INDEPENDENT REVIEW INTO THE MOVEMENT OF VICTOR HIGGS

Commissioned by Rev Father Brian McCoy, Provincial of the Australian Province of the Society of Jesus

20 December 2019

The contents of this document are private and confidential to Rev Fr McCoy SJ, Provincial.

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Opening summary

1 In January 2016, Victor Higgs (**Higgs**) pleaded guilty to two counts of indecent assault against two young male students at the Jesuit boys' school St Ignatius' at Athelstone, Adelaide (**Athelstone**). He was sentenced to a term of two and a half years' imprisonment. These offences occurred while Higgs was a Jesuit brother at Athelstone in the period 1968-1970.

2 Later, on 9 October 2018, a jury of 12 unanimously found Higgs guilty of 16 counts of indecent assault against six young male students at another Jesuit school, St Ignatius' at Riverview, Sydney (**Riverview**), where Higgs had commenced working at the beginning of 1971 after being transferred there from Athelstone. Higgs was sentenced to a term of 12 years' imprisonment for these offences which he continues to serve.

3 In the sentencing remarks of his Honour Judge Barrett in the District Court of South Australia, his Honour accepted that at least one of the assaults had been raised with the college at Athelstone prior to Higgs' transfer to Riverview. His Honour found:

> He [a victim] was about the same age, he had misbehaved in class. You [Higgs] made him turn up at the canteen where you told him to take his pants down and bend over. He was expecting to be caned for his misdemeanour. Instead, you touched his buttocks with a feather duster. The boy asked you what you were doing, you told him to get out. He reported the matter to his parents, who raised it with the school. …
>
> Whether as a result of that report or for some quite other reason, I am not sure, but you left the college in Adelaide and moved to a brother school in Sydney.

4 It is in this context that concerns have been raised about how the Australian Province of the Society of Jesus (the **Society**) may have handled complaints about Higgs in the past and, specifically, regarding the circumstances of Higgs' transfer from Adelaide to Sydney at the end of 1970.

5 In late 2018, Rev Fr Brian McCoy SJ, Provincial of the Society, announced the commissioning of a review (**Review**), the purpose of which is to investigate and understand the circumstances of Higgs' move from Adelaide to Sydney in 1970 and specifically whether that move was prompted by complaints that had been made

regarding Higgs behaving inappropriately towards the boys while at Athelstone. I was appointed to conduct the Review.

6 At the outset I acknowledge that the Society was at great pains to ensure the independence and integrity of the Review. Communications by or on behalf of the Society were conducted at arm's length from me at all times and through the lawyers, Maddocks, and counsel assisting the Review, Mr Nick Elias, and the lawyers acting for the Society, MinterEllison. Further, all requests made by the Review were responded to by the Society, its members and staff and all documents requested were provided by or on behalf of the Society to the Review. I further acknowledge that the Review made extensive, probative requests for documents and information from the Society. The Review was conducted as far as possible as a full judicial review. Nevertheless the Review did not have the powers to summon witnesses or subpoena documents as would a royal commission or formal board of enquiry. It was dependent upon the cooperation and responsiveness of the Society.

Introduction

7 Higgs entered the Society on 14 August 1963 and took vows on 15 August 1965.

8 After working at Loyola College in Watsonia, he was posted to Athelstone in 1968. While there, he performed various roles, including some teaching in religious education and commerce, secretarial and bookkeeping work for the school, assisting with sporting teams and the canteen, and in other aspects of school life.

9 In around November 1970, Higgs was transferred to Riverview in Sydney, where he worked from 1971 until around 1981.[1]

10 In 1982, he moved to Campion College, and thereafter held positions at various schools including Xavier College and St Aloysius' College, where he worked until 2000.

11 Towards the end of 2000, the Society received a formal complaint of alleged sexual

[1] On 30 November 1970 Higgs wrote to Fr Jordan, Rector of Riverview, informing him that he was to commence working at that school the following year (i.e. 1971).

interference by Higgs from a former student of Athelstone. The complainant suggested that he knew of other former students who might make similar complaints. The 2000 complaint is the first known formal complaint since contemporaneous complaints during 1968-70.

12 By that time, the Society had a protocol for dealing with allegations of this kind, and in accordance with that Protocol, Rev Fr Day SJ, the then Provincial, removed Higgs from St Aloysius' College and transferred him to the Provincial Residence.[2]

13 In accordance with the Protocol, David Mercer, the former Chair of the Public Service Board of South Australia, was appointed as an independent professional to interview the complainant, Daniel Gill.[3] On 1 January 2001, Mr Mercer forwarded a copy of the statement made by Mr Gill and his notes of interview to Tony Macken of A.J. Macken & Co Lawyers who it appears had been engaged by the Society in relation to the complaint. Mr Mercer found the complainant to be credible and so advised Fr Day.

14 On 29 January 2001, Fr Day flew to Adelaide to meet with Mr Gill. Fr Day kept a file note of that meeting.

15 Subsequently Fr Day met with Higgs to confront him with the complaint. Correspondence passing between Fr Day and Higgs dated 11 April 2001 records that Higgs firstly denied the accusations and then later when he saw Fr Day for the second time, acknowledged the truth of the allegations.

16 On around 28 May 2001, Higgs wrote a letter to the Rev Father General, Peter-Hans Kolvenbach SJ, seeking to leave the Society and to be released from his vows. In that letter, he refers to having discussed his decision with his spiritual father, Rev Fr Des Purcell SJ and another Jesuit whom Fr Day requested that Higgs speak to, Rev Fr Michael Ryan SJ. Higgs recorded that both had tried to dissuade him from leaving the Society, as had Fr Day.

[2] A copy of that Protocol was provided to the Review on 23 May 2019. The Protocol was established following the Melbourne Response, being the Melbourne Archdiocese response to complaints of sexual abuse.
[3] See para 29 regarding anonymisation.

17 Higgs' request to leave the Society was considered by the Province Consult (**Consult**) at a meeting on 6 April 2001. In the result, the Consult believed that there were insufficient reasons for Higgs to leave. Higgs was informed of this by letter from Fr Day dated 10 April 2001.[4]

18 In a letter written by Fr Day to Fr General Kolvenbach dated 11 April 2001, Fr Day provides the following account of the Society's response to the complaint of Mr Gill:

> At this point, Br Higgs thought that the complaint might concern his habit of then inviting young boys, collectively, to compare their sexual development. He claimed he did this because he himself as a boy had received no education in puberty. He went on to say that this stopped when the Rector of the time learned of it and told him to cease.
>
> I appointed an independent person (the former Chair of the Public Service Board of South Australia) to interview the man making the allegation. He found the complaint to be credible. The events alleged occurred in 1968. It was alleged that Br Higgs invited the boy (then in Year 8) to remove his trousers, when he then interfered with him. Another Jesuit apparently then entered the room and interrupted proceedings. […]
>
> I confronted Br Higgs, who first denied the accusation. When I informed him that would make it impossible for me to offer him support, he changed his mind and admitted the charges. […] I referred him to a former Franciscan priest, now a psychiatrist. They have had four meetings. […]
>
> The complainant [Mr Gill] then contacted me to say that he was grateful for the action that I took and for the process. He was glad that Br Higgs had been removed from contact with boys. The event had not affected his life greatly. He expressed thanks and even wished Br Higgs well for the future. […]
>
> Meanwhile Br Higgs worked well at the Provincial Residence where he was a responsible minister and helped in the Provincial Office. […] He was appreciated in the community and confidentiality about his situation was maintained, since it appeared he had simply replaced our minister.

19 Higgs responded to Fr Day's 10 April letter on 5 May 2001 and expressed some dissatisfaction with the way he had been dealt with in relation to the complaint. He also stated that he had been through 'another process' many years ago which related to the events of which he had recently been accused.

20 Higgs formally left the Society on 18 October 2001.

21 It appears that a complaint regarding Higgs was first made to police in South

[4] See the letter from Fr Day to Higgs dated 10 April 2001.

Australia in early 2012 and an investigation commenced. During the course of that investigation, statements were obtained from multiple persons who had suffered abuse by Higgs during his time at Athelstone. On 2 January 2013, Higgs was interviewed by Detective Senior Constable Orlovich and Detective Senior Constable Shibble of the New South Wales police, who were assisting with the investigation because Higgs was then residing in New South Wales.

22 Higgs was subsequently charged by the South Australian police with three counts of indecent assault, although one charge was not ultimately proceeded with. The general modus operandi of Higgs was to direct young undeveloped boys, between years seven and eight, to see him alone in a private location; an office, the school canteen, or the sports changerooms. There Higgs would direct the boy to lower his trousers. Higgs would look at and sometimes touch the boys' genitals and buttocks. Higgs' pretext was to ascertain the boys' physical development.

23 On 26 January 2016, Higgs was sentenced in the District Court of South Australia to two and a half years' imprisonment after pleading guilty to two charges of indecent assault against two boys who were students at Athelstone.

Terms of Reference

24 By terms of reference signed by the Provincial, Fr McCoy dated 8 March 2019, the Review is required to consider and report on the circumstances of the movement of the former Jesuit brother, Higgs, from Adelaide to Sydney in 1970. In so doing, the Review is asked to consider and report on whether complaints had been made about Higgs prior to this movement, and if so, whether those complaints played any role in the decision to move Higgs.

Summary of conclusions

25 In summary, I find as follows:

(a) At least three complaints were made to the Rector, Rev Fr Frank Wallace SJ, regarding Higgs' conduct at Athelstone.

(b) The substance of at least some of these complaints was conveyed to the then

Provincial, Rev Fr Francis Peter Kelly SJ, prior to Higgs' movement.

(c) The fact of these complaints was a factor in the decision to move Higgs from Athelstone to Riverview in 1970.

Material before the Independent Review

26 An exhaustive, forensic approach was adopted to investigate events that took place almost 50 years ago. Material was sought from police and court authorities in both South Australia and New South Wales. Material was also sought from the Society itself, which required a review of archives located at the colleges in Adelaide and Sydney and of the Society's central archive.

27 The Society provided various documents and other materials relating to persons who had been victims of abuse by Higgs both at Athelstone and Riverview. The Society sought to consult with survivors in relation to the provision of that information and to obtain their consent to provide this material to the Review.[5] Where that consent could not be obtained, records and other material were provided in redacted form so as not to disclose any identifying information of the survivors.[6]

28 A confidential email address was established as a means by which survivors of abuse could communicate with the Review and the Review received several emails by that means.

29 In addition, various persons from both within and outside the Society were interviewed by the Review including contemporaries of Higgs at Athelstone, some survivors, and other individuals. Each of these persons impressed me as being genuinely desirous of assisting the Review. This Report has protected the identity of former students by two means. First anonymisation by using pseudonyms. Secondly, where the Society provided documents using initials to protect a student's identity that measure has been maintained. The report has taken this approach to comply with

[5] The expression 'survivors' is used throughout this Report with respect to individuals who were offended against by Higgs.

[6] In these cases the names of survivors were substituted with two letters (e.g. 'CE', 'DF' etc) and other identifying information redacted completely.

court suppression orders and out of respect for individuals who were students and their family members.

30 The substantial time that has passed since 1970 has meant that many of the persons who would be best placed to explain the circumstances of Higgs' transfer are now deceased, or are otherwise not in a position to assist the Review. Both the Provincial at the time of Higgs' transfer from Adelaide in 1970, Fr Kelly, and the Rector and Headmaster of Athelstone, Fr Wallace, were unavailable to give evidence as they are now deceased. This was also true of each of the members of the Consult in the period 1968-70. It was also true of Rev Fr Peter Green SJ, the Socius (assistant to the Provincial) from August 1968-70. The Review was also instructed that Higgs' spiritual adviser and friend for many years Fr Purcell was suffering from Alzheimer's disease. In those circumstances, the Review did not seek to interview him.

Archive structure of information

31 Athelstone and Riverview both maintain archives and have done for many years. A central Jesuit archive is also maintained by the Society. Given the fact that the relevant events occurred 50 years ago, I took the view it was essential to search intensively the documentary records of the Society with respect to Higgs. In addition to requests for documents and the searching of files, I considered it essential to the integrity and accuracy of the Review that I be satisfied that the searches conducted were rigorous, exhaustive and responsive. I am so satisfied. I find that there is no known documentary evidence of Higgs' behaviour, complaints about that behaviour, or the related reasons for his relocation to Riverview prior to late 2000.

32 A description of the Society's archives and the steps taken to search them is set out in appendix 1 to this Report.

Documentary evidence provided to the Review

33 A record of the key documentary evidence that was sought and provided to the Review is set out in appendix 2 to this Report.

34 On 4 April 2019, I received the first volume of material from the Society, which

included Higgs' personnel file.

35 On 2 May 2019, I caused a letter to be sent to the Provincial, Fr McCoy and the Society's Director of Professional Standards, Mr Simon Davies, setting out formal interrogatories.

36 On 23 May 2019, these interrogatories were responded to, and a selection of further material was provided by the Society.

37 On 31 May 2019, the lawyers assisting the Review wrote to the District Courts of New South Wales and South Australia requesting access to the court files relating to the prosecution of Higgs in each state. That letter noted that the Society's lawyers had previously made application to access those records back in December 2018, but that only the sentencing remarks had been provided by the District Court of New South Wales and only the sentencing remarks together with the certificate of records and trial transcript had been provided by the District Court of South Australia. I note that parts of the District Court of New South Wales court file included documents which were subject to suppression orders and, therefore, not readily accessible.

38 Further documents were provided by the District Court of New South Wales on 11 June 2019.

39 On 12 June 2019, the Society provided a folder of material relating to survivors. As already noted, some of the material redacted the identification of individual survivors.

40 On 5 July 2019, I caused a further letter to be sent to Fr McCoy and Mr Davies of the Society setting out additional formal interrogatories. This letter was responded to on 16 August 2019.

41 Further material was provided by the Society from its records in respect of the various survivors on 8, 19, 27 and 28 August 2019 and on 19 November 2019.

42 The Review was provided with copies of the documents held on the South Australian District Court file on 12 September 2019. In October 2019, some further documents

were provided in redacted form by the South Australian police pursuant to a Freedom of Information request made in May 2019.

43 On 24 September 2019, I caused a letter to be sent to Athelstone survivors inviting them, if they were prepared to do so, to provide the Review with details as to when they first complained in relation to Higgs, and to whom. A copy of this letter is set out in appendix 3 to this Report.

44 Responses to that letter were received from Lucas Stewart on 2 October, Toby Miller on 23 November and 3 December and Hamish Elliott on 3 December 2019.

45 On 2 October 2019, I caused a further letter to be sent to Fr McCoy and Mr Davies of the Society setting out additional formal interrogatories. This letter was responded to on 8 October 2019.

46 On 23 October 2019, I caused a further letter to be sent to the survivor known as 'CE' and on 7 November 2019, caused a further letter to be sent to the survivor Aiden Collins. Both letters sought information in relation to complaints that may have been made against Higgs by these persons while at Athelstone.

47 On 6 November 2019, I caused a letter to be sent to Fr Day containing a series of interrogatories, to which he responded on 18 November 2019.

48 On 3 December 2019, I caused a letter to be sent to Higgs via his lawyer Simon Fung inviting him to make any submissions in writing that he wished me to consider as part of the Review, and addressing various questions to Higgs which I considered would assist the Review.

49 On 9 December 2019, I was informed by Mr Fung that Higgs did not wish to respond to the Review.

Persons interviewed by the Review

50 The Review interviewed the following persons:

(a) Mr Patrick Martin, an Athelstone survivor, on 15 July 2019;

(b) Fr Michael Ryan, Rector of St Aloysius, the Jesuit school where Higgs was located at the time of the formal complaint made in late 2000, on 24 and 25 September 2019;

(c) Rev Bishop Greg O'Kelly SJ, a contemporary of Higgs' at Athelstone, now Bishop of Port Pirie, on 15 October 2019;

(d) Fr Des Dwyer, a contemporary of Higgs' at Athelstone, on 24 October 2019;

(e) Mr Declan Helman, an Adelaide survivor, on 30 October 2019;

(f) Mr Robert Liddy, a contemporary of Higgs' at Athelstone, on 6 November 2019;

(g) Ms Catherine Hobbs, Riverview archivist, on 7 November 2019;

(h) Mr Bernie Donnelly, a contemporary of Higgs' at Athelstone, on 20 November 2019;

(i) Mr Warren Murphy, Athelstone archivist, on 26 November 2019;

(j) Rev Fr Michael Head SJ, central archivist, on 27 November 2019.

