

ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES
TO CHILD SEXUAL ABUSE
AT NEWCASTLE COURT BUILDING

COMMONWEALTH OF AUSTRALIA

Royal Commissions Act, 1902

PUBLIC INQUIRY INTO
**THE RESPONSE OF CATHOLIC CHURCH AUTHORITIES IN THE MAITLAND-
NEWCASTLE REGION**

SUBMISSIONS OF BISHOP EMERITUS MALONE

Alleged conversation with Bishop Malone by Sister Woodward prior to Father Ryan's arrest:

1. Counsel Assisting has provided submissions dealing with this issue commencing at [305] and concluding at [318].
2. It is to be recalled that for the first time anywhere Sister Woodward gave evidence in the Commission hearing that she had had a conversation with Bishop Malone and told him the "the whole story" in relation to Father Ryan.
3. Bishop Malone gave evidence directly contradicting this and the thrust of that evidence is referred to in the submissions of Counsel Assisting at [315] – [317].
4. At no time was it ever put to Bishop Malone that the version given before the Commission by Sister Woodward in fact occurred. We submit that the reason this was not done was because the evidence of Sister Woodward simply could not be accepted.
5. Sister Woodward was cross examined about two versions she had given. The first version was in a Police statement referred to at [310] of Counsel Assisting's submissions. The second version was in a 1997 interview with Paul Ferman referred to at [311] of the submissions of Counsel Assisting.
6. Sister Woodward was cross examined at length about those versions and it is clear that neither of those versions were consistent with the evidence which she has given

before the Commission. It is further submitted that the thrust of the cross examination reveals that the evidence before the Commission is totally unreliable and should be rejected.

7. The ultimate submission made by Counsel Assisting is found at [318]. The critical line is:

"It is submitted that there is insufficient evidence to establish that Sister Woodward informed Bishop Malone of the substance of the allegations against Ryan prior to his arrest."

8. With respect, in relation to that submission we make the following points:
- i. It is inconceivable that if Sister Woodward had in fact spoken to Bishop Malone and told him "the whole story" that she would not have said this in her Police statement nor in her 1997 interview. That alone should have been enough to completely discount her evidence in the Commission.
 - ii. There was direct evidence from Bishop Malone that he was not told "the whole story". The only way the submission of Counsel Assisting set out at [7] above, could be accepted is if Bishop Malone's evidence was rejected.
 - iii. There is no basis for the rejection of Bishop Malone's evidence on this point. If there was to be a challenge to it, that challenge would have been made when he gave evidence and that was not done.
9. In all of the circumstances we would invite a finding that Bishop Malone was not told "the whole story" by Sister Woodward. What Bishop Malone was told are the matters set out in the submissions of Counsel Assisting at [315] - [317]. This submission is supported by the evidence at T17733 [Day 166] commencing at line 13 which is in the following terms:

"Q. Did you speak to Sister Evelyn Woodward about it?"

A. I can't remember actually speaking with her specifically about this, but she was a person whom I relied on very heavily in terms of her knowledge as a Psychologist and her ability to roll out that knowledge in the dealings with these sorts of issues.

Q. Were you aware that she had been personally involved back in 1975 in the Churches response?"

A. At that point, no, I didn't know that.

Q. When do you think that you became aware of that?"

A. I became aware of that, I think, after Vince Ryan's arrest."

10. We also refer to [314] of the submissions of Counsel Assisting. It was suggested that the question in cross examination set out within the body of [313] and the concession obtained may have been based on a factual inaccuracy. Our submission is that that submission (if indeed it be one) ought be rejected. The question makes it clear that the witness was being asked on the probabilities whether a discussion with Bishop Malone was had and she answered yes. This sentence and question need to be looked at in the context of the whole cross examination and the responses and concessions from Sister Woodward. In addition there is the added material in the question relating to Bishop Malone going away on leave shortly after Sister Woodward apparently had a discussion with Bishop Clark although we note that according to Sister Woodward's evidence there seem to be some confusion as to the date of the discussion.

