

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

**SUBMISSION BY WAY OF REPLY TO THE
SUBMISSION OF MR GLENN DAVIES (Davies)**

**BY PETER O'CALLAGHAN QC
INDEPENDENT COMMISSIONER**

INTRODUCTION

Whilst the Davies Submission is not dated I understand that it was provided to the Committee in June 2013. Importantly, and as also appears from passages in the Davies Submission, it pre-dated the Police Submission and the evidence of Deputy Commissioner Ashton. It is clear that much of what appears in the Davies Submission was incorporated into the Police Submission and Ashton. It follows that a good deal of my Reply to the Police Submission and Ashton is applicable to the Davies Submission.

I set out hereunder extracts from the Davies Submission in italics followed by my comment.

1. *"I am making this Submission largely from my own memory, not being granted access to my personal Victoria Police computer notes on this issue". (S3)*

COMMENT:

This invites two comments:

- (i) As is shown hereunder Davies' memory of what in fact had occurred is defective.
- (ii) Without knowing Police protocol, I would have thought that Davies' superiors including the Chief Commissioner and Deputy Commissioner Ashton would have been entitled to access Davies' file in the context of putting forward the Police Submission and Ashton's evidence. Because of the many errors in the Police Submission and Ashton it appears this was not done.

2. *“As such the legal advice I have received in relation to this issue is that in the absence of receiving some guarantee in this regard that I should not make a Submission that deals with my communications with the Melbourne Catholic Archdiocese. To ameliorate the risk I have provided a briefing note for Victoria Police where I have reviewed much of my extensive interactions with the Melbourne Archdiocese and in relation to my assessments of the Melbourne Archdiocese process in dealing with reports of abuse and sexual abuse on children or vulnerable adults. I have been assured that these will form part of the Victoria Police response”. (S3) (Emphasis supplied)*

COMMENT:

It does not appear Davies referred to the documents recording ‘my extensive interaction’. The preparation of a briefing note, based upon Davies’ poor memory, rather than a reference to contemporaneous documentation, results in the false and misconceived statements appearing in the Police Submission and Ashton. In my reply to the Police submission and the Archdiocese in its own reply have provided extensive contemporaneous documentation detailing our interaction with Mr Davies and Victoria Police.

3. *(Methodology and Methods)*

“As a result of these forums and working with In Good Faith and Associates, the Melbourne Victims Collective and other groups I have spoken to many victims/survivors (approximately over 200) who have told me of their interactions with the Melbourne Archdiocese and the Towards Healing process”. (S3-4)

COMMENT:

- (a) In Good Faith and Associates and/or Melbourne Victims Collective, as submissions and evidence show, are strident but false critics of the *Melbourne Response* generally and the Independent Commissioner in particular. Shortly stated Mr Davies has joined forces with the opponents of the *Melbourne Response* and the Independent Commissioner, and as appears hereunder is, to say the least, obviously biased. Davies, as with Helen Last and others, makes broad and unparticularised accusations which makes it difficult if not impossible to sensibly respond.
- (b) This is typified by Davies not identifying (even by a pseudonym) any of the approximate 200 victims he has allegedly spoken to, who have passed through the *Melbourne Response*. His failure to do so impacts on his credibility, and prevents me from presenting to the Committee, relevant contemporaneous documentation. Likewise if the victims/survivors were so identified, the Committee could inspect or have its legal advisers inspect the individual file, and consider the complaint in the light of what appears in the files. There is no mystery as to how in fact I have dealt with complaints, because my files constitute a detailed and comprehensive record of my dealing with relevant parties. It would appear Davies has forgotten, or perhaps more probably ignored, that in December 2009, he requested from me a sample of files so as to give him an indication of how my process worked. This I did, and Davies made no adverse comment or objection.

- (c) Rather, in company with Assistant Commissioner Wendy Steendam and other police officers, Davies proceeded to conduct extensive negotiations with representatives of the Archdiocese and myself in an endeavour to enter into a protocol or memorandum of understanding. Davies obviously desired to have the Police enter into such arrangements with the Archbishop of Melbourne and the Independent Commissioner. If Davies then held the views he has now espoused in his Submission, it is incredible that he as the Officer in Charge of the Sexual Crimes Squad would have facilitated and supported the Police entering such an agreement. Based on his earlier conduct no credibility should be given to these later views.
- (d) Bluntly put, the Davies Submission reflects the fact that since 2011, Davies has been working for or associated with In Good Faith and Associates, and MVC.

4. *"In 1996, I was astounded at the implementation of the Melbourne Catholic Archdiocese ('Response') appointment of Independent Commissioner was made. As a Catholic and a Police Officer I was confounded as to how the Church was able to set up an alternative pathway to handling allegations of criminal sexual abuse. I thought that surely this process would have to had significant and close Police involvement". (S4)*

COMMENT:

- (a) That Davies was astounded (and apparently concerned) in 1996 "at the implementation of the Melbourne Catholic Archdiocesan Response appointment of Independent Commissioner" is inconsistent with his subsequent statements and conduct.

- (b) On 3 November 2009 Mr Davies wrote to me seeking information as to my role as follows:

"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 some communication and dealing 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 dealings 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 wether (sic) you have a Victoria Police Liaison Officer and wether (sic) we could develop such a role".
(Emphasis supplied)*

COMMENT:

- (a) The above is clearly inconsistent with Davies claimed astonishment (para 4 above) at the setting up of "an alternative pathway to handling allegations of criminal sexual abuse" (which of course it clearly did not).
- (b) As appears in my Reply to the Police Submission (para 10) I provided Davies with:
- (i) a letter dated 15 October 1996 from Monsignor Denis J Hart Vicar General (as he then was) to Assistant Commissioner Gavin Brown;
 - (ii) a letter dated 18 October 1996 from Corrs Chambers Westgarth to Assistant Commissioner Brown;

(iii) a letter dated 21 October 1996 from Assistant Commissioner Brown to Corrs Chambers Westgarth

to which Davies does not refer, providing further proof of a defective memory, or something worse.

(c) In my Reply to the Police Submission I described "*carrying out my role as the Independent Commissioner*". At paragraph 11(b) I provided Davies with a detailed description of the way in which I performed my role. This letter was prior to a meeting I had with Davies and representatives of the Archdiocese on 4 December 2009. Davies makes no mention of this.

5. *"In 2009, it came to my attention that there were a number of practices employed by the Melbourne Catholic Archdiocese that may have been having some impacts on the Victoria Police's strategic policy direction outcomes. Specifically given the historical and situation low numbers of victims prepared to report sexual crime, one of the key outcomes of our prevention of violence against women and children strategy was to increase the number of reports to Police. There was also some public reporting via the Age newspaper articles written by Nick McKenzie of cases where Police were unhappy with the Melbourne Archdiocese cooperation with investigators. My actions in relation to this information between 2009 and 2010 should be the subject of a Submission made by Victoria Police". (S4)*
(Emphasis supplied)

COMMENT:

(a) Davies actions between 2009 and 2010, are referred to in my Reply to the Police Submission. In no way are they critical of the *Melbourne*

Response, but rather reflect the efforts and willingness of Davies to reach an agreement between Victoria Police, the Archbishop and myself. Davies in that period raised no objection to my role as Independent Commissioner. Subject to the terms of a Protocol to be entered into, my continuing role as Independent Commissioner appeared to be welcomed. There was no suggestion express or implied of unsuitability etc. as appears in his Submission.

- (b) The Police Submission does not accurately or at all record, the relationship with the Victoria Police, Davies and Ms Steendam, between 2009 and 2010. Davies has concealed the true relationship, as has the Police Submission and Ashton. This carries its own message.