51 It also spoke informally with other Athelstone survivors, in particular to seek to better understand whether there was any awareness among staff or students of Higgs' conduct while at Athelstone, and the circumstances of Higgs' departure.

52 I was also contacted by Mr Oscar Richards who requested to make a submission in person. Mr Richards was a student at the Jesuit school Xavier College. He attended before me accompanied by his lawyer, Mr Christopher Dale, and supporters, Dr John Murphy and Mr Tim McDermott on 27 November 2019.

53 From this evidence, and from other material provided to the Review, the following picture emerges of the college and the broader institutional and religious context within which the decision to transfer Higgs took place.

The Society

54 The Society of Jesus is a male religious order of the Catholic Church devoted to the

teachings of St Ignatius of Loyola. The Society first established in Australia at Sevenhill, South Australia in 1848. It has established substantial schools for boys across Australia.

55 The Australian Province of the Society was and is presided over by the Provincial to whom all members of the order, priests and brothers, are accountable spiritually and vocationally.

The Role of the Provincial

56 Although not involved in the running of the school itself, the Provincial was ultimately responsible for the Jesuits in the Athelstone community.

57 Every Jesuit was visited each year by the Provincial during the annual visitation. While there was no fixed structure to the visitation, the Provincial would arrange to visit each community of Jesuits at some point during the year, and would spend around an hour speaking privately with each person about how they were getting on and where they saw themselves in the future.

58 The Provincial in 1970 was Fr Kelly. Bishop O'Kelly recalled that in the period around 1968-9, the Provincial's visits to Athelstone would last several days and would typically commence with an address to the community as a whole. The Provincial would then meet with the Rector, who would describe how things were in the community, before moving on to meeting with each man personally. During this individual meeting with the Provincial, the Jesuit was encouraged to manifest his conscience to the Provincial so that the Provincial may know him intimately, which in turn enabled the Provincial to best further the individual's spiritual progress, and better govern the Society as a whole.

59 By these means, the Provincial would come to know each Jesuit very well. In addition to conducting a visitation with each Jesuit, from time to time the Provincial would also conduct discussions with the local Superior regarding the functioning of the community and the placement of persons. He would also receive information

informally, at social events, and by correspondence.[7]

60 The Provincial arranged for the movement of persons from community to community, based in large part on his knowledge of the person being moved and his skill set, and on the needs of the various communities within the Society, which he, the Provincial, came to understand through the annual visitations. Bishop O'Kelly described this process as 'governance by interior knowledge.'

61 While no formal records were created or maintained detailing the substance of the matters discussed during those visitations, each Jesuit had a curriculum vitae detailing biographical information and which mission the Jesuit had undertaken in each year he had been a member of the Society, which was available to the Provincial.

The Movement of Jesuits

62 It appears to have been a common feature of Jesuit life to be moved from place to place. While the goal was to be a good community person and to be able to contribute to the community, there was no fixed time for which a person would remain in a particular community. Movement was the norm rather than the exception and when it occurred, it was presumed that the Provincial had determined that the movement was intended to be of benefit to the individual and the Society as a whole.

63 Each year, the Society announced movements of Jesuits via the publication of the annual Status. In around 1970, the Status was typically published towards the end of each year. The Province Catalogue, a directory identifying where each Jesuit in Australia was stationed for the coming year would be published shortly afterwards in around February each year and would incorporate the changes announced on the Status.

64 The determination of where each Jesuit was to be stationed was ultimately made by the Provincial. The Consult, comprised of the Provincial and a small group of other senior Jesuits and community superiors, would advise the Provincial if asked. This

[7] See for example a letter written by Higgs to the then Provincial, Fr Kelly SJ, dated 27 July 1971, regarding Fr Monahan's desire to join the Riverview community.

group would typically meet annually to discuss where each Jesuit would mission to next, however it was (and is) an advisory not executory body. In doing so, it considered whether there were gaps in the Jesuit missions that needed to be filled, and the fitness, qualification, preference, and family and personal circumstances of the Jesuits available to fill them.

65 By this means, the orderly movement of Jesuits between communities was facilitated. Each community would be alerted by the Status as to who was to mission with them in the coming year and any Jesuit who was to be moved would make contact with the Superior of the community which they were to join to make arrangements to begin their work in that new place.

66 On occasion, movements were made at times that did not follow the publication of the Status. The Review was told by Fr Dwyer that while there would have to be some explanation for such a movement, it would not necessarily be a remarkable event in the community. It would usually be attributed to there being a gap somewhere else that needed to be filled, and it would be assumed that the Provincial had determined that the person being moved was the right person to fill it.

Athelstone circa 1968-70

67 St Ignatius College was already well-established in Norwood, Adelaide when the Athelstone campus commenced in 1967 and began accepting boys in years 7 to 12 for day schooling. Many students had attended the school in Norwood, which continued as a junior school once the Athelstone campus was established. From its early years, Athelstone grew quickly.

68 By 1968, the Jesuit community at the school numbered 11 (including the Rector), and comprised eight priests, two brothers and a scholastic, all of whom lived on campus in the Jesuit residence, and taught and assisted in various other ways in the running of the school by coaching sports teams and undertaking maintenance. The Jesuit staff typically shared meals, and would dine together at the evening meal where they would regularly discuss school matters and share anecdotes of school life.

69 While Jesuit priests frequently had a length of formation of 10 years or more, involving academic studies often in philosophy, regency and then further studies in theology before progressing to ordination and final vows, the period of formation of Jesuit brothers was significantly shorter and less structured. Brothers were typically given a trade and were often asked to perform more 'worldly' services which supported the spiritual mission of the Society.

70 In addition to the Jesuit staff, there were a number of lay staff members, who taught and assisted in school programs but did not live on campus. The relationship between the lay staff and Jesuits was close. All would meet together before school each morning for prayers, and worked closely together in the running of the school.

71 The early years at Athelstone were described to the Review as 'pioneering'. There was a close bond between staff and students who were all engaged in trying to ensure the success of the new school, which at the time felt to some like it was on the outskirts of Adelaide even though it was only a little way out of the town centre. It was a close community where everybody knew everybody.

72 The Rector, Fr Wallace, acted as the Father Superior of the Jesuit community, and as headmaster of the school. He was described to the Review variously as a 'tough, hard-working man',[8] a 'somewhat strict and severe man', a 'strong leader',[9] a 'bit of a dictator',[10] and as a 'bit cruel.'[11] He was a man who 'most people would be in awe of'[12], was 'demanding, but fair' and was a man for whom 'the rule was the rule.'[13] He was said to have been 'very proud of the fact that he was sort of brought in to be in charge of the school'[14], and one former teacher observed that he would have been motivated to preserve and enhance the reputation of both the school and the Jesuits. In addition to his work as Rector and headmaster of the newly established school, Fr Wallace taught students and coached the first-eleven cricket team. At weekends, he

[8] Bishop O'Kelly.
[9] Fr Dwyer.
[10] Mr Donnelly.
[11] Mr Helman.
[12] Mr Helman.
[13] Bishop O'Kelly.
[14] Mr Helman.

would go out to different parishes to say Mass and give Scripture lessons.

73 Money was tight in the early years. The Rector did not have a secretary, and where possible, Jesuits would be employed instead of lay staff in order to save costs. Each Jesuit worked extremely hard.

74 There was a loyalty among the students and their families to the school and to the Jesuits more broadly. Most of the students and their families shared a common faith and attended the school for that reason. It was common for students to stay after school several days per week for sports coaching, including in cricket, football and basketball, and to catch the later bus which departed at around 5:00pm. There was significant parental involvement in the school, which included helping out with sports teams, in the tuck shop and with working bees and other maintenance tasks, as well as via the formal reporting and parent teacher interviews that occurred each year.

75 There was a strong approach to pastoral care, academic standard and discipline. The staff interviewed by the Review all remembered fondly the students they had taught and many had continuing relationships with some of them more than 50 years later.

Higgs' conduct whilst at Athelstone

76 Higgs' offending whilst at Athelstone was the subject of three charges in the South Australian District Court, although only two were ultimately proceeded with. Higgs' offending was put to the Court in this way by the Crown prosecutor:

> In the record of interview the offender conceded that he acted in this improper way - 'improper' is my word - to approximately 10 boys. He asked them into an office or another private place and he counselled them on their sexual development. These are boys aged between 12, 13, 14. He generally chose boys who hadn't yet gone through puberty and he asked them to pull down their pants for the purpose of looking at their penis and genitals, and then would advise them about how far along they were towards puberty.
>
> In regard to the first victim he went a step further, and so the plea to the indecent assault is that he did just that, but he also went on to touch the penis, hold the penis and touch the testicles, and still using the same sort of language about the boys' sexual development.
>
> Now, the offender did not do anything of the sort of masturbating the boy or anything further in regards to that victim. He did that and then asked him to leave and there were no further incidents in regard to victim 1.

> Victim 3 is somewhat different. It arises out of an incident that occurred in a classroom where the boy was naughty in the classroom; I think there was a suggestion of some flatulence. He has then been asked to come to the front of the class and bend over the table for the offender to use the cane across his buttocks. He had a book down his pants which the offender became aware of and told him to attend the canteen after class or after school. There, in the canteen, he asked the boy to do the same thing, but pulled down his pants as the boy was bending over with his pants down and his bare buttocks exposed. The offender used a feather duster to tickle the boy's buttock/genital area. So that is the indecent assault of count 3.
>
> That boy then confronted the offender, said 'What are you doing?' and he left and there were no further incidents relating to him. That is within the context of these 10 other boys who were asked into the offender's office and counselled in the same way as victim 1. However, there was no touching.

77 The prosecutor continued:

> You have the record of interview but what your Honour does have on the brief are statements from a number of witnesses. One of them is a man named Callum Foster, another Patrick Martin and another Daniel Gill. They were all students at the school, they were aged between 11 to 15, and they all give a fairly similar account to what I have already described but with no touching.
>
> Simply, they were asked into the office to speak about their sexual development; and also for the purpose of the accused being able to pitch his discussions in class appropriately.
>
> The offender didn't have any particular expertise or training in sexual education. His role at the school was a brother. It was his first placement with a school, and his role really was for administrative tasks as well as clerical duties and some experience in accounting and he had passed some certificates.
>
> He was also responsible for some other administrative duties to do with the canteen and things such as that. But also from time to time he taught some classes which included religious education and also later in the final years a commerce class. So he had absolutely no reason to be speaking to any of the boys about these things, and certainly he had no reason to be asking them to pull their pants down.[15]

78 By his plea of guilty, Higgs' counsel said to the Court that Higgs accepted:

> firstly it was a breach of trust as a brother whilst at St Ignatius and also as part of a course of conduct as identified by him to police in his record of interview during the three years that he was at St Ignatius in South Australia.
>
> Your Honour will have seen that in that record of interview he identified approximately 10 students to which similar conduct had occurred and as of these proceedings six of the 10 students have been formally identified.
>
> Each student was seen only once. The declarations with respect of Mr Elliott,

[15] Transcript 12/1/16, 3-4.

> Mr Helman, Mr Gill and Mr Martin only refer to only being seen once and Mr Higgs confirmed that at p.32 of the record of interview at 27 line 13. Of the scope of the offending, the offending in relation to Mr Helman is the most serious with Mr Elliott following after. Only Mr Helman and Mr Elliott with respect to count 3 were the ones that were actually touched by Mr Higgs. Your Honour will see in the record of interview that Mr Higgs, at the first opportunity, admitted the offending to the police.
>
> They were forthright admissions and not only that, he goes beyond those victims identified by police and identifies other boys, for example Mr Martin. Throughout his record of interview he acknowledged to the interviewing officer that his behaviour was wrong and inappropriate.[16]

79 Material provided to the Review by the Society shows that there were many other victims of Higgs' conduct while at Athelstone in addition to the two in respect of whom charges were laid. As some of the material that related to some survivors was provided in redacted form, some of the survivors have not been identified.

80 There are common features in these accounts. In many, Higgs asks the boy to meet him in a private place, an office or room in the school, and once there, begins a conversation with the boy relating to his sexual development. While in several instances, the offences were voyeuristic and did not involve any touching, on other occasions Higgs touched the boys either directly, or with a pen or feather duster on the genitals or buttocks.

81 Higgs acknowledged some of this conduct in his interview with police. Relevantly however, he said that his inappropriate behaviour occurred in 1968 and 1969, but then he 'backed off' because 'people were sort of talking around the school' and that he did not think the conduct continued into 1970 at all.[17] He also denied that any touching took place.

The subsequent offending at Riverview, Sydney

82 Following a further proceeding in New South Wales, Higgs' was convicted of 16 counts of indecent assault against six young male students at Riverview, and in relation to two events at Gerroa.[18] The offences occurred in a boarding school

[16] Transcript 21/1/2016, 2.
[17] Higgs' record of interview, page 8.
[18] The Jesuits maintained a holiday house in Gerroa, which is a coastal town outside of Sydney.

environment, in circumstances where the sentencing judge found that:

> [Higgs'] actions were done in private, beyond the watch of any third person. The offender intended to commit these actions unobserved by others. The reason for that was simple, he did not want to be found out.[19]

83 The judge observed:

> So when one steps back and looks at the counts on the indictment in respect of which the offender was found guilty, it clearly indicates to me an overall escalation of the criminal conduct, leading up to what occurred when it comes to the events constituting count 16.
>
> So it is clear from the evidence as to these 16 specific counts that the offender has had at least from the time he commenced his employment as a Jesuit brother in South Australia an abhorrent, deviant interest in young boys at around the age of 12 years.
>
> The offences as described in the indictment occurred in the privacy of a room without any persons present and the offender ensured that privacy was maintained throughout when he committed these offences upon very young, vulnerable boys in his care, particularly in a boarding school environment where children were away from their parents and others who would care for them in a family environment.
>
> They were indeed entitled to feel safe and protected in the boarding school environment, but the offender took advantage of each of these boys when they were isolated from their own families. He seized upon the opportunities afforded to him and there were many in that environment, solely for his own sexual gratification and to the detriment of the young victims who would have found it extremely difficult to go into the detail required in their evidence during the trial. They will never forget what happened to them.
>
> …
>
> The offender is not a person of good character having regard to the offences, all the offences having been dealt with years later, committed in South Australia. He was imprisoned in South Australia years after those events and although he was not dealt with for those offences before he transferred to Riverview, it is clear that that state of mind and that modus operandi, if I can use that terminology, continued on when he obtained employment at Riverview.[20]

84 I do not diminish the significance of Higgs' egregious conduct whilst at Riverview. However, his offending there is of limited relevance to this Review, which is to determine the circumstances that led to his transfer to Riverview, rather than to further examine his conduct after he arrived at that school. The only relevance of

[19] Transcript 23/11/18, page 15.
[20] Transcript 23/11/18, page 17, 25-6.

Riverview was to ascertain whether there was evidence at its end about Higgs' transfer. Save for some correspondence from the Riverview Rector, Fr Jordan, there was none.

Bishop O'Kelly's evidence

85 Bishop O'Kelly made himself readily available to the Review. He provided considerable assistance in explaining the role and significance of the Status, the Consult and the annual visitation by the Provincial to all schools and the private discussion that would occur on a visitation between the Provincial and each priest or brother.

86 In 1968-70, the Status was published annually and set out who within the Society would be located where and what roles would be performed. These were then published in the Province Catalogue, which at the time was written in Latin. For example, Higgs' role in 1969 is recorded as '*Secret, Adj praef, Doc relig I et commerc II, Aedit, Dir YCS jun, Ad dom*'.[21] At the time, there were approximately 300 Jesuit priests and brothers across Australia.

87 Bishop O'Kelly, who in 1968 had completed his initial studies and had been sent to work full time in a Jesuit ministry for two to three years before going on to undertake post-graduate studies in Theology, said the Status was keenly awaited by the priests and brothers. He also said it was well understood that individuals would only stay at a place for two or three years. In his own case, Bishop O'Kelly returned to Melbourne to undertake post-graduate studies in theology at the end of 1969.

88 Once the Status was published, each individual Jesuit knew where he would be the next year. There was no explanation or clarification. A Jesuit accepted his allocated location as an inherent part of the Jesuit mission, namely to go wherever he was needed.

89 The Review examined each of the Status documents for the years 1968-1970.

[21] Higgs' curriculum vitae, which is in English, records that in 1969 his Status was: 'Secretary, assistant prefect, teaches Religion I & Commerce II, sacristan, director YCS junior, housework.'

