

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

**SUBMISSIONS IN REPLY TO THE TRANSCRIPT  
OF FR KEVIN DILLON**

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

## INTRODUCTION

This is a reply to what appears in the Transcript of Evidence given by Fr Dillon on 15 February 2013. I extract from the Transcript the relevant passages in italics, followed by my comments.

1. *"Thankyou for the privilege of being here today. I suppose the reference to Parliamentary privilege does not bother me too much, because I am hoping what I can present to the Committee is not about individuals, personalities or whatever; it is about policies, it is about attitudes, it is about culture and to some degree it is about history as well".*

### COMMENT:

I consider this incongruous. Fr Dillon's hopes as to what he presents to the Committee were not fulfilled. Littered throughout the Submission, and in this transcript of evidence, is his criticism of me as Independent Commissioner.

2. *"There is a human factor to this, and it is our responsibility as an organisation. These things have been done by people who the Church has placed in positions of trust. Whether through ordination, religious commitment or something else, these people have been presented as people in whom parents, children and parishioners can place their trust and that trust has been betrayed not only for victims and their families but for the wider Church. Indeed it is a betrayal of the institution itself, but I do not think that has been acknowledged. If it had been we may not be having this Inquiry". (T3)*

**COMMENT:**

- (a) Fr Dillon expresses and implies that the actions taken by Archbishop Pell and the Conference of Bishops in 1996 and thereafter amount to nothing. It will be necessary to deal in detail with the unremitting criticisms of Fr Dillon, and to reject them as they deserve to be. It is notable that far from accepting that the motives of Archbishop Pell in establishing the *Melbourne Response* were worthy, Fr Dillon imputes there were unworthy ulterior motives.
- (b) The *Melbourne Response* has resulted in 300 plus victims of child clerical abuse being found to have been sexually abused. The great majority of these victims had kept the fact that they had been abused to themselves, and lived with it. The *Melbourne Response* gave these victims the opportunity to disclose that abuse.
- (c) Those victims became and are entitled to the provision of psychological and counselling support, compensation, and an apology from the Archbishop personally and on behalf of the Archdiocese. Fr Dillon boldly asserts that he has not yet met one person who has been satisfied with what the *Melbourne Response* has provided.
3. *“Over nearly 44 years of parish experience a number of people have said to me, through bereavements, sickness and so on ‘I don’t know how I could have done this without my faith’. Any number of people have said that to me, but an abuse*

*victim cannot say that because they lose their faith – for some people it is their faith in God but certainly their faith in the institutional Church”. (T3)*

**COMMENT:**

- (a) Undoubtedly, a victim of clerical child sexual abuse has his or her faith greatly weakened or destroyed. In my meeting and dealing with hundreds of child sexual abuse victims, I have observed that a majority of victims have lost their faith. They eschew any suggestion of pastoral support, and indeed they regard any further contact with the church as anathema. They are truly disillusioned and devastated.
- (b) On the other hand there are a significant number of victims who have recognised that they have had the misfortune to meet and offender but have nonetheless maintained their faith. Indeed, it is one of the great tragedies of sexual abuse that it is only a small proportion of abuse victims who are prepared to have contact with any priest, including Fr Dillon. The greater majority of the victims I have had the privilege to meet want nothing to do with the Church at all.
4. *“In racing terms you would ask ‘what are the riding instructions’ and I think the riding instructions have been to protect the assets of the Church. I would be all in favour of protecting the assets of the Church provided that the assets were seen to be the kids, the teenagers and the vulnerable adults who have been harmed – but they are not. It has been about protecting the material assets of the Church. Ironically, as things are developing in this country and in others,*

*the cost in financial terms is proving to be, and will continue to prove to be horrendous. If only it had been done with compassion, with justice and even, dare I say, with generosity right from the word go it might have been such a different story for many people if value – to use a financial term – had been put on their lives and on their being”. (T3)*

**COMMENT:**

Implicit in the above is that the Independent Commissioner has been an instrument in 'protecting the assets of the Church' etc. My Terms of Reference required me to investigate and report upon allegations of sexual abuse by priests, religious and laypersons within the Archdiocese of Melbourne. In that capacity I have found that almost all of the complaints of sexual abuse have been established. This hardly seems to be consistent with protecting assets.

