

**THE PARLIAMENTARY INQUIRY INTO THE  
HANDLING OF CHILD ABUSE BY RELIGIOUS  
AND OTHER NON GOVERNMENT  
ORGANISATIONS**

**SUBMISSION IN REPLY TO THE COMBINED  
SUBMISSION OF IN GOOD FAITH AND  
ASSOCIATES AND MELBOURNE VICTIMS  
COLLECTIVE**

**BY PETER O'CALLAGHAN QC**

**INTRODUCTION:**

1. (a) The combined Submission of In Good Faith and Associates (IGFA) with the Melbourne Victims Collective (MVC) (**the Combined Submission**) was published on the Parliamentary website on 24 July 2013, which was seven days before the deadline for Submissions in Right of Reply. The Combined Submission had been lodged with the Committee in October 2012. It was not reasonably possible to examine and assimilate the contents of the Combined Submission, let alone prepare a Submission in Right of Reply by 31 July 2013.
- (b) Generally, I deny much of what appears in the Combined Submission and Appendices, which contain a mass of unparticularised, vague and damaging allegations which preclude the making of a meaningful reply. In that context my letter to Lewis Holdway, the solicitors for MVC, of 30 June 2008, inter alia complained of this lack of particularisation which, despite repeated requests for particulars, have still not been provided to me. That letter is Appendix 10 of the itemised appendices to the Combined Submission and the following extracts epitomise the problem of replying to unparticularised allegations:
  - (i) *"I am alarmed at the allegations and certainly if they could be validated appropriate remedial steps should be taken. The problem is that there is little particularity to the assertions made in the Charter, and until this occurs, it is difficult if not impossible to properly respond... (page 1)*
  - (ii) *I assume that the victims there referred to are some of the several hundred who have complained to me in my capacity as Independent Commissioner. It is impossible to deal with this assertion unless there are particulars of who, when and in what circumstances victims have experienced disregard, disservice and disadvantage. Tell me who they are so that I can properly*

*respond. I repeat I welcome constructive criticism, but not such which impugns reputation and competence..." (page 2)*

- (c) As appears hereunder, despite repeated requests, no particulars have been provided, and the same lack of particularity pervades the Combined Submission.

2. On 12 October 2008, MVC wrote to me stating inter alia:

- (i) *"As you have a significant role as the Commissioner into Sexual Abuse and have been consulted by the Melbourne Archdiocese for over 12 years the Melbourne Victims Collective wishes to confer with you. We see your experience as valuable and integral to the Collective's understanding of the Melbourne Response and again we are committed to addressing the questions you have raised".*

I replied to that letter on 24 October 2008, stating inter alia:

- (ii) *"It seems to me that the only satisfactory process of responding to my letter requesting particulars is to do so in writing. If particulars are able to be provided they should be.*

*When some particulars are provided and I can respond thereto if appropriate consideration can then be given to the holding of a conference. Put another way it would not be appropriate to hold a conference before such particulars are provided.*

*I request that the particulars be provided within fourteen days".*

As stated above, particulars never were provided and it would appear they never will be. This no doubt is because these broad unparticularised allegations are without substance.

3. In this Reply I propose to set out extracts from the Combined Submission in italics and then make my response. Because I do so only in respect of some of the allegations, it should not be taken in any way as an acceptance of the others. The whole history of the evidence and

Submissions made by Helen Last and others is the assertion of vague, unparticularised and false allegations. The Combined Submission asserts that victims passing through the *Melbourne Response* and, in particular, being interviewed by the Independent Commissioner, are (summarily stated) highly prejudiced. The four victims whom it appears have complained to the Committee have provided no proof to support their complaints, or have been shown to be mistaken. For example, see my response to the evidence of Shirley at paragraph 26A-26C of my Reply to the Submission of Glenn Davies, and my Reply to the Submission and Evidence of Mr Ian Lawther in respect of the manner of my dealing with the complaint of his son. Whilst I have absolute sympathy for the victims of sexual abuse, I must correct false allegations, which are being put forward to denigrate and distort my role as Independent Commissioner.

4. In Appendix 12 of the Combined Submission there is set out the Submission made by the MVC to the Victorian Government's Protecting Victoria's Vulnerable Children Inquiry. However, no reference is made to my response to that Submission in which I refute and correct the allegations contained in the MVC Submission. My Submission is **Attachment 1** hereto.

#### **MELBOURNE VICTIMS COLLECTIVE LETTER TO ATTORNEY GENERAL FOR VICTORIA**

5. This 11 page letter contains much which is false and misleading. For reasons stated above, I reply to only some of the allegations.

*"Throughout its fifteen years of activity Collective Members and supporters have become increasingly concerned that the Melbourne Response is suppressing reports to Police of serious crimes, discouraging victims from reporting to Victoria Police and taking unfair advantage of victims vulnerabilities.<sup>9</sup> Victims, professionals, members of the Church and wider community see these dynamics as an obstruction of justice and/or breaches of ethical*

*professional practice that require urgent action. The Collective is ready to submit relevant documented evidence underpinned by transcripts and testimonies to illustrate this”.*<sup>10</sup>

**COMMENT:**

There is no evidence to support these false and damaging allegations. The last sentence suggests that documented evidence underpinned by transcripts and testimonies is available. When one goes to endnotes 9 and 10, one is directed to the MVC’s “Towards Justice - The Charter”. This, for reasons stated above, provides no particularisation at all. Recurring throughout the Combined Submission is a reference to “*victims’ experiences*” as the apparent source of allegations. But this provides no evidence, nor does it identify who the victims are (even by way of pseudonym) or details of their experiences. The Committee should give no credibility to such specious allegations.

6. *“Yet there are known instances where credibly accused Clergy remain in contact with communities and families having access to children and vulnerable adults.”*<sup>16</sup> (Page 2)

**COMMENT:**

In endnote 16 it is said: *“For example, In Good Faith and Associates has been informed that Fr Barry Gwillim convicted of sex offences is with a Youth Group”.*

This is not so. Gwillim’s faculties were removed and he cannot and does not perform any priestly functions.

