

TRANSCRIPT

FAMILY AND COMMUNITY DEVELOPMENT COMMITTEE

Inquiry into the handling of child abuse by religious and other organisations

Melbourne — 3 May 2013

Members

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Mr D. Curtain, QC, chairman, compensation panel, Melbourne Response.

The CHAIR — On behalf of the committee I welcome from the compensation panel, Melbourne Response, Mr David Curtain, chairman. Thank you very much your time this afternoon.

Mr CURTAIN — It is a pleasure.

The CHAIR — All evidence taken by this committee is taken under the provisions of the Parliamentary Committees Act 2003, attracts parliamentary privilege and is protected from judicial review. Any comments made outside the precincts of the hearings are not protected by parliamentary privilege. Witnesses may be asked to return at a later date to give further evidence if required to do so. All evidence given today is being recorded and witnesses will be provided with proof versions of the transcript. Please note that these proceedings are not being broadcast.

Under our terms of reference we have been requested to look at policies and processes within religious and other non-government organisations and whether there are systemic practices that have in fact contributed to the abuse of children. We are looking at processes and understanding whether laws need to be changed to further prevent criminal abuse of Victorian children into the future.

We have heard from a number of victims who have come into contact with the compensation panel and we are particularly interested in asking a number of questions relating to your process. I would like to ask you, Mr Curtain: if a victim is informed that discussions with the compensation panel are confidential and following that the application for compensation reiterates the confidential nature of these proceedings, do you agree that such concepts are legalistic and difficult for a victim to understand?

Mr CURTAIN — Not at all. I tell each victim who appears before our panel that the proceedings are confidential. I explain that by that I mean that no member of the panel will ever discuss what happens in that meeting outside the room — and we never do. However, I make it clear to each victim who appears that that does not impose any confidentiality on them, that they are free to say whatever they wish about the process and about the panel. I tell them they can sing it from the rooftops after they leave the building and I say to them specifically, ‘I tell you this’ because it has been said that their silence has been bought, and that is not the case. I particularly emphasise that there is no confidentiality imposed upon them, and they could not possibly think it was a legalistic approach.

The CHAIR — That is your view. When you say that they are free to express their opinions about the panel, have any of those victims that have come before you done so in a negative way that you are aware of?

Mr CURTAIN — They may have — not to me. From time to time I have had a victim contact me afterwards — and they regularly contact me before, as well as after, because I give them my direct line to do it — expressing dissatisfaction with the amount. I cannot think of an instance where it was not confined to the amount. There are not many of them, but I am not surprised that people are disappointed if they do not get the maximum.

The CHAIR — Could you just then explain to the committee, understanding that there are some individuals who are disappointed with the process: where does the compensation panel actually physically sit? Can you explain to us where these meetings take place?

Mr CURTAIN — Yes. We sit in a building that is occupied by Carelink, of which you have no doubt heard. We have tried to find a premises which will not be challenging or threatening or cause discomfort to victims. At one stage we sat in a building that was part of, if I can call it, the St Patrick’s precinct, and there was a dissatisfaction with that because some people resent having any association, and we understood that, so we changed it. At one stage we even rented a conference room in a motel in Carlton, in Lygon Street, which was okay for size, but I thought it was an inappropriate area for victims to be coming to have a discussion.

The place we have got now is occupied by Carelink. Many of them are familiar with Carelink; they have had interviews there, and counselling has been arranged through there. I think it works pretty well. Can I tell you, it is not ideal. I would rather be in a room this comfortable. We are a little cramped. We sit around a table, and the fact that there are four panel members and the victim and usually at least one support person means that they might feel a bit outnumbered. I try to put them at their ease by apologising for that. I apologise for the fact I am wearing a suit, but it is usually because I have come from court. I tell them that the idea is informality and that

they should be at their ease as much as they can, but I understand that this is a process that nobody would go through by choice.

The CHAIR — Thank you. When did you move to that meeting place in Carelink; when was it that you decided to do that?

Mr CURTAIN — I do not know the answer to that. I can find out for you, but it is probably about two or three years. I cannot remember; that is the answer.

The CHAIR — But roughly two to three?

Mr CURTAIN — Two or three years.

The CHAIR — Thank you. So you have just — —

Mr CURTAIN — Can I stop you there? I should tell you a little bit more about it. It has break-out rooms, so they will be welcomed at the door — met at the door — taken into a room — —

The CHAIR — Who welcomes them and meets them?

Mr CURTAIN — There is a lady who is an employee of Carelink. It is a secure premises, so she will open the door when it is rung. She will take them into a room. If there is more than one victim, and we do tend to see three or four at each sitting, they will be taken in so they do not run into other victims. I will go down and introduce myself to them and ask them if they are ready to come up. If they are not, we wait until they are, and then we take them up. They are given tea or coffee or water or whatever they want.

The CHAIR — So that is the support people within Carelink who offer that?

Mr CURTAIN — Yes, but usually they are not alone; they are usually with a partner or a support person — sometimes a lawyer, sometimes a psychologist, sometimes a friend.

The CHAIR — Thank you. There are four members, you said, that are on the panel?

Mr CURTAIN — There are.

The CHAIR — Do you always sit and meet — the four of you?

Mr CURTAIN — Do you mean, 'Is there always four'?

The CHAIR — Yes.

Mr CURTAIN — There has only been one occasion when there were not four in the time I have been doing it, and that was because the victim knew, I think, either one of the panel or thought that one of the panel knew the perpetrator and asked that that member of the panel did not sit. I asked the member of the panel if he or she would be prepared not to sit, and the answer was affirmative.

The CHAIR — So the victims, before they appear before you, are told who is on the compensation panel and they understand your backgrounds?

Mr CURTAIN — Not by me, but they may. I do not know if they are, but they are told the background.

The CHAIR — I will rephrase my question. Are they informed, before they come to the compensation panel, that there will be four members of the compensation panel that they will meet, who you are and what your backgrounds are?

Mr CURTAIN — I believe so.

The CHAIR — Thank you.

