

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

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

- **Definitions**

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

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

"Complaint" means any complaint made to the Commissioner by a person that he or she has been abused by a church person or a complaint made to the Commissioner by a person who complains that some other person has been abused by a church person, and any

complaint of abuse by a church person which is referred to the Commissioner by any other body or person.

“Complaint” means any person making a complaint of sexual abuse as aforesaid.

“Sexual and other abuse” includes:

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

“The Support Professional” is a person to be appointed by the Archbishop for administering the provision of professional support services namely treatment, counselling and support to victims of sexual and other abuse within the Archdiocese.

“The Compensation Panel” is a panel established to provide ex gratia payments to complainants of sexual abuse who establish the factual basis of their complaint.

1. The Role of the Independent Commissioner

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

- vi. Forthwith upon becoming aware that sexual or other abuse has occurred, is occurring, or is likely to occur, the Commissioner shall advise the Archbishop and make such recommendations as to action to be taken by the Archbishop as the Commissioner considers appropriate.

- vii. The Commissioner is empowered by the Archbishop to require any priest, religious, or other person under the jurisdiction of the Archbishop to attend upon the Commissioner at such time and place as is notified, and to produce to the Commissioner such documents as the Commissioner requires, and to answer such questions as the Commissioner considers appropriate to ask, Provided that no priest, religious, or other person, shall be required to produce to the Commissioner a document, or to answer a question, which document or answer the priest, religious or other person objects to answer or produce or give because it may tend to incriminate.

- viii. The Commissioner may inform himself *inter alia* by hearings at which the complainant and the accused may be present, and also if desired, their respective legal or other representative.

- ix. The Commissioner shall interview a child or conduct a hearing at which a child is present, only with the written authority of the

parent or guardian of such child, and whom the Commissioner shall request be present at such interview or hearing.

- x. The Commissioner shall treat as confidential and privileged all information acquired by him in the course of his investigation, Provided that (subject to sub-clause 1(xi) the Commissioner may if he considers it appropriate so to do, provide the whole or part of such information to the police, and with the consent of the Complainant, to the Compensation Panel.

- xi. If a complainant, prior to stating the facts and circumstances constituting his or her complaint informs the Commissioner that he or she is only prepared to divulge those facts and circumstances to the Commissioner upon his assurances that he will not, (unless required by law) disclose those facts and circumstances to any person other than a person nominated by the complainant, the Commissioner (unless required by law so to do) shall not disclose those facts and circumstances to any other person save to members of his staff from whom he shall have procured an undertaking of confidentiality.

- xii. The Commissioner may decide to discontinue or not conduct an enquiry into a complaint which he considers is trivial, frivolous, vexatious or not made in good faith, Provided that the Commissioner shall notify the complainant in writing of any

such decision to discontinue or not conduct an enquiry into complaint.

- xiii. The Commissioner when enquiring into complaints, and reporting to the Archbishop shall observe the rules of natural justice.
 - xiv. The Commissioner shall determine the procedure to be followed in respect of enquiries and hearings and may publish to the church authorities and other relevant persons details of such procedures.
 - xv. The Commissioner may refer victims of sexual or other abuse to the Support Professional.
 - xvi. The Commission will consult with and advise the Compensation Panel as required, subject to sub-paragraphs 1 (x) and (xi).
2. (i) The retainer of the Commissioner shall be for a period of six months, Provided that if at the expiration of that period, the Commissioner and Instructing Solicitors are of opinion that there are outstanding matters concerning allegations of sexual or other misconduct in respect of which action should be taken, the Archbishop shall

extend the retainer for a further period of six months, or such other period as may be mutually agreed upon and, Provided Further that in the event of the Commissioner, for whatever reason, becoming incapable of duly performing his retainer the Archbishop may instruct his solicitors to terminate the retainer.

- (ii) The Commissioner will formulate procedures for dealing with and recording complaints of sexual abuse and other matters.



CATHOLIC ARCHDIOCESE OF MELBOURNE

Sexual Abuse - Seeking Compensation

In October 1996, Archbishop George Pell announced a range of initiatives to respond to allegations of sexual abuse made against priests, lay persons and religious who are or were under the control of the Archbishop of Melbourne. One of these initiatives is the formation of a Compensation Panel, which will provide recommendations, binding on the Archbishop, to make ex gratia compensation payments to victims of sexual abuse within the Archdiocese.

The Panel is intended to offer applicants a forum in which they can seek fair, just and speedy ex gratia compensation in settlement of their claims, in an informal and cost effective manner.

The maximum payment that can be recommended by the Panel is \$50,000 per person. In formulating its recommendations, the Panel will rely on findings of fact made by the Archbishop's Independent Commissioner, Mr Peter O'Callaghan QC. The Panel will also consider medical and other information submitted to it by applicants and, in addition, it may conduct its own enquiries.

