

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

**SUBMISSION BY PETER O'CALLAGHAN QC
IN REPLY TO POLICE SUBMISSION AND EVIDENCE**

26 APRIL 2013

- 1 (a) I am an Independent Commissioner appointed by Archbishop Pell (as he then was) which appointment was continued by Archbishop Hart in 2001, to enquire into allegations against priests, religious and laypersons within the Archdiocese of Melbourne. The background to my appointment in 1996 and thereafter is set out in the Submission to the Parliamentary Committee (**Committee**) by the Catholic Church dated 21 September 2012 (*Facing the Truth*).
- (b) Since my appointment, I have received approximately 330 complaints made to me by victims of clerical child abuse and I have been satisfied that almost all of these have been established. Consequently, those victims have been referred to Carelink and given free counselling and psychological support, and to a Compensation Panel and received compensation. The institution of the *Melbourne Response* has provided such victims with relief and compensation which previously was (in most cases) not available to them. In that context, it must however be noted that no matter how solicitously and adequately a complaint has been handled, in many cases, the fact of and the impact of the deplorable abuse cannot be eradicated, and remains a continuing blight on the life of the victim.
- (c) If the offending priest was practising as a priest at the time of the victim's complaint to me, the priest's faculties have been removed by the Archbishop pursuant to my recommendation. Thus the offender no longer acted as a priest.
- (d) I have briefly described my role above, to provide the context in which the criticisms of me as an Independent Commissioner should be seen. I consider those criticisms unjustified and unfair, for the reasons given in this and following submissions.
- 2 This Submission replies to the unsigned Police Submission (**Police Submission** or **ps**), which was provided to the Committee, by a letter from Chief Commissioner Ken Lay dated 21 September 2012. I also respond to the evidence of Deputy Commissioner Graham Ashton (hereafter referred to without disrespect as the Police Submission and Ashton) given to the Inquiry on 19 October 2012.

THE POLICE SUBMISSION

- 3 The Police Submission and Ashton are in many respects plainly wrong, as the evidence demonstrates, and also seriously misconceived. The Police Submission and Ashton make grave and groundless attacks upon my personal and professional reputation, which I utterly reject for the reasons hereunder. I was completely surprised by the content of the Police

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Submission and Ashton's evidence. I had no perception that my acting as Independent Commissioner was to be the subject of such virulent, albeit misconceived and erroneous criticism. When I, together with Mr Francis Moore, Business Manager for the Archdiocese, met with Ashton (accompanied by Detective Inspector Tony Silva) on 21 September 2011, Ashton did not even remotely accuse me of the misconduct he later referred to on the Neil Mitchell Show, and which was expanded in the Police Submission and his evidence. I will refer later to the detail of this meeting.

MY CONTACT WITH THE POLICE

- 4 The Police Submission and Ashton's evidence convey the impression I have had little or no contact with Victoria Police. This is not so. The Terms and Conditions of my Appointment, as appears hereunder, were in 1996 compiled in consultation with the Victoria Police. Over the years I have had a courteous and cooperative relationship with Victoria Police. Importantly, the Police Submission and Ashton do not adequately or at all refer to the meetings and discussions that I, together with representatives of the Archdiocese, had with senior officers of Victoria Police between 2009 and 2010, with respect to the entering into of a protocol or memorandum of understanding. Because of the policy announced by then Chief Commissioner Simon Overland in October 2010, that there would be no further agreements or memoranda of understanding entered into by the Police, no agreement or protocol was entered into, notwithstanding a lengthy and constructive dialogue with Senior Officers of Victoria Police.
- 5 Following that, discussions continued with the Police in relation to the supplementing of the Terms and Conditions of my Appointment, in terms which were approved by the Police.
- 6 The Police Submission or Ashton do not refer to the Media Release of Archbishop Hart on 15 February 2011, which Media Release (Attachment 1) had been discussed with, and seen by Senior Police Officers and approved by Victoria Police.
- 7 (a) Contrary to the assertion that there was a lack of engagement with the Police, the opposite is the case. I am providing in Attachments 1A and 1B examples of and detailed statistics about complainants, who, (pursuant to my informing them of their continuing and unfettered right to report to the Police conduct of an offender which might constitute criminal conduct and encouraging the exercise of that right), did take their complaints to the Police.

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- (b) Of the 304 relevant upheld complaints that have been made to 30 June 2012 (only two of which were made by complainants who were children at the time of their complaints):
- (i) 97 have been reported to the police (87 were reported prior to and 10 were reported subsequent to a complaint being made through the *Melbourne Response*);
 - (ii) 115 were made in respect of offenders who were already dead at the time of the complaint;
 - (iii) 9 were made in respect of offenders who resided overseas at the date of complaint; and
 - (iv) 4 were made in respect of offenders whom the complainant could not identify.
 - (v) Of the remaining 79 complaints:
 - (A) 76 complainants were encouraged by me to go to the Police (and at least 25 of these complainants expressed some reluctance to do so);
 - (B) There is no express encouragement to go to the Police located on the file of the remaining 3 complainants, however:
 - 1 complainant was provided with the *Melbourne Response* brochure which contained an encouragement to go to the Police;
 - 1 complainant had their complaint accepted without the need for a hearing; and
 - 1 complainant made a complaint that was unlikely to constitute criminal assault.
- (c) An example of my effectively referring complainants to the Police is set out hereunder in the extracts from my submission to the Protecting Victoria's Vulnerable Children Inquiry in response to allegations made by Ms Pam Krstic and Ms Helen Last that I had not dealt properly with complaints of child sexual abuse, in the Healesville area.

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- 8 If the authors of the Police Submission or Ashton had referred to that submission, they would or should have recognised the falsity of the claim that “not one complaint has been referred to the Police”:
- (a) On 21 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.
 - (b) Following this I was contacted on 1 June 1999 by B. Initially he was unsure as to whether he would report the matter to the police. After further discussion and correspondence, in which (summarily stated) I encouraged him to do so, 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 regarding DD’s four relatives. RB then laid charges against the priest in respect of his sexual abuse of B.
 - (c) 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.
 - (d) The priest maintained his plea of not guilty in respect of his three nephews and 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 of the complainants and five of them applied for and were offered compensation recommended by the

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Compensation Panel, which offers were accepted. A took legal proceedings, which I understand were subsequently settled.

- 9 Detective Inspector Glenn Davies, the then Officer in Charge of the Sexual Crimes Squad on 20 November 2009, wrote to me as follows seeking information as to my role:

"Having recently been appointed as the Officer in Charge of the Sexual Crimes Squad in the Victoria Police Crime Department I thought I might introduce myself.

My squad is responsible for the investigation of serious sexual offending against children and adults and we also provide investigative expertise and support to Regional detectives investigating sexual assault.

Recently, it has come to my attention that you have had some communication and dealings with Detectives in the Regions and I am curious about your role, how your hearings are conducted and what arrangements or protocols you have with dealing with victims of sexual assault, the accused person and Victoria Police.

I have been searching our records and I am unable to locate any Memorandum of Understanding with Victoria Police and if there is not one I was wondering who from Victoria Police provided advice or would be aware of the formation of your Terms of Reference and Role on your appointment.

I am interested in a number of issues including whether (sic) you have a Victoria Police liaison officer and whether (sic) we could develop such a role.

I already have a document which outlines your appointment by the then Archbishop George Pell and renewal and confirmation by Archbishop Hart.

With regard to scheduling a meeting, I have some appointments earlier next week and fairly free the week after if you have some time I would appreciate it.

I look forward to meeting with you".

- 10 I provided him with:

- (a) A letter dated 15 October 1996 from Monsignor Denis J Hart Vicar General (as he then was) to Assistant Commissioner Gavin Brown (Attachment 2);
- (b) A letter dated 18 October 1996 from Corrs Chambers Westgarth to Assistant Commissioner Brown (Attachment 3); and

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- (c) A letter dated 21 October 1996 from Assistant Commissioner Brown to Corrs Chambers Westgarth (Attachment 4). As this correspondence demonstrates, my Appointment as Independent Commissioner was not only preceded by consultations with the Police, but those consultations resulted in my Terms of Appointment being amended, on the very question of my interaction with the Police, to reflect changes proposed by Assistant Commissioner Brown and acceded to by Archbishop Pell (as he then was).

This correspondence was followed by the widely publicised announcement by Archbishop Pell on 30 October 1996 of the establishment of the *Melbourne Response*, including my Appointment as Independent Commissioner.

I confirm (as was foreshadowed in that correspondence with the Police) that I provided the Terms of my Appointment to the then Solicitor General for Victoria, the late Douglas Graham QC. Thus it will be seen that my co-operations with the Police commenced before I was appointed as Independent Commissioner.

- 11 (a) Following my correspondence with Detective Inspector Davies, it was arranged that, together with representatives of the Archbishop, I would meet with him on 4 December 2009. On 3 December 2009, I wrote to Detective Inspector Davies referring to the meeting and describing my procedures. This letter gives a detailed description of the practice and procedure I have followed over the years and continue to do so. Notwithstanding its length, I have set out the full text of that letter, because it rebuts the assertions subsequently made in the Police Submission and Ashton. This letter and other correspondence referred to below was obviously available to the author of the Police Submission, Ashton and Mr Finley McCrae the Senior Legal Adviser to the Victoria Police. It beggars description that the Police Submission and Ashton make no reference to the 3 December 2009 letter. It could perhaps be understood if the Police Submission and Ashton said "we have read the letter of 3 December 2009 and say that it is wrong". But rather it appears that the Police Submission, Ashton and Mr McCrae, have 'picked up and run with' the scurrilous and inaccurate criticisms made of the *Melbourne Response* generally and the Independent Commissioner in particular, by the Melbourne Victims Collective, and the Age newspaper. Put another way, they appear to have accepted those criticisms, and published them as their own, without putting those accusations to me, and giving me opportunity to respond.

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(b) The letter reads:

"Dear Inspector Davies

RE: PROCEDURES

I endeavour to set out hereunder a broad description of the procedures I follow in carrying out my role as the Independent Commissioner. I hope this will be helpful in our discussions on Friday next.

The receipt of complaints

Most complaints are received directly from persons who have complained they have been sexually abused.

I arrange to meet with the complainant and conduct an interview so as to ascertain the details of the complaint. It is my invariable practice to inform a complainant that if the conduct of which he or she complains might constitute criminal conduct then he/she has a continuing and unfettered right to report the matter to the police, and I appropriately encourage the exercise of that right.

On only a few occasions has this resulted in the complainant forthwith taking their complaint to the police. To some extent, this is a function of the fact that many of the complaints I have received, are in respect of priests who have been convicted in respect of the conduct complained of, or alternatively they are dead.

A number of complainants are most concerned, first to avoid the stress and strain consequent upon reporting the complaint to the police, and being involved in the Court process, and secondly because of the desire for their complaint to remain confidential and to the extent possible anonymous. If there is one feature which has been consistent throughout the years of my appointment, it is a desire on the part of the complainant to keep things as confidential as possible. Albeit, that a complainant can if he or she wishes publish the name of the priest, the fact that he was guilty of abuse, and that they have received compensation for that abuse, the general consensus is to keep it all private.

I conduct an interview with the complainant which is transcribed. I then forward a transcript of the complaint to the complainant inviting amendments and additions. Typically I also forward a letter which subject to the consent of the complainant I will forward to the respondent. That letter contains the relevant extracts of the transcript in which the complainant details the alleged offence.

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In that letter I invite the respondent to respond to the complaint by writing to me or attending upon me accompanied by such person as they wish.

If the respondent denies the offence, then I invite the complainant and the respondent to participate in a confidential hearing which I conduct much the same as a Magistrate would conduct the hearing of an information. In all the contested hearings I have conducted, I have had Counsel Assisting the Commission namely Jeffery Gleeson SC. Sometimes, the complainant is also represented, but if not Counsel Assisting has the responsibility to adduce all the relevant evidence to the Commission.

In all but one of the contested cases the respondent has been legally represented. I attach herewith a copy of the confidentiality agreement and the undertakings which are signed prior to embarking upon the hearing.

Whether via a hearing, or because of my acceptance of the credibility of the complainant in the interview, I can refer the complainant to Carelink which is an agency set up to provide free counselling and psychological support. Sometimes, before making a decision as to the validity of the complaint, and because of the palpable stress that the complainant is suffering, I refer the complainant to Carelink and support is provided. If it turns out that the complaint is not established, and this has only occurred very rarely, there is still no requirement of the complainant to pay for therapeutic fees.

If the respondent was a priest in active practice, then depending upon the seriousness of the allegation, and the potential for risk to other persons, I recommend to the Archbishop that the respondent be placed on administrative leave (ie. his faculties to act as a priest are withdrawn), pending the completion of the police investigation and the proceedings (if any) emanating therefrom.

Likewise if I have conducted a hearing which establishes that sexual abuse has occurred and whether or not I have made a prior recommendation that the priest be placed on administrative leave, I will make a recommendation to the Archbishop as to what action should be taken in respect of the offending priest. I stress that I make a recommendation only and the decision as to what should be done with the priest is exclusively that of the Archbishop. However, the Archbishop has generally adopted my recommendations, and certainly in the case of a priest whom I am satisfied has engaged in paedophilia, that priest no longer acts as a priest.

I have from time to time been approached by the police requesting information in respect of their investigation of allegations of sexual abuse against a priest. In those

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circumstances I provide whatever information I have, and advise the police to inform the victim that at the end of the police and Court process, the victim has the opportunity of making application under the Archdiocesan process.