Mr CURTAIN — Certainly when they have been introduced or I have introduced myself and the other members of the panel, no-one has ever expressed any surprise or even demonstrated any surprise. When I go

through my little what I say to them, as I have said before — about confidentiality, for example — it never seems to take anyone by surprise. I often say to them, ‘I’m telling you things I believe you already know, but I think it’s appropriate for me to say them to make sure that you have heard them’.

The CHAIR — And those additional people who may be with you in the room at the time, is anyone from the archdiocese ever represented at that time?

Mr CURTAIN — No.

The CHAIR — Or anyone from Catholic Church Insurance?

Mr CURTAIN — I have heard that people say that they are representatives of the archdiocese and the insurance company there. That is the first I have ever heard of that. The only people are four independent people, and I want to stress this: I do not regard myself as associated with the church or the archdiocese at all. I see myself as an independent person, and this sort of leverages into some other matters, but I do not represent the church. My job is to facilitate the awarding of compensation to victims and to facilitate their achieving some form of closure, if possible. I am not against them; my job is to assist them.

The CHAIR — Thank you. Can you describe your relationship with the church, then?

Mr CURTAIN — I am the fourth chair of this panel. Each chair before has been a senior QC. The last one was Susan Crennan, who is now a High Court judge; the one before her was, I believe, David Habersberger, who is a Supreme Court judge; and the one before him was Alex Chernov, who is the Governor of Victoria. I am the only one who has not achieved any status in life.

Mr McGUIRE — A fair line of succession for you there.

Mr CURTAIN — But the point is two of those are Catholics — I am and Sue Crennan is — but when I took this job it was nothing to do with my religion. In fact, I believe it is quarantined from that. I believe it is a job that needs a senior silk to give recognition, particularly to the victims, that the process will be followed correctly.

The CHAIR — Thank you, Mr Curtain.

Mr McGUIRE — Thank you, Mr Curtain, for your appearance here today and your contribution.

Mr CURTAIN — A pleasure.

Mr McGUIRE — Can you outline in a little bit more detail the exchange and the interrelationship between yourself and the independent commissioner?

Mr CURTAIN — I know the independent commissioner because he is a barrister; I have been opposed to him. I know him a bit socially. I am afraid to report that he barracks for Collingwood.

Mr McGUIRE — We all have crosses to bear, so to speak, but we will move on.

Mr CURTAIN — But in relation to the communications we have regarding this process, I will receive a file from his secretary with a note from him saying he has determined that X has been a victim of sexual abuse. It will typically come with other documentation, including a record of interview that he has conducted with the victim, and it may come with a claim form completed by the victim. By the time we schedule a hearing there will also be a report from a psychiatrist usually, sometimes a psychologist. There may be a police statement, if there is one. There may be something written by the victim, if there is one, and there might be other additional material which sets out the circumstances in which the claim arises and the impact on the victim.

Sometimes Mr O’Callaghan will contact me and say, ‘This is a person whose claim has taken a while to come on through no fault of him or her, or because they have been uncertain about whether to progress it or it has been on hold for a while. Can you do what you can to expedite it?’. I had recent contact with him because a victim had been found by him to be a victim of abuse in certain circumstances. By the time the victim got to me, the victim had recalled other circumstances, although the events took place many years ago, that put a different slant on it. The victim was legally represented. I said to the victim, ‘I don’t believe it’s appropriate for us to

make a determination now. Our job is not to determine whether you were a subject of more extreme abuse. Subject to what your lawyer feels, I will send you back to Mr O'Callaghan to make that determination, and if he finds that, he will send you back to me'. I apologised for the inconvenience, but it was because there was something new. That is the sort of thing where I would have an interaction with him, but it is quite at arm's length, and I am quite proud of the distance we keep between each other.

Mr McGuire — So you are saying that Mr O'Callaghan determines the fact of the matter and you determine the remedy and how that has taken place?

Mr Curtain — Yes. He determines whether a person has been a victim of abuse, and if he does, he makes that determination and sends it to us. We then accept that completely, and our job is to make a calculation of the monetary offer to the victim, which will be recommended to the archdiocese and followed.

But can I stress this: it is not just that. We tell the victim also that counselling is available — that is important to many of them — and we tell the victim that that counselling will be available as long as it is of some benefit to them. We also tell the victim that they do not have to tell us anything about the case — they do not have to repeat anything; they do not have to re-prove it. I feel very strongly about that, because coming from a common-law background I know that it is difficult for victims, say, in an accident or an assault, to repeat the circumstances, but in this situation, as in many others, that is the only way we can find out about it, so we have to do it. We usually do it by the paperwork, by the interview with the psychiatrist. I say, 'We've read all the material. If there's anything glaringly wrong that you think might give us the wrong impression, please let us know. But if it's just the name of your pet puppy or something like that, we don't care'. Then we say, 'If you'd like to say anything, to correct anything, to change anything, to add or subtract anything, please feel free to, but you don't have to say anything'.

Mr McGuire — Has there been any occasion when you or any other member of the compensation panel have actually challenged the finding of the independent commissioner?

Mr Curtain — Never. We do not have a right to do that; it is not our role. In fact, I do not even consider it. It is something I do not have a responsibility for, and I am happy about that. Can I tell you that everybody who comes before us has been found to be a victim, so the only circumstance where that could possibly arise would be if we thought that the victim was not a victim, and that cannot happen.

Mr McGuire — Okay. Since the establishment of the Melbourne Response, has there been any external review of the way the compensation panel operates?

Mr Curtain — No. Do you mean by the church or by a body outside the church?

Mr McGuire — Independent, external.

Mr Curtain — If you mean a body outside the church, I believe no. I believe the church would be looking at what is paid out and have details of that, and if that is a review, then I am sure that has happened, but I have never been subject to scrutiny or anything like that. I am in a position where if anybody felt they had a complaint about me, they would be welcome to make it. Everybody knows my number.

Mr McGuire — That is okay. I am not making one. Thank you.

Mrs Coote — Mr Curtain, thank you very much indeed for being here this afternoon.

Mr Curtain — It is a pleasure.