HOW TO SEEK COMPENSATION

- 1 To seek compensation an applicant will need to complete the "Application for Compensation" form attached to this brochure. Completion of the form will affect the applicant's legal rights, and applicants are encouraged to seek independent legal advice before completing the application.
- 2 The Panel will consider the application for compensation only after it has received a report from the Independent Commissioner following his investigation of the complaint. The Commissioner will not report to the Panel unless the applicant has consented to this. A "Consent to Independent Commissioner" form is attached to this brochure. The Commissioner will provide a copy of his report to the applicant on request.
- 3 After the Panel receives the application and the report from the Commissioner, it will invite the applicant to provide it with material relating to the consequences of the abuse on the applicant. Some notes about this material:
 - The Panel will rely exclusively on the report of the Independent Commissioner as to the facts surrounding the abuse. An applicant who wishes to supplement the Commissioner's report on such facts will need to raise this with the Commissioner.
 - The Commissioner's report will usually not deal with the impact of the assault on the applicant. Consequently, applicants will be asked to provide this material to the Panel. They may wish to place before it medical or other reports. Applicants who have sought assistance through Carelink may also authorise Carelink to provide information directly to the Panel. (Carelink cannot provide any information to the Panel without that authorisation. A "Consent to Carelink" form is attached to this brochure).
 - In some circumstances applicants may be asked to undergo medical or other examinations or to provide additional information.
 - Ordinarily all material for the Panel should be provided in writing, although in appropriate cases meetings will be arranged.
- 4 In considering the issue, the Panel will not be bound by the compensation principles that apply in court. It will make its decision on all material presented to it. Essentially it will have regard to the physical, mental and spiritual effects of the assault on the applicant.
- 5 The Panel will formulate its recommendation to the Archbishop as to the ex gratia payment to be made. The applicant will be advised of that recommendation.
- 6 If the recommended amount is acceptable to the applicant in full settlement of his or her claims against the Archbishop and the Archdiocese of Melbourne, this amount will be paid by the Archdiocese upon the applicant signing an adequate release and discontinuing any pending legal proceedings.
- 7 If the recommended amount is not acceptable to the applicant, the applicant may pursue other remedies, but in the course of so doing, may not rely on what has transpired before the Panel. All matters that have transpired before the Panel remain confidential.

APPLICATION FOR COMPENSATION FORM

I,
(Full Name)

of
(Address)

apply for ex gratia compensation from the Archbishop and Archdiocese of Melbourne in respect of sexual abuse committed against me as found by the Independent Commissioner appointed by the Archbishop, and I make this application upon the following basis:

- (a) the amount of compensation (if any) will be determined by the Compensation Panel that has been appointed by the Archbishop,
- (b) the Archbishop will offer to me such an amount as may be recommended to him by the Panel, provided I execute appropriate releases and discontinue any relevant legal proceedings,
- (c) if I reject the amount offered to me by the Archbishop, the Archbishop acknowledges that any rights that I may have to commence or continue legal proceedings against him are unaffected by my application for compensation,
- (d) neither I nor any person acting on my behalf, or any member of the Panel, or the Archbishop or any person acting on behalf of the Archbishop or the Archdiocese, will (save as required by law)
 - (i) disclose to any person,
 - (ii) rely or seek to rely in any arbitral or judicial proceeding (whether or not such proceeding relates to the subject matter of this application) on

any communication, statement or information, whether oral or documentary, made or provided in the course of or in relation to the Panel's deliberations,

- (e) I will not call any member of the Panel as a witness or subpoena or demand the production of any records, notes or the like made by or for the Panel in the course of or in relation to its deliberations,
- (f) I and each member of the Panel and the Archbishop and his advisers will, unless otherwise compelled by law, preserve total confidentiality in relation to all matters arising in the course of or in relation to the Panel's deliberations, whether documentary or oral, that may be provided to the Panel or to me,
- (g) I irrevocably waive any rights that but for this provision I may have had to seek judicial review of any act or omission of any member of the Panel.

.....
(Signed)

.....
(Witness)

.....
(Date)

.....
(Full name and address of witness)

CONSENT TO INDEPENDENT COMMISSIONER FORM

Notes:

- 1 Before seeking *ex gratia* compensation from the Compensation Panel, you need to have made a complaint to the Independent Commissioner. If you have not yet made a complaint, please telephone the Commissioner's office on (03) 9221 6190 for further information.
- 2 To help assess your claim for such compensation, the Panel will obtain a report from the Commissioner containing his findings as to the facts relating to your complaint. If you have not already done so, you will need to give the Commissioner your consent to him disclosing information about you to the Panel. You may give him your consent by completing this form.

TO: Independent Commissioner
Mr P J O'Callaghan QC

I,
(Full Name)

of
(Address)

wish to make an application to the Compensation Panel. I authorise you to communicate to the Compensation Panel and its members all information about me that they may request or require to assist them in assessing my claim for compensation. This request includes, without limitation, both information that I have provided or disclosed to you and information about me that you have obtained from other sources. I authorise you to prepare a report for the Panel as to the circumstances of my claim and to communicate that report and the material on which it is based to the Panel.

I authorise you to conduct such further investigations into my claim as you may consider appropriate or as the Panel may request.

Tick box if required. I ask you to forward to me by ordinary mail at the address shown above a copy of the report that you prepare for the Panel.

.....
(Signed) (Witness)

.....
(Date) (Full name and address of witness)

CONSENT TO CARELINK FORM

Notes:

- 1 If you have not sought treatment or counselling through Carelink this form does not apply to you.
- 2 If you have sought treatment or counselling through Carelink, you may wish to authorise Carelink and anyone to whom Carelink has referred you to provide information about you to the Compensation Panel to assist the Panel in formulating its recommendations about the ex gratia compensation that you should receive. Carelink will not disclose any information about you to the Panel unless you consent.
- 3 It is up to you to decide whether you want Carelink or anyone to whom Carelink has referred you to provide information to the Panel. If you want it to, you should complete this form.
- 4 If you have sought treatment or counselling other than through Carelink, you may wish to contact your treatment provider and ask them to prepare a report for the Panel.

TO: Carelink (including any external professionals to whom I have been referred by Carelink)

I,
(Full Name)

of
(Address)

am making an application to the Compensation Panel. In support of that application I wish the Panel to be provided with a professional report about my condition, the treatment, counselling and support that I have received and such other matters as Carelink and the Panel consider appropriate. I request that Carelink prepare or arrange for the preparation of a report and provide it to the Panel.