There have been some cases in which after I have conducted a hearing and made findings, and regardless of the confidentiality agreement, the complainant reports the offence to the police. There is of course nothing to prevent a complainant from doing this, albeit that I have undertaken that all information received by me will remain confidential unless compelled by law to do so. By way of illustration of what is my procedure in respect of the police requiring me to produce documents, I attach herewith the Decision of Chief Magistrate Adams in respect of a complaint, which I had heard, but which the complainant then reported to the police.

You will note that through Counsel I took the objection that the documents I had were protected by the privilege of public interest immunity. I so took that objection pursuant to my undertaking of confidentiality.

As appears from the Chief Magistrate's decision, he held that public interest immunity did not apply nor were the documents protected because of undertakings of confidentiality, albeit he suggested some restrictions upon the use of the documents to be produced.

Since that decision, when I have been the subject of a subpoena or summons to produce documents, I have formally taken the objection, having referred to the Decision of Chief Magistrate Adams. Judge Rizkilla and Chief Judge Waldron of the County Court have approved the decision of Adams CM.

I mention also that in at least two instances the police having been informed of complaints, required or issued warrants for the production of documents and which resulted in those documents being produced. However because the complainants in each instance specified that they did not wish to involve themselves in Court proceedings there were no prosecutions.

I am presently in a case in which I have been asked by the investigating policewoman to produce further documents, and I have communicated that request to the solicitors for the respondent. I would envisage that I will be authorised to produce the further documents, without the issue of a warrant subject to a confidentiality term similar to that given in the Judgment of Chief Magistrate Adams.

Finally there is the question of my informing the parties to an enquiry that the complaint has been referred to the police and consequently I will for that reason be taking no further

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steps in my enquiry until the police investigate and proceedings (if any) emanating therefrom.

If a complainant does not wish to report the matter to the police, despite being advised he/she has a continuing and unfettered right to do so, I then conduct an enquiry as to the validity or otherwise of the complaint. Typically, I transmit the complaint to the respondent inviting a response. If the complaint is denied, I invite the parties to participate in a confidential hearing which I conduct in much the same way as a Magistrate would conduct the hearing of an information.

I stress that the vital condition to the above process is that the complainant does not wish to report the matter to the police. That enables me to enquire into and investigate the complaint to determine its validity or not. In doing so, I am doing what the police would do in investigating the complaint, and what a Court would do in determining whether the offence is made out.

If having embarked upon the above process, I become aware that the police are investigating the matter, I cease my process immediately. This is not an option, but a mandatory requirement. To continue my process i.e. "investigate and make findings on matters the same" as the police and a Court would do would place me potentially and actually in contempt of Court. Obviously the way to cease my process is to advise the parties, that I am taking no further steps in the process until the completion of the police investigation and the proceedings if any emanating therefrom, because the matter is now in the hands of the police.

I point out that if I merely told the parties that I was taking no further step in the matter, the inevitable inference the experienced solicitors for the complainant and the respondent would draw is that the matter has been referred to the police. I stress again that regardless at what point of time I become aware that the police are seized of the matter I would cease my process by advising the parties I would be taking no further step. Even if I had completed a hearing and heard submissions from the parties but the matter then went to the police I would abstain from making any findings.

The two cases mentioned are the only ones in which a complainant part way through my process has had the matter referred to the police, or the police have on their own motion commenced an investigation.

In the most recent case raising this issue (there being one other), when upon being advised that there was a police investigation I advised both parties that I would be taking

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no further steps. The problem arose because of the complainant changing his/her mind from deciding not to refer the matter to the police, and then doing so. Senior Constable OP stated her disappointment at my having advised the Solicitors for the parties. By email of 18 November, I explained why I had so advised. I attach my email and her reply. I will be pleased to have your views on the matter.

I trust the above discursive remarks will be of assistance in facilitating our meeting".

(c) Following the meeting Detective Inspector Davies wrote to me requesting:

"copies of a selection of transcripts of interviews I had conducted with complainants, so he could 'get an idea of how the victim accounts/statements are made".

- 12 In December 2009, I wrote to Detective Inspector Davies and provided him with eight transcripts, suitably redacted to preserve confidentiality. Six of these transcripts and letters are Attachment 5. These of course were also available to the author of the Police Submission and Ashton and Mr McCrae but apparently were ignored.
- 13 On 19 February 2010, I and representatives of the Archdiocese attended a meeting at the St Kilda Police Centre with Detective Inspector Davies and Superintendent Wendy Steendam. They tabled a memorandum which they spoke to, and to which they requested a response after it had been considered. The memorandum reflected on the one hand the very proper desire of the Police to have all offenders brought to justice, and on the other the process whereby victims, who did not wish to report to the Police, could obtain redress without going through the process of prosecution. As appears from the statistics provided, this is a limited situation in the *Melbourne Response* process. The vast majority of complaints are in respect of priests who at the date of the complaint were dead, or have been reported to, or convicted by, the Police in respect of the same or similar offences.
- 14 The *Melbourne Response* provides that if the Independent Commissioner is satisfied that sexual abuse has occurred then the victim can apply for ex gratia compensation. The reference to the investigative capacities of Victoria Police as appears in paragraph 3.2 of the Police Submission, should be looked at in the light of the fact that the great majority of complaints under the *Melbourne Response* are from persons in the category referred to in paragraph 13 above, and of whom it cannot be expected will have Police resources applied to them, as convictions can no longer be obtained. Naturally, the Police are not concerned with the process of compensation.

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15 However, it was recognised as an important issue and became the subject of detailed discussions between me, the Police and the Archdiocese with the aim of agreeing to a protocol, or memorandum of understanding, which would satisfy both the interests of the Police, and the situation of the Archdiocese. At none of these meetings, or in correspondence, were the gross and erroneous criticisms now appearing in the Police Submission and Ashton, raised. Had they been they would have been responded to. The Police position was epitomised by Assistant Commissioner Wendy Steendam, on 19 February 2010:

"W: Look and I think obviously just the issue that you've raised about a perception that you're not actually giving the information that you need to encourage victims to come to police that's not our position at all this is really about we see given the issues that got raised as an opportunity to have update the (inaudible) that have been in place or the processes create a critical gateway in and out of Victoria Police and to ensure that we've actually got processes that we're all comfortable with that really work to the rights of everybody to the person that's reporting the matter ensuring that they've got the information that they need to make informed decisions and also the natural justice upon that you have as Independent Commissioner so its not about because we don't think you've been doing it well its because we see an opportunity to review and refresh the systems that are in place." (emphasis supplied)

- 16 (a) In the Police Submission and Ashton, there is no identification (even by pseudonym) of a single person who has stated that he or she was dissuaded by the Independent Commissioner from reporting the complaint to the Police. This is because this has never occurred.
- (b) On the other hand, Attachment 1A identifies a number of persons who, having been encouraged by the Independent Commissioner to report their complaint of abuse to the Police, delayed pursuing their complaint through the *Melbourne Response* process, and went to the Police, with consequent Police investigations and, in some circumstances, resulting prosecutions.

DETAILED RESPONSE TO THE POLICE SUBMISSION

17 I now turn to deal in order with the assertions contained in the Police Submission. I do so by extracting the relevant reference (shown in *italics*) and commenting thereon. I have substituted roman numerals for the bullet points in the Police Submission.

18 *"Recurring issues identified by police include;*

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(i) *Appearing to dissuade victims of sexual crime from reporting to the police.” (ps 1)*

COMMENT

What does “appearing to dissuade” mean? If there was dissuasion there should be identified the facts and circumstances of the dissuasion, the person who was subject to it, and who accordingly decided not to report to the Police. The failure in the Police Submission and Ashton to provide evidence supporting the assertions made, is because there is none.

19 (ii) *“The enquiry process undertaken by the Melbourne Archdiocese is believed to be detrimental to police investigative process and the prosecution of those suspected of criminal sexual crimes against children.” (ps 1)*

COMMENT

Believed by whom, and what is the basis for that belief? There should be identified in what respects the enquiry process has been detrimental to Police investigations, and in prosecuting.

The making of broad and unparticularised grave allegations is to be deplored, because they besmirch, without giving any opportunity to adequately respond. It is surprising and concerning to find such an approach adopted in the Police Submission and Ashton.

20 (iii) *“Alerting suspects of allegations which may have resulted in loss of evidence.” (ps 1)*

COMMENT

It is false to say that the Independent Commissioner has been responsible for the loss of evidence. This baseless allegation, alleged to have taken place in 2007, was first raised in The Age Newspaper in 2009. It is refuted hereunder (see paragraph 37).

21 (iv) *“A lack of engagement with Police.” (ps 1)*

COMMENT

Over the years, I have had a courteous and constructive relationship with Police members and particularly with members of the Sexual Offences Unit, as it has been variously named.

22 (v) *“A perceived conflict of interest for the Independent Commissioner.” (ps 2)*

COMMENT

In order for there to be a meaningful allegation of conflict of interest, the interests which are said to be in conflict must be identified. There has been no such identification in the Police

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Submission and Ashton. Self-evidently, as an Independent Commissioner I have had an interest in investigating allegations of sexual abuse. There is no other interest that conflicts with that interest for reasons which I provide hereunder.

- 23 (vi) *"Movement or protection of offenders who were known or suspected of committing sexual offending against children; and*

A failure to make offenders accountable to the law." (ps 2)

COMMENT

If these assertions are directed at me as an Independent Commissioner they are refuted. I have never recommended that a suspected or known offender be moved, and I am unaware of this having occurred within the Archdiocese since my Appointment as Independent Commissioner.

- 24 (vii) *"The Towards Healing Protocol is used to assess complaints from other Victorian Diocese including Ballarat, Sale and Sandhurst as well as nationally." (ps 3)*

COMMENT

This is correct insofar as it goes, but it does not recognise that *Towards Healing* is the body which deals with complaints made in respect of members of Religious Orders in the Melbourne Archdiocese. Independent Commissioners have no jurisdiction to deal with complaints against members of Religious Orders save for example, in the limited situation where a member of a Religious Order has held an appointment as a priest or a Parish priest in a Parish of the Archdiocese.

- 25 (viii) *"Victoria Police has serious concerns regarding the terms of the inquiry process as a defacto substitute for criminal justice. As noted on its website the Melbourne Response has made a number of ex gratia payments to victims. In spite of this, it has not referred a single complaint to Victoria Police." (ps 4)*

COMMENT

- (a) The *Melbourne Response* is not, and does not purport to be, a substitute for criminal justice. It is a process which enables victims of sexual abuse to receive ex gratia compensation and obtain free counselling and psychological support.
- (b) The assertion that no complaints have been referred to the Police is false and misleading, and recurs throughout the Police Submission and Ashton. I repeat that a

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number of complainants who have brought their complaints to me have, pursuant to my advice and encouragement, reported the complaint to the Police, which I have facilitated by referring them to the appropriate Police officer (examples of which are set out in Attachment 1A). Further, as the statistics provided demonstrate (at Attachment 1B), two thirds of the victims who have had their complaints upheld by the Independent Commissioner have either already been to the Police or are making complaints about offenders who are dead.

- 26 (xiv) *"It is evident in the mandate of Towards Healing, as well as the Melbourne Response that their focus is not on bringing offenders to justice." (ps 4)*

COMMENT

From day one the *Melbourne Response* proclaimed that victims will be advised of their continuing and unfettered right to report the complaint to the Police and will be encouraged to do so. Again, it has been said repeatedly that there can be no substitute for the Police force in investigating crime and bringing offenders to justice. But even if I had the freedom to report a complaint to the Police, and did so, that action would be of no effect unless the victim was prepared to give the Police evidence of the complaint in support of the prosecution of the offender.

- 27 (x) *"Whilst an alleged offender may have a legal adviser, victims not seeking pastoral support from the Church are not able to have legal representation." (ps 4)*

COMMENT

This astounding statement is absolutely false, and flies in the face of what I advised Detective Inspector Glenn Davies in my letter of 3 December 2009 (see paragraph 11(b)). Victims are often represented by lawyers, both before the Independent Commissioners and the Compensation Panel. Victims participating in a confidential hearing are often represented by a lawyer, and in all of those cases there is Senior Counsel assisting the Commissioner.

- 28 (xi) *"For example in one publicized case in 2010 the Independent Commissioner made statements regarding the potential success of a criminal allegation such as 'this kind of conduct you describe would be unlikely to be held by a Court as criminal conduct'. Notwithstanding the fact that the members from Victoria Police disagree, it is concerning that an Independent Commissioner, appointed under Canon Law is*

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providing authoritative advice to persons on the potential success of a criminal allegation against a member of the Church....." (ps 5)

COMMENT

- (a) Whilst the Independent Commissioners are appointed as delegates of the Archbishop under Canon Law, so as to empower them to compel priests to appear before them, this delegation is in addition to, and in no way in place of, the retainer of the Independent Commissioners by the solicitors for the Archbishop under the law of Victoria and subject to the Rules of the Victorian Bar to act as Independent Commissioners according to our Terms and Conditions of Appointment. That was a contract made in Victoria and accordingly is subject to Victorian Law.
- (b) The complaint referred to by Ashton was made by a mature woman against a priest with whom she had a long association in the pastoral sense, thus the complaint did not concern a child and therefore does not fall within the Terms of Reference of this Inquiry. I wrote to her stating:
- "It is my invariable practice to advise a person who complains of sexual abuse that he or she has a continuing and unfettered right to report that conduct to the police and I encourage the exercise of that right.*
- Having said that, and without seeking to dissuade you from reporting the matter to the police if you so desire, I must say that the conduct you describe would be unlikely to be held by a Court as criminal conduct...."*
- (c) Pursuant to the requirement that I advise victims of their right to report and the encouragement thereof, I consider that I have a duty of care to also point out the risks of a prosecution not succeeding where such risks are patent. What I did was to say effectively, this is your decision to report or not to the Police, and I do not seek to dissuade you from doing that, but in advising you of your rights it would be misleading of me, as a Senior Barrister, to leave you with the impression that I believed that a Court will find that the conduct of which you complain was criminal. If that is a bona fide opinion held by the Independent Commissioner, as it was in this case by me, it would be negligent of me not to express it. Subsequently my opinion was vindicated because the Department of Public Prosecutions discontinued the prosecution before trial, a fact which was not but should have been drawn to the Inquiry's attention by Ashton when giving evidence.