90 Bishop O'Kelly explained that the location of a priest or brother was determined by the Provincial after discussion with the Consult. The Consult consisted of the Provincial and a number of individual Jesuits selected by the Provincial, mostly some of the Rectors of Jesuit schools. The Review examined the typed minutes of the Consult for the years 1968-70. The minutes were short and disclosed the attendance and topics discussed. The Consult meetings mostly occurred monthly, at different locations across the states and sometimes over more than one day.

91 The Consult was an advisory body to the Provincial. The Provincial would seek the advice he needed. Bishop O'Kelly was not a member of the Consult between 1968-70, but later in time he was. Fr Day, when Provincial, convened the Consult meetings but later in time than the period 1968-70. None of the attendees of the Consult from 1968-70 remain alive. Hence the Review was confined to the minutes of those meetings for the period.

92 Examination of the minutes from 1968-70 reveals a dominance of discussion about resources needs (including staff) and building works. The needs of Riverview were the pre-dominant focus. It is apparent that between 1968-70, Riverview was expanding very quickly. There were constant requests discussed in the Consult minutes regarding how Riverview's needs would be met. An impression is made that Riverview was a resource priority. This is to be contrasted with Athelstone where, from the school's records and the information of witnesses, there was also considerable growth and need. However, Athelstone did not attract the prominence of Riverview in Consult discussions as minuted during 1968-70.

93 The Consult minutes reveal very brief discussions from time to time of the movement of Jesuit staff, but infrequently so. The minutes contain no reference to discussion about problematic staff such as those the subject of sexual complaints. Between 1968-70, there are two named individuals in separate instances with respect to sexual behaviour in breach of Jesuit vows. The instances were not related to students. There is no reference to any discussion of any improper or criminal sexual activity by a Jesuit priest or brother against a student at a Jesuit school. I specifically questioned Bishop

O'Kelly about that fact. He said that in his later experience as a member of the Consult, there were discussions sometimes about a problematic individual but there was never any note in the minutes. Indeed the Consult minutes show lines of dots throughout. Bishop O'Kelly said the dots represented or indicated that a discussion had occurred.

94 In the period 1968-70 there is no mention of Higgs in the Consult minutes.

95 Bishop O'Kelly impressed me with his desire to assist the Review. He was asked specifically about the individual criminal charges brought against Higgs in the South Australian District Court and the allegations recounted by survivors in the material provided to the Review. Bishop O'Kelly was shocked and appalled by the detailed matters. He said he had heard much later about Higgs' criminal activities but had not known of any detail.

96 Bishop O'Kelly described his life at Athelstone in 1968-69 as very hard work. He was young, straight from university and not much older than the students. He was a past pupil of the college. Bishop O'Kelly believed because of his age he got on well with the students but he was pre-occupied with his classes including year 12 examination classes where he sought to achieve good results for his students and the college.

97 Bishop O'Kelly gave some information about the Athelstone playground or school-yard which I deal with separately.

98 When asked whether any student ever complained to him at Athelstone about Higgs' sexual activities, or if he knew or heard of students' 'talk' about Higgs, he said he did not. Bishop O'Kelly knew nothing about any parental complaints to the school. When asked about Higgs' alleged voyeuristic conduct in the sports changerooms he said while it was possible, it was very risky to do so because a student or teacher might enter at any moment. However, Bishop O'Kelly acknowledged that voyeuristic behaviour was not understood as it should have been in the period 1968-70 compared with the period post the Royal Commission into Institutional Responses to Child Sexual Abuse (**Royal Commission**).

99 The Review was provided with a statement from a survivor who does not wish to be named where he recalls his attempt to tell Bishop O'Kelly at the time about Higgs. He stated:

> Bishop O'Kelly was on yard duty. I told him I didn't want to go to detention with Higgs, Bishop O'Kelly asked why. I said because he was a poofter. I got into trouble about it and Bishop O'Kelly told me to go to confession about it.

100 This statement was put to Bishop O'Kelly, who said that he could not remember a student saying such a thing. He said if it did occur, he would not have told a student to go to confession for calling Higgs a 'poofter'. Bishop O'Kelly impressed me as being sincere in his lack of recollection. Even assuming what was described was said, I observe it was not of itself something that would have caused Bishop O'Kelly to think that Higgs had been behaving inappropriately towards the boys in his care.

101 Bishop O'Kelly was asked about life in the residence. He saw Higgs regularly but was not particularly aware of what he was doing at Athelstone being very pre-occupied with his own teaching load and sports supervision responsibilities.

102 It was expressly put to Bishop O'Kelly that a journalist in a major newspaper[22] had recorded that Peter (a pseudonym used in the article to refer to an Athelstone survivor) suspected that Bishop O'Kelly may have known why Higgs was moved on, and that Higgs' behaviour would have been discussed. Bishop O'Kelly denied this assertion. When asked whether he was aware of any rumours going around about Higgs at the time he responded:

> Not then. No, no. I began to hear them later, many years later but not, but quite a few years later. When I went to Riverview, I followed him. He was moved from Riverview at the end of 1981 and I came to Riverview at the beginning of 1982 and I never heard any of those stories.

103 The newspaper article records further Peter's assertion that 'Bishop O'Kelly certainly knew' about his abuse when he came forward in 2007. Bishop O'Kelly stated that before 2007, 'rumours began to go around that I did pick up, I had no idea of the physical assaults Higgs was doing.' He said he could not identify the source of those

[22] 'Like a Wrecking Ball', published in the Advertiser (Australia) on 24 November 2018, 2018 WLNR 36248672.

rumours. He recalled that prior to Higgs' being removed from the school in 2001 by Fr Day:

> I might have heard it [rumours of voyeurism] once or twice, then in a way I thought it was an issue that was dead and gone because he had been moved out of a boarding school and there wasn't occasion for him to do this sort of thing as the circumstances had been changed… he was in a day school, it just didn't occur to me. We were quite ignorantly innocent. I know subsequent to that with my experiences how ignorant we were.

Fr Day's evidence

104 Father Day was the Provincial from 1996-2002. He is now 86. Although he declined to be interviewed by the Review, Fr Day gave careful consideration to the matters raised in written interrogatories. He was the first Provincial to receive a formal complaint in late 2000 about Higgs' conduct. The details of the complaint and the way Fr Day managed the matter are described below.[23] In 2000, Fr Day was unable to contact the Athelstone Rector during 1968-70, Fr Wallace, as he had died in 1993. Fr Day did not contact the Provincial between 1968-70, Fr Kelly, because he had left the Society and the priesthood approximately 27 years earlier in about 1973 or 1974. Fr Kelly died in 2004.

105 Fr Day was asked:

> *5. The Inquiry has been provided with correspondence that indicates that on 28 November 2000, you telephoned Higgs to inform him that a complaint had been made against him and that he was to move to Power Street within a few days. What did you say to Higgs about the complaint during that call and what was his response? How would you describe Higgs' reaction when you informed him of the complaint?*
>
> I recall telephoning VH to inform him a complaint had been received. I said that I required his immediate presence at the Province Office in Melbourne. I said that he would work at the Province Office going forward. At the date of the call I did not know in detail what the complaint was. I did not know what the complaint was at the time VH arrived at the Province Office in Melbourne. He said he thought he knew what the complaint was.
>
> *6. Correspondence indicates that on 20 January 2001, you interviewed Higgs at your office in Sydney. What did you say to Higgs about the complaint during that interview and what was his response? How would you describe Higgs' reaction? Did you take any notes during that meeting?*
>
> Before the first meeting with VH at the office in Sydney on or about 20 January 2001 I believe I had received a report from the independent professional on his

[23] See para 189 and following.

interview with the complainant in Adelaide and had myself attended on the complainant in Adelaide. I put its terms to VH. He became angry and evasive. I adjourned the meeting to 24 January 2001 and asked him to think things over carefully before that meeting. No notes were made during the meeting. I made notes after the meeting and gave them to the Socius after his return to Australia from the Philippines.[24]

7. Correspondence indicates that on 24 January 2001, you had a further formal interview with Higgs at your office in Sydney. What did you say to Higgs about the complaint during that interview and what was his response? How would you describe Higgs' reaction? Did you take any notes during that meeting?

At the adjourned meeting VH admitted that the accusation made by the complainant which I described was true. He expressed his contrition and remorse.

9. On 11 April 2001, you wrote to the Superior General, Reverend Peter-Hans Kolvenbach SJ, and stated, "During his [Higgs'] time in the schools over the years, there have been some anxieties about alleged improprieties, usually of a voyeuristic nature, but certainly no formal complaints of which I was aware made by boys or parents." What were the anxieties about alleged improprieties you were referring to? How did you come to know about them?

The reference as best I recall derived from VH's answers and the interpretation given to "some anxieties about alleged improprieties usually of a voyeuristic nature" I believe from the interview with VH. [See answer to q.13 below] and possibly from enquiries made by the Socius.

10. Were these alleged improprieties ever investigated by you or anyone else?

According to VH they were investigated by his Rector Frank Wallace SJ in 1968.

11. On 5 May 2001, Higgs wrote to you and in that letter stated, "My main regret is that I was forced to admit to the guilt of an action for which I have no recollection. I went through another process many years ago concerning the events of which I've now been accused. That process didn't adopt as a starting point that I was guilty of some inappropriate action." What was that other process to which Higgs referred? Did you ever ask Higgs about what occurred as part of that process or its result?

There was no other process "concerning the events (sic) of which I've now been accused" other than that of which VH spoke involving the Rector Frank Wallace. The complainant first reported being inappropriately touched by VH in his complaint made in 2000. There is no record of any other process so far as I am aware.

12. Did Higgs ever provide you with an account of the circumstances of his transfer from Athelstone to Riverview in 1970?

No.

13. In your 11 April 2001 letter, you wrote that "Br Higgs thought that the complaint might concern his habit of then inviting young boys, collectively, to compare their sexual development. He claimed he did this because he himself as a boy had received no education in puberty. He went on to say that this stopped when the Rector of the time

[24] These notes could not be found.

learned of it and told him to cease." Did Higgs describe to you the detail of that conversation he had with the Rector?

No.

14. Did Higgs ever refer to any discussion that he had with the then Provincial about that habit, or did you otherwise receive any indication that the then Provincial had been made aware of it?

VH did not refer to any discussion that he had with the then Provincial in 1970 or at any time and I did not receive any indication that the then Provincial had been made aware of his conduct.

106 In light of his earlier role and experience as Provincial, Fr Day provided comments and information that were helpful. He was asked:

15. In your experience, if the Rector had learned that Higgs had a habit of inviting young boys to compare their sexual development, was it likely he would have raised this with the Provincial, or with some other person?

In my experience a Rector who learned that a Brother on the staff of a Jesuit school had engaged in any such practice would be likely to raise it with the offender, with the house consult, with the Provincial and possibly external medical and legal advice.

16. In your experience, if the Rector had raised this with the Provincial, would any record or note of this habit or incident have been created, or would any comment have been made (perhaps during the process of transition to a new Provincial) with a view to ensuring that further inappropriate behaviour could be effectively dealt with if that behaviour was repeated?

I would expect that a record or note would have been made.

107 Fr Day also provided assistance about the role of the Provincial. He confirmed that yearly visitations were conducted in 1968-70, the Provincial determined where each Jesuit would be assigned and that the Consult would advise if asked about relocations, it being an advisory not executive body. Fr Day was asked about the factors affecting assignment:

22. Having determined where each Jesuit would be assigned, is it correct that their assignment would be communicated to them through the Status, or Province Catalogue which was published in November or December each year? Were practices similar during 1968-1970?

The Catalogue was published in February proceeded by the Status of announced changes which was published in November or December each year. When the Catalogue was published it would be supplemented by local statements of house arrangements. My expectation is this was the same in 1968-1970.

23. During your time as Provincial, was it common for Jesuits to be moved from one community to another at other times during the year? Were practices similar during 1968-1970?

Not common but it did happen that Jesuits were moved from one community to another mid-year. This was also likely to be the case in 1968.

24. How were such determinations made? Were practices similar during 1968-1970?

See answer to 19 above. The Provincial kept himself aware of the needs of the Province by inter-communication with Jesuits and employees of Jesuit works.

108 Fr Day was also asked expressly about Higgs and any possible discussion within the Consult:

25. What was the function and role of the Province Consult? How were persons selected or appointed to serve on it? Were practices similar during 1968-1970?

The Province Consult is an advisory not executive body. The Provincial or Socius at his direction prepared its agenda. Individual members could raise matters.

26. If there was a known problem with Higgs would it have been discussed in that forum? If it was discussed, would minutes of that discussion have been recorded?

If there was a known "problem" of the gravity of immoral or criminal misbehavior, I would have expected it either to be discussed or reported on in some form to the Province Consult.

109 Finally, Fr Day was asked whether he had knowledge as at 1968-70 of cases of sexual assault of students in Jesuit schools. He had none.

Mr Helman's evidence

110 Mr Helman impressed as a credible witness who told a very sad story. He, like many of the survivors who communicated with the Review, continues to be deeply affected by his experiences while at Athelstone.

111 Mr Helman started attending St Ignatius' Norwood campus at the age of seven in 1962, before moving to Athelstone in 1967. Before that time, he had been an altar boy and was familiar with several Jesuits through school and family connections. Mr Helman has brothers who also attended Athelstone.

112 Many of the Norwood students joined Mr Helman at Athelstone, as did some of the teachers. In its first year, Mr Helman estimated there were around 250 students, with

two classes of around 20-25 students in each year level. He recalled:

> Everybody knew everybody. I mean, you knew the name of every kid and everybody knew everyone. Everybody knew every teacher, everybody knew every person, everybody knew what they did, they knew when they walked across to go to the bathroom, they knew when they smoked cigarettes.

113 Mr Helman recalls that Higgs was at the college in his first year and that he ran the canteen at the college. He stated that his only contact with Higgs was through the canteen, where his mother also helped out from time to time, and occasionally when Higgs had to fill in for a teacher who was absent. He described Higgs as a jovial sort of character who the students used to call 'Higgsy'.

114 In his first year, Mr Helman was called into a room by Higgs. At the time, he was not aware of any reason to be concerned about receiving such an invitation. While there, Higgs said that he had to check if Mr Helman was developing correctly and asked questions relating to his sexual development, and took down his pants and touched his genitals. Mr Helman recalled that when he came out of the room, there were a number of students outside in the playground, including one Charles Walker. Charles Walker said to Mr Helman, 'you didn't let him touch you?' The boys proceeded to tease Mr Helman and called him a 'poofter.'

115 Mr Helman recalled feeling ashamed and embarrassed by this, as if there was a school joke that he had not been made privy to. While he did not discuss what took place with any of the other students at the time, he quickly realised that Higgs had a reputation among students for being a 'perv.' He recalled that some of the boys would say openly that Higgs was a 'weirdo' and a 'perv', but said they would not do so within earshot of the staff.

116 Mr Helman also gave a detailed description of the college grounds, including a roughly sketched diagram. He stated that given the size of the school and the number of people around, staff would be likely to notice a student being taken into an office at lunchtime. He recalled that it was not unusual for priests and other staff members to hang around the sports changing rooms and showers before and after sports practice.

117 While Mr Helman could not point to any particular event that indicated that the staff had knowledge of Higgs' behaviour, he maintained that Bishop O'Kelly as a teacher at the time knew or should have known that Higgs was odd. Mr Helman singled Bishop O'Kelly out because of his intelligence, and because he had been a student and then a scholastic at the college and was therefore a link between the boys and the teaching staff and because he shared accommodation with Higgs in 1968-9. He conceded, however, that Bishop O'Kelly may have been naïve to what was going on, and that if he had heard some rumour, he would have been likely to have dismissed it as boys making up stories.

118 Mr Helman also stated that Higgs was not alone in abusing boys at Athelstone and that there were other staff members, both Jesuits and lay staff who had interfered with him and whom he had seen inappropriately touching and rubbing other boys.

Complaints made to the school at Athelstone

119 Complaints were made regarding Higgs' conduct while at Athelstone on at least three occasions.

(a) The South Australian District Court found that the third victim, whom Higgs touched on the bottom with a feather duster, 'reported the matter to his parents who raised it with the school.'

(b) Higgs himself indicated that at least one complaint was made beyond that referred to by the South Australian District Court, which involved his lining boys up with a view to comparing their sexual development.

(c) Patrick Martin, both in interview and in a witness statement provided to police as part of the investigation stated that his mother contacted Fr Wallace to complain about Higgs' conduct in relation to Mr Martin.