I authorise Carelink (including any external professionals to whom I have been referred) to disclose to the Compensation Panel and its members all information about me that they may request or require to assist them in assessing my claim for compensation. This request includes, without limitation, both information that I have provided or disclosed to Carelink and external professionals and information that they have obtained from other sources.

I authorise Carelink and external professionals to conduct such further enquiries into my condition as they consider appropriate or as the Panel requests.

Tick box if appropriate. I ask Carelink to forward to me by ordinary mail at the address shown above a copy of the report prepared for the Panel.

.....
(Signed) (Witness)

.....
(Date)
(Full name and address of witness)

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Please forward all completed forms or enquiries about compensation to:

Compensation Panel
Archdiocese of Melbourne
Optus House
Level 25 Suite 36
367 Collins Street
Melbourne Vic 3000

Telephone: 03 9221 6190 Facsimile: 03 9221 6191

CATHOLIC ARCHDIOCESE OF MELBOURNE

VICAR GENERAL

James Goold House
228 Victoria Parade
East Melbourne, Vic. 3002
(P.O. Box 146, East Melbourne, 3002)

Telephone: (03) 9667 0377
Facsimile: (03) 9667 0398

3 April 1997

Mr A Foster



Dear Mr Foster,

I refer to your various discussions with Sue Sharkey concerning your requests for reimbursement of medical and other expenses that have, I understand, been incurred in relation to your daughter. As you know, Carelink was established for this purpose, and while I regret the delay in responding to you, the issues that you have raised in relation to Carelink are complex. They required careful deliberation by the Archbishop and his advisers. Confidentiality issues complicated the process.

I have been informed that although you seek to have expenses reimbursed, you do not agree to comply with Carelink's assessment procedures. Carelink was established for two main purposes, first, to provide treatment, counselling and support to victims and secondly, to administer the provision of such services by external service providers. The Archdiocese is concerned to ensure that services are provided to those who need it. It is also concerned to control what services are provided, and to ensure that the services provided are appropriate and that those who seek services have a genuine need.

Carelink is staffed by trained professionals, whose qualifications and experience permit such assessments to be made. Having put these important safeguards in place, the Archdiocese intends to take advantage of them. Accordingly, the Archdiocese will not reimburse medical or like expenses except on the advice of Carelink.

.../2

You have indicated that, for your own reasons, you decline to consult with Professor Ball, Carelink's director. In the circumstances, and after consulting with Professor Ball, I propose that an assessment of your daughter's condition be performed by another practitioner. I am advised that two doctors with the appropriate expertise are Gita Mammen and Peter Evans. I invite you to agree to an assessment by one or other of these doctors. The costs of that assessment will be met through Carelink in the normal manner, and Sue Sharkey would be pleased to assist you in making the necessary appointments. Alternatively, you may wish to suggest another psychiatrist of your own choosing. If you do, your suggestion will be considered as quickly as possible.

I hope that the necessary assessment can be carried out without delay, so as to reduce further anxieties on your part. The experiences about which you and your family complain are extremely distressing, and I want to assure that the Archbishop and I, and those administering the various elements of the Archdiocese's initiatives for dealing with sexual abuse, are all determined to assist you and your family.

I am aware that you have been critical of some elements of the Archdiocesan initiatives. The issues are complex and difficult, and I want to emphasise to you our determination to achieve just and fair solutions. In the course of my enquiries into your case, I have established that you have consulted with the Independent Commissioner. I am of course not privy to the matters discussed with him, but I would urge you to continue to co-operate with him and to seek from him such assistance and guidance as he can provide. If this be the case and the psychiatrist chosen by you has or is treating your daughter, no doubt the relevant report and assessment could be made available quickly and conveniently.

I am providing a copy of this letter to Sue Sharkey and to the Independent Commissioner.

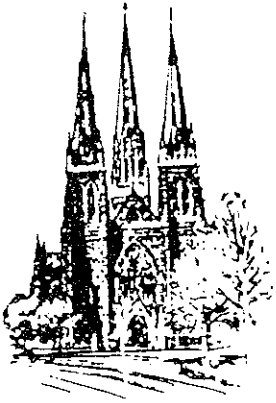
His Grace and I both pray that you and your family will find peace.

Yours sincerely in Christ,



Rev. Monsignor Denis J. Hart
Vicar General

CATHOLIC ARCHDIOCESE OF MELBOURNE



VICAR GENERAL

James Goold House
228 Victoria Parade
East Melbourne, Vic. 3002
(P.O. Box 146, East Melbourne, 3002)

Telephone: (03) 9667 0377
Facsimile: (03) 9667 0398

24 June 1997

Mr & Mrs A Foster

Dear Mr & Mrs Foster,

I refer to your various discussions with Sue Sharkey, and write in an attempt to resolve the issue of outstanding accounts.

I note that on 3 April 1997 I wrote to you indicating that before Carelink would be in a position to consider your claims, there were issues that Professor Ball needed to clarify with Dr Schwarz. I understand that last week you authorised Dr Schwarz to speak with Professor Ball but that as Dr Schwarz has been away, that conversation has not yet occurred.

Nevertheless, I would like to progress your claims as far as possible. I do so on the assumption that Professor Ball will, ultimately, be satisfied by his discussions with Dr Schwarz, and on the understanding that the proposals made in this letter relate only to those invoices already submitted to Carelink. In the long term, continued funding and support from Carelink remains subject to regular independent assessments and to the Independent Commissioner concluding his enquiries and making appropriate findings.

I understand from Sue Sharkey that the invoices fall into a number of categories, and I set out below what is proposed in respect of each of them.