Mrs Coote — Could I talk about the independent commissioner? You work very closely with him. I am concerned about a nexus with the — —

Mr Curtain — Can I just disagree with you there? I do not think I do work very closely with him. I think our roles are completely different. As I said, he will send me a notification that a victim has been found a victim, and then he hands it over to me. It is then my job. He does not have any role in what I do, and I do not have any role in what he does.

Mrs Coote — So you do not question him on any of his decisions at all?

Mr CURTAIN — No.

Mrs COOTE — So whatever his decision may be and the process by which he gets to that decision, you have no opinion on at all?

Mr CURTAIN — No.

Mrs COOTE — Okay. Can I take you, then, to the calculation of the amount —

Mr CURTAIN — Yes, sure.

Mrs COOTE — and just ask you how the amounts are calculated?

Mr CURTAIN — After each victim has finished, the four of us discuss it. The maximum that can be awarded now is \$75 000. It used to be \$55 000 and we suggested some years ago that it be increased. It was, as I understand it, historically related to what victims of crime could be awarded by the court, and it is an interesting parallel because victims of crime are awarded money not by the perpetrator but by another person. In this case, the money does not come from the perpetrator; it comes from the church which accepts a moral responsibility but does not have a legal responsibility.

I might come back to that later, if you like, and I know that people have different views about it, but every person who has come before our panel is in a circumstance where I believe they would be unable to successfully bring a claim, either because of the impecuniosity of the perpetrator or the death of the perpetrator or because they would not be able to establish the requisite link between the church and the perpetrator. Can I say I understand completely that people think that should not be the case, but that is what we are dealing with here.

So the four of us will talk about relative terms. If there has been, for example, abuse which is, let us say, penetrative abuse, for a start, our default position would be that attracts the maximum. There are many cases that are worse than people who get the maximum, if I can put it that way. So \$75 000 is not the absolute worst. It is for people who are significantly abused, and we do not award any more than that. But there are abuses less than that that do not attract \$75 000, and some are quite minor. I am not demeaning the effect on the victim when I say that. Every abuse is wrong, every abuse is inexcusable and vile. But it has to be recognised, just as in personal injuries, some injuries are worse than others.

Mrs COOTE — Could you just remind me, when you said that you recommended the cap be increased from \$50 000 to \$75 000 — —

Mr CURTAIN — Fifty-five to 75.

Mrs COOTE — Fifty-five to 75. Was 75 your recommendation or more?

Mr CURTAIN — I think it was our recommendation.

Mrs COOTE — Right, okay. Do you believe it should be higher than that now?

Mr CURTAIN — I actually think, from my experience with victims, the amount is not the key. I do not suggest that this is adequate compensation and is the compensation a victim would be able to achieve if that victim went to court. Can I also say this: I deal with victims all the time in court and when they get \$500 000 or \$1 million or \$10 million, it is never enough for them, because if you asked them, 'Would you take \$10 million to be quadriplegic?', they would say 'No, I want my health'. Money never, ever compensates. So that is the first point.

This is not suggested to compensate, and I tell victims, 'This is a financial recognition of the wrong that's done to you. You will also receive, unless you wish not to — and some expressly wish not to — a letter of apology from the archbishop. You will also have access to counselling. It's a package. The money is a part of it'. Quite interestingly, some people focus on the money and some people who have got the most hideous abuse are very grateful for the apology. People have different approaches to it, and that is the human condition.

Mrs COOTE — In that apology, does the church in your understanding actually admit that it was wrong?

Mr CURTAIN — I think an apology does do that. It is not an apology with denial; it is an apology for the wrong that is done.

Mrs COOTE — An acknowledgement that the church in fact enabled it to be perpetrated?

Mr CURTAIN — No, I do not believe that is the case, and in many cases it is not the case that the church allowed it to be perpetrated. It may be that that happened whilst the person was a member of the church — and my job here is not to defend what the church does. You will remember my job is chairman of the panel. But if I could draw an analogy: if someone runs a business, let us say, a removal business, and one of the removalists rapes someone who is having their goods removed, you would not say the removalist company has allowed that man to rape them, although he is working for them and he is vicariously liable for them. I understand the arguments put that there are occasions — and we have read about them in the paper, and you have heard about them — where the church has had indications that something bad is going on and sat on its hands. I understand those arguments. There are cases where the priests' names are known to us, but there are many cases where they are not. The apology is an apology for the wrong been done to the victim.

Mrs COOTE — Could I just use your analogy? If the removalist firm was a large removalist firm across Victoria and that same person that had raped that woman had raped several others in other parts of the state, how liable would be the removal firm?

Mr CURTAIN — There would be a good claim against them, I would think.

Mrs COOTE — Precisely, and that is exactly what we are hearing here about the priests who have perpetrated child sexual abuse right across Victoria and have been condoned by the Catholic Church and in fact just shifted around. So it was not such a great analogy, with all due respect.

Mr CURTAIN — Can I explain it to you? You asked me whether the apology contained an apology because the church had done wrong. In the cases you mentioned that is a very good argument, but there are plenty of cases like that. The apology is not specific to that sort of thing. But can I also say to you that if a victim says, 'I want the apology, but I would also like to meet the Archbishop personally and express my dissatisfaction with what has happened', we do our best to facilitate that and the Archbishop will do it. We try to not do a one-size-fits-all; we try to tailor the conciliation to meet the victim's needs.

Mrs COOTE — You were talking about penetration being the worst and attracting the \$75 000 package. Do you have, like the TAC has, for example, a schedule of maims?

Mr CURTAIN — No.

Mrs COOTE — So you do not have a schedule of maims at all?

Mr CURTAIN — No, we do not.

Mrs COOTE — We can understand what the very worst scenario is — penetration. Where would you put things such as masturbation or oral sex with a child? Where do you put that?

Mr CURTAIN — I would put oral sex with a child at the top end. I would put masturbation by a male of a child towards the top end. It depends on the circumstances, but that is all high-end stuff.

Mrs COOTE — And, to use the term that Mr O'Callaghan used, 'fiddling with little children', where would you put that?

Mr CURTAIN — It depends what it is. It is hard first of all to think of specific examples, and I also do not want to discuss individual cases. But by fiddling do you mean touching the genitals of?