7. *Fr Victor Rubeo convicted child sex offender has continued to minister to aged persons.*

**COMMENT:**

This is not so. Following Rubeo’s faculties being removed in 1996, he no longer performed any priestly functions. He died in November 2012.

8. *“Monsignor Murray convicted of sex offending has been accommodated in the grounds of a secondary girls school and continues to say Mass in various locations.”*

**COMMENT:**

Monsignor Murray, following his conviction in 2000 for indecent assault of an adult woman 27 years previously, was restored to the Ministry in 2000 by Archbishop Pell (as he then was). Monsignor Murray is now aged 89, is retired, and resides in a unit which is not in the grounds of a secondary girls school.

9. *“A pedophile clergyman has been sent to conduct an Easter Mass in a Church that has seen two priests convicted over sexual abuse – one as recently as last year....”*

**COMMENT:**

- (a) This is apparently a reference to Fr Barry Robinson, also referred to in the evidence of Ms Claire Leaney (TS6). I responded to this in paragraph 8 of my Submissions in Reply to the Transcript of Helen Last, Claire Leaney and Pam Krstic and for convenience set that out:

*“This is quite wrong. I have already referred in detail to the history of Fr Robinson in my Reply to the Submissions and Evidence of Mr Ian Lawther a Member of MVC and a resident of Healesville” (See paras 33-48 of my Reply). There was no attempt to ‘place him as a Parish Priest at Healesville’.*

*In the light of these quite erroneous accusations the veracity of other allegations made which cannot be tested, is to say the least rendered suspect”.*

- (b) To rely upon the above demonstrably false examples as proof that credibly accused clergy remain in *“contact with communities .....*” reveals the mendacity and irresponsibility of the Combined Submission. That such assertions should be

addressed to the Attorney General is to be deplored. It is repeated that the Combined Submission abounds with untenable assertions of fact, not subject to cross examination, and protected by Parliamentary privilege.

10. *“Offending Clergy are allowed to continue in Ministry with vulnerable adults and be accommodated in unmonitored environments allowing them further access to vulnerable children and their families”. (page 2)*

**COMMENT:**

The source of this false and unproven statement is said to be *“victims’ experiences”* as appears in endnote 17. There is no identification (even by pseudonym) of such victims, no doubt because they do not exist.

11. *In 2011 the Melbourne Response said it had compensated 300 victims and that more were still coming forward. Victims testify that many more complainants have been paid large settlements through the direct negotiations with Archdiocese agents outside of the Melbourne Response.*

**COMMENT:**

I have already stated in my Reply to the Transcript of Helen Last *“that this is fantastically absurd and epitomises the falsity and irresponsibility which permeates the evidence of Ms Last...”*

12. *“Following a victim’s complaint of clergy abuse, the Commissioner contacts the alleged offender. If the offender denies committing the abuse, the Commissioner has the power to call the alleged offender in front of him to contest his innocence in a hearing. Advocates and support persons for victims are often blocked from attending these hearings and victims often find themselves alone with their offender and his Counsel and the Commissioner and*

*his Counsel arguing about their traumatic experience of sexual abuse. Victims have experienced the retraumatization of up to four days of such hearings. Victims say they have not been vindicated nor given justice through these hearings and feel that the process is a further example of the Church protecting its own interests" (Page 7)*

**COMMENT:**

This scandalously false and damaging allegation typifies the great bulk of what appears in the Combined Submission. The purported source of these allegations according to endnotes 81 and 82 are 'victims' experiences'.

The Committee has been provided with my Submission by Way of Reply (yet to be published) to matters raised by Committee Members and their questioning of Sister Angela Ryan and the Independent Commissioners. There appears in that Reply:

*"I set out below summaries of how complaints were dealt with in confidential hearings conducted by the Independent Commissioner and ad hoc Commissioners. Those cases record the only occasions in which the complainant and the alleged offender participated in a hearing in the same room".*

*Mr Wakeling in his questioning of Sister Angela Ryan asserts that there is a process where the perpetrator and the victim were brought together without prior psychological and/or psychiatric assessment and/or assistance. This is not the case. To preserve confidentiality there are redactions of relevant documents and the use of pseudonyms. The Committee will be advised in confidence, if they wish, of the real name of the complainant and the alleged offender so that files can be referred to if that is desired, a process which regrettably has not been engaged in by the Committee. (This confidential information has now been made available to the Committee).*



13. *“Further, the Commissioner requires victims to do a recorded interview providing the name and location of their offender before seeking clarification of their interest in pursuing criminal justice; he also makes inaccurate assessments of obvious criminal conduct in relation to victim’s complaints.*

*The victim’s interview is usually sparse and incomplete with little clarification sought and offences are minimised through avoiding explicit words like ‘rape’. Victims have found that subsequent Police Statements have been contaminated by the existence of the Commissioner’s interview. The victims are outraged to find that the Melbourne Response provides interview transcripts and other lawyers defending clergy offenders which are then used to aggressively cross examine victims in the Courts.” (Page 6-7)*

**COMMENT:**

The Combined Submission was made before October 2012, and the above paragraph apparently provided a template for the false and misconceived Police Submission and the Evidence of Deputy Commissioner Ashton. It is also reflected in the similarly false and misconceived Submission of former Detective Inspector Glenn Davies. I respond segmentally to each of the assertions contained in the above paragraph.

- (i) *“Further the Commissioner requires victims to do a recorded interview providing the name and location of their offender before seeking clarification of their interest in pursuing criminal justice”.*

**COMMENT:**

Obviously if a person comes to me with a complaint of sexual abuse, if they have not already identified the alleged offender, then I will ask who the alleged offender was and if that offender is alive, will advise the victim of their right to report the complaint to the Police and encourage the exercise of that right. I have already made this clear in various Submissions,

and I also emphasise that only a limited number of complaints related to priests who were alive and in some instances in active practice. The Committee is aware from those Submissions that those priests are placed on administrative leave pending the determination of whether or not the complaint is established. If it is established that the complaint constitutes clerical child sexual abuse, the offending priest never again has faculties to act as a priest. I have described the procedures which I follow in carrying out my role as the Independent Commissioner on a number of occasions. In particular, I described those procedures in a letter which I wrote to Detective Inspector Davies (as he then was) on 3 December 2009. That letter appears at paragraph 11 of my Reply to the Police Submission and Ashton.

