have to make her allegation in the presence of the person whom she accuses of having assaulted her, and, contrary to the present position, the documents, manuals and instructions produced by the Jehovah’s Witness organisation should make this clear.

- 9.193 Jehovah’s Witnesses agree that a child victim of sexual abuse should not have to confront their abuser. Jehovah’s Witness procedures and practices did not and do not require such a confrontation. In those cases where the adult survivor wishes to confront the abuser, however, different considerations may be involved.¹⁶⁰

¹⁶⁰ Transcript of R P Spinks, T15686 (Day 152).

9.194 The suggested finding refers to what may have happened in one particular case of an adult survivor, rather than to the long-standing policies and practices of Jehovah’s Witnesses that do not require a victim to confront his/her abuser. The suggested finding is misleading concerning the policies and practices of Jehovah’s Witnesses. The suggested finding implies that:

- (a) Jehovah’s Witnesses *presently* require a survivor of a sexual assault to make her allegation in the presence of the accused; and
- (b) The documents, manuals and instructions produced by Jehovah’s Witnesses are unclear about whether a survivor of sexual assault must face the accused,

both of which are contrary to oral testimony¹⁶¹ given before the Commission and documentary evidence¹⁶² provided to the Commission.

9.195 In addition, the suggested finding is misleading. As Ms Gallagher, Counsel for BCB, acknowledged that Jehovah’s Witnesses do not require a survivor of a sexual assault to make her allegation in the presence of the accused.¹⁶³

Q. As it stands now, just as practicalities, if a young child comes forward, or there is complaint from a young child, of course they would not face their abuser - is that so?

A. That's correct

Q. So there's a statement, or the allegation would be put in writing in some way; is that right ?

A. That can be the case, yes.

9.196 An available finding F41, consistent with the documents produced to the Commission and the evidence of each of Messrs Geoffrey Jackson, Spinks, O’Brien and Toole is as follows:

¹⁶¹ Transcript of R P Spinks, T15683:43-T15684:7 (Day 152);
 Transcript of G W Jackson (agreeing with Spinks), T15951:29-33 and T15952:27-29 (Day 155);
 Transcript of T J O’Brien at T15834:1-26 (Day 153);
 Transcript of V J Toole (agreeing with Spinks), at T15802:19-22 (Day 153).
¹⁶² Exhibit 29-0003, WAT 0001.004.0310 (*The Watchtower* “Comfort for Those With a Stricken Spirit”, November 1, 1995);
 see also Transcript of R P Spinks, T15695:5-14 (Day 152);
 Exhibit 29-0020, EXH.029.020.0001 (Circuit Overseer’s *Outline for the Elders’ Meeting*, Form S-337);
 Transcript of R P Spinks, T15702-T15705:20 (Day 152);
 Exhibit 29-0003, WAT.0003.001.0001 at [0073] (*Shepherd the Flock of God* (“Elders’ Handbook”, also referred to as *ks10*) chapter 5, par. 38).
¹⁶³ See Transcript of R P Spinks, T15733:14-22 (Day 152) (during Ms Gallagher’s examination of Mr Spinks)

“Jehovah’s Witnesses have not and do not presently, require the survivor of a sexual assault to make his/her allegation in the presence of the person whom he/she accuses of having assaulted him/her, unless the survivor wishes to do so; and Jehovah’s Witnesses have acknowledged the need for this position to be clearly documented.”

F42 The requirement that two or more eyewitnesses to the same incident are required in the absence of a confession from the accused, the testimony of two or three witnesses to separate incidents of the same kind of wrongdoing, or strong, circumstantial evidence testified to by at least two witnesses (i.e. the two witness rule):

(a) means that in respect of child sexual abuse which almost invariably occurs in private, very often no finding of guilt will be made in respect of a guilty accused

9.197 The suggested finding at F42(a) is a criticism of the Bible’s rule of evidence for establishing sin.¹⁶⁴ Counsel Assisting asserts that because abuse occurs in private, “very often no finding of guilt will be made”. If that assertion were true, then one would expect to see that in the vast majority of cases, there would be no finding of guilt of a person within the faith. That assertion is not supported by the statistical evidence presented to the Commission¹⁶⁵ and is not supported by the experience in the secular arena.

9.198 First, the function of the investigative process carried out by Jehovah’s Witnesses is to determine whether evidence exists, by reference to Scriptural standards for sin, such that a judicial committee should be formed. This is not a procedure to determine if an individual is guilty of a crime. If a judicial committee is formed, its function is to establish the facts and then to ascertain the attitude of the wrongdoer, that is, whether he or she is repentant.¹⁶⁶

9.199 Secondly, no evidence was presented to the Commission that, by virtue of such conduct occurring in private, *very often no finding of guilt will be made* notwithstanding that the Commission received documents concerning all allegations of such conduct and that nearly 580 persons confessed to some form of sexual abuse or misconduct.¹⁶⁷

9.200 Thirdly, the conclusion sought to be drawn does not follow from the premises. If two persons are both assaulted in private and both come forward with

¹⁶⁴ Proverbs 28:13; Matthew 18:16; Deuteronomy 19:15; 2 Corinthians 13:1; 1 Timothy 5:19.

¹⁶⁵ According to the letter from the Solicitor Assisting the Commission only 125 out of 1,006 case files were prevented from proceeding to a judicial committee. Approximately some 579 alleged perpetrators confessed to having committed child sexual abuse: Exhibit 29-0021, WAT.9999.013.0003_R (Letter from T. Giugni of Royal Commission to Milton Bray dated 16 July 2015 at paragraphs 16-17).

¹⁶⁶ Transcript of G W Jackson, T15967:38-T15968 (Day 155).

¹⁶⁷ Exhibit 29-0031, WAT.0021.001.0001 - Case File Analysis Prepared by Royal Commission Staff.

reports, the matter of guilt is established. If it occurs in private and a confession or admittance of guilt occurs, guilt will also be established.

9.201 Fourthly, the suggested finding is based on an incorrect assumption that no precautionary actions are taken when there is insufficient Scriptural evidence of the sin occurring. It is also based on an incorrect and unrealistic assumption that the investigation processes followed by secular authorities often result in a finding of guilt in respect of an accused, which is widely acknowledged not to be the case by members of the police force, legal profession and judiciary. For example:

- (a) the secular judicial system failed to make a finding of guilt against [BCH] in two separate trials, and only succeeded on the third attempt, as stated:

*there were three trials – the first resulted in a hung jury, the second a mistrial, and then the third a conviction.*¹⁶⁸

- (b) Mr Davies gave evidence that about 80 per cent of matters reported to the State of Queensland child protection authority were not acted on as

*They didn't reach the thresholds necessary for child protection statutory action.*¹⁶⁹

9.202 The suggested finding F42(a) should be amended to read:

“In the case of any alleged serious sin, including child abuse, judicial committees are formed on the basis of the Scriptural standard of evidence of either a confession or substantiation by two or more witnesses. – Proverbs 28:13; Deuteronomy 19:15; Matthew 18:16; 2 Corinthians 13:1; 1 Timothy 5:19.”

F42 [The two witness rule]:

- b) causes victims of child sexual abuse to feel unheard and unsupported when it results in allegations of child sexual abuse not being upheld**

9.203 The suggested finding F42(b) is presumably based upon the testimony of the two witnesses BCB and BCG but the testimony of these two witnesses does not in fact support the suggested finding.

¹⁶⁸ Transcript of J P Davies, T15421:31-33 (Day 149).

¹⁶⁹ Transcript of J P Davies, T15426:46-T15427:2 (Day 149).

- 9.204 First, in her evidence, BCB stated¹⁷⁰ that when she told Max Horley about what had happened to her, “...Max was very kind and supportive. He told me that what has happened was not my fault and that I shouldn’t blame myself”, although BCB also states that,¹⁷¹ “Overall however, I remember that I didn’t feel supported”. Nevertheless, nowhere in her statement does BCB assert that the existence of the two witness rule caused her to feel either “unheard” or “unsupported”.
- 9.205 Moreover, it is not possible to draw such an inference based upon the experience of these two witnesses, whose abuse occurred in the 1980’s. Every person’s responses in life are unique to that person. Some may consider it “unfair” or “disappointing” or they may be “angry” but they may not consider that they have been “unheard” or “unsupported”.
- 9.206 Secondly, there is no *causal connection* between an evidential requirement that there be two witnesses or other Scripturally sufficient evidence to a sin and a victim’s feelings about the abuse they have suffered and whether they feel “unheard” or “unsupported”. The fact is that survivors do have a voice and they are heard by elders and their complaints are investigated. Additionally, victims and their families are provided with ongoing spiritual support and comfort.¹⁷²
- 9.207 Thirdly, even in the secular arena, it is well known that many allegations of sexual abuse are not upheld¹⁷³ – the secular system is not necessarily condemned as “*causing*” victims to feel “unheard” or “unsupported” when their allegations are not upheld.
- 9.208 Fourthly, even if it were true, no process dealing with the crime of child sexual abuse could abandon a requirement that some evidence be presented. Whether the Scriptural requirement that there be a confession or two witnesses to establish sin should be altered is beyond the Terms of Reference of the Commission and contrary to the fundamental right of freedom of religion enshrined in the Constitution.

¹⁷⁰ Exhibit 29-0001, Statement of BCB, STAT.0603.001.0001_R at [50].

¹⁷¹ Exhibit 29-0001, Statement of BCB, STAT.0603.001.0001_R at [64].

¹⁷² See for example, Transcript of BCB, T15164:4-6 (Day 141), Transcript of A R de Rooy, T15566:7-13 (Day 151), Exhibit 29-0003, WAT.0001.004.004, “What Elders Can Say to Abuse Victims” and Exhibit 29-0003, WAT.0001.004.001, Letter from Watchtower to All Bodies of Elders dated 23 April 1992.

¹⁷³ For example, BCG reported that “It took six years and three trials before he [BCH] was finally convicted for the indecent assault of me”: Transcript of BCG, T15293:42-43 (Day 148); See also the Report prepared for the Royal Commission, “Sentencing for Child Sexual Abuse in Institutional Contexts”, July 2015, p. 1: “A criminal justice response to CSA entails a long and difficult process of reporting, detection, prosecution, trial and disposition. Sentencing is one of the final stages of this process, however the number of people convicted and sentenced of CSA represents a very small proportion of those who commit such offences. Attrition rates are very high and accordingly very few offenders are held to account, and only a small number of victims can be vindicated through this process.”

9.209 The suggested finding is not supported by the evidence. An alternate suggested finding F42(b) consistent with the evidence of the two survivor witnesses is:

“Based on the testimony of the two survivor witnesses: (i) Although BCB did not feel supported overall, her testimony was that [an elder involved in Scripturally caring for her accusation] was “very kind and supportive. He told me that what has happened was not my fault and that I shouldn’t blame myself”; and (ii) Although BCG felt unsupported when her allegations of child sexual abuse against her father, BCH, were not Scripturally established at the time of the first congregation judicial hearing, it should be noted that BCH was found guilty of the sexual abuse of his daughter by the congregation appeal committee within the following two weeks.”

F42: [The two witness rule]:

c) is a danger to children in the Jehovah’s Witness organisation because its consequence is that very often nothing is done about an abuser in the organisation

9.210 No credible or reliable or tested evidence was in fact presented to the Commission to support such a generalised finding that the Scriptural requirement for two witnesses “*is a danger to children*” and it ought not be made. It also ought not be made for the following additional reasons.

9.211 First, there is no *causal connection* between the existence of a rule of evidence and whether children within a religious community are at risk of sexual abuse and the assumption that the two are connected is not borne out by any evidence presented to the Commission. It is tantamount to saying that, the requirement of proof of criminal guilt “beyond a reasonable doubt” means that “very often nothing is done about an abuser” secularly if they are not convicted; or that, the hearsay rule should be abandoned because it means that “very often” a truthful person is not relied upon. The rules of evidence are based upon the experience of the Courts in dealing with matters over at least two centuries. The Scriptural rules of evidence are thousands of years old. One aspect of the rules of evidence is to ensure a fair trial of allegations and to ensure that innocent persons are not wrongly convicted.

9.212 Secondly, it neglects the fact that a significant number of persons have been prosecuted by the secular authorities regardless of the existence of the two witness rule and the suggested finding does not have regard to that

consideration.¹⁷⁴ As an example, notably, the elders cooperated with the prosecution against BCG's father.¹⁷⁵

- 9.213 Thirdly, it also overlooks the fact that in the small communities of Jehovah's Witnesses, an allegation of wrongdoing will not go unnoticed or unheeded. The experiences of both BCB and BCG establish the opposite and other members of the community of Jehovah's Witnesses became aware of the wrongdoing caused to BCB and BCG and support was provided to them.
- 9.214 Fourthly, such a finding is, in fact, contrary to the evidence given by Mr Spinks and others (as set out in the passages below) that a person suspected of child sexual abuse can be the subject of restrictions.¹⁷⁶
- 9.215 Fifthly, the only consequence of the "two witness rule" in this context, is that it may preclude elders from "taking a specific action, judicial action" in respect of the accused.¹⁷⁷
- 9.216 However, the event that triggers Jehovah's Witnesses to take protective action for a victim (and other at risk children) is an allegation of child sexual abuse. Elders are instructed to *investigate every allegation of abuse*.¹⁷⁸ In every case where an allegation of child sexual abuse is made, Jehovah's Witnesses instigate a range of measures to protect children:
- (a) The safety of the victim and other children in congregations of Jehovah's Witnesses is the first concern of elders, the Australia branch and the Governing Body;¹⁷⁹
 - (b) The elders are directed to call the Service Department to "discuss the situation and work out how best to be able to protect the child";¹⁸⁰
 - (c) The branch office informs congregation elders that steps need to be taken to protect the child;¹⁸¹

¹⁷⁴ [161] alleged perpetrators have been convicted of a sexual abuse offence out of 383 investigated by the secular authorities.

¹⁷⁵ Exhibit 29-0011, First statement of J Davies, STAT.0595.001.0001_R at [10]-[12].

¹⁷⁶ Exhibit 29-0019, First statement of R P Spinks, STAT.0591.001.0001 at [37], [46], [47], [65]; Transcript of R P Spinks, T15711:26-29 and T15737:20-32 (Day 152).

¹⁷⁷ Transcript of R P Spinks, T15711:14-16 (Day 152).

¹⁷⁸ Exhibit 29-0024, First statement of T J O'Brien, STAT.0592.001.0001_R at [54] citing *Letter to Bodies of Elders* dated October 1, 2012, Re: Child abuse.

¹⁷⁹ Transcript of G W Jackson, T15968:29-38 (Day 155).

¹⁸⁰ Transcript of V J Toole, T15763:32-40 (Day 153).

¹⁸¹ Exhibit 29-0003, WAT.0001.004.0068 (Letter to Elders "*Whatever the Cost*" October 1, 2012, para. 10); Exhibit 29-0003, WAT.0001.004.0210 (*Awake!* January 22, 1985); Exhibit 29-0019, Annexure 2 to First statement of R P Spinks, STAT.0591.001.0018.

- (d) The branch office Service Department gives clear advice to the elders on the need to protect the child;¹⁸²
- (e) If the abuser is an elder or ministerial servant, he is deleted and does not continue to function in this capacity;¹⁸³
- (f) The conduct and activities of the accused are closely monitored and the elders implement the directions set out in paragraph 11 of the Letter to Bodies of Elders dated October 1, 2012 Re: Child Abuse;¹⁸⁴
- (g) The elders may warn the accused or place restrictions on his contact with children; and subsequently disfellowship the accused for breaching those restrictions;¹⁸⁵
- (h) Two elders may be assigned to meet with the parents of minor children in order to provide a warning as set out in paragraph 13 of the Letter to Bodies of Elders dated October 1, 2012 Re: Child Abuse;¹⁸⁶
- (i) If an elder ultimately believes a child is in danger, and the parent or guardian is unwilling to protect the child, the elder can report the matter to the police.¹⁸⁷

9.217 At all times during this process, the stated policy of Jehovah’s Witnesses is that:

“If the victim wishes to make a report [to the authorities], it is his or her absolute right to do so.”¹⁸⁸

9.218 In addition, the suggested finding is based on an incorrect and unrealistic assumption that the investigation processes followed by secular authorities often result in the conviction and/or removal of an abuser from the community, which is widely acknowledged not to be the case by staff in child protection authorities, members of the police force, legal profession and judiciary.

¹⁸² Transcript of R P Spinks, T15662:34-43 (Day 152) (see also from T15661:23).

¹⁸³ Exhibit 29-0003, WAT.0001.004.0306 (*The Watchtower* January 1, 1997, pp. 26-29 “*Let Us Abhor What is Wicked*”);
 Exhibit 29-0024, First statement of T J O’Brien, STAT.0592.001.0001_R, par. [62] at 0013, 1 Timothy 3:1-7, 10; Titus 1:7.

¹⁸⁴ Transcript of R P Spinks, T15737:16-32 (Day 152);
 Exhibit 29-0003, WAT.0001.004.0066
 CAS par. 352 noting that the elders in such situations are directed to remain “vigilant”.

¹⁸⁵ Transcript of R P Spinks, T15711:22-46 (Day 152);
 Transcript of R P Spinks, T15712:46-T15713:17 (Day 152).

¹⁸⁶ Exhibit 29-0003, WAT.0001.004.0069.

¹⁸⁷ Transcript of V J Toole, T15794:23-26 (Day 153).