Medical invoices - Dr Schwarz, Dr Coleman and Dr Harrison

The Archdiocese considers that these accounts are payable by Medicare. I am awaiting confirmation of this from the Health Insurance Commission. Once this confirmation is received, the appropriate procedure will be to claim medical accounts on Medicare, and to submit the account and Medicare rebate to Carelink, who will pay any "gap".

In this instance, I am authorising Carelink to pay those accounts from Dr Schwarz that you have submitted to Carelink. I am doing so on the basis that once Medicare confirms the appropriate procedure, you will claim the Medicare rebate and refund this to Carelink.

...../1

Counselling invoices - Ms Hallam

These accounts will be paid by Carelink.

Albert Road Clinic

Sue Sharkey tells me that with your authorisation, she has discussed the Clinic's outstanding invoices with them. The Clinic informed Ms Sharkey that in the past, these invoices were paid by HBA. The amount now outstanding is considerable, and as they were incurred without authorisation or an independent assessment, they will be returned to you by Ms Sharkey for forwarding to HBA. If there is a gap between the HBA payment and the invoice, the invoice should be resubmitted to Carelink.

Miscellaneous

There is one account from the Monash Medical Centre which will be dealt with in the same way as Dr Schwarz's accounts.

I understand that there are some invoices relating to cancelled bookings. In general it would not be reasonable to expect Carelink to meet such costs unless the cancellation was for good reason.

It is unfortunate that there have been delays in resolving these issues but, as you know, the assistance of Carelink is contingent on compliance with Carelink's procedures and requirements. Although these requirements have not yet been satisfied, I am approving the steps set out above in the hope that this will contribute to Emma's recovery.

Yours sincerely,



Rev. Monsignor Denis J. Hart
Vicar General

Commission into Sexual Abuse
Peter O'Callaghan Q.C.

Optus House
Level 25 Suite 36
367 Collins Street
Melbourne 3000

3 October 1997

Tel: 9221 6190
Fax: 9221 6191

Private and confidential

Mr Anthony and Mrs Chris Foster

Dear Anthony and Chris,

Re: Emma Louise

I write to advise you that I propose to make a formal finding that I am satisfied that Emma was the victim of sexual abuse by Kevin O'Donnell dec'd. Because of the reticence of Emma in discussing the abuse, and the absence of any other evidence as to the fact of the abuse and the inability of expert medical witnesses to categorically state that she was so abused, the finding cannot have the certitude which can be present in other cases. Perhaps the matter was best expressed by Ms Sue Sharkey who in a report to me said that,

"It would appear that Emma's claims to having been abused by Kevin O'Donnell are true ... Emma's presenting psychological and psychiatric behaviours are consistent with serious abuse Because of Emma's age it may be many years before the real story is known, I don't believe that Emma should have to go through intense psychiatric assessment at this stage and hope that we can get adequate information, or at least read files from Monash Medical Centre and/or from Michael Schwarz's file."

Most importantly from my point of view when I interviewed Emma and both of you on 17 March 1997 she told me that she had been abused by Fr. O'Donnell and that what she had told the psychologists about this abuse was true. I have since examined the reports of the various psychiatrists and

others who have interviewed Emma. The best picture appears from the letter of Chris Foster (22/3/97) to MMC and the reply thereto of 7/4/97.

To sum up I am satisfied that Emma is a person who was a victim of sexual abuse and is thus entitled to be referred to the Compensation Panel, and to receive continuing treatment from CareLink.

In that context I understand that you have received or in any event will very soon receive a letter from Sue Sharkey, which establishes that it is appropriate to make claims for Emma's treatment upon Medicare and that (the gap) be met by payments from Carelink. This will ensure that you will be fully indemnified in respect of what appears likely to be some continuing substantial medical treatment of Emma.

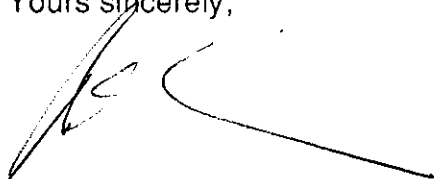
Whilst it may not advance the position at all, it may be useful for me to visit you and Emma at your home and see whether Emma is prepared to expand on what she has said in the past. I stress that in no way would I seek to press her in this regard, but it may be that in the future it will be to her benefit if she can make a fuller account of what she suffered from the abuse by O'Donnell dec'd.

Naturally, such a meeting would also enable me to advise Emma of my aforesaid findings, and to discuss with her, the best way to pursue an application for compensation. I have prepared a report for the Compensation Panel.

In the circumstances, I believe it is appropriate that this letter remain confidential to you both.

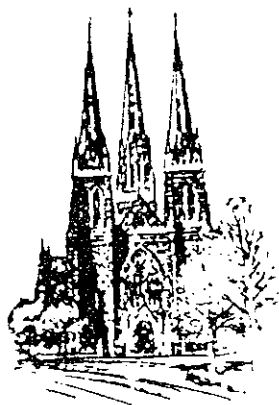
Naturally, I would be happy to discuss the above matters with you.

Yours sincerely,

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

Peter O'Callaghan
Independent Commissioner

CATHOLIC ARCHDIOCESE OF MELBOURNE



VICAR GENERAL

James Goold House
228 Victoria Parade
East Melbourne, Vic. 3002
(P.O. Box 146, East Melbourne, 3002)

Telephone: (03) 9667 0377
Facsimile: (03) 9667 0398

16th October, 1997.

Mr & Mrs A. Foster,

Dear Mr and Mrs Foster,

I refer to your recent meeting with Sue Sharkey. I understand that all outstanding invoices have now been paid. In the meantime, I have received further advice from the Health Insurance Commission. The purpose of this letter is therefore to:

- (a) finalise matters in respect of those invoices for which payment has already been made, and
- (b) confirm the position in relation to the future.