Mrs COOTE — We are not terribly sure what he meant, but that was his term.

Mr CURTAIN — Okay, I do not want to put myself into Mr O'Callaghan's mind. But there are cases of improper touching. It might be, for example, on the outside of clothing. It might be by a nun on the back of a dress of a schoolgirl, something like that, which the schoolgirl is offended by, it is sexually related and it is

abusive. But if it has not caused severe psychiatric illness to the child, or even moderately severe psychiatric harm, I do not think that would attract \$75 000.

Mrs COOTE — With the psychological damage, where would you put that? We have had people who have been less or more affected by the same perpetration, so where would you put that psychological damage?

Mr CURTAIN — We look at the effect on the victim. If the victim says, ‘That was not very pleasant, but I got over it’, then we would treat that less seriously in terms of awarding money than if someone said, ‘This was not much of an event, but it devastated my life’. I can tell you that as a barrister I have acted for people in that situation. I have acted for them in claims. I know, because I have had one who attempted suicide, that what would seem to others was not much abuse had a terrible effect on him. It is the effect on the victim that we use as the yardstick for our measurement. Having said that, any of the serious ones, penetration or anything like that, is at the top without question, even if the person is robust about it.

Mr O’BRIEN — To pick up one of the examples, you mentioned that penetration would attract \$75 000. What would happen if there was a second act of penetration: would that get \$150 000?

Mr CURTAIN — No, there have been cases where there have been several acts of penetration. The maximum we can award is \$75 000.

Mr O’BRIEN — So logically it might, but your maximum is capped at \$75 000.

Mr CURTAIN — When you say logically, do you mean in a compensation scheme outside this?

Mr O’BRIEN — Yes.

Mr CURTAIN — Yes, outside this it would, of course. In fact the first one would not attract \$75 000; you would know that it would attract a lot more than that.

Mr O’BRIEN — Yes.

Mr CURTAIN — But the maximum that you can get here for one or several acts of penetration is \$75 000.

Mr O’BRIEN — And if the maximum of the cap is reached, what room is there to compensate for legal costs?

Mr CURTAIN — What do you mean ‘the maximum of the cap is reached’?

Mr O’BRIEN — If you have assessed \$75 000 for the act of penetration alone, what room is there in your system, or in the church’s system that you are the chair of the panel of, to pay for any legal costs?

Mr CURTAIN — I think you know the answer to that. There is no amount awarded for legal costs.

Mr O’BRIEN — I have got the answer. I have a letter that expresses your view about that.

Mr CURTAIN — Is that the one to Father Dillon?

Mr O’BRIEN — Yes, and I will go to that in a sec. On that position, has it always been the case that no costs have been awarded, or is that just your personal view?

Mr CURTAIN — I believe that has always been the case.

Mr O’BRIEN — I do not have a copy of this, but the Melbourne Response has a compensation panel with a photo of who is now Governor Chernov on the front, and it says — —

Sorry, I will just pause for one question. You said in answer to Mrs Coote’s question that this is not suggested to compensate. You said that?

Mr CURTAIN — No, it is not suggested to give full compensation. If I said compensate, I meant it does not give full compensation. I think I have explained that clearly.

Mr O'BRIEN — There is a big difference between compensation and full compensation, isn't there?

Mr CURTAIN — Yes.

Mr O'BRIEN — Because I was going to put it to you that if it is not intended to give compensation, or I would say full compensation, why is it called the compensation panel?

Mr CURTAIN — I hope you now know that I did not intend it to be full compensation. I think I said that clearly. Of course it is compensatory, but it is not full compensation.

Mr O'BRIEN — So it should be called the not-full-compensation panel?

Mr CURTAIN — If you wish to call it that, I would not want to dissuade you.

Mr O'BRIEN — I think I might call it that. One of the victims who we can talk about, because they have been very public and prepared to talk about the full circumstances of their case, really to help other victims and victims' families, is the case of Emma Foster. Her family disclosed to me, and I then put it to the independent commissioners, that they received a cheque for the sum of \$450 000 when they took the case outside the not-full-compensation panel and into the courts. Are you aware of that circumstance?

Mr CURTAIN — The only knowledge I have of it is from the media.

Mr O'BRIEN — Were you on the compensation panel when the assessment was made? No, that was before your time. In relation to that, we also received evidence on Tuesday that there has not been a decided case that the insurers were aware of in the Victorian courts in regard to child sexual abuse. I think they said unlimited, but are you aware of any decided cases in Victoria from the courts, as opposed to the Ellis decision in New South Wales?

Mr CURTAIN — Of sexual abuse?

Mr O'BRIEN — Yes, liability of the church.

Mr CURTAIN — No, but I am aware of a decision last year where a claimant sued a relative and got a verdict from the Supreme Court for sexual abuse.

Mr O'BRIEN — I was referring to the non-government institutions, specifically the Catholic Church.

Mr CURTAIN — No, I am not, but if you want to debate that, I am happy to.

Mr O'BRIEN — No, I do not want to debate anything with you, Mr Curtain. I am sure you would beat me, but — —

Mr CURTAIN — Can I just finish?

The CHAIR — Mr O'Brien, let Mr Curtain finish, please.

Mr CURTAIN — Thank you. It is quite interesting because the amount this victim got for specific abuse in a home, in a position of trust, over a period of years, was about \$200 000. Can I tell you this: that is nowhere near enough, and I will bet Mr and Mrs Foster, whom I have never met and I mean no disrespect to, would also say the money that was achieved at settlement in litigation was not enough. That is my point: it is never full compensation. So when you take to me about full compensation, please understand I accept fully it is never enough, but I never suggested that this was full compensation in the Melbourne Response.

Mr O'BRIEN — Okay, well, accepting that, I put it to you as a proposition that what we have across the entire system, not just your part — I will call it the Compensation Panel, and the independent commissioners and Carelink, is a system that effectively channels claimants away from the court system and into what turns out to be a not full compensation assessment. Do you accept that?

Mr CURTAIN — Not at all.

Mr O'BRIEN — You do not?

Mr CURTAIN — No.

Mr O'BRIEN — All right.

