

TRANSCRIPT

FAMILY AND COMMUNITY DEVELOPMENT COMMITTEE

Inquiry into the handling of child abuse by religious and other organisations

Melbourne — 30 April 2013

Members

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Witnesses

Mr P. O'Callaghan, QC, independent commissioner; and

Mr J. Gleeson, SC, independent commissioner, Melbourne Response.

The CHAIR — Good morning. In accordance with the guidelines for the hearings, I remind members of the public gallery that they cannot participate in any way in the committee's proceedings. Only officers of the Family and Community Development Committee secretariat are to approach committee members. Members of the media are also requested to observe the media guidelines. I ask that you all turn off your mobile phones or switch them to silent if you have not already done so.

On behalf of the committee, I welcome from the Melbourne Response Mr Peter O'Callaghan, independent commissioner, and Mr Jeff Gleeson, independent commissioner. Welcome to you both and thank you for appearing before us this morning; we appreciate it.

All evidence taken by this committee is taken under the provisions of the Parliamentary Committees Act, attracts parliamentary privilege and is protected from judicial review. Any comments made outside the precincts of the hearings are not protected by parliamentary privilege. Witnesses may be asked to return at a later date to give further evidence if required to do so. All evidence given today is being recorded, and witnesses will be provided with proof versions of the transcript. Please note that these proceedings are not being broadcast.

As you are well aware, under our terms of reference the committee has been requested to look at policies and processes within religious and other non-government organisations and at whether there are systemic practices within those organisations that have contributed to child abuse. We are also looking at whether changes in law are required to help prevent the criminal abuse of Victorian children in the future. We have a number of questions relating to your role as independent commissioners. You provided us with a submission just yesterday. The committee has not had a chance to go through the submission; it looks very detailed, and we are not expecting you to go through it line by line either, but we will give you an opportunity to broadly speak to the submission that was provided to us yesterday. We have your *Facing the Truth* documents, which we have had for some time. We have also been interested in the Facing the Truth website, which you update on a daily basis when these hearings are being conducted, so we are very aware of the main concerns which you are putting to us.

Before you go to you speaking briefly to this submission, Mr O'Callaghan, could you please just highlight to the committee who the gentlemen are who are supporting you in the front row if you would not mind?

Mr O'CALLAGHAN — Alongside me is Mr Jeff Gleeson, independent commissioner. Mr Gleeson has been counsel assisting the commission since it was instituted, and consequently he is familiar with the past activities of the commission. He has appeared in all of the contested hearings as counsel assisting, and I expect him to be able to answer some of the questions which are asked by the committee.

The CHAIR — Thank you very much. And the three gentlemen sitting as support?

Mr O'CALLAGHAN — The three gentlemen are Mr Richard Leder, a solicitor with Corrs, who are our instructing solicitors; Father Shane Mackinlay and, on my left, Mr Francis Moore, the business manager of the Archdiocese of Melbourne.

The CHAIR — Thank you very much, and I will be coming back in relation to those gentlemen. There are a number of documents that you have provided to us and attachments in relation to the submission that you provided to us yesterday. If you could just speak briefly to that submission.

Mr O'CALLAGHAN — The submission seeks to respond to the police submission, and the evidence of Deputy Commissioner Ashton, Mr McRae and Detective Jouning. If I refer, which I do in the submission, to the police submission and Ashton, without any disrespect that is a reference to the submission and to the evidence of Deputy Commissioner Ashton.

The CHAIR — Sorry to interrupt you at this point. The committee will obviously be looking at this in more detail, but we will also put it on the website for others to review.

Mr O'CALLAGHAN — Thank you. The mode of the submission is to respond by way of reply, and after prefatory remarks what it does is extract from the police submission and the evidence of Ashton, and in the case of the submission relevant paragraphs, which we then comment on. That goes through to take in all the criticisms or allegations which are made. The comment on, for instance, taking the case of the much repeated

tip-off situation, I deal with that in detail. That requires us to look at the constitution and the actions of Melbourne Victims Collective. You will find that set out in detail.

At the very outset of the submission there are descriptions of the procedures which I had adopted and which were requested to be provided to Detective Glenn Davies, as he then was. They appear in the early pages, and they are hopefully a good reference point to the description of how I have conducted myself as independent commissioner in procedures and in findings and so on.

The submission rejects the criticisms which are made in it, and we submit that the police submission and Ashton is, in many aspects, plainly wrong and seriously misconceived. Contrary to what the true position is, the relationship which I had enjoyed with the police up until the police submission was received was highly courteous and cooperative, and I trust it still will be. I must say that it came as a complete surprise the volte-face that the police submission and Ashton represented. Previously — —

The CHAIR — Sorry, could you just repeat that?

Mr O'CALLAGHAN — It came as a complete turnaround of what I expected. 'Volte-face' — I should not use that.

There are suggestions in the police submission that there was a lack of engagement with the police, and I dispute that. I dispute it from its inception in 1996 when the terms of reference were being promulgated. I think contemporaneously or perhaps a little bit after I was appointed we consulted with Assistant Commissioner Gavin Brown as to the terms of reference. Likewise, those terms of reference were submitted to the then solicitor-general, the late Douglas Graham, and he provided them to members of Parliament et cetera. I discussed it with him. That was the inception. We acted in consultation with the police.

Over the years I have had contact with the police. Contrary to what is said — that I have not referred complaints — the fact is that I facilitated the referral of complaints by speaking to victims, telling them of their right to report their complaint to the police and encouraging them to exercise the right. In a number of cases a lot of them still did not want to go to the police, but in a lot of cases — this will appear in some of these exhibits — I rang the relevant police officer and said, 'I have Mr So-and-So here, and he wants to make a complaint'. I then arranged for him to go there.

There is a confusion about referral, which is that if I went to the police and said, 'I have knowledge of AB being sexually abused', there is no point in doing that unless AB is prepared to go to the police and take part in a prosecution. If I go to the police and say, 'AB has complained to me about sexual abuse', they say, 'Well, tell her to come'. If she says no, the police will leave it at that, which is typically the case.

You will see that in some of these cases. In one particular case there were four complaints really. The first two complainants expressed that they did not wish to go to the police, as did the other two. Subsequent to my having conducted a hearing — or a formal hearing which the offender refused to participate in — and made findings, the first two went very public, and it was widely publicised in the *Sunday Age*. They also told the police that there were two other complainants, and the police asked me what their names were et cetera. I said I would first obtain the consent of the complainants, which I did. I then, as I said I would, provided to the police the files. The upshot was that when the police interviewed the other two, they said, 'Look, we do not want to go ahead with a prosecution. We do not want to be involved in it'. The police accepted that and indeed advised me that no action was to be taken in respect of any of the four. That is the sort of situation. To be charitable, when they say that not one complaint has been referred, it is a misnomer in that I would not be personally referring a complaint without the consent of and the interaction of the victim.

There are a number of complaints which recur, and which I can explain in this way. Up until 2008 the public press that I received was not extensive at all, but in August 2009 there was a front-page article in the *Age* highlighting three matters which they said I had misconstrued and misconducted myself. That front page was repeated the next day as an editorial in the *Age*.

That emanated from Melbourne Victims Collective. Melbourne Victims Collective was announced on 17 June 2008 and it promulgated a charter called *Towards Justice*, and that made a series of unparticularised and grave allegations about the Melbourne Response generally and the independent commissioner in particular. That charter is referred to in my submission by way of my taking out of the charter the relevant extracts of it and

requesting that I be provided with particulars of these unparticularised allegations. Despite this taking place over a number of years and me being promised particulars, there never have been.

Similarly, with what has happened now, with the police submission and Ashton, there are no particularisations. They say there are reports. There have been reports, all strictly hearsay, not identifying one person who is dissatisfied, as they proclaim. Similarly with Ms Helen Last, who has said that it is a very punishing and problematic thing to have victims appear before me. That has not been my experience. I am sure that there are some who were dissatisfied or had some objection to the process, but they are very much in a minority.

Let me make this very clear: there is no doubt about my abhorrence of child sexual abuse, sexual abuse generally, and I have to say this, that no matter how solicitously a complaint is handled, how adequate compensation might be, or apology might be, the provision of free counselling and psychological support, the one thing that cannot be eradicated in many cases is the indelible imprint which the fact of the sexual abuse has left upon the person and which has blighted his or her life from the time it happened and which continues to do so. I do not want to repeat that often, but you can please accept that this is the acceptance of how I have seen paedophiles and their activities and the degradation that they wreak upon their victims.

The paedophile is, in my view, likened very much to a conman, and they are deceptive, secretive, manipulative. They prey upon the child from a dysfunctional family or from a widowed family, and they are, in my survey of them, amoral. They do not see — and indeed some of them have proclaimed it — that what they were doing was wrong. There is no recognition of their wrongdoing. I must say, that having been here in this position for 16-odd years, I still have not worked out how paedophiles get gratification from fiddling with prepubescent children, and doing more than fiddling. But, however, that is by the by, the fact is that they are there. I will not do what you have indicated. I will not go to the detail of it.

Can I just say, getting towards the finish of this summary, that when Deputy Commissioner Ashton came with his volley of criticisms, as I say, that was a complete surprise, save there was a portent of it in an interview that he had given on the Neil Mitchell program. In 2009 Detective Inspector Davies wrote to me saying, in distinction to what I understand he might otherwise be saying now, ‘Look, I have heard about your operations; would you tell me about it’ — I paraphrase, this is all in the submission. In consequence, first of all, we met: the business manager, my instructing solicitor, Mr Leder; we met with Detective Inspector Davies and also with Assistant Commissioner Wendy Steendam. That was a discussion as to how we could supplement an entry into a formal protocol, and thus I provided Detective Inspector Davies with a formal summary of how I operated. He then requested me to provide him with some suitably redacted transcripts of interviews so that he could see how it went.

Following that we had meetings with Assistant Commissioner Wendy Steendam and Detective Inspector Davies, and there was entered into negotiations and discussions for the entry into a protocol between the Archbishop of Melbourne, the Victoria Police and me as the independent commissioner. Those negotiations had proceeded, and if I might say in anticipation of later hearing a submission from Detective Inspector Davies, he was obviously approving of the situation, such that we had almost reached a stage where an agreement, or protocol, would have been signed off. But instead what happened was — and again Deputy Commissioner Ashton denies this, but it is the fact — that there was a brouhaha in the press and somewhere about the relationships between Victoria Police and the AFL, and the Victoria Police and the desal organisation, which caused Chief Commissioner Simon Overland to say, ‘There are to be no more memoranda of understandings or protocols entered into’.

As you will see from this submission, in August, I think, of 2010, Deputy Commissioner Sir Ken Jones wrote to the archbishop — and actually I was brought into it because I was party to these discussions — saying, ‘There can be no further entry into the protocols’. But notwithstanding, discussions continued and resulted in the formulation of supplemented terms and conditions of my appointment.

The CHAIR — Mr O’Callaghan, if I could just interrupt you there. I do not know how many pages this is.

Mr O’CALLAGHAN — It is about 60 pages.

The CHAIR — Pardon?

Mr O’CALLAGHAN — It is about 60, I think.

The CHAIR — Sixty?

Mr O'CALLAGHAN — I am sorry, I am not getting — —

The CHAIR — No, the 60-page document you gave to us on Friday; this one you gave to us yesterday.

Mr O'CALLAGHAN — Yes.

Mr McGuire — It will be on the website.

The CHAIR — It will be on the website. As I said, we have not had time to go through it in detail, but we are very keen to ask a number of questions in relation to areas that you have already raised.

Mr O'CALLAGHAN — Could I just say one last thing?

The CHAIR — Yes.

Mr O'CALLAGHAN — It appears at attachment 1, the media release which was made by the archbishop.

The CHAIR — Which page are you referring to?

Mr O'CALLAGHAN — It is attachment 1. If you go to page 61 of the submission, it is the first attachment after that.

The CHAIR — The media release of 15 February 2011?

Mr O'CALLAGHAN — Exactly. And that, you will see, was an announcement by the Archbishop of Melbourne, which states:

I am pleased to announce that changes have been made to the Melbourne Response by supplementing the terms of appointment of the independent commissioner Peter O'Callaghan ...

I will not take you through all of that except that you will note in paragraph 9 that there is a refutation of what has been colloquially called a 'tip-off' and there is also reference to the amendments of the terms and conditions of my appointment. That media release was approved by the police.

The CHAIR — We will refer to that. Thank you very much indeed. Can I, firstly, ask you this: you have provided us with this document and the 60-page document that you referred to. Did you and your instructing solicitor and business manager assist you in putting these documents together?

Mr O'CALLAGHAN — Certainly. This document is mine.

The CHAIR — I understand it is yours.

Mr O'CALLAGHAN — But the formatting — for instance, I got assistance from, for a start, Mr Gleeson, particularly with statistics. You will see the statistics which are in the tables. I did not do all those calculations for obvious reasons. They have been computerised, and that is not my field. But the document is mine and I stand by what is in it. But of course I was assisted in the mechanics of its preparation by having statistics provided, using a ringtail system of going through the appropriate references and so forth.

The CHAIR — So there is a team of you, including Mr Gleeson, Mr Moore, Father Mackinlay and Mr Leder, who have been putting this documentation together? Is that what you are saying?

Mr O'CALLAGHAN — No, Father Mackinlay has had nothing to do with it.

The CHAIR — Thank you for that.

Mr O'CALLAGHAN — But certainly the business manager and my instructing solicitor, Mr Leder, have been made quite aware of and have pointed out things.

The CHAIR — Thank you.