6. *“After my informed examination, it is now my view that the policies and practices of both the Melbourne Catholic Archdiocese and the Towards Healing process are operating in a manner that is detrimental to the administration of justice and impeding the detecting, apprehending, prosecuting or convicting of persons who are known or believed to have committed secular crimes against children vulnerable adults” (S4-5)*

COMMENT:

- (a) This statement bears no relationship to the facts. Prior to his resignation from the Police force Davies had pleaded guilty to offences against Section 124 of the Police Regulation Act. He was fined \$5,000 to be donated to a charity. He nominated In Good Faith and Associates, which together with Melbourne Victims Collective and others have been the most strident critics of the *Melbourne Response*

and the Independent Commissioners. These are the organisations for whom Davies now works, and supports. Davies is the man who had protracted and extensive negotiations with representatives of the Archdiocese and me as the Independent Commissioner, as the correspondence referred to in my Submission in Reply, and also that contained in a Further Reply of Archbishop Denis Hart records. Had it not been for the decision of Chief Commissioner Overland that no protocols or understandings would thereafter be entered into, the negotiated protocol would in all probability have been signed off.

- (b) Davies was not unfamiliar with the operation of the *Melbourne Response*. He asked from me as the Independent Commissioner redacted transcripts to show how my process operated, which were provided. Likewise he was given a detailed description of my practices and procedures. That letter is set out in full at para 11 of my Reply to the Police Submission. It was and remains a full and accurate description of the practices and procedures I have engaged in over the period now approaching seventeen years, and was apparently accepted and approved by Davies. For Davies to now gainsay the fact of and the efficiency of these procedures is opportunistic and spurious.
- (c) Davies was provided with all the information he wanted so as to understand the way in which the *Melbourne Response* operated, and expressly and implicitly he accepted that it was operating satisfactorily. For instance, when Assistant Commissioner Wendy Steendam on 19 February 2010 made the statement which appears at

paragraph 15 of my Reply to the Police Submission, Davies was present at that meeting, obviously agreed with Ms Steendam.

7. Davies says:

1. *“Actively and systematically dissuaded victims of sexual crime from reporting their victimisation to the Police or secular authorities”. (S5)*

COMMENT:

I repeat what I said in my Reply to the Police Submission namely:

“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 their complaint to the Police. This is because this has never occurred.”

Davies also provides no identification, for the same reason.

8. *“The system and processes undertaken by the Melbourne Archdiocese were detrimental to Police investigative processes and the prosecution of those suspected of criminal sexual crimes against children and vulnerable adults”.*

COMMENT:

This is nonsense, manifested by the absence of even the slightest particulars of or evidence to support this egregious statement.

9. *“Provided suspects very soon after allegations were made, specific details of these allegations resulting in the possible loss or destruction of evidence”.*

COMMENT:

In my Reply to the Police Submission I have refuted the one allegation that I caused the loss of evidence. Once again no particulars are provided, no

doubt because Davies knows of no facts which would support his baseless allegation.

10. *"Failed to engage in a meaningful way Police liaison and their process". (S5)*

COMMENT:

- (a) In my reply to the Police Submission, I instanced examples of liaison with the Police over the years. In my letter of 3 December 2009, I also advised Davies of liaison with the Police.
- (b) It is incredible that Davies makes such an allegation, when he himself and other Police at his request liaised with me and Representatives of the Archdiocese, from 2009 until late 2010 when Davies was stood down. Davies must have been aware that this particular liaison continued after the Overland statement, and his being stood down, and culminated in the supplementing of the Terms and Conditions of my Appointment as announced in the Media Release of February 2011 approved by the Police. That Davies has elected not to disclose this particular liaison to the Committee is, I submit, not because he does not remember it, but rather that would show the falsity of his allegations.

11. *"Allowed administrators misrepresented themselves as having independence of the Church when the truth is they were no more than reputational risk managers for their employer's organisation". (S5)*

COMMENT:

No doubt this assertion led to the allegation in the Police Submission and Ashton that the Independent Commissioners were not independent, although

described as such. This scurrilous allegation was dealt with in my Comment to para 73 of my Reply to the Police Submission which, because of its importance, I repeat here:

“Ashton appears to treat this as a revelation ie. ‘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 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 ie. I will do what they say or not do anything which will upset. This is as false as it is offensive.”

12. *“Provided protection and sanctuary to offenders who were known or suspected of committing sexual offending against children and vulnerable adults”. (S5)*

COMMENT:

In the absence of identifying even one such offender and specifying the protection and sanctuary allegedly given, the Committee should reject and ignore this grave allegation, save to note it as further proof of Davies' bias and malice.

13. *"Failing to make offenders accountable to the law".*

COMMENT:

This false accusation has been dealt with in my Reply to the Police Submission.

14. *"Failing to protect communities from offenders and indeed facilitating further access for offenders to children and vulnerable adults". (S5)*

COMMENT:

This vague unparticularised and unproven allegation is rejected. That a former experienced and competent policeman should express such a view is as surprising as it is deplorable.

15. *"Failing to have open learning systems that would have alerted the Church to inadequate and ineffective prevention processes". (S5)*

COMMENT:

Save to say I consider that the *Melbourne Response* has operated fairly, reasonably and appropriately, I do not answer further, because I do not understand what is alleged.

16. *"Failing to adequately acknowledge victims in their own right as people needing information, support and autonomy when making decisions about their own recovery". (S5)*

COMMENT:

Again the lack of particularisation or expansion makes it impossible to meaningfully respond to such a vague and incomprehensible assertion. I refer to my comment to paragraph 15.

17. *"After speaking to many victims, victim's lawyers and the Melbourne Archdiocese it was apparent that victims were not encouraged to go to the Police. In some examples questions were put with the answers already assumed. Words to the effect that once I get your ok that you don't want to report to the Police I can get my processes underway. Other victims say they were not encouraged to report". (S8)*

COMMENT:

Davies does not identify the victims, the victim's lawyers and to whom in the Melbourne Archdiocese he spoke, thus precluding any meaningful response. I have dealt at length with accusations of this sort in my Reply to the Police Submission. If Davies had identified the victims, the files in respect of those victims could be inspected to see whether there were contemporaneous statements of the sort alleged by Davies. Certainly Davies could not have achieved the impression he now espouses from perusing the files of victims which I provided to him in December 2009 pursuant to his request for *'copies of a selection of transcripts of interviews I had conducted with complainants,*

so he could get an idea of how the victim account/statements are made'. Six transcripts of my interview with victims are Attachment 5 of my Reply to the Police Submission. I refer to some of those.

(a) I refer to the redacted transcript bearing the number 6, and relevant extracts therefrom:

IH: Well I rang you up the other day because I really feel that I didn't ask what happened to me I didn't ask for that to happen and I

POC: Perhaps I should reframe my question. I can understand why you've come in, why did you not do it before

IH: ok well I didn't do it because I never wanted to go to the Police about it because I find it hard enough to talk about it let alone all this dissection and I've always felt that it's not their fault but they do make you out like the perpetrator and you have to go into things in such detail and I don't have evidence like pictures, I don't know like, tangible

POC: I think I told you that yesterday you have a right to go to the Police

IH: I understand that but I don't want to go

POC Let me make it very clear if I want to discharge my duty as I told you on Monday that I invariably tell people that they have a right to go to the Police and I encourage them to exercise that right. If and I gather you don't want to, then I am happy to hear what you say and I'm listening to what you say and I will treat it as completely confidential everything you say unless you tell me otherwise. I understand completely that people want to avoid the trauma of a Police investigation and all that flows from it so

IH: umm

POC: but you know that I've told you that

IH: no I totally understand my rights and my right to actually see the Police if I wish..... (20-22)

K: (Husband) I mean we've its not sorry hon because its not sort of like the major topic every week that we have obviously I mean the question has cropped up on many occasions and we've basically spoken about it quite often with regard to reporting it and going to the Police just in case its happening to somebody else and I mean that's

IH: I couldn't

K: But it's the choice because it's hers that has to stand in some dock and say

POC: *I'm not I've provided I've given my advice about the choices*

IH: *Yes that's fair, understood*

POC: *I encourage you but I can easily understand your not doing it*

K: *I've tried to talk her into going (31)*

(I point out this is hardly an instance of discouragement)

(b) Transcript

POC: Peter O'Callaghan QC

G:

M:

"POC: *Well now look what I've got to tell you both too is this that you've got a continuing and unfettered right to report matters such as this to the Police if you wish to. I'm obliged to tell you that because part of my arrangement when I was appointed was I wasn't going to be any substitute for the Police force and I have encouraged people to report it but you both shook your head in the negative when I mentioned just then*

G: *I'll speak for myself. My reason for being here Peter is to help and to make sure he's still not doing it just for him to seek help because I can't imagine what it must be like to be him and so I'd like for him to seek help we don't want I don't want any compensation I don't want any of it. This for me is about making sure he's still not doing it*

(c) Letter marked 2A (This was a letter I wrote to a victim who had gone to the Police, and whom I had interviewed on 28 January 2000):

"...you complain of sexual abuse byAs appears from the Terms and Conditions of my Appointment it is my invariable practice to advise complainants who come to me that they have a continuing and unfettered right to report their complaint to the Police and I encourage the exercise of that right.

