

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

**SUBMISSION BY WAY OF REPLY TO THE
SUBMISSION AND EVIDENCE OF MR MARK
FABBRO BY**

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

INTRODUCTION

1. On 26 November 2012 Mr Mark Fabbro appeared before the Committee. I had overlooked replying to Mr Fabbro but on 15 October 2013 I was rung by Mr Fabbro saying he was hoping to come by and pick up a copy of the file in relation to what he described as the appointment he had had with me in 1996.
2. I told him that I did not have any file but only an entry which my then Secretary made in an index in 1996, which index was not continued. I set out the entry.

Complainant Surname	Fabbro	
Compl. First Name	Mark	
Address		
Suburb	Sydney	P C 2000
State	NSW	Jurisdiction Q
Phone Nr		Fax Number 0295188831
Date of Ctc	18/11/96	Gender Male
Occupation		V Dob
Accused		
Date(s) Occurrence	1970/1	Comp Ref
Location		
Victim Name	Mark Fabbro	
Previous Complaint?		
Other known victims		
Comments	Collected questionnaire App. 7.30 a.m. 19/11. Asked whether he should contact others he knew had been abused. 5/12 Mr. Fabbro rang to ask how the process of the Comm worked. I told him that he could give his details to the Comm who would then recommend whether his	

It will be noted that the entry appears incomplete. I infer that after the words

“whether his” should have been followed by words to the effect “complaint came within his jurisdiction”. This would be consistent with my Secretary placing “Q” after jurisdiction.

3. Whilst it clearly appears Mr Fabbro was in touch with my Secretary, I have no recollection of meeting with him in 1996 nor is there any record of such a meeting. Nonetheless I told him that I was happy to see him and it was agreed that I would see him at 10.30 am on the following Friday 18 October 2013.
4. On Thursday afternoon Mr Fabbro left a message that his flight was not getting in until 10.21 am on the Friday but left no forwarding address. I was in my office until 12.15 but Mr Fabbro did not arrive.
5. I emailed him on Friday afternoon as follows but to which I have received no reply.

“Dear Mark

I refer to our telephone conversation in which it was arranged you would come at 10.30 am on Friday. Subsequently my secretary received a voicemail message in which it was stated that your flight did not arrive until 10.30 am or thereabouts. Unfortunately because this was a blocked call my secretary could not respond. I remained in Chambers until 12.15 pm when I was required to be elsewhere.

I repeat that I am happy to see you and can I suggest that you give me a ring and we can either arrange a further meeting or discuss matters by telephone.”

6. I now set out relevant extracts in italics from Mr Fabbro’s Submission and evidence and provide my comments thereto:

“I was discouraged from reporting the abuse to both the Jesuit Order and to the police by Peter O’Callaghan. Peter O’Callaghan informed that there was no point

in reporting to the Police because Fr Byrne was dead. Due to the apparent failure of Jesuits Order, Church authority and Peter O'Callaghan QC to report the sexual assault to the police it's seemed of no consequence for me to report in my disempowered circumstance". (Submission at p 2)

COMMENT:

- (a) As the Committee will be aware from previous submissions and replies and which is evident from an examination of my files it has been my invariable practice to keep a written record of all contacts which I have in my role as Independent Commissioner with victims and offenders. As stated above, I cannot recall meeting Mr Fabbro and it would be surprising to me if such a meeting did occur and I did not have a record of the meeting. Assuming I did see Mr Fabbro I believe I would have certainly told him as indeed he agrees, that I had no jurisdiction in relation to the Jesuit Order. I could well have told him there was no point in reporting the complaint to the Police because the offender was dead. There are a number of instances in which victims have reported complaints to the Police albeit the offender was dead. Those victims were told no doubt courteously that the Police could do nothing in respect of prosecuting a complaint against a deceased person.
- (b) However if we did meet I find it difficult to accept Mr Fabbro's recollection that I told him there was no point in reporting his complaint to the Jesuit Order. This is so because I believe I would have told him to complain to

the Jesuits. That belief is based upon it being the obvious thing to so advise, and indeed was precisely the advice I gave at that time to a person who had complained he had been sexually abused by a Jesuit Priest at Xavier College. Likewise if complaints were being made to me relating to priests in dioceses other than the Archdiocese or about matters that did not involve Catholic clergy, religious or lay persons, the obvious advice for me to give, and the advice that I have invariably given, is that the matter is outside my jurisdiction and should be taken to the process or entity with jurisdiction to deal with it.

