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Ref: brh:St Anns3

26 May, 2004

O'Loughlins
Level 2
99 Frome Street
ADELAIDE 5000
Att: Mr Tony Fuller

26 MAY 2004

Dear Tony

Re: St Ann's Special School

I refer to our conferences and discussions in relation to my report. You tell me that it is the wish of the Archbishop to publish the advice which I provided in the report because he does not wish the Church to be seen as covering up any of the issues that have been addressed in this matter. The basis upon which I was instructed to consider the material provided to me and report to him thereon, was that it would be counsel's advice to the client in the normal way. I am concerned that if it is published it would be seen as some kind of inquiry into the issues which it is not. I am particularly concerned about the impact publication would have upon the individuals mentioned in the report who were merely participants in a process over which they had varying degrees of control.

As I point out in the report, they were not the subject of questioning by me nor have they had an opportunity to consider or reconsider what they might have said in the statements provided to my instructing solicitors. Nor have they been provided with a draft to enable them to comment thereon. Because of the nature of my instructions which was not to conduct a wide ranging enquiry into the issues but merely to collate and report on the information obtained from the individuals concerned and advise on whether or not the school's processes were adequate, it would not be appropriate to publish the report. Such publication could well be prejudicial to the individuals named in the report.

You asked me whether the names of the individuals could be removed for the purposes of any publication but in my opinion that will not assist because they could be easily identified by their positions. There is also a danger of creating confusion and uncertainty in the minds of uninvolved members of staff with the corresponding embarrassment to them.

It is for all of these reasons that I strongly advised against publication and why I do so again.

If it is the wish of the Archbishop to publicly acknowledge the receipt of the report then he may like to consider doing so having regard to your memorandum dated 7 May 2004 where you have adequately prepared a summary of my conclusions which, while identifying some of the individuals involved, concentrates more on the process which was flawed.

Yours sincerely



BRM HAYES QC