

APPOINTMENT OF INDEPENDENT COMMISSIONER

TO ENQUIRE INTO SEXUAL ABUSE

Archbishop George Pell when the Catholic Archbishop of Melbourne (“the Archbishop”) 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, and which appointment was renewed and confirmed by Archbishop Hart upon him becoming the Catholic Archbishop of Melbourne.

- Definitions

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

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

“**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.

“Complaint” means any person making a complaint of sexual abuse as aforesaid.

“Sexual and other abuse” includes:

- 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
- 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.

“The Support Professional” is a person to be appointed by the Archbishop for administering the provision of professional support services namely treatment, counselling and support to victims of sexual and other abuse within the Archdiocese.

“The Compensation Panel” is a panel established to provide ex gratia payments to complainants of sexual abuse who establish the factual basis of their complaint.

1. **The 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.
- 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 1(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. The 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 the Support Professional.

xvi. The Commission will consult with and advise the Compensation Panel as required, subject to sub-paragraphs 1 (x) and (xi).

2. (i) The retainer of the Commissioner shall be for a period of six months, Provided that if at the expiration of that period, the Commissioner and Instructing Solicitors are of opinion that there are outstanding matters concerning allegations of sexual or other misconduct in respect of which action should be taken, the Archbishop shall extend the retainer for a further period of six months, or such other period as may be mutually agreed upon and, Provided Further 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 abuse and other matters.

(4)

PROCEDURES OF THE INDEPENDENT COMMISSIONER

The Independent Commissioner was on 31 October 1996 appointed by Archbishop Pell to enquire into allegations of sexual abuse by priests, religious and lay persons within the Archdiocese of Melbourne. Those Terms and Conditions (the "Terms") of appointment are in writing, and contain detailed provisions, including inter alia, that the Commissioner acts in accordance with the principles of nature justice, and generally speaking, confidentially. A copy of the Terms are annexed. See particularly, definition of Sexual Abuse; Clauses 1(xiii) and (x).

The Commissioner was also appointed as a delegate of the Archbishop pursuant to Canon 1717 of the Code of Canon Law.

The practice and procedures followed by the Commissioner in respect of complaints made to him varies from case to case. Subject to that qualification, the following is a typical description of how the Commissioner enquires into and reports upon a complaint, and matters incidental thereto.

The Complaint

Usually a complaint of sexual abuse is made by the Complainant contacting the Commissioner by telephone (mostly), sometimes in writing and sometimes referred by another person.

The Commissioner then arranges for the complainant to be interviewed, usually in his chambers, which is recorded and a transcript thereof provided to the complainant. At the outset of the interview, the Commissioner informs the complainant that he or she has a continuing and an unfettered right to report the matter to the police, and encourages the exercise of that right. If the complainant decides to complain to the police, the Commissioner takes no further action pending the resolution of whatever police action emanates from that complaint. In most cases, complainants have either previously reported the matter to the police (and the Courts have dealt with the Priest) or the complainant specifies the desire not to go to the police. In that event, the interview takes place subject to undertakings of confidentiality.

Following the interview, and in the case of where there is a complaint made against a particular priest or person, the Commissioner writes to the priest enclosing the transcript of interview or the relevant parts thereof, and inviting the priest's response thereto.

Recommendation that the Priest be Placed on Administrative Leave

Depending upon the circumstances and in particular the nature of the complaint, the Commissioner may advise the priest that he has recommended to the Archbishop that the priest be placed on administrative leave pending the investigation of the complaint.

The Commissioner in doing so emphasises that this recommendation in no way indicates an acceptance or otherwise of the validity of the complaint.

The Commission is conscious of the possible prejudice which the recommendation may cause the priest, and it is only after careful consideration that the recommendation is made.

It might be said that it is unfair for a priest to be placed on administrative leave before he has an opportunity of dealing with the complaint. But if the complaint is of a particular type e.g. child abuse, and the complainant is not palpably irresponsible, vexatious or incredible, the common good dictates that the subject priest should be placed on administrative leave. This is the result of balancing competing interests, on the one hand the reputation of the priest, and the presumption of innocence which applies to him, and on the other, the necessity for assurance that action has been taken, that there can be no suggestion of a cover up and to preclude any risk that there could

be an occurrence of conduct of the sort alleged. In all but one of the cases in which the Commissioner has recommended the priest be given administrative leave, the complainant alleged criminal conduct. Where the complainant was referred to the police charges were ultimately laid, and the same result would almost certainly have occurred if the other complainants had been so referred. In cases where priests have been charged with sexual misconduct by the police in respect of matters unknown to the Commissioner, the Archbishop either places the priest on administrative leave, or accepts the request of the priest that this be done.

It is a common place of disciplinary proceedings in relation to professions and other organisations, for the subject complainant to stand down or be suspended pending resolution of the complaint. If a charge is laid against a policeman almost invariably that policeman is placed on suspension pending the charge being resolved. Similarly with teachers, nurses and other professionals.

The Commissioner does not upon receiving a complaint, automatically recommend that the subject priest be placed on administrative leave. For instance in a case where the complaint is that of a mature woman, who alleges a prior sexual relationship with a priest, it is not unusual for the Commissioner to refrain from recommending any action until at least the

investigation has been completed, and the priest given a full opportunity to deal with the complaint.

With respect to the procedure for placing the priest on administrative leave, that is not the province of the Commissioner. As the Commissioner understands it the Archbishop must consult with the Promotor of Justice, the Church's guardian of the common goods, before acting. Having done that and having decided to accept a recommendation of the Commissioner that a priest be placed on administrative leave, the priest is interviewed by the Archbishop and appropriately informed, and there is then read from the pulpit of the subject church a statement of the Archbishop inter alia stating that the priest has been placed on administrative leave in order to assist the Commissioner in the investigation of the complaint. That statement by the Archbishop specifies that there has been no judgment, and that the presumption of innocence applies to the priest. It is difficult indeed to postulate a more satisfactory alternative procedure.

The Determination of the Complaint

If the priest denies the complaint, it is usual for the Commissioner to conduct a hearing much in the same manner as a hearing conducted by a Magistrate in a Magistrate's Court. The complainant is either represented by his or her own counsel, or the complaint will be presented by Counsel

assisting the Commission. The priest likewise may be, and in most cases is represented by counsel, and he is free to choose to give evidence himself, and to call witnesses. Parties are of course free to cross-examine witnesses called by the opposing party.

If the complaint is not established, then naturally no further action is taken and if the priest had been placed on administrative leave it would be recommended that he be returned to the ministry with an appropriate public statement so as to off-set so far as is possible the effects of earlier publicity. It must be said this position has not as yet occurred.

Procedure if Complaint is Established

If the victim is desirous of making application for compensation the Commissioner will refer his findings to the Compensation Panel, which will accept his findings as to the fact of and the nature of the sexual abuse complained of. The Commissioner does not play any part directly or indirectly in the assessment of compensation, this is entirely the province of the Compensation Panel. Indeed the Commissioner is typically unaware of the results of the applications for compensation.

With respect to the priest in regard to whom the complaint has been established, the Commissioner reports to the Archbishop all relevant

circumstances, and makes recommendations. In the case of a priest convicted of an offence of child abuse, it will almost certainly follow that the priest will not be returned to the ministry. The recommendations range from the prohibition of the priest assuming his priestly ministry to those in which no action should be taken. Within those ranges there are many permutations and computations.

Again it is entirely a matter for the Archbishop as to whether he accepts the whole or part of any recommendation, and in making decisions His Grace will of course, be governed by the relevant provisions of Canon Law.