7. *"In 1996 I was dissuaded by an agent of the church, Peter O'Callaghan, QC, from reporting these crimes to police. I was also dissuaded by Peter O'Callaghan, QC, from attempting to seek justice from the Jesuits. He said it was pointless 'as priests had made a vow of poverty'.*

It was not until July 2005, after the Jesuits were forced to sign up to the Towards Healing protocol, that I was able to lodge a complaint" (Transcript 12)

COMMENT:

- (a) I repeat that if we did meet I find it difficult to accept Mr Fabbro's recollection that I sought to dissuade him from attempting to seek justice from the Jesuits for the reasons stated above. I note that Mr Fabbro did not, in his complaint to Towards Healing in 2005, refer to what I had allegedly told him in 1996.

- (b) It is not correct to say that it was not until the Jesuits entered *Towards Healing*, that there was a remedy for victims of sexual abuse by Jesuit priests. I am aware that on 4 April 1997, the Jesuits promulgated a Protocol which I understand codified existing practice.
- (c) I must respond to the broad and unparticularised allegations which were made by Ms Blaine, Ms Davis and Mr Fabbro in their Submissions and Evidence. Before doing so I repeat what I have said on innumerable occasions that I have great sympathy for the victims of sexual abuse and certainly that sympathy extends to those three persons for the abuse they have undoubtedly suffered. However their Submissions and the Evidence make grave allegations as to what took place without identifying particular cases, so that an opportunity for response is provided. This is illustrated in the following extract from the Transcript.

8. *"Mrs Coote: I have just one final question, which is in the written submission that was presented prior to today. It says there were:*

Accusations against a Melbourne Catholic investigator tipping off accused priests about secret Police investigations so that they could destroy evidence - and that this is - not unique.

Do you know of explicit examples of this, either Mark or Nicky, here in Victoria that you could share with us? Again, I have put you on the spot, but if you could perhaps provide our secretariat with some more information about these specifics, I think we would be grateful.

Mr Fabbro: There have been allegations that Peter O'Callaghan was somehow involved in informing a priest who was later discovered to have had child pornographic material on his computer. We can give you all the details to that case as soon as we can". (T16)

COMMENT:

This spurious allegation against me as the Independent Commissioner has been repeated on multiple occasions. I have refuted the allegation particularly in my response to the Police Submission. What in fact occurred was that I advised the Solicitors of the parties to a complaint that because the complaint had been referred to the Police I would be taking no further steps. This did not in any sense lead to a destruction of evidence. I repeat again that my aforesaid advice to the Solicitors was given 18 days after the last occasion on which the computer had been accessed for wiping.

9. I set out the following passage from the transcript which with respect demonstrates Mr McGuire's appreciation of the need for particularization, but which has never occurred.

"Mr McGuire: Nicky, I would just like to also put to you that you raised a number of issues and a number of specific propositions, and you said there might be some more people who are willing to come and testify. Obviously we need to take it from a general proposition to try to get specific fact and evidence and what can be validated and verified.

Ms Davis: Sure and these are people who are already in the system, so they have put submissions in and they have put in a request to speak to the Committee. I can give you the names of those people in private.

Mr McGuire: If we could work through the secretariat and just make sure that we get that on the record.

Ms Davis: Yes so you are interested in following up that information?

Mr McGuire: Absolutely.

Ms Davis: Because they are very happy to speak to you about that.

The Chair: I am sure the Secretariat will be in touch with them.

Ms Davis: I mean when I heard those numbers, it was like, you know, you think you know a lot about the issue but you are just constantly hearing real-life examples that just – wow.

Mr McGuire: And as you would be aware, we need to get the facts, the evidence and the validation and the verification. We have to take that through to make sure everything can be tested. (Emphasis supplied)

Ms Davis: Yes.