120 While the Review has not been able to establish the basis for the Court's finding that the third victim's parents raised the matter with the school, or indeed any further details in relation to when the complaint was made, and to whom, the Review does not have available to it all the material that was before the Court as some documents

were not released by the Court. However, it is not apparent in any way that the finding was made in error.[25]

121 Higgs in his record of interview with police referred to a complaint being made by a parent (who he does not name) to the Rector, apparently following a report that Higgs was lining up students and commenting on how they were developing.[26] This practice is also referred to by Fr Day in his letter to Fr General Kolvenbach dated 11 April 2001, who indicates that when he first informed Higgs that a complaint had been made in late 2000, Higgs thought the complaint might concern this conduct.

122 Evidence of a further complaint being made to the school was provided by Patrick Martin, who was a student at Athelstone from around 1968 or 1969. Mr Martin provided a statement to police dated 27 May 2015 as part of their investigation in which he recorded that Higgs told him to attend an office in the administrative building at lunchtime, and once there, closed the doors and blinds and asked Mr Martin to take his pants down. Higgs then looked at Mr Martin's genitals for some time, then dismissed him. That evening, Mr Martin told his mother exactly what had gone on, and the next day, she either went to see or telephoned the Rector, Fr Wallace, to report the incident. Mr Martin records that his mother told him that Higgs had been moved to another school, and that he did not see or hear from Higgs again after that incident.

123 The account to the police accords with that given by Mr Martin to the Review when interviewed on 15 July 2019. In interview, Mr Martin confirmed that he did not have any subsequent discussions with Fr Wallace or anyone at the school about the incident, and that his mother only made the one call to the school about Higgs. Mr Martin noted that the school did not question the veracity of the complaint and at no time was he asked to provide an account of what took place. Mr Martin's evidence was very clear. From both Mr Martin's own description, and the descriptions of others

[25] The Review has sought to identify as best it can from the material available to it the identity of the third victim and considers it likely that that victim's parents are now deceased and cannot be interviewed. I note also that in material provided to the Review relating to survivor 'DA', DA asserted that the father of a friend of his complained to the school about his son's experience involving Higgs.
[26] See Higgs' record of interview, pages 12-13, and also page 35.

who knew her, it appears that Mrs Martin was a devout straightforward woman who was not likely to have been intimidated.

124 It was telling that some 50 years later, many of those persons spoken to by the Review remembered Mrs Martin. Mr Helman recalled Patrick Martin, who was in the year below him, and his mother Mrs Martin who was sometimes on tuckshop duty with his mother. Mr Helman recalls she was a cheery, strong person who was unlikely to have been afraid of Fr Wallace.

125 Bishop O'Kelly recalled meeting Mrs Martin during his time at Athelstone and recalled that she was 'very committed, a good person and a good parent.' He said that based on his recollection of Mrs Martin and of the Rector, he could imagine a situation where if a credible complaint was made by Mrs Martin's son, she would have complained to the Rector. He thought that if Mrs Martin made such a complaint, it would have been taken seriously by the Rector.

126 There is also evidence to suggest that a complaint may have been made to the school regarding an individual known as 'CE'. In particular, a complaint may have been made by CE's family friend to Fr Wallace. The Review was provided with a case diary note that records a call between CE and Mr Davies of the Society dated 28 November 2018, and states that:

> [redacted] advised [redacted] had reported the abuse to [redacted] parents. At time, [redacted], a family friend was present at the home and told the [redacted] that [redacted] would take the issue up with the Principal, Fr Wallace SJ. A short time later, HIGGS was removed from the school.
>
> [redacted] acknowledged this may have occurred at the end of the school year but would make more enquiries with his brother.

127 The Review sought to contact CE in relation to this note, however CE did not respond to the Review's request.

128 There is evidence to suggest that a former student, Aiden Collins, told his father that he had been abused by Higgs at the time the abuse occurred, although it is not clear what if any action his father took in response. The Review sought to contact Mr

Collins, however Mr Collins did not respond to the Review's request.

129 I note there is a reference in Fr Day's letter to Fr General Kolvenbach of 11 April 2001, to another Jesuit having apparently interrupted Higgs while he was interfering with Mr Gill. As Mr Gill did not contact the Review or respond to the letters sent to survivors, I am unable to take this matter any further.

130 In addition to examining the evidence that emerges from the documentary material and the statements provided by various survivors, the Review interviewed various contemporaries of Higgs during his time at Athelstone with a view to examining whether Higgs' proclivities were known or suspected by those with whom he worked, and whether it was likely that Higgs' behaviour would have drawn the attention of the staff.

131 Two quite different pictures emerge from the accounts of Higgs provided by those persons who were students at the time, and those who were staff in relation to Higgs' reputation.

Evidence of students

132 As already stated, Mr Helman recalled that Higgs had a reputation among the students for being a 'perv', and that students would say this openly.

133 A former student, Mr Miller, recalled that it was known among the students to 'watch out for Higgs' and not to go off with Higgs to the tuck shop after school. This student recalled that students called Higgs 'the poof' and there were stories going around about Higgs asking boys to try on football jumpers and take their pants off so he could check to see if they fitted adequately. He noted that this is what happened to him. He had not told anyone so someone else must have been the source of these stories.

134 When asked whether the teachers knew about Higgs, Mr Miller stated that in his opinion they had to have known because there was so much chatter among the students. However, Mr Miller said that he could not say so with certainty, because he never told any teachers or spoke with any teachers about Higgs.

135 Mr Miller did not have any recollection of rumours of any parental complaints to the school regarding Higgs.

136 Several survivors referred to Higgs having a reputation as a 'perv', a 'poofter' and a 'sleaze'. One stated he was given the nickname 'Wilbur the worm.'

137 I note that unlike Mr Helman, Mr Miller and the other survivors spoken to by the Review, Mr Martin stated in interview that Higgs did not have a reputation at the school. Notwithstanding the different view of Mr Martin, the overall weight of the evidence is that Higgs' proclivities were known to many of the students. So much was found to be the case by the sentencing judge in South Australia.[27]

Evidence of teachers

138 None of the staff members spoken to by the Review had any knowledge of this reputation.

139 Bishop O'Kelly denied being aware of rumours regarding Higgs whilst he was at Athelstone, or indeed for many years afterwards.[28]

140 Fr Dwyer said that while he was now aware that Higgs had something of a reputation among students at Athelstone, he stated 'never, never did I get a sniff of any of that'.

141 Mr Donnelly too stated he was not aware that Higgs had a reputation among the students. Mr Donnelly stated that although he was close with the students in his classes, he had never heard anything of that nature.

142 Mr Liddy likewise said he had very little to do with Higgs and had no knowledge that Higgs had a reputation among some of the students.

Disparity as between students and teachers

143 I have considered carefully what if anything may be drawn from the disparity in knowledge as between the students and teachers. In my view, there are several factors that may account for it.

[27] See the sentencing remarks of his Honour Judge Barrett, delivered 29 January 2016.
[28] See para 98.

144 Firstly, it may be explained by the physical space of the school.

145 When Athelstone opened in 1967, the school buildings were a mix of pre-existing and new buildings constructed around a quadrangle which provided the playground or school-yard. On one side was a new science block, on another side was the library, the Rector's office and the librarian's office. On another side was a two story classroom building with outdoor stairways up to the second level of classrooms. The second level created a veranda or overhang where students could shelter from the weather at ground level. On the ground level of this building, in a corner, were a couple of offices with an adjacent tuck-shop. One of these offices was probably the sports-master's office and the one used by Higgs when he called students in and sexually abused them. The remaining flank of the quadrangle consisted of classrooms on the ground level and an upper level with a balcony where the priests and other teachers would smoke.

146 The students were restricted to the quadrangle for the first twenty or thirty minutes of lunchtime whilst they ate lunch. It was always very crowded and busy in the quadrangle with around 240 students compressed into a fairly confined area. There were staff present during this time. They would come and go from the lunch served at the residence depending on whether they had supervision duties in the playground or elsewhere. An absent staff member would not be noticed, or be the subject of comment.

147 Access to the corner office probably used by Higgs was visible from the playground, the stairways and the staff balcony. However, because of the busy activities in the quadrangle at lunch and recess times, Higgs' activities were not noticed at those times. There was one exception. Mr Helman was seen by Charles Walker and other boys when he left the office after Higgs assaulted him.

148 After a set time in the lunch break, students were permitted to leave the quadrangle and go to the open areas beyond the buildings such as the football oval.

149 The crowded nature of the quadrangle partly explains why Higgs' activities and the

comings and goings by students into the office he used may not have been noticed. Some survivors described Higgs requiring them to meet him at the school canteen after school, to which it appears Higgs had a key. While some students said that it was relatively common for teachers to enter the changerooms during afternoon sport, none of the staff the Review spoke to suggested this was a common practice for either themselves or others. In each case, I accept Higgs' activities may have gone unnoticed.

150 A second factor is that Higgs was very secretive and furtive in his conduct. In my judicial experience, I have observed that many sexual offenders against children in institutions were quite successful at covering their activities.

151 Thirdly, while there is a consistent thread running through the survivors' statements to the effect that Higgs' activities and modus operandi were notorious among the students, the teaching and supervisory atmosphere of Athelstone was described as intimidating and frightening with a wide application of corporal punishment. It would have been a courageous, even bold student who would have told Fr Wallace or another priest of what Higgs was doing to students.

152 Such was the respect for and the awe in which priests in general and Jesuits in particular were held, in all likelihood an informing student would not have been believed and risked receiving severe corporal punishment at the school, or criticism from parents for lying in a hideous way about devoted men of God. Again, the Royal Commission has analysed the prevailing circumstances of fear and disbelief. It observed:

> During our inquiry we heard that in devout religious families, parents and other adults often had such a high regard for people in religious ministry that they trusted them almost without question. Survivors of child sexual abuse told us that the status afforded to people in religious ministry meant they could not disclose to their families that they had been sexually abused by such people.[29]

153 And that:

> We heard that there was a common belief among Catholic communities that

[29] See, eg, Royal Commission into Institutional Responses to Child Sexual Abuse, Volume 16, Religious institutions Book 1, 11.2.1 page 519.

> priests and religious leaders would never do anything that was evil or wrong, and that it was sinful to make any kind of accusation against them.[30]

154 Indeed, in one case, a student told his parents what Higgs had done to him and was not believed.[31]

155 The Royal Commission also referred to the concept of 'betrayal blindness', a term used to describe situations where individuals may minimise, ignore or deny an incident involving a friend, or other trusted adult in order to protect themselves. It observed that 'Disbelief or shock that a colleague or friend could or would sexually abuse children may result in adults minimising or downplaying concerning or inappropriate behaviour.' In that context, it referred to the submission of The Truth, Justice and Healing Council which observed that 'staff who have worked alongside someone or come to know a person in the course of their work or social setting, can at times be unwilling to recognise reportable behaviour for what it is'.[32]

156 The Royal Commission identified that:[33]

> there was an inability on the part of some adults to conceive of the possibility that people in religious ministry were capable of sexually abusing children. An additional factor that can act as a barrier to the identification or disclosure of child sexual abuse in institutional contexts is the strong personal relationships that often exist between adults in institutions – including between perpetrators and other staff members. There may be a high degree of trust between individuals within an institution, particularly where individuals share a religious affiliation

157 Weighing all these factors, while I am satisfied that Higgs did have a reputation among some of the Athelstone students, I am not satisfied that the staff at the school were aware of it, and if they were, there is nothing to suggest any awareness of the nature and gravity of Higgs' activities. My conclusion relates to the level of awareness of Higgs' behaviour when the decision was made to transfer him in 1970. Whilst students' talk was not known and general observations of Higgs movements went unnoticed, for reasons I explain later the Athelstone and Society leadership were

[30] Ibid. page 533.
[31] This is apparent from material provided to the Review relating to survivor 'DE.'
[32] Ibid. page 532.
[33] See generally, Royal Commission into Institutional Responses to Child Sexual Abuse, Volume 16, Religious institutions Book 1, 11.4 pages 531-2.

aware of complaints that had been made regarding Higgs' behaviour.

Circumstances of Higgs' departure from Athelstone

158 Given that almost 50 years has elapsed since Higgs was moved in late 1970, there were only a limited number of persons still living who were able to provide an account of the circumstances of Higgs' departure from Athelstone from their own knowledge.

159 The Review spoke with Fr Dwyer, former Jesuit priest Robert Liddy, and former Athelstone lay teacher Bernie Donnelly, each of whom were on staff at Athelstone at the time of Higgs' departure. The Review also had the benefit of interviewing Bishop O'Kelly, who had left a year before Higgs' departure, and of speaking to various survivors who were students at the school at the time.

Fr Dwyer

160 Fr Dwyer, who was a scholastic at the school in 1969 and 1970 could not recall anything about Higgs' departure, and indeed could remember very little about Higgs at all. He stated that he had little to do with Higgs, and that as the brothers were only involved in teaching to a very limited extent if at all, they were less conspicuous to the other teaching staff. Fr Dwyer stated that he could not remember a farewell for Higgs, but also that he could not recall farewells for any staff that he was involved in during his time there. He could not recall farewells being marked in any way and observed that leaving was 'part of the process' and 'they knew when you came you were only there for a short time.'

Mr Liddy

161 Mr Liddy, then a Jesuit member of staff at the college, also stated that he had only very faint memories of Higgs and that he had little to do with him during his time at the school. He had no recollection of Higgs being moved, but stated that he himself may have been moved shortly before Higgs was.

Mr Donnelly

162 Mr Donnelly, a lay teacher who taught science particularly to the older boys, recalled that Higgs acted in the role of a mini bursar but could not recall whether he taught classes. Mr Donnelly could not recall Higgs leaving the school but described Higgs'

departure as a 'fly by night job.' Mr Donnelly recalled that Higgs' leaving was different to the way other staff left as usually the staff would get together in the school common room for a farewell and there would be a speech, but this did not occur when Higgs left. Mr Donnelly said he did not recall discussing Higgs' departure with other members of staff, and that Higgs was not a person he would have missed.

Bishop O'Kelly

163 Bishop O'Kelly was also asked whether he had any recollection of the circumstances of Higgs' departure, notwithstanding that he himself had left Athelstone at the end of 1969 and moved to Melbourne. Bishop O'Kelly said he did not and could not recall having any conversations with Higgs about his move to Riverview either at the time or subsequently.

Mr Martin

164 Mr Martin, who was a student at the time, stated that he could not remember the exact timeframe of Higgs' departure from Athelstone, but recalled that Higgs was removed from the school very soon after his mother complained. He recalls being 'surprised at the swiftness' and said he felt that Higgs had left the school because his mother complained. Mr Martin noted that Higgs' departure from the school was not a point of discussion among the students, because it was common for priests and brothers to come and go from the school.

Mr Helman

165 Mr Helman stated that Higgs was not a regular teacher of his, and that he had little contact with him. When asked about his recollection of Higgs' departure, he said Higgs 'was just there, then not there' and that he did not remember any talk or announcement in relation to the departure. He could not recall becoming aware of any gap in the staff arising from Higgs' absence.

166 Mr Helman stated that Higgs 'almost felt like he was a sort of supernumerary' and noted that the brothers were different and less important that the priests. He stated that Higgs was not a person who would have been missed, at least from the students' point of view.

Mr Miller

167 Mr Miller recalled that Higgs 'just disappeared', and recalled some of the students saying 'about time' or 'where did the poof go'. He could not recall when exactly Higgs left or whether it was the end of the school year or before the end of the year.

Higgs' own description

168 Higgs' own recollection, as recounted in his interview with police was that a concerned parent went to the Rector, who followed the complaint up with Higgs. Higgs' states that he 'explain[ed] that there was no truth in it at all… was nothing, nothing, nothing to the story, it's just, just hearsay among the boys.'[34]

169 In response to the question whether he was told by the Rector or someone to cease this thing, Higgs stated: 'I think, no, he didn't, well he didn't actually say don't, but I mean it was pretty obvious it was time to stop…'[35] Higgs indicated that to the best of his knowledge, he had ceased [lining boys up to compare their development] before 1970.