¹⁸⁸ Exhibit 29-0003, WAT.0003.001.0133 (ks10 12:19).

F42 [The two witness rule]:

- d) **does not seem to be applied by the Jehovah's Witness organisation in the case of an accusation of adultery, which suggests that adultery is taken more seriously by the organisation than child sexual abuse**

9.219 The suggested finding “that adultery is taken more seriously by the organisation than child sexual abuse” is contrary to the oral evidence given by Mr M Baker, formerly one of Jehovah's Witnesses, called by Counsel Assisting. Mr Baker, who had no reason to give evidence favourable to Jehovah's Witnesses having been disfellowshipped and shunned by others, acknowledged that adultery was not regarded as more serious than child sexual abuse.¹⁸⁹

9.220 Indeed, no oral evidence of any person with any authority or relevant experience to speak on such matters was presented to the Commission in which it was asserted that it was the practice of Jehovah's Witnesses to take adultery more seriously than child sexual abuse. No one would seriously contend that adultery was a more serious sin than the sin of sexual abuse of a child.¹⁹⁰

9.221 For those and other reasons, the assumption regarding the *evidence* required for establishing adultery is incorrect and is not supported by the oral testimony that was placed before the Commission¹⁹¹ and the literature published and disseminated by Jehovah's Witnesses.¹⁹²

9.222 The suggested finding “that adultery is taken more seriously by the organisation than child sexual abuse” is incorrect¹⁹³ and ought not be made.¹⁹⁴ Jehovah's Witnesses have for decades warned against the abhorrent sin of child abuse¹⁹⁵ and have advised that in order to protect a child, the sinner may

¹⁸⁹ Transcript of M Baker, T15623:45-T15624:8 (Day 151).

¹⁹⁰ For example, Transcript of R P Spinks, T15721:19-23 (Day 152): “*Not only is that printed, that we view child abuse as a sin and a crime, there is no worse sin and crime than child abuse. So I understand the basis for you expressing that, but that is totally the opposite to the truth with Jehovah's Witnesses.*”
See also Exhibit 29-0019, First statement of R P Spinks, STAT.0591.001.0001 at [13] and [25]; Exhibit 29-0024, First statement of T J O'Brien, STAT.0592.001.0001_R at [47] and [91].

¹⁹¹ Exhibit 29-0035, Statement of G W Jackson, STAT.0670.001.0001 at [15]-[21];
See also footnote 190 above.

¹⁹² Exhibit 29-0003, WAT.0001.004.0205 at 0210 (Awake! January 22, 1985 – “Child Molesting: Every Mother's Nightmare”); for more examples, see footnote 16 above.

¹⁹³ See footnotes 190-192 above.

¹⁹⁴ The only possible basis for such a conclusion was the confusing cross examination of the elders on the judicial committee who only had confirmation of the sin of adultery for which they disfellowshipped BCH. When confirmation of the child abuse of BCG was established at the appeal of that decision the disfellowshipping was upheld on the basis of the additional charge of porneia (child abuse).

¹⁹⁵ See footnote 16 above.

need to go to jail,¹⁹⁶ and Jehovah's Witnesses will not protect an abuser.¹⁹⁷ No one in Australia today is sent to jail for committing adultery.

F42 [The two witness rule]:

e) needs to be revisited by the Jehovah's Witness organisation with a view to abandoning it or at least reformulating it to ensure that safe decisions as to someone being guilty of child sexual abuse can be made more easily.

9.223 The evidential requirements laid down in Scripture for establishing sin are not matters that can be "revisited" or "abandoned" by Jehovah's Witnesses,¹⁹⁸ just as belief in the Bible's record of Jesus Christ curing the blind or resurrecting the dead cannot be abandoned by Christians, notwithstanding modern-day evidence that such miracles are not humanly possible; nor will the criminal justice system abandon the requirement to prove guilt beyond a reasonable doubt, although many no doubt think that such a requirement allows some who are guilty to go free.

9.224 Moreover, the free exercise of religion protected by s.116 of the Constitution means that a person is free to hold a religious belief and is free to act upon that religious belief in respect of matters of sin without interference from the secular authorities.¹⁹⁹ It would be beyond the scope of the Terms of Reference of the Commission to require a member of a religious faith to "revisit" or "abandon" their beliefs in order to satisfy another person's idea of what constitutes a "safe" decision.

9.225 This suggested finding is based on a number of incorrect assumptions. A "safe decision" is not necessarily one that "can be made more easily". In the case of Jehovah's Witnesses, a determination of guilt in respect of a sinner is based on their understanding of Scriptural evidentiary requirements.

9.226 The suggested finding is inconsistent with the religious beliefs of the 68,000 Jehovah's Witnesses living in Australia and 8.2 million Jehovah's Witnesses

¹⁹⁶ Exhibit 29-0024, First statement of T J O'Brien, STAT.0592.001.0001_R at [57]; Exhibit 29-0003, WAT.0001.004.0205 at 0210 (last paragraph in box) (Awake! January 22, 1985 - "Child Molesting: Every Mother's Nightmare"); Exhibit 29-0003, WAT.0001.004.0306 at 0310 (par. 1) (The Watchtower, January 1, 1997 - "Let Us Abhor What is Wicked").

¹⁹⁷ Exhibit 29-0035, Statement of G W Jackson, STAT.0670.001.0001 at [14]; Transcript of R P Spinks, T15662:1-43 (Day 152); Transcript of V J Toole, T15794:23-26 (Day 153); See also footnote 196 above.

¹⁹⁸ Exhibit 29-0035, Statement of G W Jackson, STAT.0670.001.0001 at [15]-[21]; Transcript of R P Spinks, T15699:21-47; T15700:7-11, 19-37; T15705:33-40 (Day 152); Transcript of G W Jackson, T15946:15-19 (Day 155).

¹⁹⁹ See paragraphs 3.7-3.10 in Submissions above.

worldwide (since Jehovah’s Witnesses are united in their religious beliefs and practices, irrespective of their nationality).

9.227 In any event, the investigative processes to determine whether a serious sin occurred that are followed by Jehovah’s Witnesses do not purport to supplant the secular authorities, to whom a victim or his/her parents remain free at all times to report a crime.

F43 The requirement that only elders (i.e. men) can participate in the making of decisions in the investigation process on whether or not someone has committed child sexual abuse:

- a) is a fundamental flaw in that process which weakens the decisions by excluding women, and
- b) needs to be revisited by the Jehovah’s Witness organisation to ensure a meaningful role for women

9.228 As set out in Part I, no empirical or credible evidence has been placed before the Commission suggesting that a decision made only by men was or is necessarily problematic.

9.229 In relation to F43(b), Jehovah’s Witnesses repeat their submissions in response to suggested finding F42(e). It would be inconsistent with and contrary to the free exercise of religion in Australia for the Commission to find that the members of a religious institution must “revisit” a Scriptural belief.

9.230 It is beyond the scope of the Commission’s Terms of Reference to make findings on what is or is not a “meaningful role” for women within the belief system of Jehovah’s Witnesses.

9.231 In any event, as noted at CAP 351, Mr Geoffrey Jackson gave evidence:

“that there is no Biblical impediment to women being involved in the investigation and that two women close to the victim may take the victim’s testimony and convey it to the investigating elders.”

9.232 However, with regard to making decisions or judgments in the Christian congregation of Jehovah’s Witnesses, this responsibility is assigned to the men who are appointed as elders.

Available findings on the judicial committee process

9.233 Counsel Assisting considers that the following five findings are available on the evidence:

F44 Under the current documented judicial committee process, if the evidence of the complainant is to be taken into account then she must give evidence in person unless she lives a great distance away or for some other reason is not able to be physically present.

9.234 The suggested finding is contrary to the oral evidence of Mr Spinks, who advises elders about such matters, is not supported by any documents referred to by Counsel Assisting and conflates several stages of the process that is involved.

9.235 Counsel Assisting's submission that the oral evidence of Messrs Spinks, O'Brien and Toole "cannot be accepted" is based on an incorrect assumption that there are no documents available to support the oral evidence of the witnesses and is disingenuous.

9.236 The suggested finding is factually incorrect; it is contrary to the following documents produced and explained to the Commission:

- (a) The reference to *Shepherd the Flock of God* ("Elders' Handbook") chapter 7, paragraph 2²⁰⁰ in the suggested finding is taking the reference out of context. As testified by Mr Spinks, this is a reference to congregation judicial action in *general* and is not specific to handling child sexual abuse.
- (b) A specific documented reference to there being no need for a victim of child sexual abuse to confront his/her abuser are found at:
 - (i) Elders' Handbook chapter 5, paragraph 38.²⁰¹ The point is that victims of child sexual abuse are not required to meet with the abuser, and their testimony may be "submitted in writing and read to the accused".²⁰²
 - (ii) *The Watchtower* magazine entitled "Comfort for Those With a Stricken Spirit", November 1, 1995 p. 28.²⁰³
 - (iii) Circuit Overseer's Outline for the Elders' Meeting, Form S-337 (5/98).²⁰⁴

²⁰⁰ Exhibit 29-0003, WAT.0003.001.0001 at 0090.

²⁰¹ Exhibit 29-0003, WAT.0003.001.0001 at 0073.
Transcript of T J O'Brien, T15833:43-T15834:26 (Day 153).

²⁰² Exhibit 29-0003, WAT.0003.001.001 at 0090 (ks10 7:2).

²⁰³ Exhibit 29-0003, WAT.0001.004.0310;
Transcript of R P Spinks, T15695:5-14 (Day 153).

F45 The stated willingness of the Jehovah’s Witness organisation in Australia to have the evidence of a complainant of child sexual abuse give evidence remotely or by way of a written statement should be formalised and documented so that those running judicial committee processes and those affected by them are properly advised of the position.

- 9.237 The stated willingness of Jehovah’s Witnesses on this issue is formalised and documented, and has been since at least 1995, as set out in response to F44 above.
- 9.238 Every elder has a personal copy of the Elders’ Handbook which states a victim of child sexual abuse does not need to give evidence in person: Elders’ Handbook, chapter 5, paragraph 38.²⁰⁵ Elders have also received training at schools and during regular circuit overseer’s visits concerning this issue.²⁰⁶
- 9.239 Elders have been directed to contact the Service Department whenever an allegation of child sexual abuse is made, whereupon they are advised by elders in the Service Department who are experienced in handling child sexual abuse matters and walked through how to handle the matter, as set out in Annexure 2 to the Statement of R P Spinks.²⁰⁷
- 9.240 Counsel Assisting has relied too much on one case from 27 years ago [BCG] and has not provided any evidence to substantiate the proposed finding in relation to current or recent practice.
- 9.241 Although the current position is clearly documented, incorporated into the training of elders, and advised by the Service Department to elders, Jehovah’s Witnesses have agreed to consider incorporating all of the relevant references into a single document.
- 9.242 The finding F45 should read:

“Jehovah’s Witnesses should continue to make clear their long-standing policy that, where desired, a victim may provide evidence remotely or by way of a written statement to elders investigating and to those subsequently handling an allegation of child abuse.”

²⁰⁴ Transcript of R P Spinks, T15702-T15705:20 (Day 152);
Transcript of T J O’Brien, T15833:43-T15834:26 (Day 153);
Exhibit 29-0020, EXH.029.020.0001.

²⁰⁵ Exhibit 29-0003, WAT.0003.001.0001 at 0073.

²⁰⁶ See, for example, Transcript of R P Spinks, T15701:15-T15703:30 (Day 152).

²⁰⁷ Exhibit 29-0019, Annexure 2 to First statement of R P Spinks, STAT.0591.001.0018.

F46 Under the current documented judicial committee process, a complainant of child sexual abuse is prohibited from having someone present with her in the judicial committee process to offer support.

9.243 This suggested finding is incorrect and is based on Counsel Assisting's misunderstanding of the Elders' Handbook chapter 7, paragraph 3 statement that,²⁰⁸ "Observers should not be present for moral support", which is actually referring to moral support for the accused, not for a witness/victim.

9.244 Mr Spinks' evidence was (emphasis added):²⁰⁹

"Our application of it, in practice, in the service department, has always been for *the accused*, who is trying to defend himself against the allegations, to not have observers there for moral support, other than the specific witnesses. *We don't want the survivor there as a witness at that judicial hearing.*"

9.245 At CAS 370, Counsel Assisting has taken the words of Mr Spinks out of context. The transcript shows that the context in which Mr Spinks acknowledged that the passage in the Elders' Handbook "is confusing," means that it could be "confusing" to those who are not Jehovah's Witnesses.²¹⁰ Mr Spinks was clear in his understanding of the Elders' Handbook and was also clear about the current practice and application of the section by congregation elders.²¹¹

9.246 In circumstances where a victim chooses to confront an accused during the judicial committee process, he/she is not prohibited from having a trusted individual present with them for moral support.

9.247 Accordingly, the suggested finding F46 should not be made.

F47 The stated willingness of the Jehovah's Witness organisation in Australia to allow a complainant of child sexual abuse to be accompanied by a support person of her choosing should be formalised and documented so that those running judicial committee processes and those affected by them are properly advised of the position.

9.248 This suggested finding is based on the incorrect assertions that a complainant of child sexual abuse must be present at a judicial committee hearing and that

²⁰⁸ Exhibit 29-0003, WAT.0003.001.0001 at 0091.

²⁰⁹ Transcript of R P Spinks, T15695:8-14 (Day 152).

²¹⁰ Transcript of R P Spinks, T15695:16-18 (Day 152).

²¹¹ Transcript of R P Spinks, T15693:29-T15695:18 (Day 152).

the complainant is prohibited from having a trusted individual with them for moral support. No such requirement or prohibition exists, as set out in the responses to F45 and F46 above.

- 9.249 As set out above, if a victim wishes to have a support person present in any situation, there is nothing that prevents that from occurring.

F48 The current documented process for responding to allegations of child sexual abuse within the Jehovah's Witness organisation is focussed largely on the rights and comfort of the accused, with little regard to the requirements of a victim of abuse.

- 9.250 This suggested finding is based on incorrect assertions and should not be made for the following reasons.

- 9.251 Given the evidence provided by Messrs Spinks and Toole about the process for responding to allegations of child sexual abuse and the documented requirements concerning such responses, Counsel Assisting's suggested finding should not be made.

- 9.252 Evidence was given that when a complaint of sexual abuse was made, the first priority was the protection of children.²¹² The next step was to notify the Legal Department in order to comply with any reporting requirements.²¹³ The next step involved the Service Department and emphasised the protection of children.²¹⁴

- 9.253 A victim is not required to confront the accused and can give their version of events by letter.²¹⁵ The victim is entitled to and receives comfort and support at each stage of the process.²¹⁶

²¹² Exhibit 29-0019, First statement of R P Spinks, STAT.0591.001.0001_R at 0005 [28]-[30]; Exhibit 29-0019, Annexure 2 to First statement of R P Spinks, STAT.0591.001.0018_R at [1.8]; Exhibit 29-0024, First statement of T J O'Brien, STAT.0592.001.0001_R at 0010 [51] and 0012 [56]; Transcript of R P Spinks, T15660:40-47 (Day 152); Transcript of V J Toole, T15763:32-40 (Day 153); Transcript of G W Jackson, T15968:26-32 (Day 155).

²¹³ Exhibit 29-0019, First statement of R P Spinks, STAT.0591.001.0001_R at 0004 [26]; Exhibit 29-0019, Annexure 2 to First statement of R P Spinks, STAT.0591.001.0018_R at [1.5]-[1.6]; Exhibit 29-0023, Statement of V J Toole, STAT.0593.001.0001_R at 0002 [13]-[14].

²¹⁴ Exhibit 29-0019, First statement of R P Spinks, STAT.0591.001.0001_R at 0004 [26]; Exhibit 29-0019, Annexure 2 to First statement of R P Spinks, STAT.0591.001.0018_R at [1.8]-[1.9]; See also footnote 212 above on the protection of the child.

²¹⁵ See footnote 30 above.

²¹⁶ Exhibit 29-0019, First statement of R P Spinks, STAT.0591.001.0001_R at 0005 [31]-[33] citing Scriptures from the Bible and articles published by Jehovah's Witnesses concerning their practice of giving support to a child or survivor of abuse; Transcript of G W Jackson, T15956:24-30 (Day 155).

- 9.254 The subsequent steps involved investigating the complaint and addressing the complaint.²¹⁷ Natural justice requires that a person accused of sexual abuse be given the opportunity to respond to a complaint. A person accused of child sexual abuse is permitted to state their version of events in a calm and dispassionate atmosphere.
- 9.255 Ample documentary evidence was put before the Commission demonstrating that, when an allegation is made of child abuse, the child must be protected²¹⁸ and the abuser dealt with even if it means that an abuser goes to jail.²¹⁹
- 9.256 The purpose of dealing with a sinner in accordance with Scriptural requirements is to enable the sinner to understand, and repent of, their wrongdoing and to make amends to God. Of necessity, the process must respond to the sinner just as the various requirements in a criminal trial respond to an alleged offender. It is, for example, well known that an accused person in a criminal trial has the presumption of innocence in their favour and that the prosecution must prove its case beyond a reasonable doubt.
- 9.257 This suggested finding is also incorrect because:
- (a) It is based on quoting a sentence out of context from the Elders' Handbook chapter 7, paragraph 1.²²⁰ While not specifically dealing with child sexual abuse cases, that paragraph²²¹ says that elders should "*try to put the accused at ease*" when meeting with him/her, "*Even if the accused is belligerent.*"
 - (b) To suggest that elders acting in a Christian manner when *disciplining a wrongdoer* in any way relates to the *requirements of a victim* of abuse is gratuitous and unhelpful to the process.
 - (c) It fails to have regard to the Bible as the *primary* document used by Jehovah's Witnesses when responding to allegations of child sexual abuse; and which Counsel Assisting has repeatedly acknowledged is followed closely by Jehovah's Witnesses.
 - (d) It fails to have regard to the documents referred to in response to suggested finding F44 above, which are sensitive to the needs of a victim of abuse.
 - (e) It fails to have regard to the extensive material published by Jehovah's Witnesses and provided to the Commission, which forms part of the

²¹⁷ Exhibit 29-0019, First statement of R P Spinks, STAT.0591.001.0001_R at 0004 [34]-[47];

Exhibit 29-0019, Annexure 2 to First statement of R P Spinks, STAT.0591.001.0018_R at [2.1]-[4.21].

