



20 July 2015

Mr Tony Guigni
Solicitor Assisting
Royal Commission into Institutional Responses
to Child Sexual Abuse
GPO Box 5283
SYDNEY NSW 2001

BY EMAIL

Dear Mr Guigni

**Re: Royal Commission into Institutional Responses to Child Sexual Abuse (“Commission”) –
Analysis Summary – Comments and Verification**

Thank you for your letter dated 16 July 2015, attaching your Analysis Summary of the Case Files.

In your letter, you asked my client to consider whether the Analysis Summary you attached “is inaccurate or incomplete” and asked my client to provide you with its assessment by 9.00 am today. As you will no doubt appreciate, although you provided us with the electronic database, the task that you asked my client to undertake was complex and required considerable work over the weekend.

While my client’s response is set out under the heading “Verification of Analysis Summary” below, we make the following preliminary comments as to how Counsel Assisting intends to use the data.

Preliminary Comments

From paragraph 3 of your letter, it appears that the purpose of the exercise is to allow Counsel Assisting to “put some of the figures recorded in the Analysis Summary to witnesses from [our] client”. It is not clear from your letter which figures you wish to use and for what purpose. Your letter is silent as to these aspects.

It will, however, greatly assist my client’s witnesses’ ability to answer such questions if you could indicate which of the 29 areas referred to in the Analysis Summary (“**Analysis**”) will be the subject of questioning. We say this for the following two reasons.

First, if the purpose is to assist the Commission in its deliberations regarding Case Study 29, then that assistance will be enhanced if proper preparation is able to be given to the questions in order to ensure that considered, fact-based answers are provided. Otherwise, there is every chance my client’s witnesses will be taken by surprise with the likely result that incomplete answers will be given.

The second, and more significant issue, is that my client is concerned that part of the Analysis steps outside the Terms of Reference which, of course, is into “institutional responses to child sexual abuse”.

Familial Cases

It is apparent, for instance, from paragraph 3 of your Analysis, that the summary deals also with familial child abuse. It would appear to us that, on any view, the 564 cases falling into this category are matters unrelated to my client, in the sense that they are not related to the “institution” of my client’s faith.

Further, this fact possibly distorts the analysis and presents an incomplete picture. For example, in relation to paragraph 2, no attempt is made to distinguish between the familial and non-familial cases (and thus possibly involving the Jehovah’s Witnesses as a faith) in the 270 New South Wales cases set out or in the 306 Queensland cases etc. The same point may be made in relation to each of the paragraphs. Even with the paragraphs that deal specifically with positions held within my client’s faith, the distinction is not drawn: for instance, paragraph 6 states “135 alleged perpetrators were elders or ministerial servants”. Yet, it is entirely silent as to whether the alleged abuse was of a family member.

As is apparent from the Case Files, my client has taken complaints of child abuse very seriously for a number of decades (even prior to the requirements for mandatory reporting) and has kept careful records of such cases including familial abuse where the alleged abuser was a Jehovah’s Witness. To elaborate on this point: as you will have seen from the extensive material provided by my client that forms the basis of your Analysis, my client’s definition of abuse is very wide (and includes such behaviour as “sexting”). Moreover, every allegation of abuse is investigated.

As you will appreciate, however, and as indicated above, intra-family abuse has nothing to do with a person’s religion and everything to do with the family. All Jehovah’s Witnesses are free and, indeed, encouraged to report to the elders any child sexual abuse. The elders are then obliged to report matters to the Branch Office and, where required under mandatory reporting legislation, to the secular authorities. This includes familial abuse cases.

My client is concerned that unless the factors referred to above are incorporated into the Analysis, an incomplete picture will be provided to the Commission.

Verification of Analysis Summary

As indicated above, it has not been possible for my client to provide comprehensive assurances as to the accuracy or completeness of the Analysis in the time stipulated for such a response. As a result, it has concentrated on those areas it assumes are of most importance to the Commission, namely the non-familial cases and allegations against those who were elders and ministerial servants at the time of the abuse. It has therefore concentrated on the data summarised in paragraphs 6 - 7 and 25 - 29 of your letter.