(1) **Paid Invoices**

In response to an enquiry by me, the Health Insurance Commission has confirmed that it is appropriate for people to claim on Medicare and to recover any "gap" from Carelink. I enclose for your information a copy of a letter from the Archdiocese's solicitors to Professor Ball which clarifies the legal position. You will note that enclosed with that letter is a letter from the Health Insurance Commission.

In accordance with my letter to you of 24 June 1997, I would therefore ask that you complete the appropriate Medicare claim forms in respect of the invoices that Carelink has paid. When the Medicare rebate is received by you, it should be forwarded to Carelink. Sue Sharkey will be able to assist you in completing the forms.

(2) **The Future**

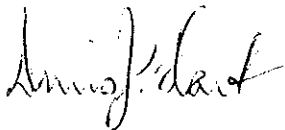
For the duration of the operation of Carelink, medical, psychological and related professional care will continue to be provided to your daughter through Carelink in relation to the abuse of which she complains. This support is of course subject to Carelink's ordinary requirements, including an annual review of the progress towards recovery, and subject to any finding by the Independent Commissioner that the provision of further support would be inappropriate.

If Carelink is disbanded at any future time, appropriate alternative arrangements will be made.

In the light of the advice received from the Health Insurance Commission referred to above and in the enclosed correspondence, claims should of course continue to be made on Medicare where this is appropriate.

I hope that this letter adequately confirms the Archdiocese's commitment to assist in Emma's recovery.

Yours sincerely,



Rev. Monsignor Denis J. Hart,
VICAR GENERAL.

Enc.



HEALTH INSURANCE COMMISSION

Managing Director

97/1405

29 August 1997

Rev Monsignor D J Hart
Vicar General
Catholic Archdiocese of Melbourne
PO Box 146
EAST MELBOURNE VIC 3002

Dear Rev Monsignor

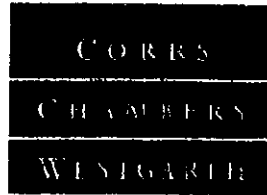
I refer to your letter of 29 April 1997 to me and subsequent correspondence between yourself and the Health Insurance Commission (HIC) concerning your "Carelink" proposal.

On the basis of legal advice which the HIC has obtained, I am now able to advise you that the proposed scheme of treatment, counselling and support for alleged victims of sexual abuse by clergy and others within the control of the Archbishop of Melbourne, as described in your letters (and accompanying documents) of 29 April 1997, 4 June 1997 and 25 July 1997, is not subject to the provisions of the *Health and Other Services (Compensation) Act 1995*.

I apologise for the time that the HIC has taken in providing you with a substantive response in this matter.

Yours sincerely

John M Evered



L A W Y E R S

12 September 1997

Office: Melbourne
Contact: Richard Leder
Direct Line: (03) 9672 3424
Our Ref: ROMA5455-001/RAL

Professor R Ball
Carelink
1st Floor
163 Victoria Parade
FITZROY VIC 3065

Dear Sir

MEDICARE

We refer to our discussions concerning the relationship between Carelink and Medicare.

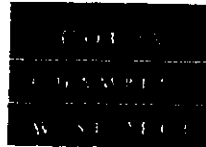
As you know, it is our view that where someone using Carelink services obtains external medical treatment, they should claim on Medicare. If there is a gap between the Medicare rebate and the actual cost of the service, that gap will be covered by Carelink.

Concern was expressed that if Carelink represented a "reimbursement arrangement" or "compensation" within the meaning of the *Health & Other Services (Compensation) Act 1995*, then it might be inappropriate to make a claim on Medicare. We formed the view that Carelink fell outside the Act. Out of caution, advice was sought from the Health Insurance Commission as to whether they agreed with our views.

By a letter dated 29 August 1997, the Health Insurance Commission has advised that Carelink is not subject to the provisions of the Act. That being the case, and in accordance with our instructions from the Archdiocese, we confirm the following:

- 1 patients who receive medical treatment from service providers external to Carelink should make a claim for those services on Medicare;
- 2 in accordance with advice received from the Health Insurance Commission, patients can and should answer "no" to the question on the Medicare claim form as to whether their claim is subject to compensation; and

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GPO BOX 9925 VIC 3001
TELEPHONE (03) 9672 3000 INT +613 9672 3000 FAX (03) 9602 5344
DX 336 MELBOURNE



L A W Y E R S

12 September 1997
Carelink
MEDICARE

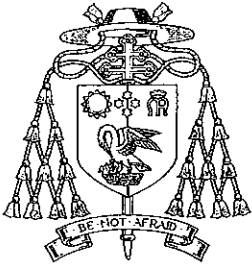
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3 where there is a gap between the Medicare rebate and the actual cost of the service, that gap will be met or refunded by Carelink.

If you have any queries, please contact the writer.

Yours faithfully
CORRS CHAMBERS WESTGARTH

Richard Leder
Partner



26 August 1998

Ms Emma Foster

Dear Ms Foster,

You will be aware that in October 1996 I announced a range of initiatives to respond to allegations of sexual abuse concerning the Archdiocese of Melbourne. At that time, I apologised sincerely and unreservedly, on behalf of the Catholic Church, to both the victims and more generally to the people of the Melbourne Archdiocese, for the betrayal of trust perpetrated upon them. I also expressed my regret that it had taken the Church a long time to come to grips successfully with these issues.

I understand that, based on findings made by the Independent Commissioner, your claims have been considered by the Compensation Panel. The Panel has provided me with a recommendation, which I accept, and this letter is accompanied by a formal offer made on my behalf.

The Archdiocese seeks to address the issues of sexual abuse of minors and adults in a professional, caring and appropriate manner. In addition, the Church has implemented procedures aimed at preventing any recurrence of sexual abuse, and is confident that these initiatives will go a long way towards addressing this issue, which has shocked all in our community.