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- 29 (xii) *"Over time, Victoria Police has observed a number of letters from the Independent Commissioner which purport to encourage reporting to police, while at the same time effectively dissuade reporting by restricting or delaying compensation until litigation is resolved." (ps 6)*

COMMENT

- (a) This is mischievous nonsense. Time and again I have emphasised that it is best if victims report their complaints to the Police so that the Police can conduct investigations and initiate appropriate criminal court proceedings. Once a complaint is reported to the Police, the Independent Commissioner must delay conducting or continuing to conduct an investigation as to whether the complaint is established. It would be untenable for an Independent Commissioner to conduct an investigation concurrently with the Police, and were they to do so, the Police would have just cause to be critical.
- (b) In order to found the victim's right to compensation, it is necessary for it to be established that the victim was in fact abused. An Independent Commissioner cannot be involved, or be seen to be involved, in conducting an investigation at the same time as the Police. Accordingly, victims have necessarily been told that in the event of their reporting a complaint to the Police, any action or further action by the Independent Commissioners to investigate that complaint has to be suspended. An Independent Commissioner cannot say to a complainant 'you go ahead with your complaint to the Police and at the same time I will conduct my own process to see whether the complaint is established and if it is I will recommend you for compensation'.
- (c) It should be noted that there have been many cases in which the Police have decided to take no action as well as cases where the accused was tried and acquitted, yet I have been satisfied the abuse has occurred and the victim has been compensated.
- (d) The Police Submission and Ashton seem to want to have it both ways. On the one hand they dismiss the *Melbourne Response* as an attempt to pervert Police processes. On the other they are critical of the respect that is in fact shown, and rightly shown, for pending Police processes.

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- 30 (xiii) *"Victoria Police is concerned that, while publicly encouraging victims to seek redress through the criminal justice system, the Catholic Church is providing a financial incentive to use its enquiry processes instead of State mechanisms."* (ps 6)

COMMENT

- (a) This criticism is entirely incorrect and once again displays a misunderstanding of Police processes. The simple point is that victims who come through the *Melbourne Response* and *Towards Healing* remain free to go to the Police at any time, including after compensation is paid. They are encouraged to do so. There is no financial incentive not to go to the Police, on the contrary, if a victim's claims have been confirmed by a conviction following a Police complaint, compensation through the *Melbourne Response* then becomes readily available.
- (b) However, the vast majority of complaints dealt with by the Independent Commissioner are in respect of complaints against deceased priests, or which have already been reported to the Police or been the subject of a conviction of that offence or of a substantially similar offence, and in these circumstances the criminal justice system offers those victims no redress. The erroneous impression sought to be created by the Police Submission and Ashton is that there are a large number of complaints against priests dealt with by the *Melbourne Response*, whereby the criminal process could have been but is not invoked. The statistics attached hereto prove that this is not so. I repeat that almost all of the complainants who have come before me, have been the victim of sexual abuse perpetrated decades before. For manifold reasons, the victim has long ago decided not to take that complaint to the Police, has already reported the complaint to the Police (who in many instances have taken no action) and that is where the matter would have rested, had it not been for the introduction of the *Melbourne Response*.
- (c) Thus the victim, having been abused decades before, is provided with the opportunity to obtain counselling and compensation by invoking the *Melbourne Response* process. Over these decades, typically, the victim has often told no one of what had occurred, and at best to a very limited number of people such as their spouses or close friends. When those victims approach the Independent Commissioners, overwhelmingly they require that what they tell the Commissioners is confidential, as indeed is required by our Terms of Appointment. Obviously, the Independent Commissioners do not say to

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such persons, 'if you tell me that the conduct of which you complain is sexual abuse I will report that to the Police regardless of whether you wish this to be done or not'. Put another way, the Independent Commissioners do not say 'if you desire to have the benefits of the *Melbourne Response*, you can only do this if you first report the complaint to the Police, even if such a report would be futile'.

(d) I also reiterate that all victims who proceed through the *Melbourne Response* remain able to report their complaint to the Police at any time.

31 (xiv) *"From these comments a victim may infer that the Inquiry process will be less harassing and time consuming than the legal system."* (ps 6)

COMMENT

(a) It would be legitimate to draw that inference. With no criticism at all of the Police process, the fact is that if a complaint is made to the Sexual Offences Squad, and statements given to the Police, it can be reasonably certain that some months will elapse whilst the Police investigate the offence and before they interview the alleged offender. Given then that the Police decide to prosecute the offender, there will in many instances be a Committal Hearing at which it will be decided whether or not the alleged offender will go to trial. Such a Committal Hearing will often take place a year after the filing of the complaint.

(b) If there is a Committal then it is likely to be another year at least before the offender is brought to trial. The complainant will be required to give evidence in open court at which the media may be present and report. Assuming a conviction, and no appeal by the offender, it will probably be three years before the Independent Commissioner is able to deal with the complaint.

(c) On the other hand, if the complainant insists that the complaint will not be referred to the Police but that it should be dealt with by the Independent Commissioner, and assuming further that the offender denies the complaint, requiring the Independent Commissioner to conduct a confidential hearing to establish whether or not the complaint is established, it would be unusual for this process to take more than six months.

32 (xv) *"Victoria Police believe that none of these modern services are being provided by the Church and indeed we are aware of circumstances where victims have been required*

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to confront alleged offenders where they have been required to repeat allegations in the presence of those alleged offenders.

Victoria Police has offered to provide this briefing to the Catholic Church on two occasions but these offers have not been accepted to date.” (ps 5)

COMMENT

- (a) The Chief Commissioner has been advised that the Independent Commissioners would be happy to accept this briefing, and appropriate arrangements are in process. However I repeat that the great majority of victims whom I have dealt with are not in a position to report their complaints to the Police, and thus access the expert services the police have referred to, because the offender is dead, residing overseas, or has been convicted of the subject or a similar offence.
- (b) The only occasions when victims have repeated allegations in the presence of alleged offenders are when the victim and the alleged offender have agreed to participate in a confidential hearing. At all such hearings there has been Counsel Assisting the Commissioner, Mr Jeffrey Gleeson SC, who has recently been appointed an Independent Commissioner. Attached herewith is a copy of the confidential agreement and undertaking which are signed prior to the commencement of the hearing (Attachment 5A). It is emphasised that these confidentiality agreements relate only to the hearing, and not to a subsequent application for and payment of compensation. Mr Gleeson's role as Counsel Assisting the Commissioner has now be taken by Mr Andrew Woods of Counsel.
- (c) At the hearing the complainant, if legally represented, is examined by their lawyer, and the victim can be further questioned by Counsel Assisting and be cross examined by Counsel for the alleged offender. In all but one of these contested hearings, the alleged offender has been represented by Counsel. If the complainant is not represented his or her evidence is adduced by Counsel Assisting who, prior to the hearing, will have interviewed the complainant and taken a proof of evidence. At the conclusion of the evidence the Independent Commissioner requests submissions in writing by the complainant and also the alleged offender.
- (d) Typically, Counsel Assisting the Commission will provide a submission which he will have shown to the complainant or the complainant's advisers for comment and inclusion of matters the complainant requests. Submissions in writing are received

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from the representative of the alleged offender and the Independent Commissioner then makes his decision and provides written Reasons for Decision. There have been 16 such hearings in which the complaint was upheld, four of which hearings were conducted by ad hoc Commissioners. The remaining hearings were conducted by me. Thirteen of these hearings were in respect of child sexual abuse and three were in respect of adult boundary violations. There have been four hearings in which the complaint was not upheld, three of which were conducted by me and one by an ad hoc Commissioner. One of these hearings was in respect of an adult boundary violation, the remainder were in respect of alleged child sexual abuse.

- (e) Undoubtedly it can be stressful for victims to be interviewed and give evidence. This is a function of the deplorable sexual abuse to which they have been subjected. In some instances, complainants who do not wish to be in the same room as the alleged offender, have their evidence given by video link.
- (f) It is notable that in directing this criticism against the Independent Commissioner, the Police do not acknowledge that being "required to confront alleged offenders where they have been required to repeat allegations in the presence of those alleged offenders" is a function of every criminal trial.

33 (xvi) *"To obtain an ex gratia payment for compensation, victims must enter into an agreement discharging the Church from any further liability. Some of these deeds include confidentiality clauses agreeing not to disclose or discuss the circumstances of the complaint.*

Despite indicating that there is an unfettered right to complain to police in letters and public statements, the signatories of such deeds enter into a broad confidentiality clause agreeing to not discuss or disclose the facts and circumstances incidental to any of the complaints he/she has or could have made.

The deed represents a legally binding agreement between the Church and the victim in respect of the ex gratia payment. A breach of contract gives rise to a liability to be sued. In the context of a criminal investigation, criminal law does not necessarily override the civil law. If a signatory discusses or discloses the information, even to police, the Church retains the option to sue regarding the breach." (ps 6-7)

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COMMENT

- (a) This is utterly false. It is astounding that a responsible organisation such as Victoria Police could put forward to a most important Inquiry such blatant untruths. The above passage epitomises what is contained in the Police Submission and Ashton, namely that a great deal of it is misconceived, misleading, and damagingly wrong.
- (b) Victims of sexual abuse who accept the offer of compensation provided pursuant to the *Melbourne Response* are not required to sign a confidentiality agreement. Moreover they are specifically advised that there is no obligation of confidentiality and that they are free to discuss with anyone the facts and circumstances of the abuse and the compensation obtained. It is quite wrong to say, as the Police Submission and Ashton do, that there is a prohibition upon a victim reporting his or her complaint to the Police after they have received compensation.
- (c) That such reports are rarely made is reflective of the continuing attitude of complainants that they do not wish to have their privacy invaded by disclosing the deplorable abuse which they have suffered. In one case the complainant, after close consideration, decided not to report the complaint to the Police, and went through the *Melbourne Response* process, received counselling and support, and obtained compensation. Some little time after this, the complainant rang me and said he had decided to report to the Police, and asked for my consent to him providing to the Police, the transcript of my interview with him. Whilst my consent was unnecessary, I readily gave it. The complainant went to the Police, and made a statement in early 2012, and has lately been advised that the offender is to be charged. The offender remains in prison.

- 34 (xvii) *"In recent times Victoria Police has noted improved co-operation by Melbourne Response and Towards Healing, however some concerns remain."* (ps 8)

COMMENT

If such concerns are those expressed in the Police Submission and the evidence of Ashton, they are without substance and not based on fact.

- 35 (xviii) *"Some Victoria Police members have reported that the discussions with the Church Administration had indicated to the member that there were no previous complaints*

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made against the alleged offender. However, documents obtained under warrant indicated that previous complaints had been made to the Administration.” (ps 8)

COMMENT

I have never misled the Police in this or any other way. I am not aware of any of the above, and no such accusations have been put to me. I have not engaged in any such conduct.

- 36 (xix) *“In some circumstances the Church has been reluctant to provide information under warrant to Victoria Police. This has included seeking injunctions to delay or stop the processing of warrants and creating separate files and moving them, making it hard for police members to identify and seek access to appropriate information”. (ps 8)*

COMMENT

If that statement is intended to convey that I, in my capacity as the Independent Commissioner, engaged in such conduct I utterly reject it. In order to refute this grave and groundless accusation, I deal in detail with an early instance of Police seeking documentation from me, and my response thereto, which typifies my attitude of co-operation with the Police. Whilst the abuse complained of in this case was not child sexual abuse, it is relevant because it applies equally to cases of child abuse, and has been followed in later cases. Because of its length I have attached the history of this matter as Attachment 6.

- 37 (xx) *“In some circumstances, the Church has alerted the alleged offender to a police investigation. One instance of this occurred as recently as 2009. In this instance it was evident that by the time police had arrived potential evidence was removed or destroyed.” (ps 9)*

(This appears to be the same allegation as is referred to in paragraph 20 above. It was again repeated by Deputy Commissioner Ashton at page 5 of the transcript of his evidence where he stated:

“In the second example the Independent Commissioner informed the accused that police were investigating the matter. Victoria Police’s E-Crime Units Analysis of the accused’s computer subsequently showed that a number of suspicious files were destroyed. Alerting the accused gave him the opportunity to attempt to destroy those files.”)

