

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

**Public Hearing - Case Study 22  
(Day C105)**

Level 17, Governor Macquarie Tower  
Farrer Place, Sydney

On Thursday, 17 September 2015 at 11am

Before  
The Presiding Member: Justice Jennifer Ann Coate  
Commissioners: Mr Robert Fitzgerald AM  
Mr Andrew Murray

Counsel Assisting: Ms Maria Gerace

1 THE PRESIDING MEMBER: Good morning, Ms Gerace.  
2  
3 MS M GERACE: Good morning, your Honour, Commissioners.  
4 This is an oral hearing for case study 22 examining the  
5 responses of Yeshivah Melbourne and Yeshiva Bondi.  
6  
7 THE PRESIDING MEMBER: Thank you. I understand that we do  
8 have an audiovisual connection back to Melbourne. I did  
9 momentarily see the connection.  
10  
11 DR K HANSCOMBE QC: Your Honour, I appear for [AVA],  
12 [AVR], Menachem Waks and Zephaniah Waks.  
13  
14 THE PRESIDING MEMBER: Thank you. Can you just confirm -  
15 you can obviously hear us. Are you able to see us as well?  
16  
17 DR HANSCOMBE: Yes. We have a good image. Thank you,  
18 Commissioner.  
19  
20 THE PRESIDING MEMBER: Good, thank you.  
21  
22 MS C RANDAZZO QC: Commissioner, I am here on behalf of  
23 Avrohom Jacks, leave having previously been given.  
24  
25 THE PRESIDING MEMBER: Thank you, Ms Randazzo.  
26  
27 I received some advice just before I came in,  
28 Ms Gerace, that for the live streaming, those who are  
29 watching via the live streaming won't have a visual image  
30 from Melbourne but should be able to hear.  
31  
32 MS GERACE: Yes, your Honour, that's what I understand is  
33 the situation with the technology today. They will hear  
34 but not see those making submissions from Melbourne.  
35  
36 THE PRESIDING MEMBER: All right. Thank you.  
37  
38 MS GERACE: We have some appearances, your Honour and  
39 Commissioners, including some new appearances, in the case  
40 study.  
41  
42 MR D SEEMAN: If the Commission pleases, my name is  
43 David Seeman. I appear on behalf of [AVB] and [AVC].  
44  
45 THE PRESIDING MEMBER: Thank you.  
46  
47 MR G SMITH SC: Your Honour, I seek leave to appear.

1 I appear for Rabbis Pinchus Feldman and Yosef Feldman, and  
2 from the Melbourne side I appear for Rabbi Meir Kluwgant -  
3 or I seek leave to appear. I am instructed by David Austin  
4 in relation to Rabbis Pinchus Feldman and Meir Kluwgant,  
5 and by Eddy Neumann in relation to Rabbi Yosef Feldman.  
6

7 THE PRESIDING MEMBER: Ms Gerace, I'm right, aren't I,  
8 that leave has previously been granted?  
9

10 MS GERACE: Yes.

11 MR SMITH: That's right.

12 THE PRESIDING MEMBER: But your presence is a new  
13 presence?  
14

15 MR SMITH: I'm now taking the place of other counsel.  
16

17 MR K GINGES: May it please your Honour, I am instructed  
18 by Sackville Wilks in Melbourne. I appear for Harold New.  
19 Mr New has sought leave to appear and has been granted some  
20 limited scope for leave to appear today.  
21

22 THE PRESIDING MEMBER: For the purposes of making an  
23 application today?  
24

25 MR GINGES: For making an application in respect of  
26 a statement. Also he has sought leave, as a third point,  
27 to make submissions in respect of the draft submissions of  
28 counsel assisting. I have not received a response from my  
29 instructing solicitor as of yet as to whether leave has  
30 been granted in respect of that matter. It is probably not  
31 controversial. It deals with submissions that are being  
32 proposed based on the evidence that has so far been  
33 adduced.  
34

35 THE PRESIDING MEMBER: All right, we'll come back to that.  
36 Thank you, Mr Ginges.  
37

38 MR S GINSBOURG: If your Honour pleases, I appear for  
39 Rabbi Lesches. I am instructed by Mr Brett Samuel of  
40 Rosendorff Lawyers. May it please your Honour.  
41

42 THE PRESIDING MEMBER: Thank you.  
43

44 MR P NOONAN: If it pleases your Honour, I appear for  
45 Yeshivah Melbourne and related individual institutional  
46  
47

1 witnesses.

2

3 THE PRESIDING MEMBER: Thanks, Mr Noonan.

4

5 Now, Ms Gerace, it is perhaps the appropriate place to  
6 start.

7

8 MS GERACE: Yes, your Honour. Perhaps the first place  
9 might be Mr New, to deal with the applications for which he  
10 has been granted leave and to deal with the application to  
11 extend the leave granted to him to appear.

12

13 Mr New has not previously appeared in case study 22.  
14 He has been granted leave for limited purposes in order to  
15 make his application for the tender of a statement and some  
16 additional material. He also now seeks to extend that  
17 leave to make submissions in response to matters contained  
18 in paragraphs 466 and 470(h) of my draft submissions. So  
19 I may deal with those matters first and then ask Mr Ginges  
20 to add any further materials he wishes the Commission to  
21 consider in relation to those applications.

22

23 Your Honour, the first application made by Mr New is  
24 for the tender of a statement. Your Honour and  
25 Commissioners, you will find that document at tab 18,  
26 a statement by Harold New.

27

28 In relation to the application and because some part  
29 of today will be concerned with a number of separate  
30 applications being made for leave to tender material at the  
31 end of the hearing, it is appropriate, in my submission, to  
32 make some general statements of principles that should  
33 govern those applications and the consideration of those  
34 applications.

35

36 May I say firstly that it would only be, in my  
37 submission, in extraordinary circumstances that the  
38 Commission should accept additional evidence of matters of  
39 fact or opinion after the close of the public hearing,  
40 particularly in respect of matters where the issues were  
41 agitated or explored on notice and where parties, and  
42 interested parties, had an opportunity to both seek leave  
43 to appear and seek leave to put on material which they  
44 wished the Commission to consider.

45

46 The reasons for that proposition are self-evident  
47 because it is both difficult and unfair for parties to seek

1 to put on material that goes to matters in issue or matters  
2 explored at the conclusion of a hearing when witnesses who  
3 were called and examined at length, or who were available  
4 to be called and who might have other information relevant  
5 to the facts that might be touched upon by those documents,  
6 have either not been examined or are not available or able  
7 to respond to those matters in the manner in which they are  
8 sought to be agitated before the Commission now.

9  
10 The primary position that I have in relation to this  
11 application by Mr New is that there is no, in my  
12 submission, cogent reason advanced by Mr New as to why he  
13 makes this application after the close of the hearing.

14  
15 He was aware of and able to respond to the matters  
16 explored in the public hearing through the course of the  
17 hearing.

18  
19 The issues to which this additional statement responds  
20 or which it seeks to address are matters that were at all  
21 times being explored through the hearing - the relationship  
22 between Yeshivah Centre and the Committee of Management and  
23 the victims of child sexual abuse and others. If there was  
24 material that Mr New or others wished to have explored in  
25 relation to those relationships and dynamics, the proper  
26 time for that material to have been brought before the  
27 Commission was during the public hearing.

28  
29 It is not, as is submitted, relevant or even fatal to  
30 a consideration of that evidence that the matters were not  
31 put to Mr Waks. The Commission does not operate and did  
32 not operate on the basis that it precluded other witnesses  
33 putting evidence before the Commission merely because  
34 another witness had not been questioned about that matter.  
35 They are always matters of judgment and fairness.

36  
37 But if Mr New or the Yeshivah Centre otherwise wished  
38 to have those matters - and I don't understand this to be  
39 an application of the Yeshivah Centre - if Mr New wished  
40 this Commission to consider the matters he sets out in his  
41 statement, the proper time to have made that application  
42 was when the hearing was in progress and when witnesses  
43 were available to respond to the matters that he sets out.

44  
45 For that principal reason, the application should be  
46 rejected.

47

1           However, there are further matters that bear on the  
2 consideration of this issue. Mr New wishes to take  
3 objection to or raise a different perspective on a meeting  
4 which is the subject of evidence given by Manny Waks in  
5 paragraph 77 of his statement dated 12 January 2015.  
6 Evidence on that topic was given by Manny Waks in the  
7 public hearing.  
8

9           Mr New wishes to make comment upon or respond to  
10 statements in paragraphs 466 and 470(h) of the submissions  
11 of counsel assisting. Now, in respect of the statements to  
12 which he seeks to respond, the issue that he raises is not  
13 the subject of findings urged by me on you, Commissioners,  
14 in respect of either Mr New personally or of the Committee  
15 of Management for the Yeshivah Centre in fact.  
16

17           Because that is the case, it is my submission that the  
18 issue is so tangential to the matters explored before this  
19 Commission, he should not now be permitted to put it in  
20 evidence before the Commission.  
21

22           Further, Mr New's statement puts forward an  
23 explanation of a meeting which has not been put to Mr Waks  
24 and is not now able to be explored. The issue of manner of  
25 dealings between the Yeshivah Centre and its executive  
26 committee was a central issue explored in evidence before  
27 this Commission.  
28

29           Had the material been put before the Commission, the  
30 issue could have been explored with Mr Waks, and Mr New  
31 could have made himself available for questioning in  
32 relation to the matters he now asks the Commission to  
33 consider. Mr New did not do so, and he should not now be  
34 permitted to give evidence behind a shield which does not  
35 permit of interrogation or questioning. In my submission,  
36 the greater injustice would be occasioned by allowing  
37 Mr New to now put this material before the Commission in  
38 the form intended, in circumstances where it is not open to  
39 challenge and is immaterial to any of the proposed findings  
40 put forward by me as a result of the public hearing.  
41

42           I would ask the Commission to reject the request for  
43 leave to tender the statement of Harry New dated 16 June  
44 2015, SUBM.1022.012.006\_R, and that his leave not be  
45 extended to make further submissions in reply to the issues  
46 raised - the statements of fact set out in 466 and 470(h)  
47 in my submissions.

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DR HANSCOMBE: Your Honour and Commissioners, before you hear from Mr Ginges, would you hear from me? I represent Menachem Waks, as you know.

THE PRESIDING MEMBER: I will certainly allow you to be heard with respect to this application, Ms Hanscombe. You may wish to hear Mr Ginges first, and then I'll call upon you.

DR HANSCOMBE: If the Commission please.

THE PRESIDING MEMBER: Thank you.

MR GINGES: Your Honour and Commissioners, my learned friend the counsel assisting asserted that the general application of principles would lead the Commission to accept that it would be in extraordinary circumstances to accept matters of fact or opinion at the end of a hearing.

In the case study number 4, entitled Towards Healing, at page 18 the Commission said as follows:

*It is through the process of submissions that individuals are provided with the opportunity to respond to any adverse findings submitted to be available on the evidence by counsel assisting ... It is always open to any person or institution with leave to seek a further opportunity to put evidence before the Royal Commission, prior to the conclusion of the submission process.*

*The Royal Commission cannot report adversely on a person or institution without first giving a person or institution an opportunity to answer the matters put against them and to put submissions as to findings or recommendations that might be made.*

Accordingly, it is respectfully submitted that it ought to be open to Mr New, with leave, to put evidence to the Commission prior to the conclusion of the submission process, and that is precisely where we are at the moment. Draft submissions have been prepared by learned counsel

1 assisting.

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Dealing first, if I might, with Mr New's statement, Mr New's statement clearly rebuts matters that Mr Waks has stated in his statement, including, he says, that a financial demand was made by Mr Waks as a condition precedent before Mr Waks would meet with the Committee of Management; that it was left with Mr Waks to come back to Mr New if he wished to see the Committee of Management and speak with them; and that the Committee of Management wished to speak with Mr Waks openly and without conditions. Those things were set out clearly in Mr New's statement.

THE PRESIDING MEMBER: Before you turn to the substance, Mr Ginges, the first issue, in my view, that you should address is why your client didn't seek leave during the course of the public hearing.

MR GINGES: Yes. Thank you, your Honour.

The first point is that, during the course of the hearing, my client was not only on the Committee of Management, he had been on the Committee of Management for some 20 years. He was the advocate, if you like - perhaps not the advocate, the instructor from the Committee of Management during the course of the hearing and he instructed my learned friend Mr Noonan, who appears for Yeshivah today.

My client resigned his post on 17 February, that is, only some four days after the close of the evidence. So during the course of these proceedings, he was concerned with giving instructions on behalf of and for the benefit of the Committee of Management, not in his own right. That's the first thing to note.

The second is that a decision had been taken, and perhaps sensitively so, not to further traumatise those who are the victims of such terrible abuse and such terrible history, so that, as I understand it, not to cross-examine on matters that really weren't going to go into an issue.

My learned friend the counsel assisting, during the course of examining Mr Waks at page C6030 line 30, after Mr Waks had spoken about his meeting with Mr New and after Mr Waks had said there were no minutes that he had seen, minutes of records from the board, reflecting his meeting



1 with Mr New, counsel assisting said, "All right, we will  
2 follow that up."  
3

4 The person who gave evidence on behalf of the  
5 Committee of Management was a Mr Don Wolf. Mr Don Wolf was  
6 not asked any questions, and neither was any other witness  
7 asked any questions, by learned counsel assisting in  
8 respect of this matter. It was not followed up, and  
9 a decision, as I understand it, was made that the Committee  
10 of Management and Mr New would not agitate the issue  
11 because it was not thought that the issue would be one that  
12 would be pursued by learned counsel assisting.  
13

14 It has been pursued. It is referred to in the draft  
15 submissions and it's referred to by reference to the  
16 footnotes at paragraphs 460 and 470(h). It is a matter  
17 which has thereby denied Mr New some procedural fairness.  
18 He had taken an approach which was one of sensitivity and  
19 only to follow up and only to pursue matters which it  
20 seemed were being pursued by counsel assisting.  
21

22 Counsel assisting did not further "follow up" that  
23 issue, and so neither did, as I understand - but Mr Noonan  
24 probably will be better to tell your Honour - the Yeshivah  
25 and neither did Mr New.  
26

27 Then upon the release of the draft submissions, Mr New  
28 sees that some significance is put on these matters that  
29 were not followed up and were not pursued, and he is and  
30 feels somewhat aggrieved because, as your Honour can see,  
31 he has a very different take on what occurred at that  
32 meeting. He, as being the representative or the agent, if  
33 you like, of the Committee of Management at the time of  
34 meetings with Mr Waks in late 2011 and 2012, feels that it  
35 is important, to give proper context and real justice to  
36 what has occurred, to have his statement put into evidence  
37 and to be placed on the public record.  
38

39 Your Honour has asked me to deal with matters  
40 specifically dealing with why his evidence was not sought  
41 to be tendered, so it was really a combination of those  
42 three matters, the first being that he was involved as  
43 a representative of the committee, not in his own right;  
44 secondly, there was an intentional approach not to  
45 traumatise or aggravate those people who are, and  
46 Manny Waks is, a victim of a terrible abuse and thereby  
47 only put things into issue that really were sought to be

1 put into issue by counsel assisting; so the third matter is  
2 that that was not followed up, it was not pursued, and it  
3 is only upon reading the submissions that reference is made  
4 and emphasis is put on those matters that Mr New now feels  
5 aggrieved.

6  
7 THE PRESIDING MEMBER: Are you instructed to act on behalf  
8 of Mr New now as an individual --

9  
10 MR GINGES: Yes.

11  
12 THE PRESIDING MEMBER: -- not related to his role on the  
13 Committee of Management for Yeshivah Centre Melbourne?

14  
15 MR GINGES: Yes.

16  
17 THE PRESIDING MEMBER: So this is a personal issue for  
18 him?

19  
20 MR GINGES: It's a personal issue, but it relates to his  
21 role at the time - perhaps I ought to be clear. I am  
22 receiving instructions by Mr New in his personal capacity.  
23 I have no instructions in respect of the Committee of  
24 Management.

25  
26 His personal capacity involves his role at the time  
27 within the Committee of Management, but I am not instructed  
28 to make submissions in respect of decisions of the  
29 committee. But to the extent that there are either  
30 submissions made by counsel assisting or proposed findings  
31 by the Royal Commission that reach out and extend out to  
32 impact on Mr New personally, then I am instructed in  
33 respect of those matters.

34  
35 THE PRESIDING MEMBER: Mr New as opposed to his role  
36 representing the Committee of Management?

37  
38 MR GINGES: Well, your Honour, I don't think it can be as  
39 cleanly cut as that. It is both, because at that time he  
40 had had a longstanding personal relationship with Mr Waks,  
41 with his family, and your Honour will have read that in his  
42 statement, and I think Mr Waks said so. But he was also  
43 reaching out as an agent of or as an emissary of the  
44 Committee of Management of which he was an active member.  
45 So I'm not sure that it can be clearly divorced, as  
46 your Honour asks.  
47

1 THE PRESIDING MEMBER: I'm asking you in what capacity you  
2 are seeking to put the material before the Commission. Is  
3 it an institutional response or is it a personal response?  
4

5 MR GINGES: Your Honour, it would have to be an  
6 institutional response at the time, through Mr New, and so  
7 it has the potential to impact upon Mr New personally, but  
8 it relates to the institutional response. It relates to  
9 the response of the Committee of Management and the  
10 approach or approaches that were made to, as Mr Waks  
11 asserts, the Committee of Management.  
12

13 I've probably muddied the waters more, I apologise,  
14 but it really is relating to Mr New's involvement in that  
15 decision process, those approaches in his personal  
16 capacity, that it relates to the institutional response.  
17

18 THE PRESIDING MEMBER: So I'm really grappling with  
19 understanding the position that you put before the  
20 Commission, Mr Ginges. As I understand it, you tell us  
21 that your client was the person giving instructions to the  
22 legal team --  
23

24 MR GINGES: Yes, your Honour.  
25

26 THE PRESIDING MEMBER: -- that represented the institution  
27 throughout the public hearing?  
28

29 MR GINGES: Yes, your Honour, that is correct, and he now  
30 is no longer on that Committee of Management. There is  
31 a new interim committee, as I understand it, and Mr Noonan  
32 receives separate instructions from somebody on that board.  
33 Mr New is a person who says he is a person against whom  
34 submissions adverse to him have been made, and he is  
35 effectively, he says, denied an opportunity of airing his  
36 response to those allegations in circumstances where it was  
37 assumed, because nothing was followed up or pursued, in the  
38 context of his meetings - and that transcript I have taken  
39 your Honour to was to the meeting with Mr Waks.  
40

41 THE PRESIDING MEMBER: Perhaps to some extent we might be  
42 talking at cross-purposes, Mr Ginges. It might assist for  
43 you to take us directly to what you are calling the  
44 submissions as opposed to a summary of the evidence. That  
45 might be at least in part where the difficulty lies.  
46

47 MR GINGES: Could I take your Honour to the first

1 submission, then, at paragraph 466 contained at page 107 of  
2 the draft submissions.

3  
4 THE PRESIDING MEMBER: Yes.

5  
6 MR GINGES: There is one discrete sentence contained  
7 within that paragraph, that commences:

8  
9 *The Committee of Management would not meet*  
10 *with Manny Waks or Zephaniah Waks, despite*  
11 *their requests to meet to seek to sort out*  
12 *the tensions that had developed between*  
13 *them.*

14  
15 The footnoted reference there is to reference 852. The  
16 reference to the transcript of Manny Waks, "M Waks",  
17 contains the portion of the statement, or includes the  
18 portion of the statement, to which Mr New's evidence goes,  
19 and, firstly, Mr New says is not consistent. He did, in  
20 fact, meet with Manny Waks.

21  
22 THE PRESIDING MEMBER: On behalf of the Committee of  
23 Management?

24  
25 MR GINGES: He says it was on both fronts. He met with  
26 him in his own personal capacity, because they had other  
27 issues to discuss relating to Mr New's wife, but also he  
28 says that he was reaching out on behalf of the Committee of  
29 Management, inviting Mr Waks to meet with the Committee of  
30 Management. So, yes, your Honour, one of the purposes of  
31 the meeting was on behalf of the Committee of Management,  
32 and the second reference, your Honour, if you please, is  
33 over the page at paragraph 470(h), which reads:

34  
35 *the Committee of Management could have met*  
36 *with Manny Waks to discuss how the Yeshivah*  
37 *Centre were responding to the child sexual*  
38 *abuse investigations and to discuss a way*  
39 *to resolve things developing between them*  
40 *and Manny Waks, but the evidence is that*  
41 *the Yeshivah Centre would not engage even*  
42 *after Manny Waks' repeated approaches.*

43  
44 The reference there footnoted at 860 includes the statement  
45 of Manny Waks at paragraphs 75 to 77. It also includes two  
46 transcript references of Mr Wolf.

47

1 Mr New says, firstly, that the Yeshivah Centre would  
2 engage with Manny Waks, but that he was told that  
3 Manny Waks would only engage with the Committee of  
4 Management, or the management - this is contained in his  
5 statement - on the basis of the payment of certain moneys,  
6 and so forth, and the utilisation of his entity, Tzedek.

7  
8 Secondly, he says there were not repeated approaches  
9 by Manny Waks. That's the last matter. It would seem that  
10 the only approach seems to have been the approach through  
11 Mr New himself, there not being evidence of any other  
12 approaches. In the transcript of Mr Wolf, he was not asked  
13 about, for instance, whether or not Manny Waks made any  
14 approaches.

15  
16 So Mr New says he is aggrieved by the references there  
17 to an evidentiary basis which he says is inaccurate.

18  
19 THE PRESIDING MEMBER: Again, the reference that you take  
20 us to is about the Committee of Management?

21  
22 MR GINGES: Yes, your Honour.

23  
24 THE PRESIDING MEMBER: So does your client say what he  
25 wants to put before the Commission is on behalf of the  
26 Committee of Management in response to that evidence?

27  
28 MR GINGES: As at that time, yes, your Honour, but not as  
29 the Committee of Management now stands, differently  
30 constituted. So, as at the time, yes --

31  
32 THE PRESIDING MEMBER: Well, we're talking about events  
33 that occurred at the time your client was on the Committee  
34 of Management.

35  
36 MR GINGES: Yes, so he says that that was on behalf of the  
37 Committee of Management at the time, so it does relate to  
38 the institutional response, that is, the response of the  
39 Yeshivah Committee of Management at the time.

40  
41 The statement, your Honour, is relevant because it  
42 outlines why the Committee of Management did not contact  
43 Mr Waks and it outlines the reason being because it was  
44 left in Mr Waks's court to contact the Committee of  
45 Management to discuss with them in an open and  
46 unconditional way that did not relate to the payment of  
47 compensation or the sole use of his entity, Tzedek, to

1 assist with victims of sexual abuse.

2

3 Mr New says that it puts the proper picture or the  
4 full picture before the Royal Commission.

5

6 The Royal Commission, of course, is not an adversarial  
7 court. It does not necessarily engage in adversarial  
8 processes. The principles that one would find in an  
9 adversarial court, such as *Browne v Dunn* do not apply  
10 strictly or, as I understand it, at all in the Royal  
11 Commission.

12

13 It may be that if the statement is accepted for  
14 tender, it simply neutralises a reference within the  
15 submission. It ultimately will not affect any of the  
16 findings, because Mr New, at least through this  
17 application, does not seek to disturb the proposed  
18 findings. That is not to say that the Commission might not  
19 of itself come to a finding outside of that which is  
20 proposed by counsel assisting. So it is a matter of  
21 fairness, Mr New says, that his statement ought to be  
22 tendered to properly record why it is that the Committee of  
23 Management did not respond.

24

25 Mr Wolf in his evidence says that the committee did  
26 not respond, or rather, did not reach out to contact  
27 Mr Waks in the way perhaps it ought to have, but what's  
28 missing from that is the reason, is this lacuna of contact,  
29 and that comes from Mr New's statement --

30

31 THE PRESIDING MEMBER: So do you say that Mr Wolf, who was  
32 on the Committee of Management, didn't know what Mr New, on  
33 the Committee of Management, was doing?

34

35 MR GINGES: No, your Honour. I say that nobody, including  
36 Mr Wolf, was asked about whether or not Mr Waks had  
37 contacted or made any contact or attempted contacts to the  
38 Committee of Management. He was asked a very specific  
39 question from Mr Waks's counsel, not from counsel  
40 assisting, about whether or not the Committee of Management  
41 had contacted Mr Waks. This is at page C6896:

42

43 *Did the Committee of Management take any*  
44 *steps to contact Manny Waks and offer him*  
45 *concrete support and assistance?*

46

47 "Not to my knowledge", was Mr Wolf's answer.

1  
2           There was no exploration, as was indicated there might  
3 be, of the contact made by Mr Waks to the Committee of  
4 Management or of any link between the meeting with Mr New,  
5 which is referred to in the transcript reference I took  
6 your Honour to earlier, and --

7  
8           THE PRESIDING MEMBER:   Is that because Mr Wolf didn't know  
9 about it, was my question to you?