Mr GLEESON — Can I indicate something, which might assist? Some short time ago I received the draft from Mr Callaghan, which was entirely his own work. He told me he was preparing it. I was present when he told Mr Leder he was preparing it. It was about 83 pages. When reformatted that would be about the 61 pages that you have now, so the assistance he received from me was very modest. It was typo fixing, grammar checking; although you have already picked up the fact that he is not too bad at articulating himself. But it would be a grave error for you to assume that this is not Mr Callaghan's work in its entirety. There were some practical matters he received assistance with. There are 36 attachments. They are documents that have been available to the committee for many months, but we know that you are swamped with paper and we thought it would help to put them in some sort of systematic order for you. The practical task of assembling those annexures and putting the document together in a physical sense was facilitated by Mr Leder, but it would be a mistake to think that he or his assistants did much more than that — as well as, of course, the compilation of statistics that you heard reference to.

The CHAIR — Thank you for that clarification, Mr Gleeson.

Mr O'Callaghan, you were appointed by the archbishop in 1996?

Mr O'CALLAGHAN — In October 1996.

The CHAIR — I am just wondering what relationship you had with the church prior to 1996?

Mr O'CALLAGHAN — Yes, I will make no reference to what Father Dillon said that I am a cradle Catholic. I was born a Catholic, but that does not matter. In 1988 I was approached by Archbishop Little, or written to by Archbishop Little, asking whether I would sit on a confidential subcommittee, which was chaired by the then Vicar-General, Hilton Deakin. On that committee were Dr Eric Seal, an eminent psychiatrist, now deceased, and Father Torpey, as he then was — he is still a psychologist but he is no longer a priest. That committee met on a few occasions. I had been familiar with the situations — when I say 'familiar with' I had read about the situations — in Canada and the US and there were discussions about a protocol but it never got beyond that. Then the committee fell into — I do not think it was formally wound up — decline because the special issues committee was then appointed, I think in 1992, or something like that.

Then in 1996, following Archbishop Pell's appointment in July 1996 as the Archbishop of Melbourne, I was asked to advise as to what was then being considered the formulation of the innovation which ultimately became the Melbourne Response. In that capacity I was consulted as a practising barrister. Without being grandiloquent at all, I had a very large, very busy practice and that was another brief I received. I then advised as to the format of the terms and conditions. Then I am not quite sure when, but it was following consultations I was having in respect of communicating with Assistant Commissioner Brown that I was asked to be the independent commissioner.

A widely publicised press conference was then held on 30 October 1996, following which I put out a notice calling upon victims to come forward. You will see both in the 'Facing the truth' and in our submission the yearly numbers. I think in the first year there were 69 complaints. I must say it was thought that this would be a matter that was dealt with fairly expeditiously, and that was reflected in the fact that the terms and conditions of my original brief were for a period of six months.

The CHAIR — I am just wondering, because you have had that longstanding relationship with the church and then being appointed as the 'independent commissioner', do you think that was the wrong term to use for many victims?

Mr O'CALLAGHAN — No, I do not.

The CHAIR — Because in many instances from many victims we have heard from they do not believe you to have been independent.

Mr O'CALLAGHAN — I understand that and naturally I will deal with that, but, Chair, on independence, I am a member and have remained a member of the Victorian Bar and barristers necessarily are independent of their appointers. They are independent of their clients. They often advise clients about things which the client does not want to hear. Similarly, royal commissioners are often appointed by governments. I am not a royal commissioner. I never said I was, but I was akin to a royal commissioner in the sense that a government

appoints a royal commission — take the present Victorian government for instance. The analogy is that the government appointing me was the Archdiocese of Melbourne. Now use of the words ‘independent commissioner’ was to convey just simply that. I do not accept that there has been as much puzzlement as is being put forward about what people, or victims, thought I was or what I was doing. Your legal advisers have seen my files. As I say, there are some excerpts in this submission and I will be also submitting other files which make clear my independence.

The CHAIR — Can I go to that point? Absolutely, we have accessed your files and we are very appreciative that you have been so compliant with that. In those files it is very well known that you have accepted the vast majority of the complaints. In fact I think you have accepted around 97 per cent of the complaints that you have been made aware, and I think there were 330-odd complainants.

Mr O’CALLAGHAN — Yes.

The CHAIR — So you have accepted 97 per cent of 330 complainants, yet there still seems to be from victims a large degree of dissatisfaction about the process. We just want to understand why you believe that has come about and what that is attributed to.

Mr O’CALLAGHAN — I contest that there is a large amount. I think the number of victims who have in fact come and appeared before this committee are few.

The CHAIR — We have seen many, many people both in public hearings and in camera.

Mr O’CALLAGHAN — Those complaints or concerns have not been made known to me by the complainant or by representatives on their behalf.

The CHAIR — We have seen over 140 victims who have got a similar story that they have been telling us. They have been highly dissatisfied with the process, so we are just trying to understand why that has been the case.

Mr O’CALLAGHAN — So am I, and notwithstanding the absolute necessity to maintain confidentiality, if you can go to the files in relation to those 140 persons, I suggest that you will not have any disquiet from seeing the way the process operated.

Mr GLEESON — Can I indicate that I asked for some research to be done as to the number of people who made submissions to this committee and/or appeared before the committee who were complainants to the Melbourne Response, which is the limit of our involvement. I do not know the number off the top of my head but it is in the range of 30 to 40. So of the 100-plus that you referred to, Chair, perhaps 30 to 40 were people who had been through the Melbourne Response. Not all of them were victims of child sex abuse. There was some small number who were in fact beyond the terms of reference of the inquiry, but let us say it is 30.

Mr O’CALLAGHAN — They were boundary violations.

Mr GLEESON — Boundary violations.

The CHAIR — Mr Gleeson, the committee has been conducting public hearings since October. We have seen many people.

Mr GLEESON — Yes.

The CHAIR — And you are right, not all of those have come through Melbourne Response; many of those have come through Towards Healing. We received subsequent submissions when I closed the submissions, so we are getting a common theme from this process. That is what we are trying to understand here. What is it that has made so many victims dissatisfied with this response? Other committee members have questions, but could I just ask this: you were appointed, too, as an independent commissioner last year?

Mr GLEESON — That is right.

The CHAIR — In what month?

Mr GLEESON — August.

The CHAIR — In August. So there are two independent commissioners. I am just wondering why the church has got two independent commissioners at this point where you have only had one in the past; is that right?

Mr GLEESON — I missed the last part of what you said.

The CHAIR — Is there a reason that there are two independent commissioners currently?

Mr O'CALLAGHAN — Can I answer that. I think I may have been phasing out, which is not terribly surprising, and in anticipation of that occurring the archdiocese agreed to appoint Mr Gleeson, who would have replaced me. Then the terms of this inquiry were announced, and quite frankly I took the view that it would be highly impolitic for me to be resigning or withdrawing after the announcement that a committee had been formed.

The CHAIR — The inquiry was announced last April.

Mr O'CALLAGHAN — Exactly, but there had been discussions before that. Once the inquiry was announced, any thought of my terminating my position evaporated, and that is why I am here, to give an account of my stewardship and to deal with what I take with the greatest of concern, your statements that you have seen 140 persons now. All I can suggest is for me to adequately respond to those concerns is to know what they say, and I do not.

The CHAIR — I am going to pass on to other committee members to ask questions, but thank you, and we do appreciate your being here.

Mr McGuire — Mr O'Callaghan, you have described yourself as a cradle Catholic. You were appointed to this position — —

Mr O'CALLAGHAN — No, I did not; Father Dillon did.

Mr McGuire — Okay. Do you accept that?

Mr O'CALLAGHAN — Yes.

Mr McGuire — You are saying you have been a Catholic for life, born a Catholic. That is not an issue with me, don't worry.

Mr O'CALLAGHAN — There will be no Mother MacKillop where I am.

Mr McGuire — I just want to go to this point, then. So you have been a Catholic for life, you were appointed to this position by the church, you are paid by the Catholic Church to do this job; correct?

Mr O'CALLAGHAN — Of course.

Mr McGuire — So how can you therefore call yourself independent?

Mr O'CALLAGHAN — Well, in the same way that boards of inquiry, royal commissioners, members of committees who are paid by the government, of course they are independent of their appointor. The fact — —

Mr McGuire — Don't you see that there is an inherent contradiction in the public perception, at least — in the perception of independence? If you are paid by somebody to do a job, naturally you are going to do the job, or the perception is that you will do the job in their interest?

Mr O'CALLAGHAN — That, with respect, is a fundamental misconception. A royal commissioner appointed by a government is paid by the government. He is paid by — —

Mr McGuire — You are not a royal commissioner.

Mr O'CALLAGHAN — But I am in an analogous position to a royal commissioner or to a board of inquiry.

Mr McGuire — No. Are you aware of the evidence we had yesterday from Bishop Connors, who said strategically this is what was going on within the Catholic Church: we were listening to insurers and lawyers who said 'Admit nothing'. So he was giving that as a context of the strategy behind the scenes within the Catholic Church on how to deal with these issues.

Mr O'CALLAGHAN — I do not concern myself with the position of Ballarat. Bishop Connors was, during the term of my appointment, I think originally he was the vicar-general.

Mr McGuire — I am going to the substantive point, though.

Mr O'CALLAGHAN — But can I keep back at you, if I might say with respect, Mr McGuire. You say: how can it be otherwise if the person is appointed? Now, barristers, doctors, lots of professionals and other people — mechanics — are paid by the person who asks them to do a job.

Mr McGuire — With respect, this is a different category altogether. This is about heinous crime, about issues of cover-up. There are allegations that the church's position has been about minimising damage to its reputation and minimising payouts to people. They are the critical issues we are talking about. It is not about mechanics, right? So let us stay on what is absolutely critical here. The perception is that you have a conflict of interest here. What I am saying to you is that in 21st century transparency issues and all the rest of it, don't you see that that is the perception; it is the perception itself that should really take you to a position? You were saying that you are looking for maybe phasing out. I put it to you: isn't that the issue?

Mr O'CALLAGHAN — No, I do not see that. Can I just persist in saying this, and we deal with it in some detail in the submission: the fact of being paid by the appointor does not — and it is a grave allegation against me when it is made — destroy my independence. That is, I am allegedly a cat's paw of my appointor. Now, if there has been a conflict of interest, I have not perceived it and I do not think anyone rationally should and what is more, if I am covering up — if that is what I am accused of — I have found 97 per cent of complaints which have come to me established. That does not appear to be anything other than the exercise of an independent assessment of the matters that have come before me.

Mr McGuire — I will go to some of the particulars that you have raised in the submission. As the Chair has said, we have just got them. One of the issues that you argue is about the word 'encourage'; did you encourage people to go to the police, right?

Mr O'CALLAGHAN — Certainly.

Mr McGuire — Okay. So a lot hangs on this word 'encourage'; do you agree with that?

Mr O'CALLAGHAN — Yes.

Mr McGuire — The argument cuts two ways on this, from what we have heard from victims, because they would say that while in your mind — and I am not arguing against; this is the way you perceive the issue — you think you are encouraging people and you are doing your best and all the rest of it, but on the other hand then you are saying to them that the process could be harrowing, if we get into the legal system and if you contest. So on one hand you are saying you are encouraging but on the other hand it can be argued that you are discouraging. This is the point that I am making about the perceived conflict here.

Mr O'CALLAGHAN — Well, on the aspect of encouragement, we have statistics in 34(b) and so on. When I meet with a victim, I say, 'I must advise you that you have a continuing and unfettered right to report to the police' and I encourage the exercise of that right.

Mr McGuire — But then you say, 'It's a harrowing process, it might take a long time, you're not certain to get anything, so it's better to deal with me', don't you?

Mr O'CALLAGHAN — I do not say that at all.

Mr McGuire — But that is the interpretation that people have made.

Mr O'CALLAGHAN — That is why it is absolutely fundamentally fair for me to see what these people say, so that I can compare it with what took place in my interview with them. Now, every — I think virtually every — victim I have seen, I have taped the interview with them and I have provided them, contrary to what has been said, with a transcript of that tape. I can also provide the committee, if necessary, with the audios of those. I think I have retained almost all of them. I invite the committee, if they have this concern — and I can understand you do have that concern — to have a look at, if you like, a random set of files or certainly nominate some of the 140 persons who have expressed their dissatisfaction, so that, preserving the confidentiality of that applicant, we can discuss it.

Mr McGuire — I will put it you this way. We will go to your submission.

Mr O'CALLAGHAN — Which page is this?

Mr McGuire — In your recent response regarding the police, you have stated in your submission at page 16, paragraph (c) that you considered you had a duty of care to point out the risks of a prosecution not succeeding where such risks were patent. So surely this is a matter for the police to determine on the basis of information that they had? The point I am trying to make here is that it can clearly be argued that it is beyond your role to do that.

Mr O'CALLAGHAN — No. Mr McGuire, that situation — this is a case I will deal with in much greater detail later on. What happened was that this was a mature woman who had a complaint against a priest. She came and saw me and initially she did not want to go to the police so I wrote to her, and this appears there, telling her that I had the transcript and I would put that complaint to the priest, and asked for her consent. In that letter I said, 'Whilst I have no wish to dissuade you from going to the police, I have the opinion that it might be unlikely that the prosecution would succeed'.

When you have that belief or opinion I have a duty to say, 'Look, I am not going to urge you to go into something which is likely to finish up detrimentally to you'. Can I add to this that phrase was eventually vindicated because the deputy director of prosecutions withdrew the charges before trial.

Mr McGuire — The more substantive point I guess I am trying to make is that you are seeing people who are coming to you in a state of anxiety — they are trying to deal with these issues — and your role seems to change during different times. Are you finding out the facts, are you a fixer, are you a fix-the-problem person, a Mr Fixit? There is confusion over what your role is. That is why I am saying that if you were not being paid and it was clear cut that you were independent that would resolve that issue, surely.

Mr O'CALLAGHAN — If I was not being paid — are you suggesting I was paid by somebody else or I am doing it for nothing?

Mr McGuire — The issue is about the concern that if you are being paid by somebody to play a role, that by itself has an inherent contradiction about where your final loyalty may lie. Whether you believe it to be the case or not, there is that perception, is there not?