Unfortunately we cannot change what has happened in the past. You may never be rid of the memories or the hurt. Services such as those provided through Carelink can assist you in your recovery. The payment of compensation raises difficult and complex issues. It is my hope that my offer, based on the Panel's recommendation, will be accepted by you as a preferable alternative to legal proceedings and that it too will assist you with your future.

On behalf of the Catholic Church and personally, I apologise to you and to those around you for the wrongs and hurt you have suffered at the hands of Father Kevin O'Donnell. Whether or not you choose to accept the enclosed offer, I offer you my prayers.

Yours sincerely in Christ,

A handwritten signature in black ink that reads 'George Pell'.

ARCHBISHOP OF MELBOURNE

CORRS
CHAMBERS
WESTGARTH

L A W Y E R S

31 August, 1998

Partner
Richard Leder (03) 9672 3489

Our reference
RAL/ROMA5455-001

Mr & Mrs A Foster

Dear Mr & Mrs Foster

**ARCHDIOCESE OF MELBOURNE
- OFFER OF COMPENSATION TO MS EMMA FOSTER**

As you know, we act for Archbishop Pell and for the Catholic Archdiocese of Melbourne. We note that an application to the Compensation Panel established by Archbishop Pell for ex gratia compensation in relation to sexual abuse has been made by Ms Emma Foster.

The Archbishop established the Compensation Panel to provide an alternative to the pursuit of legal proceedings. We are aware that the Panel's operation has been criticised on the basis that amounts it can recommend are less than applicants such as Emma believe that they might obtain if they pursued legal proceedings to success. However, you and Emma should consider the offer as a genuine attempt by the Archbishop to provide an alternative to litigation.

The compensation offer, together with the services that remain available through Carelink, are offered to Emma by the Archbishop in the hope that they will assist her recovery and provide a realistic alternative to litigation that will otherwise be strenuously defended. Importantly, it is also hoped that Emma will in time be able to put the abuse she has suffered behind her, and focus on the future. Enclosed is a personal letter to Emma from the Archbishop. We note that His Grace has also met with you personally on prior occasions.

The Compensation Panel has recommended to the Archbishop that Emma be offered the maximum amount of compensation, which is \$50,000. Enclosed for your information is a copy of a letter from the Chairman of the Panel to the Vicar General containing the recommendation.

In accordance with the procedures established by the Archbishop, we are instructed to offer this amount to Emma. If she wishes to accept it, it is proposed that the amount will be placed in a trust fund, to be jointly administered by you and

BOURKE PLACE 600 BOURKE STREET MELBOURNE VIC 3000
GPO BOX 9925 ^{Melb} VIC 3001
TELEPHONE (03) 9672 3000 INT +613 9672 3000 FAX (03) 9602 5544
DX 336 MELBOURNE

31 August 1998

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Mr & Mrs A Foster

ARCHDIOCESE OF MELBOURNE

- OFFER OF COMPENSATION TO MS EMMA FOSTER

the Archdiocese, until Emma's 18th birthday. At that time, Emma will have the choice of ratifying her acceptance of the compensation offer and signing a document releasing the Archbishop from all further claims arising out of the sexual abuse or any other sexual abuse by a priest, religious or lay person under the control of the Archbishop of Melbourne. You will note however that treatment and counselling through Carelink is unaffected.

Alternatively, if Emma does not ratify her acceptance of the compensation offer, the trust will be wound up and the funds returned to the Archdiocese. In that event, Emma's rights will be unaffected by the fact that the application for compensation was made.

If Emma rejects the offer now, she and you will remain bound by the terms of the application for compensation form and in particular, may not disclose or rely upon this offer which is, of course, put on a without prejudice basis.

As appears from the **enclosed** letter from David Habersberger to the Vicar General, we are aware that in March 1998 you met with Carelink and raised various issues. You will, we trust, recognise that the structure put in place by the Archdiocese in relation to victims of sexual abuse contemplates that medical and counselling issues are administered through Carelink. Subject to that, all other claims, requests and issues are intended to be addressed by means of the ex gratia compensation payment. To that end, it is intended that if Emma accepts the \$50,000 compensation offer, the payment of that sum and the signing of a release by Emma in due course will finalise all matters, with the exception, of course, of those dealt with by Carelink.

Nevertheless, the Archbishop has asked that we reiterate what we understand was conveyed to you by the Compensation Panel, namely that if you have any specific requests, not covered by Carelink or by the compensation payment, you should approach Richard Leder of this office.

It might be of some comfort to you if we reiterate what Bishop Hart said in his letter to you of September 1997, namely that for the duration of the operation of Carelink, medical, psychological and related professional care will continue to be provided to Emma through Carelink, subject to Carelink's ordinary requirements, including an annual review of her progress. If Carelink is disbanded at any future time, appropriate alternative arrangements will be made. Where appropriate, claims should continue to be made by you and Emma on Medicare and on private health insurance.

31 August 1998

Page 3

Mr & Mrs A Foster

ARCHDIOCESE OF MELBOURNE

- OFFER OF COMPENSATION TO MS EMMA FOSTER

Would you please advise us in due course whether Emma wishes to accept the offer. Assuming that she does, and as indicated above, it will then be necessary for a deed of trust to be prepared.

If you have any queries please do not hesitate to contact the writer.