10  
11          MR GINGES:   I don't know the answer to that, your Honour,  
12 I'm afraid. I honestly don't know the answer to that.  
13 I haven't spoken to Mr Wolf, so I am not able to answer  
14 that question. It might be something that Mr Noonan can  
15 answer, but is not something that I can answer, I'm sorry.  
16

17           But at the meeting with Mr Waks, Mr New says it was  
18 left in the court of Manny Waks effectively to come back to  
19 him, Mr New, to arrange to meet with the Committee of  
20 Management if Mr Waks was prepared to do so without  
21 conditions. That's really the issue, Mr New says, as to  
22 why a meeting did not occur with the full Committee of  
23 Management. He also says that Mr Waks was reluctant to  
24 meet with the Committee of Management.  
25

26          THE PRESIDING MEMBER:   One assumes that at the time Mr New  
27 was instructing the legal representatives for the Yeshivah  
28 Centre, he knew that answer from Mr Wolf was incorrect.  
29

30          MR GINGES:   I'm not saying that the answer is incorrect at  
31 all. Mr Wolf's answer is that the Committee of Management  
32 did not take steps to offer him concrete support and  
33 assistance, he says not to his knowledge. If that's  
34 inconsistent with offering Mr Waks to meet with them, then  
35 perhaps, your Honour, that's correct, but in my respectful  
36 submission, they are separate matters.  
37

38           One is an invitation to have a meaningful meeting with  
39 the Committee of Management, which, on Mr New's statement,  
40 Mr Waks is reluctant to do and then says, "Well, I'll do so  
41 if there's payment to victims and payment to Tzedek in  
42 a particular way", and then the matter stops there and is  
43 not progressed any further.  
44

45          THE PRESIDING MEMBER:   By counsel being instructed by  
46 Mr New at that time?  
47

1 MR GINGES: Sorry, your Honour?

2

3 THE PRESIDING MEMBER: Also by counsel being instructed by  
4 Mr New at that time?

5

6 MR GINGES: In February 2015. As I understand that to be  
7 the case, yes. But --

8

9 THE PRESIDING MEMBER: And do you have any instructions  
10 from your client as to why that was so?

11

12 MR GINGES: Well, your Honour, as I understand it --

13

14 THE PRESIDING MEMBER: This was of Mr Wolf, not of  
15 Mr Waks.

16

17 MR GINGES: That's right. This was a question not pursued  
18 by counsel assisting.

19

20 THE PRESIDING MEMBER: No, I'm asking a separate issue,  
21 Mr Ginges. Mr Wolf was represented, or the Yeshivah Centre  
22 was represented.

23

24 MR GINGES: Yes.

25

26 THE PRESIDING MEMBER: As I understand it - just confirm  
27 that again - Mr New, on behalf of the Yeshivah Centre, is  
28 giving instructions to his legal representative seated at  
29 the Bar table during the public hearing?

30

31 MR GINGES: I understand that to be the case. He was  
32 either - and again I'm not privy to what occurred in that  
33 context. I don't know whether there was an intermediary,  
34 being a solicitor, but I understood that Mr New did play  
35 that role, but I am unable to answer your Honour. I have  
36 not sought instructions on that. Perhaps if I might be  
37 granted some time at an appropriate time, I can seek some  
38 instructions in respect of that.

39

40 Thank you, your Honour. Perhaps if I might be heard  
41 after Ms Hanscombe if there's anything additional arising?

42

43 THE PRESIDING MEMBER: All right, I will give you that  
44 opportunity.

45

46 Ms Hanscombe, you have indicated that you want to have  
47 the opportunity to be heard with respect to this



1 application.

2

3 DR HANSCOMBE: Yes, if the Commission please. Thank you.

4

5 We would support the position of counsel assisting  
6 that this material should not now be received. Despite  
7 Mr Ginges' eloquence for the better part of three-quarters  
8 of an hour, there is still no satisfactory explanation as  
9 to why these matters were not explored with Manny Waks when  
10 he was in the witness box.

11

12 Now, Mr Ginges said to you this is a question of "real  
13 justice". Our submission would be that it will certainly  
14 not be real justice if the material, particularly given its  
15 tone and the matters which appear in particular from  
16 paragraph 16 of this proposed document onwards, is  
17 permitted to be accepted into evidence without any  
18 opportunity being afforded to Manny Waks to test any of it.  
19 That would not be real justice.

20

21 Mr Ginges has said expressly that he does not seek to  
22 disturb any of the proposed available findings put forward  
23 in counsel assisting's submissions, and that must be so,  
24 because no available finding proposed to be put forward by  
25 counsel assisting refers to the Commission making any  
26 finding about this meeting, about what occurred at the  
27 meeting, about who said what.

28

29 Now, it is well established on the authorities that  
30 what the Commission was obliged to do and has done is to  
31 publicise its proposed available findings in order that any  
32 person affected by them may have a proper opportunity to  
33 respond. But Mr New does not seek to respond to an  
34 available finding. He seeks, in terms, to respond to the  
35 witness evidence of Manny Waks. The statement says so  
36 under the heading "Purpose of statement". There is no  
37 reference at all to counsel assisting's submissions.

38

39 Mr Ginges has just said, "Oh, well, of course, the  
40 Commission could make findings outside the proposed  
41 findings of counsel assisting." Well, if it did that, (a)  
42 the very purpose of counsel assisting having advanced  
43 comprehensive written submissions with proposed findings  
44 would be defeated, and (b) the law as to the rights of  
45 affected people would not have been complied with.

46

47 It is plain, in our submission, that that is no more

1 than a stab in the dark to defend the attempt to file this  
2 document. The document expressly says that what it wants  
3 to respond to is paragraph 77 of Manny Waks's statement.  
4

5 Manny Waks's statement was made in mid-January.  
6 Manny Waks was in the witness box in January. Mr New was  
7 in the hearing room in January. And yet he says nothing  
8 for months. And the explanation about counsel assisting's  
9 proposed available findings simply can't be right, for the  
10 reason I enunciated to you.  
11

12 As the Commission was attempting to elicit from  
13 Mr Ginges, in the end Mr Ginges says, as he must, that  
14 these transactions at the meeting concerned Mr New in his  
15 role as a member of the Committee of Management. The  
16 Yeshivah Centre was represented at the hearing by  
17 Mr Noonan. There is still no explanation as to why there  
18 was no puttage about these events to Manny Waks.  
19

20 In the absence of such an explanation, it not only  
21 would not be real justice to permit this material to be  
22 accepted; our submission is that it would constitute real  
23 injustice to Manny Waks. If the Commission please.  
24

25 THE PRESIDING MEMBER: Thank you. Does anyone else wish  
26 to be heard with respect this application?  
27

28 MR GINSBOURG: No, your Honour.  
29

30 THE PRESIDING MEMBER: Would you like to make a response,  
31 Ms Gerace?  
32

33 MS GERACE: Yes. First, as a matter of form, they are my  
34 submissions, not my draft submissions. But no point is  
35 taken further on that.  
36

37 Secondly, it is customary in these matters, when one  
38 is not aware that there is any challenge to evidence being  
39 given, that it is unnecessary to explore that matter  
40 further.  
41

42 It does not assist, in my submission, to seek to  
43 assert that some reasoning behind the matter not being put  
44 before the Commission was because of something that  
45 counsel, myself, did or did not pursue. In fact, the  
46 paragraph of the transcript to which Mr Ginges referred  
47 indicates, in its terms, that the matter to be pursued was

1 the minutes, not the meeting itself.

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As indicated by Ms Hanscombe, the evidence given by Mr Waks about that meeting was put on in January. He gave evidence about it in January. There was no evidence given to me, in my role as counsel assisting, or put before the Commission at any stage that indicated that the evidence that Mr Waks was giving about what occurred at that meeting was to be challenged by any witness.

In those circumstances, it can hardly be that a party should rest upon some criticism of failing to pursue the factual matters of what occurred at a meeting, in circumstances where no-one understands from the evidence that there is to be any challenge, no-one comes forward and says, "May I respond?" The matter need not be pursued, in those circumstances.

In any event, the issue that was going to be followed up was the minutes. Summonses were issued for the minutes, and the comments Mr Waks was making was that the meeting between Mr Waks and Mr New did not appear in those minutes, and that's where the evidence follows on from.

THE PRESIDING MEMBER: And no minutes have been produced, as I understand it --

MS GERACE: Precisely.

THE PRESIDING MEMBER: -- from Mr Noonan's client, instructed by Mr New, that contain any minutes of such a meeting.

MS GERACE: Precisely. Yes.

And Mr New was acting in his capacity as a member of the Committee of Management when he instructed those representatives representing the Yeshivah Centre Melbourne, through the two weeks of the hearing, and the antecedent period of preparation for that hearing, when applications could have been made for the receipt of statements, if there was some particular challenge.

It may be in some circumstances that a matter is not put to a witness, but evidence could be given separately by another witness who has a different recollection. So it is not necessarily fatal, even in the hearing itself, that

1 a matter is not put to a witness like Mr Waks, for an  
2 application for leave to have been made to put on that  
3 evidence through the hearing.  
4

5 They would be matters of weight and other things that  
6 might bear upon a consideration of the evidence in that  
7 manner.  
8

9 It is, however, a matter of great injustice and  
10 unfairness, where that evidence is not put in issue in any  
11 manner or form, to then come forward, after the end of the  
12 hearing, and say, "I have a different explanation. Please  
13 accept this", particularly where the person who seeks to  
14 advance that explanation had access to and did in fact  
15 instruct those who were running the hearing or appearing  
16 for the interests of the Yeshivah Centre.  
17

18 In any event, in my submission, the fatal flaw in the  
19 application is this: firstly, the matter was pursued with  
20 Mr Wolf by counsel, Ms Richards, when she said:  
21

22 *Did the Committee of Management take any*  
23 *steps to contact Manny Waks and offer him*  
24 *concrete support and assistance?*  
25

26 "Not to my knowledge." That was on page C6896 at lines 12  
27 to 15. The following question at line 17:  
28

29 *Did the Committee of Management take any*  
30 *steps to contact his family, his parents*  
31 *who lived over the road, and offer them*  
32 *concrete support and assistance?*  
33

34 At line 20, "Not to my knowledge." Counsel then goes on to  
35 ask about steps taken by the Committee of Management to  
36 have any other victims, for example, contacted.  
37

38 The issue of not just this meeting but the issue  
39 generally of the steps taken by the Committee of Management  
40 or otherwise to deal with Manny Waks, Zephaniah Waks, the  
41 other victims, the community in general, was the central  
42 issue. It's one of the major and central issues explored  
43 through the hearing.  
44

45 Evidence relevant to that point should have been put  
46 before the Commission so it could be dealt with in the  
47 ordinary course.

1  
2 It was also open to those representing the Yeshivah  
3 Centre to make an application to the Commission for the  
4 Commission to approach Mr New in order to take a statement  
5 and have Mr New called as a witness. That was not done.  
6

7 Lastly, and centrally, coming back to the first thing  
8 raised by Mr Ginges about statements by this Commission  
9 about the opportunity to others to come at any stage to  
10 give evidence:

11  
12 *It is through the process of submissions*  
13 *that individuals are provided with the*  
14 *opportunity to respond to any adverse*  
15 *findings submitted to be available on the*  
16 *evidence by counsel assisting ...*  
17

18 It is at this hurdle that Mr Ginges' application must fail,  
19 in my submission, because no adverse findings are sought  
20 against Mr New in respect of that meeting, no adverse  
21 findings are sought against the Committee of Management in  
22 respect of that meeting, no adverse findings are pressed  
23 against the Yeshivah Centre in relation to what occurred at  
24 that meeting.  
25

26 In those circumstances, there is no foundation, in my  
27 submission, for this application. There is no principle of  
28 fairness or otherwise to support the tender of the  
29 material. And in fact the tender would cause injustice to  
30 other witnesses who did attend and gave evidence and put  
31 that matter into the forum so that it could be examined and  
32 explored. It does not advance the work of the Commission  
33 in the matters under consideration nor assist the  
34 Commission in its deliberations to come as to proposed  
35 findings against the Yeshivah Centre.  
36

37 On that basis, the application should be rejected.  
38

39 THE PRESIDING MEMBER: Mr Ginges, I understand you want  
40 the opportunity to take some instructions from your client  
41 with respect to those matters that I raised with you, and  
42 I will give you that opportunity. So I will put this  
43 application to one side now and we will otherwise proceed.  
44

45 MR GINGES: Thank you.  
46

47 THE PRESIDING MEMBER: Thank you. We will otherwise

1 proceed and I will call upon you, Ms Gerace, to otherwise  
2 open with respect to the oral submissions in response to  
3 the written material before us.  
4

5 MS GERACE: Thank you, your Honour, and Commissioners.  
6 Today was scheduled to provide parties with an opportunity  
7 to respond to the replies to submissions received, my  
8 submissions having been forwarded to the parties. For  
9 represented parties, having now had an opportunity to put  
10 on their written submissions in reply to my submissions,  
11 today is scheduled to provide opportunities to those  
12 present to make additional supplementary submissions or  
13 arguments responding to submissions in reply.  
14

15 I thought it best if I make some general responses to  
16 the replies first, and then an opportunity be afforded to  
17 other parties to make additional supplementary oral  
18 submissions, if they intend to do so having heard the  
19 submissions I make this morning.  
20

21 In the process of responding, there are other  
22 applications for tender of material, and I will indicate to  
23 you, your Honour and Commissioners, my submissions in  
24 relation to those applications at the time.  
25

26 First, may I say as a matter of general response, the  
27 submissions circulated do not purport to reiterate all of  
28 the evidence given before the two-week hearing. For the  
29 sake of those appearing and those who may be observing  
30 these proceedings, it is appropriate to comment that the  
31 Commissioners will have access to all of the evidence given  
32 at the public hearing when preparing their report and the  
33 findings pressed either by myself or by other parties.  
34

35 So the fact that a matter is only referred to with  
36 some brevity in my submissions or otherwise omitted, that  
37 evidence is still available to your Honour and  
38 Commissioners in your deliberations.  
39

40 The next point is that I don't propose, and it is not  
41 customary for counsel assisting, to respond to all of the  
42 submissions made by the parties. For those observing the  
43 proceedings, in the preparation of any final report  
44 consideration will be given to each of the matters raised  
45 by all of the parties represented, particularly any areas  
46 of contest between witnesses about what occurred, any  
47 submissions about interpretation that should be made of

1 evidence given or documents provided to the Commission, and  
2 any omissions or errors in my submissions will also be the  
3 subject of review and consideration. So just to stress  
4 that each and every submission made by all of the parties  
5 who have put on submissions will be considered by  
6 your Honour and Commissioners, just so that those observing  
7 will be aware this will only be a limited response to  
8 matters raised.

9  
10 It would be appropriate, in my view, to deal with  
11 Yeshiva Bondi first, and then I propose to deal with the  
12 submissions put on by Rabbi Pinchus Feldman and Rabbi Yosef  
13 Feldman, and then I will deal with the submissions put on  
14 by those witnesses from Melbourne.

15  
16 In relation to the submissions put on by Rabbi Pinchus  
17 Feldman, I note for your Honour and Commissioners that  
18 Rabbi Pinchus Feldman also makes an application for leave  
19 to tender material. The submissions of Rabbi Feldman are  
20 at tab 10 of the submissions brief. The additional  
21 documents that Rabbi Pinchus Feldman seeks leave to tender  
22 are at tabs 4 through to 7 of the additional documents  
23 bundle.

24  
25 I will go firstly to the application for leave to  
26 tender the additional material and I will deal with tabs 4,  
27 5 and 6 first, because my submissions differ in respect of  
28 the document at tab 7.

29  
30 The document at tab 4, in my submission, does not  
31 assist. This Commission is well aware of the principles of  
32 *Browne v Dunn* and does not require an extract of the  
33 Building and Construction Industry Royal Commission to  
34 understand the principles espoused in the document at  
35 tab 4.

36  
37 The document at tab 5, an article entitled "Jewish  
38 Law Articles - Informing on Others for Violating American  
39 Law: A Jewish Law View", by Rabbi Michael J Broyde, in my  
40 submission does not advance the Commission's task further.  
41 We had voluminous evidence before the oral hearing about  
42 various positions of the halacha and mesirah. There is no  
43 utility, in my submission, in receiving any further  
44 evidence on this point. It doesn't go to any of the  
45 proposed findings or otherwise.

46  
47 The document at tab 5 is an application by

1 Rabbi Pinchus Feldman to tender a copy of what appears to  
2 be a print-out from J-Wire, an internet publication or  
3 journal, of a report headed, "Hayman told he's not  
4 welcome". It is a report by a journalist purportedly  
5 setting out a conversation said to be about the president  
6 of the Yeshiva Centre telling Daniel "Gug" Hayman that he  
7 is not welcome at the synagogue following confirmed reports  
8 that he lead prayers on the same day he was granted bail on  
9 charges of indecent assault against two young boys.

10  
11 In my submission, the article should not be received  
12 into evidence and it would only be, in my view, in  
13 exceptional circumstances that the Commission would accept  
14 evidence of this sort at this stage. It is evidence of  
15 a third party. It does not, in my submission, advance the  
16 matters discussed in the submissions or the proposed  
17 findings.

18  
19 You would need to be satisfied as to why an  
20 application was not made at the time of the hearing for  
21 this material to be considered by the Commission, given  
22 that Rabbi Pinchus Feldman was represented by senior  
23 counsel at the hearing.

24  
25 The document, in its terms, does not advance the  
26 Commission's work, nor is it material to the matters in  
27 issue.

28  
29 MR GINSBOURG: I'm sorry to interrupt my learned friend.  
30 She referred to the document at tab 5. I presume she meant  
31 tab 6.

32  
33 MS GERACE: Thank you, I'm grateful. The document at  
34 tab 6, "Hayman told he's not welcome", does not advance the  
35 Commission's work, nor is it material to any of the  
36 findings.

37  
38 There was no examination of the witnesses at all about  
39 this purported presence of Daniel Hayman at the Yeshiva on  
40 this day or the response to it. It is a matter on which we  
41 have heard no evidence before now. It doesn't take matters  
42 anywhere. It doesn't materially affect what has already  
43 been discussed.

44  
45 The document at tab 7 is a statement, redacted, dated  
46 18 December 2013, which is a statement given by a witness  
47 to NSW Police. It is my understanding that the application



1 for tender is made on the basis that the witness gives  
2 evidence of a discussion with another witness about an  
3 assault by Daniel Hayman and of the conversation with  
4 Rabbi Lesches.

5  
6 I understand from the application that the reason for  
7 its tender would be to provide to the Commission the view  
8 of another witness of the meeting with Rabbi Lesches, and  
9 it is appropriate at this time that I go to the substance  
10 of the submissions made about the meeting with  
11 Rabbi Lesches and indicate my views, which are as follows.

12  
13 One, in my submission, having received into evidence a  
14 statement made by another witness about a conversation with  
15 Rabbi Lesches, principles of fairness would support the  
16 tender of this additional statement because it provides  
17 another view of the meeting with Rabbi Lesches.

18  
19 Secondly, the submissions made by Rabbi Lesches and by  
20 Rabbi Pinchus Feldman about the conversation with  
21 Rabbi Lesches by these young boys in relation to  
22 Daniel Hayman - on that point it is appropriate to say that  
23 the evidence before this Commission being given in the form  
24 that it has been, in statements by those witnesses, it is  
25 conceded that the information provided to Rabbi Lesches and  
26 our understanding of that information from the statements  
27 is necessarily imprecise. It is not possible to determine  
28 from either the statement received into evidence or this  
29 additional statement the precise words spoken at the  
30 meeting with Rabbi Lesches nor the precise content of the  
31 conversation with Rabbi Lesches.

32  
33 It remains, your Honour and Commissioners, my  
34 submission that what appears from both of those statements,  
35 though, is that information was being provided to  
36 Rabbi Lesches that should have put him on notice that there  
37 were complaints being made against Daniel Hayman that  
38 warranted further investigation.

39  
40 But accepting that the precise words spoken are not  
41 known and the statements in their form reveal a degree of  
42 imprecision and differences between the two witnesses who  
43 have made those statements, that should be reflected in a  
44 consideration of the evidence on that point, on the  
45 meeting.

46  
47 THE PRESIDING MEMBER: So does that constitute, then,

1 a variation in the position that you put to us in terms of  
2 the finding that you submit is open to the Commission on  
3 this issue?  
4

5 MS GERACE: Yes, your Honour, it does. I will take  
6 your Honour to the findings that I sought.  
7

8 In finding 1, it should be that "received multiple  
9 complaints of conduct or alleged conduct that may have  
10 amounted to child sexual abuse". It should be expressed in  
11 less certain terms, given the imprecision.  
12

13 THE PRESIDING MEMBER: Could you just take us to it?  
14

15 MS GERACE: Yes, finding 1 on page 39 of the submission.  
16

17 THE PRESIDING MEMBER: Thank you. Sorry, I'll get you to  
18 say that again?  
19

20 MS GERACE: Yes. The finding I now urge upon you,  
21 your Honour and Commissioners, is that in 1986/1987  
22 Rabbi Lesches, a senior employee of Yeshiva Bondi, received  
23 multiple complaints of alleged conduct that may have  
24 amounted to child sexual abuse by Daniel Hayman. And that  
25 is more consistent with the proposed finding in 2, that the  
26 complaints put Yeshiva Bondi on notice that Daniel Hayman  
27 may pose a risk to children who attended Yeshiva Bondi and  
28 that complaints were not documented or investigated further  
29 remains as is, unvaried.  
30

31 Similarly in finding 3, and any subsequent findings  
32 about that, it is complaints of alleged conduct that may  
33 have amounted to child sexual abuse. It should be  
34 expressed in terms that reflect the imprecision of the  
35 evidence.  
36

37 THE PRESIDING MEMBER: Thank you.  
38

39 MS GERACE: There are just two or three short matters in  
40 Rabbi Pinchus Feldman's submissions that I want to address.  
41 They appear at tab 10, your Honour and Commissioners, in  
42 the submissions brief.  
43

44 Paragraph 60 seeks to draw some distinction between  
45 the Melbourne community and the Sydney community, and  
46 counsel representing Rabbi Feldman says that there is no  
47 evidence before the Commission that community perceptions

1 as to the laws of mesirah inhibited the Sydney community  
2 in their dealing with those instances of child sexual abuse  
3 which came to the attention of those in charge of its  
4 institutions.

5  
6 There is evidence before the Commission that  
7 perceptions as to the laws of mesirah were widespread  
8 amongst the whole of the communities of Sydney and  
9 Melbourne. That much was acknowledged by the evidence  
10 given by Rabbi Pinchus Feldman, Yosef Feldman and each of  
11 the institutional witnesses.

12  
13 The other point I wish to make is that in  
14 paragraph 22, which deals with a report of Rabbi Lesches,  
15 when it is said that it is Rabbi Pinchus Feldman's  
16 contention that boys of that age in a Yeshiva environment  
17 were so generally shy and inexperienced that the use of  
18 graphic terminology by them in describing an event is  
19 inherently unlikely, in my submission, that is speculation  
20 and doesn't really assist consideration of the material.  
21 The material appears on its terms, and with the alteration  
22 to the proposed findings, all that is now sought in terms  
23 of a finding is that the complaints made to Rabbi Lesches  
24 were of conduct that may have amounted to child sexual  
25 abuse and that it warranted further investigation.

26  
27 To go further and to speculate as to whether or not  
28 particular terminology was used or particular words were  
29 not used is unhelpful and doesn't assist consideration of  
30 the evidence.

31  
32 Paragraph 22 is the next point I wish to address. It  
33 appears under the heading "Hayman's assault on [AVB]".  
34 "Was the assault on [AVB] preventable?" The submissions  
35 and proposed findings do not seek to draw a conclusion  
36 about the preventability or otherwise of the assault by  
37 Daniel Hayman on [AVB], merely to comment upon the fact  
38 that reports having been made to Rabbi Lesches of conduct  
39 which, in my submission, warranted further investigation,  
40 the evidence suggests no further investigation was done and  
41 that Daniel Hayman was allowed to attend the camp.

42  
43 Now, in my submission, it is neither appropriate nor  
44 necessary to answer the next question, which was, was the  
45 assault preventable, and that was not a matter explored.

46  
47 It is accepted, as is set out in the second paragraph

1 that appears under paragraph 22, that neither account  
2 states that Rabbi Lesches received an explicit account of  
3 what had taken place. That is the concession that I sought  
4 to make earlier.

5  
6 MR SMITH: Pardon me, your Honour and Commissioners,  
7 I think my learned friend referred to paragraph 60. Is  
8 that of Rabbi Pinchus Feldman's submission, because it  
9 doesn't seem to comply with the paragraph 60 I have. It  
10 deals with Conway.