The CHAIR — I think Mr Curtain has made that point, so if you could move to your next question, please.

Mr O'BRIEN — I am, thank you. The compensation summaries that we have received from the files — and this analysis has been done by our offices and I understand they have reviewed 150 of the 330 files we have received from the Melbourne Response — only a few of them mention the actual compensation payment. So the sample is small, but from that range they see a range of average compensation payments of around \$20 000 to \$40 000. Would that figure be sounding right to you?

Mr CURTAIN — No.

Mr O'BRIEN — What would you say the average would be, then?

Mr CURTAIN — I would say the average compensation would be — can I take it from the time it has been raised to \$75 000 — towards the upper end of the range of \$50 000 to \$70 000.

Mr O'BRIEN — You have already said that is a lot less than you would get in the courts. Do you accept that?

Mr CURTAIN — No, it is a lot less than you would get from the court if you could prove your case against — remember this: it is not the perpetrator who is paying the money. This is a conciliation process. It is not a parallel to a litigation process, where you have got an adversary situation between an assailant and a victim.

Mr O'BRIEN — Can I just take you up on two propositions there that might change it and allow you to answer my question? What about if, in a different situation, you did not have to prove your case because the church admitted liability, paid for one of these victims that Mrs Coote was talking about, where they had prior knowledge and they did not take a vicarious liability defence, they did not necessarily even take a statute of limitations or they did not take whatever constitutes as the Ellis defence in Victoria; they just simply admitted liability and allowed an assessment of damages to be calculated? Would that be an alternative system that would allow greater compensation to be paid?

Mr CURTAIN — There is no doubt about it. I am sure that all the victims of industrial accidents who complain about the changes to WorkCover over the years by successive governments would have the same view. If only they would admit liability, irrespective of being able to prove it, they could all get on with their lives. There is no doubt about that. If everybody who broke their leg in the street could get full compensation even though they could not prove it was someone's fault, that would be great. That system in workers compensation has been tried in New Zealand and it is sending the country broke.

Mr O'BRIEN — This is a system we are talking about with the Catholic Church.

Mr CURTAIN — I know.

Mr O'BRIEN — And that is effectively, in the courts, a private litigant. Do you accept that?

Mr CURTAIN — Yes.

Mr O'BRIEN — And therefore its choices are up to it. It is not the person in the supermarket, it is not the man in the street, it is the Catholic Church. It is also trying to put forward a position to this inquiry and to the community at large that it has done everything it possibly can to help victims. Do you accept that?

Mr CURTAIN — I do not know. You have heard it, not me.

Mr O'BRIEN — Okay. I can take you to the sections, but I do not want to debate with you on that.

Mr CURTAIN — Really my job is, as you know, I am chairman of the compensation panel.

Mr O'BRIEN — I might leave that for another person to ask. If I could, just in relation to this compensation payments system, this statement here, then, in the page that says:

If the person making a complaint accepts the recommended payment, the amount will be paid in full settlement of all ... claims against the archbishop and the archdiocese. Carelink services will ... remain available.

Do you accept that in a sense if they accept the payment with the deed of the release they are then waiving themselves not of just the initial not full compensation but of all claims?

Mr CURTAIN — No. They are giving a release in relation to all claims, but they have an opportunity before they do that to bring all the claims forward. So the only possible circumstances where this could be a problem is if they remember another claim later.

Mr O'BRIEN — Or if they have not had legal advice?

Mr CURTAIN — No, they do not need legal advice to know they have been victims of abuse.

Mr O'BRIEN — But they might need legal advice to know whether or not they should sue in the courts, or take — —

Mr CURTAIN — Oh, yes, there is no doubt they should do that, and there are many firms available who offer and advertise widely that they give that free legal advice.

Mr O'BRIEN — Could I take you to the correspondence that occurred between you and Father Dillon?

Mr CURTAIN — Yes. I have got it here. Are you talking about his letter of 31 March 2011, and my response of 6 April?

The CHAIR — Is that the letter you are referring to?

Mr O'BRIEN — Yes, those two. Could you just read that first letter from Father Dillon?

Mr CURTAIN — Do I read the highlighted one or mine?

Mr O'BRIEN — You could read yours, but this one does have names blanked out, which I think is important. I do not know what yours has.

Mr CURTAIN — Mine has got names blanked out.

Mr O'BRIEN — Okay.

Mr CURTAIN — Yes, okay. I have read it.

Mr O'BRIEN — Could you read it aloud, please?

Mr CURTAIN — Why do you want me to do that?

The CHAIR — Which paragraph are you referring to, Mr O'Brien?

Mr O'BRIEN — Because I want you to, and then I will ask you some questions about it.

The CHAIR — Mr O'Brien, which paragraph are you referring to?

Mr O'BRIEN — I have decided to ask Mr Curtain to read the whole letter, because it sets out the circumstances of this person's claim as put by Father Dillon.

The CHAIR — If you would not mind, Mr Curtain, could you start from the start of the letter?

Mr CURTAIN — Do you want me to read the heading of it?

The CHAIR — Just read the body of the letter.

Mr CURTAIN —:

Thank you for your courteous and understanding approach to XXXXXXXX at the panel meeting on Monday March 21. Your considerate leadership of the evening was much appreciated.

You may recall that, towards the end of the meeting, I raised the matter of legal costs for victims seeking an 'ex grata payment' —

I think he means ex gratia payment —

from the archdiocese. While I recognise that the compensation panel does not determine policy with regard to the 'Melbourne Response', you seemed to indicate that recommendations from the panel, should it choose to make them to the archbishop, might be an effective means of moving towards an improved approach to assist established victims.

I am enclosing a letter I wrote to the archbishop on November 20 last year with regard to the situation of Mr YYYYYY YYYYYY. My understanding is that he is yet to accept the panel's recommendation of an ex gratia payment, and that the delay is based on his hope that his legal costs can be added to the payment.

The archbishop's secretary replied to my letter (enclosed). Soon after I spoke to the archbishop about my letter, but his reply was simply: 'I have passed that matter on to my advisers'. Since then, I have heard nothing, either verbally or in writing.