Whenever a Police investigation is pending and any Court proceedings emanating therefore I take no or no further action. Accordingly I confirm my advice to you whilst I will pay the closest attention to your complaints I will not do this until after the trial ofis completed which trial I understand is to take place on"

(Some two years later I was advised that the Police would not be charging the offender in respect of that victim. I accordingly dealt with

the complaint. found it was established and that victim was duly compensated. etc.)

- (d) I refer to the letter dated 1 July 2002, written by me to a victim and which contains inter alia the following:

"What you described in the document referred to constitutes criminal conduct. I enclose herewith the Terms and Conditions of my Appointment....

You will note from the Terms and Conditions of my Appointment that it is provided that I inform any person who complains of what might constitute criminal conduct that such person has a continuing and unfettered right to report that conduct to the Police and I encourage the exercise of that right.

It has been my invariable practice to so inform people and to encourage them to report the matter to the Police. Accordingly I so recommend to you. I must say that if the matter is reported to the Police that I take no further steps until the Police investigation and any proceedings emanating therefrom is completed. It would be quite inappropriate for me to be conducting investigations and making findings contemporaneously with a Police investigation. I am no substitute for the Police force, and the only way the defendants can be brought to justice in the true sense is pursuant to Police action. However, regardless of whether you do report the matter to the Police I consider that in the circumstances you should be entitled to counselling and psychological support if you require it. Thus whether or not you go to the Police I would be prepared forthwith to consult with Carelink and to ascertain the name of a counsellor or psychologist in South Australia who could provide you with relevant assistance if required...."

(That victim reported the complaint to the Police, and the offender stood his trial in respect of that and other complaints upon which he was convicted. Subsequently I dealt with the complaint, found it established, and the victim was duly compensated etc. This is another example of my referring a victim to Carelink before deciding whether the complaint is established)

- (e) Transcript bearing the number 5

"POC: Well what I want to tell you at the start is that its my invariable practice to tell anyone who comes here with a complaint of sexual abuse that if that conduct may constitute criminal conduct then I remind the person that they have a continuing and unfettered right to

report that to the Police and I encourage the exercise of that right. In this case, as I told you on the phoneis dead so

DC: something to which I was actually unaware

POC: yes he died I think it would have been November I think last year. So and indeed if a person does go to the Police I then take no steps whilst the Police are investigating the matter but again that doesn't arise. But often people, either because they don't want to the Police, or for some other reason, they simply want me to listen to what they say and I tell you then on the basis you have my undertaking that whatever you tell me will remain confidential until you direct me otherwise. Now just, now just so you can, you will get a copy of this transcript."

(f) Transcript bearing the number 1

"POC: Now before we go any further let me tell you this that I am obliged to tell you that if what you say about this abuse constitutes criminal conduct you of course have the right to go to the Police and to report it to the Police and I would encourage you to do it and if you wanted to do that really that I would not continue then to take it up. Have you thought about going to the Police

PC: I'm I've been too afraid to

POC: Why is that

PC: It's hard to explain you know I mean being sexually abused and him being in a power position as a priest

POC: Yes well you can tell me if you want to tell me about this in confidence and for me not to tell anyone else unless you tell me to and if that is the condition upon which you want to talk to me I will give you an undertaking that I will treat everything you tell me as confidential unless and until you tell me that you don't want me to is that satisfactory

PC: yes

POC: well I may after I have heard what you say, say to you you ought to go to the Police or whatever but however we will deal with that when it arises

PC: yes

POC: at the moment what you are telling me I treat completely confidentially and I won't tell anyone else unless I'm obliged by law to do so which I can't really see that happening or unless you tell me I can. So tell me about it. You were in Grade 4 and this is how old you are...." (p 2)

(g) They are some of the transcripts I provided to Davies, and are quite inconsistent with the assertion I discouraged persons going to the Police. Those redacted transcripts are replicated in multiple other

transcripts and directly refute the accusations Davies makes. I emphasise that I provided these redacted transcripts in the course of liaising with the Police, at a time long prior to the announcement of the appointment of this Parliamentary Committee. I submit those transcripts demonstrate that I acted towards victims in a caring and compassionate way. They are an excellent example of the importance of contemporaneous documentation.

18. *"Many victims I have spoken to had believed that Police reporting was put forward as a viable option. It was my view that the 'options talk' was heavily weighted in favour of the Melbourne Archdiocese taking on the role of providing some relief, counselling and compensation for a victim quickly. It should be remembered that these people were in many cases seriously hurt people often with chaotic lives.... The legal system with it's long and onerous pace, invasive Court cases and threats to privacy offered little compared to immediate counselling and a speedy hearing that could yield a moderate to large amount of money. In all cases the Melbourne Archdiocese to my knowledge never offered independent legal advice or to bring in a Police member to speak with the complainant" (S8)*

COMMENT:

- (a) The contemporaneous documentation I provided to Davies as referred to above, was in the light of the biased criticisms he makes of the Independent Commissioner, obviously ignored. It is scandalous for a person such as Davies to make such grave allegations of misconduct by the Independent Commissioner, when my files containing contemporaneous documentation contradict and refute these

allegations. If Members of the Committee have received complaints of dissatisfaction with the *Melbourne Response* by victims who have passed through the *Melbourne Response*, with respect it should have been axiomatic for the Committee to have called for my file in respect of that victim so as to weigh the complaint against the contents of the file.

- (b) Apart from the Foster files, I have not been required to produce a file of any other individual. Alternatively, having received such a complaint, the Committee's legal advisers (who had and have complete access to my files), could have been directed to report on that complaint to the Committee. If this has occurred, it is a fundamental principle of fairness and natural justice, that I be given the opportunity to inspect that report, and if the report reflects adversely upon the Independent Commissioner, to be given the opportunity to respond thereto. Likewise, if the report is favourable, I should be entitled to adopt it so as to correct and refute allegations to the contrary.
- (c) It might be thought that I am over emphasising the importance of what is contained in my files. With respect, it seems to me unthinkable that an appraisal of the *Melbourne Response* would not include as a fundamental step, the inspection of the record of how complaints were dealt with over the past near 17 years. It would be a denial of fairness and natural justice for an adverse conclusion to be made in respect of the Independent Commissioner's handling of sexual abuse complaints

without referring to the file in respect of those victims who do complain of dissatisfaction.

- (d) Similarly, to accept or give credence to Davies' accusations in his Submission without reverting to individual files is wrong. Of course such reversions are hamstrung when there is no identifying of the particular complainant, a feature of the criticisms of the *Melbourne Response*.
- (e) I deny that I have ever told a victim that they did not need legal advice because I was acting for them. Many victims had solicitors representing them. Once again, the lack of particularisation and the identification of persons who made these complaints makes it impossible to meaningfully respond.
- (f) When victims wanted to report the complaint to the Police I facilitated this occurring, as I record in my Reply to Police Submission. If on the other hand, I had offered to bring in the Police, this would have been regarded by the victim, as a potential breach of my undertaking of confidentiality.