11  
12 MS GERACE: That would be paragraph 6, I think.

13  
14 THE PRESIDING MEMBER: Paragraph 6? Sorry?

15  
16 MS GERACE: Could I check that, your Honour, and come back  
17 to the paragraph that I was referring to?

18  
19 THE PRESIDING MEMBER: Yes.

20  
21 MS GERACE: Oh, sorry, it is paragraph 15, which is  
22 responding to my paragraph 60.

23  
24 The next point that I wish to respond to appears at  
25 paragraph 29 of Rabbi Pinchus Feldman's submissions  
26 responding to paragraphs 157 and 162, rejection of evidence  
27 of Rabbi Lesches.

28  
29 I press, as set out in the first paragraph that  
30 appears under paragraph 29, my invitation to this  
31 Commission to reject the evidence of Rabbi Lesches where it  
32 is inconsistent with [AVB]'s evidence or other evidence  
33 examined at the public hearing. It is said that the  
34 submission derives from the premise that Rabbi Lesches  
35 declined to make himself available for questioning and  
36 therefore his evidence generally is not to be believed.

37  
38 That is one point. The second point is that [AVB],  
39 having given his evidence and not having been challenged on  
40 that evidence, and in the absence of evidence given orally  
41 by Rabbi Lesches and challenged, in my submission the  
42 process of reasoning would militate in the circumstances  
43 where [AVB]'s evidence is inherently acceptable, that the  
44 evidence of [AVB] would be preferable to the evidence of  
45 Rabbi Lesches on any point where they diverge.

46  
47 In circumstances where the particular issue being

1 examined concerns Rabbi Lesches' failure to respond to  
2 complaints, or the steps and other things that he did or  
3 did not do, evidence given by him in a statement, which  
4 would be necessarily self-serving, should be given little  
5 weight if you, your Honour and Commissioners, otherwise  
6 form a view that [AVB]'s evidence on the areas of fact  
7 where they diverge was compelling and cogent and  
8 reasonable.

9  
10 It is necessary to respond to one other issue, in my  
11 submission, and that is the structure of finding F7:

12  
13 *[AVL] left the country less than 24 hours*  
14 *after being informed of the allegation on*  
15 *a ticket paid for by the Yeshiva Gedola.*  
16 *[AVL]'s rapid departure from Australia*  
17 *hindered the police investigation of the*  
18 *complaints made against him.*

19  
20 In my submission, the evidence likely suggests that the  
21 ticket was paid for when he came to Australia, although, in  
22 my submission, comment can properly be made on the fact  
23 that notwithstanding repeated calls and requests for  
24 documents to substantiate the purchase of that ticket, none  
25 was produced. The evidence did suggest that most students  
26 who travelled, whose tickets were paid, were likely paid at  
27 the time of their travel to Australia.

28  
29 In my submission, the position remains, however, that  
30 the evidence given by either Rabbi Pinchus Feldman or  
31 Rabbi Yosef Feldman in the absence of documents did not put  
32 before this court any compelling evidence to prove that  
33 matter. However, there is no evidence to counter the  
34 evidence given that the ticket was purchased when [AVL]  
35 travelled to Australia.

36  
37 And further, the manner in which F7 had been put  
38 together does suggest, on its terms, an inference that the  
39 ticket was paid for at a time proximate to his departure  
40 for Australia. That is not, in effect, the finding that  
41 I was seeking, but I accept that, on its terms, it gives  
42 that inference, and it should be corrected to reflect the  
43 evidence more thoroughly.

44  
45 As to paragraph 66 of Rabbi Pinchus Feldman's  
46 submissions, responding to paragraph 257, in my submission,  
47 again what occurs here is an extract of a document --

1  
2 THE PRESIDING MEMBER: I'm sorry, just before you move  
3 away from the finding 7 submitted to the Commission by you,  
4 Ms Gerace. To assist counsel in responding now, it would  
5 seem to me to be helpful for you to make clear what it is  
6 that you are actually submitting to us should be the  
7 content of finding 7.

8  
9 MS GERACE: Yes, thank you. Your Honour, I propose the  
10 following:

11  
12 *[AVL] left the country less than 24 hours*  
13 *after being informed of the allegation on*  
14 *a return ticket paid for by the Yeshivah*  
15 *Gedola and likely given to him when he*  
16 *travelled to Australia to study at the*  
17 *Gedola.*

18  
19 That more accurately reflects the evidence. And the  
20 balance remains:

21  
22 *[AVL]'s rapid departure from Australia*  
23 *hindered the police investigation of the*  
24 *complaints made against him.*

25  
26 THE PRESIDING MEMBER: Thank you.

27  
28 MS GERACE: Your Honour, I was going to address now  
29 paragraph 66 of the submissions, which responds to  
30 paragraph 257 of my submissions. Firstly, if, for the  
31 reasons advanced earlier, your Honour and Commissioners  
32 reject the tender of the document from J-Wire, any  
33 reference to the document in the submissions should be  
34 redacted.

35  
36 For the same reason, the email set out in paragraph 66  
37 was not in evidence before this Commission and should not  
38 be in the submissions and should be redacted from these  
39 submissions. If the application is for leave to rely on  
40 this email as well, for the reasons I advanced earlier  
41 leave should not be granted and the application should be  
42 rejected.

43  
44 The other matter I would say about paragraph 66 is  
45 that it says in the second line:

46  
47 *On his mother's death in November 2013*

1           *Mr Hayman who had visited from the United*  
2           *States for the funeral and the mourning*  
3           *period started attending at Yeshiva Bondi*  
4           *to pray.*

5  
6 Your Honour, that is evidence in the form of submissions  
7 that is not before the Commission.  
8

9           Part of the difficulty in seeking to tender material  
10          at this stage on an issue not explored is precisely because  
11          it then leads to the giving of evidence in the form of  
12          submissions and causes confusion and doesn't actually  
13          assist in the process of consideration of the matters  
14          before this Commission.  
15

16          The whole of paragraph 66, including the email, in my  
17          submission, should be redacted in these submissions.  
18

19          The balance of the material raised in those  
20          submissions which I wanted to respond to are matters also  
21          raised in Rabbi Yosef Feldman's submissions, so I will deal  
22          with them in reply to Rabbi Yosef Feldman.  
23

24          The submissions filed in relation to Rabbi Yosef  
25          Feldman make a number of points, and I want to extract from  
26          those points some key matters on which I seek to reply.  
27

28          The first matter and the central reply that I wish to  
29          make is to the argument advanced by those representing  
30          Rabbi Yosef Feldman that a good deal of counsel assisting's  
31          questioning of Rabbi Yosef Feldman at the public hearing  
32          and counsel assisting's submissions focus on Rabbi Yosef  
33          Feldman's personal views on matters such as the reporting  
34          of child sexual abuse matters, media publicity surrounding  
35          the matters relating to certain offenders and the  
36          appropriate punishment which should be meted out to people  
37          who have committed offences.  
38

39          It is said that the personal views of individuals such  
40          as Rabbi Yosef Feldman are relevant to the case study where  
41          those personal views inhibit or are an impediment to  
42          reporting, investigating or responding to allegations and  
43          incidents of abuse.  
44

45          However, counsel representing Rabbi Yosef Feldman  
46          stipulates or suggests that submissions concerning the  
47          personal views of Rabbi Yosef Feldman traverse beyond the

1 Royal Commission's terms of reference or the terms of what  
2 this case study seeks to examine, and I want to respond to  
3 that submission.  
4

5 First and foremost, it is incorrect to suggest that it  
6 is necessary to show that the personal views of Rabbi Yosef  
7 Feldman actually inhibit or are an impediment to reporting,  
8 investigating or responding to allegations of abuse for the  
9 Commission to properly examine those views.  
10

11 Whilst it accurately sets out part of the terms of  
12 reference for this Commission, it is inaccurate and unduly  
13 restrictive and prescriptive of the matters which may  
14 properly be examined by this Commission. The terms of  
15 reference provided to the Royal Commission are necessarily  
16 wide and encompass not only the actual impediment but  
17 matters that might be relevant to the impediment of  
18 reporting, investigating or responding to allegations of  
19 abuse.  
20

21 Further, without limiting the scope of the Royal  
22 Commission's inquiry, if it is a matter relevant to or  
23 related to the institutional response, that is a matter  
24 properly examinable within this Commission.  
25

26 Specifically, the terms of reference provide and  
27 require and authorise this Royal Commission:  
28

29 *... to inquire into institutional responses*  
30 *to allegations and incidents of child*  
31 *sexual abuse and related matters, and in*  
32 *particular, without limiting the scope of*  
33 *your inquiry, the following matters:*  
34

35 *a. what institutions and governments should*  
36 *do to better protect children against child*  
37 *sexual abuse and related matters in*  
38 *institutional contexts in the future;*  
39

40 *b. what institutions and governments should*  
41 *do to achieve best practice in encouraging*  
42 *the reporting of, and responding to reports*  
43 *or information about, allegations,*  
44 *incidents or risks of child sexual abuse*  
45 *and related matters in institutional*  
46 *contexts;*  
47



1 c. what should be done to eliminate or  
2 reduce impediments that currently exist for  
3 responding appropriately to child sexual  
4 abuse and related matters in institutional  
5 contexts, including addressing failures in,  
6 and impediments to, reporting,  
7 investigating and responding to allegations  
8 and incidents of abuse;

9  
10 d. what institutions and governments should  
11 do to address, or alleviate the impact of,  
12 past and future child sexual abuse and  
13 related matters in institutional  
14 contexts ...

15  
16 And it goes on then to discuss particular terms of  
17 reference for the provision of redress.

18  
19 Further, the terms of reference stipulate:

20  
21 *AND, without limiting the scope of your*  
22 *inquiry or the scope of any recommendations*  
23 *arising out of your inquiry that you may*  
24 *consider appropriate, We direct you, for*  
25 *the purposes of your inquiry and*  
26 *recommendations, to have regard to the*  
27 *following matters:*

28  
29 e. the experience of people directly or  
30 indirectly affected by child sexual abuse  
31 and related matters in institutional  
32 contexts, and the provision of  
33 opportunities for them to share their  
34 experiences in appropriate ways ...

35  
36 Then:

37  
38 g. the adequacy and appropriateness of the  
39 responses by institutions, and their  
40 officials, to reports and information about  
41 allegations, incidents or risks of child  
42 sexual abuse and related matters in  
43 institutional contexts.

44  
45 In my submission, those terms are sufficiently broad to  
46 capture the inquiry that occurred through the public  
47 hearing into the views of Rabbi Yosef Feldman on the

1           appropriateness of reporting child sexual abuse, on whether  
2           or not it was permitted by a Jewish person to report  
3           another Jew for child sexual abuse, whether it is necessary  
4           for a victim to speak to a rabbi before making that report,  
5           how victims should be treated and how offenders should be  
6           treated.

7  
8           That is particularly so in circumstances where, at the  
9           time of the examination of Yosef Feldman, he was the  
10          rabbinical administrator of the Yeshiva Gedola. He ran and  
11          administered the institution responsible for training  
12          rabbis in New South Wales. He was a rabbi at the Yeshiva.  
13          Up until 2003, he had been a Director of the Yeshivah  
14          College Limited. And at the time of his examination, he  
15          was a Director of the Sydney Talmudical College  
16          Association, which operated the Yeshiva Gedola.

17  
18          Further - and I will go through these more  
19          particularly - many of the views that he expressed were  
20          expressly publicly or to a number of people in emails and  
21          were expressed in his capacity as a rabbi and where he  
22          sought, in many instances, to argue and to convince other  
23          rabbis to adopt the views that he expressed.

24  
25          That much is so where the overwhelming evidence before  
26          this Commission was that many of the views expressed by  
27          Rabbi Yosef Feldman had been acknowledged by other rabbis  
28          and institutional leaders as having hindered, in  
29          generality, the reporting of child sexual abuse, in  
30          particular, the concept of mesirah. Many of the leaders  
31          gave evidence about how that had impacted on these  
32          communities because of the belief that reporting on a Jew  
33          to a non-Jew was the gravest sin that could be committed.

34  
35          Your Honour, I have just noticed that we have lost  
36          Melbourne. I am informed that they have lost power to the  
37          Melbourne courthouse, and, as soon as power is restored, we  
38          will be informed. It might be appropriate in those  
39          circumstances --

40  
41          THE PRESIDING MEMBER: Let's take the lunch break now,  
42          then. So we will break now, 12.45, and return at 1.45. We  
43          will take the one-hour luncheon. I just ask that  
44          communication, of course, be made with those in Melbourne  
45          as to what is happening here.

46  
47          MS GERACE: Yes, your Honour, I will make arrangements for

1 that contact.

2

3 THE PRESIDING MEMBER: Thank you.

4

5 **LUNCHEON ADJOURNMENT**

6

7 THE PRESIDING MEMBER: So I'll just confirm that we do now  
8 have Melbourne back, Ms Hanscombe and Ms Randazzo?

9

10 DR HANSCOMBE: Yes, that's so. Thank you, Commissioners.

11

12 MS GERACE: Your Honour, counsel for Mr New has asked that  
13 we might conclude, if at all possible, the application?

14

15 THE PRESIDING MEMBER: Let's do that.

16

17 MR GINGES: Thank you, your Honour. Commissioners, I have  
18 spoken with Mr New. He instructs that at the time of  
19 meeting, or shortly after meeting, Mr Waks, he did inform  
20 informally Mr Wolf and some others on the committee as to  
21 his contact with Mr Waks. Your Honour asked whether he was  
22 wearing a personal hat or a committee hat at the time.

23

24 He considers that he was wearing both hats at the  
25 time. He was attempting to open the door for Manny Waks  
26 for personal reasons and also on behalf of the committee.  
27 Nothing was kept as a record because he felt that if it was  
28 put on the record that there were conditions - his view was  
29 that if conditions were placed, such as the payment of  
30 moneys or that the Tzedek be --

31

32 DR HANSCOMBE: Excuse me, I rise to object to this. It's  
33 the second time that Mr Ginges has attempted to traverse  
34 into the substance of this statement and I would ask him to  
35 refrain from that.

36

37 MR GINGES: Your Honour, I'm sorry. Thank you to my  
38 learned friend.

39

40 It was Mr New's position that if those matters were  
41 put on the minute record of the board, it would frustrate  
42 or prejudice any further contact with Mr Waks. In any  
43 event, that did not make its way to the formal record and  
44 no further contact, in any event, was received by Mr Waks.

45

46 When Mr Wolf gave evidence before the Commission and  
47 Mr New was the instructing representative of the committee,

1 having regard to the very specific question that was asked  
2 by Ms Richards, I think it was, of Mr Wolf, it was not  
3 considered to be inconsistent. It is correct that the  
4 Committee of Management had not made any contact in  
5 relation to, I think, "concrete assistance or support" -  
6 I'm paraphrasing and I apologise if I'm paraphrasing  
7 incorrectly. So it was not thought to be inconsistent, but  
8 it is Mr New's instructions that at that time he believed,  
9 in answer to your Honour's question, that Mr Wolf would  
10 have been aware that there was the informal contact between  
11 him and Mr Waks.

12  
13 So I hope that answers, to some degree, your Honour's  
14 question. I do not otherwise seek to be heard further in  
15 respect of the application. I've heard what my learned  
16 friends, the counsel assisting and Ms Hanscombe, have said,  
17 and I otherwise press the tender.

18  
19 THE PRESIDING MEMBER: Thank you.

20  
21 MS GERACE: Thank you to counsel for Mr New.

22  
23 Your Honour, the additional material just further  
24 supports the following propositions: the evidence was that  
25 Mr New was in a position to give instructions to those  
26 representing the Yeshivah Centre at the time when the  
27 evidence was given by either Mr Waks or by Mr Wolf, and  
28 would have been, then, aware that evidence given by Mr Wolf  
29 did not accord with his own recollection of events, even if  
30 he took the view it wasn't consistent.

31  
32 I say again that central to the examination of  
33 Yeshivah Centre's response was the way in which it dealt  
34 with and responded to victims and advocates of child sexual  
35 abuse, and central to that was the acts, or lack of action,  
36 by the Committee of Management.

37  
38 At this stage, your Honour, I draw attention to  
39 practice guideline 1 of this Royal Commission, which says  
40 in paragraph 69 in relation to the rule in *Browne v Dunn*:

41  
42 *Except as set out below, the Royal*  
43 *Commission will not apply the rule in*  
44 *Browne v. Dunn:*

45  
46 *a. If the Royal Commission is to be invited*  
47 *to disbelieve a witness, the material*

1 grounds upon which it is said that the  
2 evidence should be disbelieved should be  
3 put to the witness so that the witness may  
4 have an opportunity to offer an  
5 explanation.

6  
7 *b. The Royal Commission expects that, where*  
8 *it is contended that deliberately false*  
9 *evidence has been given, or that there has*  
10 *been a mistake on the part of the witness*  
11 *on a significant issue, the grounds of such*  
12 *contention will be put.*

13  
14 *c. What is stated above is not intended to*  
15 *mean that.*

16  
17 *i. Mere inconsistencies and unimportant*  
18 *differences in the evidence should be*  
19 *raised.*

20  
21 *ii. Once the grounds for disbelieving a*  
22 *witness have been put by one party, other*  
23 *parties need to put them again.*

24  
25 The practice note, in my submission, further supports  
26 the position taken that at this late stage, and given the  
27 circumstances where Mr New was represented, the matters  
28 being dealt with are matters that arose in his capacity as  
29 a representative of the Committee of Management, where  
30 those issues were on notice, where he was present when the  
31 evidence was given, and in circumstances where great  
32 injustice would be occasioned to the witnesses who did  
33 appear to give evidence, both Mr Waks and Mr Wolf, and  
34 those matters not having been put, this application should  
35 be refused and the submissions should be refused.

36  
37 THE PRESIDING MEMBER: Thank you. There is nothing  
38 further you want to say, I take it, Mr Ginges?

39  
40 MR GINGES: No, thank you, your Honour. I don't know  
41 whether your Honour intends dealing with the matter now or  
42 at some later time. If your Honour is not going to deal  
43 with the matter now, I will be seeking your Honour's leave  
44 to withdraw from the remainder of the proceedings today  
45 because I don't think they impact on Mr New.

46  
47 THE PRESIDING MEMBER: All right. Thank you. I will give

1 you leave to withdraw, but I consider myself in a position  
2 to make the ruling now.

3  
4 MR GINGES: May it please your Honour.

5  
6 THE PRESIDING MEMBER: Mr Ginges, you have obviously had  
7 the opportunity to say what you wanted to say and put those  
8 matters before the Commission. It is clear from what has  
9 been said to the Commission, through you, with respect to  
10 your client, Mr New, that he was completely embedded in or  
11 involved in the proceedings throughout the public hearing  
12 and, indeed, not only was he present but, as is now clear,  
13 he was, indeed, playing a considerable role in providing  
14 instructions to the legal team representing the Yeshivah  
15 Centre through the Committee of Management where your  
16 client was, at the relevant time, a member.

17  
18 So he - Mr New, your client - was clearly in  
19 a position to respond to the evidence that came up during  
20 the course of the public hearing that your client, through  
21 you, now wishes to take issue with.

22  
23 From my point of view, having given you opportunity,  
24 on behalf of your client, to give an explanation to the  
25 Commission as to why that material was not put to the  
26 appropriate witnesses at the time, it is my view that no  
27 satisfactory explanation has been clearly given to us, on  
28 the basis that what is now sought to be tendered was  
29 clearly well within the knowledge of your client at the  
30 time and, as I have said, he was embedded in the  
31 proceedings in a way in which most other witnesses normally  
32 are not.

33  
34 The matters that your client now wishes to put,  
35 through you, were matters that he clearly could have raised  
36 with counsel assisting or with the legal team and, indeed,  
37 he could have made the statement that he made some months  
38 later and asked, through counsel assisting, that that come  
39 before the Commission, and taken advice and guidance from  
40 his legal representatives at the time. Also, of course,  
41 even if he had not put that statement together, even  
42 falling short of that, these were matters that were not put  
43 either to Mr Waks or, indeed, to Mr Wolf, and which could  
44 have been put. Indeed, as counsel assisting said, the  
45 practice guideline makes clear that if at some later stage  
46 it is to be put that a witness is mistaken as to  
47 a significant issue, then that proposition needs to be put

1 to the witness, as an exception to the position that the  
2 rule in *Browne v Dunn* doesn't apply.

3  
4 I will put to one side the issues that surround the  
5 lack of clarity around the way in which your client wants  
6 to put the material before the Commission, in that it  
7 appears to be both personal and part of the institutional  
8 response, and given my view that it is not appropriate to  
9 allow the tender, I won't take that any further, other than  
10 to say it doesn't assist your client to not have that  
11 clarity about the way in which he wants that matter to come  
12 before the Commission.

13  
14 Significantly, counsel assisting has indicated, and it  
15 is clear from the material before us, that no adverse  
16 finding is being sought with reference to Mr New in his  
17 named individual capacity or, indeed, as counsel assisting  
18 says, even in more general terms with respect to the  
19 Committee of Management that your client was part of at the  
20 relevant time.

21  
22 Finally, there were submissions made by Ms Hanscombe,  
23 who presses firmly on behalf of her client that the issue  
24 with respect to fairness and the possible injustice that  
25 could be worked in fact falls upon her client, rather than  
26 upon yours in these circumstances, if that material were to  
27 be accepted into evidence at this stage.

28  
29 So for those reasons, we will not accept the tender of  
30 the document and I will otherwise excuse you, Mr Ginges,  
31 and thank you for your attendance.

32  
33 MR GINGES: May it please the Commission.

34  
35 MS GERACE: Just before I continue, as a matter of  
36 housekeeping, I know we have had some technical  
37 difficulties and therefore lost some time. I will  
38 endeavour to finish my reply before 2.30, and possibly  
39 sooner than that, but just to indicate, as I have informed  
40 the parties, we will conclude at 4pm today.

41  
42 Before the break, I was dealing with Rabbi Yosef  
43 Feldman's submissions and my response to those and, in  
44 particular, the suggestion that the Commission was outside  
45 its terms of reference to examine the personal views or  
46 that the submissions made in relation to the views and  
47 opinions expressed by Rabbi Yosef Feldman were outside

1 those terms of reference.

2

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1 context.

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Institutions speak and act by their officials. The views of officials shape the responses of institutions, not just to allegations and incidents but to attitudes to victims and advocates of victims who either operate within or come in contact with the institution and their officials and other members of the same community that the institutions affect.

The views of officials contribute to the milieu of the community in which abuse occurs and in which victims live. It shapes, informs and impacts on decisions that victims face in deciding whether or not they will speak up about child sexual abuse.

Views of officials of institutions shape, inform and impact on the way victims feel about themselves as a result of their abuse. Views of the officials of institutions shape, inform and impact on the way other members of the community think about child sexual abuse, about what they might think about victims, about how they may decide to treat and respond to victims who come forward to report allegations of abuse.

The word "rabbi" means teacher, a teacher of the Jewish faith. The evidence in this Commission showed that a rabbi was a person to whom members of the community would look for both religious and moral guidance.

Yosef Feldman was a rabbi at the time he expressed those views and the interactions he had with people as a result of expressing those views. He was the head official at the Gedola and a director of the company that ran the Yeshivah Gedola.

Is it seriously suggested that view expressed by Yosef Feldman when in those roles may not, as a possibility, affect the way victims feel about reporting child sexual abuse or impede the reporting of child sexual abuse?

It is not necessary, in my submission, for this Commission to show that Yosef Feldman actually impeded a particular person from reporting child sexual abuse.