The Chair: I am sure the secretariat is following up with those people, but if they would like to contact the secretariat, then please alert them to do so.” (T15)

With respect that request so far as I am aware has not been complied with.

10. Mr O'Brien also appears to recognise the problem.

".....The first question I wanted to ask in that context is: we have not had a coordination submission from any of the victims groups to our knowledge. I make no criticism in that regard. The church has not provided us with a database of offenders et cetera, although they have provided that summary information that you have correctly identified. One of the first tasks for us is to catalogue and receive the information, particularly of what you call the cover-ups or what has been called the perpetrators moving. We had the very compelling evidence of the Fosters last Friday, and other witnesses, who explained the problem of when a priest is being moved from parish to parish: it is that endangerment of innocence that is a particularly heartbreaking aspect of this issue.

We are endeavouring to begin the process of cataloguing these offences effectively and building this database and the cooperation of the church will obviously be critical both here and overseas. What level of activity has your organization, SNAP, done to localise the evidence you have? Specifically you have mentioned there are 20,000 pages of evidence in your ICC cases and 12,000 members. Are you able to tell us either now or later how much, if any, of that has come from Australia?

Ms Blaine: We can check we do not have the information available right now.

Mr O'Brien: For example, in the case of Father Kevin O'Donnell, he has now passed away, so it is an accountability exercise.

Mr Fabbro: A lot of the records are in the public domain via the Broken Rites website, so that would be a very useful resource

Mr O'Brien: It is. Just so that you do not misunderstand where I am coming from, I make no criticism, because this is an exercise that has not been undertaken by the church. If they are going to improve or mea culpa or whatever, the first thing they have to do is to acknowledge the past, which has not properly been done in terms of accountability, even in the case of priests who are dead. That is really my thinking, to some extent, but that seems to be a first step of where they have got to head. For us, we have received submissions from people like In Good Faith and Associates, who have acknowledged 19 priests who have moved on. I identified another 10 to 15 from Broken Rites. You have said there is a cover-up in every case, by way of example.

Ms Davis: Yes. There is also my own case.

*Mr O'Brien: Of course there is your own case, and we have had Mr Lawther's case. We have had all the individual cases plus your collective cases, and this will have to be coordinated effectively for the first time by this inquiry". (T19-20)
(Emphasis supplied)*

COMMENT:

The reference to Mr Lawther's case apparently refers to his Submission and the Evidence which he has given just two days before the evidence of Mr Fabbro and others. The apparent acceptance of Mr Lawther's evidence is dismaying. That

acceptance is not qualified by any statements such as “*subject to whatever we might hear in response*” in reply from the Independent Commissioner. In the event I have in detail responded to and refuted Mr Lawther’s Submission.

11. *Mr O’Brien: The Chair has explained a number of times, but just for your benefit that the powers of this committee through its Parliament and the process in which are engaged is to call for the documents from the church and to obviously hear from the church in due course. But we are interested to get a very clear understanding on a forensic basis, particularly in cases that show systemic fault in relation to how the abuse was handled, because that is effectively where our terms of reference lie. Thank you for that.*

Ms Davis: Can I just make a comment? You would like to see the church coming forward and voluntary allowing the statute of --

Mr O’Brien: It was just an option.

COMMENT:

I must again complain with respect to the decision of Committee Members not themselves to inspect my files, which were readily made available. To properly assess my role as Independent Commissioner it is vital to refer to contemporaneous documentation. The only files that the Committee took possession of are the Foster files. Mr O’Brien when I was before the Committee referred to letters in the Fosters file. I trust that the Committee has or will review

the voluminous Fosters file in determining whether I as Independent Commissioner has acted fairly reasonably and appropriately.

CONCLUSION:

I request that this Reply be published forthwith on the Parliamentary Committee's website.

A handwritten signature in black ink, appearing to read "Peter J. O'Callaghan". The signature is fluid and cursive, with a long horizontal stroke at the end.

.....
Peter J O'Callaghan QC

7th November 2013