The validity of legal costs being added to the ex gratia payment is outlined in my letter to the archbishop. The central element of the argument reads:

'When the Melbourne Response was established, it was built on a substantial legal foundation. A Queen's Counsel was appointed as the independent commissioner, other important people in the process, including members of the compensation panel, were or are lawyers, and the processes followed were generally legally based.

Given that legal base, it is essential that those who seek to use the process in order to further a complaint will need to seek legal counsel and therefore incur the costs associated with such legal counsel.

Accordingly, I would suggest that when a compensation payment is awarded by the compensation panel, and therefore the complaint associated with the payment is designated as justified, it is appropriate that the payment made is exclusive of the legal costs incurred by the complainant — costs which the system itself renders essential'.

I am hoping that you and/or the panel might give this application further and hopefully speedy consideration in order that XXXX XXXXX's application at least can be successfully completed.

Do you want me to read all of this?

Mr O'BRIEN — Yes, I do.

Mr CURTAIN —

XXXXX is a man of few means — he wears worn, second-hand clothes, and drives a dilapidated 80s Commodore which is not far from being unroadworthy. Despite this, he remains a dignified, courteous and extraordinarily patient human being whose life, as the Melbourne Response process has found, has been grievously affected by the abuse he suffered at the critical age of just nine years.

I would be personally very grateful if this matter could be given earnest and speedy consideration.

With thanks,

Yours sincerely,

Father Kevin Dillon
Parish Priest.

The CHAIR — Thank you, Mr Curtain.

Mr O'BRIEN — That plea in relation to legal costs was about the process — the cost of him going through the process as well as the appearance before the panel, and you responded to that. I would ask you to read your response if you could.

Mr CURTAIN —

Dear Father Dillon,

I refer to your letter of 31 March 2011.

Victims occasionally appear represented before the compensation panel, although they are always advised that no legal costs will be awarded.

I respectfully disagree with your statement to the Archbishop of Melbourne that 'it is essential that those who seek to use the process in order to further a complaint will need to seek legal counsel'.

Indeed, I believe the process is set up so the opposite is true, that is that victims do not need to seek legal counsel.

There are occasions when victims bring support people, to speak for them, and there are occasions when some victims are not able readily to articulate their experiences. However, we seek and usually obtain professional opinion and are greatly assisted by medical reports in relation to the effect on victims of the abuse they have suffered.

In addition, the panel has considerable experience in communicating with victims in such a way as to be able to form a proper view of the impact on victims of the abuse they have suffered.

I stress that these are my personal views, but I hope I have been of some assistance to you.

Yours faithfully,

David Curtain.

Mr O'BRIEN — Thank you. In that regard you have put your personal views; did you seek instructions from your instructor as to the position of the church to Father Dillon's request, because the Archbishop sought advice from his advisers?

Mr CURTAIN — The question is misconceived. I do not have an instructor. I repeat I am independent of the church; no-one instructs me.

Mr O'BRIEN — Who pays your bills?

Mr CURTAIN — The church.

Mr O'BRIEN — And you are a barrister.

Mr CURTAIN — You would know as a barrister — —

The CHAIR — Mr O'Brien — —

Mr O'BRIEN — I have asked a question. As a barrister the person who pays your bills — the solicitor for them is often called the instructing solicitor.

Mr CURTAIN — Yes.

Mr O'BRIEN — And you are instructed by your client.

Mr CURTAIN — Yes.

Mr O'BRIEN — Is there any difference in this situation in that you are a barrister instructed by a solicitor? Yes, you serve an independent role at that panel time, but you are still retained as a barrister by a solicitor with a client — the Catholic Church.

Mr CURTAIN — No, the Catholic Church is not my client. The Catholic Church is set up as a process. I charge a fee for what I do, but that does not mean the Catholic Church is my client. Analysed, it is ridiculous. My job is to hand out money that the church has to pay out hand over fist, and I do so, as I said before, with the aim of helping victims, not helping the church.

Mr O'BRIEN — In closing can I give you two reasons for effectively why victims make need legal assistance. Firstly, when you get them to sign that release, they have been into the process potentially without legal advice. Do they get legal costs to sign the release?

Mr CURTAIN — You know the answer to that is no, I think.

Mr O'BRIEN — I am asking you.

Mr CURTAIN — Yes; the answer is no.

Mr O'BRIEN — Thank you. Have you considered the position in relation to an Amadio-type action?

Mr CURTAIN — Yes. Again, Amadio is entirely different. In Amadio it was the bank entering into a contract with the client and taking advantage of the ignorance of the client; there was not an independent commissioner between them.

Mr O'BRIEN — I will just pause you there. You do not think that in a situation where you have accepted that it is not full compensation that is paid at the end of a system as opposed to what can happen in the courts if the church were to admit liability — and you gave the answers about apologies and admissions and what they mean — you would be not potentially subject to a similar type of if not legal but moral action that you are taking, as a system, advantage of the fact that these people have not retained lawyers to advise them of their legal rights?

Mr CURTAIN — The question ignores the fact that I am independent of the church. I stand between the church and the victim, and my job is to assist the victim.

Mr O'BRIEN — Your answer relies on that fact. One other fact, if I can put it to you finally, a little practical matter: are you aware that if the situation of psychiatric reports are commissioned a person who is unrepresented does not receive that report until the night before the hearing, whereas —

Mr CURTAIN — That is not the case. It may be the case on some occasions; it is not generally the case.

Mr O'BRIEN — Whereas if they are legally represented they receive it much earlier because the psychiatrists are not as concerned that they will cause damage to themselves by reading the report if there is an intermediary such as a lawyer.

Mr CURTAIN — There are some occasions when the psychiatrist's report is not released early to a person who is particularly vulnerable. Most of them are not that and most of them have them and, as I said before, before we start I tell the victim what they have had so that they know and I say, 'Have you seen this?'. And on one or two occasions they have said, 'I'm not sure' and we stand it down or offer them an adjournment so that they can inform themselves about it. We put them under no pressure, and I see it as incredibly important that they know what we have got and they have had access to the same amount, and I am satisfied that that has happened with every victim who has come before me.