COMMENT

It is unfortunately necessary to respond in detail to this groundless accusation:

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- (a) In 2006, I commenced dealing with a complaint by a woman whom I will call Mrs Smith and her son against Fr Pavlou (**Pavlou**). At all relevant times, Mrs Smith and her son were represented by Lewis Holdway Solicitors and Pavlou was represented by Voitin Walker Davis. There was protracted correspondence between the Independent Commissioner and those solicitors, which is set out in my letter to Senior Detective Constable KN (see paragraph 38). I wrote jointly to those solicitors. Because the complaint was disputed I had decided to conduct a hearing (fixed for 23 July 2007) to determine the validity or otherwise of the complaint, and so advised both solicitors. I had made no decision in respect of the conflicting versions. In preparing for and conducting a hearing I was under a duty to observe the rules of natural justice. These rules included my being obliged to make known to each party what the other had submitted to me. It followed that when I was advised by Mr Paul Holdway on 20 July 2007 that the matter had been reported to the Police I immediately advised both solicitors by a joint letter as follows:

"I refer to my letter of 6 July and to a conversation I had with Mr Paul Holdway on 20 July. In that conversation Mr Holdway advised me that the complaint had been reported to the police and that apparently the police are considering the matter. In those circumstances and consonant with my invariable practice I propose to take no further step until the police investigation, to the extent that there is one, is completed.

I would ask that I be advised as to who the relevant police officers are, and if nothing further occurs in the course of the next 14 days I would then propose to contact those police and ask them if there is a continuing investigation."

- (b) The solicitors for Pavlou wrote to me on 23 July 2007.

"We acknowledge receipt of your letter of 20 July 2007. As we understood it a hearing date had been fixed for Monday 23 July 2007. We are now advised, late in the afternoon prior to the hearing date that the matter has been referred to police and that consequently the hearing will not proceed on 23 July 2007.

Should the police contact our client we will advise you of the details of same or alternatively we await your response to a new hearing date."

- (c) On 3 August 2007, I wrote to the respective solicitors stating:

"I refer to my letter of 20 July 2007 and must request that I be advised urgently of the police officer in charge of whatever investigation is occurring in relation to this matter. I

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would then seek to ascertain from that officer whether or not there is a continuing investigation.

Or alternatively if those acting for (the complainants) can advise me as to this aspect please advise me immediately”.

(d) Lewis Holdway on the same day replied:

“We refer to your letter of 3 August 2007. We advise that the police investigation in this matter is ongoing. We advise that the police officer in charge of the investigation is Senior Constable (redacted) who is based at the Knox Sexual Offences Child Abuse Unit (SOCAU).”

38 On 21 September 2007, I was contacted by Detective Senior Constable KN who eventually laid charges against Pavlou. On 25 September 2007, I wrote to that Detective as follows:

“Re: Pavlou

I refer to my telephone conversation with you on 21 September, when you sought from me information with respect to the abovenamed. I advised that I would set out my position and role in this matter, and further consideration could then be given.

(There was then set out particulars of my appointment as Independent Commissioner and relevant clauses of the Terms and Conditions). The letter then continued)

.... Consonant with the above, if a Complainant has prior to seeing the Commissioner gone to the police, or when seeing the Commissioner states his or her intention to go to the police, or if police investigation is already occurring, then my invariable practice is to take no further steps whatsoever until the resolution of all proceedings (if any) emanating from the police investigation. One qualification to this is that in particular circumstances where the Complainant appears to be in need of counselling and psychological support, I will refer that person to Carelink (see below) who will ex gratia provide that counselling and psychological support.

For completeness in the description of my role I should add if I am satisfied a person has been the victim of sexual abuse I can refer that person to Carelink, which is the agency set up to provide free counselling and psychological support to victims.

Likewise I can refer that person to a Compensation Panel which has jurisdiction to make binding recommendations of offers of compensation to be made by the Archbishop up to a limit of \$55,000.00.

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Finally, if I am satisfied that a priest has committed an act of sexual abuse as defined in the terms, I can make a recommendation to the Archbishop as to what action, (if any), should be taken. I stress that this is merely a recommendation, and of course the decision as to any action to be taken in relation to the priest is one exclusively for the Archbishop”.

I now set out hereunder a Chronology of events in relation to the complaints made against Pavlou.

I was first contacted by Mrs Smith on 24 October 2006, at which time I was hospitalised pending a by-pass operation on 27 October. Mrs Smith had already contacted Carelink and because I understood that Father Pavlou was on sick leave, I at that time took no further steps, though I was aware that Ms Sue Sharkey of Carelink and Ms Maria Kirkwood saw Mrs Smith and her son (the Complainants) on, I think, three occasions.

On 31 January I met with Mrs Smith and her son at Healesville and complaints were made against Father Pavlou in respect the son. I discussed the issue of referral to the police, and at that time it was the position of the Complainants that they did not propose to refer the matter to the police.

On 6 February 2007 I wrote to Father Pavlou conveying the complaints and inviting his response.

On 12 February 2007 Father Pavlou wrote to me stating that he would reply in detail.

I wrote again to Father Pavlou on 15 February 2007. On 5 March 2007 I was contacted by Mr Geoff Croxford of Voitin, Walker Davis, Solicitors, who advised that he was acting on behalf of Father Pavlou.

This was confirmed in a letter which Mr Croxford wrote to me on 6 March 2007.

I should note that in distinction to so many other complaints with which I have dealt, this was a current complaint, and one which had apparently been widely publicised in and around the parish. In consequence there was considerable public controversy which of course is understandable but irrelevant to the issue of whether or not there is a valid complaint against Father Pavlou.

Mr Croxford complained at the situation which was occurring in the parish, but as I pointed out this was not something which was of relevance or concern to me in the context of considering whether the complaints of Her son and his mother were established.

On 2 April 2007 I was advised, inter alia, by Lewis Holdway, Lawyers, that they were acting on behalf of the Complainants.

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Mr Croxford wrote to me on 3 April 2007. On 4 April 2007 I wrote to Mr Croxford advising him that I took his letter of 3 April essentially as a denial of the allegations which had been made by the Complainants. I wrote, inter alia:

"In those circumstances I consider that the only proper way for me to determine the validity or otherwise of the complaints is to invite the parties to a private and confidential hearing, which would be conducted in much the same way as a Magistrate would deal with an information in the Magistrate's Court. If the parties agree, a confidentiality agreement can be entered into, and witnesses called at the hearing can then be required to sign an undertaking of confidentiality."

I wrote to Lewis Holdway on 4 April 2007 setting out the correspondence I had had with Father Pavlou and Voitin Walker Davis and provided to those Solicitors a copy of the letter I had written to Voitin Walker Davis on 4 April 2007.

I then stated:

"In the circumstances, I consider that it is now necessary to conduct a hearing, for the reasons stated in my letter to Voitin Walker Davis" (copy herewith)

There followed a deal of correspondence between the writer and the respective Solicitors for Father Pavlou and the Complainants dealing with the procedures to be followed at the hearing, and including the deferment of a hearing because of her son's health.

I also contacted Mr Jeff Gleeson of Counsel and advised him of what was occurring preparatory to the holding of a hearing at which he would be Counsel assisting the Independent Commissioner.

It is unnecessary to detail the lively correspondence in this regard, nor is it relevant to refer to other correspondence which I had received, which related to matters not concerned with the complaints made by the Complainants.

At all times prior to 20 July I had proceeded on the basis that the Complainants did not intend to refer the matter to the police. However on 20 July Mr Paul Holdway advised me that the complaints had been reported to the police".

On 20 July 2007 I wrote to Voitin Walker Davis as follows:

"I refer to my letter of 6 July and to a conversation I had with Mr Paul Holdway on 20 July. In that conversation Mr Holdway advised me that the complaint has been reported to the police and that apparently the police are considering the matter.

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In those circumstances, and consonant with my invariable practice, I propose to take no further steps until the police investigation, to the extent that there is one, is completed.

I would ask that I be advised as to who the relevant police officers are, and if nothing further occurs in the course of the next fourteen days I would then propose to contact those police and ask them if there is a continuing investigation."

On 3 August 2007 Lewis Holdway advised me that the police investigation in the matter is ongoing, and accordingly I have taken no further steps in the matter.

The position therefore is that whilst I have received complaints from the Complainants, those complaints have essentially been denied by Father Pavlou and the Solicitors acting for him.

For the reasons stated above, I will take no further steps in the matter, until the police investigation and proceedings (if any) emanating therefrom are concluded.

I trust the above adequately explains my position."

- 39 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 by-line of Nick McKenzie have done (see paragraph 42), and latterly the Police submission, that I acted improperly is as wrong as it is offensive.
- 40 On 29 June 2009, Pavlou pleaded guilty and was sentenced to 15 months imprisonment in respect of indecent assault (wholly suspended) and was convicted of access to pornography for which he was given a Community Order.
- 41 On 1 July 2009, I advised the solicitors for Mrs Smith and her son that following the conviction of Pavlou, the son was entitled to pursue his application for compensation which I invited him to do. Notwithstanding frequent invitations extended to the solicitors for the son he has not yet pursued an application for compensation, though I understand he will. Mrs Smith also applied for compensation as a victim of Pavlou's misconduct, and I found that she was a victim because of her proximity in time and space to the abuse which Pavlou perpetrated on her son. Pursuant to the reports of psychiatrists I have also found that the other children of Mrs Smith are entitled to be compensated on the same basis, and I have duly reported this to the Compensation Panel. However, these applications have not as yet been pursued, though Mrs Smith has received financial assistance through Carelink.

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- 42 On 9, 10 and 11 August 2009, there appeared on the front page of The Age articles by Nick McKenzie highly critical of the *Melbourne Response* generally and the Independent Commissioner in particular. Such criticisms included that I as the Independent Commissioner had "tipped off" Pavlou, such that he was enabled to wipe his computer of incriminating evidence of his access to pornography. The article said inter alia that the Police were infuriated and frustrated at this 'tip off' which, so the article ran, provided Pavlou with the opportunity to wipe his computer.
- 43 It would appear that the author of the Police Submission relied upon the reports in The Age newspaper, as apparently did Ashton, to repeat the allegations which were made by The Age.
- 44 That the Police Submission and Ashton should allege that I "had alerted offenders so that evidence was lost" is remarkable in that it ignores and is contrary to discussions which took place with senior members of the Police relative to the Archbishop publishing a Media Release in respect of the changes to the *Melbourne Response* process as referred to above. That Media Release dated 15 February 2011 (see Attachment 1) was approved by Victoria Police prior to its publication.
- 45 The Media Release included the following paragraphs:
- "11. One of these cases generated front page articles in the Age newspaper, which characterize the Independent Commissioner's actions as a 'tip off' thereby implying misconduct when there was none.
12. The Age also asserted that the actions of the Independent Commissioner resulted in the alleged offender wiping his computer.
13. This was wrong because subsequently, the Independent Commissioner was informed by the Prosecuting Police Officer that the last occasion on which the computer had been accessed for wiping was 18 days before the Independent Commissioner advised the solicitors for both parties he would be taking no further steps because the complaint had been referred to the police".
- 46 (a) Despite the multiple references to the Independent Commissioner having alerted alleged offenders that they were being investigated, there are only two occasions, when it is alleged this occurred. The first I have already dealt with (at paragraph 37), and the second is the complaint referred to below. This was characterised on the front page of The Age as the "second tip off". I have provided the detail of my

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handling of these complaints so as to refute the express and implied accusation, that in breach of my professional and ethical obligations, I acted partially in respect of the alleged offender. The facts in respect of the "second tip off" follow:

- (b) On 21 July 2009, I interviewed a woman (the complainant) who made a complaint of sexual abuse by a priest.
- (c) On 6 August 2009, I wrote to the complainant (Attachment 6A) which letter is also at Appendix A of the Police Submission.
- (d) Having received her consent to put to the priest her complaint, I did so, by letter dated 17 August 2009. The priest rang me, denied the accusations, and tentative arrangements were made for him to meet with me.
- (e) On 24 August 2009, solicitors acting for the priest wrote to me (Attachment 7).
- (f) I wrote to the complainant (Attachment 8). It will be noted that I advised her that I had an obligation "to inform the other side of what else I had been told by you".
- (g) On 1 September 2009, Lewis Holdway Lawyers advised me they were now acting for the complainant (Attachment 9).
- (h) On 19 October 2009, I was rung by Detective Senior Constable OP who advised that the complaint had been assigned to her, and requested that I provide her with information. I advised her that, with the consent of the complainant, I would provide her with relevant documents.
- (i) On 27 October 2009, I advised Lewis Holdway that I "will take no further step in this matter until the completion of the Police investigation and the proceedings (if any) emanating therefrom. I have similarly advised TJ Mulvany & Co who act for (the priest)" (Attachment 10).
- (j) On 5 November 2009, I emailed Detective Senior Constable OP (Attachment 11). Unfortunately, the Terms and Conditions of my Appointment were not attached as was stated in the email.
- (k) On 16 November 2009, Detective Senior Constable OP emailed me (Attachment 12) to express her disappointment with my "decision to contact the Priest's legal advisers in regard to police involvement without firstly speaking to me about your actions, as I remember you saying you would take no further part in the matter. As stated above I

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am unaware of your rules of natural justice. I cannot see how you can claim this is the reason for informing of police involvement.....”

- (l) On 18 November 2009, I emailed Detective OP the redacted terms of which I set out hereunder:

“Re: Complaint

I have your email of 16 November and first let me apologise for the failure to attach to my email of 5 November the Terms and Conditions of my appointment, which are attached herewith. Secondly I want to assure you of my cooperation and assistance generally, and particularly in the case at hand. Since my appointment as Independent Commissioner in October 1996 I have had a great deal of contact with the police, and particularly the Sexual Offences Unit, as it has been variously named.

You state in your email “Have you conducted any investigation into this matter; it appears to me you have more of a mediator role than investigation role and without receiving the ‘terms and conditions of your appointment’ you promised I am not aware of how you go about conducting the investigation into the validity of the claim”.