Is it suggested that where an official expresses views

1 that a member of the community who reports another Jewish  
2 member of the community to the secular authorities has  
3 committed one of the greatest sins of the Jewish faith,  
4 that that may not be an attitude, once widely known or  
5 disseminated, that would affect the decision of a member of  
6 the community to report, particularly in circumstances  
7 where it was the uncontested evidence of a multitude of  
8 witnesses before this Commission who gave evidence that  
9 that very belief, or misconceptions about that belief, had  
10 influenced the approach of leaders and members of the  
11 community in their decisions on whether or not to report.  
12

13 Evidence was heard before this Commission of people  
14 being called a moser when they did report or when they  
15 spoke up. Those views were the subject of evidence from  
16 rabbinical leaders who had sought to dispel those  
17 misconceptions within the community so as to create a safe  
18 environment for members of the community to come forward  
19 and to discuss and report their abuse.  
20

21 What about the views where it was argued that someone  
22 who reports child sexual abuse may not only commit mesirah  
23 but should be labelled a roidef, therefore leading to  
24 ostracisation by the community in which they live? There  
25 was ample evidence before the Commission that those  
26 misconceptions and beliefs had been sources of conflict and  
27 confusion for members of the community about whether or not  
28 they could report child sexual abuse and in what  
29 circumstances.  
30

31 It is not necessary, in my submission, for this  
32 Commission to find that one person did, in fact, not report  
33 because of the views held by Yosef Feldman. It is enough,  
34 on the evidence that was before this Commission,  
35 uncontroverted as it was, that those misconceptions existed  
36 and that they had operated to cause fear and concern in  
37 members of the community that if they were to report their  
38 abuse to others, they may be labelled a moser. That  
39 evidence was given by a number of witnesses and not  
40 challenged.  
41

42 At the time those views were expressed, Rabbi Feldman  
43 was not an ordinary member of the community and, in  
44 particular, if we look at the emails of 21 to 25 July 2011,  
45 the public statement of 26 July 2011 and the emails of  
46 27 July 2011, paragraphs 213 and following, at that stage  
47 Rabbi Feldman was endeavouring to have his views adopted by

1 other institutional leaders. He was seeking to argue with  
2 other rabbinical leaders that the views he held on the  
3 application of mesirah or that someone was a roidef or  
4 whether or not a person was permitted to report to the  
5 secular authorities and whether or not a member of the  
6 community required the permission of a rabbi, he sought to  
7 engage other rabbinical leaders in dialogue so as to  
8 persuade them to argue for an approach that the reporting  
9 of child sexual abuse might first require a report to  
10 a rabbi before reporting to a secular authority, to allow  
11 a rabbi to ascertain the validity of the complaint or to  
12 argue for a position that the Jewish community deal with  
13 allegations rather than the secular authorities and arguing  
14 that, in some instances, a reporter of abuse might be  
15 a moser; paragraph 214 of my submissions.  
16

17 These were his views on whether a Jew is permitted to  
18 report child sexual abuse, expressed in his role as  
19 a rabbi, when a rabbi has, as one of his functions, to  
20 advise parents on the Halacha. Any suggestion that these  
21 views are not able to be examined by this Commission, in  
22 the circumstances in which those views were expressed in a  
23 debate with other leaders as to the approach that should be  
24 taken by the Chabad Orthodox faith in its response to child  
25 sexual abuse, does not stand up to scrutiny and should be  
26 rejected.  
27

28 Once that position is reached, the Commission would  
29 necessarily be alive to and be concerned to investigate  
30 whether or not those views were still held and were likely  
31 to inform or may even in fact, as a possibility, inform the  
32 response of institutions in the future.  
33

34 The terms of reference are sufficiently widely drafted  
35 to encompass not only how an institution has responded in  
36 the past but how it might respond in the future.  
37

38 In July 2011, he was the president of the Rabbinical  
39 Council of Australia, at a time when he held, as his own  
40 submissions would suggest, a personal view, reservation  
41 about whether or not the Halacha permitted the reporting of  
42 child sexual abuse to the secular authorities. They are  
43 matters properly examined by this Commission, and whether  
44 he adheres to those views and whether he has accepted the  
45 ruling of the Rabbinical Council of Victoria are matters  
46 properly to be examined.  
47

1           On 26 July he issued his statement saying that he had  
2 adopted the principles as set out in the RCV resolution.  
3 That is one of the matters addressed in the submissions and  
4 it appeared to be, on its face, a renunciation of the views  
5 he had expressed the day before. The Commission would be  
6 entitled to examine whether, in his ongoing roles within  
7 the community, he in fact acted in a manner consistent with  
8 what appeared to be his renunciation of the views expressed  
9 in his emails the day before and consistently with his  
10 public statement on 26 July that notwithstanding halachic  
11 differences, under his direction and authority the RCV  
12 resolution of 2010 would be accepted.  
13

14           I will not go through all of the factual matters, but  
15 the submissions then deal with the various bits of evidence  
16 that came before this Commission that provided some  
17 evidence that suggested that potentially his public  
18 statement on 26 July 2011 was not so earnestly held and  
19 that perhaps it had been made for public relations purposes  
20 as opposed to being a true commitment to an acceptance of  
21 the principles set out in the RCV 2010 resolution. They  
22 are matters on which this Commission may make findings.  
23

24           He was, it is to be remembered, at the time of being  
25 examined, still holding senior positions within the Yeshiva  
26 Bondi institution. And perhaps the truer test of his  
27 commitment to the principles set out in his public  
28 statement on 26 July was how he conducted himself when, as  
29 a result of changes within the community and encouragement  
30 for people to come forward, he confronted a situation where  
31 a friend of his, Daniel Hayman, was arrested in relation to  
32 historical sexual abuse offences.  
33

34           In response to those circumstances, Yosef Feldman  
35 contacted [AVB], and those matters are dealt with in my  
36 submission. See paragraphs 232 and following.  
37

38           If he had so earnestly accepted the position of the  
39 RCV in 2010 and was genuine in his commitment, there would  
40 be no basis upon which he would seek to contact [AVB] to  
41 urge him to disclose whether it was the public  
42 pronouncements that had led him to report on Daniel Hayman  
43 in circumstances where he knew, he accepted, that there had  
44 been discussions between Daniel Hayman and [AVB] in  
45 relation to the allegations of assault, and to then send  
46 off an email to Rabbi Moshe Gutnick critical of the  
47 decisions taken by the RCV to encourage people to come

1 forward. Those emails are evidence, in my submission, that  
2 his public statement on 26 July was not a genuine public  
3 statement of his acceptance of the principles in the RCV  
4 resolution 2010 and is evidence upon which this Commission  
5 may make findings.  
6

7 These are not private views. These are not views that  
8 he overheard at a barbecue or were taken from his private  
9 diaries or private musings over the kitchen table in his  
10 family home. These are views that he is expressing to  
11 other leaders at the time. He is contacting someone who,  
12 de minimis, he must be concerned is a victim of Daniel  
13 Hayman, where there had been conversation, to inquire  
14 whether he felt compelled by the RCV resolution to  
15 complain, and he then writes to another rabbi to complain  
16 of the encouragement given by public pronouncements to  
17 child victims.  
18

19 It is suggested that after July 2011 there is no  
20 evidence that Rabbi Yosef Feldman failed to follow the law  
21 or breached the law. That is not the point. This  
22 Commission is not solely concerned with the breaking of  
23 a law. The Commission in its work seeks to understand the  
24 way in which institutions have responded to child sexual  
25 abuse and may respond to child sexual abuse in the future.  
26

27 The Commission is entitled to examine whether  
28 Rabbi Yosef Feldman holds the views that he has expressed  
29 to assess whether or not they may impede his ability to  
30 respond appropriately to child sexual abuse in the future  
31 and whether those views will influence or impact the  
32 response of others.  
33

34 Given the overwhelming evidence of witnesses that  
35 attitudes towards reporting child sexual abuse had been  
36 influenced about misconceptions about mesirah, a reluctance  
37 to report externally and the influence a rabbi may have,  
38 the Royal Commission is entitled to examine the views  
39 expressed by leaders of Yeshiva Sydney and otherwise on the  
40 appropriate responses they should make and their attitudes  
41 to child sexual abuse and its reporting.  
42

43 There was no doubt that the views expressed by  
44 Rabbi Yosef Feldman were against the tide. Even in the  
45 emails of 26 July 2011, many of the people with whom he  
46 corresponded sought to dissuade him from the views that he  
47 held, perhaps set out best in the email chain of 25 July

1 2011, expressed by Rabbi Moshe Gutnick.

2  
3 Notwithstanding those arguments, he persisted in  
4 holding those views. Given the strength of his commitment  
5 to those views, the Commission should properly examine  
6 whether he continues to hold those views now and whether  
7 they may continue to impact or, as a possibility, affect  
8 the way he or others respond to child sexual abuse in the  
9 Yeshiva Bondi community.

10  
11 It is suggested that the Commission should find that  
12 Rabbi Yosef Feldman had made it clear that he accepted the  
13 statement of the RCV that matters of abuse should be  
14 reported.

15  
16 For the reasons outlined in my submissions and the  
17 supplementary oral submissions, the proposition should be  
18 accepted that there is no cogent evidence that any belief  
19 of acceptance - meaning to generally believe or recognise  
20 to be valid or correct - was ever held by Rabbi Yosef  
21 Feldman in relation to the 2010 resolution of the RCV.

22  
23 That brings me to Rabbi Yosef Feldman's application  
24 for the tender of additional material. I will be very  
25 brief in relation to my position on those emails.

26  
27 Documents 8 through to 17A. I would ask if  
28 Rabbi Feldman's counsel would indicate, is the tender made  
29 on the basis that those documents have come into existence  
30 or have been adopted since the public hearing, so I could  
31 understand those documents further before responding?

32  
33 MR SMITH: If the Commission pleases, I think when  
34 Rabbi Yosef Feldman was giving evidence before he didn't  
35 have at his fingertips the procedures that had already  
36 been - if any had been set in practice, what they were. He  
37 was asked by counsel assisting, as I recall it, if he could  
38 make those materials available, if there were such  
39 materials.

40  
41 I am instructed that those materials have been in  
42 operation for some time, and he wasn't so closely involved  
43 in the actual running of the institution at that time, and  
44 he is certainly not now. In fact, he is unemployed now and  
45 has been for some months.

46  
47 I'll come to those matters.

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THE PRESIDING MEMBER: All right. So does that clarify that point for you?

MS GERACE: Yes. Thank you to my learned friend. I'm grateful for the clarification of the basis of the tender.

The answer provided, though, is somewhat troubling, in this sense: to the extent the documents are tendered as policies in place or adopted since the date of the public hearing, my position would be that we would welcome the tender on that basis, because this Commission welcomes any developments or steps undertaken by any of the institutions examined to bring into existence or to formalise the policies that exist for the investigation or reporting of child sexual abuse. I am not troubled by the tender on the basis that they are put forward as policies now of the Yeshiva Bondi.

If it is pressed, however, that they were policies in place at some indefinite time, that is a submission that I find troubling. On 3 November 2014 his Honour Justice McClellan issued a summons to produce documents to Rabbi Pinchus Feldman, which called for a number of categories of documents, one of which, paragraph 4, included:

*All documents setting out the policies and procedures of the Yeshiva Centre and/or its constituent organisations in relation to child protection, misconduct by or the fitness for duty of employees, volunteers or members of the Yeshiva Centre and its constituent organisations and/or the handling of allegations of complaints of child sexual abuse.*

The material now sought to be tendered was not produced in answer to that summons. I would like to hear some further argument, but on that basis I submit that the material should be rejected. It was not before the public hearing. I would oppose the tender on the basis that Yeshiva Bondi or Yosef Feldman seeks to make some submission that they were in existence at the time of the public hearing or, as it is put, that they could not locate or identify them at the time of questioning. I have a copy of the summons if it would assist my learned friend.

1  
2 MR SMITH: If I could just respond, and if I have not  
3 accurately advised the Commission or informed the  
4 Commission of the situation - there is a covering letter  
5 with the material, which is dated 30 July 2015. It says:  
6

7 *I attach the current child protection*  
8 *policy for Yeshiva College. The policy*  
9 *includes four parts and has been reviewed*  
10 *and upgraded this year. In addition,*  
11 *current staff have all reviewed it together*  
12 *in four staff meetings. They signed off on*  
13 *each new part as it was tabled for*  
14 *discussion.*

15  
16 *This new policy has been included in the*  
17 *updated version of our Staff Handbook which*  
18 *every teacher signs off on upon being*  
19 *employed.*

20  
21 *In addition, volunteer and substitute*  
22 *teachers are given a copy of the full*  
23 *policy to sign off on before entering our*  
24 *classrooms.*

25  
26 *I have also taken the liberty of attaching*  
27 *our workbook used for overnight camps.*  
28 *Before camp counsellors embark on*  
29 *supervision of campers, they are required*  
30 *to go through training about child*  
31 *protection which is relevant to the camp*  
32 *setting. The attached workbook is used as*  
33 *a the basis for this training.*

34  
35 And it finishes off. I understand that an earlier version  
36 of these documents was produced in answer to the summons  
37 that was served. This is an upgrade.

38  
39 THE PRESIDING MEMBER: So the material was updated in July  
40 2015?

41  
42 MR SMITH: Well, it was before then, but it was July 2015  
43 that the letter was prepared attaching the material. It  
44 was a progressive development.

45  
46 THE PRESIDING MEMBER: I understand. Mr Smith, though,  
47 are your instructions that there were policies, relevant



1 child protection policies, in place as at - what was the  
2 date of the notice to produce?

3  
4 MS GERACE: November 2014.

5  
6 THE PRESIDING MEMBER: November 2014?

7  
8 MR SMITH: Well, that's what I'm instructed.

9  
10 MS GERACE: For the Yeshiva Gedola.

11  
12 MR SMITH: This is Yeshiva College Cheder Chabad.

13  
14 MS GERACE: I'm drawing a distinction. There were some  
15 policies for the Yeshiva College. The issue was for the  
16 Yeshiva Gedola, it had no policies of its own. That's what  
17 I was seeking to clarify. Are these documents now tendered  
18 as documents that now apply for the Yeshiva College and the  
19 Yeshiva Gedola, and is it accepted that the tender is being  
20 made on the basis that they now are formal written policies  
21 for the Gedola that postdate the hearing?

22  
23 My learned friend is correct when he says some  
24 policies were produced by the college.

25  
26 MR SMITH: I'm instructed that the rabbinical school - I'm  
27 still learning these terms --

28  
29 THE PRESIDING MEMBER: This is the Gedola.

30  
31 MR SMITH: Yes, the Gedola follows these same policies.

32  
33 THE PRESIDING MEMBER: This is the institution that was  
34 teaching the young rabbis.

35  
36 MR SMITH: Yes, it follows the same policies as exist for  
37 the Yeshiva College.

38  
39 THE PRESIDING MEMBER: That is now, Mr Smith, is that  
40 right? But the question is: did the institution, the  
41 Gedola, have those policies in place somewhere between  
42 November 2014 and February 2015, at the time at which the  
43 public hearing commenced? So between the time of the  
44 issuing of the notice to produce and the public hearing.

45  
46 MR SMITH: Well, I don't have any instructions on that.  
47 Perhaps we could clarify it and send through the

1 information?

2

3 THE PRESIDING MEMBER: So you understand the relevance of  
4 it as raised by counsel assisting?

5

6 MR SMITH: Yes, your Honour. Yes, I will get a further  
7 chance to respond.

8

9 THE PRESIDING MEMBER: Perhaps I'll just add one question  
10 to it. What I understand counsel assisting to be saying is  
11 that if your instructions are that Yeshiva Gedola has now  
12 adopted those policies as part of its operation, then  
13 counsel assisting won't object to the tender on the basis  
14 that that's relevant information for the Commission.

15

16 MR SMITH: Well, those are my instructions.

17

18 THE PRESIDING MEMBER: They've been adopted since?

19

20 MR SMITH: Since.

21

22 THE PRESIDING MEMBER: Yes, all right.

23

24 MS GERACE: On that basis, the tender of the documents as  
25 formal policies adopted since the public hearing, then in  
26 my submission they should be accepted by this Commission,  
27 acknowledging the work of those involved in the formulation  
28 and adoption of written policies for the investigation and  
29 response to child sexual abuse.

30

31 THE PRESIDING MEMBER: So is everyone content for those  
32 documents marked numbers 8 through to 17A to be marked into  
33 evidence as a bundle, one exhibit? I'll mark that 22-056.

34

35 **EXHIBIT #22-056 DOCUMENTS MARKED NUMBERS 8 THROUGH TO 17A.**

36

37 MS GERACE: They are all the submissions that I want to  
38 make at this stage in relation to Yosef Feldman's  
39 submissions and his applications for tender.

40

41 There are two discrete matters. The first is in  
42 relation to an issue I raised before the luncheon  
43 adjournment about the imprecision of the complaint made to  
44 Rabbi Lesches by the students. It is also fair to  
45 acknowledge that the statements on their terms do not  
46 identify the precise age of the persons who spoke to  
47 Rabbi Lesches.

1  
2           There are no further replies I wish to make at this  
3 stage, but there is an additional application for tender by  
4 [AVB]. For the reasons I have already indicated, my  
5 submission is that that material should not be accepted.  
6 In large, they were not the subject of investigation at the  
7 public hearing. In particular, documents 19, 20, 21 and 22  
8 are matters that postdate the public hearing. There is no  
9 basis on which they should be provided.

10  
11           I might just short-circuit this. They are not  
12 pressed. The only document that is pressed, I think, is  
13 28. I don't wish to say anything about that at this stage,  
14 and I will allow counsel for [AVB] to address your Honour  
15 on that.

16  
17 THE PRESIDING MEMBER:    Yes.

18  
19 MS GERACE:    Thank you.

20  
21 MR SEEMAN:    If the Commission pleases, would the  
22 Commission like that to happen now, submissions about that  
23 document?

24  
25 THE PRESIDING MEMBER:    Perhaps I'll get Ms Gerace to  
26 finish going through the responses that she wants to make,  
27 and then I'll obviously give you the opportunity to do that  
28 then, Mr Seeman.

29  
30 MS GERACE:    Your Honour, I am at this stage not proposing  
31 to make any further replies to submissions, so I was going  
32 to ask your Honour to invite parties to make whatever  
33 additional oral replies they want to make to other parties'  
34 submissions and/or address their applications for tender,  
35 if they continue to press them.

36  
37 THE PRESIDING MEMBER:    Yes.  Thanks, Mr Seeman.

38  
39 MR SEEMAN:    Perhaps that's a good starting point.  
40 Thank you, your Honour.

41  
42           Document 28 is an extract from the trial of  
43 Daniel Hayman. It is relevant because submissions have  
44 been put before the Commission on behalf of Rabbi Lesches  
45 which raise the issue of the age of the complainants at the  
46 time that the complaint was made and also the age of the  
47 complainants at the time of the assaults.

1  
2 Issue is also raised by Rabbi Lesches as to whether or  
3 not the complaints were of a sexual nature.  
4

5 The extracts from the trial make abundantly clear, in  
6 our submission, the age of the complainants. It's a very  
7 simple chain of logic which we wish to put before the  
8 Commission, and that is that a time frame is given by the  
9 complainant that the assaults occurred six months after  
10 returning from Israel.  
11

12 Documents from the Department of Immigration were  
13 tendered before the magistrate at trial proving that date.  
14 In addition, there is an argument put by counsel on behalf  
15 of Daniel Hayman compelling a finding before that  
16 magistrate that the complainant was aged between 14 and 16.  
17 That was part of Daniel Hayman's case at trial.  
18

19 So, insofar as Rabbi Lesches before this Commission  
20 seeks to raise any doubt about that, that evidence is  
21 fundamentally important and that's the basis upon which we  
22 seek the tender of that document.  
23

24 Now, before I launch into submissions about that, I'm  
25 not sure whether the Commission would like to rule on that  
26 or not.  
27

28 THE PRESIDING MEMBER: I'll give the opportunity to others  
29 who haven't yet got to their feet and I'll come back to  
30 that, Mr Seeman. I am sure you will remind me if  
31 I overlook it. You keep going.  
32

33 MR SEEMAN: I wish to make submissions on the presumption  
34 that it is tendered, so perhaps I won't make those  
35 submissions just yet and I might be given leave to make  
36 submissions arising out of that document once the ruling is  
37 made?  
38

39 THE PRESIDING MEMBER: I am happy for you to make your  
40 submissions if the tender is allowed.  
41

42 MR SEEMAN: Yes. In other words, should I wait for the  
43 ruling to be made or can I presume that that document will  
44 be admitted into evidence?  
45

46 THE PRESIDING MEMBER: No, you can't presume, but you can  
47 make submissions on the basis of if the tender is allowed -

1 or does that cause you a problem?

2

3 MR SEEMAN: No, it doesn't, your Honour. Thank you. If  
4 the tender is allowed, our submission will be that the  
5 complainant was clearly aged 15 at the time of the  
6 assaults.

7

8 What we also submit is that on a reading of the  
9 statement from the unnamed complainant, that is, document  
10 211 from the supplementary tender bundle, the following  
11 version of events was put by the complainant.

12

13 Firstly, a complaint was made that Gug had "been  
14 inappropriate with myself and others". That's the first  
15 proposition from that statement.

16

17 THE PRESIDING MEMBER: Put to Rabbi Lesches at the time of  
18 the discussion, not at the trial?

19

20 MR SEEMAN: That's correct. That's correct. I am now  
21 referring to a statement dated 16 September 2013 from the  
22 complainant. This is at paragraph 11 of that statement  
23 that I am referring to.

24

25 The first proposition is "Gug has been inappropriate  
26 with myself and others". The second, put to Rabbi Lesches  
27 again, is "we're all victims of his". The third is, "we've  
28 all been touched inappropriately". And the fourth is,  
29 "I think he's gay".

30

31 Now, the response from Rabbi Lesches in that statement  
32 from the complainant is important, because he says, "Oh, we  
33 have a problem with him". Now, what we say is that that  
34 reveals, if the Commission accepts that that was said,  
35 a consciousness that there has previously been an issue  
36 with Daniel Hayman and that Rabbi Lesches knew of an issue.

37

38 What we say is this: on the most vague  
39 interpretation, with the least specificity about that  
40 statement, the following things can be found about that  
41 statement by the Commission, and they are, firstly, that  
42 the complainant regarded himself as a victim; secondly,  
43 that the conduct was inappropriate; and, thirdly, that the  
44 conduct was sexual in nature.

45

46 What we say is that the relevance for this Commission  
47 is not necessarily what precisely was said to Rabbi Lesches

1 at the time, although it's of course relevant. The real  
2 relevance is what should Rabbi Lesches have done at the  
3 time about it? Was what was said to Rabbi Lesches enough  
4 to call on him to act? We say clearly yes.

5  
6 We say, quite simply, what Rabbi Lesches should have  
7 done at the time was at the very least to have quarantined  
8 Daniel Hayman from children and also probably informed the  
9 police at the time.

10  
11 On behalf of Rabbi Lesches, at paragraph 26 of his  
12 submissions, in the middle of that paragraph, it is put,  
13 secondly, that communication about these matters is likely  
14 to have been extremely inhibited, given Chabad cultural  
15 practices, ie, young men were often sexually naive,  
16 discouraged from discussing sexual matters prior to  
17 marriage and presumably knew that homosexuality was  
18 disapproved of by many in the community.

19  
20 What we say about that proposition is that that is the  
21 very reason why Rabbi Lesches should have taken those  
22 comments more seriously. The unlikelihood that  
23 Rabbi Lesches is talking about here, with a young child in  
24 the ultra Orthodox community, should have made it more  
25 important for Rabbi Lesches to at least have had a second  
26 thought about what was said to him at the time.

27  
28 A challenge is also made in relation to the timing of  
29 the complaints to Rabbi Lesches. We would like to  
30 highlight the evidence on that point to the Commission, and  
31 that is at paragraph 7 of the unnamed companion's  
32 statement, which is document 7. I am not certain whether  
33 this has actually been tendered yet. It was put by  
34 Rabbi Pinchus Feldman, but we certainly seek to rely on it  
35 as well.

36  
37 THE PRESIDING MEMBER: This is the document that you have  
38 referred to in submissions, Ms Gerace, that you don't  
39 oppose the tender of?

40  
41 MS GERACE: Yes.

42  
43 THE PRESIDING MEMBER: In fact, I haven't marked it in  
44 yet, just because I haven't given everyone the opportunity  
45 to talk to it. So, again, you can make your submissions  
46 and I will ultimately make a ruling on it.

47

1 MR SEEMAN: Thank you, your Honour. We say that at  
2 paragraph 7 the companion says, "I think within the  
3 following weeks or maybe the next day, I can't remember  
4 exactly when, but myself and [REDACTED] went to the Yeshiva  
5 in Flood Street." So that's the time frame put by the  
6 companion.

7  
8 But importantly, in the next part of that paragraph,  
9 he says:

10  
11 *I remember him saying, 'Yes, yes, I know*  
12 *that Gug's got problems it's his evil*  
13 *inclination. We need to fix that and the*  
14 *way to fix that is we are working on*  
15 *marrying him off."*  
16

17 We know that Hayman was married on 20 August 1987, and  
18 that's at page 6 of that record of interview. So that  
19 assists the Commission, I hope, in a time frame for that  
20 complaint.

21  
22 Moving away from Rabbi Lesches, we wish to make  
23 a submission in relation to Rabbi Klwugant, specifically  
24 the submissions he wishes to make in relation to how the  
25 Commission should interpret the comment to [AVB] that he  
26 should not have sent that email, and that's the email of  
27 17 June 2011.

28  
29 THE PRESIDING MEMBER: What paragraph are you referring  
30 to, Mr Seeman?

31  
32 MR SEEMAN: It's paragraph 13 of his submissions where  
33 it's highlighted that this was a chance encounter, and then  
34 at paragraph 15 of those submissions it is submitted that  
35 had Rabbi Klwugant wished to threaten or intimidate or  
36 exercise control over [AVB], he would have sought a meeting  
37 in a more formal circumstance.