²¹⁸ See footnotes 16 and 212 above.

²¹⁹ See footnotes 16 and 196 above.

²²⁰ Exhibit 29-0003, WAT.0003.001.0001 at 0090.

²²¹ Exhibit 29-0003, WAT.0003.001.0001 at 0090.

documented policy of Jehovah’s Witnesses when responding to allegations of child sexual abuse, and which focuses on how best to meet the needs of a victim of abuse.

Available findings on the management of risk

9.258 Counsel Assisting considers that the following finding is available on the evidence

F49 The failure of the Jehovah’s Witness organisation to take into account the risk of re-offending when considering whether an offender is repentant, and consequently in deciding whether to merely reprove rather than to disfellowship, or whether to re-admit someone who has previously been disfellowshipped, does not adequately take account of considerations of child safety and should be revisited.

9.259 Jehovah’s Witnesses do take into consideration the likelihood of whether an offender will repeat his sin in considering whether to disfellowship or to subsequently reinstate. Moreover, the request that Jehovah’s Witnesses “revisit” their handling of these matters is nothing less than an impermissible request to subordinate the fundamental right of freedom of religion of Jehovah’s Witnesses, as protected by the Constitution, to secular law and, moreover, is beyond the Terms of Reference of the Commission.

9.260 If a person is truly repentant, then, by definition, they are asserting that they are unlikely to sin again because they have an understanding of their wrongdoing and do not want to repeat it. An assessment that someone is truly repentant involves an assessment of the risk of re-offending. Thus, and contrary to the suggested finding, “repentance” takes into account the “risk of re-offending”.

9.261 Further, neither psychiatrists, nor psychologists, have a monopoly on the prediction of human behaviour.²²² Indeed, every day of the week, ordinary people predict with some accuracy the behaviour of others and, by and large, our daily experiences demonstrate the accuracy of such predictions.

9.262 Moreover, *no one* can predict with *certainty* the actions of another person in the future and it is wrong to suggest otherwise.²²³ For example, in the *Veen* case, the High Court of Australia overturned a sentence of life imprisonment for manslaughter and Veen’s sentence was reduced to 12 years imprisonment.²²⁴ Veen was subsequently released on licence and several

²²² See the observations in *Veen v The Queen [No.1]* (1979) 143 CLR 458 at 464.7 per Stephen J.

²²³ See the observations in *Veen v The Queen [No.1]* (1979) 143 CLR 458 at 464.7 per Stephen J.

²²⁴ *Veen v The Queen [No.1]* (1979) 143 CLR 458.

months later killed again in very similar circumstances to his first killing and was again sentenced to life imprisonment.²²⁵ On the second occasion, the High Court upheld the sentence of life imprisonment. Veen's actions demonstrated his propensity to kill in some situations but predicting with certainty that he would do so, was acknowledged as not being possible.²²⁶

9.263 Furthermore, the suggested finding and CAP 376 in the Submission of Counsel Assisting need to be put in context. The question that Counsel Assisting put to Mr Spinks was:²²⁷

“The difference in a civil court setting, for example, is that there are likely to be expert reports from psychologists and others as to the risk of reoffending. That wouldn't be part of your judicial process--”, to which Mr Spinks replied, “That's true.”

9.264 Of course, the judicial process of Jehovah's Witnesses is not a “civil court setting” but rather it is determining whether a person has sinned and their response to such sinning. Jehovah's Witnesses do not purport to offer an alternative system of criminal justice in which prevention, prosecution, punishment and rehabilitation are the primary considerations.

9.265 In any event, there is *no* evidence that the Scriptural principles applied by Jehovah's Witnesses in determining repentance place children at risk. On the contrary, the documentary and oral evidence of the witnesses and Dr Monica Applewhite showed that considerations of child safety are of paramount importance irrespective of whether a sinner is reprovved, disfellowshipped or reinstated – see, for example, the considerations of child safety applied by Jehovah's Witnesses to individuals who are reprovved, disfellowshipped and/or reinstated at paragraphs 4.10 – 4.21 in Annexure 2 to the Statement of R P Spinks.²²⁸

9.266 Mr Spinks gave evidence concerning the specific case of [BCH] in which Jehovah's Witnesses have refused to reinstate (that is, re-admit) him as a congregation member for a total of 15 years because of taking into account his failure to fully acknowledge his offences and considerations of child safety.

9.267 On the other hand, the secular authorities released [BCH] from prison and into the community after 3 years, apparently without monitoring his activities in the

²²⁵ *Veen v The Queen [No.2]* (1988) 164 CLR 465.

²²⁶ *Veen v The Queen [No.2]* (1988) 164 CLR 465 at 470.

²²⁷ Transcript of R P Spinks, T15714:6-10 (Day 152).

[see complete exchange at Transcript of R P Spinks, T15713:44-T15716.1 (Day 152)].

²²⁸ Exhibit 29-0019, Annexure 2 to First statement of R P Spinks, STAT.0591.001.0018 at 0021-0022.

community after he was released. While the congregation disciplinary process is in no way a substitute for a ‘civil court setting’ or any action on the part of authorities, the suggested finding that congregation action “does not adequately take into account considerations of child safety” is inconsistent with the evidence before the Commission.

Available findings on sanctions – reproof

9.268 Counsel Assisting considers that the following three findings are available on the evidence:

F50 Since it is the policy or practice of the Jehovah’s Witness organisation not to report allegations of child sexual abuse to the police (other than if required by law to do so), if a known abuser is found to be repentant and for that reason merely reproofed rather than disfellowshipped he remains in the congregation and a risk to children in the congregation.

9.269 Counsel Assisting’s suggested finding is unsupported by facts and conclusory. It should therefore not be made. It is correct to say and the same was acknowledged²²⁹ that, in some circumstances, a person who has committed an offence and is reproofed may remain in the congregation (subject to restrictions)²³⁰ but the same may be, and, often is, true whether the offender is dealt with within a religious community or in the general community (unless imprisoned). The mere presence of an offender within a congregation does not necessarily entail that other children in a congregation or the community are at risk. A lot would depend upon the circumstances of the offender and the offending.

9.270 Such a broad finding viz. that a reproofed person “remains ... a risk to children” is not supported by the evidence given to the Commission and inaccurately represents Jehovah’s Witnesses’ stand on the matter, for the reasons set out below.

9.271 There is in fact no policy stating that Jehovah’s Witnesses should not report child sexual abuse to the secular authorities, nor is there evidence of a practice not to report allegations of child sexual abuse; each allegation is dealt with on its merits. Jehovah’s Witnesses’ position is that victims and their parents are free to report child sexual abuse. Moreover, congregation elders

²²⁹ Exhibit 29-0019, First statement of R P Spinks, STAT.0591.001.0001_R at 0007 [43]; Transcript of R P Spinks, T15707:8-13; T15714:23-T15715:2; and T15734:5-11 (Day 152).

²³⁰ Exhibit 29-0019, First statement of R P Spinks, STAT.0591.001.0001_R at 0007 [45]-[47]; Exhibit 29-0019, Annexure 2 to First statement of R P Spinks, STAT.0591.001.0018 at 0021 [4.13]-[4.21]; Exhibit 29-0024, First statement of T J O’Brien, STAT.0592.001.0001_R at 0015 [70].

report allegations when required to do so by law or if they consider a child is at risk and its parent or guardian fails to take the necessary protective action.

9.272 The suggested finding fails to have regard to the following evidence given to the Commission by witnesses:

- (a) There are special considerations applied by Jehovah's Witnesses when determining allegations of child sexual abuse, for an example as set out in paragraph 4.8 in Annexure 2 to the Statement of R P Spinks,²³¹ which states:

"In the case of a practice of child abuse, the individual would unlikely "be able to demonstrate sufficient repentance to the judicial committee at the time of the hearing. If so, he must be disfellowshipped" [Elders' Handbook chapter 7, paragraph 9]."²³²

- (b) Paragraph 62 in the Statement of T J O'Brien²³³ which states:

"Elders have been directed that any Jehovah's Witness who sexually abuses a child is either to be disfellowshipped from the congregation or is to receive severe discipline, part of which will always include a public announcement for the protection of the congregation."

9.273 In addition, if the reproof "involves an elder, ministerial servant, pioneer, special pioneer and/or any other position of status in the congregations, the branch office is notified since a person who is *reproved* by a judicial committee of elders *automatically ceases to qualify* for such assignments."²³⁴

9.274 Measures are taken by Jehovah's Witnesses to protect children in the congregation when a sinner is reproofed (rather than disfellowshipped) – which protective measures are set out at paragraphs 4.10 – 4.21 in Annexure 2 to the Statement of R P Spinks.²³⁵

9.275 At all times an adult survivor or a child victim and his/her parents retain their full right to report the matter to the police; and are advised by the elders to take whatever protective action is necessary, including reporting the matter to the authorities if that is their desire.

²³¹ Exhibit 29-0019, Annexure 2 to First statement of R P Spinks, STAT.0591.001.0018 at 0020.

²³² Exhibit 29-0003, WAT.0003.001.0093.

²³³ Exhibit 29-0024, First statement of T J O'Brien, STAT.0592.001.0001_R at 0013.

²³⁴ Exhibit 29-0024, First statement of T J O'Brien, STAT.0592.001.0001_R at 0018_R at [86].

²³⁵ Exhibit 29-0019, Annexure 2 to First statement of R P Spinks, STAT.0591.001.0018 at 0021-0022.

9.276 Irrespective of whether a parent or guardian of an abused child takes responsible action, if a congregation elder believes that children are at risk, then the elder can inform the authorities so that children are protected.²³⁶

9.277 The structure, activities and meetings for worship of Jehovah's Witnesses minimise the potential for a child abuser to pose any risk to other children. Dr Monica Applewhite gave evidence to the effect that different child protection/prevention considerations apply when an institution does not have the care or guardianship of children.²³⁷

9.278 Confirming this, as Mr O'Brien noted in his statement.²³⁸

"We do not have any programs in which we take custody of children from their parents. We do not have Sunday Schools, youth groups, camps or social activities that separate children from parents. All of our congregation meetings involve entire family groups. Children, even teenagers, are not separated into groups from parents. Nor do we have secular educational schools, orphanages, hospitals, day care centres and the like. We believe that loving and protective parents are the best deterrent to child abuse. We continue to educate parents and provide them with valuable tools to help them educate and protect their children.-Deuteronomy 6:6, 7."

9.279 In addition to whatever action is taken by the authorities, a suggested finding that congregation disciplinary action, the removal of all congregation privileges and assignments, and a public announcement of the disciplinary reproof contributes to a risk to children in the congregation is unsubstantiated and indicates that the Commission is recommending a stricter internal process for Jehovah's Witnesses than for any other faith-based organisation.

9.280 There is *no* evidence that the Scriptural principles applied by Jehovah's Witnesses when determining the sanctions to be imposed on a sinner place children at risk. The suggested finding F50 should not be made.

F51 The system of not announcing the reasons for reproof means that members of the congregation are not warned about the risk that such a wrongdoer poses to children in the congregation.

²³⁶ See for example, Transcript of G W Jackson, T15967:14-17 (Day 155); Transcript of V J Toole, T15776:30-35 (Day 153).

²³⁷ Exhibit 29-0013, Statement of Dr M L Applewhite, STAT.0606.001.0001 at [49] and this proposition is also set out in the reverse situation by Professor Quadrio in Case Study 28: Transcript of Prof C Quadrio, T8486:31-43 (Day 81).

²³⁸ Exhibit 29-0024, First statement of T J O'Brien, STAT.0592.001.0001_R at 0014_R at [67].

- 9.281 It is correct to say that the reasons for reproof of an individual are not announced but the fact of reproof of an individual is announced to the congregation and the individual will also be placed under severe restrictions (as Mr O'Brien mentioned in his oral testimony).²³⁹ The congregation is thus alerted to the fact that the particular individual has engaged in conduct that is deserving of censure or condemnation. In such circumstances, it would be surprising if members of a congregation were to act as if nothing had occurred and they were not wary of the individual.
- 9.282 Such an announcement would alert any parent in the congregation to be wary of such an individual. The restrictions placed upon the individual would also safeguard the members of the congregation. Additionally, in most instances a talk will subsequently be given in the congregation about the need for vigilance or care for children in relation to such behaviour.
- 9.283 For those reasons, including the additional ones set out below, the suggested finding should not be made.
- 9.284 This finding is unavailable on the evidence presented to the Commission. The reasons and evidence set out in response to suggested finding F50 above are repeated.
- 9.285 The risk to members of the congregation cannot accurately be measured but, having regard to the reasons and evidence set out in response to F50, it is considered that the risk may be minimal because an announcement is made that the individual concerned has been reproofed and in most instances a talk will subsequently be given in the congregation about the need for vigilance and care for children in relation to such behaviour.²⁴⁰
- 9.286 The finding fails to have regard to the evidence submitted to the Commission whereby, if required, "two elders should be assigned to *meet with the parents of minor children in order to provide a warning.*" - Letter to Bodies of Elders, October 1, 2012 paragraph 13.²⁴¹
- 9.287 The Commission failed to provide any evidence of how the same is not true of abusers who are released into the community without a public announcement warning of the risk to children in the community.

²³⁹ Exhibit 29-0024, First statement of T J O'Brien, STAT.0592.001.0001_R at [62].

²⁴⁰ Exhibit 29-0019, First statement of R P Spinks, STAT.0591.001.0001_R at 0007 [43]-[44].

²⁴¹ Exhibit 29-0003, WAT.0001.004.0069.

- 9.288 Jehovah's Witnesses are unaware of any faith-based or community organisation that is authorised to unilaterally and publically announce the details of offences or internal disciplinary action taken against a member or an attendee, and the Commission did not proffer any evidence of same.
- 9.289 To the extent that the Commission seeks to find or recommend that Jehovah's Witnesses announce the *reasons* for any reproof *publicly* to the congregation, the Commission's recommendation must comply with the relevant privacy legislation (the Australian Privacy Principles) and such other law which may apply to a public announcement of this nature.
- 9.290 On risk, see also the evidence of Mr Baker (formerly one of Jehovah's Witnesses) who in his statement said:²⁴²

“Child sexual abuse is considered abhorrent to the congregation. Zero tolerance is applied to this sin. As a result of this stance, all members of the congregation would be vigilant to any hint of this activity and would report their suspicions to a member of the Body of elders for further examination. If an incident of such gravity like this was to occur, the congregation would be given a speech at the first available opportunity to make them aware of this particular serious sin. Without naming names of the offender or the victim, the congregation would be encouraged to see the need to keep the congregation clean remembering they represent the name of the Holy Sovereign God Jehovah. (1 Peter 1:16)”

- 9.291 Finally, Counsel Assisting's suggested finding F51, if adopted, would impermissibly subordinate the fundamental right of freedom of religion of Jehovah's Witnesses, as protected by the Constitution, to a secular requirement not demanded of any other faith-based group and would be beyond the Terms of Reference of the Commission.

F52 The sanction of reproof therefore does nothing to protect children in the congregation and in the broader community.

- 9.292 No evidence was, in fact, presented to the Commission to establish such a finding, and suggested finding F52 should therefore not be made. In addition, the matters set out in response to suggested findings F50 and F51 above are repeated.

²⁴² Exhibit 29-0017, Statement of M Baker, STAT.0605.001.0001_R at 0002 [2b].

9.293 A more accurate statement concerning reproof is that: “a reproofed person remains a member of a congregation subject to such restrictions as are placed upon that person. Whether such a person may be a risk to the broader community is not something that can be known and was not investigated in the Commission”.

Available findings on sanctions – disfellowshipping

9.294 Counsel Assisting considers that the following two findings are available on the evidence:

F53 Since it is the policy or practice of the Jehovah’s Witness organisation not to report allegations of child sexual abuse to the police (other than if required by law to do so), if a known abuser is disfellowshipped he remains in the community and a risk to children in the community.

9.295 As mentioned above, Jehovah’s Witnesses do not have such a policy or practice. The approach taken by Jehovah’s Witnesses is that the decision whether or not to report belongs to the victim and his/her parents, rather than to the congregation.

9.296 The statistical evidence confirms that some 383 instances of the 1,006 case files provided to the Commission also involved the secular authorities.²⁴³

9.297 The suggested finding proceeds upon two assumptions, the truth of which were not established in the Commission. First, the assumption that in *all* cases, a person who has been disfellowshipped has not also been dealt with by the secular authorities and imprisoned and, second, the assumption that such a person may or will seek to abuse children in the community.