Mr O'CALLAGHAN — But that would apply to every barrister on the role of counsel. They are all paid by the client who instructs them through the solicitor.

Mr McGuire — To be an advocate.

Mr O'CALLAGHAN — The canons of the bar are that you must remain independent. You have a duty to your client and a duty to the court. But the fact that you are being paid does not disqualify your independence. How could it?

Mr McGuire — What about the confusion in your roles, though?

Mr O'CALLAGHAN — You say there is confusion. I have not experienced any. I have had plenty of discussions with people about my position and what I am doing. As far as going to the police is concerned I have encouraged them to do so but as I explained, the thing that is a feature of this deplorable situation of sexual abuse is that with the exception of two complaints, or perhaps three, counting the family, all the complaints are ancient.

Mr McGuire — Sorry, I could not hear that?

Mr O'Callaghan — Ancient — 40, 30, 50 years ago.

The Chair — But the victims are still here; many of the victims are still here.

Mr O'Callaghan — Sorry?

The Chair — Many of the victims are still here and Mr McGuire's point is — —

Mr O'Callaghan — What I am saying is that they are victims who were abused decades ago and they have long ago for whatever reason not taken their complaint to the police.

Mr McGuire — You understand there is a huge time lag between the incident and the reporting, often 20 years or more.

Mr O'Callaghan — Indeed.

Mr McGuire — You understand that.

Mr O'Callaghan — Of course I understand that. What happened with the Melbourne Response was that the innovation, and it is said to be the first in the world, was to give victims of sexual abuse who found it difficult if not impossible to take legal action the remedy of coming forward and satisfying the independent commissioner on only one matter: that they had in fact been sexually abused. Once that is established, their entitlement to the benefits of the Melbourne Response are, et cetera.

My role is complete, though I continue to consult with Carelink and people like that. My role is complete when I have found that the offence is established. From there I refer the person, if they have not gone to the police, to the compensation panel, to Carelink and so on. In some instances when they have gone to the police, if they come to me and before I may have made any decision they decide to go to the police then it would be quite untenable for me to conduct an inquiry simultaneously with that of the police.

There is the famous case of *Watts v. Hawke* referred to in the Supreme Court which makes it clear that probably I would be in severe contempt of the court. So in those instances I would wait; and, as I said, in a number of instances I pay particular attention to cases I referred to in the protection of children inquiry. When they had been to the police some of the complainants came back to me and were entitled to and received the benefits of the Melbourne Response.

Mr McGuire — Mr O'Callaghan, I will come back on some of the issues raised about the police but I want to hand over to my colleagues now.

Mrs Coote — Mr O'Callaghan and Mr Gleeson, thank you very much indeed for being here today. Could I also reiterate what the Chair said about access to your files. Thank you for the amount of information you have given us and that access.

Mr O'Callaghan — I might note that the legal advisers who inspected my files over many days were highly courteous and apparently highly competent.

Mrs Coote — They are indeed. Thank you very much.

In the *Facing the Truth* documentation we have been given — it is only a matter of clarification; I do not think you need to look it up — it says on page 55:

The independent commissioner receives complaints and enquires into allegations of abuse by priests, laypeople and religious who are, or were, under the auspices of the Catholic Archbishop of Melbourne. The independent commissioner makes an appraisal of all of the circumstances of the situation and helps victims to explain and address their very personal issues.

Then in today's information that you have given us you have given us a slight deviation in changes to the Melbourne Response which you have given and you mentioned earlier today. I gather from what you have said and from what we have been led to believe that it was to be a non-confrontationist-type approach and in fact not to be legalistic. In fact I think there is a YouTube clip of you, Mr Gleeson, explaining to people about it being a

non-confrontationist/legal-type approach because we are dealing with very vulnerable people, as you have acknowledged as well —

Mr O'CALLAGHAN — Indeed.

Mrs COOTE — and people who are very fragile in many instances. So a legal approach is often going to be very threatening, and I think in your advice that you have given to the victims you have said, 'We do not especially want to take it to court, because we feel it will be confrontationist'. I think you enunciated to Mr McGuire before how difficult that could be if they went through a police process and a court process.

I am needing to know a couple of things, but before I get on to my line of questioning I would like to actually ask up-front how you see the role of the independent commissioner. Is it a fact finder, or is it in fact something else?

Mr O'CALLAGHAN — It certainly is a fact finder in the sense that — no doubt that is why they have appointed a person — I have no doubt that the archdiocese considered with their lawyers who was to be a suitable appointee to act as the independent commissioner, and they said, 'He will do'. That is me, but I am sure there would have considered other names and so on because what is needed at the outset of the introduction into the Melbourne Response is for it to be found whether or not the victim has been sexually abused, and thus if I say — like many of my colleagues, we are used to engaging in fact-finding exercises of that sort. So certainly, initially, that is the function I have to perform.

I add, as Detective Jouning said, I think — or it may have been Professor Tidmarsh — there is very little fakery in respect of sexual abuse. At the time of my appointment, because money was involved, I had the perception that there may be a number of bogus applicants, and that has not occurred at all. I have no doubt as to the veracity of the complaints which have been made. People do not, for obvious reasons, simulate or make up that they have been sexually abused, but, Mrs Coote, of course I hope I have been solicitous of these people, whom I have seen in all sorts and sizes.

I do not know — I think someone asked whether they, if I can just explain, are just given tea and biscuits. They are not. They are given tea and a glass of water — whatever they want — and I then interview them. In some cases, of course, they are palpably distressed; they have difficulty in getting their story out. I have been in a number of cases where once I was satisfied the basic complaint was there I stopped short of asking for further detail, which I said in the context of referring them to Carelink — and some of them had been referred to Carelink before they came to me — because there they would be able to deal with psychiatrists and psychologists in discussing that because it is necessary to get the detail so that the detail can be then submitted in a report to the compensation panel, which has to determine the impact which the abuses had upon the person.

I am sorry — I will just come back. The first chairman of the compensation panel was —

Mrs COOTE — We know.

Mr O'CALLAGHAN — not a Catholic. The chairman of Carelink was Professor Richard Ball, also not a Catholic. Successively, I think, David Habersberger and Sue Crennan and so on — but there have been a number of chairmen of the compensation panel which I say have been and are classically independent of the archdiocese which pays them.

Mrs COOTE — Mr O'Callaghan, I would like to bring you back to the process. I would like to ask you: when people come to your office — could you explain whereabouts your office is, actually?

Mr O'CALLAGHAN — When I was first appointed I made it very clear I would not be occupying an archdiocesan premises. That is — I knew I was — I wanted to be seen as being independent, so the first place I had was in Optus House. I think it is 360 Collins Street. I was there for about two or three years, I think, but it then became — I was still conducting a practice otherwise, so naturally you have to be in the chambers. Since then they come to my chambers on the 18th floor of Owen Dixon Chambers West at 525 Lonsdale Street.

Mrs COOTE — So, therefore, when we are trying to distance ourselves from a legal situation you actually have them coming to your chambers?

Mr O'CALLAGHAN — Yes, but — —

Mrs COOTE — Could you say that some of these very fragile victims would find that very threatening?

Mr O'CALLAGHAN — It may have been, in a very limited number of cases, but there seems to me to be no reasonable alternative to that if one is to determine the essential issue, which as far as I am concerned is: has there been sexual abuse?

Mr GLEESON — And I think, with respect, it needs to be understood just how human this process is. We walk in here to this room, and it is grand and it is magnificent, but within a minute of engaging with you we are dealing with human beings. This is a terribly human ordeal that the people go through, and our process is only as good as we are good at being compassionate and sensitive human beings. It is for others to ultimately judge, but what we try to do is sit them down, make them comfortable, get them talking at their own pace, listen, reassure them that we understand how difficult it is and reassure them when they say, 'I can't remember the dates. I don't know whether it was a Saturday or Sunday'. We say, 'It doesn't matter; just tell us what happened — as much or as little as you want'.

Mrs COOTE — Mr Gleeson, I am going to come and ask you a bit later about how you are going to approach it in the future, but I am really talking about the past. We have had a lot of people say that that is not their understanding or experience at all. They find it intimidating and threatening, and in fact that is not their experience at all. That is what we have been hearing, but I am wanting to paint the picture from your point of view, and obviously there is an issue of it being in barristers chambers, so already it looks as if it is a legal entity. But I want to take Mr Gleeson first of all to the issue of who else is in these interviews. Obviously Mr Gleeson has been in the interviews. Is anybody else in the interviews?

Mr O'CALLAGHAN — You are talking to me now?

Mrs COOTE — Yes, I am.

Mr O'CALLAGHAN — I can answer that question this way. Typically the complainant rings me direct. There are some referrals from other people and things, but typically a person rings me up — we will say it is a lady — and she says, 'I have been told to ring you and — —

Mrs COOTE — Or he.

Mr O'CALLAGHAN — Or he, yes; I was just saying he or she. I say, 'Yes; have you got a complaint?' — 'Yes'. At that stage on the phone I say, 'Is the complaint against a priest of the archdiocese of Melbourne?' — and they say, 'Yes'. 'Well', I say, 'What I typically do is to meet with you, interview you and tape a record or a transcript of your complaint. Can I suggest that you come and meet with me, and if you wish you are perfectly happy to bring a friend or companion, anyone you like', and frequently that occurs. Often enough the complaint comes via their solicitor. On those occasions I interview the complainant in the presence of his or her solicitor.

I will give you the precise reference later, but in the submission which Ms Vivian Waller made to this committee — some of which was very critical of the Towards Healing process, but she is a person who has brought a number of applicants to my room — she says that they were courteously and aptly received, et cetera. That is something to be counterbalanced against the other things you have been hearing.

Mrs COOTE — The other issue is also you just mentioned before that you have tape recordings of all of these interviews. Do the people — —

Mr O'CALLAGHAN — All but perhaps three or four which may have been done by a telephone conference. Say, for instance, a person in Queensland would have gone to Towards Healing. Towards Healing would say, 'No, that is a matter for the archdiocese of Melbourne or the Melbourne Response'. They would have taken a statement from the person, they would send that statement to me, and I would then speak to the person. Before I actually see them I say, 'Do you verify for the record that the contents of that statement are true and correct?', and then they come to Melbourne. That is a very rare occasion when there is not a transcript of the interview.

Mrs COOTE — So all of the people who are coming to see you are asked if they are happy for it to be taped?

Mr O'CALLAGHAN — Yes.

Mrs COOTE — So it is done with their approval?

Mr O'CALLAGHAN — Yes. I must have said 100 times that my usual practice is to tape-record what we are saying, because then it is easier to do it that way — I do not have to take notes — 'I will be giving you a copy of this transcript', and they see you. I give them a copy of the transcript, and in a lot of instances they make corrections to what was said, including spelling corrections and even my grammar.

Mr GLEESON — Can I indicate that I thought long and hard about that process when I was appointed independent commissioner. It is a difficult thing, and some people do shrink back a little when the suggestion is made that it is going to be taped. Ultimately I formed the view that if I was a victim seeing a commissioner, I would want to be sure that everything I said was recorded properly and not misinterpreted or paraphrased. There is a practical aspect that makes it a very advantageous system — that is, that you can sit there and listen, no pens. You just sit there and listen to the person; you are not scribbling notes about what they say, which they would I think regard as more legalistic.

Of course warts and all is what you get. I do not know whether you have had the opportunity to read any of the transcripts yet, but I would urge you to read as many as you can, because for all the goofball things that you say when you are trying to make somebody at ease who is distressed, there it is; every silly thing we say is recorded and transcribed, but it is very important I think that the whole conversation is transparently there. Importantly when we speak with the accused, that is also recorded and transcribed. A matter in which I issued a determination yesterday — a contested matter that went to a contested hearing where the priest denied the allegations — it was the transcribed interview with me during our first communication that played a significant part in me being well satisfied that the complaint was valid, and I upheld the complaint.

Mrs COOTE — Thank you. Mr O'Callaghan, could you tell me about how you come to the assumption of the report that you make? How is it that you decide on the scale of abuse who needs to have what sort of justice? When it goes off, I would like to know the nexus between what you send to the archbishop and what you send to the compensation panel. How do you actually decide, for example — I am not sure what the term was; I think you said 'fondling' — but certainly how would you put a price upon someone who had their genitalia touched by a priest through to buggery of children and boys? How do you equate that, and how do you equate their psychological sense or what has happened to them in their lives, and how does that recommendation go from you to the compensation panel?

Mr O'CALLAGHAN — Mrs Coote, the fallacy — it is not a fallacy that I suggest is held by this committee — that minor — —

When I was doing crime hand over fist many years ago what would be described as a minor sexual assault may well have occurred — fondling and things of that nature — but the psychological impact that that abuse has had upon the child when it happens is a gross betrayal of trust and is, I think, the most endemic thing that priests who do these deplorable activities do. What I would do is to get the detail — as much as for the reasons I have said can be got — and then I simply say when I report to the compensation panel that I find that this person was sexually abused by the named priest in the circumstances described by, for instance, the claimant in her or his record of interview with me, or in a case where they had previously been to the police, in the statement that they have made to the police. But I do not make a gradation at that point, other than to say that once sexual abuse has been established they are entitled to the benefits of the Melbourne Response, including getting compensation, and also, most importantly, getting free counselling and psychological support.

Mrs COOTE — So the compensation panel and you have discussions about the severity or otherwise of your report, or of the implications for the victim?

Mr O'CALLAGHAN — I have very few discussions with the compensation panel. I can recall when our present Governor may have written to me and said, 'Are there any further particulars of that?'. That occurs very, very occasionally, but once I send it off to the compensation panel and to Carelink, certainly to the compensation panel, I have no further contact with them. Indeed can I also add that when you say, Mrs Coote, 'Reporting to the Archbishop', in most cases the Archbishop would not know of a complaint having been received by me until it has gone through the process and he receives from the solicitors for the archdiocese the report of the compensation panel. There are, of course, occasions when it has been necessary to speak with the

Archbishop about an offender who is in active practice — and this is a very limited class — to have that offender put on administrative leave pending the determination of the proceedings.