170 Higgs described the reason of his transfer to Riverview as follows:

> Higgs: Well they, they, the Provincial, the Provincial visits at every Jesuit every yeah, and the Provincial at that time in 1970 came along and just, well, well they always say, you know, "Ever thought of a change?"
>
> Detective: Mmhm.
>
> Higgs: And I said, "No". "But if you are", I said, "what about Riverview" 'cos I came from Sydney and-
>
> Detective: Right.
>
> Higgs: And straightaway he said, oh he said, "Yes, we need someone there with accounting knowledge" 'cos old Brother Johnson had been there for 50 years and-
>
> Detective: Mm.
>
> Higgs: So that was the reason that I was sent there to use my accounting knowledge at, at St Ignatius at Riverview, and that's, well so and once I got there I was teaching Religion and Commerce again.[36]

[34] Higgs' record of interview, pages 6-7.
[35] Higgs' record of interview, page 13.
[36] Higgs' record of interview, page 34.

171 Higgs does not indicate in his record of interview that he ever discussed leaving Athelstone with the Rector, Fr Wallace. Rather, Higgs' account suggests that the possibility of Higgs' moving away from Athelstone was first suggested to him by the Provincial during the annual visitation in 1970. Higgs does not record that he discussed the complaint that had been made with the Provincial at that time, or at all.

172 In addition to a transcript of Higgs' police interview, the Review was provided with parts of the transcript of Higgs' evidence in the proceeding in New South Wales. That evidence offered no real assistance as it does not bear on the issues the subject of this Review.

173 The Review wrote to Higgs, both via New South Wales prison authorities, and via Higgs' lawyer, Simon Fung, seeking to question Higgs directly as to his recollection of the circumstances of his move to Riverview. The Review indicated it would be particularly assisted by Higgs' responses to the following questions:

1. In your record of interview with police, you said that while you were at Athelstone a parent contacted the then Rector, Fr Wallace, to make a complaint in relation to inappropriate sexual conduct by you towards a student at Athelstone. To the best of your recollection, what was the complaint that was made? What did Fr Wallace say to you when he informed you of the complaint? How did you respond?

2. Apart from on this occasion, did Fr Wallace raise this complaint or other complaints of a similar nature with you on other occasions? If so, what did he say to you and what was your response?

3. You said in your record of interview with police that during the annual visitation in 1970, the then Provincial, Fr Kelly visited you and asked if you had 'ever thought of a change?' Did the Provincial discuss the complaint(s) with you during that conversation, or at some other time?

4. To the best of your knowledge, did Fr Wallace discuss the complaint(s) with the Provincial, Fr Kelly?

5. To the best of your knowledge, what role did the complaint(s) play in your being moved from Athelstone to Riverview?

174 On 9 December 2019, Mr Fung replied to the Review's request indicating that Higgs did not wish to respond to the Review's queries or to make any further submission to the Review.

Documentary and other evidence

175 From documents provided to the Review, it appears that the Provincial visitation to Athelstone occurred in August in 1970. Accepting Higgs' account, it would follow that it was at least contemplated that he would be moved by August 1970.

176 While it is unclear exactly when the Status was published in 1970, it appears to have been published before the end of November that year, since on 30 November 1970, Higgs wrote to Rev Fr Gregory Jordan SJ, then Rector of Riverview, informing him of what his duties had been at Athelstone and indicating that he 'looked forward to a new school and perhaps similar duties in a different situation.'

177 On 28 December 1970, Fr Jordan responded by letter, telling Higgs:

> you have talents we badly need, and there is plenty of scope for them… Frankly, I personally look upon you as a lifebuoy sent by Providence just as I was about to go under for the third time (this being the end of my third year as Rector).

178 On 7 January 1971, Fr Jordan wrote to the Provincial, Fr Kelly, regarding Higgs' duties and appointment. In his letter he records:

> When you first informed me by letter last year that you would be able to send us Brother Higgs you said that he was to be Secretary to myself and Adj Oecon. I rejoiced. In particular I was pleased that he would be of assistance to Austin Quilty, whom we call Bursar, though he is attached to Fr. Romanin, the Oecon. I saw him as coming within the Oecon's department, a natural enough assumption to make.
>
> Later I wrote to you about this, and you replied that Brother Higgs was not to be an assistant to Austin, but to Fr Romanin and myself and that his precise duties and function should be quite clear from the start.
>
> It turns out that everything, every single thing, that Austin does, he finds Brother Higgs has already done at Athelstone – mutadis mutandis.
>
> …
>
> Frankly, I was never too sure what exactly you had in mind for Vic [Higgs], but I would like to submit this plan to you. I can't imagine it being too far removed from any ideas you had but I may be wrong. Anyway, it is certainly what we want for our immediate needs after Austin's illness and until he is fully effective again, and as a backstop for Austin from time to time.
>
> Vic is teaching only a few classes, but has been of immense help to Chris Gleeson in starting off the Third Division… he is a godsend.

179 The 7 January letter from Fr Jordan refers to correspondence he had received from the Provincial regarding the movement of Higgs, and to further correspondence which appears to have specified with some particularity the duties and functions the Provincial intended Higgs to perform while at Riverview.

180 At the Review's request, further searches were conducted of the central archive for any additional correspondence regarding this matter. On 10 December 2019, the Review was informed that no further correspondence had been retained in the archive.

The timing of the decision to transfer Higgs

181 On the evidence available to me, I am unable to conclude with precision when Higgs was moved. It appears that Higgs' move was arranged in August at the time of that year's visitation by the Provincial. Taking such evidence as is available into account, I consider it more likely than not that Higgs was moved at the end of the 1970 school year. Had he been moved earlier, it is likely that he would have been posted to and given duties at another place in the intervening period between his finishing at Athelstone and commencing at Riverview. There is no record suggesting any such posting. Higgs, who typically discusses his recent activities in detail in correspondence does not refer to having performed any duties, or to having travelled or gone on retreat in any correspondence prior to his commencing at Riverview.[37]

182 I am satisfied Mrs Martin complained to the Rector. I am unable to say with any certainty when Mrs Martin made her complaint. On the evidence available, I incline to the view that the complaint was probably made late in the school year and after the August visitation. That would explain Mr Martin's recollection that his mother told him that Fr Wallace informed her at the time of her complaint that Higgs had been moved to another school and his recollection that Higgs left shortly after.

Attempts made to locate additional contemporaneous documents

183 In the material initially provided to the Review, there was nothing to indicate that the

[37] I note that in his letter to Fr Jordan dated 30 November 1970, Higgs requested that he be allowed to commence at Riverview in mid-January so that he could spend some time with his family before school commenced.

Society held any document regarding improprieties in relation to Higgs prior to the complaint that was made in 2000 (which is discussed below).

184 The Review requested that the Society provide details of the searches and enquiries that have been made by the Society to:

(a) identify whether any contemporaneous documents and/or records exist in relation to the complaint allegedly made to St Ignatius' College Adelaide by Mr Martin's mother sometime during 1968-1970;

(b) identify whether any contemporaneous documents and/or records exist in relation to improprieties concerning Br Higgs alleged to have occurred prior to late 2000

and of the results of those enquiries.

185 On 16 August 2019, Review was informed that:

> The Society has made the following enquiries:
>
> (A) searches of the Society's hard copy archives and records, which were requested on approximately 24 April, 14 May and 7 August 2019, which involved the following:
>
> > (I) searches of an electronic database, which identified 6 boxes of archived records containing materials referencing Br Higgs (the Society holds approximately 2,500 boxes of archived records);
> >
> > (II) manual review of the contents of those 6 boxes;
> >
> > (III) manual review of the contents of the Province Consult meeting minutes; and
> >
> > (IV) manual review of the contents of the Province Catalogue;
>
> (B) searches of the Society's Polonius electronic document management system on numerous occasions since December 2018, which involved a search for all documents in relation to Mr Higgs and a manual review of those documents;
>
> (C) correspondence with St Ignatius' College Adelaide on 9 July 2019 requesting confirmation that all searches of College archives and records have been undertaken (details of searches undertaken are to be provided on the archivist's return from leave anticipated to be next week);
>
> (D) correspondence with St Ignatius' College Riverview on 9 July 2019 requesting confirmation that all searches of College archives and records have been undertaken, those searches involving the following:

> (I) searches of an electronic database and catalogue, with reference to the period of Mr Higgs's employment between 1971 – 1981, the names of former student survivors, Mr Higgs' name and other general terms such as boarding, discipline and incidents, which identified files of potentially relevant records;
>
> (II) manual review of the contents of those files; and
>
> (III) searches of the College annual Alma Mater between 1971 – 1981, with reference to the names of Mr Higgs and former student survivors;
>
> (E) a request to Fr McCoy via email correspondence on 8 August 2019 as to his knowledge of the existence of any relevant documentation.

186 In relation to the request regarding any documents relating to a complaint by Mr Martin's mother, the Review was informed on 16 August 2019 by the Society's lawyers that:

> As recently as 9 July 2019, the Society made enquiries in email correspondence with St Ignatius' College Adelaide (College) as to whether any such contemporaneous documents or records exist in relation to a complaint allegedly made to the College by Mr Martin's mother sometime during 1968 – 1970. The College confirmed to the Society on 22 July 2019 that its archivist had conducted searches for records and was unable to find any relevant documents.
>
> The Society has also on numerous occasions, including on 8 July 2019 and 7 August 2019, conducted reviews and searches of Mr Martin's file on its Polonius electronic document management system for any documents or records in relation to Mr Martin and his mother's complaint. This involved a search for all documents in relation to Mr Martin in the Polonius system and a manual review of all documents. The Society was unable to find any relevant documents. …
>
> The Society is not aware of and does not presently hold any contemporaneous documents in relation to a complaint made to St Ignatius' College by Mr Martin's mother sometime during 1968–1970.

187 The Review was further advised by the Society's lawyers that there are 'no Headmaster's diaries held by the College [Athelstone] for the period 1968 to 1971, and that the College does not in general hold staff records relating to Jesuits or former Jesuits. The College has very limited archives for the period 1968 to 1971.'

188 As stated earlier, the Review was advised by the Society by letter dated 8 October 2019, that it had not kept records of the visitation meetings and that none of the persons that served on the Consult in the period 1968-1970 were still living.

Complaint made to Society in late 2000

189 As stated, toward the end of 2000, a formal complaint of sexual interference was made to the Society by Daniel Gill, a former student of Athelstone. The Society's response to this complaint, and particularly the response of Fr Day is described above with reference to the contemporaneous correspondence with which the Review was provided.

190 Fr Day did not consider that he could shed any light from his own knowledge on the circumstances of the movement of Higgs in 1970. Fr Day stated that he could not recall having met Higgs prior to his becoming Provincial in December 1996.

191 When asked to explain the reference in Fr Day's correspondence to the Superior General to 'some anxieties about alleged improprieties, usually of a voyeuristic nature over the years' Fr Day stated that the reference as best as he could recall derived from Higgs' answers to his questions when he interviewed Higgs in relation to the complaint, and possibly from enquiries made by the Socius. Fr Day did not provide any further details in relation to this reference.

192 Fr Day confirmed that he is not aware of any record of some other process concerning the events of which Higgs was accused, other than one of which Higgs spoke involving the Rector, Fr Wallace. He stated that Higgs did not describe the circumstances of his transfer from Athelstone to Riverview to Fr Day, and Fr Day did not receive any indication that the then Provincial, Fr Kelly had been made aware of Higgs' conduct.

Evidence of knowledge at the time of Higgs' movement

193 I am satisfied that Fr Wallace was made aware of at least three complaints regarding Higgs during his time at Athelstone.

194 I also consider that it is more likely than not that someone connected with the survivor CE made a further complaint to the Rector, Fr Wallace. While much of the detail of this event remains unclear, it appears that after CE reported the abuse to his parents in the presence of a family friend, one of the adults present considered the incident

recounted by CE sufficiently serious to report to the school, and informed the other persons present that they would do so. In circumstances where there is nothing to suggest that any objection was taken to their doing so, I consider it likely that a report was made, and that it was made to the Rector.

195 Material provided to the Review contains part of a confidential report generated as part of an application made under the Towards Healing framework[38] regarding the survivor 'DE.' That report records:

> In 1973 on a Friday night DE rang the school to see where footy was being played. When the phone was answered he realised that two of the priests were drunk., Father Wallace the Latin teacher and another priest he can't remember the name of. He and his mates thought this a great joke. Some months later they rang on a Saturday night and again the priests were drunk. The boy who was with them from [redacted] College, DE not sure of his name (sic), unfortunately did not hang up the phone and it was off the hook but they did not know this. They discussed the abuses involving Br Higgs [redacted] and the student from [redacted] College was shocked and could hardly believe that this was happening to them.

196 As is apparent, the report is lacking in detail. It is not clear who is alleged to have discussed the abuses involving Higgs; while one of the priests appears to have been Fr Wallace, two Fr Wallace's taught at Athelstone around that time, both of whom are now deceased. The content of the conversation is not set out. In circumstances where no further details of this event were provided and where DE did take up the Review's request to make contact, I note this report but I am unable to take the allegations it contains any further.

197 There is no evidence before the Review from which I can make findings as to the forcefulness or particularity with which these complaints were made as each of those persons who made complaints could not be spoken to. Evidence as to Fr Wallace's response to them is limited to Higgs' assertion that he confronted Higgs with the complaint that he had been lining up boys to compare their development. It is unclear whether or not he confronted Higgs with the complaints found to have been made by the South Australian District Court, or by Mrs Martin, or on behalf of CE.

[38] A process for responding to victims and survivors of Church–related sexual abuse developed by the Catholic Church's National Committee for Professional Standards in 1996.

198 The credit of Higgs and whether his description of conversations ought be accepted is difficult and a matter I approach with caution. First he did not give evidence in the South Australian court hearing. He did not challenge or question the police record of interview and also pleaded guilty to the charges. His statements were not tested. Secondly, in the New South Wales court hearing Higgs pleaded not guilty, gave evidence which was unresponsive to the detailed evidence of the Crown witnesses and ultimately his evidence was rejected by the jury's verdict and the judge's sentence. Thirdly, through the materials provided to the Review there is extensive correspondence by Higgs to different individuals including his superiors. I have discerned a tendency throughout for Higgs to construe facts and circumstances in a way that provides a favourable perspective of him. So much is apparent from Higgs' correspondence with Fr Jordan in late 1970 and early 1971 and Higgs' later correspondence with the then Provincial, Fr Day, as formal complaints came to light. Fourthly, Higgs was provided an opportunity by the Review to expressly clarify what occurred in the conversation between he and the Provincial, Fr Kelly, upon the visitation to Athelstone in August 1970.[39] He declined to do so. Whilst he may have had reasons for so declining he could have assisted the Review by answering questions that related not to his criminality but ostensibly to the conduct of others and the Society. In those circumstances, I do not accept that Higgs provided to police a complete and accurate account of the conversations he had with the Rector in relation to the complaints.

199 The universal descriptions of the character, style and tenor of the management of Fr Wallace provide a picture of a man who was formidable, domineering, intimidating and driven. The descriptions came from former students, staff and priests who attended or worked at Athelstone under Fr Wallace. One description by a priest who worked at Athelstone in the 1968-70 period was that Fr Wallace would directly and vehemently inform a person who did anything that was wrong or with which he did not agree or approve of that fact. On the other hand he was described as a man who left staff alone to get on with their work once he was certain the person was competent

[39] See para 173.

and performed to his standard. As noted earlier, Higgs told the police in his record of interview that he thought in 1968 or 1969 the Rector confronted him about his practice of lining boys up in order to assess their level of physical development. Higgs said he stopped his activities as a result of the Rector speaking to him. Accepting that such a conversation occurred around 1968 or 1969 and taking account of the descriptions provided to me of Fr Wallace, I infer and anticipate that when a parental complaint was first made to Fr Wallace about Higgs – of which there were at least three – the Rector would have dealt with the matter swiftly, directed Higgs to immediately desist, and assumed thereafter the problem would cease. Consistently with Fr Wallace's style and character the conversation would have been delivered forcefully. In addition, in all likelihood Fr Wallace may not have understood or appreciated the gravity or detail of Higgs' behaviour and its potential to seriously harm and damage young boys. He may have construed the behaviour as odd, voyeuristic even ridiculous without appreciation for the criminality of Higgs' conduct. The Royal Commission has highlighted as I have referred to the inadequacies of religious orders in dealing with sexual offending against children.[40]

200 I readily accept that when later complaints were made, consistent with the style and character of Fr Wallace he would have resolved that Higgs must leave Athelstone.

201 From the universal descriptions I received it is clear that Fr Wallace was a man acutely mindful of hierarchy, roles of responsibility and the structures and processes of the Society – the role of the Provincial, the visitation, the Consult and the Status. I readily conclude Fr Wallace would be very aware of his responsibilities and those of his superior. It is also clear that he had a very strong commitment and devotion to the Jesuit principles and to the advancement of Athelstone as an excellent Jesuit school.