(ii) *“He also makes inaccurate assessments of obvious criminal conduct in relation to victim’s complaints”.*

**COMMENT:**

I infer that this is a reference to the complaint referred to by Ashton at paragraph 28 of my Reply to the Police Submission. I refer to paragraphs 28(a), (b) and (c) at page 16 of my Reply to the Police Submission.

(iii) *“The victim’s interview is usually sparse and incomplete with little clarification sought and offences are minimised through avoiding explicit words like ‘rape’.*

**COMMENT:**

This is nonsense. That this is so can be demonstrated by reference to my files and by way of example to Attachment 5 to my Reply to the Police Submission in which there is set out six redacted transcripts of victims’ interviews provided to Detective Inspector Glenn Davies as he then was.

- (iv) *“Victims have found that subsequent Police Statements had been contaminated by the existence of the Commissioner’s interview”.*

**COMMENT:**

There have been three cases in which the complainant has taken their complaint to the Police after I had taken a statement from the victim. In none of these cases was there any suggestion that subsequent Police Statements have been contaminated by the existence of the Independent Commissioner’s interview (whatever that means). The three cases are referred to in paragraph 37-42 of my Reply to the Police Submission. For convenience, I set out paragraph 39 in which I stated:

- (v) *“I remained in contact with Detective KN and other Police and gave such assistance and cooperation as I was asked. At no time did I receive any complaint from the Police in respect of my dealing with the complaint. I submit that my handling of the above complaint was fair, reasonable and appropriate and to claim successively, as the Age under the byline of Nick McKenzie have done (see paragraph 42) and latterly the Police Submission, that I acted improperly is as wrong as it is offensive”.*

The second case is referred to in paragraphs 54-63. The third case is referred to at paragraph 46 of my Reply to the Police Submission.

14. *“Victims are outraged to find that the Melbourne Response provides interview transcripts and other files to lawyers defending clergy offenders, which are then used to aggressively cross examine victims in the Courts.*

**COMMENT:**

I infer that this refers to the complaints of “George aka Luke”. That complaint is referred to at paragraph 54 of my Reply to the Police Submission. George, who is a signatory to the

MVC's "Towards Justice Charter", has made unjustified complaints of my role as Independent Commissioner to Kate Tozer of the ABC which, as appears from paragraph 54 and following, were completely without substance and were the subject of a sort of apology from Helen Last. His malevolence and bias against the *Melbourne Response* generally and the Independent Commissioner in particular is detailed in paragraphs 54 to 63. In that context, I set out paragraph 63 of my Reply to the Police Submission:

*"63. I have detailed the situation in respect of George to demonstrate the concerted campaign which the Collective, Helen Last and Lewis Holdway have engaged in to discredit the Melbourne Response generally and the Independent Commissioner in particular. I do this in the context of exercising my right of reply to the Police Submission and Ashton because of their apparent acceptance, without any, or any adequate, investigation of the claims of misconduct made against me. It is remarkable that the Police Submission was written and produced to the Committee (albeit unsigned), and Ashton gave his evidence with the apparent support of the Police Senior Legal Adviser, without apparently any effort being made to check the veracity of these claims. Such claims were not put to the Archdiocese, or to me as the Independent Commissioner. Had this been done, the response would have been that which is contained in this reply. Not anywhere in the unbalanced and biased Police Submission and Ashton is there any recognition of the fact that approximately 304 victims of clerical child sexual abuse have, through the Melbourne Response, been compensated and given access to free counselling and psychological support. These victims represent almost all of the persons who have brought complaints to the Independent Commissioner of clerical sexual abuse..."*

- 14.A (i) In the Combined Submission there appears in the endnotes multiple references to articles appearing in The Age under the byline of Nick McKenzie. It is relevant to

note that in August 2009 The Age, in a number of front page articles and an Editorial, criticised the *Melbourne Response* and the Independent Commissioner. Notwithstanding my requests to have published my response correcting and refuting these criticisms, The Age refused to do this.

- (ii) These articles reflected the willingness and cooperation of The Age to criticise the *Melbourne Response* and the Independent Commissioner which undoubtedly reflected the views of the MVC. In that context, I set out extracts from the Minutes of a meeting of the MVC on 28 May 2010. These Minutes were obtained by conducting a Google search of Fr Kevin Dillon.

The following is an extract from those Minutes:

*“Members were advised that the recent notice of the MVC meeting was sent to Commissioner Peter O’Callaghan together with defamatory material attached to it. Such actions have been unhelpful. This information was also sent on to the National Bishops Commission and to Archbishop Hart.*

*Lewis Holdway has spent significant time the last couple of days answering a letter from Mr O’Callaghan’s lawyer. We advised them that we had nothing to do with the defamatory material or with calling Mr O’Callaghan ‘corrupt’ and informed them that we would advise the MVC of this fact.*

*In these circumstances we encourage people to keep their discussions confidential given that the work of the Collective is much more effective if the information is kept to ourselves...”*

*“Media – David congratulated MVC Members who have helped with Media articles and have made themselves available to the Media when asked. David noted that Nick McKenzie has been a champion for the victims and the media strategies developed from being a focus on individual cases through to a focus on the Church’s actions in terms of cover up and protection of their own. This started in Boston, moved to Ireland and then to Australia. In Australia, what has been achieved through the Media is very very significant and highlights two particular points.*

1. *The MVC as a Collective is the only group of victims worldwide to highlight injustices; and*
2. *The MVC have uncovered some serious issues and brought them to the Media, for example, the relationship between Mr O’Callaghan and the Police.*