Mr GLEESON — And I have never spoken with the compensation panel.

Mrs COOTE — Finally, in relation to the whole issue and to the type of issue I have been discussing, I would like to refer to a letter that you sent to Richard Leder, who I believe is here today, at Corrs Chambers Westgarth on 23 February 2000, and I will just give you a copy of the letter. This is a letter in relation to Emma Foster, and it says:

I would like your views as to whether it is appropriate in effect to try to flush out the real intention of the Fosters. A reading of the correspondence only reinforces the possibility that they may have another agenda and my oblique reference to other information is reflective of that. On the other hand, if they write back and say they insist upon my making a finding in relation to the complaint which has been lodged, I will feel obliged to do so. They would say we will decide what we are going to do when we have the finding, and such an option is contemplated by the archdiocese system.

I believe you went to see the Fosters after the process et cetera. Did you do that with all the victims, and do you have an explanation for ‘flushing them out’?

Mr O’CALLAGHAN — The only use of that phrase was that I had had some discussions with Mrs Foster — and that is a recorded conversation I had with her — as to whether she was thinking of taking proceedings, if she had lawyers or something like that, and I think the conversation terminated then.

But going back to that other question, I first saw the Fosters in Optus House. I saw them with the tragic Emma, and I went out to their home on a couple of occasions and again saw Emma there — —

Mrs COOTE — Excuse me, I do not like the term ‘tragic’. Emma was a very special girl, so please do not use that word.

Mr O’CALLAGHAN — But she was tragically abused and shockingly abused.

Mrs COOTE — Thank you.

Mr O’CALLAGHAN — I have expressed time and again my sympathy for the Foster family. You have got the Foster file, where this has no doubt come from. So if you have any worries about how I handled the Foster complaint, I suggest you go back to the file. But in this context, as it appears from the file, I was wanting to know whether they were coming to see me merely to get a finding so that they would go on to take proceedings, and I expressed to their solicitors that they were perfectly entitled to do what they wished. It was only in respect to Katie that I was asked for a finding, and I said, ‘What is the reason for it?’, and there it was. But with respect to Emma, if you go to the file, you will find I think a 50-page report which I made to the compensation panel — —

Mrs COOTE — I am not disputing that. I am disputing the fact that you said before that you did not discuss it with other people et cetera, and I am just finding here that in fact that is what you did do.

Mr O’CALLAGHAN — And that was because I perceived the imminence of legal proceedings, which I think in a letter to William Winter and Higgs I said:

In the light of the above and also because of other information I have received, my query is whether Emma proposes to reject the offer and presumably pursue other remedies. Let me hasten to say that whether or not this occurs is not a matter which concerns me in my capacity as independent commissioner. I do not, as I cannot, discourage or encourage any course of action decided upon by Emma and her advisers.

Mrs COOTE — That is fine. This documentation backs up what I was asking. What I would like to know is: did you go through these same types of processes with other victims dealing with your legal supporters and dealing, perhaps, with the archbishop and/or the compensation people? Did you do that with other victims as well?

Mr O’CALLAGHAN — If I did, it was on rare occasions. The justification for this is because of what appeared to be the position of going outside my role. Can I say that when Mrs Foster mistakenly says I went out to get Emma to sign, I did not. I was going out to see Katie and also Emma, but to tell them about the trust deed,

because Emma had signed her acceptance and she was to turn 18, and it was obvious that if they were going to accept that money, then it was desirable that there be a trust deed before she turned 18.

Mrs COOTE — I could suggest to you that there was haste in that — that you were going out to get her to sign the trust deed before they took it to the civil courts, so you were very concerned about getting it signed while she still had trustees and she was still under 18.

Mr O'CALLAGHAN — My concern to talk about the trust deed was that I said, 'If she is going to sign it, she should do it quickly before she turns 18, because once she has turned 18 the essential rationale of the trust deed goes'.

Mrs COOTE — I think my colleague Mr O'Brien has more to say about that, but I would like to thank you both. I have not had a chance, Mr Gleeson, to ask you about what you intend to do, but we will be watching with great interest.

Mr GLEESON — I would like to address that. I know you have given us some further time in due course, and I am anxious to address that but when it is convenient to you.

The CHAIR — Thank you, Mr Gleeson. I will move to Ms Halfpenny now, and we will come back to that point.

Mr GLEESON — Certainly.

Ms HALFPENNY — Firstly, I want to pick up on Frank McGuire's question about going to the police and your saying that you encourage people to go to the police. You have referred to the appendices. Out of 300 complaints, there are 5 examples that you have provided. If you look at them, at the very most they are not challenging somebody to go to the police, and they certainly do not sound to me like encouraging. In fact in the first one it says that it is the complainant that tells you that they are going to the police, and the complainant does not want to give the priest's name to you because the police are worried that you might tip them off again. I know that we have referred to that issue.

Mr O'CALLAGHAN — I would like you to withdraw the word 'again'.

Ms HALFPENNY — This is what it says in the document. Then there is another one that talks about — —

Mr O'CALLAGHAN — Can I just comment on that, Ms Halfpenny? That was the case when the — —

Ms HALFPENNY — You agree that in that case you did not encourage them to go to the police? They told you they were going to the police?

Mr O'CALLAGHAN — They had gone to the police. When the gentleman came to me — —

Ms HALFPENNY — I am just establishing the point about it being an example of you encouraging them to the police. That one is not you encouraging them to go to the police.

Mr O'CALLAGHAN — I think what that was really turning on was that, but it also was that the complainant would not tell me the identity of the priest.

Ms HALFPENNY — Yes, but I am just asking about the encouragement aspect rather than — —

Mr O'CALLAGHAN — It was certainly — —

Ms HALFPENNY — And if you want to talk about the other, that is fine, but I just want to go through that.

The CHAIR — Ms Halfpenny, if you could just put that question again to Mr O'Callaghan and if Mr O'Callaghan could please answer your question. Put that question again to Mr O'Callaghan.

Ms HALFPENNY — It is the first example of what you say are your examples of encouraging people to go to the police, I am just saying that the first example that you give in your appendices, which is appendix 1A, the transcript of your notes — you have put your notes in here — is basically the complainant telling you that they are going to the police. It is not an example of you encouraging them to go to the police.

The CHAIR — Which page is that, Ms Halfpenny? The pages are not numbered, are they?

Ms HALFPENNY — It is the first page of attachment 1A.

The CHAIR — Have you got reference to that now, Mr O’Callaghan?

Mr O’CALLAGHAN — Yes, I have. That is an attachment which says:

... complainants reporting abuse to police at the encouragement of or with the assistance of the independent commissioner ...

The full file of that complainant — —

Ms HALFPENNY — I suppose I am making the point that it is not really one. It is that person initiating the contact with the police. That is really all I was trying to get at with that one.

Mr O’CALLAGHAN — I am sorry, because the first sentence is:

The file reveals that ... the complainant originally made his complaint to the Melbourne Response. He was not prepared to disclose the identity of the offender but advised that he had reported the abuse to the police.

That is what I was saying: when that person came — —

Ms HALFPENNY — But you had not encouraged him to go to the police; he advised you that he had been. I am not saying that there is anything wrong with it. All I am saying is that it is not really an example of you encouraging him to go to the police. That is all.

Mr O’CALLAGHAN — Yes, very well.

The CHAIR — Do you have another question?

Ms HALFPENNY — I could go through each one, but I will not do that. But there are also others that, as I said, where it is more you are not challenging the person to go to the police when they say they are going to the police, but it is not really on your own motion that you are encouraging them to go to the police. That is as I see a number of those attachments.

The second issue, which is what I really wanted to talk about, is the Melbourne Response in terms of a child protection or child prevention of abuse strategy. My understanding is that Melbourne Response is not just about adults coming to the Melbourne Response to raise issues and to talk about things that may have happened in the past. It is also there in the event that there are current abuses occurring or that people or children have current complaints that they want to raise and bring to the attention of the church; is that right?

Mr O’CALLAGHAN — There have only been two.

Ms HALFPENNY — Yes, but I am just trying to understand. It is not just about what happened in the past, is it? It is also a thing that is there for — —

Mr O’CALLAGHAN — If a current complaint is made, of course it will be dealt with.

Ms HALFPENNY — Yes, so if a person, a family or a child has a complaint about abuse, this is where they go to — the Melbourne Response?

Mr O’CALLAGHAN — Yes.

Ms HALFPENNY — I know that you said there were very few contemporary cases in terms of current abuse. How many cases was that?

Mr O’CALLAGHAN — Two.

Ms HALFPENNY — Two cases?

Mr O’CALLAGHAN — Yes.

Ms HALFPENNY — In both of those cases, and I am assuming that one was the Pavlou case — —

Mr O'CALLAGHAN — Yes.

Ms HALFPENNY — And the other was also involving a child and a current priest?

Mr O'CALLAGHAN — The Fosters.

Ms HALFPENNY — Right. Looking at it in terms of the current situation, do you think that it really is a thing that can deal with the problems of abuse within the church? I will just look at some of the comments that have been made by various groups and organisations. For example, the Cummins report of the inquiry into the protection of vulnerable children said in respect of the Melbourne Response, and it is sort of posing these questions:

First, whether or not private processes are conducted faithfully according to their own criteria ...

So that is a concern. Having an internal process, does it mean that even on your own terms of reference is the process being followed? Because it is an internal process outside the scrutiny of the public. And also it says that the second issue that they have is that:

The Melbourne Response is a private initiative. Its processes and procedures are not public. Second, if children come before it, there is no public scrutiny of its processes including whether the scrupulous care exercised by the criminal courts to ensure victims are not confronted personally by their abusers in the hearing, is or is not followed.

And the third concern of Justice Cummins was:

... there is no public knowledge whether the consent given by children to the process is informed consent as contemplated by the law.

In the two cases of children, how was the process followed in terms of getting information from them and then following it up in terms of the accused people?

Mr O'CALLAGHAN — It is in the terms and conditions of my appointment that if I did receive a complaint from a child, I can only interview that child in the presence of parents. In the case of the Fosters that was always so, that I only saw Emma or Katie in the presence of their parents or, I think in Katie's case, in the presence of a psychologist who, because Katie wished — —

Ms HALFPENNY — I am not a lawyer but does that fit in with what Justice Cummins would be talking about in terms of children in the law?

Mr O'CALLAGHAN — With respect, Justice Cummins was, I think, referring generally rather than to the facts of this situation. There were two cases, and in each case the parents were obviously involved and I have not, happily in one sense, received any other complaints from children. That is a comforting thought in one sense but it is a disquieting thought in another, because we know of the prevalence of victims to live with their stress and strain for a number of years. Hopefully, that is not the case, but I have not got absolute confidence that it is.

Mr GLEESON — Can I just pick up on your reference there to victims being forced to confront their abuser. It is really important to address this because I would hate anyone to think that that is so, because that would be terrifying. If somebody did not want to confront the person about whom they make the accusation, it would be traumatic and a terrible ordeal. I can speak to this issue because it would only ever occur in a contested hearing, and for 16 years I have been the person responsible for conducting, as counsel assisting, the contested hearings, so I know the process.

What occurs is that the person is told that there has been a denial — and we are talking about a very small minority of these cases — and there will be a need to conduct a hearing. We then talk through the process, how it will work, how I will assist them to tell their story to the commissioner, usually Mr O'Callaghan, sometimes an independent commissioner. I talk about the layout of the room, where they will be, where they will stand and where the accused will be. We then talk about whether they are comfortable with that. If they are not comfortable with that what is offered to them is a remote video location so that they can do it just as in court hearings, and that has happened once or twice.

Typically the victim says, after thinking about it, talking to their partner or their family or their lawyers or all of them, 'No, I want to be in the room'. They want to be in the room because now they are an adult and they can confront the, by this stage usually very aged, offender, and they can confront them on even terms. They can look them in the eye and say, 'You did this to me, how dare you!'. They say to me that this is a very empowering and validating thing to do because they did not think they would ever get the opportunity to confront this person who took advantage of them. The only circumstances in which a victim confronts the offender is when they want to do it.

Ms HALFPENNY — I think there might be some more to say about that later but I am going down another line at the moment in terms of the Melbourne Response and its ability to deal with current issues, rather than, other people were suggesting, the past issues.

Mr GLEESON — I am sorry, you made specific reference to that issue when you raised the question.

Ms HALFPENNY — Yes, that is right. The second comment I want to raise, and put to you to see what you say is that we have had a submission from the Catholics for Renewal, and their submission was a very professional one in that it was put together by well qualified people. There was Peter Johnstone, who is a former director-general of the community services in Victoria; Frank Burke, who has held senior administrative positions in the not-for-profit sector; he has done industrial chaplaincy and also holds spiritual directorships; and Maria McGarvie, who is a solicitor in a large law firm. They talked about Melbourne Response and they provided an analysis in their public submissions about Melbourne Response.

They concluded that they did not believe because of the processes of it being an internal system and that it deals with individual complaints, that it was not really adequate to prevent recurrences of the terrible things that have gone on in the church in the past, and because it deals with individual complaints in isolation, it can therefore not deal with systemic problems as well as dealing with confirmed offenders. It is privately outside the justice system, it is a system which deals with individual complaints so you cannot really look at whether there is a systemic problem and therefore you cannot put all the dots together and really protect the church and protect the children that are within the church into the future in this sort of system.

What do you say to that?

Mr O'CALLAGHAN — I say that our brief, our terms and conditions are that we are required to investigate complaints of sexual abuse. That is the charter we have and if complaints come to us we must deal with them accordingly. In the case of children, current complaints, there have not been any, apart from the two we have mentioned.

