

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

**SUBMISSION IN REPLY TO EVIDENCE OF MS C
McISAAC, DR W CHAMLEY AND DR B
BARRETT (ALL OF BROKEN RITES)**

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

INTRODUCTION:

1. On 9 November 2012, evidence was given by Dr Chamley and I identify the evidence below in italics and make my comment thereunder. Because I do not refer to the evidence of Ms Mclsaac and Dr Barrett it should not be taken that I agree with all that they say.
2. *"The Inquiry has so far been informed about two serious deficiencies regarding the response of Senior Clergy and Religious to these complaints. The first is the failure to inform Police, and you had Victoria Police indicate here that not a single case had been referred to them – not a single case."*

COMMENT:

It is regrettable that Dr Chamley has unquestionably accepted what was asserted in the Police Submission and the evidence of Deputy Commissioner Ashton. I refuted this assertion in my Reply to the Police Submission.

3. *"Getting to the Melbourne Response first and we said this in the Submission. I cannot believe that it is even allowed to operate. Under what legal authority can some clergyman who was formerly the Archbishop of Melbourne set up a quasi legal star chamber of his own with transcripts, evidence and cross examination".*

COMMENT:

There are multiple domestic disciplinary authorities set up by various organisations including Sporting, Racing and Professional bodies the existence of which can be readily ascertained.. I object to the description of the *Melbourne Response* as a 'quasi legal star chamber of his own'.

4. *"I have only done one case for a woman and Peter O'Callaghan QC said to this woman, 'and everything is recorded so you can ask him for all the tapes – right at the start do you understand the process. I am Peter O'Callaghan QC da da da. I have the powers of a sort of Royal Commissioner. I nearly fell out of the chair. I thought what Act of Parliament set that up. But that it is mindset that he has the powers of a Royal Commissioner so these victims believe that and they go humble."*

COMMENT:

I refer to that woman by a pseudonym "Joan". This is a classic example of an apparently responsible witness stating in a damaging way his recollection of the only case he had done. Dr Chamley should have asked Joan or me for the tapes, which would have relieved his apparent bewilderment. I have had the transcript of my meeting with Dr Chamley and Joan redacted and it is Attachment 1 hereto. For convenience, I set out hereunder extracts from that transcript of a meeting I had with Dr Chamley and Joan on 9 March 2001. Joan appears in the transcript as EH.

- (i) *"EH: Well I've been in touch with Broken Rites for about 2 years on issues about Fr Day and that, because I've just let it go about 2 years ago and because when I went to the reunions we started talking about it and that and last year I went overseas and I told Broken Rites that I was going overseas and when I come back I'll get back to them so I didn't get back to them until about 2 weeks ago when Chris the lady at Broken Rites*

POC: *(inaudible)*

EH: *Yes she said to me ring Mr O'Callaghan the QC and she gave me the number and I rang up and within 24 hours I had an appointment within a week, so I was quite shocked and so was Chris I think she nearly fell off her chair that I got in so quickly....."*
(page 2-3)

- (ii) POC: *Now the first thing we'll come to the details in a moment but you've mentioned a Fr Day. Let me explain my position as Wayne now knows but I am an Independent Commissioner appointed by Archbishop Pell to inquire into allegations of sexual abuse by priests, religious and laypersons. That phrase priests, religious and laypersons within the control of the Archdiocese is important. My jurisdiction does not extend to Religious Orders so far as you and I are concerned I think are concerned with*

EH: *Fr Day and that's it*

POC: *was Fr Day a secular priest or was he attached to a Parish....*
(page 4)

(I submit that that was a fair description at the outset of the conference of my position and which seemed to be readily understood by Joan).

- (iii) POC: *Well now you haven't had any counselling from*

EH: *no one*

POC: *well look the thing is this that what I've got to do is to make some inquiries investigations but what I think if you without me making*

any final decision at this stage at all and I've got to investigate Fr Day's relationship but would you be happy to go and see Carelink which is an agency Sue Sharkey and Richard Ball

EH: but I was just hoping that she could travel to Geelong to see me if that's possible

POC: yes

EH: It's too hard for me I don't drive. I mean the young boy I've got in my care now he has to go to my niece's house now until I get home tonight and I don't

POC: Certainly a tee up arrangement can be done that way and no doubt they could find an appropriate person in Geelong to do that. What I'd like you to tell me if you can't tell me immediately you can ring me....(Page 30)

(iv) POC: ok as I say whatever, regardless of whatever decision as I say I must keep an open mind. There's no point in telling you about your rights to report the matter to the Police because the priest is dead, but I will tee up with Carelink for you to meet with them and that's whatever happens that needs to be done...

POC: now have you got any other queries or questions

EH: Are you more or less for, in this situation, are you more or less on our side or are you on the Church side

POC: I'm completely independent in the sense

EH: you're neutral

POC: *I'm completely independent in the sense*

EH: *you're neutral*

POC: *well let me explain this. I'm just the same as a Royal Commissioner appointed by the Government. Now you've probably been (inaudible) Royal Commissions, very often the appointment of a Royal Commission turns out a bad result because they get answers they didn't expect they'd get. Now my fees are necessarily paid by the Church in the same way as a royal Commissioner's fees are paid*

EH: *paid by the government*

POC: *by the Government. But I'm a barrister with a reputation I have a reasonable one but it would be a terrible thing in the twilight of my career if somebody said I was in favour of one part*

EH: *and not the other*

POC: *yeah*

POC: *so what I do is to simply investigate whether there is this*

EH: *and do you go to their with all this*

POC: *well let me explain the process. First when a complainant sees me no one knows about that its all confidential and I don't communicate with anyone. I don't ask anyone's permission what I do. If I am satisfied that a person has been a victim of sexual abuse*

EH: *you do the judgement do you*

POC: well in the same way as a Royal Commission it does Judge and Jury type of thing...." ... (Page 30-31)

COMMENT:

- (a) The above typifies the description I have given to victims on many occasions of my practice and procedure in dealing with complaints of child sexual abuse. As with the case of Shirley, Jim and now Joan, I was required to refer back to the transcript so as to see from the contemporaneous documentation what in fact occurred. With respect to Dr Chamley, he was apparently not listening, or cannot remember what was said. I emphasise that there is nothing unique about the contents of my transcript of my interview with Joan, they are replicated throughout the 300 plus victims I have interviewed. It once again emphasises the importance of going to primary sources.
- (b) Over the years I have been involved in many Royal Commissions and Boards of Inquiry and I can assure the Committee that an early priority is for the production of all relevant documentation. This is what is presently occurring in the Federal Royal Commission, and what was required of me at the outset of this Inquiry, but the Members of the Committee have not inspected my files or a sample thereof. My files have instead been inspected by the Committee's legal advisers, who presumably have reported to the Committee. Despite my continuing requests to be apprised of any such reports, this has been refused.

A handwritten signature in black ink, appearing to read "Peter J. O'Callaghan". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Peter J O'Callaghan QC

26th July 2013