*While this has been a local Melbourne issue it is now a known international issue.*

*The work of Nick McKenzie, Raphael Epstein and Barney Schwartz who are the three independent journalists and who have had the hard task of reporting the truth has been very significant...."*

*"...David believes that the MVC is right at the cutting edge and is a major threat to the Catholic Church in Australia.*

*Catherine suggested that we write to the journalists and thank them on behalf of the Collective and Jim also felt the Editor of the Age should be included. Both Paul and David suggested that any such letters (including letters to the Editor) should be written as individuals but not a letter from the Collective as a group."*

*"...The push behind these actions is to seek for the Government to set up a Commission of investigation into the Melbourne Response. In relation to the Police, the MVC has been vindicated in the Media as Police have now fully investigated Mr O'Callaghan's procedures, the use of the name 'Commissioner', the potential contamination of evidence, the tipping off of Police, there has been reference to establishment of a Police Liaison Officer when a priest or Religious is reported for criminal offences. In addition, Paul and Ruth met with the Head of SOCA (Sexual Offences Child Abuse Units), Glenn Davies some time ago who has taken our concerns very seriously".*

*".....Paul suggested that individuals could check in with the three journalists to enquire of the progress in relation to the protocols of Mr O'Callaghan. This would have the effect of keeping the pressure on Mr O'Callaghan at present".*

#### **CONCLUSION:**

I request that my Reply be published on the Committee's website, so as to provide a balance to the Combined Submission. If this is not done, adverse inferences arising from my apparent failure to respond will be drawn.



Peter J O'Callaghan QC

3<sup>rd</sup> September 2013



**PROTECTING VICTORIA'S VULNERABLE CHILDREN INQUIRY**  
**SUBMISSION BY PETER O'CALLAGHAN QC (INDEPENDENT**  
**COMMISSIONER)**

1. I am the Independent Commissioner appointed by the Archdiocese of Melbourne to enquire into allegations of sexual abuse by priests, religious and lay persons within the Archdiocese of Melbourne.  
  
Attachment 1 are the Terms and Conditions of my Appointment ("The Terms"). The Terms were compiled in October 1996 in consultation with an Assistant Commissioner of Victoria Police, and were referred to the then Solicitor General for Victoria Mr Douglas Graham QC. As appears therein the Terms were supplemented in January 2011.
2. My role and that of the Melbourne Response is essentially concerned with the investigation of complaints by victims of sexual abuse by priests, religious and lay persons within the Archdiocese. Given the establishment of the complaint, the complainant can receive free counselling and psychological support and can apply for ex gratia compensation. Attachment 2 is a brochure which describes "The Melbourne Response" its procedures and personnel.
3. It had not been my intention to make any submission to this important Inquiry. It has become necessary to do so because of the submissions made by Melbourne Victims Collective through Ms Pam Krstic, Ms Helen Last and Ms Valerie Gaimon on 28 June 2011. Whilst it may be that these submissions do not easily fall within the Inquiry's terms of reference, I have no option but to refute and correct them, because

they make many false and damaging criticisms of the Melbourne Response, generally and the Independent Commissioner particularly.

#### 4. The Melbourne Victims Collective

The Melbourne Victims Collective was apparently established on 16 June 2008, when nineteen persons signed the Charter "Towards Justice". The signatory page (Attachment 3) states:

*"Most importantly, if the Melbourne Catholic Archdiocese continues to respond as it has done to date, we fear that innocent children and vulnerable adults will continued to be assailed within the Archdiocese, both by clerical abusers and, crucially, by the very system put in place to respond to these sinful crimes".*

The Charter contained a mass of serious but unparticularised assertions.

#### 5. On 30 June 2008 I wrote to the Solicitors for Melbourne Victims

Collective. That letter stated in part:

*"I refer to my recent correspondence requesting the identity of the signatories to the Charter.*

*That request has apparently been ignored, and whilst I have recognised some of the signatures, I consider it is important that I know who it is making complaints. I accordingly maintain that request but in the meantime I respond to the Charter. I do so in my capacity as Independent Commissioner, because much of the Charter expressly or impliedly criticises the role and the performance of the Independent Commissioner. Whilst I have not the slightest objection to constructive criticism, and will endeavour to accommodate to it, this cannot be said*



*of a great deal of the Charter. It's criticisms generally are unfounded and/or inaccurate and/or misconceived.*

*I am alarmed at the allegations and certainly if they could be validated appropriate remedial steps should be taken. The problem is that there is little particularity to the assertions made in the Charter and until this occurs it is difficult if not impossible to properly respond....".*

The letter then sets out extracts from the Charter, and my comments thereon. I continued to make requests for particulars, and despite some promises, none have been provided.

#### **6. The Submissions of Ms Krstic and Ms Last**

I set out hereunder extracts from the submission of Ms Krstic (identified by transcript page and line) and comment thereon.

*"As a professional teacher in the Catholic School system I witnessed the first priest's grooming patterns in my classroom and did not know to recognise them as such". (p 96/33)*

(a) Whatever be the precise meaning of that statement, the fact is of the five children who were sexually abused by the first priest (DD), only one attended St Brigid's School at Healesville. Much of what is expressed and implied in the MVC submissions, gives the impression that there was apathy and inaction in relation to the deplorable abuse which DD perpetrated on five children three of whom were his nephews and one his niece. The other child whom I will call B was of a family to whom DD was very close. The other person when abused was a male aged about twenty-four (C). DD had resigned from Healesville in January 1995 and is now laicised.