Ms HALFPENNY — In at least one there were problems with it, weren't there? And I know you referred to the Pavlou case yourself in your opening submission, but really I am just having a look — one of the issues in the Pavlou case was — and these are your own words at page 33:

To suggest that I should effectively conceal from the priest that the matter had been referred to the police would be in breach of my ethical and legal responsibility to one of the parties to the complaint.

Mr O'CALLAGHAN — Yes.

Ms HALFPENNY — That obviously changed as per the media release that you provided to us and quoted from. Obviously the ethical and legal responsibilities changed. Archbishop Denis Hart said there were changes to the terms of reference so that you could now not tell offenders whether the complainant had gone to the police. Surely that is a problem that has arisen if you are going to try to deal with current child abuse allegations?

Mr O'CALLAGHAN — Ms Halfpenny, the way that that has been dealt with is to — first, I repeat that if you embark upon a hearing between A and B, then you have an obligation in accordance with natural justice to tell each of them what the other has said. Likewise, when one of them says, 'We've gone to the police, I say, 'I stop now', and I tell both of them.

Ms HALFPENNY — Why is that an issue of natural justice — to tell an alleged offender that the child is going to the police?

Mr O'CALLAGHAN — All I am saying is that in the case at issue the hearing was fixed for 20 July, I think, and I was told that the complaint had been taken to the police. I then had to cease conducting that inquiry and naturally — —

Ms HALFPENNY — So you are representing both the child and the — —

Mr O'CALLAGHAN — No, I am obliged to be fair to both, and one does not — however, that has now been overcome by the agreement of supplementing the terms and conditions that if a complaint is brought to me or Jeff, I will say to the offender, if that be the position, 'The complainant does not at this stage wish to report the complaint to the police, but if at a later time he or she does so, I will delay informing you of that fact for a period of four weeks or such other period as agreed with by the police'. So that overcomes if I tell the offender at the outset, or the alleged offender at the outset, 'He or she does not want to go to the police, but if he or she does, you won't be told about that until the expiration of four weeks from my becoming aware of it or such further time as is agreed with the police'. We did not enter into an agreement but that was what the police agreed was the thing to do in the terms of reference.

Ms HALFPENNY — Thank you.

Mr O'BRIEN — Thank you, Mr O'Callaghan and Mr Gleeson. First of all I want to confirm the figures in your report. At page 74 of your submission there is a pie chart titled 'Complaints made under the Melbourne Response as at 30/6/2012', which states 'Total complaints — 330'.

Mr O'CALLAGHAN — Yes.

Mr O'BRIEN — 'Total complaints 330' — that is since its commencement in about 1996 up to this time.

Mr O'CALLAGHAN — Yes.

Mr O'BRIEN — It also says 'Total complaints upheld — 304', of which 234 were male complainants. Is that right?

Mr O'CALLAGHAN — Yes.

Mr O'BRIEN — And 70 were female complainants. There are two other categories on that chart — 'Undetermined' and 'Not substantiated'.

Mr O'CALLAGHAN — Yes.

Mr O'BRIEN — Could you just explain what those two other categories are?

Mr O'CALLAGHAN — 'Not substantiated' and 'Undetermined'?

Mr O'BRIEN — Yes, the distinction between them.

Mr O'CALLAGHAN — 'Not substantiated' refers to people who have brought their complaint and then have not pursued it and so it collapses. Likewise when the word 'Undetermined' is there a decision had not been made. 'Not substantiated' means that the complainant did not substantiate the complaint.

Mr O'BRIEN — Yes, and 'Undetermined' may be that for example they have entered into the court process and you have not finished your task for some reason or another.

Mr O'CALLAGHAN — That could be so, yes.

Mr GLEESON — More commonly than not they have entered into a court process but that the victim has done what many victims do, which is take two steps forward and one step back. They will come to see us, start to give information and then retreat because they are not coping. So these complaints can sometimes take many months or even years to process because it is not our wish to rush people into things that they do not want to rush into. We want to do it as quickly as we can.

Mr O'BRIEN — I just wanted to confirm for the record: you have interviewed these complainants over many years and I think your evidence was that you found that there was very little fakery. I think a percentage

of something like 97 per cent of claimants have been accepted and you have accepted a higher level of veracity of the claims, somewhat contrary to your initial expectations.

Mr O'CALLAGHAN — It may have been.

Mr O'BRIEN — But that is correct?

Mr O'CALLAGHAN — I expected to have a number of suspect complaints. I will just give you one quick example. This complainant came from Sydney. He gave his complaint and said this had happened and I said, 'Well, look, the person you are complaining against is a brother of an order and that is the process which is dealt with by Towards Healing'. And I can remember he said, 'Smack my hand. I forgot. He was a priest'. Now, I had difficulty in accepting that, but that is a rarity.

Mr O'BRIEN — You have given those numbers. Obviously you would accept that this is an indictment on the Catholic Church that you were born into — the fact that this number of claims existed in the first place?

Mr O'CALLAGHAN — I think it is an indictment on the Catholic Church if the Catholic Church has not done something about it. I submit that the innovation which was the Melbourne Response is doing something about it and has done something about it. Can I say in the context of what Ms Halfpenny was asking me, if George Pell had not done it, who was going to do it?

Mr O'BRIEN — And to be fair to you, some people have not complained about your process; they have said you have done a good job in the material we have received.

Mr O'CALLAGHAN — I am pleased to hear that.

Mr GLEESON — By 'some people' do you mean 90 per cent?

Mr O'BRIEN — I cannot give you a percentage; I am sure that can be worked out as best it can be worked out. But I want to be fair to you in this because we have also had a number of people coming before us who are critical of the process.

Mr O'CALLAGHAN — Yes.

Mr O'BRIEN — This may include people who were critical notwithstanding your endeavours. You talked about this innovative process. What are the reasons you attribute as to why people would be critical of the process?

Mr O'CALLAGHAN — I attribute much of the criticism which has been put forward as perhaps being influenced, condoned or supported by Melbourne Victims' Collective. We only saw some of these documents last Monday, but I put that in the context of Ms Last for instance, and the credibility of her evidence should be tested. She asserts there were 2000 complaints dealt with outside the Melbourne Response. Now that is just nonsense. My position has been that in three cases, because the priest concerned was known, in respect of him I said to those complainants, 'You should go and get your own legal advice'. They did and took common-law proceedings, which were settled.

Mr O'BRIEN — Okay, and we had this discussion about the independent commissioner and your role. Can I put it to you that one of the reasons there is concern about your role and the system that has been set up is that it is not a royal commission and you are not a royal commissioner.

Mr O'CALLAGHAN — I agree with that, and nobody said I was.

Mr O'BRIEN — Can I just take you to one of the transcripts which you have attached to your evidence, which is on page 2. I will just read it to you, because there may be some trouble finding it and I want to keep moving. It says:

What I am is an independent commissioner appointed by the archdiocese to inquire into allegations of sexual abuse, and I act much like a royal commissioner just investigating whether I am satisfied that that abuse has occurred.

Mr O'CALLAGHAN — Yes, that is correct.

Mr O'BRIEN — That is what you have said, so what we have is essentially a privatised commission as opposed to a public royal commission. Do you accept that?

Mr O'CALLAGHAN — It is a domestic commission, if you like, and that has happened in many other circumstances. Whether it is a union that appoints their own solicitor or union official to investigate: they investigate independently. There are multiple tribunals which are set up to do just that.

Mr O'BRIEN — You have said this is an innovative system set up in relation to child abuse.

Mr O'CALLAGHAN — The innovation was to provide a remedy to victims of sexual abuse who previously had none.

Mr O'BRIEN — I will get to that in a sec, but would you accept that one of the complaints is that in a sense it is a private process, not a public process?

Mr O'CALLAGHAN — It is a private process, and if I might say this — it is a private process because if there had not been this private process, there would have been none.

Mr O'BRIEN — Do you accept the criticism that there would rather have been a public process, in part?

Mr O'CALLAGHAN — I can only answer that by saying I am the appointee. The process the archdiocese employed was to constitute the Melbourne Response, which in my respectful submission has been a successful operation. It required somebody to do something about these victims of sexual abuse, and that is what the archdiocese did in 1996.

Mr O'BRIEN — And I could characterise your role as seeing that you have done more than what would have been done — by the attitude of the church — if you had not been involved in that role. Is that how you would put yourself in the reflection of time?

Mr O'CALLAGHAN — All I have done, I hope, and I am sure you would all be familiar with the phrase, is to fulfil the terms of my brief.

Mr O'BRIEN — Yes, that is what I want to take you to, because we have a duality of role. It is not a public royal commission and it is not a court: it is a private tribunal. I suspect and I will put it to you that in terms of the complaints received, that might be a significant cause of the problem. If I could ask you, you described Mr Leder as your instructing solicitor. If Mr Leder is your instructing solicitor, who is your client?

Mr O'CALLAGHAN — As the terms of reference say, my client and my appointor is — the Archbishop of Melbourne, George Pell originally, through his solicitors, has retained me as the independent commissioner.

Mr O'BRIEN — To contrast that with a royal commission, for example, you would be appointed by the government, or the people of Victoria.

Mr O'CALLAGHAN — Yes.

Mr O'BRIEN — Likewise, if it was a judicial appointment and you were a court, you would be appointed under tenure as a justice of the court.

Mr O'CALLAGHAN — And would be paid by the government.

Mr O'BRIEN — That is right. So in relation to your independence, I am not going to put to you allegations as to quantum of fees, although I would like an answer as to how much the Catholic Church has spent on the total system. You may have to provide that on notice, but if you can provide it now, I would like to know that. I will get to that in a sec, but I would like to know how you consider that the role of the victims could have been better applied if they had been involved in a court system whereby the church had, for example, agreed not to run the defences that it presently runs and to allow the informal processes that you have identified to take place for 97 per cent of these cases that you have said are true, but to allow victims where necessary to have that day in court and to have publicly placed on record the civil results of these cases. Do you think that would have been a better system?

Mr O'CALLAGHAN — I am not avoiding the question, but I do not propose to answer it simply for this reason — that is not my role.

Mr O'BRIEN — You did say you advised on the set-up of this role.

Mr O'CALLAGHAN — I advised as to the concept which was put before me, namely the appointment of an independent commissioner. At that stage I did not know it was going to be me. I gave some advice about it and the terms of reference were developed. I have been on quite a few royal commissions. I know a bit about it. Typically, save with some exceptions, the person whom the government chooses to be the commissioner consults with the government as to the terms of reference — that is, in exactly the same way as when the Anglican Archdiocese of Brisbane appointed me as the chairman of the board of inquiry I, in consultation with Archbishop Phillip Aspinall and his solicitors, formulated the terms of reference.

Mr O'BRIEN — I am aware of that, and I am going to keep moving on. The first difference is that it is not government appointed; it is a private tribunal. You would accept that.

Mr O'CALLAGHAN — Of course.

Mr O'BRIEN — Then as a result there is not public publication of your decisions, even though you have made 97 findings. If it were not, for example, for this inquiry, or the work we have had to do, that would not be on the public record.

Mr O'CALLAGHAN — No, it would not.

Mr O'BRIEN — Can I keep moving, sorry.

Mr O'CALLAGHAN — Can I just answer that. The very process seeks to keep confidential the whole of the process. When I refer the victim to the compensation panel, when I refer them to Carelink, they maintain that confidentiality there. No-one knows. And this is what I have found is one of the most prevalent things, the desire of victims to remain confidential, so it is not on the public record.

Mr O'BRIEN — I accept some want to remain confidential, but others do not. Do you accept that?

Mr O'CALLAGHAN — Well, if they do not, there is no inhibition on them — —

Mr O'BRIEN — To going to courts?

Mr O'CALLAGHAN — To take courts? Of course not.

Mr O'BRIEN — No, but we can deal with that in terms of the prospects of success within a court, within the present — —

Mr O'CALLAGHAN — Well, there is no doubt that was expressly said by Archbishop Pell when he appointed the Melbourne Response, that because of the difficulty, if not impossibility, of victims having a common-law remedy — and I am not going to get into discussions about the Ellis case or whatever, but the fundamental issue that confronts a victim is to prove that the people in authority knew or ought to have known that the priest had this propensity.

Mr O'BRIEN — Just on that, you would accept — and Mr Gleeson, you would accept it as well — that what defences are placed by a body in a civil proceeding is ultimately a matter for the defendant, be it the Ellis defence, vicarious liability or the statute of limitations. They do not have to be pleaded and, for example — —

Mr O'CALLAGHAN — I am not familiar with the Ellis defence being applied in Victoria.

Mr O'BRIEN — No; they refer to Grant's case more than the Ellis defence, but those defences are matters for the party and so the church, if it wished to, could have and could still re-engage in the court system, rather than operating through a private system. That is a choice for your instructor, is it not, or your client?

Mr O'CALLAGHAN — Well, I am not going to comment on that.

Mr O'BRIEN — Come on, Mr O'Callaghan.

Mr O'CALLAGHAN — Well, obviously it is.

Mr O'BRIEN — Thank you.

Mr O'CALLAGHAN — But that does not mean that I can have any regard other than to what I am obliged to do under the terms of my reference.

Mr O'BRIEN — Yes. So just back to this system that has been established, one of the aspects of it — there are effectively four parts to it, if you like, as opposed to what I would put to you would be the court process. You have the police and the court system in relation to the criminal aspects, you have your Melbourne Response as a second and you also have Towards Healing, then you have victims who may go outside into the private court because they are not happy with the results. One of the key distinctions also with your process is that compensation is capped, isn't it?

Mr O'CALLAGHAN — Yes.

Mr O'BRIEN — At \$50 000.

Mr O'CALLAGHAN — No, \$75 000.

Mr O'BRIEN — Initially at \$50 000 and now up to \$75 000.

Mr O'CALLAGHAN — Fifty, 55, 75.

Mr O'BRIEN — That is right. And one of the other distinctions between your process and the court process is that if a court case is successful, you will see a victim receiving the costs of their court case as part of the award, as a general rule? Costs follow the event; you would accept that?

