

# Sexual and Other Abuse The Melbourne Response

CATHOLIC ARCHDIOCESE OF MELBOURNE

## APPOINTMENT OF INDEPENDENT COMMISSIONER TO ENQUIRE INTO SEXUAL AND OTHER ABUSE

### Background

Archbishop George Pell in 1996 then the Catholic Archbishop of Melbourne being concerned that a number of priests and religious have abused children, adolescents and adults in their pastoral care, in order to facilitate the discovery of such abuse, and the taking of consequential action instructed his solicitors to retain Peter John O'Callaghan Q.C. (the "Commissioner") to act as an Independent Commissioner to enquire into and advise the Archbishop with respect to allegations of sexual misconduct by any priest of the Archdiocese and religious, and lay persons working within the Archdiocese on the following terms and conditions (the terms), and which appointment was renewed and confirmed by Archbishop Hart (the Archbishop) upon him becoming the Catholic Archbishop of Melbourne. Archbishop Hart appointed Mr Jeff Gleeson SC as an Independent Commissioner commencing on 1 August 2012. Mr O'Callaghan and Mr Gleeson both function under these terms.

The terms were formulated in consultation with the Victoria Police and it was then acknowledged and agreed, as it is now by the Archbishop and the Commissioner, that there can be no substitute for a Police investigation into complaints of sexual and other abuse, which may constitute criminal conduct. It is also acknowledged that some complainants do not wish to take their complaints to the Police. In that context and in order to continue and to facilitate co-operation and assistance between the Archdiocese, the Commissioner and Victoria Police, the Archbishop has supplemented the Terms and Conditions as set out in Clauses 4 to 6 hereunder.

### 1. Definitions

**"Accused"** means the person against whom an allegation of sexual or other abuse is made.

**"Carelink"** is an agency of the Archdiocese that administers the provision of professional support services namely treatment, counselling and support to victims of sexual and other abuse within the Archdiocese.

**"Church person"** includes any priest of the Archdiocese and religious, and lay persons, working within the Archdiocese.

**"Compensation Panel"** is a panel established to provide ex gratia payments to complainants of sexual and other abuse who establish the factual basis of their complaint to the satisfaction of the Independent Commissioner.

**"Complainant"** means any person making a complaint of sexual or other abuse as aforesaid.

**"Complaint"** means any complaint made to the Commissioner by a person that he or she has been abused by a Church person or a complaint made to the Commissioner by a person who complains that some other person has been abused by a Church person, and any complaint of abuse by a Church person which is referred to the Commissioner by any other body or person.

**"Sexual and/or other abuse"** includes:

- a) Any form of criminal sexual assault, sexual harassment or other conduct of a sexual nature that is inconsistent with the public vows, integrity of the ministerial relationship, duties or professional responsibilities of Church personnel; and
- b) Conduct by a person with a pastoral responsibility for a child or young person which causes serious physical pain or mental anguish without any legitimate disciplinary purpose, as judged by the standards of the time when the behaviour occurred.

### 2. Role of the Independent Commissioner

- i. The Commissioner is appointed to enquire into and advise the Archbishop with respect to complaints of sexual and other abuse by Church persons.
- ii. The Commissioner shall forthwith enquire into any complaint of sexual and other abuse by a Church person made or referred to him.
- iii. The Commissioner immediately upon there being made or referred to him a complaint of sexual or other abuse (which may constitute criminal conduct), shall inform the complainant that he or she has an unfettered and continuing right to make that complaint to the police, and the Commissioner shall appropriately encourage the exercise of that right.
- iv. Subject to sub clause (xi) below, upon becoming aware of sexual or other abuse (which may constitute criminal conduct), the Commissioner may report that conduct to the police.
- v. The Commissioner will not act so as to prevent any police action in respect of allegations of sexual or other abuse by Church personnel.
- vi. Forthwith upon becoming aware that sexual or other abuse has occurred, is occurring, or is likely to occur, the Commissioner shall advise the Archbishop and made such recommendations as to action to be taken by the Archbishop as the Commissioner considers appropriate.
- vii. The Commissioner is empowered by the Archbishop to require any priest, religious, or other person under the jurisdiction of the Archbishop to attend upon the Commissioner at such time and place as is notified, and to produce to the Commissioner such documents as the Commissioner requires, and to answer such questions as the Commissioner considers appropriate to ask, Provided that no priest, religious, or other person, shall be required to produce to the Commissioner a document, or to answer a question, which document or answer the priest, religious or other person objects to answer or produce or give because it may tend to incriminate.
- viii. The Commissioner may inform himself inter alia by hearings at which the complainant and the accused may be present, and also if desired, their respective legal or other representative.
- ix. The Commissioner shall interview a child or conduct a hearing at which a child is present, only with the written authority of the parent or guardian of such child, and whom the Commissioner shall request be present at such interview or hearing.