Mr O'BRIEN — How would they have known about the Fosters' \$450 000 if it was not for this inquiry — under your system, without an independent lawyer?

Mr CURTAIN — I do not see how that follows from anything. I thought we were discussing the exchange of psychiatric reports.

The CHAIR — Thank you, Mr O'Brien. Is that your final point?

Mr O'BRIEN — I have no further questions.

The CHAIR — Thank you, Mr Curtain. I will move to Mr Wakeling.

Mr WAKELING — Thank you, Mr Curtain, for your attendance. Can I firstly just deal with the process? We have had a number of victims who have raised concerns, and I will take you to some of the concerns that have been raised about the process for which you and your predecessors have been in control. Some of the issues concerned delays, lack of understanding of the process — that being for the victim — no information provided regarding the process, no information regarding the manner in which amounts are calculated, concerns of the necessity to go through traumatic matters again and despite a finding by the independent commissioner. Can I ask: do you accept that these are criticisms which are justified?

Mr CURTAIN — It is a big question and I have got a little mind, so I am happy to deal with them seriatim. I think we have already addressed the question of going over matters. I understand that and I apologise, and I say to them, 'Look, I don't like the fact that we're revisiting the offence for you, because I understand it's traumatic, but it's the only way we can be informed to make a decision'. That happens in any form of compensation, complete or partial, but I do make a point of apologising to them for that. I want to stress this: we do our best to look after the victims, to make sure they are at ease, and if they have problems we deal with them and we answer every question we can as best we can.

In relation to absence of understanding about how the process goes, I tell each victim that after the meeting we will talk about it between ourselves and come up with a figure which we recommend to the archbishop and which he will accept. So I tell them that. I do not tell them that we might have even robust discussions about how we reach that amount. Sometimes we all agree, sometimes we might disagree and we might reach a compromise. You would know this from any committee that you have sat on, that is how decisions are made. But it is patent. Did you say lack of review?

Mr WAKELING — Yes. Do you have a review process?

Mr CURTAIN — No, we do not.

Mr WAKELING — Do you have a process where you go back and ask victims who have been through the process to provide feedback?

Mr CURTAIN — No. Some do, but we do not seek it because — —

Mr WAKELING — Do you have an opinion on that, as to whether that should be something you should be doing?

Mr CURTAIN — I do not see there has been a need demonstrated. Can I say that some people would say there is; some people say there is not. I can only do what I think, and I get feedback from people and the number of complaints we have about our panel is minuscule considering the number of people we deal with. Some of the complaints come from people I do not know, some of them from lawyers, some lawyers say there should be lawyers in everything. It is hard for me to disagree with that, but when you talk about the people who are actually disgruntled by the hearing they have had, there are hardly any.

There are some people who are disappointed that they do not get the maximum and I understand that and sympathise with them, but the argument would be: give everybody the maximum, and that is not the way it is set up.

Mr WAKELING — Would you concede, though, that the issues that we have received, if you had undertaken that review, then you, too, would have been aware of the complaints that we have received as part of this process?

Mr CURTAIN — I am not sure about that. You see, I do not know who has made them. First of all, they may have been made on my watch — I do not know because I do not know who they are and I do not wish to know; and I do not know whether they have been made by people who think that the Catholic Church Insurance sat there, or that representatives of the church sat there. I do not know whether they are correct or not.

As I say, my number is given, my direct line is given to every claimant, and they sometimes give me feedback and sometimes they express gratitude at it. I am not asking to be thanked. This is a thankless task and I do not like doing it but someone has to do it, and what we aim to do is try and help them move on. I say to them, 'This is intended to help you', rather than, 'It's not going to recover you' or 'It's not going to terminate it, but it is a recognition of the wrong that is done and it is a way, we hope, of helping you move forward as much as you can'.

Mr WAKELING — I have just a couple of other questions. Victims have certainly indicated to us about the traumatic process, and as you can appreciate the structure that is in place by going through the Melbourne Response with Mr O'Callaghan and then with yourself, the victims potentially have to go through the process twice, in terms of telling their story.

Mr CURTAIN — Once, and then once to a psychiatrist.

Mr WAKELING — So in terms of the process with you?

Mr CURTAIN — They do not have to repeat it. I tell them — and I have said this to you — I make it clear that they do not have to say anything. I tell them we have read all the material, including the transcript of Peter O'Callaghan and any psychiatric reports, and there is no necessity for me to do it. I say that because I am aware of it and I do not want them to go through it again unless they are comfortable doing it. Some are, but those who are not say nothing.

You would appreciate, because you have seen victims, some are outgoing and robust, some are terribly insightful and some are terribly inward looking. Each person is individual. What we do say is, 'You don't have to go through it again with us'.

Mr WAKELING — I accept that. May I ask how long have you been in the role?

Mr CURTAIN — I thought it was about four years, but it is since February 2004.

Mr WAKELING — And during that period, how many cases would you have been involved in?

Mr CURTAIN — I have some statistics here, because I thought you might ask me that. There have been a total of 287 offers; 290 applications to the compensation panel, 287 have accepted offers, 3 have not yet accepted offers, and there are 14 who have not been to the compensation panel. Of those, 4 settled outside the Melbourne Response and 4 have not yet made applications to the panel. One has made an application to the panel but does not yet feel ready to go through the process, and one made an application to the panel and we are not sure of the status of that.

Mr WAKELING — Thank you. So you have been involved in 287?

Mr CURTAIN — No, that is the total. I cannot give you the breakdown of it. I can tell you that this started in 97 and I have been there since — — .

Mr WAKELING — But of the matters that you have been involved in since 2004, of those cases that you have read and of the findings that you have read from Mr O'Callaghan, what number would that be? Is there a rough figure? Would it be 200? Would it be 50? Can you put a figure to it? I will not hold you to the figure; I am just trying to get an understanding.

Mr CURTAIN — I am trying to think. I think it might be between 150 to 200 — but please, barristers are notoriously bad with numbers.

Mr WAKELING — Let us say I accept 150. Considering the fact that there is 150 and your role is independent — you are clearly independent of the church.

Mr CURTAIN — Yes.