Mr O'CALLAGHAN — Yes.

Mr O'BRIEN — And in other government-run compensation schemes — one I worked in, for example, land acquisition and compensation — you have an entitlement for legal advice irrespective of the prospects of your claim, paid for by the inquiring authority because it is considered that you are not a willing participant in the court system; you are a victim. That is very much the case if you are a victim of sexual abuse, isn't it?

Mr O'CALLAGHAN — Yes, but can I say that the best analogy to the compensation cap is the Victims of Crime Assistance Act — that is, if a person applies successfully under the Victims of Crime Assistance Act, I think the cap on that is \$60 000 and a finite provision of free counselling and psychological support. Under this system, the cap is \$75 000 and there is no limit upon the provision of free counselling and psychological support. As long as the victim needs it, it will be provided.

Mr O'BRIEN — But in terms of the legal advice, your system — and I know that you are in the compensation assessment, not the determination; that is the panel — the system that you are part of, does not make a separate adequate provision for legal representation, so that a client can have their lawyer paid for by the system?

Mr O'CALLAGHAN — I cannot speak for the compensation panel, other than that it may well be — —

Mr O'BRIEN — I can.

Mr O'CALLAGHAN — It may well be that they take — —

Mr O'BRIEN — I can, because I have the letter from David Curtain, that Father Dillon gave to us in Geelong, which I will read to you. This is a letter from David Curtain to Father Kevin Dillon on 6 April 2011 and it says:

I refer to your letter of 31 March ...

Victims occasionally appear represented before the compensation panel, although they are always advised that no legal costs will be awarded.

So there it is, from the panel: no legal costs will be awarded, irrespective of outcome.

I respectfully disagree with your statement to the Archbishop of Melbourne that ‘it is essential that those who suit — ‘seek’, I think it should be, but —

to use the process in order to further a complaint will need to seek legal counsel’.

Indeed, I believe that the process is set up so that the opposite is true, that is that victims do not need to seek legal counsel.

That is from another very senior Queen’s Counsel who will be before us.

Mr O’CALLAGHAN — He has not been yet, has he?

Mr O’BRIEN — He will — well, anyway.

Mr O’CALLAGHAN — That is why I am going to leave that to him.

Mr O’BRIEN — Well, the reason it cannot be just left to him is that if that is the position in relation to the church’s view on compensation or the panel’s view on compensation for legal fees, it means the position at the start is that claimants are not given that very important right to independent counsel.

Mr GLEESON — Can I respond to that, because the — —

The CHAIR — Just a moment. Mr O’Brien, is that in relation to Mr O’Callaghan’s letter?

Mr O’BRIEN — Well, I did not get an answer, but I am happy — —

The CHAIR — Could Mr O’Callaghan first answer it and then Mr Gleeson please answer it?

Mr GLEESON — Certainly.

Mr O’CALLAGHAN — All I want to say on this is that it is my understanding — and I stress it is my understanding, which you can clarify with Mr Curtain — that if an applicant for compensation goes before the panel and says that ‘I have incurred X amount of dollars in legal expenses’, the panel can take that into account in determining the amount of compensation.

Mr O’BRIEN — You now are prepared to speak for the panel, but we will take that up with them.

The CHAIR — I will just give Mr Gleeson an opportunity to also respond, before you go to your next question.

Mr O’BRIEN — Well, I am happy for you to answer. I am just conscious — —

Mr GLEESON — You seem very rushed, Mr O’Brien. We have had 50-plus hours of people patiently and quite justly communicating to you criticisms and I would hate to think that we were not get the opportunity to, in a timely manner, respond.

The CHAIR — Mr Gleeson, if you could just answer Mr O’Brien’s question.

Mr O’BRIEN — I have all the time, if you have.

The CHAIR — We will stay here for as long as we need to. Thank you.

Mr GLEESON — Excellent. The vice that seems to be said to be implicit in the non-funding of legal representation for complainants is that they are disadvantaged. That is essentially what you are putting, yes?

Mr O’BRIEN — Well, it is a fundamental right to a lawyer, isn’t it? The whole Victorian court system relies upon — —

Mr GLEESON — So that is yes?

Mr O’BRIEN — Well, you will be answering my questions, but — —

The CHAIR — Excuse me. Order. I do not want a debate here. Could you just answer the question, and then move on to your next question, Mr O'Brien?

Mr O'BRIEN — Are you going to dispute the fundamental right to a lawyer in this tribunal?

Mr GLEESON — No, and indeed they are quite entitled to lawyers.

Mr O'BRIEN — And for lawyers to be paid.

Mr GLEESON — The vice that I understand and I will assume is implicit in your criticism is that the complainants are disadvantaged by not having a lawyer.

Mr O'BRIEN — Precisely.

Mr GLEESON — One would suspect that the disadvantage would be most acute in the event that there was a contested hearing.

Mr O'BRIEN — Yes.

Mr GLEESON — Of the 16 cases where there was a contested hearing where the complainant did not have legal representation but the respondent did, the outcome was as follows: 14 complaints were upheld and 2 complaints were not upheld. Of the two cases that were not upheld, one of them was where the complainant admitted upon entering the hearing room, 'I have got the wrong priest'.

Mr O'BRIEN — I want to talk to you about another contested hearing and I will ask the questions — —

Mr GLEESON — The other — —

Mr O'BRIEN — I have heard enough.

Mr GLEESON — The other contested hearing where the person was not represented was assisted by her mother and she was a tertiary-qualified person who did not want legal assistance.

The CHAIR — Thank you for that clarification.

Mr O'BRIEN — The purpose of legal advice is not just advice about what may occur within your system but the merits of proceeding outside your system. Do you accept that, Mr Gleeson?

Mr GLEESON — I can only speak to the way in which they are dealt with in our system.

Mr O'BRIEN — Then you are now confining yourself, but I would put to you — —

Mr GLEESON — Yes indeed.

Mr O'BRIEN — I put to you that many victims have received more money outside the system in the court system than they have within your system. Do you accept that?

Mr GLEESON — No. I do not know.

Mr O'BRIEN — Can I provide you with a document?

Mr GLEESON — Certainly.

Mr O'BRIEN — I have received that document this morning. Can you read that document to me? Can you read what it says?

Mr GLEESON — National Australia Bank, 330 Collins Street branch. Roman Catholic Trusts Corporation for the Diocese of Melbourne. The sum of — —

Mr O'BRIEN — What sum? Read it very loudly, please.

The CHAIR — Mr O'Brien, just let Mr Gleeson read this. Thank you, Mr Gleeson, please continue.

Mr GLEESON — The sum of \$450 000 only paid to the order of Emma Foster. Not negotiable. Bank account payee only. 16 March 2006.

Mr O'BRIEN — Money talks in this world, does it not, in the end in compensation systems, if that is what we are talking about? Money talks.

Mr GLEESON — Is that a serious question?

Mr O'BRIEN — Yes, it is.

Mr GLEESON — What do you mean?

Mr O'BRIEN — The colour of your money shows the attitude of the church in relation to this system. At the moment you have presently got a cap on 55 up to 75 within the system, but we have an example there of someone who has taken a proceeding outside the system. Yes, they have settled the claim and we note the horrific circumstances of that claim, but they have received more money, have they not, Mr Gleeson?

Mr GLEESON — I do not know what this is about. I do not know anything about it.

Mr O'BRIEN — I will provide that to you. I will ask — —

Mr O'CALLAGHAN — Can I suggest that that was a situation in which the victims and their families sued at common law and what that represented was a settlement at common law. Now of course in the three cases where I have said, 'You should get legal advice' and they have taken common-law remedies, they have recovered more than the cap, in the same way that a person applying under the Victims of Crime Assistance Act, if they can sue someone, will obviously get more money.

Mr O'BRIEN — But if I could just conclude on this point. It is an artificial cap set in a private system and in your advice in relation to the compensation system you do not really put the legal system in a great light. You say, 'Civil proceedings. You can go and get alternative legal proceedings'. You do not advise anyone to seek independent legal advice, as, for example, the statutory advice that is given in a land acquisition up-front. 'First thing, go and get independent legal advice. It will be paid for under the system'. Then it says, 'If the recommended payment is not accepted, you can go to the civil courts'. We have touched as far as we can on the prospect of that whilst the church wishes to continue these defences. Are you aware, for example, that the Jesuits have indicated from 2002 that they do not wish to necessarily rely on all the defences they were entitled to?

Mr O'CALLAGHAN — I am not really in a position to be discussing those matters, I am the independent commissioner appointed in respect of, as you call it, a private situation in the same way that the chairman of a statutory body, namely, under the Victims of Crime Assistance Act, decides whether a person has proven that they have suffered the results of the crime and they can be given up to a limit of \$60 000.

Mr O'BRIEN — I have one final matter involving the offer of compensation. I want to provide you with two sets of documents. This relates to the issue of confidentiality. I note that the church has put up two different positions, Mr Gleeson, in relation to the confidentiality agreements on its web page. In the 'Frequently asked questions' section it says:

The church respects the rights of victims to speak to people about their abuse.

It does not time-date it. It does not say for how long the church has done that. Whereas in the 'Correcting the misconceptions' section it indicates that from about 2000 the church's position has changed.

Mr O'CALLAGHAN — In respect of Towards Healing?

Mr O'BRIEN — Yes.

Mr O'CALLAGHAN — It has never changed as far as the Melbourne Response is concerned.

Mr O'BRIEN — If I could just put that to you, and we will just have a look at these documents. The first document you will see is a letter dated — —

Mr O'CALLAGHAN — Dated 20 February 2002.

Mr O'BRIEN — Thank you. You will see that it has a phrase there. There are two aspects. One is this concept, again in relation to the Fosters, that if you do not take the offer within the system the church will have an alternative to litigation which will be strenuously defended, including going through your process, not admitting claim. You will see that in the 20 February 2002 letter. That is underlined. Over on the back of that page there is also this:

If you reject this offer you will remain bound by the terms of the application for compensation form. Particularly you may not disclose or rely upon this offer which is of course put on a without prejudice basis.

If we then look at the second document I have provided to you, you will see it is a transcript of 2 June 2002 of an interview by the late Richard Carleton with George Pell. On the very back page it refers to the Watson case and states:

If words have meaning, sir, you bought their silence or you sought to buy their silence, a realistic alternative to litigation that will otherwise be strenuously defended.

I do not know if you can see that, but that is what — —

Mr O'CALLAGHAN — I accept it.

Mr O'BRIEN — Then it says:

There is a requirement that they do not talk about it. Most of them are not happy to, if we do not use that for something else.

Could I then just take you to the second letter — —

Mr O'CALLAGHAN — Could I just make a comment there?

Mr O'BRIEN — Yes.

Mr O'CALLAGHAN — That statement by Archbishop Pell, which may have implied that there were confidentiality agreements, was corrected. There has never been a confidentiality agreement with respect to the Melbourne Response. If I might interpolate, it may be one of the reasons I will be having to submit further about. One particular case I would mention. I wrote a letter to — and, Chair, I do not want to mention the lady's name here — a lady, but she was completely mistaken in the evidence which she gave when compared with what in fact occurred. Likewise — —

Mr O'BRIEN — I have to cut you short. I appreciate that, but if I could just — —

The CHAIR — No. Mr O'Callaghan, just finish that point, and then we can go back to you, Mr O'Brien.

Mr O'CALLAGHAN — I submit that that may well be the case, and the justification for looking closely at the record of interview and the file ab initio — people's memories can get clouded. For instance, Mr Chamley of Broken Rites refers to my constituting myself as a royal commissioner and things like that. He implies that it was wrong, but if you look at the transcript, which I will make available redacted, of the woman with whom he came to me — —

I might add that his recollection of that is wrong. He never made any complaint, rather the opposite, at the way in which she was treated. When Helen Last has attended on a limited number of occasions with a victim, I have never had any complaint from her in relation to that victim.

The CHAIR — Thank you. Mr O'Brien, to that final point.

Mr O'BRIEN — Yes. You see the letter changes. This is a standard form letter that changes on 20 November 2002, after that interview, where the part about realistic alternative to litigation that could otherwise be strenuously defended is deleted from that paragraph, and a much fuller description, more consistent with the position you now put, is stated in relation to the confidentiality. I will just ask you one final question because in your role as independent commissioner you have the witnesses, if they accept, or the church does, sign a deed of release. Can I ask you: has the church considered any sort of Amadio-type situation that is

occurring if a quasi-independent commission process then results in deeds of release that are signed by someone who is not getting independent legal advice?

Mr O'CALLAGHAN — I cannot answer that.

Mr O'BRIEN — Mr Gleeson?

Mr GLEESON — So the question is whether the church has considered an Amadio-style defence, by which I understand you to mean a defence — —

Mr O'BRIEN — Sorry, I will correct it so we are clear. It is engaging an Amadio-type process, similar to banks with guarantees, where they are effectively signing up people to legal rights, being a deed of release not just for the out-of-court or privative system but for all legal claims in circumstances where they have not had independent legal advice.

Mr O'CALLAGHAN — Can I say this? It is said there is no appeals process. If the victim received a decision from any part of the process — the compensation panel or the independent commissioner — which is such that no reasonable commissioner or no reasonable compensation panel would make, they do have resort to the courts, where they could correct that. Order 56 — —

Mr O'BRIEN — I know all about order 56. I have done a few myself, probably not as many as you — —

Mr O'CALLAGHAN — I have been around for years, but I do not know all about it!

Mr O'BRIEN — We will leave it at that. Thank you gentlemen.

Mr WAKELING — Gentlemen, thank you very much for your attendance and the significant information you have provided, not only in recent days but over the period of this inquiry, to the secretariat. The first question I wish to ask is: in regard to those victims who are coming to see you for the first time, Mr O'Callaghan, what state would you say many of those victims are in?