202 Weighing all these matters up the conclusion may be reached that when it became clear to Fr Wallace that his discussion with Higgs in relation to the complaint that he had been lining up boys to compare their development had not put an end to parental

[40] See generally, Royal Commission Final Report: Volume 16, Religious institutions Book 3, page 236 and following.

complaints regarding Higgs, Fr Wallace determined to act decisively and prosecute Higgs' transfer. I have no doubt Fr Wallace advised the Provincial, whilst respectfully nonetheless as persuasively as he was able, that steps needed to be taken about Higgs.

203 Throughout 1968-70 Fr Wallace was a member of the Consult. Two matters arise. First, as a member there was a good prospect that Fr Wallace would alert the other members of sexual misbehaviour at Athelstone. Fr Day explained that members of the Consult could raise matters. Higgs' behaviour was serious and also involved disobedience towards the Rector's instruction to desist. Furthermore, Mr Helman stated that it was not only Higgs who was abusing children at the time. As said by Bishop O'Kelly, in his experience of the Consult it was the practice not to minute the discussion of such topics but rather to mark the discussion of sensitive topics with a line of dots in the formal minutes. I consider there is a high likelihood that Fr Wallace discussed Higgs' behaviour at some point at the Consult. Upon Fr Wallace doing so, the Provincial, Fr Kelly, would be informed. Secondly, in light of the revelation by the Society to the Review of 21 cases of sexual offending other than Higgs during 1968-71, it is apparent there was a serious pattern of deviant criminal behaviour being perpetrated across the Society such that the Consult, including therefore Fr Wallace, would likely have discussed the pattern and how to manage it. On the readily concluded assumption such discussion occurred at the Consult, the location of Higgs could have actually been part of a much larger and more challenging problem of where to locate not merely one but up to 22 problematic priests or brothers. However, I am unable to make such a finding absent more information about the other 21 cases.

204 As to whether the conversation between the Provincial and Higgs during the August 1970 visitation occurred as described by Higgs in his police interview is difficult to determine. The fact of the Provincial, Fr Kelly suggesting a change would be consistent with the Jesuit relocation philosophy. Further, Fr Kelly would have been mindful of the constant and pressing resources needs of Riverview and transferring Higgs to Sydney would be logical. However, allowing for the purpose of the visitation and the private and solemn focus within the visitation on the conscience of the

individual priest or brother, I assess it as highly probable that Fr Kelly raised with Higgs the complaints about which he had been informed by Fr Wallace.[41] I view it as highly probable that Fr Kelly would have advised Higgs not to repeat his conduct and to take the opportunity for a fresh start.

205 There is one other matter. Once Higgs was transferred to Riverview, the Rector Fr Jordan wrote to the Provincial Fr Kelly seeking to clarify the work Higgs was to perform. I have set the correspondence out noting it is incomplete there being no letter from Fr Kelly.[42] However, it is plain from Fr Jordan's letter that the Provincial was quite prescriptive as to Higgs' work. On the face of the language, on one view it may be inferred that the Provincial wanted Higgs tightly managed and occupied away from boys. The suggestion in Fr Jordan's correspondence is consistent with the Provincial having been informed by the Athelstone Rector, Fr Wallace, of the complaints against Higgs.

206 While I note the absence of documents recording these complaints, I do not consider that this circumstance detracts from such complaints having been made. Importantly, the Review has not been provided with documentary evidence showing that it was the regular practice of either the Society generally or Athelstone in particular to keep records of such complaints, or in relation to any action taken because of them. On the contrary, it was the practice of the Society in 1968-70 to not record sexual improprieties of priests and brothers. The Consult has gaps in its minutes in the period which may indicate discussion of sensitive matters.[43] The archives of Athelstone and the central office of the Society, together with Higgs' personnel file contain no documents noting Higgs' conduct when on his own admission he was spoken to by the Rector, Fr Wallace, in all likelihood in 1968 or 69. Further, despite the complaint noted by the South Australian District Court, the fact of Higgs' own admission, the complaint by Mrs Martin and the likely complaint relating to CE, there is no documentary record or note in the Consult or the archives. An inference can be drawn of these matters

[41] See para 213.
[42] See para 178.
[43] Bishop O'Kelly informed the Review that in his experience discussion of these matters would not be minuted.

deliberately not being recorded, or if recorded, the notations being destroyed.

207 My view is confirmed by the fact of other cases within the Society. The Review was informed by the Society that during the period 1968-71, aside from Higgs' offending there were 21 other cases of sexual impropriety. With respect to the 21 other cases, the first complaint was made in 1996 and most of the other complaints since 2003. The Society holds no records of these cases of sexual impropriety occurring in 1968-71.

208 I conclude that Fr Wallace was aware that multiple complaints had been made against Higgs while at Athelstone. Once Fr Wallace had knowledge of these complaints, then the Society had knowledge. In any event, I am also satisfied that Fr Wallace conveyed the substance of at least some of these complaints to the Provincial, Fr Kelly.

209 The question then arises as to whether Higgs was moved as a result of these complaints.

The role these complaints played in Higgs' movement

210 While there is nothing in the account given by Higgs to police of his conversation with the Provincial to indicate that Fr Wallace had discussed the complaints with the Provincial prior to the August visitation, the inference is open that he had done so. It would accord with what the Review has been told of Fr Wallace's character, that he would take complaints of this kind seriously, and would be alive to the impact they may have on the reputation of the school and the Jesuit community. It would also accord with the Review's understanding of Jesuit governance, which seeks to ensure the Provincial is fully informed of matters affecting the spiritual progress of individuals, and Jesuit communities more broadly so he can govern effectively.

211 In answer to a question posed by the Review, Fr Day, a former Provincial, indicated that in his experience, a Rector who learned that a brother on the staff of a Jesuit school had engaged in inviting young boys to compare their sexual development would be likely to raise it with the offender, with the Provincial and possibly also with others. He further stated that if there was a known problem of the gravity of immoral or criminal misbehaviour, he would have expected it to be discussed or reported on in

some form to the Consult.

212 Significantly, it would have been a serious omission of Fr Wallace, both as leader of Athelstone and as a member of the Consult at the relevant time, to allow Higgs to be moved to another school without informing the Provincial that complaints had been made.

213 Weighing all matters up, I conclude that Fr Kelly as Provincial had knowledge of complaints that had been made against Higgs at the time that he decided to move him to Riverview for eight reasons. First, the nature of the governance arrangements of the Jesuits in 1968-70 would have compelled the Rector of Athelstone to inform the Provincial. Secondly, the minutes of the Consult between 1968-70 contain gaps indicative that sensitive topics like Higgs were in all likelihood discussed. Thirdly, discussion by the Provincial with his advisors on the Consult (of which Fr Wallace was one) was typical under the governance arrangements. Fourthly, all descriptions of the Rector, Fr Wallace, point to and confirm an individual who would have followed Jesuit governance to the letter by informing the Provincial of the complaints, at least during the August 1970 visitation and possibly on other occasions. Fifthly, the spiritual obligation upon all Jesuits to share their conscience with the Provincial at visitation would have led to Fr Kelly raising such complaints as had been conveyed to him with Higgs. Sixthly, the tone of correspondence between the Rector of Riverview, Fr Jordan and the Provincial reflecting the latter's desire to have Higgs confined to certain duties is reflective of the Provincial's concerns about Higgs. Seventhly, in the context of the pressing needs of Riverview as reflected in the Consult minutes there was a very convenient opportunity to transfer Higgs away from Athelstone demonstrating, if needed, a responsiveness to the Athelstone complaints. Eighthly, Higgs in his letter to Fr General Kolvenbach dated 28 May 2001 wrote, 'My inappropriate behaviour surfaced in 1968 and was dealt with by my Rector Fr Frank Wallace SJ and Provincial Peter Kelly SJ.'

214 In moving Higgs when seized of this knowledge, it is evident that Fr Kelly did not respond as he should have. Bearing in mind that in addition to Higgs there were 21

other cases within the Society in the period 1968-71, there would be a reasonable prospect of the Provincial being confronted by similar problems from across the Society. If there was a pattern across the Society of wrongful conduct, non-transparency and relocation of problem priests and brothers in around 1970, it would reinforce my findings with respect to Higgs. However, the Review cannot resolve that matter as the 21 other cases are beyond the terms of reference and have not been investigated or considered by the Review.

215 The Royal Commission made various general observations about responses to allegations of child sexual abuse across religious organisations. It observed that some perpetrators were moved to new positions in different locations where they were offered a 'fresh start', untarnished by their history of sexual offending or previous allegations.[44] It observed that in taking this action

> some leaders of religious institutions failed to make accurate or frank statements either to other members of the religious institution or to the wider community about the real reasons for transfers. They also failed to adequately consider the risks these individuals posed.[45]

216 It found that it was clear in some cases that:

> leaders of religious institutions knew that allegations of child sexual abuse involved actions that were or may have been criminal, or perpetrators made admissions. However, there was a tendency to view child sexual abuse as a forgivable sin or a moral failing rather than a crime. This contributed to inadequate institutional responses to such abuse.[46]

217 I note that the Royal Commission did not report specifically on the Society. Nevertheless, some of those persons who suffered abuse at Athelstone made contact with the Royal Commission.

218 On the evidence available to me, and where Fr Kelly and Fr Wallace are now deceased, I am unable to make any further findings on this matter.

Findings to be understood in light of Terms of Reference

219 In the course of the Review, Oscar Richards requested that he be given an opportunity

[44] See, eg, Royal Commission Final Report: Volume 16, Religious institutions Book 3, page 237, 241.
[45] Ibid. page 241.
[46] Ibid. page 259.

to make a submission about his experience and the abuse he suffered as a student in another Jesuit school. I subsequently interviewed Mr Richards, together with his lawyer, Christopher Dale, and supported by Tim McDermott and John Murphy. In interview Mr Richards described abuse that he had suffered while a student. His description of the abuse he suffered was horrific. Mr Richards's circumstances did not relate to Higgs and fall outside this Review's terms of reference.

220 Mr Richards and his supporters submitted that sexual abuse of boys was widespread across the Society. They also submitted that the Society had a disposition towards dealing with problematic priests and brothers by moving them on to other schools where they reoffended. They suggested Higgs' case was consistent with that approach or practice. I have not seen evidence to support such an assessment.

221 Subsequently, Dr Murphy provided a written submission summarising his investigations over several years regarding allegations of sexual abuse by Jesuits primarily at Xavier College in Melbourne, but also in other schools.[47]

222 It would appear from Dr Murphy's voluntary work, and from the fact that 21 other instances have been identified by the Society where complaints of sexual abuse occurring during the period 1968-71 had been made by students in Jesuit schools, that there are serious matters warranting resolution. It may be reasonably expected that the Society is or will be conducting further investigations into these matters. In my view, it is highly desirable that it do so.

223 While it is beyond the scope of this Review to enquire into the details of all such cases, the Review sought to establish whether there were particular features of the other 21 cases that may provide further context in which the circumstances of Higgs' move could be understood. By letter dated 3 December 2019, the Review requested that the Society advise on the following:

1. How many individual Jesuits were the subject of complaint in the 21 other cases?
2. Of the 21 other cases, how many of these were the subject of

[47] A submission to similar effect was also received from a survivor who had worked with Dr Murphy.

contemporaneous complaints, and, how were the complaints in those cases dealt with by the Society?

3. Were any contemporaneous records or documents created in 1968 – 1971 relating to the 21 other cases?

4. Has the Society explored whether persons the subject of those complaints were moved frequently or at unusual times in the year, and if so, how those moves were explained?

5. Did then Provincial Kelly know about any of the 21 other cases during his time as Provincial? If he knew, how did he respond?

6. In 1968 – 1971, was there any awareness that sexual impropriety by Jesuits in relation to students was a problem? If so, what guidance (if any), formal or informal, was provided by the Society to Jesuit Colleges as to how it was to be dealt with?

7. If there was no awareness or consistent practice of dealing with such complaints in 1968 - 1971, when did an awareness of the problem emerge?

8. Was moving a Jesuit the subject of a complaint to another place one of the ways that such problems were addressed in 1968 – 1971?

9. Are there other aspects of the way these cases were dealt with that may assist the Inquiry in understanding the Society's response to the Higgs complaints?

224 The Society responded to that request on 11 December 2019 and indicated that:

> The Society of Jesus' (Society) ability to respond to much of your letter is limited by the effluxion of time of (at a minimum 48 years), the unavailability of witnesses (so many individuals are deceased and, particularly, Provincial Kelly who has been deceased since 2004) and the absence of documentation (we address below that certain school records are no longer in existence).
>
> As you are aware, the Society has caused extensive searches to be undertaken for records and all available records have been provided to the Inquiry. The Society is not aware of any other records that would be relevant in either a positive or negative way and, as such, there is no additional information that can be provided that would be of assistance to the Inquiry for the purpose of understanding the Society's response to any complaints that may have been made against Victor Higgs and/or other Jesuits in the period 1968 to 1971.
>
> Of the 21 other cases of complaints of sexual impropriety referred to in our letter dated 14 October 2019, the earliest complaint was made in 1996 and 18 were made since 2003….We also note that 14 of those complaints relate to schools in Victoria. The Society has made further inquiries with Xavier's archivist who has confirmed that there are no records relating to any students prior to 1980 (other than being able to confirm a student attended the School) as they were all destroyed for the purpose of saving space. The Society also notes that Xavier did not employ an archivist until 2014.

225 While the focus of this Review has been to examine, as extensively as is practicable,

the particular circumstances of Higgs' movement from Athelstone to Riverview in 1970, that examination would be informed by a fuller understanding of the way in which cases of a similar nature were dealt with by the Society.

226 The Review was not informed of any other reviews, investigations or inquiries conducted within or for the Society. In particular the Review enquired of the Society's lawyers whether there were other matters relating to the 21 cases of misconduct in addition to Higgs about which the Review should know and be informed.[48] As already stated the context in which Higgs offended may be relevant to reinforcing my findings as to the level and nature of Fr Wallace and Fr Kelly's knowledge of the complaints about Higgs when the decision to move him to Riverview was made.

Conclusions

227 For the reasons stated, I have found that at least three complaints were made to the Rector, Fr Wallace, regarding Higgs' conduct at Athelstone.

228 I find that the substance of at least some of these complaints was conveyed to the Provincial, Fr Kelly, prior to Higgs' movement.

229 In my view, the fact of these complaints was a factor in the decision to move Higgs from Athelstone to Riverview in 1970.

DATED: 20 December 2019

……

The Honourable Marilyn Warren AC QC

[48] See question 9 in the interrogatories in the Review's letter of 3 December 2019, set out at para 223.

APPENDIX 1

Description of the Society's archives

1 The Riverview archive was established in 1974 and is currently managed by Catherine Hobbs who began working as the college archivist in March 2001.[49] The Riverview repository consists of approximately 620 shelf metres of records in various formats (including photographs) stored in archive boxes dating from 1878.

2 Since its establishment, the Riverview archive has always been under the care of professional archivists and has been arranged according to the archival principles of provenance and original order. Searches for documents are conducted using the accession register, which is sorted by creator and by date, and through early pre-computer index cards, which are sorted by subject as well as by provenance.

3 The Athelstone archive commenced in around 1999 when Warren Murphy,[50] then a teacher at the college, began the task of bringing together records that were held in various boxes throughout the Athelstone and Norwood campuses and at the Jesuit Residence, all in Adelaide.

4 In 2006, a designated archive space was established under the newly built college chapel at Athelstone and a 37-bay compactus was installed as a home for the college's archives. The initial archiving of college records was principally done by Mr Murphy, who was assisted by two volunteers both of whom were former teachers. Mr Murphy has worked with the archives since his initial involvement in 1999, and continues to work in the archives three days each week. Over the years, he has become very familiar with the college's records and its history.

5 In addition to the archives maintained by the colleges, which retain material relevant to the history of that college, the Society maintains a central archive which has been

[49] Ms Hobbs has a Graduate Diploma in Information Management–Archives Administration from the University of NSW and has worked as a professional archivist for 34 years.
[50] Mr Murphy completed a Masters in Historical Studies which included an archive component.

managed by Fr Head since 2004.

6 This central archive was formally established in around 1920, and consists of about 2500 boxes of material. To a large extent, this material is searchable through an electronic database, into which the topics of the material stored in those boxes has been inputted over the years.