19. *"It is my view that there was not a process that recorded accurately a complainant's understanding of Mr O'Callaghan's encouragement to report to the Police. As it is expressed in his Terms of Appointment the 'the continuing and unfettered right' to report to the Police still remains an unnecessary legalistic piece of language that not all people could readily understand".*

COMMENT:

With respect, this is nonsense and deprecates the common sense and intelligence of victims. The reason I used the words in the Terms of Appointment including *'continuing and unfettered'* is because the Terms obliged me to. This was what I agreed to do, this was agreed to and required by Assistant Commissioner Gavin Brown of Victoria Police. It would have been improper for me to have used language different to that.

20. *"Many victims have also spoken to me about the language used by Mr O'Callaghan that he would stop if they reported to the Police. Victims felt that this pronouncement was manipulative and directed them away from reporting. Many said they went to him for help and why would they want him to stop"*.

COMMENT:

Once again, a perusal of my files, including a reference to the redacted files provided to Davies in December 2009, refutes this allegation, which I also do in my Reply to the Police Submission. It is necessary but tedious to repeat my complaint about lack of identification.

21. *"On any view if the Independent Commissioner received complaints identifying the same offenders committing the same sexual crimes he would have a responsibility to report this behaviour to Police"*.

COMMENT:

- (a) As I explain in my Reply to the Police Submission, if I am told in confidence by a complainant that he or she has been sexually abused, but does not wish to report that complaint to the Police, I am

bound to respect that wish unless compelled by law to do otherwise. I refer to the description of this aspect of my role in my 3 December 2009 letter to Davies, and also in my Reply to the Police Submission.

- (b) Since 1981, the obligation upon a person who has knowledge of criminal conduct which might lead to the successful prosecution of the offender has been removed (Section 326 of the Crimes Act). (See paragraphs 7, 8, and 52 of my Reply to the Police Submission).

22. *“Without deflecting from the many criticisms Pam and I had of the document (May Our Children Flourish) one in my eye stood out and that was that the reporting of suspected child sexual assault still remained through the Independent Commissioner and not the Police.*

COMMENT:

This can be shortly answered by referring to the following paragraphs of that document:

“100. Nothing in this code of conduct restricts the right of any person to report any matter to the Police or other authorities”

The right to report a matter to the police is also included in the flow chart on Page 18 of the document. Thus, if a victim wishes to report a complaint to the Police there is of course no fetter upon them so doing. Further, if a victim reports a complaint to the Independent Commissioners, that victim will be told of the continuing and unfettered right to report the complaint to the Police, and the victim will be encouraged to do so. That there has been no change in the operation of the *Melbourne Response*, by the publication of *May Our Children Flourish* is emphasized by the following paragraph:

"103. Nothing in this code of conduct is intended in any way to affect the role of the Independent Commissioner or the ability of any person to make or refer a complaint to the Independent Commissioner".

"Mr O'Callaghan's ability to judge criminal conduct:"

23. *"Perhaps the reason why Mr O'Callaghan does not exercise this option is that he was not able to make that assessment. There are a number of examples where Mr O'Callaghan's judgment in this regard was less than sound and not informed by contemporary research, prosecuting perspectives or policing expertise. There are a number of examples cited and will be included in the Police Submission that have publicly exposed Mr O'Callaghan as inadequate in this area". (S10)*

COMMENT:

- (a) This belittling statement is hardly worthy of a reply, but if left unchallenged it will be seized upon as an admission. I am accordingly obliged to say that my knowledge of criminal law and procedure is more than adequate to enable me to discharge my function as the Independent Commissioner. I am confident that this would be the view of my colleagues and Judges before whom I have appeared at the Bar. Particularly in my early years at the Bar, I sometimes prosecuted criminal cases and appeared as Defence Counsel in many. Included in those many cases were sexual offences. In latter years, I have appeared in a number of significant criminal cases.
- (b) To state that I am not aware of contemporary research is wrong. With respect to my investigational techniques, they have resulted in my

being satisfied that in all but a handful of cases, the victim was sexually abused. For me to make such a finding was of course, the reason why victims sought me out.

- (c) In criticising my judgement of criminal conduct I can only assume that Davies is referring to my having told a mature age woman that whilst I did not wish to dissuade her from going to the Police, I thought it unlikely that a Court would hold her complaint was criminal conduct (See para 46 of my Reply to the Police Submission where it is noted the DPP discontinued prosecution of that woman's criminal complaint against a priest). So far as I am aware, this is the only instance of my alleged defective judgment and ignores that my view was upheld by the DPP.

24. *"There is of course another explanation why the 'Independent Commissioner' may not be making determinations regarding the criminality of conduct and that is to deter people from reporting the offending to the Police". (S10)*

COMMENT:

This scurrilous statement again accuses me of deterring people from reporting the offending to the Police. I have above and in my Reply to the Police Submission demonstrated the falsity and malice involved in that accusation. It is of course a grievous attack upon my personal and professional reputation and integrity. I am confident that people who know me will reject statements such as those made by Davies as false and unsubstantiated. Regrettably, these accusations have been made available to the general public, members

of whom in the absence of a response to these accusations, will draw unfounded conclusions that are adverse to my character and reputation.

25. *"The Independent Commissioner did not encourage independent advice from a lawyer, Police or CASA. This process would have ensured a level of best practice and fairness that may have alleviated concerns from victims and truly encouraged reporting to the Police."*

COMMENT:

I have already referred to the fact that a number of victims have lawyers acting for them. I have likewise denied that I have failed to encourage reporting to the Police. With respect to CASA I have read many reports from that worthy organisation, to whom victims had gone. Further, as I have demonstrated in a number of references above and in my Reply to the Police Submission, I have frequently referred a victim to Carelink for psychological support and counselling before I have decided whether or not the complaint is established. I repeat that there has not been identified one person who has said he or she was discouraged from reporting to the Police.

26. *"Victims have stated to me that they were not given copies of the notes of their interview or copies of their recordings". (Page 10)*

COMMENT:

I deny this. Without the victim being identified, I can do little else. A perusal of my files will show that as a matter of practice I make available the transcript of interview so as to have the victim read and, if necessary, amend it. In a limited number of cases in which the priest was in active practice, and the victim did not wish to report it to the Police, I identified in the transcript the passages which with the agreement of the victim, I proposed to put to the

alleged offender and obtain a response. To suggest that victims were not aware of my reaction to their complaints ignores that I provided to the Compensation Panel inter alia a report of my findings, of which the complainant was aware.

The great majority of victims have been interviewed and transcripts of their interview have been made available to them shortly after that interview. There have been some cases where a transcript of interview was not made because the victim had made a comprehensive statement to the Police which had been verified before me, and which formed part of my report to the Compensation Panel. In a limited number of cases where there has not been a recorded interview, I took notes of the interview which I incorporated in my letter to the victim advising that I was satisfied that he or she had been a victim of sexual abuse.

In another small group of cases it was unnecessary to conduct an interview because the victim had gone to a Towards Healing Professional Standards Office in other States and had made a statement of complaint. When this was referred to me, I had the complainant verify it and hence there is no need for a further statement. In the *Towards Healing* process the contact person interviews the victim and records the complaint in writing.

I have no knowledge of transcript of recordings not being found or no records kept.

The evidence of Shirley

- 26A (a) Shirley is a pseudonym for a victim who gave evidence to the Committee and the transcript of which evidence was published and appears on the Committee's website.

Following this I wrote to the Committee stating inter alia:

"I repeat my sympathy for (Shirley), and I have no wish to unduly embarrass or concern her. But the fact is there remains on the Committee's website serious imputations against Archbishop Pell, the Melbourne Response generally, and the writer.

In the circumstances I request that Shirley's transcript of evidence be removed from the website and that no further action be taken or findings made. I will not then exercise my right of reply to Shirley, which if I had to would require me to publish in my defence the matters I have referred to above."