My client is happy to provide further analysis but we will need further time to do so, if requested. In the meantime, my client does wish to make the following comments using your paragraph numbering:

1. *Paragraph 1* – You have determined that, since 1950, Watchtower Australia has recorded in the Case Files allegations, reports or complaints of child sexual abuse against 1006 members of Jehovah’s Witnesses in Australia (“alleged perpetrators”). It is important to note that the total

number of case files include details of allegations received over the past 65 years, whether or not they could be established.

For decades, as you are aware, my client has retained all records where it has come to my client's attention that a person may have at some time in their past had an allegation of child sexual abuse levied against them, even where that allegation had no connection with the activities of the institution.

2. *Paragraphs 2-5* – Given the limited time within which to respond to your letter, my client is unable to provide any assurances as to the accuracy or completeness of information contained in paragraphs 2-5.
3. *Paragraph 6* – In the time my client has been able to consider your Analysis, it has undertaken a comprehensive review of all of the 135 Case Files that you identify in your electronic spreadsheet under the heading '*Role in church at time of first abuse*' (Column G) as being elders or ministerial servants at the time of the first alleged incident of abuse.

As a result of that review, my client has identified the following alleged perpetrators who were incorrectly classified as to their role in the congregation at the time of the first alleged incident of abuse. We list those records below in Table 1 for your reference:

Table 1

Corrections required to 'Role of Alleged Perpetrator' (Column G)					
#	Name	Role at time of first abuse	#	Name	Role at time of first abuse
7	REDACTED	Parishioner	467	REDACTED	Elder
82		Pioneer	468		Not a JW member
91		Parishioner	486		Not a JW member
115		Ministerial Servant	540		Parishioner
121		Unclear	608		Unbaptised
141		Parishioner	615		Parishioner
177		Elder	653		Parishioner
197		Elder	669		Unclear
206		Parishioner	688		Parishioner
208		Parishioner	694		Parishioner
216		Not a JW member	771		Unclear
222		Unclear	799		Elder
232		Not a JW member	821		Parishioner
312		Unclear	867		Parishioner
345		Parishioner	868		Elder
378		Parishioner	877		Parishioner
415		Parishioner	927		Unclear
430		Ministerial Servant	929		Parishioner
452		Unclear	974		Ministerial Servant
464		Parishioner			

This review identified 31 persons who were not elders or ministerial servants at the time of the alleged abuse and clarified the role of a further 8 alleged perpetrators. As a result of these changes, my client was able to determine that an adjusted number of 104 alleged perpetrators held the position of either elder or ministerial servant at the time an allegation was made.

After adjusting the spreadsheet for accuracy in light of the above changes, and filtering the data at Columns G & H in order to differentiate the 104 alleged perpetrators between familial, elders and ministerial servants at the time of alleged abuse, my client notes the following further information:

Table 2

Alleged Incidents of Abuse (Elders and Ministerial Servants) (1950-2015)		
Status	Comment (Inc Case Analysis #)	#
Familial		54
Elders	#163, #197, #239, #321, #385, #395, #505, #575, #580, #606, #673, #752, #868, #889, #928, #934, #938, #942	18
Ministerial Servants	#9, #38, #89, #93, #98, #115, #129, #149, #158, #159, #192, #202, #308, #364, #410, #454, #477, #479, #494, #524, #534, #556, #602, #623, #754, #789, #832, #836, #969, #971, #974, #1004	32
Total		104

When applying a further filter using Column K (headed 'Year of first abuse'), my client was able to identify the following cases relevant to a period covering the last 10 years. This information, along with supplementary information is summarised below:

Table 3

Alleged Incidents of Abuse (Elders and Ministerial Servants) (2005-2015)				
	Number of Alleged Incidents over past 10 years	Familial	Number of Alleged Perpetrators handled by secular authorities	Number of those Serving as an Elder or Ministerial Servant over the past 10 years
Elders	2 (#239, #934)	0	2	8,507
Ministerial Servants	3 (#98, #202, #1004)	1 (#834)	3	7,438

4. *Paragraph 7* – From the adjusted case data analysis my client has also been able to ascertain the following from filtering the electronic spreadsheet at Columns G & H:

Table 4

Alleged Perpetrators 'Role in Church at time of first abuse' (1950-2015)		
Status	Comment	#
Not Jehovah's Witness, Unbaptised or Status Unclear at the time of alleged abuse	No discernible link to the institution	199
Familial	Non Institutional	470
Parishioners	Only connection with the institution is that they were members of the same faith	287
Elders		18
Ministerial Servants		32
Total		1006

Therefore, over a period of 65 years, the data shows that only 50 alleged perpetrators fall within the Commission's Terms of Reference.