Criticisms of Bishop Malone in relation to public statements:

11. Counsel Assisting has set out in [327] – [357] material in relation to this aspect.
12. At [355] various criticisms are made of Bishop Malone in relation to a number of public statements said to have been authored by him. It is submitted at [355] that those public statements “misrepresented the true position in relation to the adequacy of the Diocese response to allegations against Ryan in the 1970s”.
13. The starting point for the consideration of these matters is an understanding of how it came to be that Bishop Malone became the Bishop of the Diocese. It is clear that the Bishop was on leave between 1st and 30th October, 1995. In that period, Father Ryan was arrested. Bishop Malone was not informed that that arrest had taken place until he returned from leave. Obviously the Bishop was not “in the loop”.
14. On return he was apparently asked to take over the reins in relation to the Church's response to the matter. At this point we should pause to remind the Commission that Bishop Malone had been plucked from the ranks of a Parish Priest to become the Co-Adjutor Bishop and shortly on his return from leave was thrust into the helm as the Bishop. His description of the handover from Bishop Clarke to himself was telling.
15. The commencement of the attack on Bishop Malone in relation to this issue is set out in [333] of Counsel Assisting's submissions. Bishop Malone was asked whether he appreciated that one of the important issues for the community was how much was known to the Church about Father Ryan's conduct historically. We should remind ourselves that this Commission seeks to examine the Diocese response to child sexual abuse. It is within that context that that question was asked.
16. However, Bishop Malone noted, without challenge, that that was not at that point “an immediate concern of mine”. It is clear that there was a massive fallout occurring and

having just been put in charge he was trying to learn on the run and in particular learn how to deal with and handle the fallout following the arrest of a Priest.

17. Bishop Malone, to his credit at T17732 [Day 166] commencing at line 26 made a concession that by April (of 1996) he appreciated that one of the issues that the community was concerned about was what did the Church know in the past specifically about Ryan. This however does not detract from his asserted position that his primary focus was in fact dealing with the fall-out as described above and for that reason he was concentrating on the period from the time of the arrest of Father Ryan.
18. It is true that a number of public statements were made. It is equally true that, to his credit, Bishop Malone accepted propositions in evidence that statements that were attributed to him could be regarded as being misleading or untrue. It is our submission however that it would be unfair in the extreme to put a proposition that any of those statements were made with an intention to mislead or be untruthful. Again, as we understand the evidence, no such question was put to Bishop Malone in his evidence.
19. Four pieces of evidence were referred to by Counsel Assisting and they are set out below.

Media Release dated 30th May, 1996

- i. This media release was issued following the sentencing of Father Ryan.
- ii. Counsel Assisting correctly notes at [343] that there was a heading in that media release, "Time-line detailing Catholic Church's response to clergy sexual abuse".
- iii. However, Counsel Assisting does not refer to the first paragraph in that media release which notes the following:

"Today Fr. Vincent Ryan was sentenced as a result of sexual abuse charges with minors. In response I am presenting the following time-line and attachments which detail the Catholic Church's approach to this particular case."
- iv. It is unfair to criticise Bishop Malone for this media release failing to, at that time, detail everything that had occurred going back to 1975 or thereabouts. At T17735 (day 166) commencing at line 6 Bishop Malone was asked about this issue:

"Q. *Again, Bishop were you conscious at the time that that was a question that the community wanted answered?*

A. *No, I wasn't conscious of that. I think I was too preoccupied with trying to put in place adequate responses to the needs of both survivors and the people generally.*

The Chair:

Q. *Bishop I assume the purpose of publishing this timeline was to demonstrate to the community that the Church had acted appropriate; is that right?*

A. *Yes, I think so Your Honour, yes.*

Q. *In not telling everyone what the Church knew in 1975, you weren't being frank, were you.*

A. *Well, I was being frank about what the response had been to the arrest of Vince Ryan.*

Q. *Yes, I know, but the point was the Church knew an awful lot more than you revealed in this document, didn't it?*

A. *Yes.*

Q. *And you didn't tell the public that you knew that?*

A. *I didn't tell him no."*

- v. The above exchange makes it very clear that Bishop Malone was intent on putting out information as to the response to the particular case (the words used in paragraph 1 of the medial release) and the sentencing of Father Ryan. So much is clear from the use of the word "frank" set out above. The Bishop conceded that the Church knew more than was revealed in the document and that that was not told to the community in the document but those answers need to be put into the context of all of the Bishop's evidence. In other words, his only intention was to explain the actions of the Church (and himself) in relation to the particular case. If it was thought otherwise during his evidence on this point it would have been put directly to him that his intention was to mislead in that particular way. There is no suggestion in the media release itself that the document purports to explain all that had occurred and been known going as far back as 1975 and despite the heading referred to by both ourselves and Counsel Assisting.
- vi. The media release dealt with "this particular case". It is obvious from the timeline that the media release was attempting to set out how the Church at that time was dealing with that particular case. This is consistent with the stated approach of Bishop Malone. It is beyond the realm of common sense that the document is suggesting that nothing at all occurred prior to 11th October, 1995. As Counsel Assisting points out at [344] Bishop Malone said in evidence that he wasn't conscious that at that time there was an expectation by the community that they were wanting to know what the response of the Church was in the 1970s. Indeed there is no evidence to suggest how big an issue that

actually was at that particular time. It certainly became an issue over time.