5. *“One of the things that demonstrate that is that there is no advocacy, certainly within the Melbourne Response. No one is given to them to support them. I believe it has been part of my journey in this whole saga that I have had a lot to do with Vietnam veterans, and one of the greatest honours I have been given as I think I mentioned in my Submission, was an honorary membership of the Geelong Vietnam Veterans Association of Australia. That taught me about post traumatic stress and it taught me about structures. I learnt about the Veterans Review Board and Federal Courts. I have been through the whole gamut”. (T3)*

**COMMENT:**

Fr Dillon refers to his experience with the Vietnam Veterans Association, as important, and implicitly unique to him. Many lawyers are familiar with the fact and impact of PTSD, as indeed are the psychiatrists and psychologists who examine and assess victims of child sexual abuse. I have seen many reports of Counsellors, in the context of the diagnosis and treatment of PTSD in child abuse victims.

6. *I also learned that right from the word go someone who was seeking to find out their entitlement is given an advocate, someone to walk alongside them in that quest. I would suggest with all due respect of veterans seeking entitlements, that is even more important for someone who comes forward, perhaps after years of denial to themselves, looking for solace and comfort if they are on their own. Their introduction to the system is to go to a legal person – a Queen’s Counsel in the Melbourne Response case – often in his Chambers which I think would be a fairly intimidating experience without anyone to support them.*

**COMMENT:**

- (a) Yet another misconception and myth which permeates much of Fr Dillon’s evidence and Submissions. I reject Fr Dillon alleging that I intimidate victims whom I interview, inter alia because there is no one to support them, or at all. “Intimidate” is “frighten or overawe especially in order to make them do what one wants”. When I invite a victim to meet with me to establish that they have been the victim of sexual abuse, I tell them

they can do that by meeting with me, accompanied by such person as they wish. Some do have a person accompany them, others do not because they are anxious to discuss with me on a one to one basis their complaint.

- (b) I remain surprised, that Fr Dillon has engaged in grave criticisms of me as Independent Commissioner without contacting me. Fr Dillon has had contact with me on a very small number of occasions with respect to particular victims of sexual abuse, and I have not understood him to find my response inadequate or unsatisfactory. If a Parish Priest has had this alleged widespread contact with a number of victims who claim that they have been badly dealt with, he should have contacted me and raised these concerns with me. There would then have been discussed (without disclosing the identity of a complainant), but by use of a pseudonym, details of the nature and extent of the victim's dissatisfaction with the *Melbourne Response*, and in particular with the Independent Commissioner. Fr Dillon instead criticises me publicly, as does the Police Submission and Ashton, Helen Last, the MVC, the former Detective Davies, and others. These broad criticisms are unparticularised grave allegations of misconduct on my part, which I reject. As I have said elsewhere, the validity of the criticism is best judged by reviewing my files and particularly the transcripts of my interviews with victims.

7. *“There are no appeals. Talking about the Veterans Review Board and the policies of DVA, DVA will acknowledge that it has some problems. It does not have it all perfect by any means, but in my view it is streets ahead of the Church in terms of process. There is no appeal. This is what we do, this is our decision – take it or leave it. If you do not like it you can pursue it through the Courts. We know how successful that can be there are all sorts of ties and escape clauses”.*

**COMMENT:**

- (a) There is not an appeal against my findings, but I would point out that I have upheld complaints of abuse in 97% of the cases I have seen. However if for instance as Independent Commissioner I denied natural justice to a victim of sexual abuse, and I did so in a way that no Commissioner acting reasonably could have acted, the victim has the right to go to the Supreme Court and obtain relief inter alia under Order 56 of the Supreme Court Rules. A similar situation applies with respect to the Compensation Panel.
- (b) Of course the victim need not accept the compensation offered, and can take proceedings in the civil Courts. This is a function of every alternative dispute resolution process. Victims can proceed outside the courts or they can proceed through the courts. A victim wanting to sue “the Church” would have to prove that the “Church” was vicariously liable. It was for this reason that Archbishop Pell introduced the scheme of ex

gratia compensation. All that a victim has to establish in order to be compensated etc. is that he or she had been sexually abused.