5. *Paragraphs 8-24* – Unfortunately, given the time available, my client is accordingly unable to provide any assurances as to the accuracy or completeness of information contained in paragraphs 8-24.

My client wishes to comment, however, on paragraphs 20 and 22, as follows:

- (a) As will be clear from your Analysis, where an alleged perpetrator does not fully disclose the nature or extent of their abuse during the original judicial hearing, and subsequent to that hearing further information is uncovered,¹ the alleged perpetrator will again be dealt with judicially, either for the same instance or for an additional allegation of child sexual abuse that may pre-date the event previously dealt with.
- (b) My client was unable to determine whether some of the instances mentioned in paragraphs 20 or 22 fall into this category.

It may be inaccurate to present these numbers as a reference of further sexual abuse by an alleged perpetrator.

6. My client also wishes to make a correction to a comment made in Column Y of the supplied electronic spreadsheet (at #477 REDACTED - "reproved and continued to abuse"). This is

¹ This further information could include where another victim of historical child abuse makes an allegation or the extent of the abuse was not originally disclosed to the judicial committee.

incorrect according to my client's records. The Case File indicates that any dealings with the alleged perpetrator after he was reproved were for allegations of prior historical abuse.

7. *Paragraph 25 – Appointment as Elder or Ministerial Servant* – My client notes from your Analysis that you have identified 29 alleged perpetrators who were appointed as elders or ministerial servants after having been the subject of an allegation of child sexual abuse. After reviewing each of the relevant Case Files, my client is able to provide the following additional information:

Table 5

Analysis of 29 Alleged Perpetrators - later appointed as an Elder or Ministerial Servant (1950-2015)		
Status	Comment (Inc Case Analysis #)	#
No Longer Serving as an Elder or Ministerial Servant	(#12, #28, #94, #166, #177, #371, #509, #548, #550, #609, #720, #771, #781, #886)	14
Never Served as Elder or Ministerial Servant in Australia	Incorrect data in Case File Analysis (#528, #854)	2
Currently Serving as Elder	An average 32 years has elapsed since the last alleged incident of abuse (#239, #339, #467, #608)	4
Currently Serving as a Ministerial Servant	An average 32 years has elapsed since the last alleged incident of abuse (#73, #393, #531, #715)	5
No Longer a Jehovah's Witness	Since 2005 (#710)	1
Appointed in Error	Arrived from overseas congregation, served for a period of 12 months. Immediately deleted once notification of his past was received. No allegation of abuse received in the 15 years he has been in Australia. (#926)	1
Deceased	(#580, #938)	2
Total		29
Of the 29 listed as appointed, there has been no report of any further allegations of child sexual abuse with the exception of one person (#938) who was subsequently re-removed as an elder and is now deceased.		

8. *Paragraph 26 – Deletion as Elder or Ministerial Servant* - In applying the relevant filters on Columns G, H and R in the electronic format you supplied, my client is able to make the following observations:

Table 6

Deletions of Elders and Ministerial Servants for an Allegation of Child Sexual Abuse (1950-2015)		
Status	Comment	#
Familial	No discernible link to the institution	61
Not a Jehovah's Witness, Unbaptised or Parishioner at time of Alleged Abuse	Deletions were made upon hearing of an allegation of child sexual abuse committed prior to the individual serving as an elder or ministerial servant (i.e. report of historical abuse)	27
Elders at time of Alleged Abuse		13
Ministerial Servants at time of Alleged Abuse		27
Total		128

9. *Paragraph 27 – Reappointment* - My client is able to provide the following additional information that explains the context of the 17 alleged perpetrators you identify who were later reappointed as either an elder or ministerial servant:

Table 7

Analysis of 17 Alleged Perpetrators who were Deleted and later reappointed as an Elder or Ministerial Servant (1950-2015)		
Status	Comment (Inc Case Analysis #)	#
No Longer Serving as an Elder or Ministerial Servant	(#28, #94, #166, #177, #371, #550, #609, #720, #771)	9
Never Served as Elder or Ministerial Servant in Australia	Incorrect data in Case File Analysis (#854)	1
Currently Serving as Elder	An average 34 years has elapsed since the last alleged incident of abuse (#239, #339, #608)	3
Currently Serving as a Ministerial Servant	An average 52 years has elapsed since the last alleged incident of abuse. (#531)	1
Appointed in Error	Arrived from overseas congregation, served for a period of 12 months. Immediately deleted once notification of his past was received. No allegation of abuse received in the 15 years he has been in Australia. (#926)	1
Deceased	(#580, #938)	2
Total		17
Of the 17 listed as reappointed, there has been no report of any further allegations of child sexual abuse with the exception of one person (#938) who was subsequently re-removed as an elder and is now deceased.		