- (b) That letter was written on 16 April 2013 but Shirley's transcript remains on the website. In those circumstances I must respond to the allegations in Shirley's transcript, and inferentially to Shirley's submission which has not been published. The reason I refer to this matter in the context of replying to the Davies Submission is because I understand that Shirley was interviewed by Davies in the business he had together with Helen Last and Claire Deveny, namely providing assistance to victims making submissions to the Committee.
- (c) The Shirley file is significant because it provides one of the few instances where it is possible to compare the contemporary file with a later account contained (apparently) in a Submission to the Committee (yet to be published), and the transcript of the evidence of Shirley which has been published on the Committee website.
- (d) The 'assistance' provided by Davies has caused or contributed to Shirley describing in her Submission and evidence what took place, when she went before the Independent Commission and the

Compensation Panel. Shirley's description is damagingly different to what in fact occurred.

What in fact occurred

26B I interviewed Shirley: on 21 May 1997, in the company of her solicitor and her father. I set out extracts from the transcript of that interview:

(i) *POC: I've read this statement which you made to the Police on the 30th May 1994 to Senior Constable [REDACTED] do you remember that statement?*

SH: Yes [REDACTED]

POC: Just have a quick look at that that's a copy of your statement you don't have to read it all through. Do you remember making it?

SH: Yes I do

POC: And the contents are true and correct

SH: To the best of my knowledge and ability.... (T1-2)

(ii) *POC: Alright well my position is to decide whether a person has been the victim of sexual abuse by what's called in my Terms of Reference a 'church person' who in this case is a priest and whilst I'm not giving you any indication today I see little reason why I won't be satisfied that you were. If I am though the position is that I can refer you to Carelink that is to provide counselling and psychological support free of charge or indeed to continue to provide counselling of your choice free of charge*

SH: Well I'm still having counselling and I would like to stay with Susan Colby because I feel quite relaxed with her

POC: Fine. The next thing is that you will be entitled to apply to the Compensation Panel for compensation as the Archdiocese has established a Compensation Panel to make an ex gratia payment up to a limit of \$50,000. Now that's got nothing to do with me..." (T2-3)

(iii) *POC: But accepting all that and that's the fact and I'm interested to hear what you say, I truly am.*

SH: If you were the Archbishop and you were there in that situation, I've asked you what you would do, the first thing is you'd get rid of them.

POC: Well they are so far as they're discovered being got rid of and I don't want to discuss the Court cases at present

SH: That's fine I mean probably first alright I would report them to the Police

POC: *That's the first thing*

SH: *That's the first thing*

POC: *Absolutely (T14-15)*

- (iv) *Solicitor: Can I just mention though, part of the Commissioner's role is to filter the claims going through to the compensation area and it seems difficult to believe that he won't formally advise us within the next week or two that your claim is obviously genuine and that everything that you say is accepted as being entirely true, as it ought to be, and then we can go down the path. The other part of his role as I understand it is to advise the Church generally in a report at some point of time about sexual abuse.....(T18-19)*

POC: You see, what, what's occurred to me in my post is that a lot of people have said you're a stooge and you're a cover up and that sort of thing and I've been insulted by experts so that doesn't matter

SH: I didn't come here to insult you

POC: And you're not... But the thing is this though but the last thing in the world not the last thing I suppose there must be other things I wouldn't want but I would not like to be known as the barrister who was appointed by the Church and he was the great stooge in a cover up....."(T20-21)

I attach (Attachment 20) the full but redacted transcript of that interview comprising 31 pages.

26C I now set out extracts from Shirley's transcript on the Inquiry's website which I have redacted by substituting S for her name.

- (i) *"S: Yes after that I went to the Geelong Police Station and gave a statement. I am so glad that things have changed now because I was so uncomfortable...*

Mr McGuire: What happened then just take us through that process

S: They just asked me the questions. They took it all down. But I did not receive a copy at all of my statement that I gave to the Police.

Mr McGuire: Did you find the way you were treated by the Police and the Church unsatisfactory or how would you describe it

S: Yes very unsatisfactory (T3)

COMMENT:

Clearly Shirley is mistaken when she says that she did not receive a copy of her Police Statement which in fact she verified when I interviewed her.

(ii) *Ms Coote: You felt that the Melbourne Response itself once you got in there was ok. Did you come across Peter O'Callaghan?*

S: Yes I had to go and see him prior to the Church offering me \$25,000

Mrs Coote: Was he kind and compassionate too?

S: Yes he was, but I just felt he was all for the Church and not for the victims

Mrs Coote: Did he make it very clear to you that if you were to receive money that you would not be able to speak to anybody else and was he firm about that?

S: Yes

Mrs Coote: Was that intimidating or concerning?

S: Yes it was to an extent. I thought if they were going to give us money that to me is a cop out I would have been much happier if they had said to me 'we are really sorry that this priest did what he did to you and that has affected your family we will try and change things' but no. (T4) (Emphasis supplied)

COMMENT:

I presume that Ms Coote's question "did he make it very clear to you.....firm about that" was based on something Shirley had stated in her Submission. I had no reason to discuss with Shirley the signing of a confidentiality agreement, nor did I. Likewise, as the transcript of interview shows, I did not tell Shirley that she "would not be able to speak to anybody" or anything like that. It will be noted that Shirley was accompanied by her solicitor Mr [REDACTED], whom the transcript shows above was fully aware of the situation, and her father. As appears at page 30 of the transcript:

"POC: Now have you got any other queries

Shirley: No I don't think so

The father: I think we've covered it fully, thanks very much for your help".

(iii) The Chair: Shirley before we go on I believe you asked to see the Archbishop at some point. Did that happen?

Shirley: Yes I did

The Chair: Did that happen? Was that request granted?

Shirley : No

The Chair: Who did you make that request to

Shirley: His Secretary I had no idea who it was

The Chair: You had no reply regarding that request?

Shirley: No

The Chair: Nothing

Shirley: No (T5)

COMMENT:

I have obtained from the Archdiocese's solicitors the compensation file in respect of Shirley. On 12 September 1997, Archbishop Pell wrote to Shirley. That letter concluded:

"On behalf of the Catholic Church and personally I apologise to you and those around you for the wrongs and hurt you have suffered at the hands of Father Fasciale".

On 15 September 1997, Corrs wrote to [REDACTED] [REDACTED] inter alia as follows:

In accordance with the procedure established by the Archbishop we are instructed to offer this amount (\$25,000) to your client. If she wishes to accept it she will need to sign the enclosed document which releases the Archbishop from all further claims arising out of the sexual abuse so that she

will remain able to receive treatment and counselling through Carelink. We have enclosed two copies of the Release. Assuming that your client is happy to sign the Release she should sign one copy for return to us and retain the second copy for her records...."

Subsequently, [REDACTED] requested further copies of the Release because apparently the first were misplaced.

On 3 February 1998, Corrs wrote to [REDACTED]

"As requested, we enclose further copies of the Release in relation to Shirley".

On 10 February 1998, [REDACTED] wrote to Corrs:

"...We now enclose Release duly executed by our client. We look forward to receiving a cheque for \$25,000 made payable to [REDACTED] [REDACTED] [REDACTED] as soon as possible. Please advise of a suitable time for our client to meet with the Archbishop.

Finally, we confirm that the settlement of this claim will have no effect on our client's ongoing counselling through Carelink...."

On 18 February 1998, Corrs wrote to [REDACTED] stating:

"We refer to the request by (Shirley) to meet with Archbishop Pell in your letter of 10 February 1998. We advise that Friday 27 February 1998 would be a convenient date for such a meeting.

Please contact Mr Casey at the Catholic Diocesan Centre on [REDACTED] to arrange a convenient time."

It is not clear whether this meeting took place. Be that as it may the Committee has been provided with copy of a handwritten letter of 5 February 1999 to Archbishop Pell which conveys a totally different impression than that Shirley gave in her answers to the Chair's questions at page 5 of the transcript. In that letter, Shirley wrote to Archbishop Pell stating inter alia *"I accept your apology with humble heart"*.