- (b) On 21<sup>st</sup> October 1997 I interviewed a complainant whom I will call A. I informed him that he had an unfettered right to report his complaint to the police and encouraged him to do so. He agreed to do so and I accordingly contacted the Sexual Child Exploitation Squad, and arranged for A to attend and to be interviewed. I told A that I would be taking no further steps in respect of his complaint until the police investigation and any proceedings resulting therefrom had been completed. (This is my invariable practice. It would be wrong for me to commence or continue an enquiry, concurrently with that being conducted by the police.) I later became aware that the police interviewed the three cousins of A, and as with A charges were laid against DD. Initially DD pleaded guilty to these offences but later changed his plea to not guilty.
- (c) Following this I was contacted on 1 June 1999 by B and initially he was unsure as to whether he would report the matter to the police. After further discussion and correspondence, on 30 July 1999 B told me he was happy to cooperate with the police and be interviewed. I accordingly arranged for him to be interviewed by Detective RB who was the informant in the charges against the DD's four relatives. RB then laid charges against the priest in respect of his sexual abuse of B.
- (d) On 2 June 1997, being aware that C had made a complaint against DD in 1994, I wrote to C asking him whether he wished to take any further action in respect of his complaint. I wrote again on 3 August 1999, advising C that charges had been laid against DD. C then

instructed me to inform RB of his complaint which I did and DD was charged in respect of his abuse of C.

(e) The priest maintained his plea of not guilty, in respect of the three nephews and the niece, was tried and convicted. He then pleaded guilty to the charges in respect of B and C. On 14 July 2000 DD was sentenced by His Honour Judge Kimm to a total effective sentence of six years imprisonment with a non parole period of four years and six months. Following this conviction, I interviewed all the complainants and five of them applied for and were offered compensation recommended by the Compensation Panel which offers were accepted. A took legal proceedings, which I understand were subsequently settled.

7. *"I did recognise these patterns in the second priest's behaviours and found it impossible to convince others to respond to my concerns. I was accused of overreacting and sent away on holidays to collect myself. In both cases it wasn't until a victim came forward that anything was officially done". (p96/35)*

(a) Whilst as appears hereunder Ms Krstic was concerned at the behaviour of the second priest (PP), the victim of PP was not a student at St Brigid's School Healesville.

(b) I further understand that Ms Krstic did not teach at St Brigid's after 5 May 2006. On 4 December 2006 Ms Krstic had written to the Director of Catholic Education in respect of PP stating inter alia *'In my experience the abovementioned behaviours have been linked with individuals proven to be unsafe with children and as such, they*

*trigger anxiety in me; I therefore felt compelled to voice my suspicions regarding Father's behaviour, to ensure the safety of the students. I now reiterate my request that these verbalised suspicions and concerns be documented in writing by your office and kept on your records for future reference.*

*I am well aware that in this case these behaviours may not demonstrate that Father is unsafe...'*

8. The Director responded inter alia *'Please be assured that your concerns have been formally noted and referred onto the Archdiocese for further consideration'*.
9. On 24 October 2006, I had been contacted by a mother who was concerned at the conduct of PP towards her son. Coincidentally, PP had gone on sick leave on 25 October 2006 and from that time on ceased to act as a priest in Healesville or elsewhere. Summarily stated, the complaints were investigated by the Independent Commissioner, but before a hearing had taken place to determine the validity of the complaints, the complaints of the mother and the son were referred to the police. As is my invariable practice when a complaint is or is about to be investigated, I advised that I would be taking no further action until the police investigation and proceedings resulting therefrom were completed. A lengthy police investigation followed resulting in PP being convicted on 29 July 2009. PP is now laicised.
10. I found that the mother and the son were victims of sexual abuse by PP, and advised them they were entitled to apply for compensation.

Notwithstanding my writing on several occasions to their solicitors inviting them to pursue their application for compensation they have not done so. Carelink has provided financial assistance to the mother.

11. It is significant, particularly in the light of my unsuccessful requests for particulars as set out in my letter of 30 June 2008, that the only reference to a factual situation in the MVC submissions was in respect of Healesville. It is submitted that the above demonstrates that these complaints were handled fairly and properly. What occurred in respect of the Healesville complaints refutes the assertions of MVC (104/1) namely:

- (i) Complainants who have decided to report the matters to the police are not assisted in the making of those complaints
- (ii) That complainants having decided to go to the police cannot go through the Melbourne process

12. It can be added that four of the above six complainants were represented by Solicitors.

13. I do not seek to deal with all the assertions contained in the MVC submissions. Suffice to say that these submissions portray a system which is deficient and in disorder. Nowhere save in the reference to the Healesville priests, are any facts identified, which justify the claim of overall systemic failure. For example Ms Krstic states:

*"There seemed to be no difference in the systemic response to allegations and convictions between the first priest in 2000 in my school and the second in 2006. It seems to me that it will take*



*intervention from outside the church for any change to be implanted”.*

*(100/37)*

14. There was no substantial difference in the systemic response. In DD's case, his deplorable activities commenced but were undetected long before he went to Healesville in 1990. So far as the Commission was concerned, immediately a complaint was made by A a nephew of DD who had abused A when he was about six years old, the complaint was referred to the police. This resulted in charges being laid in respect of A, his three cousins, B and C (as referred to in paragraph 6(a) to (e) above). DD was convicted and imprisoned. Five of the victims received psychological and counselling support, and an apology from the Archbishop for the wrongs they had suffered and compensation. It is not suggested that this removes the infamy of the actions of DD (who has been laicised), but it does reflect a fair and reasonable response in the circumstances.
15. PP's case in 2006 was dealt with in much the same way as was that of DD. The complaint having been made to the Commissioner, was initially the subject of investigation and potential hearings, which ceased when complaints were taken to the police. I took no further steps until after the completion of the investigation and resulting proceedings. Both the mother and the son remain entitled to pursue applications for compensation based upon the findings of the Commission that they had been the victims of sexual abuse. If application is made they will receive compensation.

16. To sum up in relation to Ms Krstic's submission, her assertion is that there is a deficiency in the Melbourne Response, which she seeks to characterise as a systemic deficiency in the overall operation. But she has failed to identify instances of default in the operation of the Melbourne Response. Her fundamental premise seems to be based upon the contention that the deplorable conduct of DD and PP was not dealt with adequately or at all by the Melbourne Response. The facts as recited above belie that.