9.298 Evidence presented to the Commission is to the contrary. For example, according to the statistics, some 161 persons were actually convicted of offences involving child sexual abuse and some 383 cases involved the authorities.²⁴⁴

9.299 The broad finding is unavailable having regard to the following evidence:

²⁴³ Please see footnote 26 above.

²⁴⁴ Please see footnote 26 above.

See also Exhibit 29-0021, WAT.9999.013.0011_R, Appendix A, at [9].

- (a) There is no policy stating that Jehovah’s Witnesses should not report child sexual abuse to the police or other authorities: see above paragraphs.
- (b) Disfellowshipping from the congregation is *in no way a substitute* for reporting allegations of child sexual abuse to the police. The evidence of Jehovah’s Witnesses repeatedly highlighted this point.
- (c) It is based on an inaccurate and unrealistic assumption that a report to the police will result in an abuser being removed from the community (that is, imprisoned), which is widely acknowledged is often not the case.
- (d) It is not supported by evidence of any causal link between child sexual abuse and the Bible-based disciplinary procedures of Jehovah’s Witnesses.

9.300 For the reasons set forth above, suggested finding F53 should not be made.

F54 The sanction of disfellowshipping does nothing to protect children in the community.

9.301 No evidence was presented to support the suggested finding.

9.302 The purpose for disfellowshipping is primarily spiritual; related to keeping a congregation spiritually clean, which is a matter of religious belief, separate to the protection of children in the community. Disfellowshipping is a Bible-based, congregation disciplinary process and is not a substitute for criminal proceedings. Additionally, as a religious procedure, consideration of this activity is outside the scope of the Terms of Reference of the Commission: 1 Corinthians 5:13 and Statement of Mr O’Brien.²⁴⁵

9.303 The suggested finding is not supported by evidence of any causal link between child sexual abuse and the Bible-based disciplinary procedures of Jehovah’s Witnesses.

9.304 The suggested finding wrongly assumes a broad obligation upon Jehovah’s Witnesses “to protect children in the community” but fails to identify how such an obligation exists. To the extent that mandatory reporting legislation exists in a State or Territory, Jehovah’s Witnesses will continue to comply with their obligations; and to give their full support to survivors who report to the authorities.

²⁴⁵ Exhibit 29-0024, First statement of T J O’Brien, STAT.0592.001.0001_R at 0019 at [89].

Available findings on reporting

9.305 Counsel Assisting considers that the following two findings are available on the evidence:

F55 Prior to this case study, the Jehovah's Witness organisation in Australia did not advise congregational elders of their obligations to report the commission of criminal offences to the police under s 316 of the *Crimes Act 1900* (NSW).

9.306 Counsel Assisting raised a question about s.316 of the *Crimes Act 1900* (NSW). Jehovah's Witnesses presently consider that s.316 does not apply where a victim complains to an elder that they have been abused, because, at that stage, the elder's knowledge is not the "knowledge" required by the section, although it may satisfy the "belief" required by the section. Nevertheless, the elder is not required to report the same to the authorities because of the application of the qualification in s.316(1) of "without reasonable excuse" when those words are considered and understood in light of the requirements of s.316(4) of the Act, s.127 of the *Evidence Act 1995* (NSW) and the usages and rituals of the Jehovah's Witnesses faith.

9.307 The combined effect of the qualification in s.316(1) and s.316(4) of the Act and s.127 of the *Evidence Act 1995* (NSW) is that where an elder forms the belief in the "course of practising or following a profession, calling or vocation ..." they have a "reasonable excuse" within the meaning of s.316(1) to not report the information and thus no offence is committed; that interpretation is supported by the section's natural meaning, the highest common law authorities, its legislative history, and a consideration of the section by the NSW Law Reform Commission.

9.308 Consequently, Mr Toole was correct in thinking that elders who were informed of complaints were not required to report the matter to the authorities. It follows that he is not in error. In any event, in the absence of an authoritative determination by a court of competent jurisdiction about whether a requirement exists in the circumstances contemplated (and none is referred to by Counsel Assisting) there is no basis for any criticism or referral to the Law Society of New South Wales even if questions of professional competence to advise on such matters were within the Commission's Terms of Reference, which, clearly, they are not.

9.309 Jehovah's Witnesses are currently seeking advice from Senior Counsel in relation to the *Crimes (General) Amendment (Concealment of Offences)*

Regulation 1998 (NSW) cl 2, Sch 1. and its application in relation to mandatory reporting laws and related matters.

9.310 Accordingly, this suggested finding F55 should not be disregarded.

F56 This report is referred to the Law Society of New South Wales in relation to the conduct of Mr Toole in having failed to advise congregational elders of their obligations to report their knowledge of the commission of certain criminal offences to the police.

9.311 For the reasons set out in response to suggested finding F55 above, there is no basis for any criticism of Mr Toole’s professional competence or a referral to the Law Society of New South Wales of the submission by Counsel Assisting or any report.

Available findings on the Jehovah’s Witness organisation’s policy on reporting

9.312 Counsel Assisting considers that the following four findings are available on the evidence:

F57 It is the policy and practice of the Jehovah’s Witness organisation in Australia to not report allegations of child sexual abuse to the police or other authorities unless required by law to do so.

9.313 There is no policy and practice of Jehovah’s Witnesses to not report child sexual abuse to the police or other authorities. This suggested finding and the submissions CAPs 419, 421, 422, 424 and 425 on which it is based, misrepresent what is the actual approach of Jehovah’s Witnesses in Australia. Jehovah’s Witnesses do not take it upon themselves to report such matters as they consider that it is the right of the victim or his/her parents to do so.

9.314 The present practice of Jehovah’s Witnesses on reporting to the secular authorities is based on a number of important considerations which Mr Geoffrey Jackson explained²⁴⁶ and others also explained. In summary, these are:

- (a) Jehovah’s Witnesses comply with the law – to the extent mandatory reporting laws apply to ministers of religion (or similar) in a given State or Territory.

²⁴⁶ Transcript of G W Jackson, T15965:16-T15967:22 (Day 155).

- (b) Jehovah’s Witnesses respect the right of an adult survivor to decide for him/herself whether or not to report a complaint to the secular authorities.
- (c) Jehovah’s Witnesses respect the right of a family of the child victim to report the matter to the secular authorities.
- (d) Jehovah’s Witnesses will take all steps necessary to protect a child from abuse and an abuser will not be protected.
- (e) Jehovah’s Witnesses do report matters to the police as the police have dealt with a significant number of cases involving some Jehovah’s Witnesses.

9.315 The safety of the victim and other children is paramount. In cases where the parent or guardian of a minor fails to take necessary measures to protect the child, a congregation elder can inform the authorities for the protection of the child or other children.²⁴⁷

9.316 Mr Toole was unequivocal in his evidence.²⁴⁸

*We would do it if we thought it was necessary to protect the child, unhesitatingly. If I came across a situation and the only way that I believed I could protect a child that was in danger - I would have absolutely no hesitation at all in going to [the] authorities, even though I'm not required by a mandatory reporting law.*²⁴⁹

9.317 In addition, Counsel Assisting’s suggested finding fails to account for the policy and practice of Jehovah’s Witnesses as set out in the following oral and documentary evidence:

- (a) “In any circumstances, where the elders learn that the victim remains in danger of further abuse, the elders are reminded that, ‘First, the child—and other children too—must be protected from any further abuse. This must be done whatever the cost.’ *Awake!* January 22, 1985, page 8”.²⁵⁰
- (b) The policy *Letter to All Bodies of Elders* dated October 1, 2012, states: “Regardless of whether the law requires the elders to report an accusation to the authorities, steps need to be taken to protect children.”²⁵¹
- (c) The evidence of Mr Spinks (who is the senior Service Desk member in the Service Department at the Australia Branch) informs elders “to go

²⁴⁷ Transcript of G W Jackson, T15967:15-17 (Day 155) and T15988:29-33 (Day 155).

²⁴⁸ Transcript of V J Toole, T15776:30-35; T15794:23-26; and T15795:1-9 (Day 153).

²⁴⁹ Transcript of V J Toole, T15776:30-35 (Day 153).

²⁵⁰ Exhibit 29-0033, WAT.0001.001.0013.

²⁵¹ Exhibit 29-0033, WAT.0001.004.0066 at 0068 at [10].

back to the guardian/parent and assist them to do all they can, including going to the authorities, if that's what the parent – the guardian/parent is willing to do, including going to the authorities, and remind them that they – the individual, that they have the full support of the elders in doing that.”²⁵²

- (d) Contrary to Counsel Assisting's submission at CAPs 424 and 425, Mr Spinks did *not* testify that 1 Corinthians 1:24 and Galatians 6:5 “prohibit” Jehovah's Witnesses from reporting child sexual abuse to the police or other authorities. These submissions misrepresent the transcript of Mr Spinks.²⁵³ To the extent that Counsel Assisting relies on his own understanding and interpretation of these Scriptures to make submission CAP 426, the analysis is unnecessary and unhelpful to the work of the Commission.
- (e) Careful analysis of the case files reveals the practice of Jehovah's Witnesses includes numerous incidents of members of the organisation reporting child sexual abuse to the police or other authorities, although not required by law to do so.²⁵⁴
- (f) The published procedure states: “Never suggest to anyone that they should not report an allegation of child abuse to the police or authorities ... If the victim wishes to make a report, it is his or her absolute right to do so.”²⁵⁵
- (g) The support given by congregation elders to parents/guardians as the primary caregiver(s), “including going to the authorities,” is clearly stated in evidence before the Commission.²⁵⁶

9.318 Accordingly, this suggested finding F57 should not be made.

F58 The basis for this policy is said to be respect for the ‘right’ of the victim to herself decide whether to make a complaint to the authorities.

9.319 As stated above in response to suggested finding F57, Jehovah's Witnesses do not have a policy and practice to not report allegations of child sexual abuse to the secular authorities, unless required by law. The policy and practice of Jehovah's Witnesses is based upon a number of considerations, one of which is, the right of the child, or the child's parents, to decide whether to report matters to the secular authorities.

²⁵² Transcript of R P Spinks, T15662:12-19 (Day 152).

²⁵³ Transcript of R P Spinks, T15720:40-T15721:12 (Day 152).

²⁵⁴ Transcript of V J Toole, T15776:24-T15777:3 (Day 153);
Transcript of R P Spinks, T15663:28-30 and T15664:12-19 (Day 152).

²⁵⁵ Exhibit 29-0033, WAT.0003.001.0001 at 0132-0133 (ks10 chapter 12, paragraph 19).

²⁵⁶ See Transcript of R P Spinks, T15662:5-19 (Day 152).

- 9.320 The suggested finding wrongly implies there is something legally or morally wrong with respecting the right of the victim to decide whether to report the abuse (except if a child is in danger and his/her parent or guardian fails to take protective action or to the extent that mandatory reporting laws apply, in which case elders will report). It would be improper and contrary to the Commission's Terms of Reference, for a finding of the Commission to disregard the victim's rights.
- 9.321 The suggested finding fails to acknowledge that, in respecting the right of a victim to personally decide whether to report, it is submitted that Jehovah's Witnesses are following what is considered best practice today, as acknowledged by NSW Health, victim support groups, the testimony of some victims of abuse, the Commission's provision for reports to be made anonymously, and many other professional sources.
- 9.322 Mr Spinks' evidence was that the approach taken by Jehovah's Witnesses is consistent with the approach recommended in *Sharing the un-shareable: A resource for women on recovering from child sexual abuse*, which states:²⁵⁷

It is each survivor's decision whether or not to report the abuse. Many survivors choose not to report and this should be respected.

- 9.323 Mr Spinks' further evidence was:²⁵⁸

.... the publication that is given to victims here at the Commission from NSW Health, ... says, "The victim should be given the right to determine whether it is to go to the authorities or not", and that booklet that is handed to the victims says, "And their wish in that matter should be respected." Now, that's religiously [is] the approach that we have taken for the reasons that have only been sort of briefly described, ... but we accept, when the State says, "You are required to mandatorily report that offence", that Jehovah's Witnesses will ... willingly and happily comply. In the meantime, we've got that ethical challenge of respecting the individual's right, as the New South Wales brochure says, and as the Scriptures say.

- 9.324 Jehovah's Witnesses propose the following alternate finding, which they submit is consistent both with their approach and widely-acknowledged need to respect the right of a victim to determine if she/he wishes to report the abuse:

²⁵⁷ Published by Education Centre Against Violence, NSW Health 201 at p.21.

²⁵⁸ Transcript of R P Spinks, T15665:25-45 (Day 152).

“Jehovah’s Witnesses respect the right of a survivor or victim of abuse (or their parent or guardian) to decide for him or herself whether or not to report the abuse to the authorities.”

F59 That basis has no justification where the victim is still a minor at the time that the abuse comes to the attention of the organisation, or where there are others who may still be at risk at the hands of the alleged abuser.

- 9.325 The consequence of the suggested finding by Counsel Assisting is that it would sweep away the rights of victims/survivors to determine whether they wish to report their abuse and disempower them.
- 9.326 It is accepted that a victim or the parents of a child may choose not to report the matter to the secular authorities. The fact that some decide not to report does not represent a “systemic” failure on the part of Jehovah’s Witnesses to comply with their legal obligations.
- 9.327 Accordingly, suggested finding F59 ought to be disregarded.

F60 Since the organisation cannot remove an alleged abuser from the family or take other positive steps to safeguard children in the family from continuing risk, the organisation should have a policy to report all allegations of child sexual abuse to the authorities unless an adult victim specifically requests that a report not be made and there is no appreciable risk of children being abused.

- 9.328 The suggested finding ought not be made as it is tantamount to a recommendation that would sweep away the rights of the victim and the victim’s family to report such matters contrary to Australian and international instruments recognising the rights of children and families.²⁵⁹
- 9.329 In addition, the mere reporting of such a serious allegation to the secular authorities could potentially destroy the family unit in circumstances where the allegation was subsequently found to be unjustified and relatively recent experience in both Australia²⁶⁰ and the United Kingdom has demonstrated that

²⁵⁹ For example, the *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss. 9(2)(a)-(c), 10(1) and 31; similar legislation exists in other States/Territories of Australia; Convention on the Rights of the Child 1989 (entered into force for Australia on 16 January 1991), Articles 12, 14 and 16; and Economic and Social Council (ECOSOC) Resolution 2005/20, annex, Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime 2005, Articles 5, 6 and 8.

²⁶⁰ See e.g. *Sullivan v Moody* (2001) 207 CLR 562.

not all allegations are true, even when made by reputable secular authorities.²⁶¹

9.330 Moreover, Jehovah's Witnesses are not an agency or instrumentality of government but a voluntary faith-based association of individuals. As stated above, and specifically in response to F57, Jehovah's Witnesses comply with the relevant legislation and Counsel Assisting's proposed finding is not helpful to the Commission.

9.331 The submissions in response to F57 are repeated, which demonstrate that the practice of Jehovah's Witnesses is based on several important considerations, including religious beliefs and practices which are based on Scriptural principles.

9.332 In responding to whether a report should be made to authorities in situations where it is deemed that others are at risk, Mr Geoffrey Jackson stated that it was:

“a possible thing for us to consider, and I think, already, the assumption is there, that if any elder was to see that there was some definite risk, that their conscience would move them to do that. But the point I was trying to make, Mr Stewart, is there are other scriptural factors that maybe make that a little complicated, and it would certainly be a lot easier if we had mandatory laws on that.”²⁶²

9.333 Jehovah's Witnesses submit that despite repeated statements that they do and will continue to comply with mandatory reporting and would welcome uniform laws in this regard, Counsel Assisting has consistently chosen to criticise their Bible-based religious beliefs and practices rather than the lack of uniform mandatory reporting laws.

9.334 Jehovah's Witnesses propose the following alternate finding:

“The Scripturally-based beliefs and practices of Jehovah's Witnesses require that they obey the laws pertaining to child abuse. In jurisdictions that require it, they obey laws requiring the reporting of such allegations to the authorities. Elders of Jehovah's Witnesses will obey any newly-enacted laws requiring ministers of religion to report allegations of child abuse.”

²⁶¹ See e.g. *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633.

²⁶² Transcript of G W Jackson, T15967:14-22 (Day 155).

Available findings on the impact of the Jehovah's Witnesses organisation's processes on criminal processes

9.335 Counsel Assisting considers that the following four findings are available on the evidence:

F61 The internal processes of the Jehovah's Witness organisation for handling allegations of child sexual abuse cause significant delay in a complaint coming, if ever, before authorities.

9.336 The only evidence given of any delay was that given by Mr Davies in his statement and oral evidence before the Commission. Mr Davies was then a junior lawyer (three years qualified) who had worked on only the one case involving Jehovah's Witnesses. That evidence alone does not warrant such a finding and no other reliable or credible evidence was provided to the Commission that could provide support for such a "systemic" finding. It follows that it ought not be made.

9.337 Specifically, it places too much weight on the personal observations and a brief historical file note of a single witness, Mr Jason Davies, in relation to his experience in one case in 2001 that is, some 14 years ago. For the reasons given above, the evidence of Mr Davies, does not demonstrate any systemic problems with the approach of Jehovah's Witnesses to dealing with child sexual abuse and no such finding could ever be made in a Court based upon his limited experience in such matters.

9.338 Moreover, there are many reasons why a victim may delay in reporting the abuse that occurred to them as a child. The Commission is aware of the research on the issue of delayed reporting.²⁶³ There is no empirical evidence that the practices and procedures of Jehovah's Witnesses contribute to a delay in reporting.