I have already provided to the Committee the Deed of Release made 9 February 1998. It will be observed there is no confidentiality requirement contained in that Deed.

27. *"Many victims I spoke to stated the interview with Mr O'Callaghan was unnecessarily invasive or over focused on identifying who the offender was. Whilst the name of the offender of course would have been important, traumatised children often can't remember such details from 15 or 30 years prior. In this instance Mr O'Callaghan's access to Parish records could have revealed the identity. In my discussion with victims I have not heard them refer to any identification process such as photo boards".*

COMMENT:

I do not understand what is here being contended. Obviously the name of the offender is important because the victim is complaining that he or she has been sexually abused, and the obvious question is by whom. In any event, out of the 300 plus complaints I received in only 4 of those cases was the offending priest not able to be identified.

28. *"In evaluating a number of interviews conducted by Mr O'Callaghan I believe he has limited skills in extracting information from victims and many of the interviews were brief and lacking what I would believe is critical detail relating to identity of other offenders or enablers, blockers or those covering up the behaviour. It is my belief that Mr O'Callaghan has received no further accreditation or specialist training in dealing with victims of sexual crimes. With some of his pronouncements regarding what is and what is not a crime or what the Courts would be interested in, I doubt that he has engaged in any meaningful dialogue with the OPP or Police Prosecutions Personnel".*

COMMENT:

I have already responded to these belittling remarks. My process of investigation has resulted in my finding that nearly all the complaints have been established.

29. *“A common theme I heard was that victims could not prove what occurred. Where is the proof is the phrase I heard many say what was said to them. Many witnesses I spoke to felt those in position of authority in the Melbourne Archdiocese demanded absolute proof and failed to give consideration to similar facts and acts which is a legitimate measure of validity when deciding the likelihood of someone being an offender. An example of this was the Peter Searson case from Doveton where Searson had many allegations made against him but was barely recognised as a risk. There was no effective management or communication around Searson and as a result children were sexually assaulted by him over again”.*

COMMENT:

- (a) I cannot recall saying to any victim “where is the proof”. My practice is to obtain a statement in a conversational way from the victim. It is the technique I have employed over the years in conferring with witnesses and clients on myriad matters. I doubt that Davies has any direct knowledge of, nor had he any involvement in, the deplorable activities of Peter Searson. On the other hand, I am very familiar with what occurred with Searson prior to my appointment and of course what occurred thereafter. Briefly stated, in 1985 a then Grade 4 female student (AB) fled from the Confessional and Father Searson in a

distressed state. However, AB would not detail what had caused her distress and, despite the efforts of the Principal and other teachers of the school, this remained the case. Her parents were adamant that they did not wish to take the matter to the Police because of the strain and distress they believed this would impose on AB.

- (b) In December 1990, the Principal was interviewed by Police in relation to AB and other matters. Subsequently, the Police interviewed AB and her disclosure then was not such as to warrant or cause any action to be taken by the Police. The position thus pertained that whilst there was abundant suspicion about the conduct of Searson, there was no evidence considered sufficient to the laying of charges.
- (c) A leading firm of lawyers was retained to advise and in a letter of April 1993 reported:

“None of these comments in themselves disclose any evidence which would justify a charge against the Parish Priest (Searson) in relation to sexual offences”.

In 1993, Searson was interviewed and given a formal warning that if there were any further allegations the Canonical process to remove him from the office of Parish Priest will be commenced.

- (d) In March 1997, upon my recommendation as Independent Commissioner, Searson was placed on administrative leave pending the hearing of charges of physical assault, and the making of further investigations by the Commissioner. Upon the initiative of a former

Principal of the school to which AB had moved in 1986, AB indicated her preparedness to meet with me in respect of a 1985 incident.

- (e) On 20 March 1997, I met with AB, and while she did not wish to report the matter to the Police, she gave a detailed complaint of what had occurred on and prior to 2 May 1985.
- (f) A hearing was held in June 1997. AB's solicitor appeared for her, Mr Jeffrey Gleeson (as he then was) appeared as Counsel Assisting the Commission and Searson was represented by his solicitor. This hearing resulted in my finding that Searson had been guilty of the sexual abuse of AB and another victims and consequently making recommendations to the Archbishop. Suffice to say that from that time on until his death in 2009, Searson did not have any faculties to act as a priest.

Until AB was prepared to come forward and detail her complaints, there was no hard evidence of sexual abuse by Searson.

30. *"In truth the Independent Commissioner does not conduct an investigation per say (sic). The Police definition of an investigation being 'a search for the truth in the interests of justice in accordance with the specifications of the law. The rigor applied to his inquiries is sporadic and incomplete and the framing of the problem is to be solved is only limited to establishing whether (sic) the victim can be determined as a bona fide victim of clergy abuse".*

COMMENT:

I deny that my inquiries are sporadic and incomplete but do agree that my role is complete when I have been satisfied that a victim has been sexually

abused. I then refer that victim to Carelink and the Compensation Panel. I have seen no evidence of collusion between offending paedophile priests or things such as a network. Of course, in evaluating a complaint by a victim against an offender whom I have previously found a complaint by another person, I will often be assisted by the application of similar facts principle.

31. *"I have an example of one victim who mentioned that another person in the room but it was not ever questioned who that person may be. Years later the other person was identified as another molesting priest".*

COMMENT:

I have no knowledge of this, and find it impossible to further answer unless particulars are provided.

32. *"Witnesses have told me there were many instances where Mr O'Callaghan referred to himself and his role as likened to that of a Royal Commissioner, when in reality he is really a reputational risk manager who makes recommendations that individuals receive money for how they have experienced abuse by people working for the Church in the Melbourne Archdiocese".*

COMMENT:

- (a) I have never told a victim that I was anything other than an Independent Commissioner. Certainly I said my role could be likened to that of a Royal Commissioner appointed by and paid by the Government, but independent of its appointer. In my case the "Government" was the Archbishop who appointed me and paid my

fees but of whom I was independent, in the same way as a Royal Commissioner. I have addressed this point in detail during my evidence to the Inquiry.

(b) I am not a reputational risk manager (whatever that means).

33. *"From victims accounts and documentation I believe Mr O'Callaghan was aware of many serial offenders and serious sexual offending that were perpetrated by those under the administration of the Melbourne Archdiocese and refused to report offenders for investigation by authorities or make recommendations that would have protected children and vulnerable adults from further victimisation. This has the effect of authorities never knowing the identity of suspects and therefore when the first reports came through there were no avenues of inquiries with other sources to establish a similar fact or similar case".*

COMMENT:

This scurrilous and deplorable accusation is rejected. It epitomises the malice and bias of the Davies Submission. In the absence of even the slightest particularisation I can do no more than to deny this egregious statement. For even a discredited Police Officer to pedal such an irresponsible accusation beggars belief.

34. *"As reported by the Age newspaper questioned by journalist Nick McKenzie, Mr O'Callaghan believed in the principle of natural justice and as soon as possible after an allegation is made he notifies the alleged offender with the details".*

COMMENT:

- (a) The above statement is false and Davies knows or should know that it is, because in my letter to him of 3 December 2009, I explained in detail my practices and procedures, and in doing so dealt with the activity described by way of misnomer as "tipping off". For convenience I set out some relevant extracts from that letter which appears at paragraph 11(b) of my Reply to the Police Submission:

"I have from time to time been approached by the Police requesting information in respect of the investigation of allegations of sexual abuse against a Priest. In those 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, 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.....

Finally there is the question of my informing the parties to an Inquiry that the complaint has been referred to the Police, and consequently I will for that reason be taking no further steps in my Inquiry until the Police investigation and proceedings (if any) emanating therefrom (are completed).

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 can then conduct an inquiry 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 if the complainant does not wish to report the matter to the Police that enables me to inquire 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. To continue my process ie. '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 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 more steps. 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 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."

- (b) The obligation of natural justice to inform the parties I will be taking no further steps, only arose after I had embarked upon such a hearing. I am then required by the rules of natural justice to keep each party apprised of the material in my possession.