7 Fr Head has had occasion to work with the Athelstone and Riverview archives from time to time. Though they are independent of the central Society archive, because particular kinds of material is maintained by those archives, that material does not also need to also be kept as part of the central archive.

8 Each of these archivists has been asked to identify records relating to Higgs.

9 When Mr Murphy was asked to identify records relating to Higgs, initially by the college's then Rector, Fr Davoren, in 2016, he first looked up the school year books and determined that Higgs was at the college between 1968-70. Mr Murphy was aware that there were no headmaster's files, diaries or correspondence from that period whatsoever, and knew that no files of the Jesuit staff from that period were retained in the college archive. In those circumstances, Mr Murphy quickly formed the view that there were likely to be few if any records relating to Higgs.

10 While Mr Murphy knew it was possible that there would be a reference to Higgs in one or more student files, he was not given the names of any students who may have a connection with Higgs so did not review these files. In any event, from his previous review of such files, he knew that the student files from the period typically contained only academic records for years 11 and 12, and were not likely to contain personal information or correspondence. While he was aware too that there were records of sports reports covering 1968-70 football and cricket, prepared by Br Callil, he did not review these records for references to Higgs for a similar reason. In the result, the only records located in the Athelstone archive that relate to Higgs are references in the college year book, and some photographs.

11 Mr Murphy is confident and the Review accepts that further records relating to Higgs, in particular records of any parental complaint, or of discussion between Higgs and the then Rector, Fr Wallace, or other records of Higgs' life and work at the college in that period do not exist in the Athelstone archive. Mr Murphy noted that records of such matters have been kept since 1994 and since then some records have been maintained that are marked confidential to the Rector. However, the Athelstone records from 1968-70 are very limited.

12 Ms Hobbs conducted searches for material relating to Higgs held at Riverview using both the accession register and the index cards. She stated that she had adopted a broad approach to the task of identifying relevant records and, like Mr Murphy, she is confident and the Review accepts that all relevant records have been located.

13 Fr Head has also undertaken various searches in the central archive for material relating to Higgs. These searches revealed several boxes of financial information prepared by Higgs while at Riverview, along with Higgs' personnel file.

14 Fr Head is confident and the Review accepts that searches reasonably necessary to discover material relating to Higgs have been conducted and relevant documents extracted from the central archive. While it is possible that a reference to Higgs may appear in other documents within the archives including in correspondence, Fr Head is confident that documents discussing or relating to any complaint made against Higgs of sexual impropriety do not exist in the central archive. In Fr Head's experience, the records that were kept for archiving in the late 1960s and early 1970s were typically financial and legal documents, and did not commonly include personal correspondence and other records of that nature.

15 In interview, Fr Head was asked whether in his experience as the Jesuit archivist he had identified documents and records relating to other instances of sexual improprieties towards students in the period around 1970. Fr Head recalled one complaint from the late 1940s, but believed that was the only one he had seen from that era. While he considered it was possible that other instances of sexual

improprieties towards students may have occurred during the period 1968-70, they were not disclosed in any records with which he was familiar.

APPENDIX 2

Summary of requests for information and information received

Requests and responses

Court documents and transcripts
• SA District Court file documents
  ○ ***Obtained 12 September 2019***
• SA District Court transcript
  ○ ***Provided on 23 May 2019 and on 12 September 2019***
• SA District Court sentencing remarks
  ○ ***Provided on 23 May 2019***
• SA District Court certificate of record
  ○ ***Provided on 23 May 2019***
• NSW District Court sentencing remarks and transcript
  ○ ***Provided June/July 2019***
• NSW District Court file documents
  ○ ***Obtained 11 June 2019***
• Confirmation of steps taken to obtain documents from the courts and police in NSW and SA
  ○ ***Explanation provided 15 May 2019***

Police documents
• NSW Police documents
  ○ ***MinterEllison made FOI request in May 2019 – request denied in June 2019***
• SA Police documents
  ○ ***MinterEllison made FOI request in May 2019 – request allowed (but heavily redacted) in October 2019***

Higgs' staff file from the Society • ***Provided by MinterEllison in April 2019***
Survivor material • ***Provided by MinterEllison on 23 May 2019, 12 June 2019, 8 August 2019, 19 August 2019, 27 August 2019, 28 August 2019 and 19 November 2019***
Other

- Information from Dr John Murphy outlining the names of Jesuits who were moved under Fr Kelly as Provincial, and those with credible allegations made against them. ***Provided on 4 December 2019. Submissions also received on 9 December 2019 by a survivor who has worked with Dr Murphy in his research***
- Letter to MinterEllison re 21 other cases of sexual impropriety at Jesuit Colleges in 1968 – 1971. David Laidlaw spoke with Michelle MacMahon on 2 December 2019 and she requested that the questions be include in a letter. ***Letter sent on 3 December 2019. Response provided 11 December 2019***

Additional requests for information/documents from the Society

- Positions held within the Society in 1968 – 1971
  - ***Response received 16 August 2019***
- Jesuit contemporaries of Higgs at Athelstone 1968 – 1970
  - ***Response received on 3 October 2019 (identifying Fr Des Dwyer as available to be interviewed)***
- Staff list of lay staff at Athelstone in 1968 – 1970
  - ***Provided 30 October 2019 (identifying Bernie Donnelly as available to be interviewed)***
  - ***Full names of lay staff provided (except Mrs G Arnold and Mrs P Wilkins) on 25 November 2019***
  - ***Maddocks spoke with Mr Donnelly and Fr Dwyer to ask whether they could recall the first names of Mrs G Arnold or Mrs P Wilkins. Mr Donnelly and Fr Dwyer could not. Maddocks undertook searches of the telephone contact directory but was unable to identify Mrs G Arnold and Mrs P Wilkins***
- Calendar of Provincial visitations for 1968 – 1970
  - ***The Society has not been able to locate any relevant records***
- Any notebooks, diaries, memoranda, staff planning materials or other documents created by or on behalf of the Provincial in 1986 - 1970 in relation to the annual visitations by the Provincial
  - ***Provided 30 October 2019 and 31 October 2019***
- Any supporting or related documents held by the Society relevant to the preparation of the 1968 – 1970 Provincial Catalogues
  - ***Society has not been able to identify any supporting or related documents***
- Contemporaneous documents regarding staffing needs of Riverview in 1968 – 1970
  - ***Society has not been able to locate any relevant records***
- Fr Daven Day CV
  - ***CV provided 24 September 2019***
- Fr Frank Wallace CV
  - ***CV provided on 8 November 2019***
- Confirmation that all documents provided to NSW Police have been provided to the Inquiry
  - ***Explanation and additional documentation provided on 19 November 2019***
- Any other cases of sexual impropriety in relation to students in 1968 – 1971
  - ***21 other such cases across Colleges operated by the Society (response on 14 October 2019)***

- ***Followed up with letter containing additional questions on 3 December 2019. Response provided 11 December 2019***
- Request that the Society undertake searches for any further correspondence sent in late 1970/early 1971 relating to Higgs' duties and appointment (letter from Fr Jordan to Provincial dated 7/1/71 makes reference to such correspondence)
  - ***Request sent on 29 November 2019. Response received on 10 December 2019 – Fr Head confirmed no further correspondence was identified***

Requests for contact information:

- Bishop O'Kelly
  - ***Provided 5 September 2019***
- Fr Michael Ryan
  - ***Provided 5 September 2019***
- Fr Des Purcell
  - ***Diagnosed with Alzheimer's disease***
- Fr Des Dwyer
  - ***Provided 3 October 2019***
- Mr Bob Liddy
  - ***Obtained October 2019***
- Mr Bernie Donnelly
  - ***Provided 14 November 2019***
- Other lay staff contemporaries of Higgs at Athelstone
  - ***Society does not hold contact information for lay staff other than Mr Donnelly***
- Athelstone archivist
  - ***Provided 31 October 2019***
- Riverview archivist
  - ***Provided 16 October 2019***
- Society's archivist
  - ***Provided 26 November 2019***
- Fr Martin Wallace
  - ***Passed away in 1973***
- Victor Higgs
  - ***MinterEllison does not have Higgs' contact information***
  - ***Maddocks has sent a letter to Corrections NSW to be forwarded to Higgs and also letter to Higgs through his NSW defence lawyer, Simon Fung on 3 December 2019. Simon Fung emailed Maddocks on 9 December 2019 confirming that he spoke with Higgs and Mr Fung was instructed that Higgs did not wish to respond***

Miscellaneous

- Letters to Adelaide survivors
  - ***Sent 24 September 2019 and 22 October 2019***
  - ***Responses received from Toby Miller, Hamish Elliott and Lucas Stewart***
  - ***As at 18 December 2019, no other responses received***
- Letter to Aiden Collins
  - ***Sent 7 November 2019***
  - ***As at 18 December 2019, no response received***
- Letter to CE
  - ***Sent 23 October 2019***
  - ***As at 18 December 2019, no response received***
- Letter with queries for Fr Day
  - ***Sent 6 November 2019***
  - ***Response received 26 November 2019 (by letter dated 18 November 2019)***
- Review of documents provided to the Royal Commission into Institutional Responses to Child Sex Abuse, the Final Report and the Interim Report
  - ***Maddocks completed 17 October 2019***

Interrogatories

Requests for interrogatories 2 May 2019 (response 23 May 2019)

1. On 11 April 2001, the Provincial, Fr Day SJ, wrote to the Superior General, in role (11 April 2001 letter) and in that letter stated, *'During his [Higgs'] time in the schools over the years, there have been some anxieties about alleged improprieties, usually of a voyeuristic nature, but certainly no formal complaints of which [the Provincial] was aware made by boys or parents'.*

   a) Does the Society presently hold, or has it previously held, or is it otherwise aware of, any documents regarding improprieties in relation to Br Higgs alleged to have occurred prior to late 2000.

   We understand interrogatory 1 is seeking contemporaneous documents regarding improprieties in relation to Victor Higgs alleged to have occurred prior to late 2000. If we have misunderstood the interrogatory then please let us know, however, we proceed on this premise.

   The Society does presently hold documents regarding a complaint made in late 2000 by a former student of St Ignatius College Adelaide.

Enquiries have been made and the Society does not presently hold and is otherwise not aware of any other contemporaneous documents regarding improprieties in relation to Mr Higgs alleged to have occurred prior to late 2000. It is not within Fr McCoy's or Mr Davies' knowledge whether the Society previously held any contemporaneous documents regarding improprieties in relation to Mr Higgs alleged to have occurred prior to late 2000.

b) If it presently holds documents, please provide copies.

Records relating to the complaint made in late 2000 by a former student of St Ignatius College Adelaide are enclosed.

c) If it previously held documents, but no longer does, please explain why the Society no longer holds those documents.

The information requested in this paragraph is not within the knowledge of Fr McCoy or Mr Davies.

d) What is the source of Fr Day's reference to Higgs' alleged improprieties 'over the years'?

The information requested in this paragraph is not within the knowledge of Fr McCoy or Mr Davies. However, we note that Fr Day is available to be interviewed regarding these matters.

2. The 11 April letter states '*towards the end of last year [2000], however, there was a formal complaint of sexual interference received from a former student of St Ignatius Adelaide.*'

a) Does the Society presently hold, or has it previously held, or is otherwise aware of, any documents in relation to the formal complaint made in late 2000?

Yes, the Society presently holds documents in relation to a formal complaint made in late 2000.

b) If it presently holds relevant documents, please provide them as soon as practicable.

All documents in the possession of the Society in relation to this complaint, including those referred to below, are enclosed with this letter.

c) If it previously held relevant documents, but no longer does, please explain why the Society no longer holds those documents.

Not applicable.

d) Please provide the usual particulars in relation to the complaint.

The records indicate Sr Angela Ryan CSB (National Committee for Professional Standards, a Committee of the Australian Catholic Bishops and the Australian Leaders of Religious Institutes) was contacted by or was made aware of contact by Daniel Gill in 2000, and that she provided Mr Gill's mobile number to the Provincial. It is unknown what Mr Gill initially communicated to Sr Ryan/the Society other than that it related to Victor Higgs.

On 1 December 2000, the Society provided Mr Gill with the Protocol. It is unknown whom provided Mr Gill with the Protocol.

1. The 11 April 2011 letter states '*in accordance with our Protocol for these matters, I immediately removed Br Higgs from St Aloysius College even though the school year had not ended, and brought him to the Provincial Residence*.'

a) Please provide a copy of the Society's Protocol for these matters as it applied at the time of the making of the formal complaint in late 2000.

Please find enclosed a copy of the Society's protocol as it applied at the time of the making of the formal complaint in late 2000.

b) Did a similar Protocol exist for dealing with these matters in the period around 1968 – 1971? If so, please provide a copy.

No, a similar protocol did not exist for dealing with these matters in the period around 1968 to 1971.

c) Does the Society presently hold, or has it previously held, or is it otherwise aware of, any documents in relation to the removal of Br Higgs from St Aloysius College in late 2000 – 2001?

The Society holds meeting minutes of the Province Consult dated 2 March 2001 and 6 April 2001, in which the removal of Victor Higgs to the Provincial Office is recorded.

d) If it presently holds relevant documents, please provide them as soon as practicable.

The relevant extracts of the meeting minutes are enclosed.

e) If it previously held relevant documents, but no longer does, please explain why the Society no longer holds those documents.

The information requested in this paragraph is not within the knowledge of Fr McCoy or Mr Davies. However, we note that Fr Day is available to be interviewed regarding these matters.

2. The 11 April 2011 letter states, '*I [the Provincial] appointed an independent person (the former Chair of the Public Service Board of South Australia) to interview the man making the allegation. He found the claimant to be credible.*'

   a) Does the Society presently hold, or has it previously held, or is it otherwise aware of, any documents in relation to this interview?

      Yes, the Society presently holds documents relating to this interview.

   b) If it presently holds relevant documents, please provide them as soon as practicable.

      All documents in the possession of the Society in relation to this interview, including those referred to below, are enclosed with this letter.

   c) If it previously held relevant documents, but no longer does, please explain why the Society no longer holds those documents.

      The Society is not aware of any further documents to provide in relation to this interrogatory.

   d) Please provide the usual particulars in relation to this interview.

      On 11 January 2001, David Mercer (former Chair of the Public Service Board of South Australia) interviewed Daniel Gill at the office of N Minnicozzi, Solicitor, in Hackney, South Australia. Mr Mercer prepared a handwritten statement dated the same date and a document titled 'Schedule A'. Mr Mercer also prepared a document titled 'Notes on Interview'. The details of what was said in the interview are contained in these documents. Those documents record that Mr Gill made allegations against Mr Higgs as follows:

      i. ***Mr Gill was a student at St Ignatius Senior School Athelstone, was aged 12 and in second term of 1968;***

      ii. ***Mr Higgs was out in the yard next to the library, now the teachers room;***

      iii. ***Mr Higgs asked to see him and they went to Fr McAvery's office (then Prefect of Studies), which was part of the library;***

      iv. ***Mr Higgs and Mr Gill sat opposite each other with nothing between them when Mr Higgs asked about Mr Gill's interests, where he was from and what he had done in his life;***

      v. ***Mr Higgs then asked Mr Gill to pull his pants down;***

      vi. ***Mr Gill asked why and Mr Higgs said 'just to get to know you better';***

vii. ***Mr Gill stood up and pulled down his khaki shorts;***

viii. ***Mr Higgs looked at Mr Gill's genitalia, lifted his penis and moved his testicles around a bit for 2 to 3 minutes while Mr Gill stood there dazed;***

ix. ***Mr Higgs told Mr Gill to pull his pants up and just after that someone came in, who he cannot remember;***

x. ***After a short conversation with the person who interjected, Mr Higgs then said in similar wording 'thank you - nice to meet you';***

xi. ***Mr Gill then left the office; and***

xii. ***In the years that follows there were no similar incidents with Mr Higgs.***

3. The 11 April 2001 letter states that *'I [the Provincial] then flew to Adelaide to meet with the person [the complainant].'*

a) Does the Society presently hold, or has it previously held, or is it otherwise aware of, any documents in relation to this meeting?

Yes, the Society presently holds relevant documents in relation to this meeting.

b) If it presently holds relevant documents, please provide them as soon as practicable.

All documents in the possession of the Society in relation to this meeting, including those referred to below, are enclosed with this letter.

c) If it previously held relevant documents, but no longer does, please explain why the Society no longer holds those documents.

The Society is not aware of any further documents to provide in relation to this interrogatory.

d) Please provide the usual particulars in relation to this meeting.