There is no basis to reject the Bishop's evidence on that point. This of course goes to the question of intent.

20. As a matter of semantics if the media release of the 30th May, 1996 is to be considered in the context of whether in fact it represents everything that the Church did from the mid 70s to the date of the media release, then it did not capture what the Church knew, or did, in that entire time. However, the Commission would be comfortably satisfied that that was not the intent of the media release. It was the intent of the media release by Bishop Malone that what was being portrayed was what had occurred following the arrest of Father Ryan and nothing more. This is consistent with the evidence given by Bishop Malone on a number of occasions that he was simply trying to deal with the situation presented to him at that particular time amongst all of the other matters he was trying to deal with as the new Bishop.

The October 1997 Statement:

21. It is said that this statement which is referred to commencing at [348] was also something that misrepresented the true position. Bishop Malone in the Diocesan magazine, Aurora, said those things set out in the submissions of Counsel Assisting at [348].
22. Clearly, the October, 1997 statement was incorrect. This was conceded by the Bishop at T17746 (Day 166) July 19. However, this needs to be put into context. The submission by Counsel assisting is that the statement in the Aurora was misleading as it conveys the impression that the Diocese and the authorities only had knowledge of the gravity of Ryan's sexual abuse of children in 1995 and that was clearly not the case. However Bishop Malone explained his use of the word "misdemeanours" and in particular his use of the inverted commas. The Bishop said he used the inverted commas to demonstrate how idiotic it was to use such a word in relation to sexual abuse. It is not without significance that that word in inverted commas occurred in the very paragraph referencing the Diocesan authorities. Obviously Bishop Malone was saying it was idiotic of the Diocesan authorities to regard sexual abuse as trivial. It may be that absent that explanation the interpretation proffered by Counsel assisting at [355](b) could be drawn. However given the clarity of the evidence by Bishop Malone it is at worst equivocal. In any event there is no demonstrated intent to be misleading in the way that is suggested.
23. The submission by Counsel assisting also flies in the face of what else was known publicly because it is clear that from various documents e.g. the Newcastle Herald

article on 31st May, 1996 that there were allegations that people in the church knew and that these matters were not trivial.

The Letter to the Editor of the Newcastle Herald in May 2001

24. The offending paragraph in the letter to the Editor dated 7th May, 2001 comes from page 1 of that letter and is set out at [350] of the submissions of Counsel Assisting.
25. However, that paragraph should not be taken out of context and the whole of the letter needs to be read as a whole. Bishop Malone makes it clear in the very first paragraph that he regarded the actions of the named columnist as an attack, not only on the Church and the Diocese, but on himself as Bishop “regarding alleged inaction on our part in the matter of sexual abuse”. Clearly that paragraph was written in the context of what had occurred following Bishop Malone becoming the Bishop of Newcastle. So much is clear from the 4th paragraph on page 1, when Bishop Malone writes:
- “When allegations of sexual abuse were made against Vincent Ryan in November, 1995, he was immediately withdrawn from active ministry (11.10.95) and the proper procedure of our legal system took its course, leading to his imprisonment.*
- I spoke to the Diocesan Community and the general public through print and broadcast media about the Church’s response to this deplorable situation.”*
26. The above two paragraphs demonstrate that what Bishop Malone was focussing on was the response from him and those around him following the arrest of Father Ryan. We agree that the paragraph quoted by Counsel Assisting referred to above does reference knowledge of the Church authorities back in the mid 1970s. The last sentence in that quoted paragraph “subsequent church authorities definitely did not know of the nature and extent of his abusive behaviour” must have been written with himself in mind and those around him. So much is clear from the context of the letter.
27. It is submitted at [355](c) that the letter to the editor was misleading “as it conveys that the approach in 1975 was an adequate response and that Bishop Clarke did not know of serious allegations of sexual abuse of children by Ryan”. With respect, we disagree with that submission. The offending paragraph notes that the Church authorities learnt of the complaint in the mid 1970s and sought help for him. The last sentence, as we have pointed out above, refers to “subsequent church authorities” which cannot include Bishop Clarke, who was the Bishop at the time. It should be remembered at this point that Bishop Malone, for the reasons which he gave evidence about, did not interview either Bishop Clarke or Monsignor Cotter to investigate what had occurred in 1975 because he was busy enough with the fallout from the arrest of Father Ryan and all of the other matters that he was dealing with as the Bishop of this very large Diocese. His concern as he indicated on any number of occasions was what was

going on following October, 1995 and trying to make sure that the response of the Church at that time was appropriate particularly in the care of the victims. To his credit, Bishop Malone acknowledged that that response from him and those around him at that time evolved and obviously evolved for the better. There is nothing unnatural about that and it is not a matter that ought to attract any criticism.