8. *"No effort whatsoever has been made to bring together victims of church related abuse, who have a lot in common, to give each other support within what should be the comforting arms of the Church. The only place in Australia where that has been done, to the best of my knowledge, is here in Melbourne, Victoria, through an organisation called In Good Faith and Associates through the Melbourne Victims Collective, and that was spearheaded by a lady by the name of Helen Last who I think has appeared before you. I believe that Helen has saved innumerable lives through her own individual advocacy and support, but particularly through bringing victims together and making them know that they are not people with two heads, they are not sub-human and they are genuine, valued and decent people that can only come within a support group".*

**COMMENT:**

Fr Dillon is wrong. When Archbishop Pell became Archbishop of Melbourne, a number of these meetings were held. They were judged to be unhelpful and distressing to victims. Far from being best practice, they were destructive. Fr Dillon imputes a lack of compassion and care to the pastoral support group of the Archdiocese of Melbourne, and Carelink. If Fr Dillon elects to associate himself with Helen Last, that is a matter for him. I have demonstrated elsewhere the falsities and malice of Helen Last, In Good Faith and Associates and the Melbourne Victims Collective. I believe any objective examination of

my files would reveal my concern and compassion for victims of sexual abuse. I trust that Fr Dillon is a source of comfort to victims. But I know from experience that victims have and continue to receive great support and comfort from Carelink, and I am talking about hundreds of victims.

9. *“Just a few weeks back, I had a visit here for a couple of hours from a Melbourne person, who as a result of this Inquiry being announced found himself listening to a radio interview with a victim from Ballarat. He was on the road, he pulled over to the side of the road and just sobbed for half an hour, because he said ‘that is me’. He had not acknowledged that to himself for over 30 years. When he went to the Melbourne Response his comment to me was that he was surprised how quickly compensation was raised he said ‘I do not want compensation, he said, I want my life back’. He is a man in his mid to late 50’s now and he has been carrying this for nearly 40 years. I hope that through the efforts of this Committee that maybe he might be able to get his life back”.*

**COMMENT:**

I think I know this man with whom I had an intensive telephone conversation which accords with what is said above. I believe that he has progressed through the *Melbourne Response* and necessarily imperfect as it is, he has received compassion and care. But his laudable ambition to ‘get his life back’ mirrors the plight of myriad other victims. As I have said on many occasions and I say it again, that no matter how solicitous the dealing with the victim of sexual abuse is provided, no matter how adequate an apology and

compensation is, no matter how efficient the provision of counselling and psychological support, none of these things can eradicate the fundamental and overriding fact, namely the deplorable abuse which that victim has suffered and its drastic and continuing impact.

### **The Dillon Situation**

10. *"I put forward this idea of a Pastoral Fund. It was not going to cost the Archdiocese anything.....(and there is an explanation). That is a lot of money to be able to just pay for the fridge to be repaired, fix up the gearbox when it has blown up or pay for private health insurance. I have one victim whom I am constantly in contact with who suffers.....This is a very private person....Private Health insurance would make all the difference. I was able to manage that that would be provided. When I told him you would have reckoned I had told him he had won tattsлото. He was so relieved and so delighted it breaks your heart. This is the human side of things".*

### **COMMENT:**

I applaud what Fr Dillon did. But the provision of support including the introduction of victims into private health insurance is frequently provided by Carelink.

11. *"In regard to the way forward, I just have a few thoughts and I am no expert, but I believe the current protocols certainly the Melbourne Response and probably Towards Healing – although I am less experienced with that, have lost all credibility with victims. I believe they are beyond repair, those would be the*

*words I would use. The only way forward I believe and I would hope that maybe this Committee can direct and enact this is that through the community a totally independent and skilled committee be established with people who know about post traumatic stress, people who have genuine social work and welfare skills and people who have good knowledge obviously in the law, it is still important to work within all of that. You could have a member of the Church to represent the Church. I think it is important that the Committee actually sit in judgment on that membership and see whether that person was an appropriate member to represent the Church within that Committee. (T5)*

**COMMENT:**

As this Submission is being written Carelink is attending to the post traumatic problems of over 160 victims. I repeat that I have read many reports from highly qualified therapists, referring to treatment of victims including in many cases, addressing and treating PTSD.

