IN THE MATTER OF:

THE COMMONWEALTH ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

AND

THE ROYAL COMMISSION'S REPORT ON CASE STUDY 16 AND ISSUES PAPER 11

SUBMISSIONS OF INDEPENDENT COMMISSIONERS
PETER O'CALLAGHAN QC AND JEFFERY GLEESON QC

1. We refer to the Commission's Report on Case Study 16, The Melbourne Response (Case Study 16 Report). This Submission does not deal with other matters in Case Study 16 Report, which will be the subject of a further submission.

2. This Submission can also be treated as a submission in response to Issues Paper 11, which invites submissions as to, amongst other things, any action taken in response to the Case Study 16 Report.

3. We are the Independent Commissioners appointed by the Catholic Archdiocese of Melbourne to act within The Melbourne Response.

4. At page 8 of the Case Study 16 Report, there appears:

   Mr O'Callaghan QC and Mr Gleeson QC meet complainants in their chambers. No doubt following this public hearing, Mr O'Callaghan QC and Mr Gleeson QC will reflect on whether their chambers are the most appropriate place to interview complainants. For many people, the general environment of chambers may be threatening, if not overwhelming, and a
barrister's room is unlikely to provide a sense of confidence and security for a survivor [emphasis added].

And at page 39:

No doubt following this public hearing, Mr O'Callaghan QC will reflect on whether his chambers are the most appropriate place to interview complainants. Given the care with which we considered this issue when developing the Royal Commission's practice, and the vulnerability of many survivors, we doubt whether it is appropriate to conduct the interviews in a barrister's chambers. For many people the general environment of chambers may be threatening, if not overwhelming, and a barrister's room is unlikely to provide the sense of confidence and security for a survivor [emphasis added].

Mr Gleeson QC also meets with complainants at his chambers. He said that he has thought carefully about the best place to meet with complainants. He was not convinced that a serviced office would be better and he thought that it would be inappropriate for him to go to the complainant's house. No doubt Mr Gleeson QC will also review his position in light of the evidence given at the public hearing.

5. We have many years of experience of interviewing complainants of institutional child sexual abuse both in our chambers and at other locations as follows:

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a) for two or three years after the establishment of *The Melbourne Response* in 1996, Mr O'Callaghan QC met with complainants and others at a serviced office in Optus House in Collins Street;

b) we have both met with complainants and others in hotel meeting rooms when meeting them interstate and in regional areas;

c) when requested to do so, we have both met with complainants in their homes; and

d) otherwise, we have both generally met with complainants and others in our respective chambers.

6. With due deference to the pronouncements of the Commission, we intend to continue to interview complainants in our chambers, unless we are compelled by law not to do so. We provide our reasons below.

7. We are firmly of the view that had we visited victims in their home (which Mr O'Callaghan QC has done on a few occasions and Mr Gleeson QC on one occasion), met them in a hotel conference room, or took them to another office, there would be no difference in the stress and strain experienced during an interview in barristers' chambers.

8. We have always been, and continue to be, acutely aware that disclosing child sexual abuse is an immensely difficult process. It is a process that the person receiving the disclosure must manage with openness, understanding and compassion. Making the process of disclosure as comfortable as possible has always been at the forefront of our minds.
9. In our view above, the extracts from pages 8 and 39 of the Case Study 16 Report effectively condemn the practices and procedures engaged in by barristers, attorneys and solicitors throughout the world, for centuries past. We accept completely that many victims/survivors of sexual abuse are vulnerable and fearful at the prospect of recounting the details of their terrible experiences. But to conclude that the stress upon a victim/survivor would be less if the relevant interview was not conducted in barristers' chambers reflects a view of barristers' chambers which is misconceived.

10. Barristers' chambers over the centuries have been the place for the disclosure and discussion of events by persons, who no doubt find it stressful to engage in such discussions. But this would be so wherever that disclosure and discussions took place. Such stress is not unique to sexual abuse victim/survivors, but is present in multiple other classes of persons and who necessarily reveal it in barristers' chambers. Logically, the Commission's view that it is inappropriate to so interview complainants of sexual abuse, would also apply to the myriad interviews conducted in barristers' chambers of persons who are and have been afflicted with stress and fear arising from matters other than sexual abuse.

11. In the personal injuries jurisdiction, barristers receive and confer with persons whose injuries have and will continue to blight their lives physically and psychologically. Persons rendered quadriplegic or paraplegic, who are afflicted with brain damage, mental illness or post-traumatic stress disorder, are but some of the categories of persons who suffer most significant distress. In commercial litigation, loss of income, loss of the ability to work, family and financial disputes are all attended by significant stress. Likewise, in criminal
law stresses occasioned by persons charged with criminal offences can be profound, particularly those who believe they are innocent.

12. Not a single person has ever complained or even commented to us about feeling uncomfortable as a result of meeting in our respective chambers. The Commission's statements on pages 8 and 39 of the Case Study 16 Report, extracted above, are, with respect, untenable. There is simply no evidence to justify those statements, and there is no attempt (as there cannot be) to identify such evidence. In that context it is significant that the submissions of Counsel Assisting in respect of Case Study 16 did not point to any evidence, nor could they submit that a finding was available to the Commission to proscribe the practice of meeting complainants in chambers.

13. Mr Gleeson QC has from time to time and in an indirect manner, raised the matter with complainants. On each such occasion that Mr Gleeson QC has raised the matter, the complainant has said that they are comfortable meeting him at chambers. He has also on several occasions asked the complainant during a telephone conversation conducted for the purpose of arranging the meeting, whether they wish to meet him in chambers, at their home or at a neutral place. On no occasion has the complainant wanted to meet anywhere other than at Mr Gleeson QC's chambers.