Of course that reflects the unfortunate omission to provide to you the Terms and Conditions of my appointment. I did commence an investigation (put another way an enquiry into allegations) of sexual abuse by the priest which I will now endeavour to explain.

I am not a mediator. If the complainant does not report the matter to the police, I embark upon the enquiry by referring the complaint to the accused, inviting him to respond by attending upon me or in writing. In the event that the accused denies the allegations I invite the complainant and the accused to participate in a confidential hearing to ascertain the validity or otherwise of the complaint. In conducting such a hearing I act in the manner of a Magistrate hearing an information.

Typically there is Counsel Assisting the Commission and on some occasions the complainant has legal representation. In all instances to date, the respondent has been legally represented. If I find that the complaint is established, I can refer the complainant to Carelink which provides free counselling and psychological support. I can also refer the complainant to a Compensation Panel which has jurisdiction to make binding recommendations of compensation up to a limit of \$75,000.

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If I find that the complaint is established I will report the facts to the Archbishop and make recommendations as to what should happen to the respondent. I stress that all I do is to make recommendations, and the final decision in relation to the respondent priest is exclusively that of the Archbishop. I should add that since my appointment, I have in more than 300 cases been satisfied that sexual abuse has occurred, and have accordingly referred the complainant as aforesaid. A large number of these cases have been those in which the relevant priest has admitted guilt, or alternatively has been previously convicted in respect of the sexual abuse complained of.

In this case, the complainant made her complaint in an interview with me which was transcribed. I forwarded the transcript of that conference to her, together with a letter which subject to her consent I proposed to send to the priest. The complainant consented to my sending the letter and thus I was embarked upon an enquiry into the validity or otherwise of her complaint, and pursuant to the Terms and Conditions of my appointment (and of legal principles) I was required to accord natural justice to each of the parties. Simply stated natural justice means acting fairly. There are myriad decisions upon the meaning of natural justice and I refer only to Concise Law Dictionary by P G Osborne:

'The rules and procedures to be followed by any person or body charged with the duty of adjudicating upon disputes between, or the rights of, others eg. a government department or the Committee of a Club. The chief rules are to act fairly, in good faith, without bias and in a judicial temper; to give each party the opportunity of adequately stating his case and correcting or contradicting any relevant statement prejudicial to his case and not to hear one side behind the back of the other...'

Had the complainant, instead of consenting to my forwarding the letter of complaint to the priest, informed me that she proposed to report the matter to the police, I would have taken no further step in the matter.

In that situation because I had not embarked on an enquiry, I had no obligation to inform the priest of the potential for a police investigation of the complaint.

Once you informed me that there was a police investigation, pursuant to my invariable practice, I stated that I would take no further part in my investigation/enquiry. But this did not relieve me of the obligation to so inform the parties that I would be taking no further steps in the matter.

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I repeat what I said in my email of 5 November namely: 'Accordingly I advised the solicitors for the priest that the matter had been referred to the police, and likewise informed the solicitors for the complainant that this was the case, and that accordingly I would be taking no further steps in relation to the investigation until the police investigation and the proceedings (if any) emanating therefrom were completed. You did not request me not to inform the solicitors for the priest that the matter had been referred to the police, and if you had, I would have respectfully advised you that I would not consent to such a course, because of my duty to keep both parties in respect of the investigation I was conducting fully apprised of relevant matters.

It is obviously appropriate that the priest through his solicitors be informed that I would be taking no further steps in relation to determining the validity or otherwise of the complaint (pending the completion of the police investigation...) 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'.

I have forwarded by mail to you at Moreland Crime Investigation Unit, 630 Sydney Road, Brunswick the following documents:

Transcript of my interview with the complainant on 21 July 2009;

A copy of my letter to the complainant, including a draft of the letter proposed to be written to the priest, which she authorized me to do;

The letter to me from the solicitors for the priest and my proposed reply to that letter which is all incorporated in my letter to the complainant of 25 August 2009 together with copies of her letters to the Vicar General as referred to in that letter.

I am happy to provide whatever else you require of me.

I confirm that I would be obliged if you advise me if you intend to charge the priest with a criminal offence. In that event I would almost certainly recommend to the Archbishop that the priest be placed on administrative leave (ie. cease to practice as a priest) pending the determination of such charge. I have so advised the solicitors for the priest.

I trust the above clarifies the situation, and I again record my regret at the "Murphy's Law" situation in respect of the terms of appointment.

I reiterate my willingness to provide whatever cooperation and assistance I can."

(m) Detective OP replied the same day stating:

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"You have explained it well. I would like to request any other files on the priest where he has been the subject of any sexual abuse matters. Thank you".

- (n) Both my letter and Detective OP's reply were provided to Detective Inspector Glenn Davies in December 2009, but these were apparently ignored by the author of the Police Submission, Ashton and Mr McCrae.
- (o) In January 2010, with the consent of the priest's solicitors, I advised Senior Constable OP of the other files I had in respect of the priest and their contents, the production of which she did not require.
- (p) On 17 May 2010, the priest was charged with offences against the complainant and was committed for trial on October 2011. However, on 1 September 2011, the Acting Director of Public Prosecutions discontinued the prosecution.

MELBOURNE VICTIMS COLLECTIVE

- 47 Lewis Holdway are lawyers for the Melbourne Victim Collective (**Collective**). The Collective was apparently established on 16 June 2008 when 19 persons signed the Charter "Towards Justice" (**Charter**). Attachment 13 is the signatory page and on which appears that contacts are In Good Faith and Associates director Helen Last and Lewis Holdway Lawyers. The Charter contained a mass of serious but unparticularised assertions of flaws in the *Melbourne Response* generally, and the Independent Commissioner in particular.
- 48 (a) On 30 June 2008, I wrote to Lewis Holdway as solicitors for the Collective stating 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 recognized 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 criticizes the role and the performance of the Independent Commissioner. Whilst I have not the slightest objection to constructive criticism, and will endeavor to accommodate to it, this cannot be said of a great deal of the Charter. Its criticisms generally are unfounded and/or inaccurate and/or misconceived.

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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 with the assertions made in the Charter and until this occurs it is difficult if not impossible to properly respond...."

(b) That letter (Attachment 14) then sets out extracts from the Charter and my comments thereon. I have mentioned this in the context of responding to the Police Submission and Ashton because a deal of what is there said appears to adopt, without qualification, the unsubstantiated assertions of the Collective. It ignores the long history of cooperation between me, the Archdiocese and Police and ignores in particular my letter to Detective Inspector Davies of 3 December 2009. I continued to make requests for particulars and despite some promises that they would be provided, this has not occurred. The Charter reflects the animus that its signatories have towards inter alia the Independent Commissioner, and presumably is the flawed basis upon which some of the signatories have made criticisms of the Independent Commissioner in submissions and evidence before the Committee which I will deal with later. Be that as it may, it is however surprising and most concerning, that the Police Submission and Ashton have apparently accepted without question those criticisms, and repeated same.

(c) I continued to make requests for particulars, and received promises that these would be provided, but they never were.

49 (xxi) *"Victoria Police was at the time reviewing all protocols with non Government organisations and made the organizational decision that no agreement should exist with the Catholic Church given Victoria Police concerns regarding the process."*
(ps 9)

COMMENT

(a) This is the first time that anyone had said that Victoria Police has "*concerns regarding the process*" as the reason no agreement should exist between the Police and the Catholic Church. That statement is demonstrably false.

(b) The reason that no protocol was entered into with Victoria Police was pursuant to the policy pronouncement of the then Chief Commissioner Mr Simon Overland, that all such Memoranda of Understanding would no longer be entered into.

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On 25 September 2010, Mr Overland was quoted as saying:

"Mr Overland said Police would no longer enter into Memorandums of Understanding with private companies and only do such deals with Government agencies".

- (c) On 6 October 2010, Deputy Commissioner Sir Ken Jones wrote to Archbishop Hart as follows:

"You may have read in various media reports that Victoria Police has recently changed its policy with regards to entering into agreements with non government or non law enforcement agencies who are involved in our investigations or operations. The Chief Commissioner, or any of his staff, can no longer enter into such agreements with organisations external to government and law enforcement. Essentially our position now is that there is no need for such agreements and that our relationships with such bodies ought to be solely regulated by the extant laws and procedures that apply to everyone.

Unfortunately the agreement that the Church and Victoria Police were developing for some time has been caught by our change of policy and cannot now be completed.

Consequently any previous similar agreement between Victoria Police and the Catholic Church is now effectively rescinded.

I have discussed this decision with Detective Inspector Glenn Davies and feel that a meeting be arranged to agree a way forward which ensures that Victoria Police and the Catholic Church continue to work closely together. Inspector Chris Gawne, from my office, will be in contact shortly to arrange that." (emphasis supplied)

- (d) I of course was involved in the negotiations of the agreement "*that the Church and Victoria Police were developing for some time*" because I was to be a party to that agreement. Thereafter I was involved in discussions with respect to supplementing the Terms and Conditions of my Appointment, which took place in February 2011. For the Police Submission and Ashton to put forward a spurious reason for a protocol not being entered into, and thus impugning the *Melbourne Response*, reveals both animus and mendacity.

- 50 (xxii) *"In this Submission Victoria Police has highlighted a number of deliberate actions by the Catholic Church which arguably have been taken to impede or conceal investigations. It is the opinion of Victoria Police that such deliberate action should be criminalized". (ps 9)*

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COMMENT

Once again this is an unparticularised assertion of "*a number of deliberate actions*". Until those deliberate actions are identified and attributed to a person alleged to have taken them, I am unable to further respond save to say that at no time have I deliberately taken actions to impede or conceal investigations, nor do I believe that any action of mine has unwittingly impeded or concealed investigations. For such deplorable assertions to be made, without a skerrick of evidence in support, speaks its own message as to the credibility to be given to the Police Submission and Ashton.

**THE EVIDENCE OF DEPUTY COMMISSIONER ASHTON, DETECTIVE
SUPERINTENDENT ROD JOUNING AND MR FINDLAY MCCRAE**

- 51 (a) Detective Superintendent Jouning is the Officer in Charge of the Sexual Crimes Division of Victoria Police and Mr Finley McCrae is the Senior Legal Adviser to the Victorian Police, who together with Deputy Commissioner Ashton, gave evidence to the Committee on 19 October 2012.
- (b) In responding to and commenting upon this evidence, I have extracted the relevant paragraphs (in *italics*) and numbered them (i), (ii), (iii) etcetera. Unless otherwise noted these extracts are from the evidence of Ashton, and the relevant pages of the transcript are identified eg. (T1)
- 52 (i) *"To date Victoria Police has not had a single referral of a child abuse allegation by the Catholic Church, and whilst a number of victims who have spoken to Victoria Police have indicated that they spoke to the Church previously, there have been no referrals by the Catholic Church or its representatives". (T1)*

COMMENT

- (a) This erroneous statement repeating what was said in the Police Submission has been refuted above. I repeat, and stress again, for there to be an effective referral of a complaint to the Police, the victim must be prepared to give evidence in support of the complaint. If this is not so, the Police will not, as they cannot, take further action. In cases where the victim has reported their complaint to the Police, in circumstances where (as is invariably the case) I have advised the victim of their right to report their complaint to the Police, and have encouraged them to do so, that effectively is a referral by the Independent Commissioner. There would be no point (even if I was

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permitted to do so), in my referring a complaint to the Police, unless the victim is prepared to 'press charges'.

- (b) The following example illustrates the lack of utility in reporting a matter to the Police unless the victim is prepared to 'press charges', and demonstrates the unreasonableness of this oft repeated criticism of the Independent Commissioner.
- (c) Two brothers each complained in respect of a priest, but did not wish to take their complaint to the Police. I accordingly dealt with the complaints, found them established, and made findings which entitled each of the brothers to apply for compensation and to have free counselling and psychological support. I had also received separate complaints from a man and a woman against that priest. Neither of them wished to take the complaint to the Police. I found these complaints established and made similar findings as above.
- (d) However following my findings in respect of the brothers, a partner of one of the brothers (who was a journalist) wrote a front page article in The Sunday Age referring to my findings and dealings in respect of her partner. Following this the two brothers were then each interviewed by the Police, and inter alia advised the Police that there were two other complainants, whose names they did not know.
- (e) I was approached by the Police and asked to disclose the names of the other complainants and the details of their complaints. Summarily stated, and after discussions with the man and the woman, and advising them that if the Police subpoenaed my files I would naturally provide them, I was authorised to provide the relevant files to the Police, which I did. When the Police interviewed the man and the woman, they stated they did not wish to pursue their complaints through the Courts. Consequently the Police took no action, and advised me of this, and also that they would be taking no further action in respect of the brothers.

53 (ii) *"Victims have reported to Victoria Police: evasive and defensive dealings with personnel employed by the Church, making them feel reabused". (T4)*

COMMENT

Once again no particulars are given to amplify this serious allegation. These complaints have not been made known to me, and consequently it is difficult to adequately respond. I readily acknowledge that many victims find reporting their complaints very stressful. I further

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acknowledge that no matter how solicitously a complaint is handled, or how adequate an apology, and the payment of compensation, there cannot be eradicated the fact of the abuse and the continuing impact which it has had upon the life of the victim. I believe that in dealing with all complaints I have acted fairly, reasonably and appropriately. I set out an extract from my Op Ed published in the Age on 20 December 2011:

"I want to make clear that I welcome constructive criticism and if there are complainants who consider they have not been fairly or reasonably treated I invite them, or someone on their behalf to contact me in confidence. My response will remain confidential, unless the complainant wants to publish it. In short I am bound to confidentiality but complainants are not".