Fr Day prepared a handwritten file note of the meeting. Fr Day's file note indicates that he met with Mr Gill at Norwood Parish in Adelaide on 29 January 2001 and that he followed a briefing note prepared for the interview. The file note and briefing note records that in that meeting:

i. ***Fr Day apologised to Mr Gill and expressed gratitude for the action he had taken, and offered to ask Mr Higgs to apologise to Mr Gill directly;***

ii. ***Mr Gill expressed satisfaction that Mr Higgs had owned up to the matter and had expressed concern and regret;***

iii. ***Mr Gill did not want Mr Higgs to formally apologise, nor an apology from the Society, and accepted that Mr Higgs was underdeveloped and naïve;***

iv. ***Mr Gill accepted Mr Higgs' apology and Mr Gill requested Mr Higgs be told that he had forgiven him;***

v. ***Mr Gill was gratified that Mr Higgs was confined to clerical duties in Fr Day's office and that he would commence medical treatment;***

vi. ***Mr Gill spoke briefly of his own psychological difficulties over the years and it was understood he had been under stress because of the nature of police work attending accidents;***

vii. ***Fr Day said he must consider dismissing Mr Higgs from the Order and welcomed Mr Gill's thoughts on the matter;***

viii. ***Mr Gill expressed that he did not want Mr Higgs to be expelled from the Order; and***

ix. ***Mr Gill expressed satisfaction with his prior interview with Mr Mercer and thanked Fr Day several times.***

On 5 March 2001:

x. ***Mr Gill contacted Ross Jones SJ via telephone and expressed that he wished no further action to be taken; and***

xi. ***Fr Day returned the telephone call and Mr Gill confirmed he wished no further action be taken and asked Fr Day to tell Mr Higgs he had forgiven him and that he wished him well for the future.***

These telephone conversations are documented in handwritten and typed file notes.

4. The 11 April 2001 letter states '*on returning to Melbourne, I [the Provincial] confronted Mr Higgs…*' A further letter dated 9 May 2001 from the Provincial to Br Higgs states, '*When I first put the accusations before you, I cautioned you about the importance of full truth and transparency in*

these matters. You firstly denied the accusations and then I offered you the opportunity to consider if this was to be your final response. When you saw me for the second time you acknowledged the truth of the allegations.'

a) Does the Society presently hold, or has it previously held, or is it otherwise aware of, any documents in relation to either the first, or the second of these meetings?

The Society does hold a meeting minute dated 6 April 2001.

b) If it presently holds relevant documents, please provide them as soon as practicable.

The meeting minute dated 6 April 2001 is enclosed.

c) If it previously held relevant documents, but no longer does, please explain why the Society no longer holds those documents.

The information requested in this paragraph is not within the knowledge of Fr McCoy or Mr Davies. However, we note that Fr Day is available to interviewed regarding these matters.

d) Please provide the usual particulars in relation to each of these meetings.

The information requested in this paragraph is not within the knowledge of Fr McCoy or Mr Davies. However, we note that Fr Day is available to interviewed regarding these matters.

5. On 5 May 2001, Br Higgs wrote to the Provincial in a letter that stated, '*My main regret is that I was forced to admit to the guilt of an action for which I have not recollection. I went through another process many years ago concerning the events of which I've now been accused. That process didn't adopt as a starting point that I was guilty of some inappropriate action.*'

a) Does the Society presently hold, or has it previously held, or is it otherwise aware of, any documents in relation to another process many years ago concerning the events the subject of the formal complaint?

Fr McCoy and Mr Davies are not aware of any documents in relation to another process many years ago concerning the events the subject of the formal complaint. However we note that Fr Day is available to be interviewed and may be able to assist with these matters.

b) If it presently holds relevant documents, please provide them as soon as practicable.

Based on searches of records to date and with reference to the 5 May 2001 letter, the Society has not been able to identify any documents in relation to another process many years ago concerning the events the subject of the formal complaint.

c) If it previously held relevant documents, but no longer does, please explain why the Society no longer holds those documents.

The information requested in this paragraph is not within the knowledge of Fr McCoy or Mr Davies. However, we note that Fr Day is available to interviewed regarding these matters.

d) What process is Br Higgs referring to when he states that he went through 'another process many years ago'?

The information requested in this paragraph is not within the knowledge of Fr McCoy or Mr Davies. However, we note that Fr Day is available to interviewed regarding these matters.

6. On 7 June 2001, the Superior General wrote to Br Higgs an in that letter thanked Br Higgs for his letter of 28 May 2001 and stated, '*I am happy to learn about the whole story from your [Higgs'] point of view*'.

a) Does the Society presently hold, or has it previously held, or is it otherwise aware of, a copy of Br Higgs' letter to the Superior General?

The Society presently does not hold a copy of Mr Higgs' letter to the Superior General. It is not within the knowledge of Fr McCoy or Mr Davies as to whether the Society previously held a copy of the 28 May 2001 letter.

Please advise if it would assist if the Australian Province made enquiries with Roman Curia of the Society regarding a copy of the 28 May 2001 letter. [The Society later requested from the Roman Curia a copy of this document and it was provided to the Inquiry on 30 October 2019]

b) If it presently holds that document, please provide it as soon as practicable.

The Society does not presently hold relevant documents.

c) If it previously held that document, but no longer does, please explain why the Society no longer holds it.

It is not within the knowledge of Fr McCoy or Mr Davies as to whether the Society previously held a copy of the 28 May 2001 letter.

7. In relation to the assignment of Jesuit priests and brothers to various roles throughout Australia, and to the management of those persons in those roles generally:

   a) In the period around 1970, what records were kept as to which person had been assigned to what roles?

      The meeting minutes of the Province Consult recorded which person had been assigned to what roles.

      The Society also produced an annual Province Catalogue, which formed an annual directory identifying where each Jesuit in Australia was stationed for that coming year. Please advise if you require a copy of the Catalogues and for which years.

   b) Who determined whether a person would continue in their current role, or would be assigned to a new role?

      Each Jesuit in Australia was and continues to be subject to visitations by the Provincial on an annual basis. The Provincial also conducts a visitation with the local Superior where discussions regarding the placement of persons takes place. Approximately midyear each year, the Province Consult convenes and discusses where each Jesuit would mission to next. Ultimately, the determination regarding the assignment and continuation of roles of Jesuits was and continues to be made by the Provincial.

   c) How were such determinations made?

      Relevant factors for determinations as to whether someone would continue in their role, or would be assigned to a new role included gaps in Jesuit missions that needed to be filled and the skill sets of the Jesuit in question. Ultimately, the determination regarding the assignment and continuation of roles of Jesuits was made by the Provincial.

   d) What documents and/or records were created or updated when a determination was made to move a person into a new role?

      Each Jesuit in the Province has a corresponding curriculum vitae which details biographical information and which mission the Jesuit has undertaken each year he is a member of the Society. These are updated by the Socius of the Province.

      Further, the annual publication of the Province Catalogue would denote the placement of a Jesuit for that year.

   e) What records were kept in relation to the performance of persons in the roles to which they were assigned and/or in relation to a person's suitability or otherwise for particular roles?

      The Society is not aware that any records were kept. Further to the answer of interrogatory 9(b) above, these matters would have been discussed in meetings of the Province Consult, although no records, other than meeting minutes, were kept.

a) Please confirm whether documents and/or records created or maintained by St Ignatius' College Riverview are within the possession, custody or control of the Society;

Yes, these documents are within the possession, custody or control of the Society.

b) Please provide details of the enquiries that have been made by the Society to:

i. Identify whether any contemporaneous documents and/or records exist in relation to the complaint allegedly made to St Ignatius' College Adelaide by Mr Martin's mother sometimes during 1968-1970;

As recently as 9 July 2019, the Society made enquiries in email correspondence with St Ignatius' College Adelaide ("College") as to whether such contemporaneous documents or records exist in relation to a complaint allegedly made to the College by Mr Martin's mother sometime during 1968-1970. The College confirmed to the Society on 22 July 2019 that its archivist had conducted searches for records and was unable to find any relevant documents.

The Society had also on numerous occasions, including on 8 July 2019 and 7 August 2019, conducted reviews and searches of Mr Martin's file on its Polonius electronic document management system for any documents or records in relation to Mr Martin and his mother's compliant. This involved a search for all documents in relation to Mr Martin in the Polonius system and a manual review of all documents. The Society was unable to find any relevant documents.

The Society's archivist has confirmed that any documents or records in relation to a complaint made by Mr Martin's mother would have remained with College's archives and would not have been retained in the Society's hard copy archives.

ii. Identify whether any contemporaneous documents and/or records exist in relation to improprieties concerning Br Higgs alleged to have occurred prior to late 2000;

The Society has made the following enquiries:

A. Searches of the Society's hard copy archives and records, which were requested on approximately 24 April, 14 May and 7 August 2019, which involved the following:

I. *Searches of an electronic database, which identified 6 boxes of archived records containing materials referencing Br Higgs (the Society holds approximately 2,500 boxes of archived records);*

II. *Manual review of the contents of those 6 boxes;*

III. *Manual review of the contents of the Province Consult meeting minutes; and*

IV. *Manual review of the contents of the Province Catalogue;*

B. *Searches of the Society's Polonius electronic document management system on numerous occasions since December 2018, which involved a search for all documents in relation to Mr Higgs and a manual review of those documents;*

C. *Correspondence with St Ignatius' College Adelaide on 9 July 2019 requesting confirmation that all searches of College archives and records have been undertaken, those searches involving the following:*

I. *Searches of student files stored both in hard copy (in an extended compactus of 37 bays) and electronically on the Heritage Documentation System 8.7 with reference to Mr Higgs in electronic searching;*

II. *Searches of staff records stored in hard copy in the compactus referenced above with reference to Mr Higgs;*

III. *Searches of any references to Mr Higgs in the College Magazine; and*

IV. *Searches of any references to Mr Higgs in miscellaneous records such as photo albums.*

D. *Correspondence with St Ignatius' College Riverview on 9 July 2019 requesting confirmation that all searches of College archives and records have been undertaken, those searches involving the following:*

I. *Searches of an electronic database and catalogue, with reference to the period of Mr Higgs' employment between 1971-1981, the names of the former student survivors, Mr Higgs' name and other general terms such as boarding, discipline and incidents, which identified files of potentially relevant records;*

II. *Manual review of the contents of those files; and*

III. *Searches of the College annual Alma Mater between 1971-1981, with reference to the names of Mr Higgs and former student survivors;*

E. A request to Fr McCoy via email correspondence on 8 August 2019 as to his knowledge of the existence of any relevant documentation.

c) And the results of those enquiries

The Society is not aware of and does not presently hold any contemporaneous documents in relation to a complaint made to St Ignatius' College by Mr Martin's mother sometime during 1968 – 1970.

As to the enquiries outlined in response to b(ii) above, searches of the Society's hard copy archives and Polonius electronic document management system did not yield any relevant results.

St Ignatius' College Adelaide confirmed to the Society in email correspondence on 22 July 2019 that its archivist had on that day conducted final searches for records and that the College has not found any relevant documents.

St Ignatius' College Riverview confirmed to the Society in email correspondence on 16 July 2019 that its archivist and the Principal, Dr Paul Hine, have not found any relevant documents.

On 16 August 2019, Fr McCoy confirmed to Mr Davies that he did not have any knowledge as to the existence of any relevant documents.

Request for Interrogatories dated 2 October 2019 (Response dated 8 October 2019)

1. Answers to Interrogatories

a) In answer to interrogatory 8(a) [in your letter dated 23 May 2019] you asked whether you should try to obtain a copy of the 28 May 2001 letter. Can you please seek a copy of this letter.

We are advised that a copy of this letter is being requested from the Roman Curia of the Society. [The Society later provided a copy on 30 October 2019]

b) In answer to interrogatory 9(a), you referred to an annual Province Catalogue. Can you please provide us with copies of the Catalogue for the years 1968 to 1971.

Please find enclosed a copy of the Catalogue for those years. We note that for the 1970 Catalogue there are a few pages that did not scan properly, and these are described in the enclosed replacement Catalogue pages.

c) In answer to interrogatory 9(b), you refer to visitations by the Provincial and discussions with the local Superior. We would be grateful if you could seek instructions from the Society as to whether records were kept of these visitation meetings.

We can confirm that the Society has not kept records of those meetings.

2. Minutes of the Provincial Consult

d) The Inquiry was provided with copies of the minutes of the Provincial Consult for the years 1968 to 1971. We note that there is no mention of any sexual impropriety in relation to students in those minutes. Please seek instructions as to whether, aside from Mr Higgs, there were any other cases of sexual impropriety in those years. We note that the Inquiry is not requesting the details of any other cases.

We are seeking the Society's instructions and will revert with a response as soon as possible. [The Society later advised on 14 October 2019 that there were 21 other such cases across Colleges operated by the Society]

e) The minutes make reference to growth in the Riverview community. Please advise whether the Society holds any contemporaneous documents that relation to the staffing needs of St Ignatius' College in Riverview during the period 1968-1971.

The Society confirms that there are no contemporaneous records relating to the staffing needs of St Ignatius' College Riverview, other than what was referenced in the Provincial Consult minutes already provided. Further enquiries are being made with the archivist at St Ignatius' College Riverview and we will advise when we have received a response.

However, if it would assist the Inquiry, we note that Fr Christopher Gleeson, Fr Ferrucio Romanin and Fr Laurence Leonard were contemporaries of Higgs at Riverview and are still alive and may be able to be interviewed. Please let us know if it would assist the Inquiry to speak with any of these persons.

f) Lastly, we would be grateful if you could advise whether any of the people who served on the Provincial Consult in the years 1968-1971 are still living and available to be interviewed.

We advise that there are no people who served on the Province Consult in those years who are still living.

APPENDIX 3

Letters sent to survivors

Nick Elias
Barrister
Owen Dixon Chambers West
Room 23.17
525 Lonsdale Street
Melbourne 3000

19 September 2019

By email: C/ david.laidlaw@maddocks.com.au

Dear Sir

As you may know, the Honourable Marilyn Warren AC QC (her **Honour**), a former Chief Justice of the Supreme Court of Victoria and Lieutenant-Governor of Victoria, is undertaking an independent review into the circumstances of the movement of Victor Higgs (**Higgs**) from St Ignatius College Athelstone in South Australia to St Ignatius College Riverview in New South Wales in 1970 (the **Inquiry**). I write to you as counsel assisting her Honour with the Inquiry.

The Society of Jesus has provided her Honour with all material in its possession relevant to your complaint regarding Higgs. I understand that you have not consented to the provision of your personal information on an unredacted basis, and accordingly your files were provided in a redacted form.

We have reviewed your file, and are writing to request any information that may assist her Honour with the Inquiry, including any details regarding when you first made a complaint regarding Higgs and who, if anyone, you told. In particular, whether there was anyone you told between 1968 and 1971. Further, we are seeking information regarding the extent to which Higgs' conduct was known within the school community at Athelstone, and whether you are aware of any other complaints that were made, whether formally or informally, regarding Higgs' conduct.

We would be grateful if, in the first instance, you provide any information in writing. If after reviewing your response we consider you may be able to provide further assistance to the Inquiry, either myself or Maddocks as the lawyers assisting the Inquiry, will contact you directly to arrange a meeting or telephone call. Her Honour may wish to meet with you at a later date.

Any responses you provide can be kept confidential. If this is your preference, please let me know.

Sincerely

Nick Elias
Barrister
Owen Dixon Chambers West

[7867263: 24900617_1]

Nick Elias
Barrister
Owen Dixon Chambers West
Room 23.17
525 Lonsdale Street
Melbourne 3000

21 November 2019

By email: C/ david.laidlaw@maddocks.com.au

Dear Sir

You may recall my earlier letter regarding an independent review into the circumstances of the movement of Victor Higgs (**Higgs**) from St Ignatius College Athelstone in South Australia to St Ignatius College Riverview in New South Wales in 1970 that is being conducted by the Honourable Marilyn Warren AC QC (the **Inquiry**).

The Inquiry is reaching its final stages. I understand you have not yet taken up the opportunity to provide information to the Inquiry in writing. I write to extend again the invitation to make any submission in writing, or to speak with the Inquiry.

Should you wish to do so, please contact Sasha Di Sipio of Maddocks lawyers by **Friday 29 November**. Her contact details are +61 3 9258 3823 / sasha.disipio@maddocks.com.au

Sincerely

Nick Elias
Barrister
Owen Dixon Chambers West