14. Through our respective secretaries, we have always sought to accommodate complainants as much as possible, including as to what is the most suitable and convenient time for them to be interviewed and who they wish to bring to the interview. Many complainants have thanked us for this treatment.
15. We have both interviewed a significant number of complainants in our respective chambers who have been accompanied by their solicitor. Neither the complainants nor their solicitors have complained about being interviewed in chambers. On the contrary, solicitors who are critical of other aspects of *The Melbourne Response*, have not only expressed satisfaction with the interviews of their clients, but they have continued to bring their clients to our chambers.

16. At the commencement of the meeting with a complainant, Mr Gleeson QC also often asks the complainant and their solicitor whether they want to sit on the couches in chambers or at the conference table for the purposes of the discussion. The complainant always chooses the table. If they become strongly emotional during the meeting (as happens on many occasions) Mr Gleeson QC invariably asks them if they would like to continue the meeting on another day and/or at another place. Again, the complainant always say no. They typically say that they just want to get it over with and that they are relieved that it is not as bad as they thought it would be.

17. Whilst giving evidence during the public hearings for Case Study 16 we both stated that, in our view, the manner in which complainants are treated during interviews should be of paramount importance. For example, Mr Gleeson QC’s discussion during the public hearings as to using alternative venues to barristers’ chambers is important on this point:

*I think - these are really difficult meetings and I’m sure that people feel apprehensive coming to see Senior Counsel, going into the city, going into a barrister’s building, but within I think a*
few minutes of discussions it all becomes about the human beings in the room, and I try during those early minutes to talk about the footy or talk about some small talk so that they are put at ease. My chambers are not particularly barristerial in the sense that there is not many law books on the wall. There is photos of the kids. There is a painting of Peter Daicos on the wall. There is usually something to talk about other than legal matters.

I'm not convinced that something like a serviced office would be better. I think they are pretty sterile. It would be quite inappropriate for me to go to the complainant's house. I think that is far too intimate and personal and not private. So, if you take those other two alternatives out, you are probably left with something like an office in the end. I sit at the table. They sit at the table. If we were to go to a different type of office, it would be a table and a chair.¹

18. Mr Gleeson QC’s evidence was unchallenged, either by cross examination or rebutting evidence.

19. The Commission state, at page 39 of the Case Study 16 Report, “no doubt Mr Gleeson QC will also review his position in light of the evidence given at the public hearing” [emphasis added] as appears in paragraph 4 above. With respect, the Commission has not pointed to any evidence of a complainant

¹ Gleeson T4569: 16-37 (Day 42)
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expressing dissatisfaction of being interviewed in barristers' chambers, with
the possible exception of Paul Hersbach referred to in paragraph 25 below.

20. The Commission considers we should reflect upon the suitability of chambers
for conducting an interview because of "the care with which we [the Royal
Commission] considered this issue when developing the Royal Commission's
practice and the vulnerability of many survivors." One would have expected
no less, but it does not follow that it is therefore inappropriate for us to
interview complainants in chambers.

21. Mr O’Callaghan QC has been informed by a survivor of sexual abuse who
attended an interview with the Royal Commission that the interview took place
in a conference room at the Rydges Hotel in King Street, Melbourne. We
submit that the effect on a complainant of interviewing them in a hotel
conference room would be the same as interviewing them in barristers’
chambers. Regardless of location, he or she would be meeting an
Independent Commissioner to detail a complaint of sexual abuse (typically)
from many years ago. The undoubted strain of recounting those matters to an
Independent Commissioner would not be materially altered whether the
complainant was interviewed in a hotel conference room or in chambers. That
strain would exist in either situation.

22. In terms of other offices, in the first approximate two years of acting as
Independent Commissioner, Mr O’Callaghan QC conducted most interviews in
offices at Optus House on Collins Street, Melbourne. Those offices were
modern and well-furnished. Apart from criticism by one person that the offices
were too opulent, Mr O’Callaghan QC received no complaints as to the
location of the interviews. Nor have either of us had such complaints in respect of our chambers. In Mr O’Callaghan QC’s view there was no difference in the stress suffered by the complainants being interviewed in Optus House or in his chambers.

23. Over the 55 years (Mr O’Callaghan QC) and 25 years (Mr Gleeson QC) that we have practiced as barristers, we have conducted conferences and interviews with persons on innumerable subject matters (other than sexual abuse) of great sensitivity and stress to the person concerned. We recognised then, and we do now, that in many instances the holding of a conference or interview with a person such as a victim of sexual abuse is a stressful experience. That however, is not because of location but of the matters to be dealt with at such a conference or interview.

24. Case Study 16 heard evidence from three complainants of the hundreds that we have interviewed in our chambers.

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26. The other witnesses from Case Study 16, AFA and Mrs Foster, whilst critical of other aspects of The Melbourne Response, did not provide written or oral evidence that they were dissatisfied with being interviewed in Mr O’Callaghan QC’s chambers. Had they been so dissatisfied, it can readily be inferred they would have said so.
27. If the Commission has received testimony from complainants in private sessions that they were intimidated or uncomfortable by being interviewed in chambers then, as a matter of simple procedural fairness, the experience of those victims (appropriately de-identified) should be referred to us, so as to allow a response. That this has not occurred carries its own message.

28. It is for the foregoing reasons, we will continue interviewing complainants of sexual abuse in the manner we have done, since the institution of The Melbourne Response.

Peter O'Callaghan and Jeffery Gleeson
Independent Commissioners
Owen Dixon Chambers West

2 August 2016