38  
39 What we say about the nature of the meeting is that  
40 the Commission should pay no notice about that because it  
41 doesn't assist. We say that the fact that that encounter  
42 was fleeting or a chance encounter is equally able of being  
43 interpreted as meaning that Rabbi Klwugant may have,  
44 without thought, made that comment or quickly made that  
45 comment without consideration.

46  
47 Ultimately we say that that should not be part of the

1 interpretation of that comment to [AVB].

2

3 What we say is important is the puttage by counsel for  
4 [AVB] at the Commission at transcript C7210. Counsel for  
5 [AVB] put:

6

7 *I will just read you from this document the*  
8 *last lines. This is written by a Detective*  
9 *Superintendent, and I don't need to say his*  
10 *name:*

11

12 *"As a consequence of the inquiries I'm*  
13 *advised that Rabbi Klugant has had no*  
14 *identifiable contact with members of the*  
15 *Victoria Police in respect of any*  
16 *investigations into child sexual abuse*  
17 *within the Melbourne Jewish community."*

18

19 *That's a true statement?*

20

21 Rabbi Klugant:

22

23 *That's correct, yes.*

24

25 Now, at paragraph 22 of Rabbi Klugant's submissions, that  
26 he was acting in good faith to promote the objective of  
27 a successful police investigation - I'm paraphrasing now,  
28 moving on - that in acting as a bridge between Yeshivah and  
29 the police, Rabbi Klugant had his hands full and might  
30 understandably have viewed the actions of [AVB] as  
31 counterproductive.

32

33 Now, it is submitted on behalf of [AVB] that such  
34 a proposition should not be accepted as an explanation for  
35 that comment to [AVB], for three reasons.

36

37 The first is that the evidence suggests that whilst  
38 Rabbi Klugant may have had some involvement with Victoria  
39 Police, it cannot be regarded as so onerous such that he  
40 could have been regarded as having his hands full from that  
41 involvement.

42

43 Secondly, there is simply no explanation as to why the  
44 email from [AVB] would have compromised Rabbi Klugant's  
45 work with the Victoria Police. On any reading of that  
46 email calling for assistance, calling for people to assist  
47 Victoria Police, the interests in that email are completely



1 consistent with Victoria Police. There is absolutely no  
2 reason put to this Commission, that I am aware of, as to  
3 why that email would be a problem for Victoria Police at  
4 all.

5  
6 We say, thirdly, that if that was the true reason for  
7 Rabbi Klugant's comments, that he was working with  
8 Victoria Police, that they were working together and  
9 "please don't interfere", we say that the comment to [AVB]  
10 about the email would have been coupled with a comment  
11 along the lines of, "Don't worry about it, we're working  
12 with Victoria Police", or, "Yes, we're on to it", or, "This  
13 is what's happening." The nature of the comment, we say,  
14 is fundamentally inconsistent with the interpretation put  
15 by Rabbi Klugant.

16  
17 I am instructed to submit that at paragraph 7 of  
18 Rabbi Klugant's - again, I'm not sure whether this has  
19 actually been admitted into evidence, but the supplementary  
20 statement I think has been put to the Commission, and at  
21 paragraph 7 of that statement he asserts that he supported  
22 [AVB] and continued, over the following years, to provide  
23 him with significant support --

24  
25 THE PRESIDING MEMBER: This is the supplementary statement  
26 of Rabbi Klugant, is it?

27  
28 MR SEEMAN: Yes.

29  
30 MS GERACE: Ms Amundsen has helpfully reminded me that  
31 I didn't address those documents specifically other than  
32 a general position being taken.

33  
34 In my submission, there are two distinct parts of the  
35 statement. I'll deal with them separately. The first  
36 comment to make is that Rabbi Klugant was granted leave to  
37 appear and was represented by counsel through the hearing  
38 and had an opportunity to put on, at the hearing, whatever  
39 material he wished to have investigated and to have this  
40 Commission consider.

41  
42 In my submission, in the additional statement of  
43 Rabbi Klugant, paragraphs 2 through to 8 should not be  
44 accepted into evidence at this late stage.

45  
46 THE PRESIDING MEMBER: Is that the documents?  
47

1 MS GERACE: It is tab 1, your Honour, tab 1 of the  
2 submission bundle.

3  
4 THE PRESIDING MEMBER: Yes.

5  
6 MS GERACE: So paragraphs 2 through to 8 is additional  
7 evidence from Rabbi Kluwgant in relation to the [AVB] email  
8 and the comment made by Rabbi Kluwgant to [AVB] that he  
9 should not have sent that email. In my submission, that  
10 was a matter dealt with at the public hearing. He should  
11 not now be permitted to put on additional material. He was  
12 called to give evidence. An application could have been  
13 made to explain further the email that was sent.

14  
15 He was examined in relation to - well, he was  
16 available and could have given whatever explanation he  
17 wanted to in relation to the email and his approach to  
18 [AVB].

19  
20 Similarly, paragraphs 21 and 22 are additional  
21 material put on by Rabbi Kluwgant of his work. That  
22 evidence does not assist the Commission. It was evidence,  
23 to the extent it was necessary, that could have been given  
24 at the public hearing and he should not now be permitted to  
25 put on further evidence in a statement form at the close of  
26 the evidence on matters that could have been explored and  
27 are not the subject, in any event, of any findings - his  
28 work in relation to the issue of child sexual abuse.

29  
30 In relation to paragraphs 9 through to 20, that is  
31 Rabbi Kluwgant's evidence or response to questioning that  
32 occurred on the last day of the public hearing in relation  
33 to a text he sent to a journalist, Zeddy Lawrence, in which  
34 Rabbi Kluwgant made a comment about Zephania Waks and was  
35 subject to questioning by Ms Richards.

36  
37 I note for your Honour and Commissioners that that  
38 questioning occurred without notice, in the sense that he  
39 wasn't told he was going to be asked about that, not that  
40 it would have taken him necessarily by surprise, having  
41 sent the text himself. It was done after lunch on the  
42 final day of the hearing, and he brings forward to the  
43 Commission what he would like the Commission to consider in  
44 relation to the sending of that text and things that he may  
45 have been influenced by at the time of sending that text,  
46 in particular, medication and alcohol and a number of  
47 physical injuries and disabilities.

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True it is the doctor is not available to be examined, and that would not be the ordinary course. However, in my submission, given the nature of the text, given the timing when he was examined, given those factors, fairness requires, in my view, that the material be accepted into evidence to put the text in context and to allow parties to make submissions as to the significance or otherwise of that additional material.

There had been no opportunity to provide a statement in advance, and it may be that the material put before this Commission does not alter the proposed findings. However, given that I submit that you, Commissioners, should find that the sending of that text was a breach of the 2010 RCV resolution and all that a finding of that nature entails, it is my submission that you accept the tender because it would be both fair and just to allow Rabbi Klwugant to put that material before this Commission.

THE PRESIDING MEMBER: So just to be really clear about that, Ms Gerace, that's the content of the proposed supplementary statement, paragraphs 9 through to 20 inclusive --

MS GERACE: Yes.

THE PRESIDING MEMBER: -- which touch upon the issue that you have just addressed us upon, but that otherwise --

MS GERACE: And the report of Dr Jonathan Pinczower dated 16 September 2015. Those two documents together should be accepted into evidence, in my submission.

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THE PRESIDING MEMBER: But that otherwise you oppose the tender --

MS GERACE: For the reasons I have said --

THE PRESIDING MEMBER: -- of the remaining paragraphs and documents?

MS GERACE: Yes. Additionally, I understand, Rabbi Klugant wants to put before the Commission, at tab 3, a bundle of email correspondence between him and [AVB]. For the reasons I have already indicated in relation to paragraphs 2 through to 8, I oppose the tender of those emails. They are not put because they provide some incontrovertible proof against the finding proposed by available finding F44 but so as to urge upon the Commission a view of [AVB] that exhibits manifest belligerence and hypersensitivity and a distorted world view. This is all material that could have been explored at the Commission when [AVB] had an opportunity to defend or explain actions taken and when Rabbi Klugant would have made himself available to be questioned on the matters raised.

It is inappropriate that that material should be sought to be tendered now for that purpose.

THE PRESIDING MEMBER: Back to you now, having understood counsel assisting's position with respect to that supplementary statement, Mr Seeman. That certainly would seem to me, then, to make superfluous submissions that touch upon that document that is no longer being, as far as counsel assisting is concerned --

MR SEEMAN: Yes.

THE PRESIDING MEMBER: I don't know if, Mr Smith --

MR SMITH: We press the emails. The emails were produced to the Commission back in November 2014 as a bundle of emails. The Commission's counsel assisting selected which ones she wanted to use, but it is not as if these are new documents that have just been produced.

THE PRESIDING MEMBER: All right. Perhaps you can clarify with respect to the position of counsel assisting on the supplementary statement?

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MR SMITH: We submit it should all go in.

THE PRESIDING MEMBER: All right, then I will allow you to address us on that as you go through.

MR SEEMAN: Thank you, your Honour. On behalf of [AVB] we really only wish to comment on paragraph 7 of that supplementary statement.

THE PRESIDING MEMBER: Yes.

MR SEEMAN: Perhaps I should make a brief submission in relation to the emails. I have read those emails, and if they go into evidence, we simply say it is not entirely clear what their relevance is. Certainly it's not apparent to us, but we really don't take any issue with it.

THE PRESIDING MEMBER: All right.

MR SEEMAN: In relation to paragraph 7, it is put by Rabbi Klugant that he supported [AVB] "because I promised his late father that I would. I continued over the following years to provide him with significant support and never tried to stop him from publishing his campaign documents."

We submit that there is evidence at transcript C7209 which discloses a concession by Rabbi Klugant that he did not make it known to others that they should cease to bully him and cease to treat him inappropriately, and ultimately Rabbi Klugant in his capacity as a community leader did not assist [AVB] in what we say is any meaningful way. That is the extent of the submissions in relation to Rabbi Klugant.

THE PRESIDING MEMBER: Thank you.

MR SEEMAN: I wish to make two more submissions, firstly, in relation to Rabbi Pinchus Feldman. There are submissions at paragraph 65 which seek to explain the Daniel Hayman family sponsorship document.

That document came into existence and that sponsorship postdated Daniel Hayman's conviction and sentencing. In their submissions, it is put that their mother had died - and, as I understand it, Daniel Hayman's mother had died -

1 late the year before and that "refusing to accept and  
2 acknowledge a charitable payment for the sake of the  
3 elevation of the soul of a departed one would be to punish  
4 the departed one for the sins of the living".  
5

6 Now, what we say is that that demonstrates the  
7 complete lack of care towards the victims of Daniel Hayman.  
8 What really is going on here, in our submission, is that  
9 they are simply putting the - they are accepting  
10 a charitable payment for the sake of the elevation of the  
11 soul and putting the interests of the elevation of the soul  
12 before the interests of the living survivors. We say that  
13 the decision to, firstly, accept the charitable payment  
14 from the Daniel Hayman family and, secondly, publish it, is  
15 completely offensive and dismissive of the survivors of  
16 Daniel Hayman.  
17

18 In addition, there is a chain of emails at  
19 exhibit 22-023 which is consistent, we say, with this  
20 attitude. The interpretation of this email chain which we  
21 submit should be made by this Commission is that a prayer  
22 group was set up, initiated on 27 May 2014 by Rabbi Pinchus  
23 Feldman, to pray for a favourable result for Daniel Hayman.  
24

25 What we say is this: there are always going to be  
26 supporters of people charged with criminal offences. It is  
27 not necessarily critical of people to pray for a favourable  
28 for their friend, if they're friends of Daniel Hayman. We  
29 don't criticise that.  
30

31 What we say is that this prayer group completely  
32 ignores, except for one email, which is an exception, the  
33 harm done to the survivors and victims of Daniel Hayman.  
34 There is no comment whatsoever, again with one exception -  
35 there is no comment, there are no prayers for any of the  
36 victims of Daniel Hayman, and it takes someone to pipe up -  
37 and this is on 27 May 2014 at 3.08pm, and I won't name the  
38 person who sent that email, it's not necessary, to  
39 effectively say:  
40

41 *It appears that two wrongs have been*  
42 *perpetrated, one against young victims and*  
43 *the other by communal leaders who are said*  
44 *to have been silent and possibly actively*  
45 *protecting perpetrators. Ensuring the*  
46 *safety of children in the future and the*  
47 *responsibility of communal leaders*

1                   *unfortunately cannot be achieved without*  
2                   *accountability.*

3  
4                   I'll move on to the bottom of that email. It ended:

5  
6                   *This discussion is shameful. I do not want*  
7                   *to be part of this.*

8  
9                   In relation to the findings put by learned counsel  
10                  assisting, we simply submit that finding 18 as proposed is  
11                  an appropriate finding for this Commission.

12  
13                  The last submission I wish to make - and I may need  
14                  leave for this - is in relation to an explanation for  
15                  a recommendation put by [AVB] in relation to reform of  
16                  Civil Liability Acts in this country.

17  
18                  It is put in the written submissions of [AVB] that  
19                  there should be a strict liability amendment in relation to  
20                  child abuse. If it is appropriate - I know time is of the  
21                  essence - we do wish to make a submission in relation to  
22                  that.

23  
24                  THE PRESIDING MEMBER: Have you had the opportunity to  
25                  have a look at the document that has now been published by  
26                  the Royal Commission with respect to recommendations about  
27                  redress and civil litigation?

28  
29                  MR SEEMAN: I haven't, your Honour.

30  
31                  THE PRESIDING MEMBER: Just tell me in short compass what  
32                  it is, because it may be that what is contained in the  
33                  report supersedes what you want to say.

34  
35                  MR SEEMAN: I thank your Honour for that indication. The  
36                  submission is simply that a strict liability approach to  
37                  child abuse committed in institutions by employees or  
38                  volunteers of those institutions should be recommended by  
39                  this Commission, for the reasons that, firstly --

40  
41                  THE PRESIDING MEMBER: You should have a look at the  
42                  report, Mr Seeman.

43  
44                  MR SEEMAN: Thank you, your Honour.

45  
46                  THE PRESIDING MEMBER: A great deal of time and effort has  
47                  been put into the recommendations contained in that report

1 by not only the three Commissioners sitting before you but,  
2 indeed, the entire six of us, and it's a considerable  
3 report that was published on Monday of this week. You and  
4 your client can be forgiven for not being across it at this  
5 stage. It's very fresh, but it certainly addresses that  
6 issue.

7

8 MR SEEMAN: Yes. Just lastly, may I draw the Commission's  
9 attention to a decision that was handed down yesterday by  
10 his Honour Justice Rush, the defendant's names being  
11 Malka Leifer and Adass Israel School Inc, the medium  
12 neutral citation being 2015 VSC 499, which adopted a strict  
13 liability approach.

14

15 THE PRESIDING MEMBER: Thank you, Mr Seeman.

16

17 MS GERACE: Thank you to counsel for [AVB]. In terms of  
18 the process, there is only the additional statement of  
19 Rabbi Klugant and the documents that Rabbi Klugant seeks  
20 to tender that haven't been ruled upon. It might be  
21 quicker and more efficient to invite any of the parties who  
22 wish to be heard in relation to the application and the  
23 views that I have expressed that I would urge upon the  
24 Commission to address that now, and then parties would be  
25 in a position to make submissions on this matter.

26

27 THE PRESIDING MEMBER: To know whether or not they need to  
28 make any further submissions. Thank you, Ms Gerace.

29

30 Nothing you want to say, Mr Noonan?

31

32 MR NOONAN: No. I do wish to respond to one of the  
33 submissions, but not --

34

35 THE PRESIDING MEMBER: Not with respect to the documents?

36

37 MR NOONAN: No.

38

39 MR GINSBOURG: Nor me, your Honour.

40

41 THE PRESIDING MEMBER: Thank you. Mr Smith?

42

43 MR SMITH: Yes, your Honour.

44

45 Your Honour, I had a very concerned phone call from my  
46 solicitor last night, Mr Austin, who is ill today and  
47 apologises for his absence, and that was that he had been



1 rung by a journalist to ask whether he was going to make  
2 his submissions available today, because counsel  
3 assisting's submissions were going to be made available  
4 today. That was his understanding.

5  
6 THE PRESIDING MEMBER: Meaning published?

7  
8 MR SMITH: Published on the internet.

9  
10 THE PRESIDING MEMBER: As is the normal course.

11  
12 MR SMITH: Yes, I gather it's a normal course. It's an  
13 unusual course, I would submit, in the sense that the  
14 Commission is the organisation that makes the decisions and  
15 prepares the report. Counsel assisting, in a sense, is  
16 like a prosecutor. I know she is different, in a sense.  
17 Nobody is charged with any offences.

18  
19 Nevertheless, when she puts in the submission,  
20 I submit, and circulates it to the parties, it's like  
21 a voir dire. We've seen today that she has had to correct  
22 certain aspects or has accepted some of the submissions to  
23 say that there are things that should be changed because of  
24 a statement, or whatever.

25  
26 So the damage that can be done to reputation is more  
27 likely to be done in the early days, rather than having to  
28 wait for the report, and there are some very damaging  
29 remarks and recommendations in counsel assisting's  
30 submissions in respect of my clients, particularly  
31 Rabbi Yosef Feldman, and her submissions today about him,  
32 as if he was the cause of all prejudice amongst traditional  
33 Jewish thought about mesirah and matters of that sort, as  
34 if he was trying to keep that going everywhere. That was  
35 the extent. I just couldn't believe the breadth of the  
36 terrible things he's supposed to have done.

37  
38 He was seeking to take part in a debate. He obviously  
39 has certain views as to the role of a rabbi, and that's  
40 something he has probably learnt in his training and over  
41 the years. Whilst the Commission is doing some magnificent  
42 work in exposing flaws of the past, because there have been  
43 many, and trying to make up for the injustices that have  
44 occurred to children and the cover-ups and matters of that  
45 sort, in relation to Rabbi Yosef Feldman there are not many  
46 offences there at all. In fact, I think there's one, one  
47 offence that he knew something about, and he only knew

1 a bit about it.

2

3 He wasn't given the full details of the extent of the  
4 indecent assault, or whatever it was. It was purely that  
5 he heard from the man, [AVL], I think it is, that there had  
6 been some lying down together and massaging. Now, he  
7 thought that was wrong. Nevertheless, whether it  
8 constituted indecent assault, he didn't know.

9

10 Yet he and Rabbi Pinchus Feldman have been criticised  
11 in those submissions, very much so. In fact, until  
12 finding 7 was corrected, one would have thought that they  
13 were responsible for getting him out of the country, [AVL].

14

15 Now it has been modified, I submit. They weren't  
16 police. They weren't charged with investigating the  
17 offence. In fact, their role was more to deal with him as  
18 a rabbinical student and someone who had to be told, "Well,  
19 you're not going to get ordained if you don't stay here."  
20 So that, in itself, is going to encourage him to stay.  
21 That's not encouraging him to leave, because he was after  
22 ordination.

23

24 Then there was a man working for the Yeshiva College,  
25 the principal, Bill Conway, William Conway, who was charged  
26 by Rabbi Pinchus Feldman to do the necessary reporting and  
27 to get on with it. Well, he apparently still has some  
28 animosity towards Rabbi Pinchus Feldman. His statement was  
29 taken about a day after Rabbi Pinchus Feldman left this  
30 Commission in Melbourne, and it was never put to him that  
31 there was a concern that if he didn't report it, nobody  
32 else would.

33

34 But that's the inference that's in counsel assisting's  
35 submission, that, in a sense, he felt he had to do it  
36 because it mightn't be done otherwise. Now, he is not  
37 called before the Commission. His statement is not served  
38 before Rabbi Pinchus Feldman gives his evidence, and so he  
39 is not cross-examined on this, as to whether he was going  
40 to try to suppress the complaint that had been made by the  
41 boy and his mother.

42

43 In fact, Mr Conway is charged with the job of actually  
44 doing the things that have to be done with the Independent  
45 Schools Association, who they were part of, and with the  
46 JIRT group, the task force, and dealing with the DoCS  
47 officer. Mr Conway, on his notes, said that he was

1 informed by Rabbi Simons, I think his name was, the other  
2 man that he was working with and who he interviewed [AVL]  
3 with, that [AVL] had rung him after he had left the country  
4 and said he was coming back within a week.  
5

6 There was no evidence that that information was passed  
7 on to DoCS or to the JIRT. There's no evidence that the  
8 police actually were seeking to take a statement or to  
9 investigate this matter, and there's no evidence of what  
10 actually happened in relation to that [AVL] matter.  
11

12 I would have thought that if my clients, the two  
13 Feldman rabbis, were going to be criticised for, as it  
14 were, not stopping him from leaving the country, there are  
15 a number of other people who should be criticised for that,  
16 and there are people who were charged with investigating  
17 criminal offences, to actually find out where he is. Did  
18 he actually leave the country? Has he come back into the  
19 country, because there are alerts that can be put on with  
20 Customs to see the movements of people into this country?  
21 Were there inquiries made in America?  
22

23 We recently had the situation of a girl in Mosman who  
24 was held hostage. I think the man's name was Paul Peters.  
25 He held her hostage with a fake bomb attached to her and  
26 he then tried to extort money. He then fled to America  
27 once he didn't get the money, and he was tracked down in  
28 America, extradited back to Australia and is now  
29 languishing in prison.  
30

31 Now, the authorities can do that if they want to. We  
32 have no information as to what happened about [AVL] and an  
33 investigation. I'm not saying that the Commission is there  
34 to run a general crime commission and all that. But to try  
35 to criticise two rabbis, who are not police, for saying to  
36 him, "You won't be able to be ordained" and for not holding  
37 on to him or arresting him or something is, we submit,  
38 quite unfair. Yet the submission, that's going to be  
39 published, apparently, has that in it.  
40

41 Now, that does great damage to a man like  
42 Rabbi Pinchus Feldman, who has been involved in running  
43 that organisation, that college, for 50 years, and as far  
44 as we know, there is only one case that he became aware of,  
45 and the man fled the country.  
46

47 What this Commission should be doing, we submit, and

1 I know you'll say, "Well, it's all very nice of you to tell  
2 me this" - this Commission has already succeeded in  
3 changing the culture in our community. There's no doubt  
4 about it. But does it do that by attacking people who  
5 really haven't been at any great fault in what they have  
6 been doing; they haven't had a tribe of paedophiles running  
7 around their schools molesting children everywhere?  
8

9 All right, they may not have been fully up to date on  
10 the latest in child protection, but they're working towards  
11 it and they have worked towards it. But their reputations  
12 have already been damaged greatly. And I mentioned that  
13 one of them is unemployed, and chances are he'll stay  
14 unemployed because of the publicity he will get.  
15

16 Now, I was going to make an application earlier, and  
17 I think notice was given of this, to have a closed session  
18 to talk about a particular instance where there might have  
19 been a contempt of the Victorian Supreme Court with some of  
20 the material that was sought to be tendered on behalf of  
21 [AVB]. I notice he hasn't pressed that tender. It was  
22 going to be objected to as well.  
23

24 Nevertheless, this should not be a venue for victims  
25 just to take it out on people. I know it's dreadful that  
26 people have been victims. They are dreadful things. I've  
27 been prosecuting these cases for 20 years or more and I've  
28 seen the heartache caused to them. But I don't know that  
29 it's a right thing to just allow - and it didn't happen,  
30 but there was an attempt made - to pillory one of my  
31 clients --  
32

33 THE PRESIDING MEMBER: It would be more helpful to us,  
34 Mr Smith, rather than to talk about what might have been,  
35 to stick with what you want to say on behalf of your  
36 clients.  
37

38 MR SMITH: All right. I've said certain things, and I'll  
39 say some more. So far as Yosef Feldman is concerned, we  
40 maintain that the Commission should accept the rabbi's  
41 evidence that he has learned lessons about the nature and  
42 incidence of child sexual abuse as a result of the work of  
43 the Royal Commission and his own reflection, and that he  
44 feels sorrow for the suffering of sexual assault and abuse  
45 victims and that he was encouraging officially, as  
46 a rabbinical leader, other members of his faith to report  
47 instances of abuse.

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Now, whether we go deep into his head to find out what he thinks in his cultural and traditional and religious way, that's all very interesting, but what he is saying to the public and to his own faithful at large is: report; do the right thing by these children.

Further, he regrets that anything that he had previously written may have added to that suffering.

THE PRESIDING MEMBER: Are you addressing us about some aspect of the evidence now or are you giving us the benefit of instructions that you have?

MR SMITH: I'm addressing you on aspects of the submissions that have been made on his behalf, and that relates to the submissions on page 2, his written submissions, paragraph 7.

THE PRESIDING MEMBER: Thank you.

MR SMITH: Do you have the submission, your Honour?

THE PRESIDING MEMBER: Yes, I do.

MR SMITH: So that's my summation of that. I'm not going to read all the paragraphs.

THE PRESIDING MEMBER: No, you don't need to do that.

MR SMITH: There's not enough time.