12. *“Interestingly enough while I am grateful to the Committee for asking me about my thoughts on all of this those thoughts have never been sought by any of the officialdom in the Church. No one has ever come to me and said ‘you’re in contact with a lot of victims. Are we getting this wrong’. Even if we don’t take any notice of you, we are still interested in what you have to say. That is not about me at all but it is about listening. It is a great Church word – we’re listening people and so on but there has not been much listening going on in all of this.*

**COMMENT:**

Fr Dillon has spoken of his contact with me which whilst welcomed is limited. I have referred in my Reply to his Submission about the correspondence that took place but the fact is that if he has been apprised by a victim of the difficulties which the victim has encountered with the Independent Commissioner, surely, even in his busy life, he could take a little time to come to me, or have me go to him, and say (without necessarily disclosing the identity of the complainant) this is what he or she says, and what do you say? This has simply not occurred.

13. *"Ms Coote: Fr Dillon thank you very much. You have given us an enormous amount of very forthright information in both your written Submission and here today. I would like to take up the issue about the Melbourne Response particularly and your suggestion for a model going further into the future. Could you clarify for me that in your eyes the Melbourne Response itself was set up with a primary consideration of avoiding financial remuneration of victims."*

**COMMENT:**

Fr Dillon's response did not really agree to that proposition, as indeed it would have been impossible for him to do. The Melbourne Response was set up to provide financial remuneration of victims which it has done. It is a contradiction in terms to say it "was set up with a primary consideration of avoiding financial remuneration".

14. *"The next one was a six hour phone call, and she was a vulnerable adult who was in hospital and abused by a priest. It was 10 years before I actually met her in person. The third one which is important happened about 5 years ago when Chrissie and Anthony Foster whom I think are here this morning.*

*The Chair: They are".*

**COMMENT:**

Undoubtedly, the plight of the Foster family has been much publicised and I will recount again my sympathy and concern for what they have suffered. The Fosters have been described as having been appallingly treated. Whilst what occurred to the Fosters was appalling they were not appallingly treated. I submit that this is established by a study of my "Foster" files, which I produced to the Committee as long ago as nine months. If the Committee having studied those files is of a contrary view, then as a matter of fairness I should be apprised of this view, and given the opportunity to respond. The essential point I make is the importance of looking at the files. They give a contemporaneous record of my dealings with the Fosters, and are of the most obvious relevance, in the consideration by the Committee of the handling of the Foster complaints.

15. *"I was told at one stage that I was not able to go to support a victim in a conference, because the victim was told that it would be a conflict of interests. I was gobsmacked by that in the sense that it says there are them and us. It is an adversarial approach – certainly in the perception of the victims – it lies very close to the heart of all that has been so bad".*

**COMMENT:**

If Fr Dillon is implying that he was precluded from attending any conference I held with a victim that is absolutely wrong. There have been two or three occasions when Fr Dillon was involved with a victim as was I, and he did not indicate any dissatisfaction with what I was doing.

16. *"The appropriateness of anyone, other than the Police, to investigate an alleged crime".*

**COMMENT:**

There has never been any suggestion by the Archdiocese of Melbourne or the Independent Commissioners, other than that the preferred situation is one where the victim takes his or her complaint to the Police. That is why it was provided that victims should be informed of their continuing and unfettered right to report a complaint to the Police and that they be encouraged to exercise that right. But there are victims who do not agree that they should take their complaints to the Police, which in most cases they have abstained from doing for decades. They want to keep the privacy of the fact that they have been sexually abused to themselves but nonetheless desire to avail themselves of the benefits provided by the Melbourne Response. Fr Dillon and others fail to recognise this important and understandable attitude of such victims. But the only way that victims become entitled to the benefits of the *Melbourne Response* is if they satisfy the Independent Commissioners that this is what has occurred. Of course the Independent Commissioners must investigate the

validity or otherwise of the complaint and this they have done through the procedures which have been detailed in Submissions and Evidence given to the Committee.

