16 January 2015

The Hon Justice Peter McClellan AM
Royal Commission into
Institutional Responses to Child Sexual Abuse
GPO Box 5283
Sydney NSW 2001

CC: Mrs H Last, In Good Faith Foundation

Dear Mr McClellan,

Re: Redress.

"The Royal Commission’s Terms of Reference require us to examine what institutions and
governments should do to address the impacts of child sexual abuse in institutional contexts,
including in ensuring justice for victims through the provision of redress... ..."

I write specifically to you as I wish to address issues arising from the hearings into Case Study 16 that
you chaired.

As you know, Mr Donnell Ryan QC has been appointed by Archbishop Hart to make an “Independent
Inquiry” into concerns regarding redress issues and the current practices under the Melbourne
Response.

I participated in discussions with Mr Ryan personally and in my role as a leader within the Melbourne
Victims’ Collective, accompanied by Mrs Helen Last of the In Good Faith Foundation. In those
discussions I recognised that a great deal of confusion exists regarding redress payments, sometimes
called “compensation” and various other titles.

This confusion arises because many discussions commence and continue without a definite
understanding of the objectives of such payments. Without a clear definition of why a redress
payment is appropriate, it would be impossible to define a coherent and just policy.

I suggest that much discussion can be clarified and a just policy can be built on a clear understanding
that a redress payment is designed to achieve at least the two distinct aims:

1. To restore the financial damage done to the victim, and

2. To balance the hurt suffered by the victim with benefits that can be obtained by a compensation
payment.

I therefore submit the enclosed short discussion paper for the Commission’s consideration and am
prepared to discuss the contents with your staff at your convenience.

Yours sincerely, with thanks for your work,

Jas L (Jim) Boyle
A just redress policy

Jas L (Jim) Boyle  16 January 2015

Justice
The first consideration in the development of a just and equitable policy for administering financial redress for victims of clerical sexual abuse is a clear enunciation of the purpose of such payments. I attempt to address that by clarifying two distinct objectives for such payments – restitution and compensation.

I contend that a just quantification of an appropriate redress payment would include at least those two components. The first is a restitution component designed to restore losses incurred as the result of the abuse. The second is a compensation component, a token of the Archdiocese’s remorse and regret, compensating for the hurts suffered during and since the abuse by giving the victim an appropriate benefit.

Restitution – restoration of losses incurred
This would be designed to restore the victim’s financial situation to the status it would have been had no abuse occurred. This is simple justice, not compensation.

Quantifying restitution
The estimation of the amount involved would inevitably be approximate and somewhat subjective but should be determined in an open and equitable manner with appropriate professional inputs. Some items that ought be considered in that evaluation include:

- Direct costs of any related illness and treatment;
- Salary and other losses during those illness periods;
- Limited or truncated career;
- Short term treatment for the immediate effects of the necessarily traumatic process of reengaging with abuse issues during evaluation and reconsideration of related issues.
- Ongoing treatment for all issues related to the abuse history for the rest of life;
- Cost of suitable counselling and guidance to utilise redress payments to best effect. I note the known dangers of lump-sum payments such as aggravated addictions etc.. This is most important as victims often suffer from limited capacities of self-management as symptoms of damage done to their personalities,

So, conceptually, this part of the redress should restore the current situation to that which we estimate would have eventuated if no abuse had been inflicted on the victim.

This would be, I suggest, a “sine qua non” for any justice within the redress scheme.

Compensation – a token of regret
I suggest that a compensation component of financial redress be evaluated with the intent that benefits obtained by that compensation should balance as best possible, the suffering caused by the abuse. This is additional to the just restitution of estimated losses discussed above.

As Archbishops Pell and Hart have said “we cannot undo the past” but the Archdiocese can and should make amends for the past wrongs involved in addition to restoring losses suffered. A payment identified as compensation can then be a significant token of the regret that the Archdiocese has for the abuse incident(s).

Dictionary definitions of the word “token” include two alternatives:

- *Token* – something used to indicate authenticity, authority, etc.;
- *Token* – anything of only nominal value;

To be meaningful and to satisfy the first definition, the compensation component of a redress payment needs to be significant to both the giver, the Archdiocese, and to the recipient.
A trivial or small token payment would satisfy only the second of the quoted definitions. It would indicate that the issue is of little consequence to the Archdiocese and the victim’s hurt is not considered as serious.

We must recognise that during and since the abuse, each victim has undergone painful suffering, typically for several decades. Such suffering has not concluded, but, hopefully, will be reduced significantly by immediate and ongoing care and treatment.

Quantifying compensation
There are several examples of schemes used to evaluate suitable compensation payments in various situations somewhat similar to the Melbourne Response.

The most simplistic schemes allocate payments from a small range of defined values dependent on a simple evaluation of the hurts suffered (e.g. the ADF scheme).

I understand that a more complex scheme used in Canadian abuse cases defines a series of payment ranges dependent on the level of abuse suffered and then an evaluation panel decides the appropriate payment within that range for each individual case. I believe that the additional complexity of such a scheme is well justified as the evaluation process would allow a greater sense of a personalised response to victims who have frequently felt that the Melbourne Response is a highly legalistic and impersonal system.

A few of the hurts suffered by victims and that should be considered include:

- Physical and psychological pain of the sexual abuse act(s);
- Personal indignity and damaged self-image;
- Symptoms typical of complex PTSD such as self doubt, difficulties with personal relationships, broken relationships, major depression & suicidality, nightmares & flashbacks, compensatory behaviors like addictions to alcohol or drugs, poor understanding of appropriate personal boundaries thus allowing further abuses including vulnerability to different forms of abuse and exploitation.

The Melbourne Response
Currently, the Melbourne Response calls redress payments “ex-gratia compensation” which ignores whatever is supposedly the purpose of such payments and obscures the injustices within the assessment process to quantify them.

Those injustices include:

- The explicit but unpublicised omission of any aspect of restitution for financial damage suffered as the result of the admitted abuse;
- The almost universal absence of any professional support for the preparation and presentation of the victim’s case;
- The vague, undefined, undocumented and unrecorded process for the estimation of “ex-gratia compensation”; That estimation was sometimes based entirely on seriously incomplete information presented to the panel by the Archdiocese’s Carelink employees;
- The unreasonably low and unjustified upper limit on the payments.

Conclusions
1. Redress payments should be assessed as the sum of two payments as discussed – one to restore losses incurred, the other as both a sign of the regret and as compensation for the suffering involved.
2. Each component be assessed by a truly independent person or persons, perhaps appointed by a relevant independent professional body, certainly not directly by the Archbishop. As an example, in one Canadian diocese, a retired supreme court judge was appointed for this task.

Jas L (Jim) Boyle