Yours faithfully

CORRS CHAMBERS WESTGARTH



Richard Leder

Partner

encl

**THE MOST REVEREND
DR GEORGE PELL, DD**

**ROMAN CATHOLIC TRUSTS
CORPORATION FOR THE
DIOCESE OF MELBOURNE**

**[INSERT DETAILS OF
FOSTER'S TRUSTEE]**

TRUST DEED

CORRS CHAMBERS WESTGARTH

Bourke Place
600 Bourke Street
MELBOURNE VIC 3000
AUSTRALIA
Telephone (03) 9672 3000
Facsimile (03) 9602 5544
DX 336 MELBOURNE

M/362990

THIS TRUST DEED is made on

1999

BETWEEN

THE MOST REVEREND DR GEORGE PELL, DD of James Gould House, 228 Victoria Parade, East Melbourne in the State of Victoria
("Settlor")

AND

ROMAN CATHOLIC TRUSTS CORPORATION FOR THE DIOCESE OF MELBOURNE
of James Gould House, 228 Victoria Parade, East Melbourne in the State of Victoria ("RCTC")

and

[INSERT DETAILS OF FOSTER'S TRUSTEE]
of [insert details] ("Foster's Trustee")

(together the "Original Trustee")

RECITALS

- A The Settlor is the Archbishop for the time being of the Catholic Archdiocese of Melbourne.
- B The Beneficiary made an application to the Compensation Panel established by the Settlor as Archbishop for ex gratia compensation in relation to sexual abuse.
- C In accordance with the recommendations of the Compensation Panel, the Beneficiary was offered the maximum amount of compensation which can be offered by the Compensation Panel, \$50,000.
- D The Beneficiary has accepted the offer on the basis that the \$50,000 will be placed in trust until her 18th birthday on the provision of this document.
- E The Settlor desires to establish a Trust Fund in order to provide benefits for the Beneficiary. The Settlor has paid or transferred, or will pay or transfer, the Settled Property to the Original Trustee in order to establish the Trust Fund.

THIS DEED WITNESSES

1 INTERPRETATION

1.1 Definitions

In this document, unless the context otherwise requires:

"**Accounting Period**" means each 12 month period, commencing on and including 1 July and ending on and including the following 30 June, occurring between the Effective Date and the Vesting Day and includes:

- (a) the period between the Effective Date and midnight on the following 30 June if the Effective Date is not 1 July in any year;

Mons. Christopher Prowse
Vicar General
Catholic Archdiocese of Melbourne
P.O. Box 146
East Melbourne 3002

2nd April 2003

Anthony and Christine Foster

Dear Mons Prowse


We have been advised by Ms Elizabeth Harding and Prof Richard Ball of Carelink to write to you with our request, as they are unable to be of assistance.

As you are aware, our daughter Emma Foster was sexually assaulted by Father Kevin O'Donnell while she was a student at Sacred Heart Primary School Oakleigh. Mr Peter O'Callaghan can give you more information if you so require.


Because of Emma's long history of depression, self harm and substance abuse we are no longer able to care for her in the family home. Recently, after spending about 2 weeks in Monash Hospital, the Psychiatric Unit discharged her to an Aged Special Accommodation Home in South Clayton. Emma is 21 years of age and was sharing a room with a 75 year old woman. This accommodation was for 1 week only, that week finished the 28th March. She spent the weekend at a friend's house and is now in emergency short-term accommodation.

Emma is trying to enter the Lighthouse Programme which is housing for young homeless people, but there is a 3 month waiting period. Other programmes and similar assisted accommodation also have a waiting period or are full. Emma's problems stem from the prolonged abuse she suffered as a small child at a catholic primary school at the hands of a catholic priest. Carelink tell us they can do nothing for Emma with respect to provision or funding of accommodation.

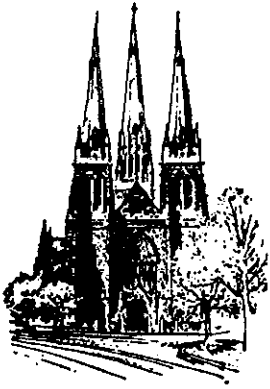
We are writing on Emma's behalf to see what you can do to provide somewhere for her to live. I believe the Catholic Church has a duty of care to Emma.

Emma can be contacted on 

Sincerely,


Christine Foster

Anthony Foster



CATHOLIC ARCHDIOCESE OF MELBOURNE

VICAR GENERAL

James Goold House
228 Victoria Parade
East Melbourne, Vic. 3002 Australia
(P.O. Box 146, East Melbourne, 3002)

Telephone: +(61 3) 9926 5677
Facsimile: +(61 3) 9926 5698

11th April 2003

Mr & Mrs A Foster

Dear Mr & Mrs Foster,

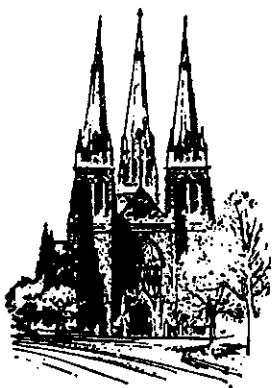
I write to acknowledge receipt of your letter dated 2nd April 2003 in which you discuss the situation of your daughter, Emma.

I will write back to you soon once I have considered the matter fully and sought some further advice.

Yours sincerely in Christ,

Most Reverend Christopher Prowse
VICAR GENERAL

CATHOLIC ARCHDIOCESE OF MELBOURNE



VICAR GENERAL

James Goold House
228 Victoria Parade
East Melbourne, Vic. 3002 Australia
(P.O. Box 146, East Melbourne, 3002)

Telephone: +(61 3) 9926 5677
Facsimile: +(61 3) 9926 5698

15th April 2003

Mr & Mrs A Foster

Dear Mr & Mrs Foster,

I refer to your letter to me of 2nd April 2003 and to my brief response of 11th April.