### **Submissions by Ms Last**

17. She states:

*"...The victims have been going to the church processes now for fifteen years in regard to the Catholic church and there is an amazing amount of material now held by just the Catholic church, for example, but in other churches in files that are not made available to the police, the materials are not reported to the police. There is no mandating for that. The people put in charge of listening to the disclosures and creating the files are not pressured in any way by the Government to have to report what they are hearing and so they are not doing that. As you know an institution like a church is free to do what it wants to do.*

*Mr Cummins: It's not free to be complicit in the breaking of the criminal law*

*Ms Last: We see that there is a complicity here, a systemic complicity and we are definitely trying to argue that very strongly because when you have that amount of material being held by a private organisation or by an institution that is of great concern to the wider society and to*

*those who are involved in the wider society in terms of its legal running and its law and order and its health and welfare". (103/5)*

18. The generality of these assertions makes it difficult to respond. As the Independent Commissioner I have honoured the complainants wishes that I deal with their complaints confidentially. I presume it is this which results in my holding what Ms Last says is an amazing amount of material. If it is suggested that this is the breaking of the criminal law, this is untenable.

The vice of these generalised assertions is that unless there is refutation, adverse inferences will be drawn. Because, as part of this alleged characterisation of a systemic failure, my conduct has been questioned, it is necessary to set the record straight, which I seek to do by detailing the way in which I carry out my role as the Independent Commissioner.

I have dealt with three hundred plus complaints of sexual abuse as described hereunder.

19. I interview the complainant, and inform the complainant that if the conduct of which complaint is made may constitute criminal conduct the complainant has a continuing and unfettered right to report the complaint to the police and I encourage the exercise of that right. If the complainant does not wish to report the complaint to the police I invite the complainant to acknowledge in writing of being advised of that right, and being encouraged to exercise it (See Clause 4 of Terms. (Attachment 1) It is only in a small number of complaints that there is the opportunity to report the complaint to the police. This is because



the majority of the complaints are against priests who have died, or have been convicted of the subject complaint. This reflects that the great majority of complaints are in respect of sexual abuse committed decades ago. Most of the complainants I have seen are adults who complain of sexual abuse, when they were children. Of the priests who were in active ministry at the time I received complaints of sexual abuse against them, all ceased to act as priests, because their right to practise as priests (their faculties), was withdrawn. In most cases, it was upon my recommendation that the Archbishop placed the priest on administrative leave or required his resignation or retirement.

20. In most of these cases the complainant desires not to report the complaint to the police, but to have me deal with the complaint in accordance with the procedures laid down in the Terms. All that a complainant informs me remains confidential save to the extent that it becomes necessary to confront the alleged offender with the complaint, and to relevantly inform Carelink, the Compensation Panel and the Archbishop to make recommendations to the Archbishop as to the position of the offender. (I cannot emphasise too much the wishes of the great majority for their complaints to remain confidential. These are persons who typically have told no one, (save in many cases their spouse), or at best a very limited number of persons, of the grievous abuse they have suffered. (I refer hereunder to there being no obligation of confidentiality imposed on the complainant)

21. Typically the complainant has over a number of years, before seeing me, given the closest consideration to reporting the offence to the

police. Their reasons for not having reported to the police, are many and varied, but one theme is prevalent, namely the desire for the preservation of their privacy. Thus despite my informing them of their continuing and unfettered right to report to the police (of which right they have usually been long aware) and encouraging them to do so, only in a limited number of cases do they change their mind.

22. If I am satisfied that a complainant is a victim of sexual abuse, I can refer the complainant to Carelink which is an agency set up to provide free counselling and psychological support for victims. In some instances, because of the condition of the applicant, I refer them to Carelink before determining the facts of the complaint. I can also refer the complainant to the Compensation Panel which has jurisdiction to make binding recommendations of compensation up to a limit of \$75,000. (See the description of the Panel in Attachment 2)

23. I play no part directly or indirectly in the calculation of compensation.

The Compensation Panel will determine what it considers is the appropriate amount to recommend to be offered, and that determination will be conveyed to the solicitors for the Archdiocese who in turn passes that on to the Archbishop. The Archbishop will on behalf of the Catholic Church make an offer of ex gratia compensation, advising that whether or not the complainant accepts the offer the Archbishop apologises to the complainant, and those around the complainant for the wrongs the complainant has suffered. Accompanying that letter will be a formal offer from the solicitors for the Archdiocese.

24. In that letter the complainant is advised *"If you wish to accept the offer, you will need to sign the enclosed document which releases the Archbishop from all further claims arising out of the Independent Commissioner's findings. We note however that you will remain able to receive treatment and counselling through Carelink... The release that you've signed contains no confidentiality provisions. Whilst your right to confidentiality will be respected if that is your wish you are under no confidentiality restrictions if you accept the offer. You are free to discuss the abuse and the payment you have received if you want to"*.

25. I now refer to a question from Professor Scott namely:

*"Yes thank you, I was just going to ask one question and that is are you aware of any situations where individuals have received some form of financial compensation, and one of the conditions is that they not inform the police of an alleged criminal offence (103/31)*

*Ms Last: yes perhaps Valerie would like to answer that one.*

*Ms Gaimon: The Melbourne system the church runs is separate to the rest of Australia's system and we work primarily in the Melbourne system.* [REDACTED]

[REDACTED] *the church can offer a process and that will result in compensation and a bit of counselling payments and if they choose to go to the police they cannot go through the church process – they have every right to go to the police – but these are separate decisions and that's made clear on the website of the Melbourne Response that they don't allow that to happen simultaneously. (Emphasis supplied)*

*Professor Scott: Thank you.*

26. Ms Gaimon's answer seems to convey that if a person goes to the police "they cannot go through the Church process". This of course is not so and I refer to paragraphs 6-8 above. Ms Gaimon's comment that victims get "*a bit of counselling payments*" is as unfair as it is inaccurate. Carelink provides whatever reasonable treatment is required. Victims are referred to appropriate professionals, mostly psychiatrists and psychologists, whose fees are met by Carelink. Likewise Carelink will assume responsibility, for the ongoing fees of a therapist already treating the victim. The payments made by Carelink far from being "a bit" can be substantial, and ongoing. Services provided by Carelink include: psychological/counselling; psychiatrists; addiction services; dieticians; pharmaceutical services; remedial therapy; hospitalizations; private medical benefits; general practitioners; food vouchers.