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- x. The Commissioner shall treat as confidential and privileged all information acquired by him in the course of his investigation, Provided that (subject to sub-clause 2(xi)) the Commissioner may if he considers it appropriate so to do, provide the whole or part of such information to the police, and with the consent of the complainant, to the Compensation Panel.
  - xi. If a complainant, prior to stating the facts and circumstances constituting his or her complaint informs the Commissioner that he or she is only prepared to divulge those facts and circumstances to the Commissioner upon his assurances that he will not, (unless required by law) disclose those facts and circumstances to any person other than a person nominated by the complainant, the Commissioner (unless required by law so to do) shall not disclose those facts and circumstances to any other person save to members of his staff from whom he shall have procured an undertaking of confidentiality.
  - xii. The Commissioner may decide to discontinue or not conduct an enquiry into a complaint which he considers is trivial, frivolous, vexatious or not made in good faith, Provided that the Commissioner shall notify the complainant in writing of any such decision to discontinue or not conduct an enquiry into complaint.
  - xiii. he Commissioner when enquiring into complaints and reporting to the Archbishop shall observe the rules of natural justice.
  - xiv. The Commissioner shall determine the procedure to be followed in respect of enquiries and hearings and may publish to the Church authorities and other relevant persons details of such procedures.
  - xv. The Commissioner may refer victims of sexual or other abuse to Carelink.
  - xvi. The Commission will consult with and advise the Compensation Panel as required, subject to sub-paragraphs 2 (x) and (xi).
3. i. The retainer of the Commissioner is ongoing for such period as may be mutually agreed upon and, Provided that in the event of the Commissioner, for whatever reason, becoming incapable of duly performing his retainer the Archbishop may instruct his solicitors to terminate the retainer.
  - ii. The Commissioner will formulate procedures for dealing with and recording complaints of sexual and other abuse and other matters.
  4. i. The Commissioner will endeavour to meet regularly with the squad manager of the Sexual Crime Squad or their delegate (Liaison Officer) to discuss issues of mutual interest and concern.
  - ii. If a complainant informs the Commissioner that it is desired to refer the complaint to the Police, the Commissioner will refer the complainant to the Liaison Officer, and subject to sub-paragraphs (a) and (b) shall take no further steps in relation to the complaint, until the Police investigation and any resulting proceedings are completed; save that
    - (a) If the complainant so wishes, the Commissioner may refer the complainant to Carelink for the provision of free counselling and psychological support; and
    - (b) The Commissioner may make recommendations to the Archbishop in respect of the alleged offender.
  5. Save where
    - i. The alleged offender the subject of a complaint is dead,
    - ii. The complaint has been previously reported to the Police and the Commissioner is satisfied that Police action and any resulting proceedings have been resolved by the conviction or acquittal of the alleged offender or by the Police having notified the complainant that no further action will be taken in relation to the complaint, or
    - iii. The complaint has been referred to the Police and no Police action has been taken in the two years preceding the making of the complaint to the Commissioner

The Commissioner will provide complainants with an information sheet in the form set out below and will seek to obtain the complainant's written acknowledgement on a copy of that document.

1. *The Independent Commissioner has explained to me that he has been appointed by the Catholic Archbishop of Melbourne to investigate allegations of abuse.*
2. *The Commissioner has informed me that because the conduct about which I have complained of may constitute criminal conduct, I have a continuing and unfettered right to report the matter to the police. He has encouraged me to exercise that right. He has informed me that if I did wish to report the matter to the police, he would refer me to an appropriate police officer to deal with the complaint.*
3. *The Commissioner has explained to me that the police have powers which he does not have, including the power to issue search warrants and to arrest offenders, and that it is only through the police that the offender can be brought before a Court and punished for criminal conduct.*
4. *Aware of these matters I do not at this time wish to take my complaint to the police, and:*
  - a) *I request the Commissioner to exercise the powers conferred upon him by the Archbishop to deal with my complaint; and*
  - b) *I require the Commissioner to keep my identity confidential to the best of his ability and save as compelled by law.*
5. *I acknowledge that I can refer the complaint to the police at any time, and if I do so the Commissioner will take no further steps in relation to the complaint until the police investigation and any resulting proceedings have been completed.*

NAME: \_\_\_\_\_

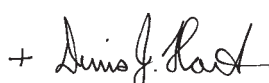
SIGNED: \_\_\_\_\_

DATED the .....day of .....20.....

6. When an alleged offender the subject of a complaint is advised of the complaint by the Commissioner, the Commissioner will, except where paragraph 5(ii) or (iii) applies, include information in writing in the terms set out below:

*"The complainant at least at this stage does not wish to report the complaint to the police, despite being told that there is a continuing and unfettered right to do so, and having been encouraged to exercise that right. If subsequently, I become aware the complaint is referred to the police, I will take no further step in dealing with the complaint. I will not advise you that the complaint has been referred to the police for at least four weeks or if requested by the police such further period as is agreed."*

APPROVED ON 15 FEBRUARY 2011

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Archbishop Denis Hart DD  
Archbishop of Melbourne