The Statement of 22nd September, 2007

28. Counsel Assisting deals with this matter in [353]-[354]. The paragraphs quoted leave out the two paragraphs in between which are in the following terms:

“Victims of child sexual abuse will tell you that their complaints in those days were very often simply disbelieved and dismissed as mischievous. Now we know how wrong it was to be so disbelieving, not to mention terrible naïve.”

“Transcript reference Malone T17750: (Day 166)

Q. *... in the case of Father Ryan and what he had done in 1975, there was never any suggestion that people disbelieved the boys who had brought those complaints, was there?*

A. *No, I don't think so, no.*

Q. *That had never been suggested to you, that there was some doubt about whether the incidents had occurred in 1975?*

A. *No, I didn't doubt that at all.*

Q. *Likewise, it wasn't a case of people thinking, 'this can't have happened because the idea of Father Ryan abusing boys is too abhorrent for words' ?*

A. *Mmm*

Q. *So at least in relation to Father Ryan, this wasn't a correct explanation of past inaction?*

A. *No it wasn't.*

Q. *Those matters of disbelieving boys and not being able to contemplate Priests offending against boys, was actually irrelevant to what the Church had done in relation to Ryan?*

A. *Yes.*

Q. *Do you know, then, why you would have said that as part of your explanation to the faith community?*

A. *Well, you know, I think the members of the faith community who are not immediately caught up with these sexual abuse issues as either parents or relatives or fellow school members or whatever, but the general*

community, would not have countenanced the fact that a priest could do such things and it was in those terms that I wrote that, it was trying to touch base with the deeper feelings as a Church community generally.

- Q. *Do you accept, though, that as it seemed also to be describing what the Church had done or not done anything in the past, it might have created a false impression, because it gave the impression, Bishop, that there might have been disbelief of the children back in the 1970s and that's why things weren't done?*
- A. *No, I don't know whether the authorities at the time, as in – well, Monsignor Cotter seemed to understand, originally, anyway, by sending Vince Ryan off to Melbourne, that something needed to be done.*

The Chair:

- Q. *Bishop again in that second paragraph you are speaking of Church leaders; you're not speaking of the general community. You say:*
'It is unfair of anyone to judge the decisions of Church leaders...
- A. *Yes*
- Q. *What you said in that paragraph is not correct, is it?*
- A. *No, what I'm saying, I think, your Honour, is that it is unfair that anyone should judge yesterday's leaders by today's knowledge.*
- Q. *But we didn't have to. Yesterday's leaders, in the case of Ryan, have real knowledge: they knew what he'd done?*
- A. *Some people had known what he'd done, yes.*
- Q. *The leaders of the Diocese knew?*
- A. *Well, as in Monsignor Cotter, yes.*
- Q. *At that time he was the ..*
- A. *He was the leader then.*
- Q. *The leader?*
- A. *Yes.*
- Q. *Its just not true to say that he did not know the true position, is it?*
- A. *No, its not true."*

29. The first paragraph referred to by Counsel assisting in [353] was exactly what Bishop Malone said in answer to the Chair when he expressed the view that it "is unfair that anyone should judge yesterday's leaders by today's knowledge". That is just common sense because the knowledge of everybody about these matters has evolved over

time. The specific knowledge about specific actions may have been known but that is not what Bishop Malone is talking about in this 2007 statement.