27. At the outset of an interview with a complainant, I inform them of the right to report the matter to the police and my encouragement for them to do so. If they decide to do so, then I take no further step until the completion of the police investigation and proceedings resulting therefrom. At that time I have made no decision as to the validity or otherwise of the complaint, and which I would not do until I investigate the complaint, including putting the complaint to the alleged offender, and inviting a response thereto. Put simply if the police are in I am not. It would probably be unlawful as interfering with the administration of justice and would certainly be inappropriate for me to conduct an

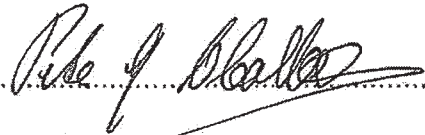
investigation contemporaneously with the police doing so. (See *Watts v Hawke & anor* (1976) VR 707 and cases there referred to).

28. It can be added that in some cases, even though the police decide not to prosecute or a jury acquits this is not the end of the matter. In those circumstances, and indeed in a case where the complaint is not reported to the police, but the alleged offender denies the complaint, I conduct a confidential hearing in much the same way as a Magistrate hears a criminal information. The applicable onus of proof is on the balance of probabilities applying the principle of *Briginshaw* etc).

29. Ms Krstic said *"There was reluctance among police, professionals and politicians to engage in any public criticism of the Church's handling of clergy abuse"*.

Given that to be the fact, a reason for this alleged silence could well be that the police professionals and politicians do not consider criticism is warranted. Over the years I have had a deal of contact with the police and have co-operated with them and assisted them in any way I can. Likewise I have received from time to time queries from politicians as to procedures of the Melbourne Response, and of matters dealt with by the Commissioner. I believe I have adequately responded to those queries.

30. If the Inquiry has any queries arising out of the above, or generally, I would be happy to answer same.

A handwritten signature in black ink, appearing to read "Peter J O'Callaghan", written over a horizontal dotted line.

Peter J O'Callaghan QC

Independent Commissioner



**APPOINTMENT OF INDEPENDENT COMMISSIONER  
TO ENQUIRE INTO SEXUAL AND OTHER ABUSE**

**Background**

Archbishop George Pell in 1996 then the Catholic Archbishop of Melbourne being concerned that a number of priests and religious have abused children, adolescents and adults in their pastoral care, in order to facilitate the discovery of such abuse, and the taking of consequential action instructed his solicitors to retain Peter John O'Callaghan Q.C. (the "Commissioner") to act as an Independent Commissioner to enquire into and advise the Archbishop with respect to allegations of sexual misconduct by any priest of the Archdiocese and religious, and lay persons working within the Archdiocese on the following terms and conditions (the terms), and which appointment was renewed and confirmed by Archbishop Hart (the Archbishop) upon him becoming the Catholic Archbishop of Melbourne.

The terms were formulated in consultation with the Victoria Police and it was then acknowledged and agreed, as it is now by the Archbishop and the Commissioner, that there can be no substitute for a Police investigation into complaints of sexual and other abuse, which may constitute criminal conduct. It is also acknowledged that some complainants do not wish to take their complaints to the Police. In that context and in order to continue and to facilitate co-operation and assistance between the Archdiocese, the Commissioner and Victoria Police, the Archbishop has supplemented the Terms and Conditions as set out in Clauses 4 to 6 hereunder.

**1. Definitions**

**"Accused"** means the person against whom an allegation of sexual or other abuse is made.

**"Carelink"** is an agency of the Archdiocese that administers the provision of professional support services namely treatment, counselling and support to victims of sexual and other abuse within the Archdiocese.

**"Church person"** includes any priest of the Archdiocese and religious, and lay persons, working within the Archdiocese.

**"Compensation Panel"** is a panel established to provide ex gratia payments to complainants of sexual and other abuse who establish the factual basis of their complaint to the satisfaction of the Independent Commissioner.

**"Complainant"** means any person making a complaint of sexual or other abuse as aforesaid.

**"Complaint"** means any complaint made to the Commissioner by a person that he or she has been abused by a Church person or a complaint made to the Commissioner by a person who complains that some other person has been abused by a Church person, and any complaint of abuse by a Church person which is referred to the Commissioner by any other body or person.

**"Sexual and/or other abuse"** includes:

- (a) Any form of criminal sexual assault, sexual harassment or other conduct of a sexual nature that is inconsistent with the public vows, integrity of the ministerial relationship, duties or professional responsibilities of Church personnel; and
- (b) Conduct by a person with a pastoral responsibility for a child or young person which causes serious physical pain or mental anguish without any legitimate disciplinary purpose, as judged by the standards of the time when the behaviour occurred.

## **2. Role of the Independent Commissioner**

- i. The Commissioner is appointed to enquire into and advise the Archbishop with respect to complaints of sexual and other abuse by Church persons.
- ii. The Commissioner shall forthwith enquire into any complaint of sexual and other abuse by a Church person made or referred to him.
- iii. The Commissioner immediately upon there being made or referred to him a complaint of sexual or other abuse (which may constitute criminal conduct), shall inform the complainant that he or she has an unfettered and continuing right to make that complaint to the police, and the Commissioner shall appropriately encourage the exercise of that right.
- iv. Subject to sub clause (xi) below, upon becoming aware of sexual or other abuse (which may constitute criminal conduct), the Commissioner may report that conduct to the police.
- v. The Commissioner will not act so as to prevent any police action in respect of allegations of sexual or other abuse by Church personnel.
- vi. Forthwith upon becoming aware that sexual or other abuse has occurred, is occurring, or is likely to occur, the Commissioner shall advise the Archbishop and made such recommendations as to action to be taken by the Archbishop as the Commissioner considers appropriate.