9.339 Accordingly, suggested finding F61 should not be made.

F62 Admissions made by an accused during the investigative and/or judicial committee process administered by the Jehovah's Witness organisation may not be admissible in criminal proceedings because of the circumstances in which they are made, including that incentives such as reduction in penalty are offered if an admission is made.

²⁶³ The Commission itself noted that, "on average it took the victim's 22 years to disclose the above, men longer than women.": Interim Report Volume 1, paragraph 3.1.

- 9.340 The suggested finding raises several debatable propositions of law and fact which were not canvassed during the public hearing and ultimately must depend upon the specific case. The admissibility of confessions in a criminal case depends upon the circumstances in which the confession was given and as to whether duress was applied or “incentives” were offered by persons in authority which resulted in the person’s will being overborne to such an extent that the confession or admission could not be said to be voluntary.²⁶⁴
- 9.341 The judicial procedure adopted by Jehovah’s Witnesses does not involve either the application of duress to a person or the offering of “incentives” in “reduction of penalty”. It is, with respect, wrong to view “reproval”, as contrasted with “disfellowshipping”, as “incentives” or as “penalties”. In a religious organisation, a person can choose to accept that they have sinned and repent of their sins and be reproved for sinning or they can deny the sin, notwithstanding evidence to the contrary, and be disfellowshipped. A disfellowshipped person can subsequently demonstrate their repentance and be re-admitted to the faith. A person of faith would not see “reproval” rather than “disfellowshipping” as an “incentive” and there was no evidence to suggest otherwise.
- 9.342 The finding is based on the testimony of a single non-expert witness, Mr Jason Davies. The claim that “incentives such as a reduction in penalty are offered if admission is made” are not a part of the religious belief system and teachings of Jehovah’s Witnesses, and the Commission provided no evidence or a single example of this being the case. In fact, the Court case Mr Jason Davies was referring to involving BCG included the testimony of the elders involved in the congregation judicial committee process and resulted in a criminal conviction.
- 9.343 In the case files provided to the Commission, of the 383 cases known to have had the involvement of the secular authorities, 161 (or 42%) resulted in a conviction.²⁶⁵ There was no evidence provided to support the claim that congregation procedures inhibit conviction rates.²⁶⁶
- 9.344 Accordingly, this suggested finding F62 should not be made.

²⁶⁴ *Cross on Evidence* (10th ed; 2015) ed. Heydon at page 1213 [33595].

²⁶⁵ Please see footnote 26 above.

See also Exhibit 29-0021, WAT.9999.013.0011_R, Appendix A, at [9].

²⁶⁶ In Comparison: “Fitzgerald’s study of the attrition of sexual offences in the New South Wales criminal justice system found that, of the very low number of sexual offences that are actually reported to the police (7,500 in 2004), only 10 per cent resulted in a guilty finding.” Freiberg, A, Donnelly, H and Gelb, K, 2015, Sentencing for Child Sexual Assault in Institutional Contexts, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney. Page 18. (emphasis added)

F63 The number of people to whom a survivor of child sexual abuse is required to divulge the detail of her complaint exacerbates the trauma already suffered by a survivor of such abuse.

9.345 It is not possible to make such a broad finding based upon the evidence provided to the Commission of a single junior assistant prosecutor. It may be possible to make a finding that it has been the experience of some survivors of child sexual abuse that the re-telling of the story of their abuse can or may exacerbate the trauma that they have already suffered.

9.346 In the secular arena, a victim of child sexual abuse may have to repeat their story on several occasions to the initial interviewer, possibly to detectives, possibly to counsel or the instructing solicitors and, most probably, in Court.

9.347 The two cases presented by the Commission are from decades ago and there was no evidence submitted by the Commission in relation to current practice. In fact, Mr Spinks said regarding the current practice:

*... in this day and age and for a long time, we would not have a victim or a survivor of child abuse in a judicial hearing.*²⁶⁷

He further stated:

*... you will find numerous examples of where the parents or guardians have provided the statement without intervention from the elders ...*²⁶⁸

9.348 Accordingly, this suggested finding F63 should not be made.

F64 There is significant risk of contamination of a survivor's evidence as a result of the number of times and circumstances in which a survivor is required to divulge the detail of her complaint before her abuse is, if ever, reported to the authorities.

9.349 Counsel Assisting incorrectly assumes that the policies and practices of Jehovah's Witnesses require a victim to divulge the details of his/her complaint to the elders before the matter can be reported to the authorities. To the contrary, the victim and his/her parent or guardian have the absolute right to report the matter to the authorities at any time they may wish to do so, whether before or after they seek the spiritual assistance of the elders in their

²⁶⁷ Transcript of R P Spinks, T15694:15-17 (Day 152).

²⁶⁸ Transcript of R P Spinks, T15698:19-23 (Day 152);
 Transcript of R P Spinks, T15704 (Day 152).

congregation. In fact, whether to bring the matter to the attention of the elders is a personal decision for the victim and his/her parent or guardian.

- 9.350 Moreover, the proposed finding involves an assessment of the risks associated with a person repeating their testimony. It is well-known that, in the secular arena, a complainant of sexual abuse may be “cross-examined” on discrepancies in their stories both by the prosecutorial authorities and by defence counsel. It is also true that some people need to speak about their adverse experiences whilst others “internalise” such experiences. Each person needs to be considered and dealt with individually.
- 9.351 The suggested finding is not relevant to the current practice or policy of Jehovah’s Witnesses. A victim or survivor of child abuse would not need to be present in a congregation hearing or give their evidence a number of times. No evidence was presented to the Commission that the spiritual support of a survivor of child abuse would contaminate the survivor’s evidence. Mr Davies’ admission to his “naïve”²⁶⁹ approach to the case of BCG and his summation based on “memory” does not present a clear understanding of the events relating to the one case decades ago. Mr Davies’ opinions were speculative and unsubstantiated. The case of BCG did result in a conviction of her father and the testimony of the congregation elders assisted in this. Counsel Assisting failed to accept the testimony in relation to the current policies and practices of Jehovah’s Witnesses.

Available findings on Mr Geoffrey Jackson’s stated empathy for survivors

- 9.352 Counsel Assisting considers that the following finding is available on the evidence:

F65 Mr Jackson’s failure to have read or be familiar with the testimony of the survivor witnesses yet to have read or otherwise familiarised himself with the testimony of Jehovah’s Witness witnesses belies his stated empathy for the survivors and his stated recognition of the importance of their perspectives.

- 9.353 This suggested finding did not have regard to the following facts and matters:
- (a) Written communications²⁷⁰ between those instructing Counsel Assisting and the lawyers representing Watchtower Bible and Tract Society of Australia was to the effect that Mr Geoffrey Jackson’s views would be

²⁶⁹ Transcript of J P Davies, T15422:27 (Day 149).

²⁷⁰ See Letter from Royal Commission to Milton Bray dated 14 July 2015; See also the statements by Counsel Assisting at Transcript of R P Spinks, T15676:29-33 and T15676:42-47 (Day 152).

sought on “policy” matters and not that he would be called upon to offer testimony on specific cases.

- (b) It was explained that, Mr Jackson was in Australia for personal reasons due to his father’s terminal illness. In fact, Mr Geoffrey Jackson’s father passed away on 30 September 2015. In the circumstances, the view was taken that Mr Geoffrey Jackson should not be additionally burdened during that difficult time.
- (c) It was not put to Mr Geoffrey Jackson during his oral evidence that his failure to read or familiarise himself with the survivor’s stories belied his empathy for such persons. Natural justice requires that a person be confronted with such a complaint during the public hearing if the suggested finding is to be made.
- (d) The suggested finding can have no bearing on the two most important questions that must be addressed by the Commission concerning the prevention of child sexual abuse and to have better responses. The Commission is entitled to assistance to identify systemic issues and failings, not speculation about whether a person is or is not empathetic.
- (e) Moreover, Mr Geoffrey Jackson addressed in a forthright manner questions of apology²⁷¹ and redress²⁷² and expressed his empathy for survivors of sexual abuse.²⁷³ Such matters ought to result in a finding in his favour.
- (f) The suggested finding should reflect what Mr Geoffrey Jackson himself explained:²⁷⁴

*I wasn’t aware of the fact that I would be called before the Commission ... I haven’t lived in Australia for 36 years, and I haven’t certainly had a chance to look through the files ... The reason I came here was to care for my ailing father, and that has taken a lot of my time.*²⁷⁵

CAS PART 8: Current Systems, Policies and Procedures for Preventing Child Sexual Abuse

Available findings on the system of prevention of child sexual abuse – WWCC

9.354 Counsel Assisting considers that the following finding is available on the evidence:

²⁷¹ Transcript of G W Jackson, T15985:29-32 (Day 155).

²⁷² Transcript of G W Jackson, T15985:38-44 and T15986:19-31 (Day 155).

²⁷³ Transcript of G W Jackson, T15995:2-9 (Day 155);

See also Mr Geoffrey Jackson’s expressions at T15985:16-20 and T15994:24-30 (Day 155).

²⁷⁴ Transcript of G W Jackson, T15990:20-30 (Day 155).

²⁷⁵ Mr Geoffrey Jackson’s father has since passed away.

F66 The documented practice of the Jehovah’s Witness organisation of not reporting child sexual abuse to the authorities undermines the efficacy of the working with children check system, a system to which the organisation says it subscribes and with which it says it complies.

9.355 The statistical evidence provided to the Commission indicated that some 383 cases were reported to the authorities²⁷⁶ and in his evidence, Mr Toole stated that he had advised persons to report to the secular authorities to comply with mandatory reporting requirements.²⁷⁷

9.356 Accordingly, this suggested finding is too broadly stated and should not be made in the terms expressed.

Available findings on the system of prevention of child sexual abuse – risk of reoffending

9.357 Counsel Assisting considers that the following finding is available on the evidence:

F67 The practices and procedures of the Jehovah’s Witness organisation for the prevention of child sexual abuse, and in particular for the management of the risk of an abuser reoffending, do not take account of the actual risk of an offender reoffending and accordingly place children in the organisation at significant risk of sexual abuse.

9.358 This suggested finding does not appear to have regard for the evidence given at the Commission. Showing an awareness of the danger, the policy states:

“The elders should remain vigilant with regard to the conduct and activity of the accused ... The elders should be especially mindful of the activity of any who are known to have sexually abused a child in the past. They should also ensure that newly appointed elders are made aware of this caution.” (Letter October 1, 2012, paragraphs 11 & 12.)

9.359 Additionally, the proposed finding fails to have regard to the evidence submitted to the Commission whereby, if required, “two elders should be assigned to meet with the parents of minor children in order to provide a warning.” – Letter to Bodies of Elders, October 1, 2012 paragraph 13.

²⁷⁶ Transcript of R P Spinks, T15663:25-26 and T15717:32-46 (Day 152);
Transcript of V J Toole, T15776:44-47 (Day 153).

²⁷⁷ Transcript of V J Toole, T15760:32-35 (Day 153).

9.360 Mr Spinks testified:²⁷⁸

“... do we understand that someone who has abused a child can offend again? Yes, very clearly! Does that move us to say that we will never allow a child abuser to return to the congregation? ... I think if that was the case no-one would be released from prison, there'd be no programs in place. So we are not naïve as to the fact that a child abuser can reoffend, and that's written in our own publications.”²⁷⁹

9.361 In the case of BCG's father, he remains disfellowshipped from the congregation because of the considered risk of reoffending, for instance while he fails to accept responsibility for his actions.²⁸⁰ The fact that a record is kept of any individual who associates with a congregation and has been accused of child sexual abuse or related offences, is a strong indication of the policy to monitor those accused and protect children in the congregation.

9.362 Accordingly, this suggested finding F67 should be disregarded.

CAS PART 9: Additional Issues

Available findings on the accessibility of procedures and policies

9.363 Counsel Assisting considers that the following finding is available on the evidence:

F68 The Jehovah's Witness organisation's documented procedures for reporting on and responding to allegations of child sexual abuse are deficient in that they are not documented in such a way as to be easily accessible in one document and available to all interested or affected parties and some matters that are stated to be the policies or practices of the organisation are not recorded at all.

9.364 The recommendation to review documentation procedures is under consideration by Jehovah's Witnesses. However, to imply that policies or practices of the organisation are "deficient" is inconsistent with the evidence given by Mr Spinks to the Commission.²⁸¹

²⁷⁸ Transcript of R P Spinks, T15714:21-46 (Day 152).

²⁷⁹ Transcript of R P Spinks, T15714:23-32 (Day 152) and see, for example, Exhibit 29-0003, WAT.0001.004.0306 at 0309 (paragraph 2) (The Watchtower, January 1, 1997 p. 29).

²⁸⁰ Transcript of R P Spinks, T15714:34-39 (Day 152).

²⁸¹ Transcript of R P Spinks, T15685:25-29 (Day 152).

9.365 Accordingly, this suggested finding F68 that “Jehovah’s Witnesses’ documented procedures for reporting on and responding to allegations of child sexual abuse are deficient” should not be made.

Available findings on shunning

9.366 Counsel Assisting considers that the following two findings are available on the evidence:

F69 Members of the Jehovah’s Witness organisation who no longer want to be subject to the organisation’s rules and discipline have no alternative than to leave the organisation which requires that they disassociate from it.

9.367 The policies and practices of Jehovah’s Witnesses do not require any individual who no longer wants to be subject to their “rules and discipline” to formally disassociate themselves. They can simply stop associating with the congregation. Such individuals are not shunned.

9.368 In any event, however, there appears to be no systemic connection between an adult making a decision to leave an organisation and child sexual abuse. Suggested finding F69 has no relevance to preventing, or improving responses to, child sexual abuse, and it is clearly outside the scope of the Terms of Reference of the Commission, and Counsel Assisting did not provide evidence to the contrary.

9.369 Jehovah’s Witnesses attended the Commission’s public hearing to assist the Commission with the task of addressing the prevention and responses to child sexual abuse. Jehovah’s Witnesses were not asked to address questions regarding persons who wished to leave the organisation.

F70 The Jehovah’s Witness organisation’s policy of requiring its adherents to actively shun those who leave the organisation:

a) makes it extremely difficult for someone to leave the organization

9.370 One of the persons who gave evidence before the Commission, Mr Baker, formerly one of Jehovah’s Witnesses and called by Counsel Assisting, did not suggest he had a problem in leaving the organisation.²⁸² Mr Baker was frank in his reasons for leaving. He sought to pursue a lifestyle that was incompatible with the way of life of Jehovah’s Witnesses. Notwithstanding,

²⁸² Transcript of M J Baker, T15614:33-38 (Day 151): “... it wasn’t really a problem for me ...”

Mr Baker expressed no hostility towards Jehovah's Witnesses, he did not seek to denigrate their beliefs, nor did he seek to belittle the faith. On the contrary, he expressed his disbelief at the number of and basis for the allegations.

- 9.371 No reliable and credible evidence was presented to support this broad suggested finding by Counsel Assisting and it contains a speculative value judgment - "extremely difficult" - about the motivations of adult persons.
- 9.372 Moreover, the suggested finding has no connection with preventing or responding to child sexual abuse and, furthermore, appears not to appreciate the difference between disassociation and inactivity. As was explained, if someone decides to no longer associate with Jehovah's Witnesses that is a personal decision and no disciplinary action is taken against that person.
- 9.373 For example, Mr Geoffrey Jackson stated:²⁸³ "I thought I made it quite clear I don't agree with that supposition". We do not have a "so-called spiritual police force" to chase after ones who no longer want to be Jehovah's Witnesses."
- 9.374 For example, Mr O'Brien stated:²⁸⁴ "They don't have to disassociate themselves to stop associating. They don't lose their spiritual or familial association by being inactive."
- 9.375 Accordingly, this suggested finding F70(a) should not be made.

F70 The Jehovah's Witness organisation's policy ...:

b) is cruel on those who leave and on their friends and family who remain behind

- 9.376 No persons gave any evidence to the effect that the suggested finding was, or is, true in all cases in which a person leaves the faith. For that reason alone, such a broad finding cannot be made. In any event, "cruel" is an emotive and personal view of the impact of someone leaving the faith. For some of those who wish to leave, it may be "sad", "disappointing" or a "relief" or it may excite no adverse feelings at all. In other words, it will depend upon the individual's personal circumstances and their personal beliefs. In any event, the suggested finding is outside of the scope of the Terms of Reference of the Commission.

²⁸³ Transcript of G W Jackson, T15980:24-42 (Day 155).

²⁸⁴ Transcript of T J O'Brien, T15852:28-31 (Day 153).

9.377 Some persons may be perfectly happy to have left the faith and others behind. No adverse comment was made by or elicited from Mr Baker, formerly one of Jehovah’s Witnesses, who had left the faith.²⁸⁵

9.378 Accordingly, this suggested finding F70(b) should not be made.

F70 The Jehovah’s Witness organisation’s policy ...:

c) is particularly cruel on those who have suffered child sexual abuse in the organisation and who wish to leave because they feel that their complaints about it have not been adequately dealt with

9.379 No evidence was presented to substantiate the finding that “those who have suffered child sexual abuse in the organisation and who wish to leave because they feel that their complaints about it have not been adequately dealt with.” Evidence to the contrary was provided by witnesses. (See the responses to suggested finding F69 above at paragraphs [9.367]-[9.369] and F70 above at paragraphs [9.370]-[9.378].)