Mr O'CALLAGHAN — Some of them are obviously distressed — hesitant about discussing the matter. I had a man this year who, when he came into my chambers, said, 'I nearly left'. He said, 'I have been sitting, waiting for just a few minutes, but I nearly left'. He said, 'I have never told anyone about this and I don't think I can tell you'. I said, 'Well, have a drink of water', and he did. He then told me. He was a waterside worker — a ruddy, strong man. He was trembling. He had told no-one, not his parents, his wife or anyone. I said, 'I can certainly, and I will, refer you to Carelink', and he said, 'Will I have to tell them too?'. To cut a long story short, he was duly compensated, but I see that person and others who are much less affected but very antagonistic, if you like, towards what has happened to them, and nobody could possibly blame them for that.

Can I just give you this example: very early on there was a prominent businessman who came and saw me. He was a Gannon victim. In the course of discussing it with him he said, 'I did not know until we buried my father that my brother had also been abused'. He was saying to the brother at the time of the funeral, 'When I told Dad about this he whacked me across the face'. I said, 'I would like to speak to your brother', who is a professional in a provincial town. I rang him, and he said — I will not mention the Christian name — 'Yes, I was shocked when I was told by him on the funeral day that he had been abused by Gannon because I had been. It hasn't worried me at all'. But the other man — it has plagued his life even though he is a successful businessman.

Mr WAKELING — So if I may, they are waiting in the reception on level 18, 525 Lonsdale Street, in Owen Dixon Chambers West?

Mr O'CALLAGHAN — Owen Dixon Chambers West.

Mr WAKELING — And they are waiting in reception of that organisation?

Mr O'CALLAGHAN — Yes. We have waiting areas. My secretary is there. The victim comes to her. I have been blessed with three marvellous secretaries, or personal assistants, I should perhaps say, and all of them have, I can assure you, received those complainants with compassion and offered them as much solace as they can. I agree with what I think you are implying, that there is no easy way for a person to come and recount what happened to them 25 or 30 years ago.

Mr WAKELING — If I may say, Mr O’Callaghan, many of the victims who have presented to us — male, female, from varying life backgrounds — have a common trait of being mentally scarred. I know as part of this process they have been afforded counselling to assist them with the process. I am wondering whether you thought it was appropriate that the people who were seeing you for the first time in your legal practice were not afforded any care — in terms of pastoral care or counselling — to assist them with this harrowing process?

Mr O’CALLAGHAN — Can I answer it this way: there have been a number of complainants who have said, ‘I’ve got a complaint’, but because of the palpable distress that they were in, before I have made a decision as to whether or not that complaint has been established, I have exercised my discretion to refer them to Carelink, and they have provided counselling, psychological support, and if necessary or if required, pastoral support will also be required.

Mr WAKELING — But would you concede that having a counsellor there would have provided a greater benefit than not having a counsellor there?

Mr O’CALLAGHAN — I am not sure that that is so at all. What has to happen is that I have to be satisfied that the abuse has occurred. Certainly if they wish to have a counsellor there, they can. As I say, many are accompanied by their friends, an associate, sometimes a counsellor, sometimes a solicitor.

Mr WAKELING — But, Mr O’Callaghan, if I may, I am not a psychologist —

Mr O’CALLAGHAN — Nor am I.

Mr WAKELING — and you are not a psychologist either, and we have had many psychologists, people with significant experience in this area, talk about the psychological harm that has been perpetrated. Do you think it was appropriate in those circumstances for you in your position to make that judgement call as to whether or not someone should or should not be afforded counselling or assistance at that first initial hearing?

Mr O’CALLAGHAN — As I say, at the initial hearing, whether or not I have made a decision and they require counselling, I certainly provide it or recommend that it be provided.

Mr Wakeling, I have over the years in my practice, which is a very wide one — in maintenance cases, in family law cases, in personal injury cases — become very used to dealing, I hope, sympathetically and compassionately, with persons who are victims of abuse also victims of trauma, PTSD and so on. I have no hesitation in saying — and I appreciate I am going to look at and get the criticisms which have been made — that I believe I have acted fairly, reasonably and appropriately in these cases.

Mr WAKELING — In regard to that, it is not my criticism.

Mr O’CALLAGHAN — I understand.

Mr WAKELING — That is obviously a criticism that has been presented to this committee.

Can I take you to the contested hearings? Mr Gleeson made some comments in regard to the contested hearings earlier. Firstly, can I confirm, Mr Gleeson, that in a contested hearing the complainant knows before the hearing that the alleged perpetrator will be present at that hearing?

Mr GLEESON — Absolutely.

Mr WAKELING — In all circumstances?

Mr GLEESON — In in all circumstances. It is discussed in detail, and I am acutely conscious of the fact that that would be difficult. I mentioned before that they are offered the opportunity to have evidence given by video link.

Mr O’CALLAGHAN — And that has been availed of in a number of cases.

Mr GLEESON — I will put this one qualification that I do not think is all that relevant, given what your question is. There have been occasions where the complainant has been quite prepared and has mentally steered

themselves to confront the accused, and on the odd occasion the accused has not attended. Subject to that, the answer is yes, they know that it will happen.

Mr WAKELING — As you could appreciate, we have received information in regard to the hearings. How do you ensure that the complainant and the alleged perpetrators do not cross paths prior to or during the hearings?

Mr GLEESON — That is a very good question. It is something we work very hard at. The majority of the contested hearings, certainly in recent times, have been conducted at the County Court facilities in a private and secure room. The advantage of that is that there is sufficient space for parties to be very well separated. It has some formality so that there is not the intimacy that might add to or compound the apprehension that the victim has. What we do is go into detailed arrangements for arrival and departure times so that they can arrive, be taken into a break-out room. You are probably not familiar with the County Court, but it has a series of lockable break-out rooms that are completely non-visible from the outside. As counsel assisting, my job was to make all of those arrangements and make sure that on the day nothing went wrong, so I would be shuttling between rooms and saying, ‘You stay there until they’re in the lift’, and so on.

Mr WAKELING — Have any of these contested hearings been held in your offices?

Mr O’CALLAGHAN — Yes, I think one. It was a boundary violation; it concerned a complaint made by a woman against a priest. That was conducted in my chambers. The woman was acted for by counsel, and so was the alleged offender. I think that is the only occasion.

At Optus House there used to be an elaborate hearing room, which met the criteria Mr Gleeson was just talking about.

Mr WAKELING — If a perpetrator has legal representation, does the complainant know before the hearing that they have representation?

Mr GLEESON — Yes. I do what I can to humanise the legal representation and say, ‘The barrister or the solicitor who will be asking you questions is Mrs So-and-so’ or ‘Mr So-and-so. I know them’ or ‘I don’t know them. Their general style is such and such. These are the sorts of questions you could expect to be asked and tested on’.

Mr WAKELING — Who generally pays for the representation of the alleged perpetrator?

Mr O’CALLAGHAN — Can I answer that this way: the policy of the archdiocese has been that they will not pay the costs of an offender defending himself in court. I have taken the view that when a system is set up which requires the priest under compulsion to attend and to have legal representation, I recommend that that cost be met.

Mr WAKELING — By?

Mr O’CALLAGHAN — By the archdiocese.

Mr WAKELING — So the archdiocese pays.

Mr O’CALLAGHAN — Pays the cost of both.

Mr WAKELING — Both being?

Mr O’CALLAGHAN — If the complainant has legal representation and has costs — again, I speak from memory of just a recent boundary violation situation — the costs of both parties are paid. As you will no doubt appreciate, when people are called before — this hackneyed phrase — royal commissioners, the government often says to witnesses, ‘Your costs are defrayed’.

Mr WAKELING — Just to confirm it, you are saying that the archdiocese pays for the alleged perpetrator’s representation — —

Mr O’CALLAGHAN — Only at a contested hearing.

Mr WAKELING — Contested hearing, yes. And is the complainant afforded legal representation?

Mr O'CALLAGHAN — Yes. In most cases they have it. If they do not, they have a very good counsel assisting. But if the complainant has legal representation, the practice has been to indemnify them for those costs.

Mr WAKELING — But in terms of their legal representation, is that only in circumstances where they choose to engage legal representation, or you afford that to them given the fact that, in all circumstances I would assume, the alleged perpetrator will have legal representation paid for by the archdiocese?

Mr GLEESON — No, there are quite a lot of cases where the respondent is the one who is not legally represented at contested hearings but the complainant is. I must say the majority are the opposite, but there are quite a number of cases where it is the respondent who is not legally represented. In my former role as counsel assisting I would typically have a discussion with the complainant about legal representation pretty early on in our discussions. I would like the committee to understand that with contested hearings I have many, many discussions with the victims. I go on the journey with them over days, weeks and months. We email each other, we speak together on the phone, they come into my chambers and we talk about the case and about a lot of things. One of the very early things they say is, 'Do I need a lawyer?'. I say, 'You're perfectly entitled to have a lawyer. It would make my job a lot easier if you did, but it's up to you. You don't need one. I will assist you, but you must understand that I am not your lawyer, so that if you tell me something' — and I try to give them a good example.

If they tell me something — say, for example, 'Look, I told O'Callaghan that I suffered abuse on these occasions, but really the last one didn't happen' — I say to them, 'You must understand I would be duty bound to tell Mr O'Callaghan that. I don't know whether if I was your private lawyer there might be a way I could step around that, but you need to understand that that is a good example of me not being your lawyer but being counsel assisting. If you feel you need legal representation, by all means get it. But I'm here to assist you, and I will advance submissions on your behalf'.

What the commission needs is balance — both sides of the story. So in the cases, which are the majority, where the respondent — the accused — has legal representation and they cross-examine the complainant, the role of counsel assisting tends to be much more as an advocate for the victim, in the interests of balance. I would then typically not cross-examine the victim but try to get clarification if there is uncertainty, but I would cross-examine the respondent. I have to say that that can happen in a reasonably robust manner.

Mr WAKELING — Can I surmise that what you have explained to me is effectively a private court hearing?

Mr GLEESON — It has got a lot of similar aspects to a private closed court hearing, yes.

The CHAIR — Mr O'Callaghan, you are nodding yes?

Mr O'CALLAGHAN — I was just going to add that you have heard the detailed description that Mr Gleeson has given. If a case arises where the alleged offender denies it, and it is agreed that there is going to be a contested hearing, I cease any further investigation of the complaint, because I am going to have to decide. Mr Gleeson provides the particulars of the complaint to the respondent and so on, so that is how I ensure that I retain impartiality.

Mr WAKELING — When you say 'impartial', you are effectively sitting as a judge —

Mr O'CALLAGHAN — Yes.

Mr WAKELING — and you have got various parties providing evidence, and there is cross-examination like in a court hearing?

Mr O'CALLAGHAN — Yes, and in all cases that I have decided I have provided detailed reasons, and if the committee can be assisted — some of them are quite lengthy; there are QCs who have appeared before me, and QCs are not altogether a foreign nation — I would be happy to provide the committee with copies of my reasons for decisions.

Mr WAKELING — But if may, Mr Gleeson and Mr O’Callaghan, certainly there is a perception from the church that the process that you administer is one that is conciliatory, is one that protects the needs of victims and is one that is engaging. But what you have effectively described is a quasi-legal system. You have acknowledged that victims in the first instance are not afforded any form of counselling or assistance, and if an allegation is denied, then effectively that victim, who is obviously in quite an emotional state, is immediately thrust into a legal situation — a court case — in which you stand as the judge to determine the outcome. Is that a fair summation?

Mr O’CALLAGHAN — Yes. Can I say this? I say to the victim, ‘You’ve told me what your complaint is, and it has been decided that you’re not going to the police. I must’ — and this appears recurrently throughout my transcripts — ‘put what you say to the alleged offender’. In many instances the complainant says, ‘I know what he’ll do; he’ll deny it’, whether or not that happens. Whilst I have found most cases established, as appears in my original terms and conditions, I have to act impartially between the parties.

The CHAIR — I do not think Mr Wakeling is disputing that. I think he is describing the setting.

Mr WAKELING — If I may, and with respect, Mr O’Callaghan, I understand that you are doing the work for which you have been engaged and funded by the church. I am not questioning that. I am just putting it to you that the process which has been expressed to the public is one of sympathy to victims and one in which they are protected, and that they will be going through a conciliatory process to assist them given their emotional strain. What you have in fact described is a process, which you have been engaged to perform, which is not that at all but is an arbitrary process, which is effectively a quasi-legal system in which the victim, who has shown courage to come forward and raise a complaint, is in fact afforded no protection from an emotional perspective or from a psychological perspective, and potentially they are at their worst and they are then thrust into a legal system.

Mr O’CALLAGHAN — If I might say, a number of victims have received counselling and psychological support from Carelink or their practitioners before I have made a decision as to whether or not the complaint is established. Can I just say this: I appreciate that in the limited number of cases in which there is a denial and the claimant wants to continue through the Melbourne Response, he or she meets in, I submit, a fair and compassionate way the same situation that he or she would meet when standing on the floor of the Magistrates Court.

Mr GLEESON — Can I make four points in response? This is an area that I suppose I have a particular insight into, because if there has been a contested hearing over the last 16 years, prior to August last year, I was in the middle of it. The first thing to note is that there have been I think 16 contested hearings in total. That includes adult boundary violations as well as child sex abuse allegations. If you want a relevant comparison, that is 16 out of over 500, so they are a very small minority. We sincerely wish that we never had to have a contested hearing, but unfortunately there are occasions when there is no alternative.

I can give you one example, and I touched upon it before. In one example there was a middle-aged man who alleged that he had been sexually abused by a priest when he was a primary school student. In some bizarre twist on sex education there was a circumstance that led to some serious sexual abuse that was alleged. The priest attended, or responded, and denied it absolutely. The complainant worked with his own solicitors and with me during the preparation for a hearing detailing when, where, what and so on. The room was booked, arrangements were made and the hearing commenced. As we walked into the hearing room I was walking beside the gentleman. We walked in, and he spotted on the other side of the room the priest, an elderly man by this stage. He grabbed my hand and he said, ‘It’s not him’.

