

Statement

Name VINCENT JOSEPH TOOLE
Address 12-14 Zouch Road
Denham Court NSW 2565
Occupation Solicitor
Date 10 July 2015

1. This statement made by me accurately sets out the evidence that I am prepared to give to the Royal Commission into Institutional Responses to Child Sexual Abuse. The statement is true and correct to the best of my knowledge and belief.
2. This statement is in response to a letter dated 26 June 2015 (which is attached to my statement and marked as Annexure 1) addressed to me from the Commission, which sets out various questions in paragraphs A-H.
3. I have answered the questions raised in connection with my role in the Legal Department and matters that I am personally aware of by the reference to the questions set out in the Commission's letter. I understand that Mr Spinks will address the role of the Service Department in handling child abuse matters.

A. OVERVIEW OF MY INVOLVEMENT WITH THE JEHOVAH'S WITNESSES CHURCH

4. I was baptised as one of Jehovah's Witnesses in October 1972 in the Manly Congregation in Sydney. In 1974, I commenced serving as a regular pioneer and in 1976 I commenced serving as a special pioneer. Around 1974 or 1975, I was appointed as a ministerial servant and in 1977, I was appointed as an elder.
5. In 1977, I moved to the Wagga Wagga Congregation where I continued serving as a special pioneer until 1980 when I moved to Bairnsdale where I continued serving as a special pioneer for approximately six months.
6. Commencing in late 1980 and up until 1989, I served as a circuit overseer in various locations in Australia. I served for approximately two and a half years in Tasmania, four and a half years in Brisbane and approximately one and a half years in Melbourne.

Signature:.....

Witness:.....

-
7. In 1989, I commenced doing voluntary work at the Branch headquarters of Jehovah's Witnesses in Denham Court, Sydney, and have continued doing so up to the present. Since 1989, I have served in:
 - a. the Chester Hill Congregation,
 - b. the Illawong Congregation, and
 - c. the Randwick Congregation.
 8. In December 1993, I completed my legal studies and was admitted as a solicitor.
 9. Since then, I have assisted in doing legal work for the Watchtower Bible and Tract Society of Australia ("the Branch") on a voluntary basis in the Legal Department.
 10. Towards the end of 1995, I established my own legal practice, Vincent Toole Solicitor.
 11. Since 2010, I have cared for the oversight of the Legal Department.

B. FUNCTIONS OF LEGAL DEPARTMENT IN RESPONDING TO ALLEGATIONS AND MANAGING THE RISK OF CHILD SEXUAL ABUSE


12. From 1989, Mr John Mouritz, the then overseer of the Legal Department, primarily handled calls from elders in relation to child sexual abuse. However, on occasions I took calls from elders if Mr Mouritz was away or not available.
13. All elders serving in congregations of Jehovah's Witnesses throughout the world have been directed to contact the Legal Department in their local Branch Office as soon as they learn of an allegation involving child abuse. The primary reason for this direction is to ensure that the elders are made aware of any reporting obligations that they may have under the law in the State where they live. The direction is clearly stated in the October 1, 2012 letter to All Bodies of Elders in Australia under para. 4 (WAT.0001.004.0066):

Some states have child-abuse reporting laws that, depending on the facts, mandate elders to report an accusation to the authorities. Thus, when elders learn of an accusation of child abuse, two elders from their congregation should immediately call the Legal Department for legal advice.

14. The letter to all bodies of elders dated August 1, 1995 contains similar direction (WAT.0001.004.0005):

When a member of the congregation is accused of child molestation, the elders should contact the Society immediately. Some states make it mandatory that elders report an accusation to the proper authorities but other states do not.

Signature: 

Witness: 

15. Where the law does not require ministers of religion to report allegations of child abuse, the Legal Department has been instructed to direct the elders to clearly explain to the victim and/or their families that they have an absolute right to report the matter to the authorities and that they should feel completely free to do so. If they decide to report the matter, the elders will fully support them.
16. As a religious organisation, Jehovah's Witnesses highly value confidentiality in line with the Scriptural admonition "*do not reveal what you were told confidentially*" (Proverbs 25:9). Therefore, it has always been the organisation's direction that elders receive any confession in a setting covered by confessional privilege, if one is available. When receiving calls concerning allegations of child sexual abuse, the Legal Department also highlighted this direction. However, the letter from world headquarters dated January 21, 1999, to Watch Tower Society Australia, page 1, para. 2 clarified the position in connection with information received in this way obtained by elders (WAT.0001.004.0020):

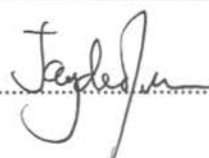
Where the law does not obligate elders to report cases that come to their attention, there is no need for them to do so, but if the matter becomes known to the authorities and they are required to disclose information they have in their possession, they will do so unless they can claim ecclesiastical privilege.