30. The reference in the second paragraph which we set out above as to being “disbelieved” is no more than a general explanation of what was often the case. Bishop Malone was expressing the view that we all know to be the case, namely that victims will often say that they were disbelieved. It was a generalisation and perhaps could have been written with greater particularity but it was not the Bishop’s intent to mislead in the way suggested by Counsel assisting. His evidence, which we set out above, is consistent with that submission.
31. In the last paragraph set out in [353] the Bishop refers to the “benefit of hindsight”. There he is not talking about the Church leaders of the time but he is talking about the hindsight that he and others have. They are looking back on a different era with more advanced understanding and knowledge. We would submit that even if it is a correct submission that the 2007 statement is misleading in the way suggested by Counsel assisting then there is no possibility of a further finding that that was the intention of Bishop Malone in that statement.
32. At [357] Counsel assisting makes the submission that Bishop Malone’s acknowledged attitude in initially responding to the allegations of child sexual abuse was in some respects to defend or be loyal to the church. The submission is then made that that was the only available explanation for failures which Counsel assisting refers to as failures to make frank and accurate statements based on a proper understanding of the Diocese’s dealings with Ryan. With respect we disagree with that submission. True it is that Bishop Malone acknowledged that his attitude was initially to defend and/or to be loyal to the Church but to say that in a vacuum does not acknowledge the other known evidence in this matter. Bishop Malone reacted swiftly when he became Bishop and expressed considerable support for victims and instituted widespread change over a period of time that really commenced in November 1995. It may be said that that process could have been more swift and perhaps it was somewhat slower than it might otherwise have been because of the Bishop’s initial attitude however the relationship of that attitude to statements described as neither frank or accurate is not a total explanation. It is not conceded that any lack of honesty or accuracy was done with any deliberate intent. Indeed we have made the submission before and make it again that there is no demonstrated intent by Bishop Malone to be either untrue or inaccurate. As this Commission is charged with examining the response of the Catholic Church Authorities then of course Bishop Malone’s actions are entitled to be scrutinised. A fair reading of his evidence would find acknowledgement in his own shortcomings in many regards but that is a far cry from

an observation that he is either deliberately untruthful or deliberately inaccurate. The following exchange at T17740 (Day 166) commencing at line 33 is telling in that regard:

- “Q. *Would you accept it is difficult for you to then making pronouncements on behalf of the church by way of explanation of what has happened in the past. If you haven't actually got to the bottom of what key people have done and why?*
- A. *Well, that's a view, I suppose, yes.*
- Q. *A view you would accept?*
- A. *Look, yes, but I am very fresh in the job by this time and I am just sort of running by the seat of my pants.*
- Q. *If you had your time over again, do you think you would have interrogated Monsignor Cotter and Bishop Clark?*
- A. *Definitely. I often wish I had been more decisive and more aware of a forward plan than I was.”*

Decision not to laicise Ryan and conditional financial support:

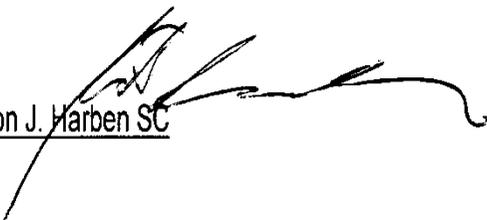
33. Counsel Assisting at [381] deals with this issue and is obliquely critical of Bishop Malone's decision not to laicise Father Ryan. The relevant submission is:
- “To the extent that retaining such people within the Priesthood may be perceived as essential in order to maintain supervision and a level of control, that should not be seen as a necessary evil in all cases. In the case of Ryan, the evidence indicates that supervision and control may be achieved in other ways even with laicisation, such as by making the provision of material assistance conditional on compliance or supervision arrangements and other terms.”*
34. It is without doubt that the decision not to laicise Father Ryan caused some problems. The submission that we make however is that the decision by Bishop Malone was reasonable in the circumstances and he ought not be criticised for it. We make the following points:
- i. Bishop Malone retired in 2010. There has been no decision since then to laicise Father Ryan. If Bishop Malone is to be criticised then those who follow him should also be criticised. We would submit that that is not the appropriate answer.
 - ii. The above submission from Counsel Assisting we submit misconceives the evidence given. At [380] it was noted in submissions by Counsel Assisting that it

was put to Bishop Malone that Ryan could also be required to comply with conditions by laicising him but still making financial assistance dependent on his compliance with those conditions. Bishop Malone's answer to that was:

"Well, I suppose so, yes ... but he could just go his own way if he wished to."

- iii. With respect, what Bishop Malone was saying was that it was far easier to be able to control Father Ryan because by laicising him and in effect cutting him loose he could very well make the decision just to go on his way. It wasn't the offer of financial assistance so much that was holding him there, it was the fact that he was still needing to comply because he had not been laicised. It is not correct to say that 'the evidence indicates that supervision and control may be achieved in other ways'. That is just too simplistic an approach because true it is that he could have been laicised and the offer of financial assistance could have been made conditional upon such control being available, but that was not a guarantee of anything and it was certainly not reasonable in the circumstances. Bishop Malone was correct when he asserted that the community would be better served with the Church exercising the relevant control over Father Ryan as a safeguard to the community.
- iv. This is why we submit that the submission of Counsel Assisting in that regard ought be rejected and there ought be no criticism of the decision which was obviously a difficult one to not laicise Father Ryan. We also reiterate that that decision seems to have been vindicated by the decision not to laicise Father Ryan in the last 6 years after Bishop Malone retired.

Dated: 8th December, 2016.


Simon J. Harben SC

Counsel for Bishop Emeritus Malone
Hunter Street Chambers