- vii. The Commissioner is empowered by the Archbishop to require any priest, religious, or other person under the jurisdiction of the Archbishop to attend upon the Commissioner at such time and place as is notified, and to produce to the Commissioner such documents as the Commissioner requires, and to answer such questions as the Commissioner considers appropriate to ask, Provided that no priest, religious, or other person, shall be required to produce to the Commissioner a document, or to answer a question, which document or answer the priest, religious or other person objects to answer or produce or give because it may tend to incriminate.
- viii. The Commissioner may inform himself inter alia by hearings at which the complainant and the accused may be present, and also if desired, their respective legal or other representative.
- ix. The Commissioner shall interview a child or conduct a hearing at which a child is present, only with the written authority of the parent or guardian of such child, and whom the Commissioner shall request be present at such interview or hearing.
- x. The Commissioner shall treat as confidential and privileged all information acquired by him in the course of his investigation, Provided that (subject to sub-clause 2(xi)) the Commissioner may if he considers it appropriate so to do, provide the whole or part of such information to the police, and with the consent of the complainant, to the Compensation Panel.
- xi. If a complainant, prior to stating the facts and circumstances constituting his or her complaint informs the Commissioner that he or she is only prepared to divulge those facts and circumstances to the Commissioner upon his assurances that he will not, (unless required by law) disclose those facts and circumstances to any person other than a person nominated by the complainant, the Commissioner (unless required by law so to do) shall not disclose those facts and circumstances to any other person save to members of his staff from whom he shall have procured an undertaking of confidentiality.
- xii. The Commissioner may decide to discontinue or not conduct an enquiry into a complaint which he considers is trivial, frivolous, vexatious or not made in good faith, Provided that the Commissioner shall notify the complainant in writing of any such decision to discontinue or not conduct an enquiry into complaint.
- xiii. The Commissioner when enquiring into complaints and reporting to the Archbishop shall observe the rules of natural justice.

- xiv. The Commissioner shall determine the procedure to be followed in respect of enquiries and hearings and may publish to the Church authorities and other relevant persons details of such procedures.
  - xv. The Commissioner may refer victims of sexual or other abuse to Carelink.
  - xvi. The Commission will consult with and advise the Compensation Panel as required, subject to sub-paragraphs 2 (x) and (xi).
3.
    - i. The retainer of the Commissioner is ongoing for such period as may be mutually agreed upon and, Provided that in the event of the Commissioner, for whatever reason, becoming incapable of duly performing his retainer the Archbishop may instruct his solicitors to terminate the retainer.
    - ii. The Commissioner will formulate procedures for dealing with and recording complaints of sexual and other abuse and other matters.
  4.
    - i. The Commissioner will endeavour to meet regularly with the squad manager of the Sexual Crime Squad or their delegate (Liaison Officer) to discuss issues of mutual interest and concern.
    - ii. If a complainant informs the Commissioner that it is desired to refer the complaint to the Police, the Commissioner will refer the complainant to the Liaison Officer, and subject to sub-paragraphs (a) and (b) shall take no further steps in relation to the complaint, until the Police investigation and any resulting proceedings are completed; save that
      - (a) If the complainant so wishes, the Commissioner may refer the complainant to Carelink for the provision of free counselling and psychological support; and
      - (b) The Commissioner may make recommendations to the Archbishop in respect of the alleged offender.
  5. Save where
    - i. The alleged offender the subject of a complaint is dead,
    - ii. The complaint has been previously reported to the Police and the Commissioner is satisfied that Police action and any resulting proceedings have been resolved by the conviction or acquittal of the alleged offender or by the Police having notified

the complainant that no further action will be taken in relation to the complaint, or

- iii. The complaint has been referred to the Police and no Police action has been taken in the two years preceding the making of the complaint to the Commissioner

The Commissioner will provide complainants with an information sheet in the form set out below and will seek to obtain the complainant's written acknowledgement on a copy of that document.

1. *The Independent Commissioner has explained to me that he has been appointed by the Catholic Archbishop of Melbourne to investigate allegations of abuse.*
2. *The Commissioner has informed me that because the conduct about which I have complained of may constitute criminal conduct, I have a continuing and unfettered right to report the matter to the police. He has encouraged me to exercise that right. He has informed me that if I did wish to report the matter to the police, he would refer me to an appropriate police officer to deal with the complaint.*
3. *The Commissioner has explained to me that the police have powers which he does not have, including the power to issue search warrants and to arrest offenders, and that it is only through the police that the offender can be brought before a Court and punished for criminal conduct.*
4. *Aware of these matters I do not at this time wish to take my complaint to the police, and:*
  - (a) I request the Commissioner to exercise the powers conferred upon him by the Archbishop to deal with my complaint; and*
  - (b) I require the Commissioner to keep my identity confidential to the best of his ability and save as compelled by law.*
5. *I acknowledge that I can refer the complaint to the police at any time, and if I do so the Commissioner will take no further steps in relation to the complaint until the police investigation and any resulting proceedings have been completed.*

NAME: \_\_\_\_\_

SIGNED: \_\_\_\_\_

DATED the .....day of .....20.....

- 6. When an alleged offender the subject of a complaint is advised of the complaint by the Commissioner, the Commissioner will, except where paragraph 5(ii) or (iii) applies, include information in writing in the terms set out below:

*"The complainant at least at this stage does not wish to report the complaint to the police, despite being told that there is a continuing and unfettered right to do so, and having been encouraged to exercise that right. If subsequently, I become aware the complaint is referred to the police, I will take no further step in dealing with the complaint. I will not advise you that the complaint has been referred to the police for at least four weeks or if requested by the police such further period as is agreed."*

APPROVED ON 15 FEBRUARY 2011

*+ Denis J. Hart*

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Archbishop Denis Hart DD  
Archbishop of Melbourne