

10 August 2001

**BY COURIER**

Ms Susan Crennan QC  
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Partner  
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Our reference  
RAL/ROMA5455-5683690

Dear Susan

In our capacity as the solicitors for Archbishop Denis Hart, the Catholic Archbishop of Melbourne, we are instructed to confirm your appointment as Chair of the Compensation Panel that has been established in the Melbourne Archdiocese to offer ex gratia compensation to victims of sexual abuse. As you are aware, the ex gratia Compensation Panel is one of the initiatives announced by the previous Archbishop to respond to allegations of sexual abuse within the Melbourne Archdiocese.

The role of the Compensation Panel is to receive applications from persons who have been found by the Independent Commissioner, Peter O'Callaghan QC, or by an ad hoc Independent Commissioner, to have been victims of sexual abuse, as that term is defined in the Commissioner's terms and conditions of appointment. The Commissioner provides the Compensation Panel with a report.

In addition, victims are encouraged to provide the Panel with medical, psychiatric and psychological statements, and this often takes the form of a report from Carelink. The Panel then schedules a time to meet with each victim for approximately 30 minutes.

Having met with the victim, the Panel then settles upon a recommended settlement amount.

It is intended that, insofar as possible, the Compensation Panel operate independently of the Archbishop and Archdiocese and accordingly, while you are briefed on behalf of the Archbishop, your brief is to act independently, and not on the Archbishop's instructions.

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For the same reason, while we are your instructing solicitors and are happy to provide administrative assistance, the practice to date has been that we do not involve ourselves in the detail of a case going before the Panel until the point is reached in the process that you as chairperson of the Panel advise us of the Panel's recommended figure.

When we receive a letter of recommendation from you, we write to the victim and make an offer on the Archbishop's behalf. If the offer is accepted, then the victim is required to sign a release. If the victim chooses not to accept the offer, then he or she is free to initiate or to proceed with such legal proceedings as are desired. Those proceedings will be strenuously defended.

The Archbishop has committed himself to act in accordance with recommendations of the Compensation Panel, and to make settlement offers in the amount the Panel recommends. By the same token, we will not enter into negotiations with victims to increase the Panel's recommended figure.

The other members of the Compensation Panel and their contact details are as follows:

Mrs Geraldine Croagh

REDACTED

Tel: REDACTED

Mr Tim McFarlane  
McFarlane Legal  
Level 7  
469 Latrobe Street  
MELBOURNE VIC 3000

Tel: 9602 9769  
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Dr Barbara Taylor  
Northpark Hospital Centre  
Greenhills Road  
BUNDOORA VIC 3083  
Or  
Eltham Specialist Centre  
28 Luck Street  
ELTHAM VIC 3095

Mobile: 0412 688 978  
Tel: 9467 1937  
Fax: 9467 2042  
  
Tel: 9431 0455  
Fax: 9439 8056

The Panel meets at 402 Albert Street, East Melbourne. Until now, Tuesday evenings have been convenient for the Panel members.

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I have written to the other Panel members to advise them of your appointment.

As discussed, I will come up and see you shortly to discuss the procedures in greater detail. At that time we can work through some of David Habersberger's files dealing with completed matters so that I can familiarise you with the letters that need to be written and so on. For your assistance a sample of the relevant documents is enclosed, along with a flow chart summarising the procedures.

I have already sent you a copy of the Application for Compensation Form and of the brochure that describes the Archdiocese's response to allegations of sexual abuse.

With this letter I am enclosing a summary of all of the claims that have been before the Panel to date. When we meet I will identify a selection of cases that cover a range of compensation amounts, and we can talk about these.

It may be that in the course of your contact with victims you will be asked questions about some of the legal issues arising from claims against the Church. Fundamental to the initiatives that have been in place since 1996 are the following propositions:

- "the Catholic Church" is not a legal entity and accordingly, it cannot be sued or served with legal proceedings;
- similarly, the Archdiocese of Melbourne is not a legal entity;
- the office of the Archbishop of Melbourne is not a legal person, and the Archbishop is not a corporation sole;
- one Archbishop is not the successor in law to a previous Archbishop;
- Archbishops do not employ priests;
- Archbishops are not "responsible for" priests, in the absence of evidence of knowledge of specific issues;
- The Roman Catholic Trusts Corporation for the Diocese of Melbourne, established pursuant to the provisions of The Roman Catholic Trusts Act 1907, is a statutory corporation that holds assets on behalf of the Church. However, it does not employ priests or have any control over any actions or omissions occurring on properties of which it is registered proprietor.

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Various plaintiffs have sought to bring legal proceedings, but none of these proceedings have proceeded to trial. Rather, those plaintiffs who have sought to press their claims have been faced with pleading summonses, applications for summary judgment and strike out applications and almost without exception, the plaintiffs have ultimately found themselves unable to formulate a sustainable pleading. Although the Archdiocese and the wider Church have come under some criticism for relying on so called legal technicalities, the position of the Archdiocese is that if an alleged victim elects to bring legal proceedings, then having chosen to play in the legal arena, the plaintiff must play by the legal rules, and expect to be faced with all of the defences and legal obstacles that are available to the defendants.

At the end of the day, the Archbishop does not accept that he has any legal liability to pay compensation to victims.

Having said that however, the Compensation Panel procedure has been instituted to provide an alternative to legal proceedings, and a forum in which victims can obtain monetary compensation without having to establish that they have a claim that would succeed at law and that is not statute barred.

The compensation that the Panel can recommend is less than the amount that one would expect a court to award to a successful plaintiff. This is a reflection of the fact that in agreeing to make a payment, the Archbishop is putting to one side all of the legal defences that may be available to him.

Enclosed for your information is a copy of my letter to Archbishop Peil of 28 October 1996 concerning "legal technicalities", which deals with some of these issues.

Also enclosed for your information is a copy of the Commissioner's appointment document.

I will be in touch shortly to arrange a time for a conference.

With kind regards



Richard Leder

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**IN THE MATTER of AN INDEPENDENT  
COMPENSATION PANEL ESTABLISHED BY  
THE CATHOLIC ARCHBISHOP OF  
MELBOURNE TO OFFER EX GRATIA  
COMPENSATION TO VICTIMS OF SEXUAL  
ABUSE**

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**Brief to Counsel**

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\$750 / hour

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