There has been no response to that invitation. If however there have been complaints made to the Committee in confidential session, I would be most willing to respond to the Committee confidentially. The complete Op Ed is Attachment 15.

- 54 (iii) *"Non advice by the Church appointed investigator that their interview could be used in future Court cases at the outset of that interview". (T4)*

COMMENT

- (a) Because the above allegation is apparently put forward by Ashton as an instance of my misconduct, I must respond to it, albeit as will appear from the following it is a specious complaint, which was made only after a number of other complaints had been demonstrated as false. The lack of particularly in Ashton's allegation suggests he has no direct knowledge of this "non advice", but has relied upon the front page Age articles of 10, 11 and 12 August 2009, extracts of which I set out:

"In another case, a victim of a paedophile priest had questioned why the Church-appointed investigator warned him only after interviewing him... 'rather than before...' the interview could be used in any future Court cases. Lawyers for paedophile priest Terrence Pidoto later used the interview to question the victim in Court".

'This is precisely one of the complaints raised by a Member of the Victims Group now questioning the Melbourne Response. The victim, who was a boy, was raped by notorious paedophile priest Terrence Pidoto, has alleged that O'Callaghan told him of his right to contact police only at the end of his interview with the barrister in 2002. 'George' would have liked to have been explicitly warned about this at the start of the interview, says the victim. Sure enough, Pidoto's lawyers later used this interview to question him in Court.'

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(b) The implication is that I have acted partially towards alleged offenders. This is made apparent in the letters of Lewis Holdway detailing the complaints of 'George' which are referred to below. Such assertions are not only false they are irrational and fly in the face of the evidence. In that context it can be noted that the vast majority of complaints made to me (in the order of 97%) have been upheld. Thus all but a handful of alleged victims have, by my findings, become entitled to free counselling and psychological support and compensation. I can do no more and no less than to find a complaint established. But notwithstanding that almost all complaints have been established, I have and continue to be stridently criticised, which, I hope for the reasons set, out fair minded persons will consider unfair and unjust.

(c) George (his pseudonym) is a member of the Collective, and a signatory to their Charter. I hereafter set out the details of my dealing with George, so as to demonstrate that Police reliance upon his complaint, is misconceived. Notwithstanding, as appears below I have always recognised that George was grievously abused, and have recorded my sympathy. An analysis of George's file rebuts Police claims of:

- (i) my dissuading victims from going to the Police;
- (ii) the failure to report to the Police cases of criminal child abuse; and
- (iii) the lack of engagement with the Police.

The length and detail of my dealing with George is necessary, because it reveals the animus that George as a member of the Collective, has towards me, and the lengths to which he and other members of the Collective are prepared to go to discredit my personal and professional reputation and the *Melbourne Response*.

(d) In April 2002, George had been recommended by Broken Rites to go to Carelink. In turn, Carelink advised George that he should contact the Independent Commissioner. Accordingly I was rung by George on the morning of 30 April 2002 and he said he wanted to make a complaint against an unidentified priest. I told him then of his right to report to the Police and encouraged him to do so. He said that was not his present intention. That afternoon I interviewed George and the transcript of that interview occupies 51 pages. I set out the concluding paragraph:

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"Before you close off I want to say this to you, what you have described to me may constitute criminal conduct and I am obliged it is my invariable practice to tell you that albeit that this is and remains completely confidential. You have a complete and unfettered right (I think I may have told you on the phone this morning) to go to the police and I have always said to people if you wish to and I encourage you to do so because I cannot be a substitute for the police force..."

- (e) Attached are the relevant pages of that interview, relevant in the sense of containing criticisms made by George, and the details of George's complaint of abuse. (Attachment 16) These extracts do not include George's history of his personal and financial situation.

- (f) I refer to the following extracts of the transcript of interview:

"POC: I want to put on the record of this transcript a copy of which I'll give to you is that everything you tell me is and remains confidential until you tell me otherwise.

George: Ok

POC: Now you have told me that you've first spoken to Elizabeth Harding consequent upon speaking to Broken Rites and

George: Correct

POC: And now you're here.

POC: So I invite you to tell me what you want to tell me about the complaint that you've got

George: Can I get I'd like to start by saying give you some background

POC: Yes"

- (g) I wrote to George on 7 May 2002 (Attachment 17) stating:

"Before going further, I emphasise that provision in those terms and what I informed you at our conference, that you have a continuing and unfettered right to report of what you complained to the police. I encourage you to exercise that right. However if you choose not to, whatever you have told me in our conference and is recorded in the transcript is and will remain confidential until you tell me otherwise"

- (h) George wrote to me on 9 May 2002 (Attachment 18) stating:

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"As per your letter of 2nd May 2002 (sic) and my telephone conversation this morning I have now identified the priest who sexually molested me as per my interview on 30 April 2002. His name is Terrence Melville Pidoto...."

- (i) Attachment 19 is notes of my conversation with George on 14 May 2002.
- (j) On 21 May 2002, George was interviewed by the Police and made and signed a statement (Attachment 20). That statement, in its essential terms, mirrored what was in the transcript of my interview of 30 April. George on that day gave that transcript to the police. Naturally at the Committal, the Crown was obliged to provide the transcript to Pidoto's lawyer. Consonant with this, I was on the list of Crown witnesses because I was the first person to whom George had complained.
- (k) Attachment 21 is notes of my conversation with Senior Detective Constable FJ on 24 May 2002.
- (l) Attachment 22 is my letter to George of 6 June 2002.
- (m) Attachment 23 is my letter to Senior Detective Constable FJ of 7 June 2002.
- (n) Attachment 24 is my letter to Senior Detective Constable FJ of 4 September 2002 with attached statement.
- 55 (a) I did not expect to have any further contact with George until the Police investigation, and any prosecution resulting therefrom, was resolved. I had no reason to believe that George had any concerns about my handling of his complaint. However, on 23 August 2002, I was rung by Ms Kate Tozer of the ABC. I had a further conversation with her on Sunday 25 August 2002. The essence of these conversations was that Ms Tozer conveyed to me allegations of improper conduct, which she had received from Ms Helen Last and George. At no time did Ms Tozer identify George, but it was clear to me who Ms Tozer was referring to.
- (b) I wrote to Ms Tozer on 29 August 2002 (Attachment 25) and referred to and responded to the allegations she had raised. The first paragraphs of that letter were:

"I refer to my telephone conversations with you on Friday 23 August and Sunday 25 August. Those conversations dealt with the allegations that you have received from Helen Last and a victim of sexual abuse (the complainant) in respect of my role as Independent Commissioner appointed by the Archdiocese of Melbourne to inquire into allegations of sexual abuse by priests, religious and laypersons within the Archdiocese. I

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note that you at no time identified the complainant, but in the circumstances it was easy for me to infer who he was.

The allegations included the following.

- 1. I am not independent, but my role is to collect evidence for the use of the Church in legal proceedings.*
- 2. That when I interviewed the Complainant I sought information about his financial position, his assets and liabilities and so on.*
- 3. I asked the Complainant what positions he and his wife occupied when engaging in sexual intercourse.*

I strongly refuted those allegations which are false and gravely defamatory and I informed you that if anything to that effect was published I would have no option but to take proceedings for defamation. You invited me to give an interview dealing with those allegations which I refused for two reasons. First, it is my invariable policy not to give interviews on radio or television, because of the confidentiality which I extend to victims of sexual abuse when bringing complaints to me. If those persons saw or heard me on television or radio, even though dealing with matters not connected to that person, they may fear I would be talking about them next. Secondly, in the context of these allegations, the mere publication even though strongly denied, would cause "some mud to stick".

The allegations convey at least the following imputations.

- (i) I am in a conspiracy with my appointors not to act independently or to honour my undertakings of confidence.*
- (ii) That I consciously do not observe and comply with the Terms and Conditions of my appointment.*
- (iii) That I am false to my ethical obligations as a barrister to act in accordance with the Terms and Conditions of my appointment.*
- (iv) That when interviewing a Complainant I sought information which was irrelevant, namely the financial position of the Complainant.*
- (v) That I asked prurient questions which could have nothing to do with the subject complaint of sexual abuse....."*

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I propose to provide a copy of this letter to Ms Last, and to invite her to withdraw the allegations which she has made..."

- (c) On 29 August 2002, and again on 4 September 2002 (because of letter being returned to sender), I wrote to Ms Helen Last as follows (Attachment 26):

"I enclose a copy of a letter which I have written to Kate Tozer of the ABC, the contents of which I believe are self explanatory. I repeat that the allegations I have referred to in that letter as having been made by you are false and defamatory of me in my professional and personal capacity. Additionally, if those allegations were made public, they would actually and potentially prejudice victims of sexual abuse.

Unless within seven days you notify me that you unreservedly withdraw those allegations, I will have no option, but to instruct my solicitors (Mahony's) to issue at the appropriate time Supreme Court proceedings claiming damages for defamation.

The appropriate time for the issue of those proceedings cannot be until the trial of Terry Pidoto in respect of the complaint of the complainant is concluded. The publicity surrounding the issue of my proceedings could prejudice the fair hearing of the trial, including detracting from the strength of the prosecution case.

But be assured that action will be taken in a timely way.

I must add that I am at a loss to understand how a person in your position could give credence to and make these allegations."

- 56 On 15 September 2002, George complained to the Registrar of the Medical Practitioners Board regarding Professor Richard Ball of Carelink making accusations against the Professor some of which were similar to those he made against me. Following a lengthy and thorough investigation the Board dismissed the complaint.

- 57 Ms Last telephoned me and, on 8 October 2002, she wrote to me as follows (Attachment 27):

"Dear Mr O'Callaghan

I am writing following my phone call to you, to respond to your letter of 4 September 2002. I reiterate that I apologise to you for any concern you may have experienced as a result of Ms Kate Tozer putting incorrectly to you that I had made the three allegations as outlined in your letter. As I said personally to you I did not make those allegations about you. I am aware that you have not and would not professionally ask such things as in allegations 1 to 3.

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As I explained to you I did say to Kate that victims have asked me to respond to their concerns about not understanding your independence, as they are unclear about the structure and operations of your appointment, which you outlined in detail in your letter. Kate Tozer, the journalist has most clearly mixed up her materials.

My apology for any undue concern this may have caused you”.

Notwithstanding that I had no reason to disbelieve what Ms Tozer had conveyed to me as to the allegations made to her by Ms Last and George, and because the ABC had indicated there would be no publication of any of these matters, I decided to take no further action and there the matter rested.

- (a) On 4 February 2003, Ms Helen Last wrote to me in respect of counselling funding for George (Attachment 28). As the following extract shows, the content and tone of the letter was inconsistent with there being any enduring concern about the manner in which I had conducted the investigation into George's complaint:

“I am contacting you as a Pastoral Advocate for George. I understand George approached you for assistance around the middle of last year regarding his allegations of child sexual abuse by Fr Terry Pidoto.

Regarding his legal process Mr Paul Holdway is currently acting for George and as you know his Archdiocese case is on hold due to criminal proceedings...

In your letter to George of 6 June 2002 (last paragraph) you confirm that he is free to nominate his own psychiatrist and to have fees met by Carelink etc....

Are you able to find George eligible for this coverage...”

- (b) On 11 March 2003, I wrote to Ms Last (Attachment 29) advising that I had requested Carelink to meet the fees of George's psychologist. At that point of time I had:
- heard his complaint and advised and encouraged him to report same to Police which he did;
 - confirmed his referral to Carelink so as to ensure that he had funding for appropriate counselling and psychological support; and
 - facilitated George meeting with the Police so as to pursue the prosecution of his abuser.

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58 On 28 June 2007, George gave evidence at the trial of Pidoto who was convicted and imprisoned of a number of charges in respect of George including the rape of George when a young boy.

59 (a) On 18 September 2007, following Pidoto's conviction, I wrote to George's lawyers Lewis Holdway (redacted) as follows:

"I was told by the Office of Public Prosecutions, from whom I sought 'George's address' that I should write to you. This I do. I first saw George in May 2002 and shortly after he reported his complaints to the police, and it was only recently those complaints were resolved in the conviction of Pidoto, as you are probably aware. Consonant with my usual practice I could do nothing with respect to furthering the matter until the Court proceedings were completed. Naturally, I am satisfied that George was the victim of sexual abuse by Pidoto as described by him in his transcript of evidence before Judge Howie and a Jury, a copy of which transcript I have.

Please let me know if George now wishes to apply for compensation and if so I will forward an application to him. I await your reply".

(b) On 15 January 2008, I then received from Lewis Holdway a letter (Attachment 30) which contained a number of complaints against me which were false and unjustified. Attachment 31 is my letter to Lewis Holdway of 1 February 2008, which sets out the accusations and my response thereto.

60 On 28 February 2008, Lewis Holdway wrote to me (Attachment 32). On 5 March 2008 I replied to that letter (Attachment 33):

"I have your letter of 28 February 2008 which purports to apologise for misunderstandings, a euphemistic description of the many falsities contained in your letter of 15 January 2008.

I do not accept those apologies, because they are inadequate and unresponsive. The essential false claim in your said letter was that I had seen your client after he had been to the police and that I made available to the Defence the Transcript of the interview of 2 May 2002. I did not provide the transcript to the Defence nor did I provide it to the police. This your client did.