9.380 Accordingly, this suggested finding F70(c) should not be made.

F70 The Jehovah’s Witness organisation’s policy ...:

d) is not apparently justified by the Scriptures which are cited in support of it.

9.381 With respect, Counsel Assisting is not qualified to offer an authoritative opinion on the Scriptures and presented no supporting evidence for this opinion, which goes beyond the Terms of Reference of the Commission.

9.382 No recommendation by the Commission ought to be or could be based on a suggested finding made along such lines as it would, if enacted into law, infringe the protection afforded by s.116 of the Constitution, which concerns the free exercise of religion.²⁸⁶

9.383 Accordingly, this suggested finding F70(d) should not be made.

F70 The Jehovah’s Witness organisation’s policy.....

e) is adopted and enforced in order to prevent people from leaving the organisation and thereby to maintain its membership.

²⁸⁵ Transcript of M Baker, T15614:17-38 (note in particular lines 33-34) (Day 151).

²⁸⁶ See paragraphs 3.7-3.10 in Submissions above.

9.384 This suggested finding ought not be made because:

- (a) there was no evidence given to the Commission upon which it could be based - no documents were or are referred to by Counsel Assisting and no oral testimony is referred to containing any admission which could support such a finding;
- (b) it is not true as a matter of fact – Jehovah’s Witnesses are a voluntary faith-based organisation that persons are free to join and to leave;
- (c) Jehovah’s Witnesses were not asked to address the Commission on such a question. Had it been raised beforehand, it could have and would have been addressed directly by testimony from persons inside and outside of the faith;
- (d) it is not at all relevant to the Commission’s Terms of Reference;
- (e) it is an unfounded, unfair and unnecessary attack upon a voluntary faith-based organisation that is law-abiding and does much to promote lawful conduct within Australia and around the world through its exertions; and
- (f) if the finding could not be made in a Court of law, it ought not be made by the Commission.

9.385 Evidence to the contrary was provided by witnesses. (See the responses to suggested finding F69 and F70(a) above at paragraphs [9.367]-[9.375]).

9.386 Accordingly, this suggested finding F70(e) should be disregarded.

F70 The Jehovah’s Witness organisation’s policy ...:

- f) is in conflict with the organisation’s professed support for freedom of religious choice and the belief that Jehovah God is a compassionate God who recognises the worth and dignity of all human beings.**

9.387 The suggested finding F70(f) on “shunning” postulates a false conflict and for that reason should not be made. It is perfectly proper for a person of one faith to “avoid” or “shun” (the two are synonyms) another person who either refuses expressly (or implicitly) to accept the first person’s beliefs or who denigrates their beliefs. Evidence was given during the Commission’s public hearing in Case Study 29 that members of the faith have siblings in other faiths and they do not “shun” them.²⁸⁷ The mere fact that someone chooses another faith does not mean that they are “shunned” — something more is required and that something more is a rejection (or denigration) of another’s beliefs.

²⁸⁷ Exhibit 29-0024, First statement of T J O’Brien, STAT.0592.001.0001_R at [4] and [25]; Transcript of V J Toole, T15795:29-31 (Day 153).

9.388 Even Mr Monty Baker (formerly one of Jehovah’s Witnesses) understood that avoidance or shunning is based upon passages in the Bible.²⁸⁸ He did not assert that it was inconsistent with Scripture, nor did he assert that it was “cruel”.

9.389 As a matter of freedom of belief, any person in the secular arena would be entitled to “avoid” or “shun” a (self-asserted) “Christian” member of, for instance, a motorcycle gang who advocated and engaged in activities inconsistent with a Christian way of life. It is still possible for that person to support freedom of religious choice and to also recognise that even a bikie can choose a different form of life and may have different religious beliefs. The point of difference is when the bikie either expressly or by implication rejects or denigrates the person’s beliefs and that leads to the avoidance. If such a right is recognised in the general community, why, one can ask rhetorically, should it be denied to a member of the Jehovah’s Witnesses faith?

9.390 Accordingly, this suggested finding F70(f) should not be made.

CAS PART 10: Dr Monica Applewhite

Available findings on Dr Applewhite’s expert opinions

9.391 Counsel Assisting considers that the following three findings are available on the evidence:

F71 The opinions expressed by Dr Applewhite in paragraphs 36, 45 and 46 of her report are rejected because they are not substantiated by identifiable facts and assumptions or by reasons.

9.392 Dr Applewhite was the only expert called to give evidence in Case Study 29 and the only expert who commented upon the practices of Jehovah’s Witnesses. No other expert came forward to give evidence and no other expert contradicted Dr Applewhite’s conclusions.

9.393 There was no evidence given that the conclusions expressed by Dr Applewhite were, in fact, incorrect, even if the reasoning by which she came to her views was not elaborated upon in her report.

9.394 Whether the conclusions expressed by Dr Applewhite will ultimately prove to be of assistance to the Commission is a matter upon which reasonable minds

²⁸⁸ Transcript of M J Baker T15614:46-15615:8 (Day 151).

can differ when one bears in mind that, part of the Commission's task is to consider what can be better done to protect children; and when it is also appreciated that, religious bodies have a significant role in providing support that is beneficial to children and their families.²⁸⁹

9.395 The opinions expressed by Dr Applewhite should not be rejected simply because Counsel Assisting considers that the opinions are not substantiated. There is a clear distinction between being correct in one's opinion or conclusion and not justifying an opinion. The same distinction underlies those decisions of appellate courts when they do not agree with the reasoning (or lack thereof) of a trial judge but nevertheless agree with the overall conclusion or conclusions on particular issues reached by the trial judge. In such circumstances, the conclusion can stand even if the path by which it was reached was unknown.

9.396 Jehovah's Witnesses publish and disseminate a substantial amount of material in many different languages throughout the world. It is self-evidently better to encourage an organisation to continue warning against child abuse than it is to criticise what has been done to protect children.

9.397 Accordingly, this suggested finding F71 should be amended to read:

The opinions expressed by Dr Applewhite in paragraphs 36, 45 and 46 of her report are accepted.

F72 Dr Applewhite's report contains a number of factual errors with regard to her documenting of the relevant practices and procedures of the Jehovah's Witnesses.

9.398 The factual errors were minor and limited in number, and, as was demonstrated in further questioning by counsel for Jehovah's Witnesses, the errors had no bearing upon the ultimate conclusions expressed by Dr Applewhite in her report.²⁹⁰ It would be rare for any report not to contain an error of sorts; the important question is whether the error had a bearing upon the ultimate conclusion.

9.399 Accordingly, this suggested finding F72 should be amended to read:

²⁸⁹ Letters Patent page 1.

²⁹⁰ Transcript of Dr M L Applewhite, T15519:8-24; T15524:6-43 (Day 150).

Dr Applewhite's report contains a small number of inconsequential factual errors with regard to her documenting of the relevant practices and procedures of Jehovah's Witnesses.

F73 Dr Applewhite's report is therefore rejected.

9.400 The reasons given by Counsel Assisting to support suggested findings F71 and F72 are not a reason to reject an expert's report (as suggested in F73). Even if correct, they could only ever be a reason for not basing action upon the report but not for rejecting it. There is no evidence that contradicts the expert's conclusions and there was ample documentary and oral evidence in support of them.²⁹¹

9.401 Accordingly, this suggested finding F73 should be amended to read:

Dr Applewhite's report is therefore accepted.

Available findings on Dr Applewhite's oral evidence

9.402 Counsel Assisting considers that the following findings are available on the evidence:

F74 Dr Applewhite accepted the following components to current standards of best practice in relation to raising and responding to allegations of child sexual abuse within religious organisations, namely that religious organisations should have:

- a) a process for reporting allegations of child sexual abuse which is survivor focussed and designed to ensure that the child or adult survivor feels able to come forward and be comfortable in reporting the allegation**
- b) a process for reporting allegations of child sexual abuse that does not require a survivor to confront the alleged perpetrator of their abuse or be in the same room as the alleged perpetrator without support**
- c) a system for preventing perpetrators of child sexual abuse from being put back in a position of trust with children**
- d) an ability to take child-safe action in order to remove children from imminent danger, or a relationship with other authorities that have that ability, and**

²⁹¹ See for example, Case Study 2, Transcript of Prof S W Smallbone, T1506:36-41, T1519:5-23, T1535:2-14 (Day 15);

e) strong and cooperative relationships with child protection authorities and with criminal justice authorities

- 9.403 It should be remembered that Dr Applewhite gave evidence before Mr Spinks gave his evidence about the present day practices of the Service Department at the branch office and that Dr Applewhite specifically did not comment upon the present day practices.
- 9.404 The procedures and practices of Jehovah's Witnesses meet criteria (a), (b), (c), (d) and (e).
- 9.405 As to 74(a) see the oral evidence of Mr Spinks.²⁹²
- 9.406 As to 74(b) see the oral evidence of Mr Spinks.²⁹³
- 9.407 As to 74(c) see the oral evidence of Mr Spinks.²⁹⁴
- 9.408 As to 74(d) see oral the evidence of Mr Toole²⁹⁵ and Mr Spinks.²⁹⁶
- 9.409 As to 74(e), Mr Toole gave evidence of the assistance provided to the police and the fact that he was thanked for the assistance given by him and the elders concerned to the police.²⁹⁷
- 9.410 As the evidence of Mr Davies revealed,²⁹⁸ it would be unrealistic to consider that the police and the prosecutorial authorities always had the resources to deal with all allegations of child sexual abuse and assistance from Jehovah's Witnesses has been welcomed and for which they have been thanked.²⁹⁹

²⁹² Transcript of R P Spinks, T15697:47-T15698:8; see also T15665:18-45 (Day 152).

²⁹³ Transcript of R P Spinks, T15683:45-T15684:2; T15686:26-40; T15695:12-14; and T15704:3-14, 33-37 (Day 152).

²⁹⁴ Transcript of R P Spinks, T15711:26-44; T15735:21-38; T15736:39-42; T15737:20-32 (Day 152).

²⁹⁵ On the ability to take child-safe action, see Transcript of V J Toole, T15763:32-40 and T15776:29-35 (Day 153);

On Jehovah's Witnesses' relationship with authorities that have that ability, see Transcript of V J Toole, T15796:44-T15797:24 and T15800:15-18 (Day 153).

²⁹⁶ On the ability to take child-safe action, see Transcript of R P Spinks, T15660:40-47 and T15711:26-43 (Day 152);

On Jehovah's Witnesses' relationship with authorities that have that ability, see Transcript of R P Spinks, T15741:20-33 and T15742:13-44 (Day 152).

²⁹⁷ Transcript of V J Toole, T15767:43-T15768:9 and T15811:25-T15812:15 (Day 153);

See also Transcript of J P Davies, T15428:18-T15429:1 (Day 149).

²⁹⁸ Transcript of J P Davies, T15426:45-T15427:10 (Day 149).

²⁹⁹ See footnotes 295-297 above.

F75 The opinion expressed by Dr Applewhite in oral evidence that requiring a survivor of child sexual abuse to present her testimony before elders and her abuser would not meet the relevant standard is accepted.

9.411 The practice of Jehovah's Witnesses has, for some time, been that a victim of child sexual abuse is not required to present his/her testimony before elders (see response to suggested finding F44 above).

9.412 An adult survivor of child sexual abuse can, if they wish to, confront their abuser (see response to suggested finding F41 above).

9.413 What occurred in the cases of BCB and BCG was consistent with the standards applied by the secular authorities at that time, 27 to 33 years ago (see paragraphs 5.4, 6.1 and 6.2).

F76 The opinion expressed by Dr Applewhite that requiring a survivor of child sexual abuse to present her allegation and testimony to three men without the presence of a support person would not meet the relevant standard is accepted.

9.414 This suggested finding assumes that Jehovah's Witnesses' policies and practices prohibit a victim of child sexual abuse from having a support person present when he or she presents his/her allegation to the elders. As noted in response to suggested findings F46 above, this is not the case.

9.415 We also refer to the evidence of Mr Spinks where he discussed the practice of Jehovah's Witnesses, and stated clearly that a victim of child sexual abuse is not prohibited from having a support person present. Counsel Assisting's suggested finding is not the practice of Jehovah's Witnesses.³⁰⁰

³⁰⁰ Transcript of R P Spinks, T15693:29-T15694:17 and T15695:2-14 (Day 152).

F77 The Jehovah's Witness organisation's current policies and procedures for raising and responding to complaints or allegations of child sexual abuse do not meet all current standards of best practice.

- 9.416 The suggested finding is far too sweeping and cannot be made. No specific current standard was investigated in any detail in Case Study 29, and no opportunity was provided to address any particular current standard of best practice for religious organisations. Moreover, this was never the subject of evidence before the Commission. Dr Applewhite was never afforded an opportunity to opine on this subject.
- 9.417 However, in accord with Scriptural principles, Jehovah's Witnesses are willing to review their policies and practices on child sexual abuse, including those having to do with the protection of children.

10. Part III: Some further matters

- 10.1 Ultimately, the Commission is required to make recommendations to the Australian Parliament about what can be done to better prevent child sexual abuse and what can be done to improve the responses to child sexual abuse. It is apparent that the Commission's task involves addressing systemic issues and failings and not isolated incidents of sexual abuse.³⁰¹
- 10.2 A number of the suggested findings by Counsel Assisting do not seem to be directed towards "systemic" issues. It should be noted that in both cases the abuse took place in the context of the private home. In any event, the congregation elders viewed the wrongdoing seriously and took congregation action. Moreover, these cases are not representative of the present-day procedures of Jehovah's Witnesses when addressing child sexual abuse. Unfortunately, those assisting the Commission appear to have misunderstood the relevant Jehovah's Witnesses' documents, which would not be the case with congregation elders who understand and implement the direction contained in the documents with the support of the Service Department.
- 10.3 Jehovah's Witnesses are a law-abiding community, committed to love of neighbour.³⁰² They readily comply with mandatory reporting laws. They also obey any other statutes enacted to safeguard minors from sexual abuse.
- 10.4 Jehovah's Witnesses have demonstrated that they make adjustments where necessary and within the confines of their Scriptural beliefs. Several examples were given during oral testimony of what Jehovah's Witnesses are prepared to do: for example, to review procedures, to consider whether procedures and practices should be consolidated into one document, and to seek additional independent legal advice.
- 10.5 The very serious task entrusted to the Commission is not lost upon Jehovah's Witnesses and for that reason, amongst others, Jehovah's Witnesses have not sought to criticise any person doing their job. Jehovah's Witnesses consider, however, that some of the criticisms made by Counsel Assisting go beyond what is necessary to assist the Commission in fulfilling its task or what is required by the Terms of Reference. They appear to be unjustified attacks on Jehovah's Witnesses as a faith and the individual members thereof. These attacks seem to be the result of misinterpretations of the beliefs and practices of Jehovah's Witnesses and of the Bible and the law.

³⁰¹ Letters Patent at pages 1 and 2.

³⁰² Matthew 22:39; John 13:34, 35.

- 10.6 Proof of this can be seen by reference to suggested finding F56 concerning Mr Toole and the referral to the Law Society of New South Wales³⁰³ and the suggested finding F65 concerning Mr Geoffrey Jackson's empathy for survivors.³⁰⁴ It was not put directly to Mr Toole that, the fact that he did not advise elders who sought his advice to report a matter to the police pursuant to s.316 *Crimes Act* (NSW) was a breach of his professional or ethical obligations so that he was not given the opportunity then to defend himself against any criticism. Moreover, in the greater scheme of things neither Mr Toole's professional competence, nor Mr Geoffrey Jackson's personal empathy for survivors, will have any bearing upon the important questions and the tasks facing the Commission and its ultimate recommendations. Unfortunately, the effect upon the reader is to prejudice the reader against two law-abiding citizens in circumstances where the criticism is not justified or relevant but instead assumes a state of affairs that neither person was required to defend.
- 10.7 In addition to those two examples, suggested finding F70 (concerning membership of Jehovah's Witnesses) is also based on Counsel Assisting's misunderstanding of Jehovah's Witnesses' beliefs and practices. Further, this suggested finding is not related to either preventing or responding to child sexual abuse, and is a criticism that was not raised with Jehovah's Witnesses at any time before the suggested finding. The suggested finding ought not to have been made by Counsel Assisting and should be withdrawn.

³⁰³ See paragraphs 9.305-9.311 in Submissions above.

³⁰⁴ See paragraphs 9.352-9.353 in Submissions above.

11. **Part IV: Summary of suggested findings that Jehovah's Witnesses accept and proposed amended findings**

- 11.1 It is the submission of Jehovah's Witnesses that the findings that ought to be made should address the two important questions that the Commission is entrusted to deal with: prevention and responses at a systemic level. In so doing, it is, of course, appropriate to recognise the experiences of the survivors. To that end, Jehovah's Witnesses set out below what they consider to be accurate findings based on the evidence presented to the Commission and addressing what Jehovah's Witnesses do to prevent and respond to child sexual abuse.
- 11.2 As stated above, the findings that the Commission ought to be making in terms of prevention and responses are set out below.

Response to suggested findings on the Jehovah's Witnesses relationship with the secular authorities

- 11.3 Counsel Assisting's suggested finding F1:

F1 The Jehovah's Witness organisation presents its members with conflicting and ambiguous teachings regarding their relationship with secular authorities, thereby fostering a distrust of such authorities.

This is simply not true for the reasons given in paragraphs 9.3 to 9.10.