THE PRESIDING MEMBER: Well, it's not necessary, Mr Smith, because there are written submissions here.

MR SMITH: There are, but there is also a publication coming up, apparently, of counsel assisting's submissions, and I would seek to have some editing of those submissions insofar as they do harm to my client, particularly Rabbi Pinchus Feldman and Rabbi Yosef Feldman.

THE PRESIDING MEMBER: This is why you're given the opportunity, Mr Smith. That's exactly why we have this process in place, why we have a "do not publish" order over the submissions until today, when parties are given the opportunity to take issue with the content of submissions, and that's what you are being given the opportunity to do

1 today.

2

3 MR SMITH: That's right. Now, the paragraphs I am  
4 objecting to, which I submit should be redacted or in some  
5 other way edited, are paragraphs 175 at page 42, 177 at  
6 page 43, 187 at page 45, 188 at page 45, and available  
7 findings F6 and F7 at page 50.

8

9 Your Honour and Commissioners, I refer you to some of  
10 the judgment by Justice Branson in a case of *Ferguson v*  
11 *Cole* [2002] FCA 1411, from paragraphs 34 to 38, but  
12 particularly 34:

13

14 *It is not in dispute that the rules of*  
15 *natural justice, or procedural fairness as*  
16 *it is now commonly described, impose*  
17 *obligations on the Commissioner acting as a*  
18 *Royal Commission. Except in one respect*  
19 *there is no dispute as to the content of*  
20 *those obligations. It is agreed that the*  
21 *content includes:*

22

23 *(a) a duty to ensure that any person*  
24 *represented at the inquiry who might be*  
25 *affected adversely by a finding should know*  
26 *of the risk of such a finding being made*  
27 *and be given an opportunity to adduce*  
28 *additional material that might deter the*  
29 *Commissioner from making that finding ...*

30

31 And the authority of *Mahon v Air New Zealand* is quoted  
32 there and *Annetts v McCann* of the High Court.

33

34 The court at paragraph 36 refers to comments by  
35 Deane J of the High Court in the *Australian Broadcasting*  
36 *Tribunal v Bond* at page 367, where he said:

37

38 *If a statutory tribunal is required to act*  
39 *judicially, it must act rationally and*  
40 *reasonably. Of its nature, a duty to act*  
41 *judicially (or in accordance with the*  
42 *requirements of procedural fairness or*  
43 *natural justice) excludes the right to*  
44 *decide arbitrarily, irrationally or*  
45 *unreasonably. ... When the process of*  
46 *decision-making need not be and is not*  
47 *disclosed, there will be a discernible*

1           *breach of such a duty if a decision of fact*  
2           *is unsupported by probative material. When*  
3           *the process of decision-making is*  
4           *disclosed, there will be a discernible*  
5           *breach of the duty if findings of fact upon*  
6           *which a decision is based are unsupported*  
7           *by probative material and if inferences of*  
8           *fact upon which such a decision is based*  
9           *cannot reasonably be drawn from such*  
10          *findings of fact.*

11  
12          Now, your Honour, those comments have been accepted by  
13          Gleeson and Kirby JJ in *Minister for Immigration and*  
14          *Multicultural Affairs v Rajamanikkam* [2002] HCA 32, as well  
15          as in subsequent decisions of the High Court.

16  
17          Now, I say this because the submission by counsel  
18          assisting is her view, and the trouble with that view is  
19          that many in the community that have access to it, and  
20          particularly readers of the Jewish News and matters of that  
21          sort, may think that's what the Commission thinks, and so  
22          the harm is done when that submission is published. And,  
23          indeed, the oral submission today in relation to  
24          Yosef Feldman could have that effect as well.

25  
26          If counsel assisting's view is the main view that the  
27          community reads, then great harm is done to those  
28          gentlemen.

29  
30          THE PRESIDING MEMBER:   Mr Smith, is this an application  
31          that the publication of these submissions not be made or  
32          that aspects of the material not be published?

33  
34          MR SMITH:   Yes, that's right, and I detailed those.

35  
36          THE PRESIDING MEMBER:   But is that on the basis - I mean,  
37          I'm just not clear about what that is, in this sense. As  
38          I've said already, now is your opportunity to take the  
39          Commission publicly to those parts of the submission that  
40          you say your clients take issue with and the reasons as to  
41          why your clients take issue with them. That's your  
42          opportunity to ensure that fairness is done to your  
43          clients.

44  
45          MR SMITH:   Yes, your Honour. Well, I'm taking that  
46          opportunity. Thank you.

47

1 THE PRESIDING MEMBER: Thank you, yes.

2

3 MR SMITH: I have already particularised the paragraphs  
4 that we object to.

5

6 THE PRESIDING MEMBER: Yes.

7

8 MR SMITH: Paragraph 175 at page 42 - I don't want to read  
9 it out because that would be the mischief that I am trying  
10 to avoid, but if one sees that Mr Conway is given, as it  
11 were, support for what he says, and certainly on the second  
12 line and onwards, there is something that could be seen as  
13 bias or a grudge or something that is a smear of the  
14 leadership of Yeshiva College.

15

16 Bear in mind that he had not given evidence and that  
17 his statement was taken after Rabbi Pinchus Feldman had  
18 finished his evidence, he was never asked about this  
19 aspect. And whilst Mr Conway did certain things, there is  
20 no examination of the notes that Mr Conway made or the fact  
21 that he didn't pass on information that Rabbi Simons had  
22 heard from [AVL], that he was coming back to Australia  
23 within a week, which would have been crucial material for  
24 investigators if they were really out there investigating  
25 seriously this particular matter. They probably had  
26 hundreds of other matters they were investigating, and it  
27 takes time for these matters often to be got around to,  
28 unless there's some dreadful incidence of pack rape or  
29 matters of that sort where everyone downs tools and goes  
30 out and searches for the person.

31

32 But, sadly, there are hundreds of instances of child  
33 abuse which are held by the police and the JIRT teams, and  
34 to suggest that my clients have somehow failed and done  
35 a lot of harm to any potential investigation by their not  
36 stopping him from leaving is absurd, in our submission.

37

38 Referring to Mr Conway's material, the untested  
39 material of Mr Conway, as a basis for the ultimate findings  
40 at page 50, recommended findings numbers 6 and 7, we submit  
41 is not warranted.

42

43 Paragraph 177 also, I submit, is, in a sense, slanted  
44 against Rabbi Pinchus Feldman.

45

46 THE PRESIDING MEMBER: Sorry, just to be clear with you,  
47 Mr Smith, of course as you have pointed out, counsel



1 assisting has sought to modify the position that she urges  
2 upon the Commission with respect to 7.

3  
4 MR SMITH: That's true. That's true. I concede that.

5  
6 THE PRESIDING MEMBER: All right.

7  
8 MR SMITH: Paragraph 187 at page 45. Now, that has been  
9 modified to an extent, too.

10  
11 THE PRESIDING MEMBER: Just before you go to  
12 paragraph 187, I might have mis-noted this, but I thought  
13 you wanted to say something to us about paragraph 177 of  
14 counsel assisting's submissions also. Just to help us  
15 follow chronologically where you are going, Mr Smith. Did  
16 you want to say something to us about that?

17  
18 MR SMITH: I just want to say that whatever Rabbi Pinchus  
19 Feldman agreed to, it showed a humility, but it may be  
20 something that we submit was not really an error of  
21 judgment, in that there wouldn't have been any action,  
22 anyhow, quick action.

23  
24 It is being put up or submitted that basically the  
25 investigation didn't proceed because of that meeting that  
26 took place between Pinchus and Yosef Feldman and [AVL] on  
27 that occasion, and that he left the next day, that that has  
28 destroyed the whole investigation. I am saying that that  
29 is not right. If police and other people involved in JIRT  
30 had wanted to pursue the matter, they could have.

31  
32 What would they get from [AVL]? Possibly a refusal to  
33 answer questions, as would have been his right. Is it  
34 likely he would have given a full confession, having  
35 already said to Mr Conway that it wasn't anything serious,  
36 and said something similar I think to Rabbi Yosef Feldman  
37 when he spoke to him?

38  
39 It's quite common in cases like this for a denial or  
40 a refusal to answer questions. So what then is there?  
41 There is then the taking of a statement from the child who  
42 has been the victim. Did they take the statement? Well,  
43 the DoCS representative took a statement a week later. Is  
44 that evidence of urgency? All right, they said, "Well,  
45 he's gone." Nevertheless, why wouldn't the police take  
46 that statement? Are you going to create two statements so  
47 that at some future trial defence counsel can show up the

1 inconsistencies? It's better for the police to deal with  
2 that matter first up, if it's considered that serious.

3

4 THE PRESIDING MEMBER: So I understand what you are  
5 submitting to us is that whilst Rabbi Pinchus Feldman  
6 accepted that his failure to notify the authorities was an  
7 error of judgment --

8

9 MR SMITH: In hindsight.

10

11 THE PRESIDING MEMBER: -- what the Commission should look  
12 at is what would have been the likely impact?

13

14 MR SMITH: Yes.

15

16 THE PRESIDING MEMBER: So we understand that point,  
17 Mr Smith.

18

19 MR SMITH: As we don't seem to have any evidence as to  
20 what the police or the JIRT did thereafter, I submit you  
21 can't find that the activities of Rabbis Pinchus and Yosef  
22 Feldman frustrated any investigation.

23

24 THE PRESIDING MEMBER: Now, I interrupted you as you moved  
25 to paragraph 187, so I invite you to go back there.

26

27 MR SMITH: I think counsel has corrected that, to an  
28 extent, in that she seems to have accepted the evidence of  
29 the two rabbis that he would have had his ticket before he  
30 came here, his return ticket, the practice being that it's  
31 much cheaper to buy a return ticket. Obviously he has to  
32 get here, so if he has come from America, he would have had  
33 his ticket at the time.

34

35 A search of the records at Yeshiva Bondi for  
36 transactions that took place 13 years ago, there having  
37 been floods and matters of that sort, failed to produce  
38 anything, but that's not surprising. Anybody looking back  
39 13 years for financial records of that sort is not likely  
40 to find much, because you generally are only required to  
41 keep financial records for six years, from the taxation  
42 department's point of view, and probably the auditors of  
43 schools.

44

45 The next one was at paragraph 188. Okay, Mr Conway is  
46 talking about what he did. So again it looks as though  
47 Mr Conway has done everything great, but they have done the

1 wrong thing. Now, I submit that the responsibility was  
2 Mr Conway's responsibility. He was the head of the school.  
3 He was the one that reported it. It was his job to pass on  
4 information, including the information - and I've already  
5 said this - that [AVL] was supposed to be returning, which  
6 he didn't. According to his notes, he didn't.

7  
8 So those are really the things. Finding F7 has  
9 already been modified; we submit that F6 should be too.  
10 And, really, there was no warning to newcomers such as  
11 myself that such a thing like the publication of counsel's  
12 submissions could occur after today. The notice that the  
13 Commission put up on the internet didn't say that. It just  
14 said it was for oral submissions. So unless you have  
15 appeared in other aspects or read them all - and perhaps  
16 I should have - I wouldn't have known that until the phone  
17 call came last night from the press to my instructing  
18 solicitor.

19  
20 We say that to release counsel assisting's submissions  
21 now would greatly damage those individuals, the two  
22 Feldmans, because of these derogatory comments, it  
23 shouldn't occur and it wouldn't constitute procedural  
24 fairness.

25  
26 THE PRESIDING MEMBER: Well, let's stop there for  
27 a moment, Mr Smith. Procedural fairness is a process  
28 whereby a party who is potentially to be the subject of  
29 adverse comment has the opportunity to respond. I'll say  
30 it again, at the risk of repeating myself for a third time:  
31 this is your opportunity.

32  
33 You've taken us to parts of the submissions where you  
34 say an unfairness would be worked to your client in the  
35 event that your client was not given the opportunity to  
36 respond.

37  
38 MR SMITH: Yes.

39  
40 THE PRESIDING MEMBER: But you appear to be maintaining  
41 that position now in a more general way that I really don't  
42 understand.

43  
44 MR SMITH: The short point is that it's really the  
45 Commission that makes the findings.

46  
47 THE PRESIDING MEMBER: Of course.

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MR SMITH: And they're the findings that are accepted as a result of the Royal Commission, not one of the active participants in the investigation. I don't mean in any way to be critical of my learned friend. She obviously has done a wonderful job in many of the things she's doing.

But I have to act for my clients, and I say that it's the Commission's report that is the thing that should be distributed, and the other documents that damage reputation should be suppressed. I've only asked for several parts of it. I'm not going for the whole thing. There are other things that my clients naturally aren't happy about, but nevertheless --

THE PRESIDING MEMBER: All right, so let me be clear about your application. Is it that you say the contents of paragraphs 175, 177, 187 and 188 of counsel assisting's submissions should not be published?

MR SMITH: And the proposed findings F6 and F7.

THE PRESIDING MEMBER: But you have conceded that F7 now, as amended --

MR SMITH: Well, it's certainly better than it was.

THE PRESIDING MEMBER: What are you concerned about, on the basis that you heard me ask Ms Gerace to clarify what it was that she was submitting to the Commission, from her position, was open to us to find, and you would recall that now the submission with respect to the finding has been amended such that it should read - and I'm in particular now referring to finding 7 - "[AVL] left the country less than 24 hours after being informed of the allegation on a return ticket and likely given to him when he travelled to Australia, paid for by the Yeshiva Gedola". Now, I understand your clients don't take issue with that?

MR SMITH: Okay, we don't take issue with that, that's right.

THE PRESIDING MEMBER: You don't take issue with?

MR SMITH: F7, as amended.

THE PRESIDING MEMBER: So am I right, then, it's

1 paragraphs 175, 177, 187 and 188?

2

3 MR SMITH: Yes.

4

5 THE PRESIDING MEMBER: I've understood, in particular with  
6 respect to 175 and 188 - because it does seem to me you  
7 have addressed your concerns in 177 and 187 - but the  
8 matters that touch upon Mr Conway, you say that Mr Conway  
9 wasn't called and his evidence wasn't tested?

10

11 MR SMITH: That's right, and, in a sense, we contrast the  
12 submission in relation to that by counsel assisting to the  
13 one dealing with my friend's client, where it's suggested  
14 that because he hasn't come here and all that, you  
15 shouldn't accept his statements.

16

17 THE PRESIDING MEMBER: I understand.

18

19 MR SMITH: Yet in relation to Conway, saying, "Oh, we  
20 accept all that, and we have doubts about aspects of the  
21 credibility of other people, the Feldmans."

22

23 THE PRESIDING MEMBER: What I just want to clarify with  
24 you, just to be clear about the position you urge, is with  
25 respect to paragraphs 187 and 188 of counsel's submissions,  
26 I understand you to have said to us that you accept that  
27 that has now been amended?

28

29 MR SMITH: Yes.

30

31 THE PRESIDING MEMBER: And that you no longer take issue  
32 with that, given the amendments that counsel assisting has  
33 sought?

34

35 MR SMITH: With F7. Yes. Do you want me to go to  
36 Klugant, because I appear for him, too?

37

38 THE PRESIDING MEMBER: Yes, please do.

39

40 MR SMITH: Your Honour, we submit that the effect of those  
41 emails, which had been provided in November - the whole  
42 lot - the ones that he wants to put in, do assist the  
43 Commission in the sense that the [AVB] submissions are  
44 making him out to be some unkind, arrogant man.

45

46 These emails that we are putting forward show that he  
47 is dealing with [AVB] in a reasonable, caring manner. He

1 may not have done everything [AVB] would like him to do,  
2 but nevertheless it showed that he wasn't just rejecting  
3 him and basically telling him to jump in the lake and, "Get  
4 off my back" or matters of that sort. He was being  
5 reasonable.

6  
7 We submit that for completeness in the material that  
8 the Commission has to consider in making findings, it would  
9 be better if you saw the matter in the proper light by  
10 having those emails.

11  
12 So far as the earlier parts of the additional  
13 statement, we submit, without saying anything further, that  
14 they should be accepted as well. Again, they demonstrate  
15 his reasonableness towards [AVB].

16  
17 In relation to the comments that he didn't have some  
18 official position according to a chief superintendent of  
19 police, or whatever it is, he was a police chaplain, he was  
20 working on, I think, a multi-cultural committee with the  
21 police, and he says - and I submit there is no evidence to  
22 dispute this - that he was working hard to improve  
23 relations between the Jewish community and the police with  
24 a view to encouraging, let's say, young people, or older  
25 people who were molested when young, to come forward, to  
26 break down barriers that he feels existed and which I think  
27 other evidence supports, that he was a younger rabbi and he  
28 was more, in a sense, open to helping to change an attitude  
29 that may have existed for a long time, and not just with  
30 this community but in many communities.

31  
32 So I submit that [AVB]'s counsel's submissions, as he  
33 is instructed to make, are not warranted, in the sense of  
34 damaging Rabbi Klugant. Those are my submissions,  
35 your Honour.

36  
37 THE PRESIDING MEMBER: Thanks, Mr Smith.

38  
39 MR GINSBOURG: Your Honour, the main issue for  
40 Rabbi Lesches is a question raised by proposed findings F1  
41 to F3 collectively, and that is whether the Commission  
42 should find that Rabbi Lesches knew or ought to have known  
43 that David Hayman posed a risk to the sexual safety of  
44 children before the time that Yeshiva Bondi exposed [AVB]  
45 to sexual abuse by David Hayman.

46  
47 As to the timing of that, I want to clarify with

1 Mr Seeman, appearing for [AVB], as to the purpose of  
2 tendering this transcript, because if it is to get into  
3 evidence the timing of that abuse and the age of the  
4 complainant at the time, that is already in the evidence  
5 before the Commission in the reasons of  
6 Magistrate Williams, who sentenced Daniel Hayman. I don't  
7 know what document references the Commission prefers.  
8 IND.0214.001.0110\_R is the reasons for sentence, and that  
9 makes it clear that the offence was committed in the summer  
10 of 1987 or 1988, and at that time [AVB] was 14 years old  
11 and Mr Hayman was 24.

12  
13 So I don't know whether that obviates the need for the  
14 tender of the transcript. Perhaps my learned friend can  
15 clarify that.

16  
17 MR SEEMAN: The point is that that might relate to [AVB],  
18 but the complainant, as I understand it, is another person,  
19 who will be of a different age. We say that the transcript  
20 simply clarifies the age of that complainant whose  
21 statement the Royal Commission has in evidence.

22  
23 MR GINSBOURG: Does my learned friend say that that  
24 complainant is the unnamed deponent of the statement dated  
25 16 September 2013 or some other person? It's difficult for  
26 me, because I just have the redacted documents, to know.

27  
28 MR SEEMAN: Yes, 16 September 2013.

29  
30 MR GINSBOURG: I understand. I thank my learned friend  
31 for that. Be that as it may, the issue that my submissions  
32 on behalf of Rabbi Lesches are directed at is not so much  
33 the age of the complainants at the time that they suffered  
34 abuse but what Rabbi Lesches knew about that, and that, of  
35 course, is affected by, firstly, how old they were when  
36 they made any disclosures to Rabbi Lesches. So putting to  
37 one side for the moment what the disclosures were. So it's  
38 a question of what ages they were at that time. So the  
39 transcript tendered by Mr Seeman - I don't understand that  
40 that really sheds any light on that issue.

41  
42 THE PRESIDING MEMBER: On the issue of what Rabbi Lesches  
43 knew at the time the disclosures were made to him, as  
44 opposed to what the criminal justice system ultimately  
45 found with the facts before it?

46  
47 MR GINSBOURG: Correct, correct. The reason that

1 I emphasise this issue is because there are a number of  
2 things that need to be remembered as the overall context to  
3 all this evidence about disclosures. A central background  
4 fact is that homosexual activity was inherently disapproved  
5 of in the Orthodox Jewish community.  
6

7 Indeed, there was the belief that Daniel Hayman had  
8 homosexual tendencies. Rabbi Pinchus Feldman, in his  
9 statement, refers to hearing rumours about that, and  
10 I think there are references from other people. So there  
11 was that rumour going about in the community.  
12

13 Those rumours about Mr Hayman and the general view in  
14 the Chabad community about homosexual activity, even when  
15 committed between consenting people - and by that, I mean  
16 between people who had the capacity to consent - might  
17 explain why Mr Hayman's conduct was seen as a problem,  
18 distinct from a concern that he was a paedophile.  
19

20 Just for example, to pick up on a point that Mr Seeman  
21 made, the fact that children or young men, putting their  
22 age to one side for a minute, might be moved to make  
23 explicit sexual complaints to Rabbi Lesches, the fact that  
24 they would be moved to do that might be explained not by  
25 the fact that this disclosed some paedophilia but because  
26 it was homosexual activity, which was frowned upon in the  
27 community.  
28

29 It might also explain why Rabbi Lesches and other  
30 community leaders who received these complaints would say,  
31 "Oh, yes, we know we've got a problem with Mr Hayman and  
32 that person, and we're dealing with it." And of course --  
33

34 THE PRESIDING MEMBER: The difficulty for you, though,  
35 Mr Ginsbourg, in this speculation is that Rabbi Lesches is  
36 your client, and what you're asking us to do is to  
37 speculate about what your client might have been thinking,  
38 aren't you?  
39

40 MR GINSBOURG: With respect, I think that's putting it the  
41 wrong way around. My submission is that counsel assisting  
42 and people such as [AVB] are asking the Commission to draw  
43 inferences about what was meant by "the problem". It's  
44 true that I am, as counsel for Mr Lesches, stuck with the  
45 position that he doesn't remember, or anyway that's what he  
46 asserts, that he doesn't have a particular memory of this  
47 conversation.



1  
2 But that is not a makeweight for the submission by  
3 counsel assisting that this Commission should draw the  
4 inference that Rabbi Lesches, when he spoke of "the  
5 problem", must have meant a problem with paedophilia,  
6 particularly when we are dealing with evidence - and this  
7 is not a criticism of anyone - of an inherently unreliable  
8 quality, because it is evidence about conversations and  
9 discussions that took place decades ago.

10  
11 Witnesses are first recounting those conversations and  
12 presumably first turning their minds to them decades after  
13 they happened. At the risk of repeating a submission that  
14 has probably been made by others to the Commission, the  
15 events that they are recounting that we're looking at here  
16 are not incidents of sexual abuse, which one would expect  
17 to leave a very enduring and graphic memory. We're talking  
18 about memories of discussions about those things, and there  
19 is no reason to suppose that people are going to have  
20 particularly good memories of discussions as distinct from  
21 the more traumatic experience of an actual sexual assault  
22 when decades pass without them turning their minds  
23 specifically to what details were disclosed and to whom  
24 they were disclosed.

25  
26 I'm speaking generally, but this applies obviously to  
27 the two unnamed deponents that we have now - the one who  
28 made the statement on 16 September 2013, who we're told is  
29 the subject of this transcript that Mr Seeman has sought to  
30 tender, and perhaps I could call that person unnamed  
31 complainant number 1. And there is also the new statement  
32 tendered by Rabbi Pinchus Feldman of another unnamed  
33 complainant, dated 18 December 2013, which I'll call  
34 unnamed complainant number 2, unless the Commission has  
35 a better suggestion for reference.

36  
37 Their evidence has this inherent problem with  
38 reliability, and with respect to Mr Seeman's submissions it  
39 is unrealistic to ask the Commission to accept verbatim  
40 their accounts of what they recall being said decades ago.

41  
42 Even if their evidence is uncontradicted - I mean,  
43 after all, they didn't give viva voce evidence, they  
44 weren't questioned by anyone just to at least test the  
45 strength of their recollection. I mean, even if they were,  
46 one doubts that that would shed much light on it.

1           But given the significance of the conclusions that are  
2 sought to be drawn out of their evidence and the *Briginshaw*  
3 standard, then it's unsatisfactory and dangerous to be  
4 making too much of what they say they recall.

5  
6 MS GERACE:    Might I ask my friend to indicate, on behalf  
7 of Rabbi Lesches, does he oppose, or neither oppose nor  
8 consent to, the tender of the statement at tab 7 sought to  
9 be tendered by Rabbi Pinchus Feldman, the one he has called  
10 "complainant number 2"?  What is Rabbi Lesches' position?

11  
12 MR GINSBOURG:  I don't say anything in opposition to it,  
13 your Honour.  Given realistically the position that  
14 Rabbi Lesches took about giving evidence, and so on.  
15 I can't say that I am prejudiced by the late tender, so  
16 I don't take that point.  Likewise, the transcript sought  
17 to be tendered by Mr Seeman.

18  
19           Going to the evidence specifically, the central  
20 proposition that I am submitting, that, if accepted, would  
21 lead to the Commission declining to make proposed findings  
22 F1 to F3, which is that the evidence of --

23  
24 THE PRESIDING MEMBER:  Proposed findings 1 to 3 as  
25 amended?

