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 Our ref KMH:



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By email

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Dear Mr Guigni

Re: Ballarat Hearings

We refer to the remarks of the Chair of the Royal Commission during the course of the hearing yesterday in Case Study 28, in relation to the Church parties not questioning survivor witnesses about certain matters, and the application of paragraph 67 of the Commission's Practice Guideline Number 1.

As our counsel advised the Commission, the Church parties do not intend to question survivor witnesses unnecessarily, which would almost inevitably exacerbate their distress in the already difficult circumstances of giving evidence to the Royal Commission. The Church parties understand the importance to survivors that their stories not be met with scepticism or disbelief.

As our counsel also advised, the Church parties are conscious of the words of paragraph 67(b) of Practice Guideline 1, which makes clear that the rule in *Browne v Dunn* will not be applied where it is not contended that deliberately false evidence has been given. Further as to paragraph 67(b), the Church parties do not regard a difference of recollection, between two participants in the same conversation, as indicating that there has been a "mistake" by either, or that any "grounds" thereby exist for any such characterisation of such a difference in recollection.

However, some of those associated with one or other of the Church parties do have different recollections of conversations, or have different interpretations of events, referred to by some of the survivor witnesses. The deliberate decision by the Church parties not to question a survivor about a particular event or conversation does not mean that the relevant Church party accepts that every last detail of a survivor's recollection is accurate.

In this context, we respectfully note three matters in particular.

First, the Commission has chosen to conduct the hearing for this Ballarat case study in two separate parts. For the first part, namely the present May hearings, the Commission requested witness statements from ten persons associated with Church parties, in respect of specific topics defined by the Commission which substantially related to the impact on the community of child sexual abuse. Those ten persons did not include, among others, various people mentioned in the statements including Brother Nangle, Brother Brandon and Cardinal Pell. No statement was requested from any witness associated with a Church party, about the particular cases of any of the 18 survivor witnesses. Indeed the statements of those 18 witnesses were only provided to the Church parties late in the week before the Ballarat hearing began, after the witnesses associated with Church parties had already



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provided their statements to the Commission (with the exception of one witness, Br McDonald, who is overseas and difficult to contact).

Second, only three of ten witnesses for the Church Parties, namely Bishop Bird, Fr McNerney and Brother Clinch, have been asked by the Commission to attend to give oral evidence in these May hearings.

Third, where in any of the recently-provided statements a survivor witness has given an account of an important conversation with a particular person or persons associated with a Church party, the Church parties have expected, and continue to expect, that the Commission will in due course require or invite such a person to provide a statement in response. Natural justice and procedural fairness require no less. The Chair confirmed yesterday that the Commission did intend to do so, at least in the case of Cardinal Pell.

In all such cases, the witnesses associated with Church parties will willingly provide a statement, and will at that time set out the position of that person on the matters raised in relation to him.

In the case of Bishop Bird, he was asked to provide a statement for these May hearings, in relation to the specific topics chosen by the Commission relating largely to community impact. The Bishop duly provided such a statement, dated 11 May 2015. It has subsequently transpired that some of the survivor witnesses, in statements provided to him by the Commission after he had provided his own statement, have made reference to certain matters in which he was involved in relation to their particular cases. Bishop Bird will accordingly provide the Commission with a supplementary statement addressing, such matters, before he gives oral evidence next week.

Given the comments made by the Chair and Counsel Assisting at 4.45 pm just before the Commission adjourned for the day, it seems clear that the Commission takes a different view as to the effect of paragraph 67, in particular as to the question of "mistake". In those circumstances, contact has been made overnight with some of the people concerned, including Cardinal Pell.

We confirm that a statement of Cardinal Pell will be willingly provided once the Royal Commission issues a request in accordance with its established practice, identifying the topics it wishes Cardinal Pell to address. As no request has been made (although foreshadowed yesterday), the representatives of the Church Parties had not anticipated any need to depart from the principled decision that has been made not to cross-examine witnesses unnecessarily.

Once such statements from affected persons have been prepared, it may be that it will be necessary for an application to be made that one or more of the survivor witnesses be recalled so that appropriate questions can be put to such witnesses in the light of the Commission's indication.

The Church parties have taken the approach they have taken to date, as outlined at page 8166 of the transcript, out of respect for the survivor witnesses. We appreciate that at the conclusion of all the evidence, including statements and oral evidence in the second part of this Ballarat hearing (presently scheduled for November-December this year), the Commission will have the task of making findings based on all of the evidence before it.

Finally, we note that the Cardinal has denied the allegations of Mr Green and Mr Ridsdale as recently as overnight, and we attach a copy of the Cardinal's statement of last night.



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Yours sincerely

A handwritten signature in black ink, appearing to read "KHarrison", written in a cursive style.

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