10. *Paragraph 28 – Convictions* - My client is unable to provide any assurances as to the accuracy or completeness of the number (161) that you indicate have been convicted of a child sexual abuse offence. Nevertheless, 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.
11. *Paragraph 29 – Mandatory Reporting* - My client makes the following clarifications:
- (a) In many instances when elders become aware of an allegation of child abuse, the police or other secular authorities are already involved. This would include many of the 383 instances where the Case Files indicate that the police or other secular authorities have become involved in matters involving allegations of child sexual abuse.
 - (b) Where elders are not subject to mandatory reporting obligations, they are directed to support the victim and/or the parent/guardian's right to decide whether or not to report the matter to the police or secular authorities.
 - (c) My client understands that from 1984 until December 2006, the Northern Territory was the only jurisdiction that imposed a mandatory reporting obligation that applied to

ministers of religion. The duty to report sexual abuse in the Northern Territory was limited to cases where a person not only believed on reasonable grounds that a child had been sexually abused, but also that the child's parents, guardians or custodians are unable or unwilling to protect the child.

- (d) In South Australia, mandatory reporting was extended to include ministers of religion (as well as employees and volunteers in organisations formed for religious or spiritual purposes) in December 2006. In Victoria, mandatory reporting obligation was extended to all adults, including ministers of religions in June 2014.
- (e) It has also been my client's understanding that in both the Northern Territory and South Australia, mandatory reporting obligations only apply where the victim is under 18 years of age at the time elders hear the allegation or learn of the sexual abuse. When the victim becomes an adult, any mandatory reporting obligation ceases and it is up to the adult to decide whether or not to report any sexual abuse he or she suffered as a child.
- (f) In comparing Columns K and L in the Case File data that you provided in electronic format, namely the elapsed time between the alleged incident of child sexual abuse and the date at which it was reported, it would indicate that a large percentage of the reports are received by local congregation elders when victims are adults.
- (g) The mandatory reporting legislation recently extended in Victoria specifies that the obligation to report does not apply if the victim of child sexual abuse was over 16 years of age on 3 June 2014 and he or she requests that the offence not be reported.
- (h) In the last six months in South Australia, elders have been directed to report three separate instances of alleged child sexual abuse (two of which concerned sexting) to the secular authorities using the Child Abuse Report line.
- (i) In Victoria, the elders were directed to report a matter to the police involving a sexual offence committed against a 15 year old. Additionally, last year in Victoria, the elders were directed to report a matter involving child sexual abuse unless they could satisfy themselves that the matter had already been reported to the police.
[WAT.0001.002.6356 - WAT.0001.002.6358]
- (j) In checking the Case Files in preparation for the upcoming Public Hearing, my client has identified three cases which it is presently reviewing to determine whether reporting should have occurred at the relevant time [#539 - WAT.0001.002.3578 - WAT.0001.002.3579; #549 - WAT.0001.002.6026; #908 - WAT.0001.002.6189 - WAT.0001.002.6191].
- (k) With regard to the [REDACTED] case (which also involved sexting [WAT.0001.002.6189 - WAT.0001.002.6191]), it appears likely that a misunderstanding may have occurred when the elders in Victoria, where the accused resided, contacted the Legal Department about the matter. In 2012, ministers of religion did not have a mandatory reporting obligation in Victoria and the advice provided about their mandatory reporting obligations likely related to the law in that State even though the victim was in South Australia.

- (l) Regarding each of these matters, my client is taking advice from Senior Counsel to determine the obligation that the elders presently have to report the matters given that the victims are now adults. If, unfortunately, there was an obligation to report the matter at the time, this was an omission on my client's part for which it accepts full responsibility.

Please let me know if you require any further information.

Yours sincerely
Milton Bray & Associates

Milton G. Bray

Milton Bray
email: milton.bray@mbassociates.com.au