26  
27 MR GINSBOURG:  As amended, yes.  I appreciate that the  
28 word "may" has been inserted, but for reasons that I will  
29 come to in a minute, that is a completely unsatisfactory  
30 way of dealing with the problem that the evidence presents.

31  
32           The evidence is collectively capable of establishing  
33 no more than that Rabbi Lesches knew or ought to have known  
34 that Mr Hayman had homosexual feelings that he was prepared  
35 to act upon by engaging in consensual sexual activity.

36  
37           I'm not saying that the Commission should make  
38 a positive finding to that effect, but I am simply  
39 resisting findings F1 to F3 by submitting that that is the  
40 most that the evidence can establish.

41  
42           So in relation to unnamed complainant number 1, one  
43 needs to look at the evidence about his age at the time  
44 that he says that he spoke to Rabbi Lesches.  These are  
45 very difficult puzzles to solve, bearing in mind the  
46 general problems with the evidence that I have already  
47 outlined.

1  
2 He says in his statement that the disclosure occurred  
3 in 1986 to 1987 and he was 44 years old at the time of  
4 making his statement in September 2013, so on my  
5 calculation, in 1987 he would have been 18 turning 19 in  
6 that year.

7  
8 Now, there's a gloss on that, which was drawn to the  
9 Commission's attention by Mr Seeman, which is that there is  
10 a reference to Mr Hayman being not yet married at that  
11 stage. I don't know what the evidence is about exactly  
12 when he got married in 1987, so that might affect whether  
13 unnamed complainant number 1 may have been as old as 19.  
14 Certainly on any view, he may have been as old as 18, as  
15 I calculate it.

16  
17 So from his statement alone - and I appreciate that  
18 his is not the only evidence - it is not clear that it  
19 would have been apparent to Rabbi Lesches at the time that  
20 the unnamed complainant was speaking to him that he was  
21 talking about something that happened to him when he was  
22 a child.

23  
24 Now, unnamed complainant number 2 impacts upon that  
25 situation. He says, "I think we were about 16 to 17 in  
26 year 10." This is on page 1 of his statement. But then at  
27 page 2, he appears to firm up a little bit and says,  
28 "I would have been 16 or 17."

29  
30 One of the things that are unclear from his statement  
31 is - I mean, even if we take the approach urged by  
32 Mr Seeman, which is effectively to take these things very  
33 literally, he says at paragraph 7 of his statement,  
34 "I think within the following weeks, or maybe the next  
35 day", so there's a bit of a range covered there, "I can't  
36 remember exactly when". So was he still in year 10 at that  
37 stage? Was he still 17 at that stage? "I can't remember  
38 exactly, but when myself and [REDACTED] went to the Yeshiva  
39 in Flood Street and spoke with Rabbi Lesches, the  
40 conversation was along the lines of what happened. I can't  
41 remember exactly if we told Rabbi Lesches exactly what  
42 happened but told him that Gug has got problems and that he  
43 interfered with [REDACTED] and touched his penis. I think  
44 we told him he rubbed [REDACTED]'s penis."

45  
46 So just from that passage, it's not clear that unnamed  
47 complainant number 2 is actually disclosing to

1 Rabbi Lesches what happened to him or whether he is just  
2 a party to a conversation in which another member of the  
3 group whose age is not clear, at least not to me, because  
4 I don't know what name has been redacted out - so we don't  
5 know how old the person who is disclosing the abuse to  
6 Rabbi Lesches is, let alone whether Rabbi Lesches is being  
7 given any time frame of when this occurred.  
8

9 As I understand it, it is not said that [AVB] is  
10 a party to this particular conversation. Mr Seeman might  
11 correct me on that, but I don't understand that to be the  
12 case.  
13

14 THE PRESIDING MEMBER: No.  
15

16 MR GINSBOURG: Again, on my calculation, Mr Hayman at this  
17 point is about five years older than these boys are if  
18 they're about 17 or 18. So there's a significant but not  
19 a huge difference between ages.  
20

21 Now, a complicating factor in all of this is that,  
22 putting [AVB] to one side, who we know sadly was 14 to 15  
23 at the time that he was interfered with by Mr Hayman, on  
24 any view it would seem that these boys are probably above  
25 the age of 16. Because I haven't been at all of the  
26 Commission's hearings, I don't know the extent to which  
27 we're in muddy waters, because, as your Honour would  
28 appreciate, 16 is now the age of consent for homosexual  
29 activity between males.  
30

31 In Victoria, where I practise, 16 was the age of  
32 consent at that time, but I understand in New South Wales,  
33 from my learned friend Mr Smith SC, that the age of consent  
34 at that stage was 18, whereas it was differentially 16 for  
35 females at that time, and that didn't change until 2004.  
36 I can only guess that probably by the late 1980s there was  
37 some significant controversy about whether it was  
38 appropriate for the age of consent for homosexual activity  
39 to be higher than for heterosexual activity.  
40

41 There may have been some diffidence in the wider  
42 community about enforcing laws that criminalised  
43 consensual --  
44

45 THE PRESIDING MEMBER: This is really going to the same  
46 point, isn't it, that you made at the outset of this point  
47 with respect to speculating about what may have been in

1 your client's mind and, as you said, tipping it around the  
2 other way, what the Commission can make of the evidence  
3 before it?  
4

5 MR GINSBOURG: Well, I think it's fair to say that it  
6 wouldn't have mattered to my client whether they were 16 or  
7 18, because in his community it was all bad, whatever age  
8 they were. I'm just trying to put some, I suppose, moral  
9 context on what the subject of these disclosures is, even  
10 on the most unfavourable view of the evidence to  
11 Mr Lesches.  
12

13 I mean, on a less unfavourable view of the evidence,  
14 the one I am urging, the Commission couldn't be comfortably  
15 satisfied that Rabbi Lesches, as a result of this  
16 conversation or, for slightly different reasons, the one  
17 that he's alleged to have had with Rabbi Moshe Gutnick  
18 later, would have put him on notice that David Hayman's  
19 homosexual activity involved non-consensual activity or  
20 activity with males who were not capable of consenting.  
21

22 THE PRESIDING MEMBER: I understand that to be the point.  
23

24 Mr Ginsbourg, I hesitate to interrupt you, but we have  
25 reached 4.10. We are obviously going to finish these  
26 submissions today - we must. But we will just need to take  
27 a short break for some administrative matters to be  
28 attended to. We will take a 10-minute break now and then  
29 resume at 4.20.  
30

31 MR GINSBOURG: I apologise I haven't been able to  
32 truncate, your Honour, but I am doing my best. I am  
33 conscious of time.  
34

35 THE PRESIDING MEMBER: All right. We will take  
36 a 10-minute break.  
37

### 38 **SHORT ADJOURNMENT**

39

40 MR GINSBOURG: Your Honour, just to come back and make one  
41 or two last points about what this Commission could infer  
42 that Rabbi Lesches knew, the first thing is that there is  
43 some very powerful evidence of his state of mind, which is  
44 a passage in his statement where he describes allowing his  
45 own children to be in the unsupervised company of  
46 Mr Hayman, including his son when he was 16 in 1988. This  
47 is, on the evidence, after [AVB] has been assaulted, most

1 likely, or at around the same time - allowing his  
2 16-year-old son to be in the sole company of Mr Hayman for  
3 the purpose of having driving lessons.  
4

5 Now, whilst there isn't direct evidence of what  
6 Rabbi Lesches knew, for example, as a result of the meeting  
7 in 1986 or 1987, or whenever it was, it's an entirely  
8 legitimate process of reasoning to look at his actions, and  
9 that is a very significant action in determining what  
10 inferences can be drawn about his state of mind.  
11

12 It supports the inference that Rabbi Lesches did not  
13 believe, despite what he had been told, and/or understood,  
14 by the group of teenage boys and also possibly  
15 Moshe Gutnick - I'll come to that, Rabbi Moshe Gutnick - he  
16 did not understand that Rabbi Hayman posed a risk to the  
17 sexual safety of children or that Mr Hayman's activities  
18 had been such as to force his sexual desires on boys or  
19 young men who were incapable of consenting or were not  
20 consenting.  
21

22 My learned friend counsel assisting has modified  
23 proposed findings 1 to 3 by inserting the word "may",  
24 effectively, and I understand the position now is that the  
25 Commission should find that Yeshiva Bondi was on notice,  
26 through Rabbi Lesches, that Daniel Hayman may have  
27 committed sexual offences against children.  
28

29 That is not a finding that's supported by the  
30 evidence, in my submission, because there --  
31

32 THE PRESIDING MEMBER: Just to interrupt you,  
33 Mr Ginsbourg, we do have your written submissions, so you  
34 do not need to go through that for us.  
35

36 MR GINSBOURG: No.  
37

38 THE PRESIDING MEMBER: It's only if you want to add  
39 something now as a result of the amendment that has been  
40 made.  
41

42 MR GINSBOURG: That's what I'm seeking to do, your Honour,  
43 and I'm very conscious of not simply repeating what is in  
44 my written submissions, so I apologise if it appears that  
45 way.  
46

47 THE PRESIDING MEMBER: Thank you.

1  
2 MR GINSBOURG: There has to be some positive basis, in the  
3 light of the difficulties with reliability of the evidence,  
4 for finding that Rabbi Lesches was put on notice that there  
5 was more than consensual homosexual conduct, because, as  
6 the Commission would appreciate, there has been a real  
7 problem with the equation or conflation of lawful  
8 homosexual activity with paedophilia.

9  
10 It frankly would be offensive to make a finding that  
11 contained the proposition that just because Rabbi Lesches  
12 had become aware of some lawful homosexual activity, he  
13 should be considered to have been put on notice that there  
14 was a risk to the sexual safety of children. And that is  
15 a real difficulty with trying to fudge the unreliability of  
16 evidence by just putting in the word "may". It really  
17 risks making that conflation, if that's the right word.

18  
19 The only thing I want to say about Rabbi Moshe  
20 Gutnick --

21  
22 THE PRESIDING MEMBER: Additional to what is contained in  
23 the written submissions?

24  
25 MR GINSBOURG: Additional, is to simply say that  
26 Rabbi Lesches disagrees strongly with the concession made  
27 by Rabbi Pinchus Feldman that it is not to be doubted that  
28 Rabbi Lesches was the one that Rabbi Moshe Gutnick spoke  
29 to, and the reasons for that are contained in my written  
30 submissions and I won't repeat them.

31  
32 Next to last, I have in my written submissions  
33 submitted that there is a conflict between proposed finding  
34 F4 that Rabbi Lesches sought to discourage the 12-year-old  
35 girl complainant's parents from believing her complaint -  
36 there's a stark contrast between that proposed finding and  
37 the direct evidence of the other party to that  
38 conversation, which is the 12-year-old girl's father, who  
39 emphasised that Rabbi Lesches, although he expressed doubts  
40 in the conversation, did not seek to take sides about the  
41 matter.

42  
43 I have quoted that evidence directly in my written  
44 submission, so I won't repeat it. I emphasise the point  
45 because understood in the correct context, that is the way  
46 that the 12-year-old girl's father describes it.  
47 Rabbi Lesches' discussion with the parents and the way he

1 approached the matter should not be the subject of adverse  
2 findings, or any criticism of him should not be elevated to  
3 the level of adverse findings.  
4

5 It can't be said that it's inherently wrong for an  
6 adult to express doubts about a complaint - these are  
7 difficult matters - particularly if the adult otherwise  
8 takes appropriate protective action, which he did in this  
9 case.  
10

11 The final point I want to add to my submissions is to  
12 respond to the submission by counsel assisting that the  
13 Commission should reject Rabbi Lesches' assertion in his  
14 statement dated 18 February 2015 that he endorses the  
15 rabbinical ruling encouraging victims of sexual abuse in  
16 the Chabad community to complain to the police.  
17

18 The basis for the submission by counsel assisting is  
19 what Rabbi Lesches said in a phone call in April 2012, that  
20 is, three years before he made the statement in his  
21 statement of February 2015, and it's unfair, given that  
22 many of us in the community are becoming, day by day,  
23 genuinely more enlightened about sexual abuse, about the  
24 nature and harm of sexual abuse and about the way to  
25 appropriately respond to it. Indeed, one would hope that  
26 the reports of this Commission's hearings have had an  
27 educative function on the community.  
28

29 It's unfair that we should doubt the sincerely  
30 expressed views of Rabbi Lesches that he has shifted from  
31 the position that he expressed to [AVB] three years  
32 earlier, when so many others in the community are doing the  
33 same.  
34

35 Those are my submissions.  
36

37 THE PRESIDING MEMBER: Thanks, Mr Ginsbourg. Mr Noonan?  
38

39 MR NOONAN: Would it be appropriate for counsel assisting  
40 to - I don't think there has been any response to my  
41 submissions.  
42

43 MS GERACE: Your Honour and Commissioners, I didn't  
44 respond to Mr Noonan's submissions, and that has been  
45 pointed out. I should do so now to say the following:  
46 some of the material put in the submission advises this  
47 Commission of developments since the date of the public



1 hearing in terms of steps taken by the Yeshivah Centre to  
2 put together an independent governance review and  
3 restructure headed by a former Federal Court judge, which  
4 is now under way. This is at paragraph 9,  
5 SUBM.1022.011.0003. Concurrently, Yeshivah Melbourne is  
6 developing a formal communal and employee grievance  
7 process. It is also establishing and funding an  
8 independently operated child sexual abuse redress scheme.  
9

10 It would be my submission that we accept the  
11 submission in terms of additional evidence of steps taken  
12 by the Yeshivah Centre to address concerns that had arisen  
13 on the hearing.  
14

15 I note the swiftness with which they have moved to  
16 undertake those steps and to inform the Commission of the  
17 steps that have been taken by the Yeshivah Centre.  
18

19 Secondly, your Honour, very helpfully Mr Noonan,  
20 counsel for the Yeshivah Centre, has identified all of the  
21 correspondence and apologies issued by the Yeshivah Centre  
22 that form part of the evidence, and they are an annexure to  
23 the submissions. I would urge upon the Commission that  
24 when the final report is done, there be a full discussion  
25 of each of the letters sent out by the Yeshivah Centre to  
26 victims and to the community, as well as all of the  
27 apologies, so they are dealt with more fully in the final  
28 report to identify that.  
29

30 The third point I wish to raise is this: in my  
31 submission, the submissions raised in paragraphs 5 and 6  
32 eloquently summarise the tensions within the community, and  
33 I believe that when I examined, through the hearing, those  
34 tensions were identified, and it is appropriate that there  
35 be some recognition of the fact that there were  
36 pre-existing grievances and perceived and actual conflicts  
37 of interest that may have contributed to difficulties in  
38 managing the conflicts and the community response, together  
39 with a failure to adequately deal with the disputes and the  
40 lack of formal grievance procedures, which is being sought  
41 to be remedied by the new grievance procedure being put  
42 into place.  
43

44 In my submission, also - this is on the evidence and  
45 it was a matter explored - there were pre-existing tensions  
46 in the community and other grievances that may have  
47 influenced some of the manner in which people were treated

1 and responded to, and they are identified in the  
2 submissions on behalf of the Yeshivah Centre.

3  
4 THE PRESIDING MEMBER: Thank you.

5  
6 MR NOONAN: I thank counsel assisting. I will be very  
7 brief. I only have a few short points to respond to  
8 various other --

9  
10 DR HANSCOMBE: I have a short point in response to  
11 Mr Noonan's submissions, if the Commission please. Is it  
12 convenient now or after Mr Noonan has spoken?

13  
14 THE PRESIDING MEMBER: After Mr Noonan, Ms Hanscombe,  
15 I will give you that opportunity.

16  
17 DR HANSCOMBE: If the Commission please.

18  
19 MR NOONAN: Thank you. The first point I was going to  
20 raise is that there have been changes. They are referred  
21 to in our submissions and they are also referred to in  
22 other parties' submissions. To the extent the Commission  
23 requires any further information, we can provide it, but  
24 I think it's set out.

25  
26 The second point is in relation to [AVA] and [AVR], at  
27 paragraph 5 of [AVA] and paragraph 11 of [AVR], it refers  
28 to the obvious conclusion being the protection of  
29 reputation. In my submission, there are quite a number of  
30 other factors at play in this particular case study. This  
31 isn't a case where this is an institution which has  
32 particularly traded on its reputation and sought to protect  
33 it.

34  
35 We've heard about a number of factors which have led  
36 to the circumstances where things weren't handled properly,  
37 but it is not as simple as just obviously reputation, as  
38 it's put there. Matters such as marriage prospects, and so  
39 on - and I won't go into them here but they are in the  
40 evidence.

41  
42 The third point is in paragraph 9 of the submissions  
43 of Manny Waks, there is a reference there to the views of  
44 Yosef Feldman and there is a comment there that other  
45 community members, and in particular the second-last, and  
46 the reference to email traffic - I have to confess I have  
47 no idea what that is a reference to. There is certainly

1 nothing that I am aware of which would suggest that the  
2 individual named there shares the views that were expressed  
3 by Yosef Feldman at the hearing.  
4

5 I understand that Yosef Feldman has expressed views  
6 different to that since that time, but I think, in any  
7 event, that person is a very different person to  
8 Yosef Feldman and with very different views. In the  
9 absence of any actual evidence to support that assertion,  
10 in my submission it probably should not even be published  
11 with that name unredacted.  
12

13 The fourth point is in relation to submissions of  
14 [AVB], paragraphs 4 to 6, in which there is expressed  
15 a view doubting the existence - or even going further than  
16 that - of the notice put up at the shule. It was never put  
17 or suggested that that notice wasn't put up, and the notice  
18 itself is, of course, in the materials.  
19

20 But for those who, for whatever reason, distrust my  
21 clients, I can assure you that in the tender bundle at  
22 tab 44, which is exhibit 22-023, I believe, it's the email  
23 chain from Zephaniah Waks. The first email is 14 July.  
24

25 Later down that document, on the second page, there is  
26 an email of 12 July. That's at YSV.0001.001.0425\_R at  
27 0426\_R. There is, in fact, a reference to the notice  
28 having gone up at the shule, by Mr Waks. He wasn't  
29 particularly impressed by the notice, but, nonetheless,  
30 it's contemporaneous evidence from clearly an independent  
31 party that the notice was put up and supports  
32 Rabbi Telsner's evidence that he did so.  
33

34 The final point is in the submissions of  
35 Rabbi Kluwgant, in relation to paragraphs 5, 12, 22, 24 and  
36 34 - I won't go to them all individually - they all assert,  
37 in effect, that Rabbi Kluwgant came in had a very strong  
38 role in changing the circumstances at the Yeshivah Centre.  
39 They refer to things such as the "intransigent attitude"  
40 and "reluctance" and "non-responsive attitudes".  
41

42 Now, I note that the evidence of Rabbi Kluwgant  
43 himself actually doesn't support that submission. I am  
44 referring to the evidence that's cited at paragraph 5,  
45 which is his evidence at transcript C7186 line 27 to C7187  
46 line 11 and C7187 line 18 to line 27 and C7188 line 7 to  
47 C7197 line 14.

1  
2 Rabbi Kluwgant's own evidence doesn't say what is in  
3 his submissions. In fact, his evidence refers to the  
4 concern about the possibility of reluctance in the  
5 community. He brokered a meeting in June, or thereabouts,  
6 of 2011 and organised for a notice to be put up. There is  
7 certainly nothing to say that there was a generally  
8 intransigent attitude or anything like that.

9  
10 He does say that there was a concern at the lack of  
11 communication. In that regard, I note again in  
12 exhibit 22-023, YSV.0001.001.0488, this is a record of the  
13 meeting with the police at the time, there was discussion  
14 of:

15  
16 *... the strong potential of The Australian*  
17 *Jewish News being contacted by one of our*  
18 *parents following a mass mail-out by police*  
19 *seeking out victims. Police said this*  
20 *could harm their case and they would like*  
21 *to avoid media exposure until they had*  
22 *their extradition finalised. They*  
23 *requested that they accompany me to the*  
24 *editor of The Australian Jewish News to ask*  
25 *him to sit on the story until they had the*  
26 *extradition finalised. Otherwise, the case*  
27 *may be compromised.*

28  
29 So it is true that there had been a lack of  
30 communication in that window, but there was a reason for  
31 that. In fact, the evidence otherwise of Rabbi Kluwgant  
32 is - and here I'm referring to C7186 where Rabbi Kluwgant  
33 was questioned by counsel assisting:

34  
35 *My understanding was that the police were*  
36 *satisfied with the cooperation they were*  
37 *receiving from Victoria Police and that*  
38 *Rabbi Telsner ...*

39  
40 That's at lines 37 to 40. At line 46 and going over the  
41 page:

42  
43 *My feeling was that these two matters, the*  
44 *fact that the police had confirmed to me*  
45 *and the others that they were satisfied*  
46 *that there was cooperation between the*  
47 *police and the fact that the rabbi had*

1           *agreed to put up a letter stating on the*  
2           *record that there is nothing - encouraging*  
3           *people to disclose to police ...*  
4

5           And so on. So, far from there being intransigence that he  
6           was overcoming, he was being told by the police that there  
7           was good cooperation. So the submissions that are made on  
8           his behalf don't reflect his own evidence.

9  
10           I'll conclude on this. This Commission obviously  
11           isn't interested to hear or explore things which  
12           necessarily were handled well. By and large, the focus, of  
13           course, has to be on the things which weren't handled well.  
14           But perhaps there is an issue with some people having come  
15           in without having been at the hearing or having received  
16           the documents at the time, but the reality is, of course,  
17           that there is ample evidence of a change in approach and  
18           attitude, which really stemmed back from about 2007.

19  
20           So the suggestion that Rabbi Klwugant came in in June  
21           2011 to what was an intransigent organisation, when the  
22           whole of the evidence is looked at, is totally  
23           unsustainable.

24  
25           In that regard, the evidence, of course, including,  
26           for example, Rabbi Moshe Kahn's statement, which was just  
27           tendered without any questions needing to be asked, at  
28           paragraphs 26 to 32; Rabbi Glick's statement at paragraphs  
29           37 and 44; and Rabbi Smukler was taken through in some  
30           degree, and Rabbi Telsner at paragraph 9 - they, of course,  
31           refer to not just themselves but also to other people who  
32           contributed to changing matters in the centre, including in  
33           particular the Jewish Taskforce Against Family Violence.  
34           Rabbis Kahn and Smukler both refer to the task force and to  
35           Sheiny New assisting with the Kestecher situation, and  
36           others.

37  
38           So the submission now being put that Rabbi Klwugant  
39           came, in June 2011, acting against intransigence, is just  
40           not at all supported by the evidence.

41  
42           The only other matter I would say is that those  
43           changes had taken place from about 2007. Rabbi Telsner, of  
44           course, took up his position in about 2007, and it is clear  
45           that those sorts of changes and the training which has been  
46           put in place at the school couldn't have taken place over  
47           his opposition, or at least without his support.

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So there are a lot of people who have participated in changing the culture, and in my submission, even on Rabbi Kluwgan's evidence, that is overstated in his submissions, but not his evidence.

THE PRESIDING MEMBER: Thanks, Mr Noonan. I should just say, by the way, to dispel one aspect of the submission that you make in more general terms about the Commission not being interested in what is handled well, that is not so. I mean, the Commission obviously is concerned to look not only at poor practice but also at good practice as well. I just didn't want to leave that out there unresponded to.

MR NOONAN: No, of course. And I should say, of course, that was wrong. Of course, the reports such as Redress are all looking at best practice and trying to identify best practice. I acknowledge that. Sorry.

THE PRESIDING MEMBER: And, indeed, a student of the public hearing reports, the case studies that have been published so far, will see that, where the evidence allows, the Commission indeed will highlight good practices for the benefit of those following the work of the Commission.

MR NOONAN: Yes, and there are, in fact, findings proposed to that effect by counsel assisting in this case as well. I perhaps was just referring to the need to prioritise --

THE PRESIDING MEMBER: I understand the context in which the comment was made, vis-à-vis your client and the submissions of others but I'm just responding to the more general comment.

MR NOONAN: Of course, and it is best that it is on the record, and I agree, obviously.

THE PRESIDING MEMBER: Yes. Now, Ms Hanscombe?

DR HANSCOMBE: Yes, thank you. I had thought I only had one point, but a couple more arise from what has just been said by Mr Noonan.

Mr Noonan is critical of paragraph 8 of the submission I wrote on behalf of [AVA] and he is critical on the basis, he says, there were "other factors, not just the protection

1 of reputation" which accounted for the way in which [AVA]  
2 was treated.

3  
4 The problem with that - and I would ask the Commission  
5 to reject that submission - is that there is no evidence  
6 whatever as to any such other factors, and the inference  
7 that the treatment of [AVA] and his mother was motivated by  
8 a desire to protect the reputation of the institution  
9 flows, we would say, inevitably from the evidence as it was  
10 given.