### **THE ISSUE OF LEGAL REPRESENTATION AND COSTS**

17. (a) At the outset of the *Melbourne Response* it was not considered that it was necessary for a victim to make application pursuant to the *Melbourne Response* to have legal representation. But there are a number of victims who have gone to solicitors to have them act for them in pursuing the application under the *Melbourne Response*. I have been asked on a number of occasions by victims as to whether they should have legal representation. My invariable response to such a question is to tell the victim that it is their decision as to whether they should have legal representation, and certainly if they think they will need it or at least would be happier to have it than without, they should instruct solicitors. Under no circumstances have I expressly or impliedly discouraged a victim from retaining a solicitor, when the victim has told me that is what I would like to do.
- (b) On a limited number of occasions victims who have passed through the *Melbourne Response* and been compensated have approached me and complained of the quantum of the fees charged by the solicitor. There was one firm of solicitors on a number of instances charged fees which to me seemed disproportionate to the work they had performed. In those

situations I recommended to the victim that they approach the Law Institute which I understand in some cases they did and the matter was appropriately redressed. I of course have no power over the fees which solicitors charge.

- (c) With respect to the cases where the alleged offender denies the allegation and a confidential hearing is conducted to determine the validity or otherwise of the allegation, I have in some of those cases come to the view that it was appropriate that the fees of lawyers for the victim and also for the alleged offender should be reimbursed. My reasoning for this was that the *Melbourne Response* in providing an entitlement for a victim to claim that he or she had been sexually abused by a priest, and required that Priest to respond to that claim, that it was appropriate for the alleged offender's fees to be paid. This is analogous to a position which has occurred in many Royal Commissions and Boards of Inquiry namely that the person or persons against whom allegations of wrongdoing are made is entitled to legal representation which will be paid for by the Commission or the Board of Inquiry. I add that it has been the longstanding policy of the Archdiocese that it will not indemnify priests against legal costs incurred by them in defending charges brought by the Police.

18. *"The need to ensure that the initial contact with any churchperson in the process is to establish a support person or 'advocate', to accompany and assist the complainant throughout the whole process "* (T7)

**COMMENT:**

I refer to what I have previously said and also to the fact that a significant number of victims are most anxious to limit the disclosure of the fact that they have been sexually abused to as limited number of persons as is possible consistently with obtaining the benefits of the *Melbourne Response*. People who have telephoned me having stated they have a complaint and being asked to come and meet with me, and if they wish accompanied by such any other person they desire, those victims are adamant that they will come alone. Fr Dillon appears to be saying that all victims should be forced to be accompanied regardless of whether this is what they want.

19. *"The need to set in place protocols whereby Police are fully satisfied with the process with regard to the notification of alleged crimes". (T7)*

**COMMENT:**

From the outset the *Melbourne Response* has liaised with Victoria Police and have accepted the recommendations of the Police as to the Terms and Conditions of Appointment.

20. *"Complainants have been not only encouraged to go to the Police, but to be given every possible personal assistance to do so. In the event that an alleged perpetrator is dead and/or the Police indicate no interest in investigation, a protocol of investigation by an experienced and trained person to be undertaken".*

**COMMENT:**

Despite Fr Dillon's apparently jaundiced views of QC's, the same are very much preferred persons to conduct investigations eg. Royal Commissions, Boards of Inquiry, Company investigations and so on.

21. *"Ms Halfpenny: I have just one other question. As a support and advocate of people who have suffered this terrible criminal rape, abuse, whatever, are you aware of people who have made complaints to Towards Healing or the Melbourne Response in cases where the perpetrator, priest or other person in the Church is continuing to practice their duties within the Church*

*Fr Dillon: Yes there have been some...."*

**COMMENT:**

Every recommendation I have made that a priest found to have engaged in child sexual abuse be placed on administrative leave has been accepted by the Archbishop. If Fr Dillon has evidence to the contrary of this, then he should make it available to the Police and the Independent Commissioners.

**CONCLUSION:**

With respect, much of Fr Dillon's evidence is misconceived and mistaken, and should be rejected. I stress that because there are a number of assertions by Fr Dillon to which I have not responded, this does not mean I agree with same.

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

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Peter J O'Callaghan QC

26<sup>th</sup> July 2013