If a victim came to me with a complaint against Fr X, and said that he was going to take his complaint to the Police (which in some cases I have facilitated) I, of course, would not then inform the priest of this. To do so would breach the confidentiality owed to the victim. Further, in that situation I have no relationship with the priest, nor any obligation to so inform him. This is distinct from the position when there has been an agreement between the victim, the priest and me as Independent Commissioner that I should conduct a hearing to determine the validity of or otherwise of the complaint. In so doing, I must observe the rules of natural justice, one of which is that each party is entitled to know the material in my knowledge and possession. Hence, when I become aware the complaint has been referred to the Police, I forthwith inform both parties of this. Of the 300 plus cases I have dealt with, this situation has only arisen in two cases. That this occurs in all cases, as implied in the reference to Nick McKenzie, is plainly false.

35. *"Many victims inform me that the person they made their complaint against remained in place sometimes for years. Others complained that the offenders were moved from Parish to Parish without a management plan or supervision. Examples of some include priests Searson and Rubeo".*

COMMENT:

- (a) All priests whom I have found were guilty of sexual abuse and recommended that their faculties be removed have had those faculties removed by the Archbishop and have not acted as a priest thereafter. Searson was moved from Sunbury to Doveton at a time when there was suspicion of misconduct by Searson but no proof which would have entitled the Archbishop to stand him down. Once I made a finding against him, his faculties were withdrawn and he was not moved to another parish.
- (b) With respect to Rubeo, it is the fact that after complaints of sexual abuse were made to the then Vicar General in 1993, and prior to the establishment of the *Melbourne Response* and my appointment as Independent Commissioner, Rubeo did not resign nor was he stood down because the complainant insisted that this not take place but that Rubeo be given instruction and counselling support etc. As I have stated elsewhere, if that situation arose today there would be only one result and that would be the priest being forthwith placed on administrative leave, pending the investigation of the complaint.
36. *"The results of these actions left Communities vulnerable. Some priests it was reported were put into positions that allowed another vulnerable group to become the target of abuse. The fact that had already previously been*

accused of another sexual crime made no difference to the appointment which allowed him to prey on other vulnerable women. It is my belief that in the Melbourne Archdiocese Mr O'Callaghan makes recommendations in regards to placement, removal and supervision of priests accused of misconduct or sexual offending".

COMMENT:

- (a) This is utterly rejected. Davies provides not a skerrick of evidence in respect of these alleged reports. It is maliciously irresponsible to make such grave allegations without supporting evidence. If such a situation was known to Davies when he was the Head of the Sexual Offences Squad, why did not he do something about it? If he obtained such reports after he had left the Police Force then why did he not report it to the Sexual Offences Squad?
- (b) If Davies holds the belief that I do as he says I do, he is completely mistaken. I repeat in respect of priests whom I were satisfied had engaged in child sexual abuse, I recommended to the Archbishop that their faculties be removed which was done.

37. *"Many victims told me that they felt they had nowhere to go if they had a complaint about the process of gaining support or compensation from the Melbourne Archdiocese. There were what they believed as silencing clauses that they were forced to sign before they were able to have any access to further services or compensation and in some instance an audience with the Archbishop. Most informally however that their complaints would always be sent straight back to the Independent Commissioner for his consideration".*

COMMENT:

The 300 plus complainants of child sexual abuse have been referred to the Compensation Panel which has resulted in the Panel recommending to the Archbishop that the victim be offered an ex gratia sum by way of compensation. There have been a very small number of complaints, which have been reviewed by the Panel, following the victim having brought to my attention additional material, material which was not made available to the Panel when first dealing with the application. I repeat that this has only occurred in a very small number of cases, and typically once I have made my finding that I am satisfied sexual abuse has occurred, and reported to the Compensation Panel my role has been completed.

CONCLUSION

I do not deal with other statements of Davies critical of the Church procedures. I maintain that the *Melbourne Response* has operated fairly, reasonably and appropriately.



.....

Peter J O'Callaghan QC

26th July 2013

INTERVIEW WITH SHIRLEY &

HER FATHER, JD

PRESENT: Solicitor: [REDACTED]

NAME: SHIRLEY
JD (HER FATHER)

ADDRESS:

TELEPHONE NO:

OCCUPATION:

DATE OF BIRTH:

POC: Peter, Shirley.

SH: Yes, that's fine.

POC: I've read this statement which you made to the Police on the 30th of May 1994 to Senior Constable [REDACTED] Do you remember that statement.

SH: Yes, [REDACTED].

POC: Just have, just have a quick look at that. That's a copy of your statement. You don't have to read it all through. Do you remember making it.

SH: Yes, I do

POC: Fine. The next thing is that you will be entitled to apply to the compensation panel for compensation as the Archdiocese has established a compensation panel to make an ex gratia payment up to a limit of \$50,000 now, that's got nothing to do with me and can I say thank God for that because what you do between \$1 and \$50,000 I don't know what you do in terms of gradations of offences and assaults and so on. But the other thing that I am interested in all things, but did you tell your father about the fact that you'd been abused.

SH: After my sister had told my father, not until then.

POC: Though she doesn't remember, but that doesn't matter. But you certainly remember telling your father.

SH: I remember dad questioning me and yes, telling him.

POC: Do you remember what you did.

JD: Yes, I remember it quite frankly, I went straight to, I went to St. Mary's Church at that time the Monseigneur, Dean O'Bryan, he was the in charge there, he was a sick man so I couldn't, I thought I'd better not go to him, he's too sick so I went to Father O'Regan and I told him exactly what the girls had told

JD: Parish Priest, yea.

POC: And, was, what was, do you remember O'Regan's first name.

JD: Beg your pardon.

POC: O'Regan's first name.

JD: Bernard.

POC: So he is now the Parish Priest of Balaclava and his Monseigneur Bernard O'Regan.

SH: That's him.

POC: That's the same bloke. And anyway, so that's what you've told him and what happened was that instead of what your expectations were, but did you have any further involvement.

JD: No, not at that time. I thought naturally left that into his hands, we didn't want any publicity, in those days publicity like that was a wipe off, you didn't go into those things at that particular time and I just kept it to myself. I told the girls, well right oh leave it now to Father O'Regan's hands and see what's to be done about it. I said anyhow later

POC: I'm not criticising you, but you simply learnt about it but you did nothing about it.

JD: That's right, well I couldn't then at that stage I thought well what am I going to do.

POC: Right. O.K.

JD: The only way you could attack it in those days was just go straight to the Police.

POC: And the reason I would have said, well you've been to the Police. Well, anyone who comes in here and tells me something which might constitute criminal conduct I'm obliged to tell them, when I say obliged, I'm strictly speaking I'm not obliged, but I do tell them that you've got a duty and a right or more particularly a right, to report it to the Police but in this case it doesn't matter because you have reported it.

SH: Yes.

POC: And again the offender is dead. The, O.K. that's when, when did you come back, if I might put it into the picture, did you go with your daughters to see Monseigneur Cudmore.

JD: Yes, told Cudmore everything and on top of that he had a hand writing expert there, was taking it down in shorthand. Everything that we said.

POC: So there should be a record of that.

JD: Yes.

POC: O.K. Right, and so well there we are. That's covered, um, [REDACTED] as far as you're concerned you're presently continuing counselling and well I'll write you a letter in a few days time, hopefully in a few days time, saying what I've said, or will say, and that makes it reasonably simple in one sense, you must have some queries, or have you any queries.

SH: No, not really, I'm just so angry at the moment and I'm sick and tired of all this pushing and shoving and it's you know, when is it ever going to end, when am I going to be able to feel that I can close that door and get on with my life.

POC: Well,

SH: I mean what they did was wrong and I wasn't the first victim there's another girl that Father Fasciolae

POC: One of the things that I have to avoid doing is getting in too much of a debate

SH: I understand.