That is such a minor exception. I do not want to overstate the frequency with which people make wrong allegations; overwhelmingly they do not. But just imagine if we accepted that man without a contested hearing. This totally innocent priest would have been found to have been a paedophile; he would have been stripped of his duties forever.

What we have is a situation a little like democracy: the process of a contested hearing is the worst way of determining facts, apart from all the others. It is the only way that we can do it. Given that we have to do it, we then try to do it in a very sensitive way, where there is certainly not this raging cross-examination where a

victim is subjected to ridicule and abuse. Mr O'Callaghan would not tolerate it for a moment. It is conducted properly but fairly.

The CHAIR — I think Mr Wakeling's point was describing the setting, which has been very intimidating for many of these victims. Certainly that is the evidence that we have heard from many of them. I think he was just trying to explain to you or put that to you in relation to that. It is not disputing your role; it is just the manner in which the process was conducted.

Mr WAKELING — I have another question if I may. Mr O'Callaghan, you made it very clear at the start that whilst you are employed by the Catholic Church you are in fact independent.

Mr O'CALLAGHAN — Yes.

Mr WAKELING — Given your independence, considering the fact that you have dealt with 330 claims, of which you have up held 304 claims, a significant number of claims within the Melbourne diocese, you are in a prime position to assess the way in which the church is operated. Given that, I am wondering whether or not you would draw the conclusion, at least with respect to the 304 victims, that in fact the Catholic Church, namely through the diocese, failed in its obligation to protect children.

Mr O'CALLAGHAN — The 304 complaints that I have upheld have been in respect of events which, save for two, have occurred many, many years ago. It is at that point of time that you are saying the Catholic Church must have failed, if that is what happened, so I cannot really answer that question. The situation that I have been proud enough to be part of commenced in 1996.

Mr WAKELING — But if I may, what I am asking is that you have not dealt with 5 claims or 10 claims; you have dealt with 330 claims. You yourself have agreed that in 304 claims these have been victims of sexual abuse — children. We are not talking about an insignificant number.

Mr O'CALLAGHAN — Not at all.

Mr WAKELING — So I am asking: in your independent role, because you are not a spokesperson for the church as you have clearly indicated here, in your opinion, at least in regard to those 304 children, did the Catholic Church — or at least the Melbourne diocese for which you had responsibility to deal with claims — fail to protect the needs of children in general and more specifically the 304 who you have acknowledged were abused at the hands of Catholic paedophiles?

Mr O'CALLAGHAN — Insofar as there may be one or two cases where there was sufficient knowledge for something to have been done about it and it was not, the fact is that the great mass of the abusers have acted stealthily, secretly, et cetera et cetera. Where the Catholic Church has failed, I do not know. If they are undiscoverable and the paedophile is a cunning man, then I can only say that it is something which should not have occurred but has occurred. All I would refer back to is my role in the matter of providing a remedy for the terrible suffering that these people have undergone.

Mr WAKELING — If I may, these are children who were in the protection of the Catholic Church, at the schools, within parishes. They were abused in Catholic institutions, and we are not talking about one, we are talking about 304. Do you believe that the Catholic Church has some responsibility for the failure to protect these children?

Mr O'CALLAGHAN — I cannot point precisely to that, but certainly the scourge of child sexual abuse is not of course limited to the clerical situation. It is unfortunately the case, and numerically that is obviously so, that the vast majority of child sexual abuse appears to come from within the families. The question is asked: who is failing there? Surely somebody is.

Mr WAKELING — Yes, but what we are dealing with here is failures perpetrated by clergy, perpetrated by schools.

Mr O'CALLAGHAN — When you say 'failures', Mr Wakeling, the question you ask is: 'Now that there has been discovered, since 1996, this mass of child sexual abuse which has occurred'. I can only say that there are one or two cases where I suspect the knowledge was available which was not acted upon.

The CHAIR — Thank you, Mr O’Callaghan. Mr Gleeson, you would like to make some brief concluding remarks to the committee, I understand, so please go ahead.

Mr GLEESON — There has been a good deal of discussion about the nature of the process, and I think we have touched upon, if not developed, the consideration of many of the issues. The point I would like the committee to understand is the extent to which Peter and I are appalled at sexual abuse and how offensive it is to have suggested that we would be complicit in a process that was designed to conceal it, and that has been said against us. It is an appalling suggestion; it is offensive. I have got five children; why would I do that? Why would I protect a priest? There have been references to cradle Catholics — well, I am not one.

Peter is a gentleman who has got six children of his own and multiple grandchildren. Does anyone seriously suggest that we are trying to protect the Catholic Church, to cover up, to act other than to the best of our ability? It is often said, but it needs to be analysed, ‘What have we done? What has Peter done that has been less than a thorough, decent and compassionate investigation?’. I would like every person who has been sexually abused to go to the police. That is what I want them to do, and I would like every paedophile to go to jail. But it is not my decision.

I can encourage, and I do encourage, the victims to go to the police. It is real encouragement, and I say to them, ‘This is a criminal offence. You should go to the police’. Typically they are men and women of about my age, and they look at me and they say, ‘We know it’s a criminal offence; of course it is. We know what happened to us’. So this misconception that people do not know they have got a right to go to the police permeates so much of the criticism against us, and the conversation that I have with victims is where they say to me, ‘I know it’s a crime, but I don’t want to go to the police’. And it is not about me, it is not about whether I want them to go to the police; it is about whether they want to go to the police. I can encourage them, but they will say, ‘I don’t want to’. Some of them say, ‘My wife doesn’t know. My kids don’t know.’

Peter told of the example of the fellow who said he had never told anyone. It is a very difficult issue. and we ought not assume that the police process and the criminal courts are a good fit for everybody. So if they say they do not want to go to the police, we do what we can to process the complaint.

Peter will not say these things, but I think I should. He has investigated over 300 cases of child sexual abuse and his name is often mentioned in the context of a criticism of the process — and we absolutely understand why that is the case. But I thought it might assist you to know little bit more about him. I have worked closely with Peter for over 16 years, so I do know little bit about him. Peter O’Callaghan is one of the most decent men I have ever met. He is kind, he is compassionate, he is wise, he is fair and he is just. If there was a better person equipped to take on the role in 1996, I have not met that person.

His job has been unbelievably difficult. He has been asked to investigate sexual abuse that appals and disturbs him, and he has spoken to hundreds of victims who are angry, sad and confused. Some of them are understandably vengeful; some of them are in despair. He has listened to them with the compassion and the understanding of a father of six and a grandfather of many more. He has weathered the storm when they have occasionally and understandably lashed out and criticised anyone who was nearby. He was so often the man who was nearby. He would take the odd angry tirade and the moments of unfair abuse and he would wait. Then he would pick up the phone and he would talk to them again, or he would pick up the dictaphone and he would write yet another calm and measured letter.

The reason I am telling you this is because these are the criticisms that are made of him: that he does not care, that he is aloof, that he is on the side of the church. It is not true. I have read countless transcripts; I really do urge you to read as many as you can, because it is a human process and it is only by reading the transcripts, warts and all, of Peter speaking to these people, concealing nothing, that you will get a sense of the job that he has done. But the overwhelming majority of victims have respected and appreciated his work. They could see that he was fair, and it mattered so much to them that he believed them.

We have had a bit of back and forth during today, which has been a big morning, but it seems to me to be suggested that the majority of people Peter has dealt with have criticisms of his process. Madame Chair, you have referred to the fact that there have been over 140 people. I know you will end up doing the statistics and it will be a hard task, but I think you will probably find that about 30 to 40 of the people who have dealt with Peter O’Callaghan have come to see you. So 30 to 40 out of 330 have come to see you.

Mr O'Brien, you mentioned the fact that some people have not been critical — and I did not mean to be glib with my interjection when I said, 'Ninety per cent or more', but 90 per cent or more who have dealt with Peter have not been critical of him.

Mrs Coote, you responded that anecdotally it is different. I know that this committee will not rely on unsubstantiated anecdotal evidence, that you will rely on what people tell you of their firsthand experience. To do less than that would be to do an injustice to the people who want the system fixed. It is very easy to talk about anecdotal evidence. What about the people who have been through the process? They have to be listened to, and I know that is what you are doing.

As counsel assisting I dealt with the cases that were perhaps the most likely to cause resentment and bitterness at the process of the Melbourne Response. I dealt with the contested cases — the small minority of cases where the accused was still alive, had not been convicted of a criminal offence or otherwise found by the commission to have committed sexual abuse and who had denied the complaint. These are the cases where the victim has to endure a hearing. We wish they did not have to, but if an accused flatly denies that he or she sexually abused the complainant, there is no alternative.

During these difficult cases I would speak to the victim many times. By that stage they had been to see Peter O'Callaghan and told him about their complaint. Many of them told me that they liked him; they just liked him.

Mrs COOTE — Anecdotally?

Mr GLEESON — I can give you the names privately.

Mrs COOTE — That would be good.

Mr GLEESON — Obviously I do not want breach confidentiality. They said that he was kind and he was funny and that he treated them with respect and dignity. The biggest criticism most of them had was that he barracks for Collingwood. There was little I could do but mumble a confession about our common affliction. None of them have, to my knowledge, given evidence to this inquiry — that is, none of the child sex abuse victims who have been through a contested hearing. Perhaps I do not know all the names, but I do not think any of them have given evidence to this inquiry. But that is the way of things. Those who are quietly satisfied tend not to shout about it, especially when it is no more than they deserve. Peter O'Callaghan has done an outstanding job, and I am proud to have worked with him.

Just in closing I have been considering the type of system I would want if I was a sexual abuse victim. As I said, I am about the age of many of the people who have come to see me. I cannot pretend that I will ever truly understand the betrayal, the loss of innocence, the loss of trust, the haunting memories and the tragically misplaced sense of shame that so many victims of child sexual abuse have suffered. But I have worked closely with many victims over the years. I have sat with them, I have listened with them and I have tried to control my emotions as they have tried to control theirs, because these are terrible stories.

For what it is worth I think what I would want is a process where I could go to somebody other than the police — as well as the police, but in parallel with the police, before or after the police. I would want to know that if I did not like feel like going to the police, there was still some other way I could voice my complaint. I would want to know that I could go to the courts, but I did not have to go to the courts. I would want to know that I could go to somebody who was an esteemed and respected person who had fact-finding skills and who could sit there and listen to me. I would want to be — I would demand to be — listened to, carefully and patiently and with compassion.

I would want my conversation recorded and transcribed — every single word of it — so that no-one could ever say that I said something that I did not say. I would want every bit of my allegation put to the accused in writing, and I would want the person investigating to have the power to compel a response.

I would want the option of going to the police. I would not want to know that the moment I spoke to this person it was a done deal because they were going to the police whether I wanted it or not. I would want it to be my choice. I would want the right to confront the person if they denied it. I would want the opportunity to have an independent person, who does not know me or who does not know the accused, sit there and listen to me, and I would so want to be believed.

I would want a written and detailed conclusion as to whether I had been sexually abused, and I would want that to go to the archbishop and I would want the archbishop to apologise to me. That sounds a lot like the Melbourne Response. Could we do it any better? No doubt.

Mr O'BRIEN — Would you want your day in court?

Mr GLEESON — I cannot say, but I would like to know that if I did want it, I would get it.

Mr O'BRIEN — I know someone who did; I will leave it at that.

Mr GLEESON — Yes.

The CHAIR — Please finish, Mr Gleeson.

Mr GLEESON — Thank you. I would like to think that if I wanted my day in court, that would be my right. Again, that is the present system. I do not want to leave you with the impression that I am saying, 'This is the bullet-proof system, and it has been done perfectly every time'. At the end of the day it is a human process and it is only as good as Peter is considerate. It is only as good as I am efficient, kind, caring and sensitive. If there is a criticism to be made, it is at the case-specific level, not the systemic level.

The CHAIR — If you could conclude, thanks, Mr Gleeson.

Mr GLEESON — Of course; I am almost finished. There will be occasions that you will see something on the transcript that Peter or I have said that we wish we could take back; I bet each of you have been in that position in your political lives. But that is an incidental thing, not a systemic thing. We try to get it right; we try to do the right thing by the victims, and I really hope that so many of that 90-plus per cent of people who you have not heard from are quietly satisfied, quietly empowered and quietly validated by the process they have been through with the Melbourne Response. Thank you.

The CHAIR — Thank you, Mr Gleeson. Mr Callaghan, very briefly.

Mr O'CALLAGHAN — I do not propose to say any more than that other than that I adopt much of what Mr Gleeson said. I will skip the bit where he was laudatory of me; however, it was nice to hear it. I think the position we have reached now is that the committee has the detailed submission, which they will be able to read. But there are still outstanding hundreds of pages of submissions that have not been published and which we only saw last Monday. I was going to suggest as to what further responses we become entitled to or are allowed to make that we can discuss that with the legal advisers to the committee.

The CHAIR — I think the secretariat has explained to your business manager, Mr Moore, the right of reply process that is in place, and you are more than welcome to undertake that right of reply.

Mr O'BRIEN — I just need that cheque back, please.

The CHAIR — If we could have that piece of paper.

Mr O'CALLAGHAN — I was about to hand it to you. You thought I would get away with it, did you, Mr O'Brien?

Mr O'BRIEN — I received it from Anthony Foster this morning; it is a cheque that they provided to me and it is my only copy.

The CHAIR — We will get that before we leave the room. On behalf of the committee I thank you both very much for your appearance this morning, for the evidence that you have provided to us and for your willingness to participate. We appreciate it. Thank you very much. Your evidence has been most helpful.

Mr GLEESON — Thank you.

Mr O'CALLAGHAN — Thank you.

Witnesses withdrew.