I understand that in 1998 Emma made an application for ex gratia compensation. Late in 1998 she wrote to the Archbishop's solicitors indicating that she wished to accept the compensation offer that was made to her. As she was then aged less than 18 years, it was proposed that the money be held for her on trust until she turned 18.

I am informed that a trust deed was sent to Emma in February 1999, but that nothing further was then heard either from Emma or from you in relation to the offer.

The offer remains open for Emma to accept if she wishes. The amount involved would quite clearly address the issues raised in your letter of 2nd April 2003, as well as assisting Emma with some of the other issues that may need to be addressed.

I should clarify that notwithstanding the misleading media publicity in 2002, the ex gratia compensation payment is not accompanied by confidentiality requirements. It is only if the offer is not accepted that it is a confidential and without prejudice offer. However nothing in the compensation panel process prevents Emma from discussing publicly the abuse of which she complains, if that is her wish.

Yours sincerely in Christ,



Most Reverend Christopher Prowse
VICAR GENERAL

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
MAJOR TORTS LIST
COMMON LAW DIVISION

No.7911 of 2002

BETWEEN:

EMMA LOUISE FOSTER

Plaintiff

and

NOREEN HARRISON and OTHERS
(according to the Schedule attached)

Defendants

DEFENCE OF THE FIRST TO SIXTH DEFENDANTS

Date of Document:

7 May 2004

Filed on behalf of:

The First to Sixth Defendants

Prepared by:

Corrs Chambers Westgarth

Solicitors Code: 9973

Solicitors

DX: 336

Bourke Place

Tel: 9672 3000

600 Bourke Street

Fax: 9602 5544

Melbourne Vic 3000

Ref: Richard Leder

To the statement of claim of the plaintiff, the first to sixth defendants say as follows:

1. As to paragraph 1:

(1) They admit that Kevin O'Donnell was the parish priest of the Sacred Heart Parish, Oakleigh, in the state of Victoria (*the parish*) within the Catholic Archdiocese of Melbourne between January 1987 and 5 May 1992 (*the period*).

(2) They otherwise deny each and every allegation contained in paragraph 1.

2. As to paragraph 2:

(1) They admit that during the period the first defendant was the principal of the Sacred Heart Primary School, Oakleigh, in the state of Victoria (*the school*).

- (2) They admit that the first defendant, in the course of performing her responsibilities as principal of the school, was under a duty to take reasonable care to avoid injury to students while at the school during ordinary school hours on school days.
 - (3) They otherwise deny each and every allegation contained in paragraph 2.
3. As to paragraph 3:
 - (1) They admit that during the period the second defendant was:
 - (a) the Catholic Archbishop of the Archdiocese of Melbourne;
 - (b) was subject to the obligations imposed on him, and had the powers vested in him, as Catholic Archbishop of the Archdiocese of Melbourne pursuant to the Code of Canon Law dated 25 January 1983 (*the Code of Canon Law*); and
 - (c) was a member of the fourth defendant.
 - (2) They otherwise deny each and every allegation contained in paragraph 3.
4. As to paragraph 4:
 - (1) They admit that the third defendant was appointed the Catholic Archbishop of the Archdiocese of Melbourne on 22 June 2001.
 - (2) They admit that, from 22 June 2001, the third defendant was subject to the obligations imposed on him, and had the powers vested in him, as the Catholic Archbishop of the Archdiocese of Melbourne pursuant to the Code of Canon Law.
 - (3) They otherwise deny each and every allegation contained in paragraph 4.
5. As to paragraph 5:
 - (1) They admit the allegations contained in paragraph 5(a) and (b) thereof.
 - (2) They admit that the fourth defendant was during the period the registered proprietor of the land on which the Sacred Heart Church and Presbytery in the parish and the school were situated.
 - (3) They otherwise deny each and every allegation contained in paragraph 5.

6. As to paragraph 6:

(1) They admit that during the period the fifth defendant was the Vicar General of the Catholic Archdiocese of Melbourne.

(2) They otherwise deny each and every allegation contained in paragraph 6.

7. As to paragraph 7:

(1) They admit that during the period the sixth defendant was the parish priest of the Dandenong parish within the Catholic Archdiocese of Melbourne.

(2) They otherwise deny each and every allegation contained in paragraph 7.

8. As to paragraph 8:

(1) They do not admit the allegations contained in paragraph 8(a) and (b).

(2) They refer to and repeat paragraph 2(2) hereof.

(3) They otherwise deny each and every allegation contained in paragraph 8.

9. As to paragraph 9:

(1) They refer to and repeat paragraph 2(2) hereof.

(2) They otherwise deny each and every allegation contained in paragraph 9.

10. They deny each and every allegation contained in paragraph 10.

11. As to paragraph 11:

(1) They do not admit that the plaintiff was subjected to physical and/or sexual and/or psychological abuse while an infant by Kevin O'Donnell.

(2) They otherwise deny each and every allegation contained in paragraph 11.

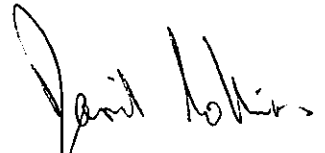
12. They deny each and every allegation contained in paragraph 12.

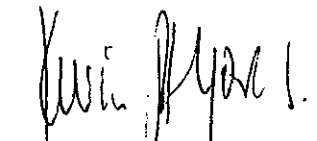
13. They deny each and every allegation contained in paragraph 13.

14. They deny each and every allegation contained in paragraph 14.

15. Further, they say that, insofar as the statement of claim alleges a claim against the first to sixth defendants, the statement of claim does not disclose a cause of action, is embarrassing and liable to be struck out.

DATED the 7th day of May 2004


DAVID COLLINS


KEVIN J.A. LYONS


CORRS CHAMBERS WESTGARTH
Solicitors for the First to Sixth Defendants