Response to suggested findings on historical child sexual abuse data

- 11.4 Counsel Assisting's suggested finding F2:

F2 Since 1950, the Jehovah's Witness organisation in Australia has received allegations of child sexual abuse against 1,006 of its members relating to at least 1,800 victims, and has in that period not reported a single allegation to the police or other authorities, even though 579 of those against whom an allegation was made confessed to having committed child sexual abuse.

This suggested finding has no regard to matters raised in correspondence with the Commission providing context for the statistics, as explained in paragraphs 9.12 to 9.21.

11.5 Counsel Assisting's suggested finding F3:

F3 The Jehovah's Witness organisation in Australia receives approximately three to four reports of allegations of child sexual abuse each month.

For the reasons provided in paragraphs 9.22 to 9.23, this suggested finding should be amended to read:

The Jehovah's Witness organisation may receive approximately three or four calls a month about child sexual abuse. No evidence was presented to determine if these reports involved non-Witness perpetrators, occurred before the wrongdoer's association with Jehovah's Witnesses, if the report was historical in nature, or if it was in fact pertaining to actual child sexual abuse.

Response to suggested findings on BCB's first disclosure

11.6 Counsel Assisting's suggested findings F4 – F6:

F4 The elders bringing the man whom BCB accused of abusing her to her home was unjustified and traumatising for BCB and should not have occurred.

F5 Although the elders may have been following the documented procedure at the time and they may have believed that Scriptural principle required that the accuser face the accused with her allegations, it was distressing to and unsupportive of BCB to require that of her.

F6 It was distressing for BCB to be required by the elders to tell of what had happened to her to a group of men, including the man whom she accused of abusing her, and it was not likely to, nor did it, result in BCB disclosing the full extent of her abuse.

This suggested finding should be amended to reflect the actual testimony of BCB, in both her oral testimony [Transcript of BCB, T15176:19-20 (Day 141)] and written statement [Exhibit 29-0001, Statement of BCB, STAT.0603.001.0001_R at [82]], respectively:

BCB "felt very, very uncomfortable" and it was "very distressing".

11.7 Counsel Assisting's suggested finding F7:

F7 It was inconsistent with the elders' professed sympathy for BCB for them not to have offered her the opportunity of the support and involvement of women in the process of investigating her allegations of abuse.

This suggested finding should be amended to read as follows, based on the reasons outlined in paragraphs 9.30 to 9.42:

As BCB had the support of her husband who was present with her, the fact that the elders did not offer her the opportunity to have women involved in the process is not inconsistent with the elders' professed sympathy for BCB.

11.8 Counsel Assisting's suggested finding F8:

F8 The elders did not explain to BCB the purpose of their investigation and the meetings with her such as to ensure that she had an understanding of that purpose, which left her confused and disempowered.

For the reasons given in paragraphs 9.43 to 9.45, this suggested finding should be amended to read:

Elders investigating BCB's complaints could have ensured that BCB understood the purpose of their investigation and the meetings with her.

11.9 Counsel Assisting's suggested finding F9:

F9 The application of the two-witness rule meant that there was insufficient evidence for the elders to act against BCB's abuser even though they believed her, which left her feeling disbelieved and unsupported, and it left the abuser in the congregation where he may have been a risk to other children.

The suggested finding is contrary to the evidence and for the reasons explained in paragraphs 9.197 to 9.227, should be disregarded.

11.10 Counsel Assisting's suggested finding F10:

F10 Mr Horley telling BCB that she should not discuss her abuse with anyone left her feeling silenced and unsupported.

The suggested finding does not accurately reflect BCB's evidence: see in addition paragraphs 9.48 to 9.50.

11.11 Counsel Assisting's suggested finding F11:

F11 BCB was not told by the elders that she could, let alone should, report her abuse to the authorities.

This suggested finding should be amended to read:

Elders investigating BCB's complaints could have advised BCB of her right to report abuse to authorities.

11.12 Counsel Assisting's suggested finding F12:

F12 In circumstances where both investigating elders agreed that there was substance to BCB's allegations, they should have taken steps against Bill Neill, at least by imposing some restrictions on his activities involving children and thereby addressing the potential risk that he posed to other children.

For the reasons provided in paragraphs 9.58, this suggested finding should be amended to read:

After Bill Neill was removed as an elder, the elders could also have imposed appropriate restrictions on his involvement with children.

11.13 Counsel Assisting's suggested finding F13:

F13 It was traumatic for BCB and inappropriate of Mr Horley for him to have required BCB to attend Bible study at Bill Neill's home when he knew that BCB accused Bill Neill of abusing her.

This suggested finding does not accurately reflect the evidence given: see paragraphs 9.51 and 9.52.

11.14 Counsel Assisting's suggested finding F14:

F14 The recommendation of the elders to the Branch Office that Bill Neill be reinstated as an elder 'once this has died down' and their expressed concern 'that there may also be worldly people who also know' demonstrates that they were more concerned about the reputation of Bill Neill and the congregation than about the risk that he posed to children.

For the reasons provided in paragraphs 9.57 and 9.58, this suggested finding should be amended to read:

The recommendation of the elders to the branch office that Bill Neill be reappointed as an elder 'once this has died down' and their expressed concern 'that there may also be worldly people who also know' were inappropriate and did not reflect the policy and practice of Jehovah's Witnesses.

Response to suggested findings on BCB's second disclosure

11.15 Counsel Assisting's suggested finding F15:

F15 It was wrong of Joe Bello, and contrary to the Jehovah's Witness organisation's own direction in that regard, to discourage BCB from reporting to the Royal Commission by asking whether she 'really wants to drag Jehovah's name through the mud'.

For the reasons given in paragraphs 9.70 to 9.71, this suggested finding is not supported by the evidence and ought to be disregarded.

11.16 Counsel Assisting's suggested finding F16:

F16 The elders in BCB's present congregation should have supported BCB in her reporting to the Royal Commission if that is what she wanted to do.

This suggested finding is simply too broad, as outlined in paragraphs 9.69 to 9.75.

Response to suggested findings on the investigation and judicial committee processes following BCB's disclosure

11.17 Counsel Assisting's suggested finding F17:

F17 The elders did not explain to BCG the purpose of their investigation and their meetings with BCG such as to ensure that she had an understanding of that purpose, which left her confused and disempowered.

This suggested finding is not supported by the evidence and should not be made for the reasons set out in paragraphs 9.80 to 9.145.

11.18 Counsel Assisting's suggested finding F18:

F18 It was traumatising for BCG to be required by the elders to tell what had happened to her to a group of men, including the man whom she accused of sexually abusing her, and it was not likely to, nor did it, result in BCG disclosing the full extent her abuse.

For the reasons outlined in paragraphs 9.80 to 9.145, this suggested finding should be amended to remove:

and it was not likely to, nor did it, result in BCG disclosing the full extent of her abuse.

11.19 Counsel Assisting's suggested finding F19:

F19 It would have been supportive of the elders to offer BCG the opportunity of the support and involvement of other women in the process of investigating her allegations of abuse.

This suggested finding should be amended to reflect the evidence in relation to BCG, as set out in paragraphs 9.90 and 9.91.

11.20 Counsel Assisting's suggested finding F20:

F20 During their judicial committee investigation or proceedings the elders received evidence that BCH had abused BCG's elder sister and her two younger sisters, but they took no action in relation to that evidence.

This suggested finding should be amended to remove the following, based on the reasons given in paragraphs 9.80 to 9.145:

but they took no action in relation to that evidence.

11.21 Counsel Assisting's suggested finding F21:

F21 The evidence presented to the judicial committee of BCH having abused his other daughters satisfied the Jehovah's Witness organisation's own rules with regard to sufficiency of evidence to establish that BCH had abused BCG, but the elders wrongly ignored that evidence and accordingly failed to uphold BCG's complaint against BCH.

The suggested finding should be amended as follows, based on the explanation in paragraphs 9.80 to 9.145:

The evidence presented to the judicial committee of BCH having abused BCG's elder sister satisfied the Scriptural standard with regard to sufficiency of evidence to establish that BCH had abused BCG.

11.22 Counsel Assisting's suggested finding F22:

F22 In the course of the judicial committee process, and before the elders reached a conclusion on BCH's guilt in relation to his extra-marital conduct, BCH confessed to having abused BCG.

Based on the reasons outlined in paragraphs 9.80 to 9.145, this suggested finding should be amended to read:

In the course of the appeal committee hearing, BCH confessed to having abused BCG.

11.23 Counsel Assisting's suggested finding F23:

F23 The elders inexplicably and wrongly ignored BCH's confession to having abused BCG and thereby, within the precepts of the Jehovah's Witness organisation's own rules and procedures, failed to uphold BCG's complaint against BCH.

This is simply not true for the reasons provided in paragraphs 9.80 to 9.145.

11.24 Counsel Assisting's suggested finding F24:

F24 BCG was not told by the elders that she could, let alone should, report her abuse to the authorities.

For the reasons explained in paragraphs 9.80 to 9.145, this suggested finding ought to be disregarded.

11.25 Counsel Assisting's suggested finding F25:

F25 The appeal committee's requirement that BCG give evidence of her sexual abuse by her father to a group of seven men including her named abuser was unjustified and traumatising to BCG and should never have happened.

This suggested finding should be amended to remove the following, given the reasons provided in paragraphs 9.80 to 9.145 and 9.193 to 9.196:

'The appeal committee's requirement', 'was unjustified' and 'and should never have happened'.

11.26 Counsel Assisting's suggested finding F26:

F26 The failure by the elders to report BCH's sexual abuse of BCG to the police had the result that BCH remained at large in the community and a risk to children, and reflects that the elders were not concerned with child safety but rather with keeping their organisation 'clean'.

For the reasons outlined in paragraphs 9.80 to 9.145, this suggested finding should be amended to remove:

and a risk to children and reflects that the elders were not concerned with child safety but rather with keeping their organisation 'clean'.

11.27 Counsel Assisting's suggested finding F27:

F27 The judicial committee's failure to uphold BCG's complaint of abuse by BCH conveyed to BCG that the organisation tolerated child sexual abuse within its ranks.

This suggested finding is not supported by the evidence, as explained in paragraphs 9.80 to 9.145, and should be disregarded.

11.28 Counsel Assisting's suggested finding F28:

F28 The advice given by the elders to BCG that she not speak about her abuse to anyone had the effect of silencing her.

For the reasons provided in paragraphs 9.80 to 9.145, this suggested finding should be amended by replacing:

'anyone' with 'everyone'.

11.29 Counsel Assisting's suggested finding F29:

F29 The elders' treatment of BCG was unsympathetic and unsupportive and left her feeling worthless and helpless.

This suggested finding is simply untrue for the reasons set out in paragraphs 9.80 to 9.145.

Response to suggested findings on the reinstatement of BCH

11.30 Counsel Assisting's suggested finding F30:

F30 BCH was reinstated as a Jehovah's Witness little more than three years after he had been disfellowshipped for, amongst other things, five or six counts of sexual abuse of his daughter.

This suggested finding should be replaced with the following, for the reasons outlined in paragraphs 9.161 to 9.166:

BCH was reinstated as one of Jehovah's Witnesses three years after he had been disfellowshipped for, amongst other things, child sexual abuse of his daughter and adultery.

11.31 Counsel Assisting's suggested finding F31:

F31 The decision to reinstate BCH took no account of the risk that BCH posed to children, paid little regard to the fact that he had been disfellowshipped because of child sexual abuse, and was focussed principally on his extra-marital relationship.

For the reasons provided in paragraphs 9.161 to 9.166, this suggested finding should be replaced with:

The religious decision to reinstate BCH as a member of the congregation was based on his demonstration of repentance, rather than on other factors.

11.32 Counsel Assisting's suggested finding F32:

F32 The decision to reinstate BCH took no account of BCH's failure to apologise to BCG, a factor relevant to consideration of sincere repentance, or of what BCG might have had to say about BCH being reinstated.

This suggested finding should be replaced with the following, for the reasons given in paragraphs 9.161 to 9.166:

BCG felt that the decision to reinstate BCH as a member of the congregation did not take into consideration whether BCH had personally apologised to BCG for child sexual abuse.

11.33 Counsel Assisting's suggested finding F33:

F33 The decision to reinstate BCH was disrespectful and unsupportive of BCG.

Given the explanation in paragraphs 9.161 to 9.166, this suggested finding should be replaced with:

BCG felt that the decision to reinstate BCH in the St George Congregation did not take her feelings into consideration.

11.34 Counsel Assisting's suggested finding F34:

F34 The Branch Office's response to BCG on 26 February 1996 caused BCG to feel angry, upset and let down, and did not convey support and concern to BCG on the part of the Jehovah's Witness organisation.

For the reasons outlined in paragraphs 9.161 to 9.166, this suggested finding should be replaced with:

Although the letter from Watchtower Bible & Tract Society of Australia to BCG dated 26 February 1996 acknowledges her feelings and conveys concern for BCG, due to a misunderstanding of the meaning of the Scripture shared with her, BCG felt, angry, upset, and unsupported.

Response to suggested findings on the impact of the judicial committee process on criminal proceedings against BCH

11.35 Counsel Assisting's suggested finding F35:

F35 The judicial committee and appeal committee processes that preceded BCG reporting her abuse by her father to the police complicated the criminal proceedings because of the numbers of people involved in those processes and the telling and retelling of the experience.

This suggested finding ought to be disregarded for the reasons provided in paragraphs 9.174 and 9.175.

Response to suggested findings on the risk management and second disfellowshipping of BCH

11.36 Counsel Assisting's suggested finding F36:

F36 When BCH was reinstated no restrictions were placed on him which were relevant to his risk to children despite his established history of child sexual abuse.

Given the reasons set out in paragraph 9.177, this suggested finding should not be made.

11.37 Counsel Assisting's suggested finding F37:

F37 BCH was disfellowshipped a second time for lying in relation to child sexual abuse rather than for child sexual abuse itself.

For the reasons outlined in paragraph 9.178, this suggested finding should not be made.

11.38 Counsel Assisting's suggested finding F38:

F38 The reasons canvassed and then given for the second disfellowshipping of BCH show that those from the Jehovah's Witness organisation who were involved were more concerned about a charge of lying than they were about BCH's sexual abuse of his daughters.

This is simply not true, as set out in paragraph 9.179.

Response to suggested findings on the authority of the governing body

11.39 Counsel Assisting's suggested finding F39:

F39 Mr Spinks' evidence that the Australia Branch has full authority to produce documents, seminars, letters to elders and letters to publishers without the approval or agreement of the Governing Body is rejected.

For the reasons provided in paragraphs 9.182 to 9.189, this suggested finding should be amended to read:

The Australia Branch has authority to produce documents, seminars, letters to elders and letters to publishers in matters relating to its local jurisdiction as long as such do not express any view or perspective contrary to the Bible.

11.40 Counsel Assisting's suggested finding F40:

F40 The Governing Body retains authority in respect of all publications in the name of the Jehovah's Witness organisation and any view or perspective contrary to that of the Governing Body is not tolerated.

The suggested finding should be amended to read as follows, for the reasons given in paragraphs 9.190 to 9.191:

The Governing Body retains authority in respect of the general principle and framework of all publications in the name of Jehovah's Witnesses, and any view or perspective contrary to the Bible is not tolerated.

Response to suggested findings on the investigation process

11.41 Counsel Assisting's suggested finding F41:

F41 There are no circumstances in which the survivor of a sexual assault should have to make her allegation in the presence of the person whom she accuses of having assaulted her, and, contrary to the present position, the documents, manuals and instructions produced by the Jehovah's Witness organisation should make this clear.

As explained in paragraphs 9.193 to 9.196, this suggested finding should be amended to read:

Jehovah's Witnesses have not and do not presently, require the survivor of a sexual assault to make his/her allegation in the presence of the person whom he or she accuses of having assaulted him or her, unless the survivor wishes to do so; and Jehovah's Witnesses have acknowledged the need for this position to be clearly documented.

11.42 Counsel Assisting’s suggested finding F42(a):

F42 The requirement that two or more eyewitnesses to the same incident are required in the absence of a confession from the accused, the testimony of two or three witnesses to separate incidents of the same kind of wrongdoing, or strong, circumstantial evidence testified to by at least two witnesses (i.e. the two witness rule):

- a) means that in respect of child sexual abuse which almost invariably occurs in private, very often no finding of guilt will be made in respect of a guilty accused often no finding of guilt will be made in respect of a guilty accused

Based on the reasons in paragraphs 9.197 to 9.202, this suggested finding should be amended to read:

In the case of any alleged serious sin, including child abuse, judicial committees are formed on the basis of the Scriptural standard of evidence of either a confession or substantiation by two or more witnesses. – Proverbs 28:13; Deuteronomy 19:15; Matthew 18:16; 2 Corinthians 13:1; 1 Timothy 5:19.

11.43 Counsel Assisting’s suggested finding F42(b):

F42 [The two witness rule]:

- b) causes victims of child sexual abuse to feel unheard and unsupported when it results in allegations of child sexual abuse not being upheld

This suggested finding should be amended to read as follows, for the reasons provided in paragraphs 9.203 to 9.209:

“Based on the testimony of the two survivor witnesses: (i) Although BCB did not feel supported overall, her testimony was that [an elder involved in Scripturally caring for her accusation] was “very kind and supportive. He told me that what has happened was not my fault and that I shouldn’t blame myself”; and (ii) Although BCG felt unsupported when her allegations of child sexual abuse against her father, BCH, were not Scripturally established at the time of the first congregation judicial hearing, it should be noted that BCH was found guilty of the sexual abuse of his daughter by the congregation appeal committee within the following two weeks.”