17. On this basis, in relation to child abuse cases, since receipt of this letter, elders, with the assistance of the Legal Department, have disclosed information being sought when the authorities have compelled them to do so.
18. Where the elders advise that the police or other authorities are already involved in the matter they are calling about, the elders are instructed to ensure that their actions do not interfere in any way with the police investigation. When this occurs, the elders are directed not to make inquiries or interview anyone concerning the allegations until the matter has been fully handled by the relevant authorities.
19. After the elders have been given the above advice from the Legal Department, they are then transferred to the Service Department where they are given whatever assistance and direction is needed to ensure that the matter is handled in harmony with the scriptural directions and procedures provided for handling allegations and instances of child sexual abuse.
20. On occasions when the police or other authorities are involved and they have sought documents from elders in connection with a matter that has been reported, the Legal Department has assisted the elders in obtaining and producing the documents sought.
21. The Legal Department is not involved in managing the risk of child sexual abuse within the Jehovah's Witnesses Church.

Signature:.....



Witness:.....



C. PERSONS SERVING IN THE LEGAL DEPARTMENT

22. Those serving in the Legal Department are:

- Vincent Toole, Solicitor;
- Benjamin Hamnett, Accountant;
- Rachel van Witsen, Solicitor; and
- Three support staff.

D. THE ROLE OF THE LEGAL DEPARTMENT IN HANDLING CHILD SEXUAL ABUSE ALLEGATIONS

23. The Legal Department is not involved in the spiritual aspects of the religion of Jehovah's Witnesses. Specifically, the Legal Department is not involved in handling of these matters:

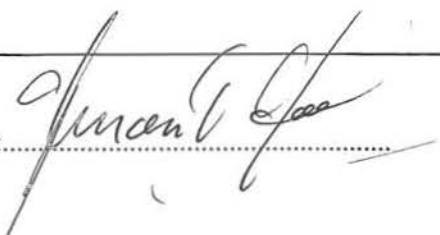
- a. the consideration of prospective members of any congregation of Jehovah's Witness and their subsequent suitability for baptism;
- b. the selection and appointment of elders, ministerial servants, pioneers, special pioneers or any other position within congregations of Jehovah's Witnesses;
- c. the deletion or removal of elders, ministerial servants, pioneers, special pioneers, or any other position within congregations of Jehovah's Witnesses;
- d. the public or private reproof of members of Jehovah's Witnesses;
- e. the awarding and removal of congregational privileges to members of the congregation, including the nature of those privileges;
- f. the disfellowshipping and/or disassociation of persons who are members of Jehovah's Witnesses congregations;
- g. the reinstatement of individuals as members of any congregation of Jehovah's Witnesses.

E. THE ROLE OF THE LEGAL DEPARTMENT IN CASE OF CHILD SEXUAL ABUSE OF BCH

24. As far as I am aware, and based on my review of the file, the Legal Department had no involvement in the case of child sexual abuse by BCH that was handled in 1989.

25. I note from the file that I provided a memorandum to the Service Department dated January 23, 2003 concerning BCH. The memorandum simply points out how untruthful he was being concerning his molestation of his daughter that he had previously admitted to before the appeal committee in 1989.

Signature:



Witness:



F. THE ROLE OF THE LEGAL DEPARTMENT AND VINCENT TOOLE SOLICITORS IN INVESTIGATION AND CRIMINAL PROCEEDINGS OF BCH

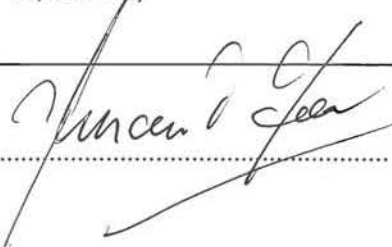
26. The Legal Department was not involved in the investigation of, and subsequent criminal proceedings against, BCH commencing in 2001.
27. In the criminal proceedings against BCH commencing around 2001, Vincent Toole solicitor was involved in my capacity as an independent solicitor as follows:
- a. Vincent Toole solicitor received instructions from the six elders involved with the judicial and appeal committees who disfellowshipped BCH in 1989, namely, Ronald de Rooy, Dino Ali, Kevin Bowditch, James Bennett, Donald Wilson and Joseph Miraziz, to accept service on their behalf and to assist them with the preparation of their statements for the police and arranging for the production of subpoenaed documents;
 - b. Vincent Toole solicitor acted for the Branch by accepting service on its behalf and arranging for the production of subpoenaed documents; and
 - c. Vincent Toole solicitor also acted for the elders in the Beenleigh Congregation of Jehovah's Witnesses by accepting service on their behalf and arranging for the production of subpoenaed documents.
28. The Branch, the Beenleigh Congregation and the elders involved willing cooperated with the police in this criminal proceeding based on the direction provided in the letter from world headquarters dated January 21, 1999 to Watch Tower Society Australia, page 1, para. 2 (WAT.0001.004.0020):