POC: But can I just put these things, I suppose it could be said that they are showing some indications of a desire to remedy the situation, they've appointed me, I could be anything, getting big fees in other Courts and I'm not doing it for gratis for the Church, the, it's a peculiar thing that if they want to sort of cover things up to pay me to investigate what's happened, because my integrity, my professional and personal integrity, and I'm no special, barristers aren't any different to bookmakers, jockeys, any of us at all, everyone lives by their rights and there's some people more moral than others, some less, but the I suppose it might be said, and reasonably said, well whatever's happened in the past at least the Church is now presently making some effort to ascertain the extent of the problem and to deal with the problem the way that they have. You don't have to agree with that.

SH: I don't see them as showing much remorse at all. Alright, I know, you know Archbishop Pell is doing this and I guess he's trying to do something but I

and even the Archbishop what would you do.

SH: Well, I mean if I was the Archbishop I would be putting these men out of the Church, that's what they deserve to happen to them.

POC: Well, O.K.

SH: And they're not are they, they're retiring them out and they're still able to say Mass, they should lose that right, they've broken their vows, they've broken a trust.

POC: Well the, the

SH: I mean if I, we'd be in jail, if I did what these Priests have done, we'd all be in jail but because they're Priests, it's just

POC: You don't mind if I debate with you a bit.

SH: No, of course not.

POC: Well now, Fasciolae would have certainly been in jail, if he'd lived.

SH: Hopefully.

POC: Absolutely.

SH: Then you get, you don't have them back into the Church, they're taking these men back into the Church and I don't think they deserve that.

POC: I don't know who they're taking back.

SH: The day we went to the Forum, Archbishop Pell said that when they came out of jail they would be given other jobs in the Church. That is what he said, and I don't agree with that.

POC: It hasn't happened.

SH: Well, I hope it never happens. He's changing all the things that are going on in the seminary at the moment, he's saying there's going to be no interaction. That's a wonderful place to create pedophiles, if there's no interaction how do people know whether they've got pedophiles amongst them or not.

POC: Well I think, can I just

SH: Yes, go.

stand up and be counted. I mean it's a very traumatic thing. To this day I can still smell Father Fasciolae's clothes. I still have nightmares, I'm on anti depressants, I mean and like we talked about [REDACTED], they're in denial, they're too frightened because the Catholic Church is up here, we're down here.

POC: I think I should say that that phenomenon of denial is also present with school teachers and scout masters and people in authority generally with, for whatsoever reason the mechanism is that people just won't talk about it, or can't talk about it, perhaps is a better word, can't talk about it.

SH: Yes, I'd agree with that.

POC: And therefore they don't. I mean I've had plenty of cases here where in some instances parents have said, oh, turn it up that's nonsense, in other cases parents have gone to the kids after they've been told about it and asked the kid and the kid's said no.

SH: Yes, because they're scared, they're frightened.

POC: They're scared and frightened.

that everything that you say is accepted as being entirely true, as it ought to be, and then we go down that path. The other part of his role as I understand it, is to advise the Church generally in a report at some point of time, about sexual abuse within the Church over the years, how its responded to it and how its dealt with the Priests and the victims over the years and the contribution that you, [REDACTED] and [REDACTED] make to all of this is a very significant part of revealing the truth and enabling the Church to prevent this happening to another generation of people.

SH: Well that was my main aim to start with. I can't speak for the other girls, but that's the way I felt, I thought if I speak up, if I push this and do something then it's going to protect my grand children and other children, but you know, up until now I've just seen it as a big fast because when I first gave my interview to [REDACTED] [REDACTED] I mean he sat at the table with a smirk on his face the whole time I spoke.

POC: When was that.

SH: And that was four years ago, in August and he made some centre report to Monseigneur Cudmore saying that I prattled on and I well, wouldn't he prattle

SH: The Diosces centre would have it.

POC: But somebody told you that that was in a letter
though.

SH: Cudmore read it out the day we had the interview.

POC: You'll forgive me

SH: Yes, sorry, I misunderstood what you were saying.

SOL: See this is part of the enquiry, how the Church
responded to it.

SH: Yes, yes.

POC: You see, what, what's occurred to me in my post
is that a lot of people have said you're a stooge
and you're a cover up and that sort of thing and
I've been insulted by experts so that doesn't
matter

SH: I didn't come here to insult you.

POC: And you're not, I might say another, and she was a
lady in your position, I said well it doesn't worry
me what you're saying is quite offensive, and she
said well let me make it quite clear, I'm intending

POC: Last bit of psychology for the afternoon.

SH: Go for it.

POC: Well, there's always going to be some rotten apples.

SH: I understand that. But I mean they stand up and make statements about everything else but not once have they publicly stood up and said you now, we are desperately sorry for what's happened to these victims I mean I wouldn't be sitting in your office today if they'd have done something about it in the first place.

POC: Do you

SH: I mean I've suffered years of anguish and pain and suffering and what's left, they don't want to do anything to help.

POC: Do you think Pell made a reasonable attempt at an apology when he made the public statement.

SH: No, I don't.

POC: What should he have done. What else should he have done.

the expression. He stood up and he said, number one I'm not going to sell off Church property, I mean that wasn't what we wanted to hear. Number one should have been I'm very, very sorry for what has happened to you victims and we really weren't given a fair go, I mean it was only for two or three hours, there was heaps of things I think a lot of people would have liked to have said that day, but it just wasn't long enough. And starting off with this spiritual thing I mean that's not what we want right now either. Telling us that you know God will forgive you, I mean what's he got to forgive me for. I didn't do anything wrong.

POC: Absolutely.

SH: To me, I see them now as doing the devil's work for years, not God's work. The devil's work. I'm right.

POC: I'm not agreeing with you about that, and I'm not making that a judgment.

SH: I mean they've sold off monasteries and things, that's where they should be putting them, in the monastery and leaving them there for the rest of their days.

POC: Listen, I tell you what I'll do. Have you heard about the Franciscan

place for them, behind bars. If we, if I commit a crime like that where do they put me, straight in the, straight behind bars.

SH: Came down father.

POC: But that's where please God, most of them have or will finish, but you see I don't know what the extent of it really is, there's probably about, last time, I think about 60 or 70 complaints of people who have gone to the Police in most cases anyway but, and the number of Priests, the, without being exhaustive, but O'Donnell, Glennon, Gannon, Fasciolae, are the spectacular, unfortunately spectacular offenders. There's been a Christian Brother

JD: Yes, I've read all about it.

POC: Leave aside Father Risdale, but it looks a bit like in one sense and I'm just discussing this with you because you've been good enough to come in and give me your views, that it looks a bit like the cross section of the community anyway but in the diplomatic service, in the teaching, in scouts, throughout

SOL: Judiciary

SH: That's why they shouldn't be allowed back into the Church.

JD: It's a sad state of affairs when the Archbishop can't clean it up. That's the unfortunate part. It's still in his hands to clean it up so we don't know what he's going to do. I don't know the man personally, I haven't met him, but apparently he's been put in charge to clean it up, which way he goes about it I don't know, we only read a little bit in the paper now and again.

SH: There's still people in our Church that don't believe us that think we're making all these things up. I mean Dad's sister, she's a very, very devout Catholic, we have had so much trauma caused by her over arguments, you know, we shouldn't have spoken up, we shouldn't do this, I mean how do you get through to somebody like her. We're saying we're hurting Aunt, we need your support, but

POC: I can't tell you the answer to that, I've heard what you've said, twenty times.

SH: I'm sure you have.

POC: The Christmas dinners have been ruined because of the fight over, people have said what did you

St. Josephs in Geelong, they won't come forward.

SOL: But your part of the solution by coming forward and it's obviously taken a lot of courage and it will be filtered through the Commissioner to the Church and to bring about a solution.

SH: It's taken a lot of courage for me [REDACTED] because I just don't feel comfortable with professional people and especially men and I've had a lot of trauma just trying to come forward and speak up, I mean I'm not doing it for myself I'm doing it for my grand children and those other innocent children out there that could be put in the same position that I was.
Thank you.