11.44 Counsel Assisting's suggested finding F42(c):

F42 [The two witness rule]:

- c) is a danger to children in the Jehovah's Witness organisation because its consequence is that very often nothing is done about an abuser in the organisation

This suggested finding is simply not true: see the reasons outlined in paragraphs 9.210 to 9.218.

11.45 Counsel Assisting's suggested finding F42(d):

F42 [The two witness rule]:

- d) does not seem to be applied by the Jehovah's Witness organisation in the case of an accusation of adultery, which suggests that adultery is taken more seriously by the organisation than child sexual abuse

This is simply not true, given the reasons provided in paragraphs 9.219 to 9.222.

11.46 Counsel Assisting's suggested finding F42(e):

F42 [The two witness rule]:

- e) needs to be revisited by the Jehovah's Witness organisation with a view to abandoning it or at least reformulating it to ensure that safe decisions as to someone being guilty of child sexual abuse can be made more easily.

Such a finding is beyond the Commission's Terms of Reference for the reasons given in paragraphs 9.223 to 9.227.

11.47 Counsel Assisting's suggested finding F43:

F43 The requirement that only elders (i.e. men) can participate in the making of decisions in the investigation process on whether or not someone has committed child sexual abuse:

- a) is a fundamental flaw in that process which weakens the decisions by excluding women, and
- b) needs to be revisited by the Jehovah's Witness organisation to ensure a meaningful role for women

Such a finding is beyond the Commission's Terms of Reference, as explained in paragraphs 9.228 to 9.232.

Response to suggested findings on the judicial committee process

11.48 Counsel Assisting's suggested finding F44:

F44 Under the current documented judicial committee process, if the evidence of the complainant is to be taken into account then she must give evidence in person unless she lives a great distance away or for some other reason is not able to be physically present.

The suggested finding is simply not true: see the reasons provided in paragraphs 9.234 to 9.236.

11.49 Counsel Assisting's suggested finding F45:

F45 The stated willingness of the Jehovah's Witness organisation in Australia to have the evidence of a complainant of child sexual abuse give evidence remotely or by way of a written statement should be formalised and documented so that those running judicial committee processes and those affected by them are properly advised of the position.

For the reasons outlined in paragraphs 9.237 to 9.242, this suggested finding should be amended to read:

Jehovah's Witnesses should continue to make clear their long-standing policy that, where desired, a victim may provide evidence remotely or by way of a written statement to elders investigating and to those subsequently handling an allegation of child abuse.

11.50 Counsel Assisting's suggested finding F46:

F46 Under the current documented judicial committee process, a complainant of child sexual abuse is prohibited from having someone present with her in the judicial committee process to offer support.

The suggested finding is untrue: see the reasons set out in paragraphs 9.243 to 9.247.

11.51 Counsel Assisting's suggested finding F47:

F47 The stated willingness of the Jehovah's Witness organisation in Australia to allow a complainant of child sexual abuse to be accompanied by a support person of her choosing should be formalised and documented so that those running judicial committee processes and those affected by them are properly advised of the position.

The suggested finding contains incorrect assertions as set out in paragraphs 9.248 and 9.249 and ought to be disregarded.

11.52 Counsel Assisting's suggested finding F48:

F48 The current documented process for responding to allegations of child sexual abuse within the Jehovah's Witness organisation is focussed largely on the rights and comfort of the accused, with little regard to the requirements of a victim of abuse.

The suggested finding is simply not true: see the reasons given in paragraphs 9.250 to 9.257.

Response to suggested findings on the management of risk

11.53 Counsel Assisting's suggested finding F49:

F49 The failure of the Jehovah's Witness organisation to take into account the risk of re-offending when considering whether an offender is repentant, and consequently in deciding whether to merely reprove rather than to disfellowship, or whether to re-admit someone who has previously been disfellowshipped, does not adequately take account of considerations of child safety and should be revisited.

This suggested finding ought to be disregarded given the reasons in paragraphs 9.259 to 9.267.

Response to suggested findings on sanctions - reproof

11.54 Counsel Assisting's suggested finding F50:

F50 Since it is the policy or practice of the Jehovah's Witness organisation not to report allegations of child sexual abuse to the police (other than if required by law to do so), if a known abuser is found to be repentant and for that reason merely reproofed rather than disfellowshipped he remains in the congregation and a risk to children in the congregation.

There is no policy or practice and for the reasons outlined in paragraphs 9.269 to 9.280, this suggested finding should not be made.

11.55 Counsel Assisting's suggested finding F51:

F51 The system of not announcing the reasons for reproof means that members of the congregation are not warned about the risk that such a wrongdoer poses to children in the congregation.

For the reasons provided in paragraphs 9.281 to 9.291, this suggested finding should not be made.

11.56 Counsel Assisting's suggested finding F52:

F52 The sanction of reproof therefore does nothing to protect children in the congregation and in the broader community.

No evidence was placed before the Commission that could justify such a finding so for the reasons given in paragraphs 9.292 to 9.293, this suggested finding ought to be disregarded.

Response to suggested findings on sanctions - disfellowshipping

11.57 Counsel Assisting's suggested finding F53:

F53 Since it is the policy or practice of the Jehovah's Witness organisation not to report allegations of child sexual abuse to the police (other than if required by law to do so), if a known abuser is disfellowshipped he remains in the community and a risk to children in the community.

There is no such policy or practice and for the reasons provided in paragraphs 9.295 to 9.300, this suggested finding should not be made.

11.58 Counsel Assisting's suggested finding F54:

F54 The sanction of disfellowshipping does nothing to protect children in the community.

No evidence was provided to the Commission which could support such a finding and based on the reasons in paragraphs 9.301 to 9.304, this suggested finding should not be made.

Response to suggested findings on reporting

11.59 Counsel Assisting's suggested finding F55:

F55 Prior to this case study, the Jehovah's Witness organisation in Australia did not advise congregational elders of their obligations to report the commission of criminal offences to the police under s 316 of the Crimes Act 1900 (NSW).

This suggested finding ought to be disregarded as explained in paragraphs 9.306 to 9.310.

11.60 Counsel Assisting's suggested finding F56:

F56 This report is referred to the Law Society of New South Wales in relation to the conduct of Mr Toole in having failed to advise congregational elders of their obligations to report their knowledge of the commission of certain criminal offences to the police.

The report should not be referred to the Law Society of New South Wales for the reasons outlined in paragraph 9.311 and 10.6.

Response to suggested findings on the Jehovah's Witnesses organisation's policy on reporting

11.61 Counsel Assisting's suggested finding F57:

F57 It is the policy and practice of the Jehovah's Witness organisation in Australia to not report allegations of child sexual abuse to the police or other authorities unless required by law to do so.

There is no such policy and practice of Jehovah's Witnesses: see the reasons given in paragraphs 9.313 to 9.318.

11.62 Counsel Assisting's suggested finding F58:

F58 The basis for this policy is said to be respect for the 'right' of the victim to herself decide whether to make a complaint to the authorities.

This suggested finding should be amended to read as follows, based on the reasons in paragraphs 9.319 to 9.324:

Jehovah's Witnesses respect the right of a survivor or victim of abuse (or their parent or guardian) to decide for him or herself whether or not to report the abuse to the authorities.

11.63 Counsel Assisting's suggested finding F59:

F59 That basis has no justification where the victim is still a minor at the time that the abuse comes to the attention of the organisation, or where there are others who may still be at risk at the hands of the alleged abuser.

For the reasons set out in paragraphs 9.325 to 9.327, this suggested finding ought to be disregarded since it does not relate to the policies and practices of Jehovah's Witnesses.

11.64 Counsel Assisting's suggested finding F60:

F60 Since the organisation cannot remove an alleged abuser from the family or take other positive steps to safeguard children in the family from continuing risk, the organisation should have a policy to report all allegations of child sexual abuse to the authorities unless an adult victim specifically requests that a report not be made and there is no appreciable risk of children being abused.

For the reasons provided in paragraphs 9.328 to 9.333, this suggested finding should be amended to read:

The Scripturally-based beliefs and practices of Jehovah's Witnesses require that they obey the laws pertaining to child abuse. In jurisdictions that require it, they obey laws requiring the reporting of such allegations to the authorities. Elders of Jehovah's Witnesses will obey any newly enacted laws requiring ministers of religion to report allegations of child abuse.

Response to suggested findings on the impact of the Jehovah's Witnesses organisation processes on criminal processes

11.65 Counsel Assisting's suggested finding F61:

F61 The internal processes of the Jehovah's Witness organisation for handling allegations of child sexual abuse cause significant delay in a complaint coming, if ever, before authorities.

This suggested finding cannot be made given the statistical evidence presented to the Commission, as explained in paragraphs 9.336 to 9.339.

11.66 Counsel Assisting's suggested finding F62:

F62 Admissions made by an accused during the investigative and/or judicial committee process administered by the Jehovah's Witness organisation may not be admissible in criminal proceedings because of the circumstances in which they are made, including that incentives such as reduction in penalty are offered if an admission is made.

This suggested finding should not be made for the reasons outlined in paragraphs 9.340 to 9.344.

11.67 Counsel Assisting's suggested finding F63:

F63 The number of people to whom a survivor of child sexual abuse is required to divulge the detail of her complaint exacerbates the trauma already suffered by a survivor of such abuse.

For the reasons provided in paragraphs 9.345 to 9.348, this suggested finding should not be made.

11.68 Counsel Assisting's suggested finding F64:

F64 There is significant risk of contamination of a survivor's evidence as a result of the number of times and circumstances in which a survivor is required to divulge the detail of her complaint before her abuse is, if ever, reported to the authorities.

This suggested finding should be removed and replaced as follows given the reasons outlined in paragraphs 9.349 to 9.351:

There may be a risk of contamination of a survivor's evidence as a result of the number of times and circumstances in which a survivor is required to

divulge the detail of her complaint before her abuse is, if ever, reported to the authorities.

Response to suggested findings on Mr Jackson’s stated empathy on survivors

11.69 Counsel Assisting’s suggested finding F65:

F65 Mr Jackson’s failure to have read or be familiar with the testimony of the survivor witnesses yet to have read or otherwise familiarised himself with the testimony of Jehovah’s Witness witnesses belies his stated empathy for the survivors and his stated recognition of the importance of their perspectives.

This suggested finding is completely untrue and should be amended to reflect what Mr Geoffrey Jackson himself explained, as elaborated on in paragraphs 9.353 and 10.6:

I wasn’t aware of the fact that I would be called before the Commission ... I haven’t lived in Australia for 36 years, and I haven’t certainly had a chance to look through the files ... The reason I came here was to care for my ailing father, and that has taken a lot of my time.

Response to suggested findings on the system of prevention of child sexual abuse—WWCC

11.70 Counsel Assisting’s suggested finding F66:

F66 The documented practice of the Jehovah’s Witness organisation of not reporting child sexual abuse to the authorities undermines the efficacy of the working with children check system, a system to which the organisation says it subscribes and with which it says it complies.

For the reasons given in paragraph 9.355, this suggested finding is too broadly stated and should not be made in the terms expressed.

Response to suggested findings on the system of prevention of child sexual abuse—risk of reoffending

11.71 Counsel Assisting’s suggested finding F67:

F67 The practices and procedures of the Jehovah’s Witness organisation for the prevention of child sexual abuse, and in particular for the management of the risk of an abuser

reoffending, do not take account of the actual risk of an offender reoffending and accordingly place children in the organisation at significant risk of sexual abuse.

For the reasons in paragraphs 9.358 to 9.362, this suggested finding ought to be disregarded.

Response to suggested findings on the accessibility of procedures and policies

11.72 Counsel Assisting's suggested finding F68:

F68 The Jehovah's Witness organisation's documented procedures for reporting on and responding to allegations of child sexual abuse are deficient in that they are not documented in such a way as to be easily accessible in one document and available to all interested or affected parties and some matters that are stated to be the policies or practices of the organisation are not recorded at all.

This suggested finding should not be made for the reasons outlined in paragraphs 9.364 to 9.365.

Response to suggested findings on shunning

11.73 Counsel Assisting's suggested finding F69:

F69 Members of the Jehovah's Witness organisation who no longer want to be subject to the organisation's rules and discipline have no alternative than to leave the organisation which requires that they disassociate from it.

For the reasons provided in paragraphs 9.367 to 9.369, the finding should read:

A Jehovah's Witness who no longer wants to be subject to the organisation's rules and discipline may simply stop associating with the congregation without formally disassociating from the faith.

11.74 Counsel Assisting's suggested finding F70(a):

F70 The Jehovah's Witness organisation's policy of requiring its adherents to actively shun those who leave the organisation:

- a) makes it extremely difficult for someone to leave the organisation

This suggested finding is incorrect: see paragraphs 9.370 to 9.375 and 10.7.

11.75 Counsel Assisting's suggested finding F70(b):

F70 The Jehovah's Witness organisation's policy...:

- b) is cruel on those who leave and on their friends and family who remain behind

This is contrary to the evidence given by Mr Baker: see paragraphs 9.376 to 9.378 and 10.7.

11.76 Counsel Assisting's suggested finding F70(c):

F70 The Jehovah's Witness organisation's policy...:

- c) is particularly cruel on those who have suffered child sexual abuse in the organisation and who wish to leave because they feel that their complaints about it have not been adequately dealt with

This is unsubstantiated: see paragraphs 9.379 to 9.380 and 10.7.

11.77 Counsel Assisting's suggested finding F70(d):

F70 The Jehovah's Witness organisation's policy...:

- d) is not apparently justified by the Scriptures which are cited in support of it.

This is incorrect: see paragraphs 9.381 to 9.383 and 10.7.

11.78 Counsel Assisting's suggested finding F70(e):

F70 The Jehovah's Witness organisation's policy...:

- e) is adopted and enforced in order to prevent people from leaving the organisation and thereby to maintain its membership.

As explained in paragraphs 9.384 to 9.386 and 10.7, this suggested finding ought to be disregarded.

11.79 Counsel Assisting's suggested finding F70(f):

F70 The Jehovah's Witness organisation's policy...:

- f) is in conflict with the organisation's professed support for freedom of religious choice and the belief that Jehovah God is a compassionate God who recognises the worth and dignity of all human beings.

There is no basis for such a finding: see paragraphs 9.387 to 9.390 and 10.7.

Response to suggested findings on Dr Applewhite's expert opinions

11.80 Counsel Assisting's suggested finding F71:

F71 The opinions expressed by Dr Applewhite in paragraphs 36, 45 and 46 of her report are rejected because they are not substantiated by identifiable facts and assumptions or by reasons.

For the reasons outlined in paragraphs 9.392 to 9.397, the suggested finding should read:

The opinions expressed by Dr Applewhite in paragraphs 36, 45 and 46 of her report are accepted.

11.81 Counsel Assisting's suggested finding F72:

F72 Dr Applewhite's report contains a number of factual errors with regard to her documenting of the relevant practices and procedures of the Jehovah's Witnesses.

The suggested finding should read as follows, based on the reasons given in paragraphs 9.398 to 9.399:

Dr Applewhite's report contains a small number of inconsequential factual errors with regard to her documenting of the relevant practices and procedures of Jehovah's Witnesses.

11.82 Counsel Assisting's suggested finding F73:

F73 Dr Applewhite's report is therefore rejected.

For the reasons provided in paragraphs 9.400 to 9.401, the finding should read:

Dr Applewhite's report is therefore accepted.

Response to suggested findings on Dr Applewhite's oral evidence

11.83 Counsel Assisting's suggested finding F74:

F74 Dr Applewhite accepted the following components to current standards of best practice in relation to raising and responding to allegations of child sexual abuse within religious organisations, namely that religious organisations should have:

- a) a process for reporting allegations of child sexual abuse which is survivor focussed and designed to ensure that the child or adult survivor feels able to come forward and be comfortable in reporting the allegation
- b) a process for reporting allegations of child sexual abuse that does not require a survivor to confront the alleged perpetrator of their abuse or be in the same room as the alleged perpetrator without support
- c) a system for preventing perpetrators of child sexual abuse from being put back in a position of trust with children
- d) an ability to take child-safe action in order to remove children from imminent danger, or a relationship with other authorities that have that ability, and
- e) strong and cooperative relationships with child protection authorities and with criminal justice authorities

These suggested findings should not be made since they do not relate to the policies and practices of Jehovah's Witnesses, as explained in paragraphs 9.403 to 9.410.

11.84 Counsel Assisting's suggested finding F75:

F75 The opinion expressed by Dr Applewhite in oral evidence that requiring a survivor of child sexual abuse to present her testimony before elders and her abuser would not meet the relevant standard is accepted.

For the reasons outlined in paragraphs 9.411 to 9.413, this suggested finding should not be made since it has no direct relevance to the current policies and practices of Jehovah's Witnesses.

11.85 Counsel Assisting's suggested finding F76:

F76 The opinion expressed by Dr Applewhite that requiring a survivor of child sexual abuse to present her allegation and testimony to three men without the presence of a support person would not meet the relevant standard is accepted.

This suggested finding ought to be disregarded since it has no direct relevance to the current policies and practices of Jehovah's Witnesses as explained in paragraphs 9.414 to 9.415.

11.86 Counsel Assisting's suggested finding F77:

F77 The Jehovah's Witness organisation's current policies and procedures for raising and responding to complaints or allegations of child sexual abuse do not meet all current standards of best practice.

For the reasons outlined in paragraphs 9.416 to 9.417, this suggested finding cannot be made.

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