I reject the spurious claims and assertions in your letter of 28 February.

Notwithstanding his false and damaging instructions to you, I retain sympathy for your client, because of the gross abuse he has suffered. The sooner there is some finality to the matter the better. In that context I am pleased that your client now wishes to apply for compensation

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pursuant to what I said in my letter of 18 September 2007 and paragraph 20.1 of my letter of 1 February 2008....." (emphasis supplied)

61 On 5 March 2008, I wrote to Mr David Curtain QC, the Chairman of the Compensation Panel (Attachment 34). I understand that the Compensation Panel recommended that George be offered the maximum compensation, which undoubtedly George deserved because of the gross abuse he suffered.

62 Lewis Holdway, in their submission to the Committee under the heading "Case Studies" gave another version of what George (Luke) claims:

(a) *"Luke's (not his real name) story is typical of the problems inherent in the Church's reporting system.*

When Luke reported his complaint of child abuse to the Church he was referred to the Independent Commissioner. The Independent Commissioner did not inform him of his right to report to the police until after he had given his statement. Nor did he adequately explain the complaint process to Luke.

Luke subsequently contacted the police and pressed charges against the priest who had sexually assaulted him. At trial, however, Luke was horrified to discover that the transcript of his initial statement to the Independent Commissioner was used against him by the Defence in an attempt to discredit him.

'I had been told by Mr O'Callaghan that what we had discussed was to be kept confidential. You can imagine my utter surprise and distress when these very matters were used to try to trip me up during cross examination....."

(b) I did tell Luke of his right to report to the Police, both in the telephone conversation I had with him on the morning of 30 April 2002, and the conference I held with him later that day (see paragraph 54(d) above). As appears from the correspondence above, I made it clear to George, that what he had told me would remain confidential unless and until he went to the Police (see paragraphs 54(f) and (g) above).

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

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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.

- 64 (iv) *"There have been reports of the Church encouraging victims to confront their alleged abusers". (T4)*

COMMENT

I have responded to this at paragraph 32.

- 65 (v) *"The Catholic Church Submission to this Inquiry went to lengths to explain their use of Canon Law in handling these matters". (T4)*

COMMENT

- (a) I have carried out my role as Independent Commissioner subject to the law of Victoria, my Terms of Reference, and the ethical rules of the Victorian Bar.
- (b) In order to facilitate my obtaining evidence I was appointed a delegate by Archbishop Pell (as he then was) and by Archbishop Hart as follows:

"In accordance with Canon 1717 of the Code of Canon Law, by virtue of this letter I appoint you as my delegate to investigate matters pertaining to professional misconduct and sexual abuse alleged on the part of priests, religious and lay workers who at the time of the alleged offence were under the control of the Archbishop of Melbourne...."

- (c) Importantly, in almost all the cases of complaints of sexual abuse in respect of a priest who was alive and in active practice at the time of the complaint, that priest's faculties were removed by his being placed on administrative leave. Administrative leave meant that he could not practice as a priest pending the investigation of the complaint and if the complaint was established he remained permanently on administrative leave.

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- 66 (vi) *"In terms of co-operation with Victoria Police, since the introduction of the Catholic Church protocols to investigate child sexual abuse complaints the Church has been identified to have alerted alleged offenders to police investigations and discouraged victims from reporting incidents to the police. Examples include: a church appointed investigator advised a priest suspected of child sexual abuse of a police investigation, which allegedly enabled the destruction of evidence". (T4-5)*

COMMENT

Presumably this refers again to the situation in respect of Pavlou. How often does this single instance need to be repeated, and to be described as an included example. How this evidence could be given with the apparent approval of Victoria Police's Senior Legal Adviser beggars belief.

- 67 (vii) *"The Independent Commissioner in 2010 made statements to a victim regarding the potential success of child sexual abuse allegations if the victim reported the abuse to police as 'this kind of conduct you describe would be unlikely to be held by a Court as criminal conduct.'" (T5)*

COMMENT

I have already responded to this allegation (see paragraph 28).

- 68 (viii) *"Further it is almost certain under reporting or delayed reporting will continually and considerably limit Victoria Police's ability to analyse contemporary child sexual abuse incidents involving Catholic Church in Victoria." (T3)*

COMMENT

With respect, this allegation again illustrates a fundamental misunderstanding of the operation of the *Melbourne Response*. In the time I have been Independent Commissioner there have only been three complaints which could be described as "contemporary child sexual abuse incidents". In the first two cases, when complaints were made to me, the offender had already been jailed for previous offences and very shortly after the complaints were made the offender died. Further, in that case the children's parents had taken one of the complaints to the Police but the Police did not pursue the complaint because of the unsatisfactory situation of the victim. In the second case, the mother and the victim, whilst initially advising that they did not wish to report the matter to the Police, eventually did and the offender was convicted. Of the 304 relevant upheld complaints that were made to me,

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115 were made in respect of offenders who were already dead at the date of the complaint, nine were made in respect of offenders who resided overseas at the date of the complaint, four were made in respect of offenders who the complainant could not identify and the complaints of another 87 victims had already been reported to the Police (see Attachment 1B).

- 69 (ix) *“Moving to more current times, current Church protocols provide child sexual abuse victims with alternative courses of action to civil or criminal proceedings. Since 1996 the Catholic Church of Victoria has upheld approximately 620 cases of criminal child abuse, none of which they have reported to police.” (T4)*

COMMENT

- (a) I speak only of the *Melbourne Response*. Undoubtedly, it does provide an alternative to civil proceedings, because victims have found it difficult if not impossible to mount a civil claim against the Melbourne Archdiocese. This was a function of an inability to prove that the Archdiocese knew or ought to have known of the propensity for the relevant priest to engage in child sexual abuse. Typically the offending priest is not in civil parlance worth ‘powder and shot’. But what the initiative of Cardinal Pell’s introduction of the *Melbourne Response* in 1996 provided, was that a complainant of sexual abuse was entitled to ex gratia compensation simply upon the proof that he or she had been abused by a Church person. In that sense the *Melbourne Response* mirrors the Victims of Crimes Assistance Act 1996 (Vic), namely that proof of damage caused by a criminal required the State to provide ex gratia compensation. In the situation of the Archdiocese of Melbourne not only does it provide compensation capped at a level above that provided by the State, but also provides for free counselling and psychological support so long as it is needed by the victim.
- (b) With respect to “none have been reported to Police” I have already dealt with that baseless allegation.
- 70 (x) *Despite the introduction of Church protocols, victims have reported to Victoria Police, evasive and defensive dealings with personnel employed by the Church, making them feel re-abused; a lack of timely responses, which has increased stress; been misadvised regarding the location of an offender that prevented the commencement of an investigation; non advice by the Church appointed investigator that their interview could be used in future Court cases at the outset of that interview; failure to*

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provide pastoral and psychological support which has exacerbated suffering; alleged breaches of confidentiality between Carelink and Archdiocese lawyers – I stress the word 'alleged' there; an uncertainty of their future rights once they had accepted an ex gratia compensation and signed a deed of release. There have been reports of the Church encouraging victims to confront their alleged abusers". (T4)

COMMENT

Out of that plethora of unparticularised accusations I was able to infer that George's complaint was in respect of "non advice by the Church appointed investigator....". Once I knew the identity of that complainant, I was able to respond as I have in chapter and verse to refute the spurious allegation that it was. Absent particulars in respect of the other accusations, I can do no more than deny their validity which I do. Were particulars provided of the aforesaid allegations, I am confident I would similarly refute them.

- 71 (xi) *"We have also had examples where evidence has been moved and also of the obtaining of injunctions and imposition of legal professional privilege to prevent the release of evidence. We had a number of examples of this conduct which named people etc, so we have taken those names out but I will quickly give you 3 examples where this obfuscation has occurred." (T5)*

COMMENT

If there are examples of the conduct complained of it would be incumbent upon even the most junior Police officer to give particulars of these examples, even if it meant referring to the relevant person by a pseudonym. I am at a loss to respond to these apparently baseless allegations if they refer to me. I can assure the Committee that I have never sought, let alone obtained, an injunction to prevent the release of evidence. Likewise, I have never claimed legal professional privilege to prevent the release of evidence.

Ashton then gives three examples of this obfuscation, the second of which is yet again a repetition of the Pavlou 'tip off'.

Since it has been referred to on multiple occasions, presumably to imply spuriously it was a widespread practice by the Independent Commissioner to alert the accused, I refer back to the detailed refutation which I gave of these allegations, and say no more other than to note this "scraping the barrel" aspect of Ashton's evidence.

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- 72 (xii) *“Victoria Police has also come across one deed of agreement between the Church and a person who witnessed or was impacted on by the activities of a convicted priest where the compensation has been traded for a discharge of potential liability. In consideration the witness released and discharged from responsibility the Archbishop, any person who became the Archbishop and all entities and bodies associated”. (T5)*

COMMENT

As a simple matter of fairness that “one deed of agreement” upon which such reliance is placed by Ashton should have been produced. Confidentiality of the person the subject of the agreement could have been preserved by using a pseudonym. But the production of the agreement would provide the opportunity to respond to this assertion, and provide an explanation for the existence of, and the reason for, the agreement. Whilst it is appreciated and applauded that the Committee gives persons a forum in which to make complaints if desired as to the *Melbourne Response*, in the case of a very senior Police officer, the least that could be expected of him is to provide meaningful evidence supporting his allegation.

But he does not provide any particulars in relation to the phrase “*Victoria Police has also come across one deed of agreement...*” It is for this reason that I have not sought to respond to every one of the broad and unparticularised criticisms of the Catholic Church, the *Melbourne Response* and in particular of me as the Independent Commissioner.

- 73 (xiii) *“The protocols employed by the Catholic Church are based on a flawed notion of independence. It is our view that the Independent Commissioner is appointed and paid for by the Church. He appears from the Church’s own submission, to be empowered to act under Canon Law”. (T6)*

COMMENT

Ashton appears to treat this as a revelation i.e. “*it is our view that the Independent Commissioner is ... paid for by the Church*”.

There are legion examples of where an appointee (eg. a Royal Commissioner, a Board of Inquiry or an Independent Investigator) is appointed and paid for by the appointor, but who is completely independent in carrying out the terms of his or her Appointment.

The suggestion that I am not independent, though it is stated I am, is a grave attack upon my personal and professional integrity and one which I emphatically deny. It is essential that a

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serious analysis of this allegation be undertaken. The nub of the criticism is that the Independent Commissioner is inclined to favour the interests of the Church when carrying out his duties. There is not a single item of evidence that suggests this is so. There is much evidence that proves it is wrong. As to the perception of a lack of independence, the argument rises no higher than to point to the fact that the Independent Commissioner is paid by the Church. For the reason set out above, that argument has no more force than to contend that there is inevitably a perception that a Judge of the Supreme Court of Victoria will favour the interests of the State because he or she is paid by the State. The criticism implies that I am a participant in a charade in which I am appointed the Independent Commissioner, but in reality am a cat's paw of my appointor i.e. I will do what they say or not do anything which will upset. This is as false as it is offensive.

- 74 (xiv) *"I think the following analogy is telling when one examines why there is in fact a need for any sort of process within the Catholic Church system dealing with child sexual abuse. If a stranger were to enter the grounds of a Church and rape a child, then that rape would be immediately reported to the Police and action expected. But if that stranger happened to be a member of the Clergy, such as a Priest, the matter under the current experience would not be reported. If that stranger is a member of the Clergy, then special processes are wrapped around him which discourages the victim from complaining to Police, seeks to ensure that the offending clergy member is not only not prosecuted and jailed but never included on the Sex Offenders Register and never adversely recorded on future Working with Children Checks".*
(T6)

COMMENT

This hypothesis needs only be stated to render it fantastic and absurd.

- 75 (xv) *"You may have your own views about that, but I would not be doing my job today if I do not tell you that the overwhelming view of investigators from Victoria Police who deal with these matters on a daily basis is that it is the reputation of the Church that creates that point of difference. In assessing all the material before Victoria Police on these issues the conclusion that Victoria Police draws is the investigator is that, apart from perhaps the desire to compensate victims, the process adopted by the Catholic Church is designed to put the reputation of the Church first and the victim second. Only when there is evidence that that stance has changed such as with the*

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reporting of a single matter to Police would we be prepared to be optimistic that the victims of clergy abuse will be truly heard and receive the justice they deserve.” (T6)

COMMENT

This is malicious nonsense. It is not supported by even a skerrick of evidence. I reject root and branch any suggestion that I have engaged in conduct such as that referred to in the above paragraph. To suggest that I have is as insulting and offensive as it is completely wrong.

- 76 The following are answers to Ashton’s answers to questions from members of the Committee.

“Whether the avenue through which the reporting is made is via the victim at the encouragement of the Church or by the Church itself to us, as long as we can then have a conversation with the victim in the manner in which we now conduct these interviews, as long as that can occur, then that is what we are really looking for. It can come in our view, from either direction as long as it comes”. (T7)

COMMENT

Under the present law, a victim is entitled to decline to report his or her complaint to the Police. If the victim for whatever reason says I am not taking this to the Police, that is not an offence against the laws of Victoria, and has not been since 1981. That right of the victim not to report must be respected, and indeed as I understand the position, if a victim tells the Police albeit that he or she has been abused, that they do not wish to pursue the matter in Court, then that wish will be respected (see paragraph 52 above). In the 16 ½ years since I have been Independent Commissioner there have been 185 cases in which the complaint was made in respect of a church person who was alive and able to be identified by the victim, and thus able to be prosecuted. There were 87 victims who had taken their complaint to the Police prior to meeting me and a further 10 victims who took their complaint to the Police having first met with me. The great majority of complaints were made by complainants the offenders of whom had already been reported and/or convicted for the subject or similar offence or the offender was already dead.