11  
12 He makes the same complaint about paragraph 11 of the  
13 submissions on behalf of [AVR], and I would make the same  
14 response. There has been no evidence that any other factor  
15 motivated the response of the Yeshivah Centre. Moreover,  
16 those paragraphs are directed to the literally decades  
17 which elapsed between what occurred and any public  
18 acknowledgment of responsibility or any apology for the way  
19 in which those boys were treated at the time.

20  
21 The other thing about the submission regarding [AVR]  
22 is that in paragraph 13 of his submissions Mr Noonan sets  
23 out what he says is a list of evidentiary or drafting  
24 errors in the submissions of counsel assisting, and the  
25 error he identifies is in relation to proposed finding F35.  
26 The quote is:

27  
28 *Rabbi Glick immediately terminated [AVR]'s*  
29 *scholarship.*

30  
31 The complaint is that Rabbi Glick might have told [AVR]'s  
32 mother of the decision, but it was not his decision, as he  
33 did not deal with financial matters and was not authorised  
34 to do so.

35  
36 It is not really clear why counsel for Yeshivah Centre  
37 wants to make that distinction. It certainly was not put  
38 to [AVR] that his account of the conversation he was  
39 present at when his mother had it with Rabbi Glick was  
40 incorrect. Indeed, no cross-examination was directed to  
41 [AVR].

42  
43 And more to the point, perhaps, although we made  
44 a call for the documents relating to [AVR]'s enrolment and  
45 scholarship, that call has never been answered.

46  
47 I don't know, the Commission doesn't know, who made

1 that decision, but what is beyond dispute is that  
2 Rabbi Glick told [AVR] and his mother at the school gate,  
3 "You can't come here any more. Go back to REDACTED"  
4

5 The proposed finding that counsel assisting advances  
6 should be made.

7  
8 If I am wrong about that, and it shouldn't be made,  
9 I suggest the following wording: instead of the statement  
10 "Rabbi Glick immediately terminated [AVR]'s scholarship",  
11 the wording "Rabbi Glick immediately communicated to  
12 [AVR]'s mother the termination of [AVR]'s scholarship".  
13 Not much turns on who made the decision. A great deal has  
14 turned on, in [AVR]'s life, the effect of that decision.

15  
16 If the Commission please.

17  
18 THE PRESIDING MEMBER: Thank you, Ms Hanscombe.

19  
20 Ms Randazzo, I take it there is nothing that you want  
21 to say?

22  
23 MS RANDAZZO: Thank you, your Honour and Commissioners,  
24 there's nothing from me.

25  
26 THE PRESIDING MEMBER: Thank you.

27  
28 MS GERACE: Your Honour, we have a few short points and  
29 then we need to make some final submissions in relation to  
30 the tender and then ask your Honour to rule.

31  
32 Generally, first, a point that is difficult to raise,  
33 but words are used like "fudge" or "slant" or other words  
34 to describe the process that is being embarked upon in  
35 preparing submissions. I generally wish to address that to  
36 say that, in my submission, it is inappropriate that those  
37 words be used to describe what has been done. There has  
38 been no fudging and no slant.

39  
40 If people counter a position taken, that is  
41 appropriate. It may be done robustly. But, in my view, to  
42 use such language in the process that has been undertaken  
43 is unacceptable.

44  
45 Your Honour, I want to respond firstly to  
46 Rabbi Lesches and just to point out matters in  
47 Rabbi Lesches' statement, whatever weight the Commission



1 elects to give to that. It has been suggested by counsel  
2 who represents Rabbi Lesches that there is nothing  
3 inherently wrong in expressing doubt about a young girl's  
4 complaint either to the girl herself or to her parents in  
5 circumstances where the rabbi was not present at the  
6 events.

7  
8 Leaving that aside, it must be remembered, even on  
9 Rabbi Lesches' own statements, that at the time that this  
10 complaint was made to him by that 12-year-old girl, he had  
11 already had to speak to Daniel Hayman, firstly in relation  
12 to a complaint made to the rabbi about Daniel Hayman having  
13 an inappropriate sexual conversation with students;  
14 secondly that there was, he accepts, a meeting in 1986/1987  
15 where something was conveyed to him about sexual conduct by  
16 Daniel Hayman, even on his own terms; and then in 2002  
17 a young girl complained to him and he expressed doubt.

18  
19 I make no findings about whether it is appropriate or  
20 not, but I do say that the purpose of expressing a doubt  
21 about the complaint to the parent could only have been to  
22 discourage the parent.

23  
24 Secondly, in relation to Rabbi Lesches himself and the  
25 submissions made on his behalf today about what was said in  
26 the 1986/1987 complaints - and this appears in his own  
27 statement, commencing at STAT.0493.001.005\_R - at  
28 paragraph 17:

29  
30 *The Commission has asked me to comment on*  
31 *a meeting that is said to have occurred in*  
32 *1986 or 1987 with a group of teenagers who*  
33 *came to my home to discuss Daniel Hayman.*  
34 *I have no recollection of that meeting.*  
35 *Nevertheless I have seen the statement to*  
36 *police of [REDACTED] in which he attests to*  
37 *such a meeting having occurred. I regard*  
38 *him as an honest man and I accept that*  
39 *a conversation must have taken place even*  
40 *though I have no memory of it.*

41  
42 Rabbi Lesches attests to the honesty of the person who made  
43 the statement to the police on which those findings rely.

44  
45 Could I come back now to the application and  
46 submissions made on behalf of Rabbi Pinchus Feldman and  
47 Rabbi Yosef Feldman and say the following. The lifting of

1 the DNP order was foreshadowed to all parties on 26 August  
2 2015. It should not have come as a surprise, but I will  
3 accept from senior counsel representing those parties that  
4 he was not informed of that situation.

5  
6 Secondly, the situation is that when an order is made  
7 to lift the DNP, it will not just be counsel assisting's  
8 submissions that are published, but each of the parties'  
9 submissions will similarly be published, together with the  
10 oral hearing of today.

11  
12 It is impossible to protect against people choosing  
13 isolated parts of the submissions and reading them in  
14 isolation from others. Even so, there is no inherent  
15 unfairness in the publication of my submissions,  
16 submissions in reply and the matters raised in argument  
17 today.

18  
19 Could I take your Honour and Commissioners to the  
20 relevant matters complained of by Rabbis Feldman and say  
21 the following. In relation to paragraph 175, the statement  
22 of Mr Conway, firstly, was not obtained until after the  
23 date when Rabbi Pinchus Feldman had given evidence.

24  
25 Secondly, I am happy to be corrected if this is not  
26 the correct position, but the usual practice of this  
27 Commission is that all statements are distributed to the  
28 parties prior to their tender.

29  
30 Thirdly, both rabbis were represented by senior  
31 counsel. No objection was taken to the statement of  
32 Mr Conway at its tender.

33  
34 Fourthly, the fact that Rabbi Feldman chose to leave  
35 and/or his counsel and/or counsel representing Rabbi Yosef  
36 Feldman were not matters decided upon by the Commission but  
37 by the parties on their own legal representation as to what  
38 they considered appropriate.

39  
40 Fifthly, the statement in paragraph 175 repeats  
41 evidence that was given by Mr Conway. No-one has notified  
42 the Commission, until this date, that that matter was  
43 challenged, until the submissions were put on, and  
44 certainly there was no objection to its tender at the time.

45  
46 In those circumstances, no criticism can be levelled  
47 at the fact that the evidence was repeated in my

1 submissions. However, I do not seek to make findings  
2 against Rabbi Pinchus Feldman --

3  
4 THE PRESIDING MEMBER: Or urge findings upon the  
5 Commission.

6  
7 MS GERACE: Adverse findings, based upon that evidence.  
8 There is no difference between the approach taken here and  
9 the practice note direction that I took this oral hearing  
10 to earlier in relation to the request for leave to tender  
11 additional material. The evidence is part of the evidence  
12 on this issue. No adverse findings were sought or proposed  
13 by me against Rabbi Pinchus Feldman or Rabbi Yosef Feldman  
14 on that part of Mr Conway's statement.

15  
16 That deals with paragraph 175.

17  
18 On paragraph 177, I do not accept that there could be  
19 any prejudice to either of the rabbis by the publication of  
20 paragraph 177. In the first line, "Rabbi Pinchus Feldman  
21 gave evidence that he did not notify any authority that  
22 [AVL] was considering leaving the country", that is  
23 factually accurate. That was his evidence. "Rabbi Pinchus  
24 Feldman accepted that his failure to notify authorities  
25 that [AVL] was considering leaving the jurisdiction was an  
26 error of judgment on his part." That was factually  
27 accurate. That was his evidence. I understand that senior  
28 counsel has made some submissions about the significance or  
29 otherwise of that concession. That matter is on the  
30 record.

31  
32 "Rabbi Pinchus Feldman said that he thought that if it  
33 could be established that [AVL] had committed a crime then  
34 the police would be able to extradite him." That is  
35 factually accurate on the evidence. It has already been  
36 published. All of this material is already in the public  
37 domain.

38  
39 Paragraph 178, "Rabbi Yosef Feldman gave evidence that  
40 shortly after the meeting with his father and [AVL], Rabbi  
41 Yosef Feldman spoke a second time with [AVL]" - that is  
42 factually accurate and was his evidence.

43  
44 The next objection is to paragraphs 187 and 188. Let  
45 me say this about the tickets in themselves. What is set  
46 out there was the evidence as it was. "Usually given  
47 a return ticket" - in circumstances where someone who has

1 just had a complaint made against them wants to leave the  
2 country in response to the complaint, and there is evidence  
3 that the institution bought the ticket, it is reasonable to  
4 examine when and where and how that ticket came to be  
5 bought. What paragraph 187 sets out is the factual matters  
6 as they appeared on the record, as the evidence was given.  
7

8 Now, I accept, and did accept in the terms of the  
9 finding, that the position of that evidence sequentially  
10 may have led to an inference that Yeshiva Bondi bought the  
11 ticket on the day that he left. I have clarified that.  
12 I did not put that as an express proposition. I did not  
13 seek to make that finding as an express proposition.  
14

15 The concession made this morning was to accept that it  
16 may lead to an inference being drawn, or an impression, and  
17 I wanted to correct that and I have.  
18

19 Again, each of those matters is factually accurate and  
20 on the record.  
21

22 Paragraph 188, up until the last sentence, there could  
23 not be any reasonable objection to that material about what  
24 Mr Conway did. It's all factually accurate and it's all  
25 already in the public domain.  
26

27 Objection is taken to the summation or submission made  
28 that the investigation into offences complained of was  
29 hindered by [AVL]'s departure. All the matters put by  
30 senior counsel representing the Feldmans - it is true,  
31 there could have been all those steps taken. In my  
32 submission, it is a matter of commonsense to suggest that  
33 if an alleged perpetrator or an accused or someone against  
34 whom a complaint is levelled has left the country, that  
35 hinders an investigation. I mean, he's out of the country.  
36 Rabbi Feldman said he would need to be extradited. That  
37 could be done, of course.  
38

39 I have not used the words "made the investigation  
40 impossible"; I have used the words "hindered" or "made more  
41 difficult". In any event, if the Commission doesn't accept  
42 the evidence goes that far, so be it. But that is no  
43 basis, in my submission, for a suppression of that  
44 paragraph of the submissions.  
45

46 Similarly, in my submission, regarding the proposed  
47 finding F6 there is no warrant for an order not to publish

1 the proposed finding F6, when each of those matters were  
2 matters examined, factually true and based on the evidence  
3 in the oral hearing.  
4

5 The last thing just to note for completeness is that  
6 Mr Conway's statement has already been published as an  
7 exhibit in the proceedings. It's already in the public  
8 domain.  
9

10 They are the matters I wish to raise in relation to  
11 the application.  
12

13 THE PRESIDING MEMBER: Is there anything else that you  
14 want to say?  
15

16 MR SMITH: I'm not trying to cavil with those submissions  
17 but there are a couple of things that I didn't put that  
18 I should have.  
19

20 In response to the submission by [AVB], paragraph 9,  
21 against Rabbi Klugant, he is suggesting that  
22 Rabbi Klugant has misled the Royal Commission. We submit  
23 otherwise. We submit you shouldn't find that.  
24

25 In relation to finding 8.2, where it says that  
26 Yosef Feldman doesn't understand the criminal law,  
27 effectively, we demur to that. We submit that that is not  
28 supported by the evidence. He understands that sexual  
29 abuse of children is a crime, and it's quite hurtful to him  
30 to have that remaining in that finding.  
31

32 THE PRESIDING MEMBER: It's a submission, Mr Smith. It's  
33 a submission, the sorts of submissions that happen in  
34 courts right across the country every day consistent with  
35 the open justice principle in this country.  
36

37 MR SMITH: That's right, but the media are not poring over  
38 submissions normally. In this Royal Commission, the  
39 submission being published at this stage can do damage.  
40

41 Also, we make that submission concerning finding 11 at  
42 page 14 and finding 13 at page 25.  
43

44 THE PRESIDING MEMBER: Thank you. Ms Gerace, I understand  
45 there was nothing more that you wanted to say?  
46

47 MS GERACE: I haven't addressed those, but there is

1 nothing more I want to say other than the same argument.  
2 There is no warrant, in my submission, that there be  
3 a suppression of any of those findings that are now the  
4 subject of late application.  
5

6 THE PRESIDING MEMBER: With respect to what now appears to  
7 be the application from Mr Smith with respect to redacting  
8 those particular paragraphs, obviously the starting  
9 principle for any such intervention on the part of the  
10 Commission is that we have conducted and continue to  
11 conduct ourselves publicly, consistent with the principles  
12 that we commenced with and remain with, which is that the  
13 work of the Commission in its public hearing exercise  
14 should be done publicly, and whilst we absolutely  
15 understand that Mr Smith, on behalf of his clients, has  
16 vigorously put a position to the Commission that it should  
17 take a different view of the evidence, the fair reporting  
18 of what has taken place today, of course, should report  
19 exactly that, that those paragraphs are objected to for the  
20 reasons that have been articulated very thoroughly by  
21 Mr Smith, but that's the basis, as I've said a few times  
22 already, upon which these proceedings today have been  
23 conducted.  
24

25 And it is the very reason why the "do not publish"  
26 order is made, to ensure that the mischief identified, the  
27 potential mischief identified, by Mr Smith is not done, so  
28 the Commission waits until the parties have had the  
29 opportunity to see each others' written submissions and, if  
30 requested, address those submissions in the public arena  
31 before directions are made for publication.  
32

33 I hope Mr Smith goes away today understanding that he  
34 has been given that opportunity and has, as I said,  
35 vigorously on behalf of his clients put his clients'  
36 position.  
37

38 But that is not a basis upon which the Commission  
39 should not now proceed to publish the submissions, but,  
40 rather, we urge, as we always do, that those reporting do  
41 so fairly and, again, the courts and commissions have been  
42 careful to say over the years that they too must work on  
43 the basis that fair, balanced and accurate reporting is the  
44 task of the media when reporting these proceedings.  
45

46 MS GERACE: Thank you, your Honour.  
47

1 THE PRESIDING MEMBER: So that is with respect to the  
2 application not to publish those paragraphs.

3

4 I just want to be satisfied with respect to the  
5 document trail that those matters have been addressed.  
6 Mr Smith made representations with respect to that email  
7 trail, as it's being referred to.

8

9 MS GERACE: Yes.

10

11 THE PRESIDING MEMBER: On behalf of Rabbi Klwugant.

12

13 MS GERACE: Yes, your Honour. In relation to  
14 Rabbi Klwugant and the email trail, in my submission, the  
15 difficulties with the tender are as I've already  
16 foreshadowed. They raise matters that have not been dealt  
17 with in the public hearing. Parties are not able to  
18 respond to the various matters raised in the emails.

19

20 They are being used, in my submission, for a purpose  
21 not to contradict either the fact that a meeting took place  
22 or that Rabbi Klwugant said the words, "you should not have  
23 sent that email", but somehow to persuade the Commission as  
24 to why you would not accept what [AVB] had to say about how  
25 he felt in response to the approach.

26

27 Beyond that, whatever those emails demonstrate, if  
28 anything at all, on their face, without being examined, any  
29 sort of hypersensitivity or belligerence or other things  
30 said to be exhibited by [AVB] do not assist, and this is an  
31 inappropriate manner in which to suggest that [AVB]'s  
32 response to Rabbi Klwugant's approach on that day, to tell  
33 him not to send that email, was somehow informed by his  
34 belligerent or hypersensitive nature.

35

36 It is, in my submission, unfair. [AVB] gave evidence  
37 over several days: on several days he was present before  
38 this Commission, and Rabbi Klwugant's counsel was able to  
39 examine him. I have nothing further to add.

40

41 THE PRESIDING MEMBER: And didn't with respect to this  
42 material.

43

44 MS GERACE: Did not with respect to this material. And,  
45 your Honour, it is to be mentioned that great efforts were  
46 gone to to confine the areas of dispute between a number of  
47 the different witnesses. If this was an area that

1 Rabbi Kluwgant thought important to explore, it should have  
2 been done in the hearing.

3

4 THE PRESIDING MEMBER: Thank you. That being said, I am  
5 satisfied it is not appropriate to receive the tender of  
6 those documents. I won't repeat what has been said. The  
7 reasons have been outlined by you, Ms Gerace.

8

9 MS GERACE: Your Honour, we have just dealt with  
10 Rabbi Kluwgant. Has your Honour ruled in relation to --

11

12 THE PRESIDING MEMBER: The trial transcript?

13

14 MS GERACE: Yes, but with Rabbi Kluwgant - I may have  
15 missed the ruling - has there been a ruling in relation to  
16 the statement, the different sections, [AVB] and his  
17 medical material?

18

19 THE PRESIDING MEMBER: No, there hasn't, but I am  
20 satisfied that it is appropriate, for the reasons that you  
21 have articulated, Ms Gerace, with respect to what goes in  
22 with respect to the --

23

24 MS GERACE: [AVB] email not going in, and the medical  
25 material?

26

27 THE PRESIDING MEMBER: Yes, but the explanation proffered  
28 by Rabbi Kluwgant with respect to the circumstances  
29 surrounding the sending of the text message, so, from  
30 recollection, that's paragraphs 9 to 20 of the statement,  
31 together with the medical material - and Mr Smith hasn't  
32 specifically requested this, but I am going to --

33

34 MR SMITH: I seek to have those things accepted.

35

36 THE PRESIDING MEMBER: Thanks, Mr Smith, but also just  
37 with respect to that medical material, there's obviously  
38 some very personal information in there about  
39 Rabbi Kluwgant --

40

41 MR SMITH: Yes, I wonder if that could be suppressed?

42

43 THE PRESIDING MEMBER: -- and it is appropriate to do  
44 exactly that, and I will make that direction with respect  
45 to the document from Rabbi Kluwgant's GP, that the material  
46 contained in there be suppressed.

47



1 I will mark that material in as exhibit 22-057.  
2 That's paragraphs 9 to 20 of the supplementary statement of  
3 Rabbi Kluwgant.  
4

5 **EXHIBIT #22-0057 PARAGRAPHS 9 TO 20 OF THE SUPPLEMENTARY**  
6 **STATEMENT OF RABBI KLUWGANT**  
7

8 THE PRESIDING MEMBER: I will give a separate  
9 exhibit number to the medical material, 22-058, but direct  
10 that its contents remain suppressed.  
11

12 **EXHIBIT #22-058 MEDICAL MATERIAL PROVIDED IN RELATION TO**  
13 **RABBI KLUWGANT (CONTENTS SUPPRESSED)**  
14

15 MR SMITH: Your Honour and Commissioners, would that  
16 include suppressing the reading out of it by my learned  
17 friend, which would be on the transcript?  
18

19 THE PRESIDING MEMBER: Yes. Thank you.  
20

21 MR SMITH: Thank you.  
22

23 MS GERACE: Your Honour, just before we move on from  
24 Rabbi Kluwgant, tab 2 of the additional documents brief was  
25 the one-page document from Rabbi Kluwgant of his work over  
26 15 years. For the reasons articulated earlier, my  
27 submission to your Honour and Commissioners is that that  
28 not be accepted as additional evidence now, as it doesn't  
29 advance the matters before this Commission.  
30

31 THE PRESIDING MEMBER: No, no, my recollection of  
32 Rabbi Kluwgant is that we had material from him with  
33 respect to his background and experience.  
34

35 MS GERACE: Thank you, your Honour.  
36

37 One remaining matter is the transcript. None of the  
38 arguments raised, in my submission, advance that matter any  
39 further. It doesn't assist us to clarify further the age  
40 of the persons who spoke to Rabbi Lesches, nor the content  
41 of the material. The submission does not seek to find any  
42 of the details of the assault as they occurred, merely  
43 about the complaint to Rabbi Lesches, and that transcript  
44 doesn't assist us in that process.  
45

46 THE PRESIDING MEMBER: No. I agree with that also,  
47 Ms Gerace. The relevance of this issue for the Commission

1 is the evidence with respect to the time at which the  
2 complaint was made, and despite Mr Ginsbourg not taking  
3 objection, or, perhaps more accurately, remaining neutral  
4 with respect to the tender - I think probably on the basis  
5 that you take the view, Mr Ginsbourg, that the material  
6 sought to be put before the Commission is already  
7 effectively there in another way - in my view the relevance  
8 of this issue for the Commission is what evidence there is  
9 with respect to what your client knew at the time, and it  
10 has the potential to work an unfairness to him if the --

11  
12 MR GINSBOURG: Well, I wasn't positively supporting the  
13 attempt to --

14  
15 THE PRESIDING MEMBER: No, I appreciate that, but it does,  
16 as I have said, have the potential to work an unfairness to  
17 him in that what is later understood during the criminal  
18 justice process can't necessarily be imported into the  
19 knowledge of your client at the time of the meeting that  
20 has been the subject of evidence. That's well understood  
21 by you.

22  
23 MR GINSBOURG: Yes, and I obviously don't resist that,  
24 your Honour.

25  
26 THE PRESIDING MEMBER: Thank you.

27  
28 MS GERACE: Your Honour, tabs 5, 6 and 7 were documents  
29 sought to be tendered by Rabbi Pinchus Feldman. I don't  
30 think there was much further argument in relation to those  
31 matters.

32  
33 THE PRESIDING MEMBER: No.

34  
35 MS GERACE: In my submission, the application for the  
36 tender of that additional material should be rejected.

37  
38 THE PRESIDING MEMBER: What I understood in particular  
39 with respect to document 4 was that I think Mr Smith  
40 ultimately agreed that the principles and procedures have  
41 come now into existence for Yeshiva Gedola in the wake of  
42 the close of the evidence. Is that right, Mr Smith?

43  
44 MS GERACE: No, these are the documents by Rabbi Pinchus  
45 Feldman at tab 4 - the Conduct of the Commission,  
46 Principles and Procedures, the Jewish Law article and the  
47 "Hayman told he's not welcome" J-Wire publication.

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THE PRESIDING MEMBER: Yes, those documents, it seems to me, don't advance any matters in issue.

MS GERACE: Thank you, your Honour.

And at tab 7 was the statement of the additional complainant made to the police dated 18 December 2013, as another participant to the complaint to Rabbi Lesches. There has been no further argument against it, and in my submission, having accepted one statement, we should in all fairness consider the other statement and have regard to differences so that this Commission can properly consider the submissions made by Rabbi Lesches and others in relation to that meeting.

THE PRESIDING MEMBER: I didn't understand that there was actually any objection raised to the tender of that.

MR GINSBOURG: That's so, your Honour.

THE PRESIDING MEMBER: We'll mark that as 22-059.

**EXHIBIT #22-059 STATEMENT OF ADDITIONAL COMPLAINANT MADE TO POLICE ON 18/12/2013 WITH REGARD TO THE COMPLAINT MADE TO RABBI LESCHES**

MS GERACE: That leaves only to vary the DNP but also that where submissions refer to documents or material not in evidence as a result of your Honour's rulings this afternoon, those parts of the submissions will be redacted and not considered by the Commissioners in the preparation of their report. Otherwise, I would ask your Honour to vacate the DNP over the submissions made on 13 February 2015.

THE PRESIDING MEMBER: Thank you. Do you have a copy of that that you can hand up, please? Yes, thank you. I will make that order in the terms in which it is sought, subject only to the matters raised by you, Ms Gerace, about the submissions that touch upon documents that, where tender has been rejected, those parts of the submissions will be redacted.

MS GERACE: Thank you, your Honour, and similarly I would assume --

1 THE PRESIDING MEMBER: Any reference on the transcript of  
2 today's proceedings.

3  
4 MS GERACE: Yes. Thank you, your Honour. Unless there is  
5 any other matter arising, that would conclude the oral  
6 hearing.

7  
8 THE PRESIDING MEMBER: Thank you. Thank you for  
9 everyone's perseverance to complete the submissions process  
10 today. Otherwise, now, that completes this part of case  
11 study 22. As is the usual process, in due course the  
12 report and findings will be published.

13  
14 **AT 5.30PM THE COMMISSION WAS ADJOURNED ACCORDINGLY**

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