Mr WAKELING — During your eight years of involvement in your role, let us concede there are 150 cases that you are aware of. In your opinion, do you believe that the Catholic Church has failed in its duty to protect the interests of children at least for those 150 cases which you have dealt with and which have been acknowledged by the independent commissioner as having been cases of acknowledged criminal child abuse?

Mr CURTAIN — Can I answer that question by qualifying it and saying I look through the prism of a lawyer. There are cases where the church has failed. There are cases where the church has not failed. There have been cases, for example, where a worker at a school out of the blue has molested a child with no warning of that and no reason to suspect he might. I think it is drawing a long bow to say the church is responsible for that. But there are cases, of course, where the church is responsible. From what I have gathered from the media, you have heard the people in those environments make those admissions to you over the last week.

Mr WAKELING — We will not draw you on the 150, but can I take from that there is at least an acknowledgement that in your opinion from what you have read and dealt with there are clear cases where the Catholic Church is guilty for the offences that have been perpetrated by lay people or clergy in terms of effects on young children?

Mr CURTAIN — I do not mean to be evasive, but can I remind you that my job is not to make the determination of liability. It is to make a determination of offering, and it is better to ask the independent commissioner that, because he works out how the events took place. We accept that.

Perhaps I could come to it this way. There are occasions when there are repeat offenders, and through the retrospectoscope, looking from 2013 to what happened in the 70s or 80s, it is hard to believe that the people in charge did not do anything and did not know anything. But I grew up in the 60s, and I know then that if I had been a victim, if I had been abused by a priest and if I had told anyone, the priest would be confident he would

be believed. It was a very different environment from today, and I have got no doubt that priests acted to the great detriment of children in circumstances where they could feel completely impregnable. They could feel that they would never be attacked for doing so, and a lot of the cases — all of the cases that we see — are quite aged. I am not seeing recent cases of abuse. It comes from a different era when children had no say, and I know of people like that.

The CHAIR — With all due respect, Mr Curtain, it might have been historical but those victims are still with us today, so it is not historical in the context of what they feel.

Mr WAKELING — But I can take from that — historical it may be, and looking at it through a different lens; I appreciate that — the simple fact is, based on what you have read, at least in your opinion for some of those cases, you would draw a conclusion that the church has to share some of that responsibility?

Mr CURTAIN — I think the church has acknowledged that — from what I have read in the media about this — to you.

Mr WAKELING — In your opinion, you would agree with that decision.

Mr CURTAIN — I am only going by the media, and I do not disagree with it.

Mr WAKELING — Thank you.

The CHAIR — Thank you very much, Mr Curtain. I think you might have a brief statement you would like to read to the committee. Please do so.

Mr CURTAIN — Some of it is repetitive, and I hope I will be able to deal with that

As chair of the compensation panel, I do not see myself as in any way affiliated with the Catholic Church. The position I hold has been held previously by other senior Queen's Counsel, including Justice Susan Crennan of the High Court, Governor Alex Chernov and current Supreme Court Justice David Habersberger.

My role is to preside over the award of compensation for victims of abuse, and I have told you what the limit is. The church inevitably accepts the panel's recommendation, and I have never had any negative feedback from the church to the recommendations we make; they accept them each time. Where particular requests have been made, such as to meet the archbishop or indeed 'What's happened to that so-and-so who abused me?', we have done our best to inform them or accommodate requests.

Whilst it is accepted and understood that recounting the circumstance of the abuse can be very difficult for some victims, the panel does its best to put the victims at ease. I repeat: we never ask them to go over it again. The settings are intended to be informal, and I explain that any support person is welcome and participates to the degree the victim wishes. I always ask the victim, 'Do you want your friend to say something?'. Often they do, because they might lose their way or be emotional. So I leave it to the victim to guide that, but we give them the respect that I hope I have learnt to give over the years.

I tell them about confidentiality, and I will not repeat that again, but I make it clear that the confidentiality is a one-way street. They are not bound by it, but we are. I make it clear that they will receive a letter of apology, unless they express a wish not to do so. Some have a lot of anger and would be offended by a letter from the archbishop, so we arrange for that not to happen.

It is made clear to each victim that nothing the panel says or does is in any way intended to suggest that they should either accept or reject the offer; that is a matter for the victim entirely. It is explained that, if an offer is accepted, the victim will be asked to sign a release, and that is explained if there is any doubt about it.

I tell each of them of the material we have read and itemise it document by document, so that they know. Then I invite them to correct any mistakes in the documentation if they wish to do so and give them the opportunity to comment or add anything that has been put. Sometimes a victim will read from a prepared statement; otherwise they will orally elaborate on their written material. Each victim is given as much time as they wish, such as you have, and never cut short due to time constraints.

Criticism is made of the absence of provision by the church of legal support. In my opinion, this is to misunderstand the process. It is not adversary but conciliatory and victims do generally not perceive a need for legal representation. It is understood that a lawyer would say that lawyers should be present in all forms of compensation, but that is not a complaint made by victims. What is important to the panel is meeting the victim and making an informed assessment of the victim and his or her circumstances. Our task is to help the victims articulate their positions and the effect the abuse has had on them. The process has parallels with that involving victims of crime in that the compensation is not paid by the perpetrator. I will not repeat that. There is no statute of limitations imposed here. It is at law and it is in victims of crime.

I feel it is important to make this further comment. It is my experience over many years that these claims are all aged. By this, I mean each claim happened many years ago, and I have seen no evidence that such offences are being perpetrated today.

As a parent and grandparent, I personally feel great sympathy for every victim of abuse, especially young, helpless victims. There is not a hearing we have conducted where we are not all reminded of the harm done to the victims, and I trust we convey to them sympathy, respect and understanding.

In my experience, the panel hearing has been said by many victims to be a positive experience, and whilst I have had feedback many times, I have rarely had a criticism of the process. When there is a criticism, it is usually because the victim has not received the maximum amount and is unhappy with that. Thank you.

The CHAIR — Thank you, Mr Curtain. Can I on behalf of the committee thank you again for your appearance before us this afternoon. We do appreciate your time and your evidence has been most helpful.

Mr CURTAIN — Thank you very much.

Committed adjourned.