Where the law does not obligate elders to report cases that come to their attention, there is no need for them to do so, but if the matter becomes known to the authorities and they are required to disclose information they have in their possession, they will do so unless they can claim ecclesiastical privilege.

G. MANDATORY REPORTING OBLIGATIONS AROUND AUSTRALIA AND POLICE CHECKS

29. All Australian States and Territories have enacted legislation imposing varying mandatory reporting obligations. South Australia, Victoria and the Northern Territory, impose the following specific obligations:
- a. In South Australia, a number of nominated persons in various professions, including *ministers of religion* as well as the *employees and volunteers in organisations formed for religious or spiritual purposes*, are required to report if he or she suspects on reasonable grounds that a child (under 18) *has been or is being abused* provided that the suspicion is formed in the course of the person's work or in carrying out their official duties with the exception of disclosures made in the confessional. (*Children's Protection Act 1993, ss. 6, 10, and 11.*)

Signature:.....

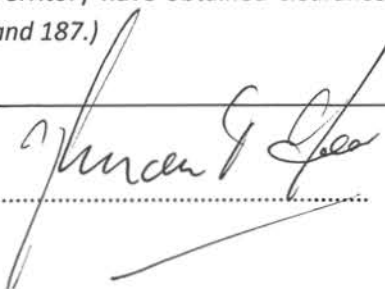


Witness:.....

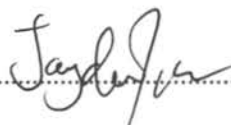


- b. In Victoria, all adults, including ministers of religion, who form a reasonable belief that a *sexual offence* has been committed by an adult against a child under 16 years of age, have an obligation to report the matter to the police. A *sexual offence* includes grooming for sexual conduct a child under the age of 16 years. (*Crimes Amendment (Grooming) Act 2014, s. 3.*) This obligation does not apply if the belief was obtained in a religious confession. Additionally, under the transitional provisions, the obligation to report applies if the victim was under 16 years of age on 3 June 2014, irrespective of when the information forming the basis of the reasonable belief is received. However, the obligation does not apply if the victim was aged 16 or over on 3 June 2014 and requests that the offence not be reported provided that the victim has the capacity to make an informed decision about the matter. (*Crimes Amendment (Protection of Children) Act 2014, s. 4.*)
- c. In the Northern Territory, all adult Territorians are required to report anyone under 18 years who they believe is involved in sexual activity and *who is, or has suffered, or is likely to suffer, harm or exploitation* (including sexual abuse of a child). Where there is a relationship of special care between the offender and a child over 16 years of age, and an adult believes the child has been or is likely to be a victim of an offence, adult Territorians are required to report. If a child is under 14, and the Territorian believes that the child has been or is likely to be a *victim of a sexual offence*, then he or she must report the matter. (*Care and Protection of Children Act, s 26.*)
30. While the other jurisdictions have enacted legislation imposing mandatory reporting obligations on nominated persons or professions, ministers of religion have not been included in the list of those who have a mandatory reporting obligation
31. In New South Wales, Northern Territory, Tasmania, Victoria and Western Australia, approximately 7,000 elders and ministerial servants currently serving in congregations of Jehovah's Witnesses have obtained police checks. In these states they are required by law to do so.
- a. In New South Wales, everyone doing child-related work must hold a Working with Children Check (WWCC) clearance. With religious organisations, work carried out by a minister, or other like religious leader or spiritual officer where children are part of the congregation is child-related work. All 3,254 elders and ministerial servants currently serving in congregations in New South Wales have WWCC clearances. (*Child Protection (Working with Children) Act 2012, s. 8; Child Protection (Working with Children) Regulation 2013, reg. 13.*)
- b. In the Northern Territory, anyone involved in child-related work, including those involved in religious organisations as volunteer ministers, must hold a current clearance notice if their work involves or may potentially involve contact (as defined) with children. All 77 elders and ministerial servants currently serving in congregations in the Northern Territory have obtained clearance notices. (*Care and Protection of Children Act, ss. 185 and 187.*)

Signature:.....

