

Facing the Truth

Learning from the Past How the Catholic Church in Victoria has Responded to Child Abuse

Fact Sheet 5

What is the role of the independent commissioners?

10 December 2012

The role of the Independent Commissioners in the *Melbourne Response* is to investigate complaints of abuse made against Church persons in the Archdiocese of Melbourne. The Archdiocese has appointed Independent Commissioners to assure complainants and accused that they will be dealt with fairly and independently.

Not only victims but any person who believes that abuse has occurred can bring matters to the attention of a Commissioner.

Prior to 1996 victims could report abuse directly to the police and the courts and could report abuse to the Church itself. Many victims did not want to report the abuse to the police, regardless of whether it amounted to criminal conduct and many did not want to report the abuse directly to the Church.

In 1996 the Archdiocese introduced an independent process, the *Melbourne Response*, to enable victims to have their complaint of abuse dealt with by someone who was not a Bishop, priest or religious, and who had the freedom and responsibility to make independent decisions. The *Melbourne Response* also enables victims of sexual abuse to claim *ex gratia* compensation and to obtain free counselling, thus providing an alternative to legal proceedings.

When the *Melbourne Response* commenced, then Archbishop Pell appointed Peter O'Callaghan QC as the first Independent Commissioner. In July 2012, Archbishop Hart appointed Jeffery Gleeson SC as a second Independent Commissioner.

Victoria Police

The Archdiocese consulted with an Assistant Commissioner of Victoria Police and the Solicitor-General of Victoria when drawing up the terms and conditions of appointment of the Independent Commissioners.

Victoria Police publicly supported both the introduction of the *Melbourne Response* and the appointment of the Independent Commissioner. When revising the terms and conditions of appointment in 2011, the Archdiocese again consulted a Deputy Commissioner of Victoria Police. Victoria Police approved the media statement announcing the revision.

The Independent Commissioners encourage all victims to go to the police, but not all victims want to do so. Many victims come to the *Melbourne Response* after they have been to the police.

Independence

Like public officials, the Independent Commissioners are paid. They are paid by the Archdiocese. This does not undermine their independence.

The fact that judges, magistrates and tribunal members are paid by the State does not prevent them from fairly deciding on cases in which the State is a party. The fact that police are paid by the State does not prevent them from investigating public officials, including other police. The fact that Royal Commissions and Boards of Inquiry are appointed and paid for by governments does not impair their independence to make findings that criticise the government.

The terms and conditions for the appointment of the Independent Commissioners specifically require them to observe the rules of natural justice when enquiring into complaints and reporting to the Archbishop. This obligation includes a duty to enquire into, hear and report matters without bias or the appearance of bias. This means that the very terms upon which the Independent Commissioners are empowered carry a legal requirement that they act independently and impartially, and resolve all issues with a fair and unprejudiced mind. If the Independent Commissioners were to fail to do so, they would be in breach of the terms upon which the Archdiocese has appointed them.

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For more information and support

www.facingthetruth.org.au

The *Melbourne Response*

Ph: (03) 9225 7979

www.cam.org.au/Melbourne-Response

Towards Healing

Ph: 1800 816 030 or (02) 9669 6218

www.catholic.org.au

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Furthermore, as senior members of the Victorian Bar, the Independent Commissioners are regulated by the Victorian Bar's Rules of Conduct, which require them to act professionally and to "act independently", to "recognise and discharge their obligations in relation to the administration of justice" and to act in a way that is "unaffected by personal interest".

It is therefore quite incorrect to suggest that the Independent Commissioners lack independence or that their investigations are "in house". It has been alleged that there is a perceived conflict of interest between the Independent Commissioners' duty to deal impartially with the complaints of the people who come before them, and their private interest as appointees of the Archdiocese. (A perceived conflict of interest exists where it appears that a decision maker's private interests could influence the performance of their duties, regardless of whether this is actually the case.)

Any such allegation is wrong. Any perceived conflict of interest is comprehensively addressed by the terms and conditions of the Independent Commissioners'

appointment, as well as the ethical and professional duties that the Independent Commissioners are bound by pursuant to the Victorian Bar's Rules of Conduct.

The confidence that society places in the professional integrity and competence of members of the Victorian Bar - from which Victorian judicial appointments are usually made - is a key reason that Independent Commissioners are chosen from among Victoria's senior barristers. Their record speaks for itself. Over 97% of complaints made to the Independent Commissioners have been upheld and every recommendation they have made has been followed by successive Archbishops of Melbourne since 1996.

It is also wrong to say that the Independent Commissioners operate under Canon or Church law rather than Australian law. Through Canon law, the Archbishop empowers the Independent Commissioners to interview priests, but the investigation process is a factual investigation as to whether alleged abuse occurred. The Independent Commissioners apply Australian law to this process.