- 77 (xvi) *“We need to know what information the Church has on the 600 or more complaints that are upheld and what sits in those files. We need to know properly what the nature of the offending is, how it is occurring and what is driving it. The information*

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we have given you today is only from the victims that have come to us. None of this information is the information that the Church is holding". (T9)

COMMENT

Insofar as my position is concerned, the provision of files to third parties would require the consent of the victim. However, this is not so in relation to this Committee and for some time past the legal advisers of the Committee have been very thoroughly examining my files. Of course if there is any file in respect of a specific matter which the Police require for their investigation, then, notwithstanding my undertaking of confidentiality, the Police can require me to produce this which I will (see the example in Attachment 5 and the Ruling of Chief Magistrate Michael Adams).

- 78 (xvii) *"In relation to offenders being deceased, simply saying 'the offender is dead. The police don't need to know' is an absolute nonsense. Despite the fact that an offender is dead, we need to know the fact that the person was an offender through their life so that when other victims come forward to us and they say 'I'd like to tell you about my abuse at the hands of Mr X, Y or Z, our records will show that that person actually had a history of offending. That changes that interview with that victim because we are not then exploring the validity of what the victim is talking about and has experienced – we know that that person is an established offender. It assists us in our analysis of these issues and our dealing with other victims". (T11)*

COMMENT

My experience is that when the victims of a deceased priest try to report a complaint of abuse to the Police, they are told that the Police do not prosecute the deceased and that the Police are therefore unable to assist (see Attachment 34A). In the absence of the likelihood of an active Police investigation, it would be a waste of time, quite apart from the strain on the victim, to have the victim recount to the Police the nature and extent of the abuse they suffered from a deceased person who clearly cannot now be charged. Further, I would consider it futile where a victim of a deceased offender who has come to me or my fellow Independent Commissioner and that victim is reluctant to report the matter to the Police to tell that person that they should report the complaint to the Police and be prepared to detail the abuse, based on what Ashton said in his evidence to the Parliamentary Committee. I repeat that the great majority of victims want to keep the fact that they were sexually abused by a priest as confidential as is possible. Thus the victims who come to the Independent

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Commissioner satisfy that Commissioner they have been sexually abused by a priest now deceased will (if treatment is required) be referred to Carelink, which will treat the victim confidentially. Likewise, when a victim is referred to the Compensation Panel, the application for compensation remains confidential to the Panel, and indeed to the Archbishop and the solicitors for the Archbishop. It is the victim who has control over whether or not they wish to divulge their complaint of abuse.

- 79 (xviii) *"What normally happens is that if a person comes forward with a complaint an interview is conducted using the whole of story concept interview techniques.... It goes into a lot of detail about how interviews are conducted. Then at the end of that the victim is able to make an informed decision about whether they wish to complain or not. For the Church to be simply saying 'the person didn't want to complain', is in our view an invalid response because it is based around a flawed investigative premise." (T11)*

COMMENT

It is not what *"the Church to be simply saying"* that matters, it is the wish of the victim. In the redacted transcripts which I provided to Detective Glenn Davies (see paragraph 12 above) the relevant passages demonstrate that those victims made an informed decision not to go to the Police. Further, since February 2011 the Independent Commissioners obtain from a victim who does not wish to report to the Police a signed acknowledgement (see example at Attachment 34B).

- 80 (xix) *"The issue in relation to protocols was that there were attempts – I think in fact it was the Church that reached out to want to have some sort of agreement and a protocol with us, which started the development of a draft protocol in relation to handling information." (T11)*

COMMENT

It is clear that Deputy Commissioner Ashton has not referred back to or worse, has ignored, the Police files in respect of the negotiations and discussions which took place over a number of months between the Business Manager of the Archdiocese, my instructing solicitor, and the Independent Commissioner on the one hand, and a number of Police officers on the other, including of course Assistant Commissioner Wendy Steendam and Detective Inspector Glenn Davies. Those negotiations were initiated by the Police, and happily received by the Church. By June 2010 the parties were close to a position when a

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protocol could have been signed off. The reason such a protocol was never enacted was because of the letter received from Deputy Commissioner Sir Ken Jones (see paragraph 49(c) above).

- 81 (xx) *"I was appointed the Assistant Commissioner for Crime early last year and this file came to me because of the fact that we were approaching some sort of protocol. I read the advice that was provided by the Victoria Police Legal Services Team on the appropriateness of doing that, and the clear advice was not to do it. It had nothing to do with the AFL or any other organisation." (T11) (emphasis supplied)*

COMMENT

With respect, this is quite wrong and reflects the fact the Deputy Commissioner Ashton was not involved in the multiple discussions and negotiations to enter into a protocol which were necessarily terminated when then Chief Commissioner Simon Overland made the announcement referred to in paragraph 4 above. Two matters which were publicly reported as causing this termination were the terms of an agreement between the Victoria Police and the Desalination Plant, and Victoria Police and the AFL, as was reported:

"VICTORIA Police will no longer make deals with private companies over the exchange of personal police information, following a damning report into an arrangement with the builders of Victoria's \$5.7 billion desalination plant over secret police files.

Chief Commissioner Simon Overland admitted that a deal between AquaSure, the private consortium building the water plant, and the police should never have been done.

A scathing report by Victoria's police files watchdog found that the agreement had failed to comply with privacy and human rights laws.

Yesterday, Mr Overland said police would no longer enter into memorandums of understanding with private companies and only do such deals with government agencies.

"The MOUs are drafted by lawyers. So we just don't race around doing these things in a slapdash fashion, but I do accept the criticisms that are being made," he told 3AW.

Last year The Age revealed that police and the government had signed a memorandum of understanding with AquaSure to manage security threats at the desalination building site.

That document stated police 'will release law enforcement data' to AquaSure.

The deal sparked an outcry from opponents of the Wonthaggi desalination plant.

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Police have struck at least 36 memorandums of understanding since January 2008, including with the AFL, Consumer Affairs and the Australian Sports Anti-Doping Authority.

Opposition Leader Ted Baillieu called on Mr Overland to publicly release the deals.

Premier John Brumby said the desalination agreement had been sloppily worded, but the report into the deal found there had been no breach of the law or inappropriate behaviour."

- 82 (xxi) *"We are happy to enter into protocols provided they are appropriate. In this case it was clearly inappropriate because of all the matters, facts and circumstances that I have outlined for you today. We are not going to enter into a protocol or an agreement on processes that we think are fundamentally flawed". (T11)*

COMMENT

I have already pointed out that reasons for a protocol not being entered in were the matters referred to in Sir Ken Jones letter. Notwithstanding that a protocol was not entered into, the spirit of the negotiations in relation to the entry into a protocol were subsequently reflected in the supplementing of the Terms and Conditions of the Appointment of the Independent Commissioner.

- 83 (xxii) *"I made it clear from that point onwards that there would be no agreement despite their website saying for some period of time that we had this agreement, until I wrote to them and asked them to take it down." (T12)*

COMMENT

- (a) With respect, this again is simply wrong. The website did not say "for some period of time that we had this agreement". True it is that Deputy Commissioner Ashton wrote to the Archbishop on 24 August 2011 in the following terms:

"Victoria Police draws your attention to information contained on the Catholic Archdiocese of Melbourne website, <http://www.cam.org.au/>. In particular document Changes to the Melbourne Response Process and Sexual and Other Abuse the Melbourne Response which make reference to Victoria Police and our support for the changes contained in those documents.

As stated in the letter dated 6 October 2010, signed by former Deputy Commissioner Sir Ken Jones, any agreement between Victoria Police and the Catholic Church is rescinded. I reiterate that the Chief Commissioner no longer enters into binding agreements with organisations external to government and other law enforcement bodies.

**THE PARLIAMENTARY INQUIRY INTO THE HANDLING OF CHILD ABUSE BY RELIGIOUS
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I formally ask that you remove any reference to agreement(s) made between Victoria Police and the Catholic Church from this website or any other public document portraying that an agreement has been met".

- (b) Because of its importance, I set out the reply to that letter by Mr Francis Moore, Business Manager on behalf of Archbishop Hart:

"Archbishop Hart has received your letter of 24 August 2011 and asked me to respond. Following the letter from Sir Ken Jones of 6 October 2010, I met with Sir Ken, together with the Independent Commissioner under the Melbourne Response, Mr Peter O'Callaghan QC and our legal advisor. In that meeting Sir Ken:

- *confirmed that Victoria Police was "very content" with the Melbourne Response and "very content that victims are being properly dealt with";*
- *noted the considerable efforts on the part of the Archdiocese and Victoria Police to reach an agreed protocol prior to Victoria Police's change of policy;*
- *apologised for the time wasted;*
- *accepted our suggestion that the Independent Commissioner's Terms of Appointment be supplemented to reflect the principles contained in the draft policy;*
 - *proposed the preparation of a jointly agreed position statement;*
 - *confirmed that Victoria Police "had no problem in saying that the Independent Commissioner's Terms of Appointment were formulated in consultation with the police", as indeed they were; and*
 - *advised that the liaison officer between Victoria Police and the Archdiocese would be the head of the sexual offences squad.*

I wrote to Sir Ken on 2 December 2010 (see attached) and we exchanged various emails in the weeks that followed. I wrote to Sir Ken again on 4 February 2011 and a copy of that letter is also attached. After further email exchanges with Mr Charlie Morton, the attached Media Release was approved by Mr Morton on 9 February 2011 on behalf of Victoria Police and released by the Archdiocese on 15 February 2011.

I believe that what is said on the Archdiocese's website is fully consistent with and approved by Victoria Police. With respect, fairly read, the website does not seek to nor does it convey that there is an agreement between the Archdiocese and the Police.

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What the Archdiocese has in place is a process which includes encouragement for all victims to report crimes to the police and which, since February 2011, has included enhanced measures to avoid any perception of interference with police investigations. We have engaged in detailed discussions with Victoria Police, back in 1996 when the Independent Commissioner was appointed, at various times over the intervening 15 years and most recently in the period between early 2010 and early 2011, culminating in the position as set out on our website and referred to in your letter.

Both the Independent Commissioner and I would be very pleased to meet with you to provide you with further background if required and to address any additional queries you may have". (emphasis supplied)

84 On 21 September 2011, I together with Mr Francis Moore, met with Ashton and Detective Inspector Tony Silva. Following that meeting, Mr Moore provided me with a file note recording what had occurred at the meeting which I consider is a fair and accurate account of what took place at the meeting (Attachment 35). It will be noted that the file note stated that there would be no agreements which was acknowledged by Mr Moore and myself, but at no time in this courteous and informative meeting was anything said that led me to believe that Ashton was dissatisfied with the Melbourne Response, such as was set out in the Police Submission and in his evidence to the Committee.

85 On 29 September 2011, Ashton wrote to Mr Moore stating:

"Thank you for meeting with Peter O'Callaghan QC and me on 21 September 2011. I think it is worthwhile that I articulate the Victoria Police position on this relationship with the Catholic Archdiocese of Melbourne. As stated in our meeting I am aware that you held discussions with the former Deputy Commissioner Sir Ken Jones, and he had offered his support for a jointly agreed position statement that was near complete prior to his departure.

The Commissioner for Law Enforcement Data (CLED) has provided advice which has shifted our position on all such joint position statements.

- As stated in my letter to Archbishop Hart on 24 August 2011, any previous agreement between Victoria Police and the Catholic Church is now rescinded. The reporting and recording of any crime committed by your staff is a matter for you to manage in accordance with the law and natural justice. Our expectations are that those matters are reported to the Police at the first available opportunity. To assist with the reporting of sexual assault related crime I fully support your ongoing professional relationship with the Officer in Charge of the Sexual Crimes Squad. If the Victoria Police position changes in the future I will notify you."*

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86 On 4 October 2011, Mr Moore replied to Mr Ashton (Attachment 36) stating inter alia:

"The position statement to which you refer was a media release approved by your Media and Corporate Communications Department on 9 February prior to the departure of former Deputy Commissioner Sir Ken Jones.

While the discussions which led to the formulation of a protocol between Victoria Police, the Independent Commissioner and the Archbishop of Melbourne were initiated by Victoria Police, they did not lead to an agreement being entered into between the parties and therefore rescission by you is unnecessary....

The Archdiocese and the Independent Commissioner support the cooperation of the Victoria Police and acknowledges your support for an ongoing professional relationship between us and the Officer in Charge of the Sexual Crimes Squad."

87 It will be seen that as at October 2011 nothing had been conveyed to me as the Independent Commissioner or to the Archdiocese of disquiet held by Victoria Police at the operation of the *Melbourne Response*. This changed suddenly and dramatically when Ashton was interviewed by Neil Mitchell. This was exponentially extended in the Police Submission and Ashton. I am at a loss to understand this volte face of Victoria Police, as expressed in the Police Submission and Ashton. I note that the Police Submission, whilst tendered by the Chief Commissioner, does not carry his signature.

CONCLUSION

88 I consider that the Police Submission and Ashton is a travesty.

I point to the positive achievements of the *Melbourne Response*, over more than 16 years, and cooperation between Victoria Police and the Independent Commissioner. I hope, and I truly believe, that this relationship will be restored.



Peter O'Callaghan QC

Independent Commissioner

26 April 2013