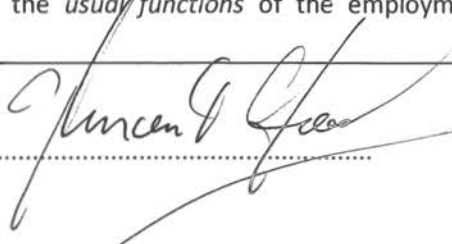


Witness:.....



- c. In Tasmania, as explained in the Tasmanian Government's *Guide for those working or volunteering in Child Related Religious Activities*, "A person must apply for working with children registration when working or volunteering in a child-related activity. Child-related religious activity means: a religious service conducted by a minister, priest, rabbi, mufti, acolyte or other religious leader or spiritual officer in a religious organisation for a congregation that consists of or includes children". All 251 elders and ministerial servants currently serving in congregations in Tasmania have obtained working with children registrations. (*Registration to Work with Vulnerable People Act 2013 (Tas)*, ss. 5, 6, 7, and 17.)
- d. In Victoria, all ministers of religion are required to hold a working with children assessment notice because they are involved in doing child-related work. If a minister of religion is the appointed leader of a local religious congregation in an organised religious institution and the congregation contains any children, work engaged in as a minister of religion is child-related work. All 2,025 elders and ministerial servants currently serving in congregations in Victoria have obtained working with children assessment notices. (*Working with Children Act 2005*, ss. 8, 9 and 35.)
- e. In Western Australia, everyone engaged in child-related work, including volunteers who are ministers of religion or persons who, in any other capacity, are carrying out the work for the purposes of a religious organisation must have a current assessment notice if the work involves or may potentially involve contact with children. All 1,258 elders and ministerial servants currently serving in congregations in Western Australia have obtained assessment notices. (*Working with Children (Criminal Record Checking) Act 2004*, ss. 4, 6, 22 and 24.)
32. Under the existing law in the Australian Capital Territory, Queensland, and South Australia, elders and ministerial servants in congregations of Jehovah's Witnesses are not required to obtain police checks for the following reasons:
- a. In the Australian Capital Territory (ACT), everyone involved in a regulated activity must have a working with vulnerable people registration. With religious organisations, an activity or service provided is a regulated activity if it is *specifically for, or mainly used by children, or for people accessing a regulated activity* mentioned in the Schedule 1, Part 1.2 of the *Working with Vulnerable People (Background Checking) Act 2011*. Jehovah's Witnesses do not conduct any activity or provide any service specifically for, or mainly used by children, nor do they provide any of the services mentioned in Schedule 1, Part 1.2. Therefore, elders and ministerial servants in congregations of Jehovah's Witnesses in the ACT are not required to obtain working with vulnerable people registration in relation to their congregation activities. (*Working with Vulnerable People (Background Checking) Act 2011*, ss. 8, 12, and Schedule 1, Part 1.23.)
- b. In Queensland, everyone involved in *regulated employment* needs to have a current positive notice. With religious organisations, employment is *regulated employment* if the *usual functions* of the employment include, or are likely to include, providing

Signature:.....



Witness:.....



services directed mainly towards children or conducting activities mainly involving children. (Commission for Children and Young People and Child Guardian Act 2000, ss. 188, Schedule 1, Part 1, ss. 5 and 10.) Jehovah's Witnesses do not conduct any activities or provide any services that are directed mainly towards children or mainly involving children. The structure and activities of congregations of Jehovah's Witnesses differ from most of the more well-known religions. For example, Jehovah's Witnesses do not sponsor or engage in any activities that separate or isolate children from their parents in any way. They do not conduct Sunday schools, camps, excursions, or any other activities involving children. Therefore, under the existing legislation, elders and ministerial servants in Queensland are not required to obtain a positive notice in relation to their congregation activities.

- c. In South Australia, persons acting in a prescribed position in an organisation must have an assessment of their relevant history (which includes criminal history) undertaken. However, organisations and individuals are exempt from this requirement if the person who undertakes, or a position only involves, work that is not *for the exclusive benefit of children and is not provided to any child on an individual basis or a position in which all work involving children is undertaken in the presence of the children's parents or guardians and in which there is ordinarily no physical contact with the children.* (Children's Protection Act 1993, ss. 8B, 8D and Children's Protection Regulations 2010, reg. 14.) Jehovah's Witnesses do not engage in any work that is for the exclusive benefit of children or that separates children from their parents or guardians. Therefore, under the existing legislation, elders and ministerial servants in congregations in South Australia are not required to obtain a relevant history assessment in connection with their congregation activities.

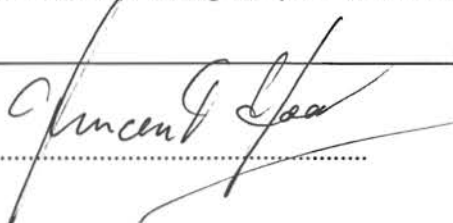
H. THE BRANCH'S DOCUMENT RETENTION POLICY

33. The Branch has had a long-standing practice of indefinitely retaining files involving child sexual abuse.
34. This practice is, by way of example set out in the direction given to all bodies of elders in a letter dated July 20, 1998, page 1, para. 2: (WAT.0002.001.0003):

Furthermore, any correspondence put in the confidential file about an individual accused of child molestation, proven or otherwise, should be marked "Do Not Destroy" and be kept indefinitely.

35. A modification to this practice occurred as a result of the Branch coming under the Commonwealth privacy legislation, in particular the *Privacy Act 1988* (Cth).
36. In 2009, the Commonwealth's Assistant Privacy Commissioner wrote to the Branch stating that, in his view, the Branch's annual turnover for the purposes of the Privacy Act should include donations received during the year, which meant that the Branch could no longer rely on the

Signature:.....



Witness:.....



"small business" exemption (before that, the Branch had operated on the understanding that it came under the "small business" exemption of the Act). The Branch accepted the decision and advised that it would do what was necessary to ensure its compliance with privacy legislation.

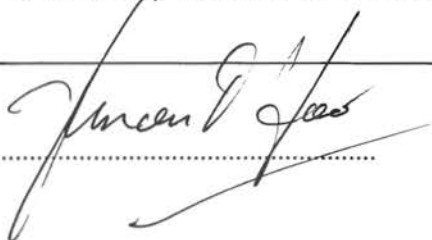
37. This meant the Branch was required to review *all* its files to ensure that it conformed to the requirements of the Act, in particular, in relation to keeping confidential, personal information in circumstances where it was unreasonable to do so.
38. As a result, the Branch introduced a policy for maintaining files and retaining documents for all files, including those relating to child sexual abuse.
39. The procedures for implementing of the policy as it pertained to serious matters and child sexual abuse matters was outlined in a letter to the bodies of elders dated February 1, 2009 which stated as follows (WAT.0002.001.0015):

***Other serious matters:** We have, however, received many inquiries concerning document retention relating to serious matters that do not result in disfellowshipping. These may concern persons judicially reprovved, allegations of serious wrongdoing that cannot be established, and matters that are investigated and handled by two elders. In these and other similar situations, a summation of no more than one page should be written and held in the confidential file. All other documents and correspondence relating to the matter should then be destroyed. Summations concerning persons judicially reprovved should be kept for a minimum period of five years. All other summations may be retained for as long as the body of elders deems necessary.*

***Child abuse matters:** In regard to all matters involving allegations or established cases of child abuse, the above-mentioned direction will apply, with one exception. All documents relating to the matter should be sent to the branch office, instead of being destroyed. This will facilitate the congregation retaining only a stamped S-77 form in matters resulting in disfellowshipping, or a single page summation for all other situations.*

40. The documents involving child sexual abuse sent to the service department at the Branch as a result of this direction were then placed in the file relating to the matter already held by the Branch.
41. The service department then carried out an assessment of the documents that were duplicative or unnecessary to keep in accordance with, and in order to comply with, the Act.
42. All material documentation was, of course, retained (and has now been provided to the Commission).
43. Further, the Branch continues to have a long-standing document replacement policy in connection with letters to congregations providing updated policy direction. When a letter is received that adjusts an existing policy in some way, the previous letter dealing with that policy is to be destroyed and replaced with the letter containing the adjusted policy. This reason for this is to avoid any confusion or mistake being made about what the current policy is in

Signature:.....



Witness:.....



connection with the matter dealt with in the letter. The Branch keep copies of these superseded documents for a period of time.

44. For example, the most recent letter setting out the importance of retaining the information relating to child abuse the 1 October 2012 letter. This letter supersedes the previous letters as set out in para. 1 (WAT.0001.004.0066). Among other matters it deals with, at para. 11 (WAT.0001.004.0068) it states:

"Information concerning an individual accused of child molestation, proved or otherwise, should be placed in the congregational confidential file and marked "Do not destroy" and kept indefinitely".

45. Those files are kept at the Branch with a summary held by the congregation.

Signed:

Date:

Witness:

Date:

Signature:

Witness: