

15 December 2014

Most Reverend William Wright  
Bishop of Maitland-Newcastle  
841 Hunter Street  
Newcastle West NSW 2301

Dear Bishop,

**Formal Advice to the Bishop of Maitland-Newcastle from his  
Independent Advisory Panel regarding Monsignor Allan Hart**

On 24 June 2014 you established a Panel, which came to comprise the undersigned:

*To examine and report on adverse comments made in the Cunneen Report concerning Monsignor Hart.... [a] serving priest in the Diocese, and to advise Bishop William Wright of what further action, if any, ought to be taken in relation to [his] holding of Church offices in the Diocese and [his] continued public ministry.*

On 5 August the Diocese invited submissions from the public with a closing date of 19 August. Seventy two submissions were received, some from multiple respondents.

On 1 October the Panel, having considered the Cunneen Report, the transcript of the evidence of Monsignor Hart, and the submissions received from members of the public, concluded unanimously that Monsignor Hart had a case to answer. We caused a letter to be sent to him on 30 October setting out our preliminary findings and invited him to show cause against their confirmation. Our letter was in the following terms:

*Dear Monsignor Hart,*

*The members of the Advisory Panel established by Bishop Wright to consider your conduct in relation to Father McAlinden in 1993 and before the Special Commission of Inquiry in 2013 have considered the Report of the Commission, the transcript of your evidence before the Commission and the submissions received from the public. Having done so, we have come unanimously to the conclusion that you have a case to answer in relation to your conduct in 1993 after AJ complained to you that she had been sexually abused by Father McAlinden many years before, and your conduct in 2013 when giving evidence during the public hearings of the Commission.*

*The Panel accepts the conclusion of Cunneen SC that your conduct in 1993 following receipt of AJ's complaint did not disclose a prima facie offence under s 316 of the Crimes Act, and the opinion of the Very Reverend Professor Ian Waters that your conduct in 1993 and 2013 did not involve a breach of Canon Law. The Panel also finds that, with one*

*exception, your conduct in 1993 did not involve a breach of the 1992 Protocol issued by the Australian Catholic Bishops' Conference Special Issues Sub-Committee.*

*The Panel notes the findings of Cunneen SC (Overview, vol 1 p. 15, vol 2 paragraphs 12.216-7) that you took "no steps to counsel and encourage either AJ or Bishop Clarke" to report AJ's allegations to the Police, and that AJ would have reported McAlinden "had she received the blessing, support and pastoral care" of clergy, including yourself. The Panel also notes the finding that you should have done both of these things. The Panel further finds that there is material before them which would sustain the conclusion that you were directly involved in arranging for Father McAlinden to leave Australia for the United Kingdom (paragraphs 12.138, 12.160-1, 12.212-3) contrary to Protocol instruction paragraph 8.4 that "the accused must not be aided to escape the jurisdiction".*

*The 1992 Protocol referred to "the high risk of recidivism" (paragraph 13.1) in such cases. This may have required you to do your best to prevent the abuse of other children by urging AJ and Bishop Clarke to report Fr McAlinden to the police. One way to achieve this may have been to object to the proposal that he be funded for travel to the United Kingdom. Instead you may be seen in a sense as "passing by on the other side". The Panel's major concerns relate to your evidence before the Commission and the manner in which it was apparently given as found by Cunneen SC. The Commissioner expressly rejected some of your evidence (paragraphs 12.209, 12.212, 12.220, 20.25). She also found that you gave inconsistent evidence (paragraph 20.22), that you were reluctant to disclose the truth (paragraph 20.22), were not prepared "to give a full and candid account of your knowledge" (paragraph 12.23), that some of your evidence was "misleading", and that you sought "to downplay your participation" (paragraph 20.24). She concluded (paragraph 20.21) that you were "an unsatisfactory and unimpressive witness".*

*The Panel, having read the transcript, and considered the submissions from those members of the public who attended the public hearings when you gave evidence, sees no reason at the moment to disagree with any of those findings. However you have not yet had an opportunity to persuade us to reach a different conclusion on some or all of those findings.*

*The Panel is well aware of the potential injustice of judging conduct in the distant past by the very different standards of the present. Nevertheless, as at present advised, we see no injustice in judging your conduct in the witness box of the Commission in 2013 against contemporary standards in the community. In any event it may be appropriate for the Panel to apply higher standards, those expected by Christ, His Church, and the faithful laity, of a priest and elder of the Church and the Diocese.*

*When the Commission was established Bishop Wright wrote in his pastoral letter of 1 March 2013:*

*"As the Bishop of Maitland-Newcastle, I enjoin any member of our clergy...who has any information that may be relevant to the [Cunneen] enquiry, to come forward... and give them your information."*

*On 13 March 2013 the Bishop spoke to Diocesan clergy on a written presentation which contained the following statements which might be thought relevant:*

*“The Diocese will help the truth to be known by...*

- 1. Demonstrating a complete and genuine commitment to...supporting the Inquiry.*
- 6. Encouraging all members of the Diocese to make themselves available to the...Inquiry.*
- 7. ...We have an opportunity to ‘get it out into the open’...*
- 9. ...Today our Diocese continues to cooperate with the Inquiry.”*

*In his further pastoral letter of 28 June 2013, shortly before the public hearings of the Cunneen Commission were due to begin on 1 July, the Bishop wrote:*

*“I have repeatedly committed the Diocese to co-operating fully with the State Commission, and I renew that undertaking today.”*

*In giving evidence in the public hearings you were, of course, representing yourself. It may also be appropriate for the Panel to see you as also representing the Church, the Diocese, and the other priests in the Diocese and to be seen as such by the laity and the general public. You gave your evidence at a time when the criminal conduct of some priests, and the response of leaders of the Diocese at the time, when they became aware of this conduct, were under intense public scrutiny. The Panel may be entitled to conclude that the Bishop’s wish, or perhaps instruction, for the Diocese to co-operate with the Inquiry in getting to the truth, required any priest giving evidence during public hearings to do so with conspicuous honesty and candour. In an appropriate case this would extend to the public confession of past errors and shortcomings.*

*The findings of the Commission referred to above, unless displaced, would indicate that you failed in these respects when giving evidence in the public sessions. This view is supported by the reaction, reflected in their submissions to the Panel, of those who were present when you gave your evidence.*

*The Panel invites you to show cause against these preliminary views, and to do so in writing sent or delivered to Mr Sean Tynan at Zimmerman Services c/- of the Diocese within 21 days of the date of this letter.*

On 25 November Mr Tynan received the Monsignor’s 20 page response which is an Appendix to this report. His response concluded:

- 99. Due to ongoing and serious ill health, Monsignor Hart has decided to bring forward his retirement, which in the ordinary course would have commenced in February 2015. Bishop Wright has been or shortly will be directly informed of that decision and the retirement may well have taken effect by the time this submission is considered in detail by the IAP.*

100. *His retirement is not, and should not be interpreted as, a concession by Monsignor Hart beyond the terms of this submission."*

On 20 August the Panel was advised by the Very Reverend Professor Ian B Waters that Monsignor Hart, in giving evidence to the Special commission of Enquiry, did not fail to fulfil the canonical obligations of his offices in the Diocese.


Accordingly, if the Panel found that further action by you was appropriate in his case, the most adverse action that could have been recommended would have been that the Monsignor be asked to resign his parish. Since you have given a public undertaking to publish our report, such a recommendation would, in all probability, have made his further public ministry in the parish and Diocese untenable.


We have been advised by Mr Tynan that Monsignor Hart tendered his resignation to you when you met on 3 December. In these circumstances we consider that nothing is to be gained by us now deciding what our recommendation would otherwise have been and giving necessarily lengthy reasons for that recommendation. We therefore recommend that you accept the Monsignor's resignation if you have not already done so.

Yours faithfully:

PANEL MEMBER'S  
NAME WITHHELD

  
Patricia Crennan

  
Ken Handley

  
Terry Lovat

PANEL MEMBER'S  
NAME WITHHELD

  
Christopher de Souza

**APPENDIX TO THE FORMAL ADVICE TO WILLIAM WRIGHT,  
BISHOP OF MAITLAND-NEWCASTLE**

**Submission of Very Rev. Allan Hart  
to the Independent Advisory Panel  
dated 21 November 2014**

21 November 2014

**Private & Confidential**

K R Handley AO OStJ QC  
Chair, Bishop's Independent Advisory Panel  
C/- Mr S Tynan  
Manager  
Zimmerman Services  
841 Hunter Street  
NEWCASTLE WEST NSW 2302

**BY EMAIL ONLY:** [sean.tynan@mn.catholic.org.au](mailto:sean.tynan@mn.catholic.org.au)

Dear Mr Handley

**MONSIGNOR ALLAN HART - SUBMISSIONS**

**Preamble**

1. This is a response to the 'show cause' letter dated 30 October 2014 addressed to Monsignor Alan Hart at Sacred Heart Cathedral Presbytery, Hunter Street, Newcastle. That letter was itself issued under the Terms of Reference (TOR) for the Bishop's Independent Advisory Panel (IAP). As notified to Monsignor Hart, the TOR were as follows:

*"To examine and report on adverse comments made in the Cunneen Report concerning Monsignor Alan Hart and Fr William Burston, two serving priests in the Diocese, and to advise Bishop William Wright of what further action, if any, ought to be taken in relation to their holding of Church offices in the Diocese and their continued public ministry.*

*Handley shall chair any necessary Panel meetings and be the lead author of the Panel's report to Bishop Wright.*

*In examining the material provided by the Diocese, the Panel and Handley may liaise with Bishop Wright and other senior Diocesan representatives as required from time to time. The Panel and Handley will ensure procedural fairness is afforded to Monsignor Hart and Fr Burston in the course of their examination and Report."*

2. Monsignor Hart has a number of quite serious concerns about the processes of the IAP. They will be addressed in these submissions; but as he has always indicated a willingness to participate with the Bishop in this process, he will also seek to address the substantive allegations in the 'show cause' letter.



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### The allegations

3. Monsignor Hart understands from the 'show cause' letter, that the issues upon which he is asked to 'show cause' are as follows:
  - That he acted contrary to paragraph 8.4 of the 1992 protocol issued by the Australian Catholic Bishops' conference special issues subcommittee in that he was directly involved in arranging for Father McAlinden to leave Australia for the United Kingdom contrary to a protocol instruction that "the accused must not be aided to escape the jurisdiction".
  - That he may have acted contrary to the 1992 protocol by:
    - (i) Failing to urge AJ and/or Bishop Clarke to report Father McAlinden to police.
    - (ii) Failing to object to the proposal that Father McAlinden be funded for travel to the United Kingdom.
  - That he gave evidence to the Special Commission which was rejected.
  - That he gave evidence that was inconsistent.
  - That he was reluctant to disclose the truth or to "give a full and candid account of (his) knowledge".
  - That he gave some evidence that was "misleading".
  - That he sought to "downplay (his) participation".
  - That he was an "unsatisfactory and unimpressive witness".
  - That he failed to give evidence with "conspicuous honesty and candour" including by making a "public confession of past errors and shortcomings".
4. If the IAP considers there is some further or other issue that is engaged by the letter dated 30 October 2014, but which Monsignor Hart has not appreciated, he asks that any such further or other matter be specifically identified so that he can properly address it prior to the IAP proceeding any further with its deliberations.

### Issues with Process

#### Towards Healing Protocol

5. This panel is ostensibly created under the terms of the National Committee for Professional Standards "Professional Standards Framework" which is inclusive of the Towards Healing and Integrity in Ministry. It is said that clause 35.8 delineates the obligation placed on the Bishop to establish a consultative panel to advise and to assist the Bishop.<sup>1</sup> In fact, the Towards Healing protocol is almost exclusively directed to receiving and investigating complaints of sexual and other abuse by clergy.

<sup>1</sup> briefing note 23 June 2014 from Mr Tynan to Bishop Wright.

6. That is apparent from the language of clause 38.2 (which requires the Director of Professional Standards to advise a complainant of other options if the complaint is not about 'abuse' as defined); clause 41.1 (which deals with responding to the needs of 'victims'); and clause 42.3 (which deals with the 'risk of further abuse').
7. There is no suggestion that Monsignor Hart is the subject of any complaint of sexual or other abuse. It is therefore curious, at least, that this mechanism has been adopted. If the protocol is in fact observed, the Bishop will ultimately be required to determine the 'guilt' of Monsignor Hart and to deal with his 'victims' [Towards Healing 41.4]. The matters being investigated by the IAP do not fit within this protocol: there is no issue of 'guilt' to be determined and no 'victims' in the sense used in the Protocol. However, the Diocese having chosen to adopt the method it has, it is expected that Monsignor Hart will be afforded the rights that exist under the Protocol, including his right of review.

#### **Briefing paper resolutions not adopted**

8. The briefing note dated 23 June 2014 records the adoption of a recommendation that two papers of advice be obtained, the first being a review of practice standards for the reporting of alleged child sexual assault, inclusive of advice as to whether Monsignor Hart's conduct failed to meet any statutory obligations or church protocols; and the second relating to Canon Law advice as to whether the conduct of Monsignor Hart constituted a failure in fulfilling the terms of his officers in his obligations to the diocese or the church teachings on justice.
9. The second of those papers appears to have been obtained in the form of the Canon Law advice from the Very Rev Prof Ian Waters dated 20 August 2014 which comprises tab 69 in the IAP papers. However the first report has not been obtained. There is certainly a briefing paper from Mr Tynan dated 20 July 2014, comprising Tab 68 of the IAP papers, however it:
  - a. Focuses almost exclusively on the criminal law, rather than dealing with any church protocols; and,
  - b. does not incorporate any advice as to whether Monsignor Hart may have breached any such protocol.

In short, a key recommendation has not been carried out.

#### **Incomplete public submissions**

10. The panel clearly read and took into account submissions from members of the public who attended the public hearings when Monsignor Hart gave evidence in forming preliminary views. The first concern in this regard is that those submissions were not initially provided to Monsignor Hart and only become available to him when he expressly requested them.
11. The second concern is that to Monsignor Hart *actual* knowledge there is at least one other submission from a person who was present during at least part of his public evidence. The submission of that person has not been provided *despite* the express request referred to above. Monsignor Hart knows that this submission is supportive of him, unlike the others. That gives rise to a real concern that there are further or other submissions which have been considered by the IAP but which have not been provided to Monsignor Hart; or alternatively that preliminary views have been formed on the basis of incomplete information provided to the IAP.



12. It gives rise to at least a perception that the processes behind the work of the IAP are biased against Monsignor Hart as only 'damaging' material has been supplied to him and, possibly, to the IAP itself. These matters offend principles of natural justice and basic fairness.

#### **Unannounced changes to Terms of Reference**

13. The TOR as advised to Monsignor Hart have, apparently, subsequently been altered but without notice to him. He only became aware of the variation when reading a letter from Mr Tynan dated 10 November 2014 (itself a response to a request for information and clarifications that should, as a matter of basic fairness, have been volunteered). That letter attached a document described as "guide notes for independent panel" which appears to indicate that the role of the IAP is to determine whether Monsignor Hart's conduct "breaches of the *community's standards* of appropriate conduct for men in positions of religious authority..." (Emphasis added).
14. It is a matter of concern, of itself, that the TOR were altered or expanded without reference to the very person whose conduct is subject to scrutiny; and contrary to Bishop Wright's express assurance that Monsignor Hart would be afforded both fair process and input into the TOR. Further, it is quite unclear what is meant by the expression "community's standards". Monsignor Hart does not know if that is intended to be a form of objective measurement. If it is, is the 'community' referred to the Australian community at large, the community of Catholics, the community of Catholics in the local diocese, or something else? It is difficult, if not impossible, for Monsignor Hart to defend himself by reference to such an undefined and nebulous standard.
15. The amended TOR also specifically requires the IAP to look at whether protocols existed within the diocese; whether Monsignor Hart was aware of them; and whether training etc had been given by the diocese to promote awareness of any such protocols. Leaving aside the fact that the TOR were altered without notice, this is, with respect, a bizarre requirement in circumstances where, as noted earlier, the very recommendation directed to informing the IAP as to whether protocols existed has not been complied with. Absolutely no material has been supplied to Monsignor Hart which might indicate any training occurred concerning the 1992 protocol, or any protocol; or that the diocese took any steps at all to promulgate awareness of it, or them, prior to 1993 or at all.
16. These matters are not "nitpicking". They go to the fundamental assurance of Bishop Wright that Monsignor Hart would be "...assured that you will be afforded to *due process, so you may feel that the process was genuinely transparent and equitable*".<sup>2</sup>
17. It is patently clear that a possible outcome of the IAP report, after it is considered by the Bishop, is that Monsignor Hart may be removed from some or all formal roles within the diocese. It is possible that some restrictions may be imposed on his capacity to celebrate the Eucharist, or other holy offices, either publicly or privately.
18. These are extremely serious consequences. If they were to be imposed consequent upon an inquiry that was itself flawed, that would be unjust and inequitable. The role of the IAP is to assist the Bishop in reaching "*just and equitable outcomes*".<sup>3</sup>

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<sup>2</sup> Bishop Wright to Msgr Hart 26 June 2014.

<sup>3</sup> Bishop Wright to Msgr Hart 26 June 2014

The obvious flaws in the processes associated with the IAP do not assist, either, in Monsignor Hart having confidence he has been afforded due process or that there will be just and equitable outcomes.

19. The flaws in the process would reasonably lead an objective observer to conclude or suspect that the diocese is less concerned with justice and equity and perhaps more concerned with conveying a perception that it has 'acted' against 'wrongdoers' identified by the Special Commission.

### **Substantive Allegations**

#### **Conduct in 1993**

20. It appears from the show cause letter that the principal concern of the IAP, relating to conduct in 1993, is Monsignor Hart's apparently direct involvement in arranging for Father McAlinden to leave Australia contrary to paragraph 8.4 of the '1992 protocol'.<sup>4</sup>

#### **The 1992 Protocol and reporting to Police**

21. Monsignor Hart cannot now recall whether, in 1993, he was even aware of the content of the 1992 protocol. The protocol was apparently published following a plenary meeting in April 1992. As the IAP will observe, it is marked "*strictly confidential*" and "*(for Bishops, Major Superiors and Superiors only)*". Self evidently, Monsignor Hart was not and never has been a Bishop, a major superior or a superior.
22. Even if he was aware of it, the 1992 protocol is directed at governing the conduct of Bishops, major superiors and superiors (only). It is not, in terms, a document governing the conduct of *other* clerics. The only presently relevant explicit obligation on other clerics in the 1992 protocol was that, if they became aware of serious misconduct, they should report to their Bishop (or Major Superior etc), Monsignor Hart, whether aware of the specific content of the 1992 protocol or not, in fact strictly complied with clause 6.4.1 by immediately reporting to the late Bishop Leo Clarke, the complaint he received from AJ concerning alleged sexual abuse of AJ by Father McAlinden<sup>5</sup>.
23. The 1992 protocol establishes, relevantly, that *the Bishop* is the competent ecclesial authority for the investigation of allegations of criminal behaviour made against clerics or religious. It required the competent ecclesial authority to respect the civil law and not obstruct or pervert the process of justice [4.1.2]. It made it mandatory to report alleged criminal behaviour immediately to the Special Issues Resource Group except in the most "serious and extraordinary" circumstances.
24. The 1992 protocol did not make it mandatory for the competent ecclesial authority to report to police, nor to encourage any other person to report to police: including a complainant. It is submitted it would be a very strange proposition indeed, if a cleric could be said to have failed to comply with the protocol (if aware of it) by failing to urge a complainant, or his Bishop, to report a complaint to police; in circumstances where the Church's *own protocol* placed no obligation on the Bishop to do so; and in fact mandated that the Bishop report, instead, to SIRG.

<sup>4</sup> It is inferred no other protocol existed and that Monsignor Hart is not required to address any other protocol or document having regard to the matters in paragraphs 8-9 above.

<sup>5</sup> This is not controversial and was accepted by Commissioner Cunneen and by AJ

**Did Monsignor Hart in fact 'urge' AJ to report?**

25. So far as Monsignor Hart may be required to address a concern that he should have, independently of the 1992 protocol, urged AJ to report to police; notwithstanding it has not been suggested there was any 'general obligation' to do so and no specifics of any such posited 'general obligation' have not been identified; the issue is dealt with here for completeness.
26. It is important the IAG always keep in mind that conduct in 1993 must be measured against the standards and mores of 1993, not 2014. As the IAP has correctly observed, there is a real danger of "...potential injustice of judging conduct in the distant past by the very different standards of the present"<sup>6</sup>. It is emphasised that, although the 1992 protocol had no direct application to him, Monsignor Hart immediately reported AJ's complaint to his Bishop and to Hart's actual knowledge the Bishop took prompt steps to deal with the allegations (by involving Fr Lucas). Monsignor Hart knew a church process had been commenced and he liaised with AJ about it.
27. In the Special Commission, AJ herself, both in her in camera evidence, and through submissions by her counsel Ms Gerace, conceded that Monsignor Hart *in fact* asked her on at least two occasions, or on "various occasions", whether she wished to report to police. Indeed, Ms Gerace in her closing submission (T2515 5-10) positively submitted:

*"There is evidence before this Commission that Monsignor Hart did say to her on a couple of occasions 'what do you want to do? Do you want to go to the police?'"*

28. In fact the evidence before the Special Commission went further than the proposition that AJ was only "asked" to go to the police. Monsignor Hart advised her to do so. He gave evidence in the following terms on 19 July 2013, under examination by counsel assisting:

*"Q. Just turning to your conversation with [AJ], did you tell [AJ] that you were going to take any particular course?"*

*A. No, because she asked me to take it to the Bishop.*

*Q. Alright.*

*A. I asked her to go to the police though."*

(T 1393.13-19)(emphasis added)

Shortly afterwards the following exchange occurred:

*"Q. Do you recollect what she said to you?"*

*A. She didn't give me full explicit details.*

*Q. No, what she said to you in terms of her intention to go to the police or otherwise, I am sorry*

*A. Oh, sorry. I told her to go to the police and she said she didn't want to."*

(T 1393.32-38)(emphasis added)

29. On 23 July 2013 Monsignor Hart, in answer to a question from AJ's counsel Ms Gerace said "***I told her to go to the police at the first meeting***" (emphasis added). Ms Gerace challenged him as to the timing, but not as to the content, of what he said to AJ<sup>7</sup>. Commissioner Cunneen did not reject this evidence. It is consistent with AJ's account.

<sup>6</sup> 'Show cause' letter 30/10/14, p2.

<sup>7</sup> 23/7/13 T 1538.26 (Ms Gerace's complete cross examination is at 23/7/13 T 1538 – 1542)

30. The IAP should conclude that Monsignor Hart in fact urged AJ to report to police (albeit, in the face of her repeated refusal, he did not then persist). At the very least the IAP cannot safely or properly conclude there was as failure to 'urge' AJ to go to police in the face of the evidence.

#### **Significance of AJ's own wishes and capacity to report**

31. There can no doubt whatsoever that AJ was aware in 1993 that it was open to her to report her allegations to police. There can be no doubt whatsoever that Monsignor Hart at least asked her, on a minimum of two occasions, whether she wished to do so (and in fact, he says and the evidence set out above shows, that he *positively* advised or told her to report).
32. AJ expressly indicated that she did not wish her allegations to be reported to police. She gave a similar indication to at least one other person involved in dealing with her complaint, Father Lucas. She was, in 1993, a mature adult. Regardless of the fact that her allegations related to historic child abuse, in 1993 she was well and truly able to make her own decision as to whether, or not, to report to police. She elected not to do so; she expressly told Monsignor Hart that she did not wish to do so, and he honoured her wishes.
33. That proposition was true at the time AJ initially contacted Monsignor Hart and remained true for the entire period when he dealt with her; that is, she was at all relevant times a mature adult able to make her own decision as to whether or not to report to police.
34. Commissioner Cunneen's finding (Volume 2: 12.217) that AJ would have reported her allegation to police had she received the "*blessing, support and pastoral care*" of, amongst others, Monsignor Hart was, it is conceded, strictly open to her based on AJ's evidence<sup>8</sup>. However what the Commissioner does not deal with, in this finding, is whether Monsignor Hart was *aware* of AJ's position in that regard.
35. AJ at no time gave evidence to the effect that she said anything to Monsignor Hart, or did anything that might have led him to believe that, if she had his "*blessing, support and pastoral care*" she may have reported to police. It was never put to Monsignor Hart during the Special Commission (either by Ms Lonergan SC, or by Ms Gerace or at all) that AJ's 'position' was known to him.
36. In circumstances where Monsignor Hart in fact explicitly, and on multiple occasions, raised the issue of reporting to police with a mature adult; was explicitly informed by that adult that she did not wish police informed; and where that adult gave no indication she would or might have adopted a different position if different circumstances pertained, it is respectfully submitted there is no reasonable basis to criticise Monsignor Hart for not 'urging' AJ to report to police.

#### **'Urging' Bishop Clarke**

37. So far as the issue of "encouraging" Bishop Clarke to report to police is concerned; had Monsignor Hart taken such a course in circumstances where he had already been expressly informed that AJ did not wish police to be involved, that would have constituted, it is respectfully submitted, a breach of AJ's trust.

<sup>8</sup> AJ's evidence in this regard would not have been admissible in any civil litigation by reason of Section 3D of the *Civil Liability Act* but, it is accepted, that legislation does not bind the Commissioner.

38. He would have been acting in direct conflict with the expressly stated wishes of a responsible adult then complaining about (and whom, it was subsequently confirmed, was a victim of) child sexual abuse.
39. Had Monsignor Hart 'encouraged' his Bishop to report to police, and a report had been made, any number of unwanted consequences may have occurred for AJ. In terms of engagement with the legal system she would or may have been required to retell, and to re-live, the incident to investigators and, potentially to a Court (where she would, of course, have been liable to be cross examined, perhaps vigorously). The fact of the abuse and the details of it would potentially have entered the public domain contrary to her desires and wishes. Viewed at the level of faith, it may well have caused AJ to lose faith in individual clerics and, potentially, in the Diocese or in the Church as a whole.
40. It is respectfully submitted that it was not reasonably or properly open to Monsignor Hart to 'urge' his Bishop to report the matter to police except with the consent of AJ – consent which she had expressly declined to give.
41. Further, as discussed above in the context of the 1992 Protocol, even the Bishop, apparently, had no mandatory obligation to report to police. The Protocol was a document of the Church, by its Bishops. Had the Bishops thought it was critical that complaints of this kind should universally be reported to police, an obvious question is: why did the Protocol not require mandatory reporting? Any criticism of Monsignor Hart, by the (present) Bishop or by the Diocese, for not 'urging' his Bishop to report to police would frankly be hypocritical when viewed against the failure to the Church's own document to mandate that Bishops report complaints of this kind to police. Further, to the extent the 1992 Protocol required the Bishops to 'respect' the civil law; a reasonable person in Monsignor Hart's position in 1993 would have expected his Bishop to comply with a directive which he (the Bishop) had participated in creating.

#### **McAlinden's relocation to UK and the 1992 protocol**

42. So far as Monsignor Hart's involvement in the arrangements for Father McAlinden's travel to the United Kingdom is concerned, he has *never* disputed a level of involvement. His closing written submissions to the Cunneen Commission made it explicitly clear that he had been involved in facilitating, or attempting to facilitate accommodation arrangements for Father McAlinden in the United Kingdom; that he was aware Father McAlinden's intended destination near Nottingham and indeed, that he had conveyed that information to AJ (see also T 1418.2-8; T 1421.33-34).
43. As is discussed in further detail below, what Monsignor Hart has said consistently, is that he had not been involved in the *decision making process* which resulted in Father McAlinden travelling to the United Kingdom (as distinct from involvement in some of the logistics of that travel). He submitted to the Special Commissioner, and now repeats, that she conflated the issue of the decision making process for McAlinden's travel, with the arrangements for that travel. The Commissioner concluded, wrongly it is submitted, that Monsignor Hart was seeking to distance himself from *any* involvement with McAlinden's relocation when that was not his position nor his evidence.<sup>9</sup>

<sup>9</sup> Public Submissions 11 March 2014.

44. Monsignor Hart has also consistently said that he knew nothing of, and was not involved in the arrangements for, the *acquisition* of Father McAlinden's ticket for travel; and that it would be unusual for such a ticket to have been paid for from the Maitland Clergy Central Fund (albeit he was not a signatory on the cheque account of that fund at the time Father McAlinden's ticket was acquired) (T 1414.33-36; T 1421.45-47; T 1422.5-23).<sup>10</sup>
45. The *decision* to relocate Father McAlinden to the UK was made, presumably, by the late Leo Clarke. It is of course now not possible to determine the precise mechanism by which the decision was made as Bishop Clarke is deceased. Father Lucas, who appears to be the other person principally involved in dealings with Father McAlinden, has only a limited recall of relevant events. However it is not an unreasonable assumption that the ultimate decision making authority was the Bishop since he was the senior clergyman in the Diocese to which Father McAlinden was incardinated and was the competent ecclesial authority under the 1992 Protocol. It is Bishop Clarke to whom AJ's complaint was reported by Monsignor Hart and who, it appears, set steps in motion to investigate the complaint (or at the very least to involve Father Lucas in an attempt to have Father McAlinden cease public ministry).
46. In circumstances where Monsignor Hart may have been unaware of the content of the 1992 protocol and was in any event not bound by it in any relevant sense; was presumably directed by his Bishop to implement a decision made by the Bishop; and as a matter of canon law was not permitted to act contrary to the will of the Bishop<sup>11</sup> it is respectfully submitted there was no breach of the 1992 protocol by Monsignor Hart for failing to object to a 'proposal' for McAlinden's relocation. There is nothing in his conduct associated with arrangements for Father McAlinden's travel to the United Kingdom, in the circumstances that existed in 1993, that is a proper basis for criticism of the Monsignor's conduct.
47. Further and for completeness, the way in which this proposition has been framed for Monsignor Hart to answer is fundamentally flawed. There was no evidence before the Special Commission, and no finding, that Monsignor Hart was aware of any 'proposal'. The proposition is in the category of questions like 'when did you stop beating your wife' as it presupposes facts that do not exist. The evidence at the Special Commission showed that a *decision* to relocate McAlinden had been made by others; and that Monsignor Hart was involved in implementing it. He has never sought to deny the role he played in that regard.
48. It is submitted that Commissioner Cunneen mischaracterised, and misunderstood, the tenor of Monsignor Hart's evidence. The "show cause" letter refers to 3 specific paragraphs in volume 2 of the report, in support of the proposition that Monsignor Hart was "directly involved in arranging for Father McAlinden to leave Australia for the United Kingdom". Those paragraphs are 12.138; 12.160 – 1; 12.212 – 3.
49. The first of those paragraphs relates to AJ's evidence, not Monsignor Hart's, but in answer to questions from counsel assisting, he accepted that that he told AJ, in about February March 1993, that Father McAlinden was to travel to England<sup>12</sup>.

<sup>10</sup> His status as a cheque signatory is significant in the context of the 'public submissions' to the IAP, many of which are demonstrably wrong on this subject.

<sup>11</sup> Report of the Very Reverend Professor Ian B Waters dated 20 August 2014 page 4, footnote 12, and page 5 – 6

<sup>12</sup> 19/7/13 T 1421.35.

50. Commissioner Cunneen criticised Monsignor Hart for having initially “told the Commission that he had no knowledge of when or where McAlinden went in 1993”. (v2 12.159). As the Commissioner ought to have recognised, the question put to Monsignor Hart was “double-barrelled”. Two questions were rolled into one. It is submitted that any fair reading of that part of the transcript (19/7/13 T 1421.16-34) indicates Monsignor Hart initially misunderstood the proposition put to him but, when it was put in a different way, he readily agreed that he had knowledge about where McAlinden was going to go. Commissioner Cunneen chose to characterise this evidence as a concession that had to be ‘wrong’ from the Monsignor when, it is submitted, that was not the position. In an exchange of no more than three or four questions, the Monsignor’s initial misunderstanding was clarified.
51. The reference to paragraph 12.160 – 1 is, with respect, not an accurate summary of Monsignor Hart’s evidence. The paragraph conflates two propositions. The footnote/reference to which the Commissioner refers, only supports the second proposition, namely that it was Monsignor Hart’s evidence that the *decision making* with respect to overseas travel did not involve him. The citation *does not* support the Commissioners conclusion that “*Hart said he had no role in making... plans about what was going to happen with McAlinden*”. Monsignor Hart has always accepted he had involvement in the ‘logistics’ of travel arrangements.
52. The reference in paragraph 12.212 also, with respect, ‘over-reaches’ the effect of the evidence. The fact that Monsignor Hart may have been involved in correspondence concerning overseas arrangements for Father McAlinden does not, of itself, support a conclusion that Monsignor Hart was involved in the decision-making process or that he was part of the “inner circle” (a phrase used by the Commissioner in paragraph 12.212). The Commissioner characterised the sending of draft correspondence, by Monsignor Hart to Father Lucas as indicative of a high level of involvement on the part of Monsignor Hart. In fact, it is submitted, this conduct actually tends to support the reverse proposition: Monsignor Hart, to the extent he was involved, looked either to his Bishop or, in this instance to Father Lucas, as the ‘decision-makers’ with respect to Father McAlinden. Monsignor Hart’s role, as he perceived it, was to implement the decisions made by others.

## Evidence at Special Commission of Enquiry

53. Monsignor Hart must accept, and does accept, that some of the criticisms<sup>13</sup> made of the manner in which he gave evidence, and the content of it, before the Special Commission were open to Commissioner Cunneen. His submissions in relation to the draft report of the Commissioner<sup>14</sup> made precisely the same concession. He submits it was not then, and has never been his intention either to mislead the Commission or to give other than a full and truthful account, to the best of his memory. To the extent his evidence was (without any intention to do so) misleading or unsatisfactory, it is a matter of deep regret to him.
54. Although the individual allegations and conclusions are dealt with in greater detail below, the fact is that Monsignor Hart was unsettled and flustered in the course of giving his evidence and in simple terms, he 'panicked' in the witness box. He did not properly attend to or consider several of the questions that were put to him and, consequently gave answers that were, or at least appeared to be, unhelpful or misleading.

<sup>13</sup> But not all of the criticisms, for the reasons further explained in this document

<sup>14</sup> Submissions 11 March 2014 paras 17 – 26 as follows:

### **Demeanour and Credit**

- 17 It must be acknowledged that Hart's evidence at times was problematic. He was admonished at least once by Senior Counsel assisting the Commission for responding before question had been completed. He was also questioned by Senior Counsel for apparently 'resisting' certain questions. His manner was also, at least on occasion, quite abrupt and his answers were not always entirely responsive to question put to him. He had occasional difficulty in immediately comprehending questions put to him – even, to lawyers, quite simple questions
- 18 However it is submitted that Hart did not seek to 'hide' his involvement in the matters involving AJ and AL. It is true that he gave inconsistent evidence on some topics – notably the degree of interaction with Bishop Clarke about McAlinden's behaviour. However when Senior Counsel assisting drew the inconsistencies to his attention, he invariably made appropriate concessions once he had addressed his mind directly to the problem. Moreover, it was not a case of making concessions only on issues where, for example, the existence of a document meant a concession could not be avoided – see for example para 25 below.
- 19 It is submitted that although on some topics he initially gave ill considered and/or hasty responses, he was not in fact seeking to minimise or avoid his role. Once he was focussed on a particular topic or issue he generally did his best, having regard to the passage of time, to accurately remember the events that had occurred and his involvement in those events. He did not 'stand behind' a claim to be unable to recall events.
- 20 It is submitted that, rather than characterising his evidence as that of a person seeking to minimise involvement or distance themselves; it would be appropriate to characterise Hart's evidence, overall, as a patchy (which is understandable given the time since the events in which he was involved, occurred) but genuine effort to recall and to assist the Commission. This is developed further in the submissions relating to excerpt C6(ii).
- Excerpt C6(ii)**
- 21 This excerpt deals primarily with the role of Archbishop Phillip Wilson, but makes brief reference to interactions between Wilson and Hart.
- 22 It is submitted paragraph C6.273 should be reworded to make absolutely clear that it was Wilson, not Hart, who been asked to go to Cassilis to investigate complaints about McAlinden. It would be unfortunate if later ill informed commentary on this issue resulted in any suggestion that Hart was involved in any actual enquiry into allegations against McAlinden.<sup>14</sup>
- 23 The Commission accepts Hart's evidence on the fact of, and content of, the 'handover' meeting in preference to that of Wilson, who had no relevant recollection (c6.275). One basis for preferring Hart's version is that it was evidence against interest. It is submitted that this is a relevant matter on the issue of whether or not Hart tried to minimise his knowledge of matters to do with McAlinden.
- 24 It is submitted that the fact that Hart was prepared to give evidence against interest is indicative of a witness who was not trying to distance himself from knowledge or involvement.
- 25 On a fair reading of Hart's evidence (in camera 14/8/13) T3.29 – T11.10; he not only answered Ms Lonergan SC's questions about the content of the 'handover' meeting as best he could, even against interest; he was able to volunteer information relating to correspondence from John Hatton MP, after his memory had been "moved" (in camera 14/8/13) T10.45. 9.34-T9.
- 26 That is not, it is submitted, the conduct of a witness trying to distance himself from relevant knowledge. Rather, it is consistent with a witness trying to recall events which occurred over 20 years prior to giving evidence; remembering imperfectly and incompletely; but still doing the best he could to assist the Commission.



55. It is submitted the IAP should take account of the fact that Monsignor Hart is not a 'professional' witness (such as a Police officer) and the process of the Commission was a strange and unusual experience for him. That of course can be said of most, if not all, of the witnesses who appeared, but the experience of giving evidence as a witness affects different individuals in different ways. It is, or can be a stressful and worrying experience.
56. It is recognised that the submissions in the preceding three paragraphs might be seen as a post facto attempt to explain away conduct that is otherwise objectionable; and as self serving and unverifiable. However, by way of seeking to persuade the IAP that his position is genuine and accurate, Monsignor Hart points to the following factors:
- 56.1.1 In the course of providing instructions to his own legal representatives prior to giving evidence, he gave detailed instructions concerning matters such as his dealings with AJ; his knowledge of and involvement in McAlinden being confronted with AJ's allegations and, subsequently, being relocated to the United Kingdom. In the course of providing those instructions the Monsignor indicated (in contrast to the evidence he later gave to the Commission) that he had *in fact* been involved in a number of discussions with Bishop Clarke concerning allegations that McAlinden had sexually abused children (one of the criticisms made by Commissioner Cunneen at paragraph 20.22 of volume 2 of her final report). Further, he gave instructions that he had acquired knowledge of allegations that had been made about Father McAlinden's conduct at Merriwa parish (although not at any other parish) at or about the time he was appointed as vicar general of the Diocese. (Commissioner Cunneen found, at V2 20.23 that Monsignor Hart had attempted to present as having little or no knowledge of allegations of prior offending conduct by Father McAlinden.)
- 56.1.2 It is submitted that the fact that Monsignor Hart gave substantially more detailed instructions as to his involvement with AJ and McAlinden, than appeared from his later evidence in the Commission, is inconsistent with any deliberate attempt to mislead or conceal. Logically, if he had intended to mislead or conceal, there was no reason why he would, in effect, put his own lawyers in a position where they would become aware that the evidence he gave before the Commission was inconsistent with his (more detailed) instructions. A far safer course for a person who intended to conceal matters, or 'misdirect' an enquiry, would be to not disclose the 'true' position to anyone *at all*.
- 56.1.3 To the extent it might be thought an explanation is found in the doctrine of client legal privilege, it is submitted that, at least in relation to matters of legal process, Monsignor Hart is not a sophisticated individual. He certainly had no appreciation of the probability that any actual or apparent conflict between his evidence, and his instructions to his lawyers, could not have been disclosed.
- 56.2.1 Secondly, Monsignor Hart was required to give evidence in two private hearings of the Special Commission, several months before the evidence he gave on 19 and 23 July 2013.<sup>15</sup>

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<sup>15</sup> He was not represented by his current lawyers at those times but rather, by the Diocesan legal 'team'. The nature and content of this evidence is therefore known to the Diocese.

- 56.2.2 The evidence given on those occasions poses a particular problem: as the IAP may well appreciate, that evidence has never been published on transcript and is otherwise subject to a non publication order under Section 8 of the *Special Commissions of Enquiry Act*. Monsignor Hart is therefore legally prevented from referring to the specific evidence that he gave, for the purpose of this panel.
- 56.2.3 That said, it is submitted his private evidence was consistent with the instructions referred to in the preceding paragraph and, in some respects, was even more detailed than those instructions. Indeed, the evidence given at the private hearing, it appears, assisted Ms Lonergan SC, (counsel assisting the Special Commission) to prepare her primary examination of Monsignor Hart for the purpose of his public evidence. That is, her public questions were prepared with an *expectation* that certain answers would be given<sup>16</sup>.
- 56.2.4 Further, certain matters were *volunteered* to the Commission during the first private hearing; including an offer that Monsignor Hart would search for and endeavour to locate certain documents associated with McAlinden's travel to the United Kingdom in 1993. Those documents were in fact located by him; were in fact supplied by him to the Commission and were ultimately tendered in evidence.
- 56.2.5 It is submitted that the content of Monsignor Hart's private evidence, albeit it cannot be referred to in any specific way, and the fact that he volunteered to search for documents that were ultimately relied upon by the Commission, is not consistent with the conduct of a person seeking to deliberately mislead or to conceal his involvement.
- 56.2.6 In addition, in his evidence on 14 August 2013 Monsignor Hart gave evidence against interest in relation to his involvement with Father McAlinden. This is referred to in his submissions to the Special Commission extracted at footnote [14]. Those submissions are repeated for the IAP.
57. Monsignor Hart accepts that none of these matters wholly excuses or justifies the manner in which he gave his public evidence. It does, however, provide both context and some explanation so far as any question of 'intent' is concerned. It is submitted that he did not deliberately give inconsistent evidence, or seek not to disclose the truth, or not to give a candid account of his knowledge or involvement in matters associated with AJ's complaint, or his dealings with or about McAlinden.
58. Whilst Monsignor Hart concedes that, at least on occasion, he did not properly address his mind to questions being posed to him during the public hearing, it is also respectfully submitted that the IAP would take account of the fact that many of the questions or issues put to the Monsignor related to matters of fine detail and to events that occurred more than 20 years prior to the date of the public hearing.

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<sup>16</sup> [As a private observation of the author, who was present for all Monsignor Hart's public evidence, Ms Lonergan was in fact quite obviously surprised when certain answers, for example with respect to conversations between Monsignor Hart and Bishop Clarke about McAlinden, were given by Monsignor Hart to her questions. She was clearly not expecting a response, initially, that no such conversations had occurred. This is not apparent simply from reading the transcript.]

### **Rejecting Evidence**

59. In so far as Commissioner Cunneen rejected some of Monsignor Hart's evidence, it is submitted that the acceptance or rejection of the evidence of different witnesses is so commonplace in any form of hearing or enquiry as almost not to warrant comment. The fact that a judicial officer prefers the account of one witness to another is not, it is respectfully submitted, a matter that carries any 'moral' weight.
60. A witness whose evidence is rejected may still honestly and genuinely believe their account is correct; but the judicial officer might conclude that a competing account is more persuasive - for example because there is a higher degree of corroboration. So far as this panel is concerned it is submitted that this is a factor which should be accorded little weight, of itself.
61. To the extent the Commissioner rejected Monsignor Hart's evidence based on a view that he was trying to 'distance' himself from involvement, it is submitted for the reasons given elsewhere in this document, that the Commissioner's view was at least in some respects incorrectly formed based on a misunderstanding of the evidence (see for example the discussion of 'misleading evidence' below) or was formed in the absence of evidence that would have assisted Monsignor Hart and which the Diocese ought to have made available (see discussion of the 'Vicar General' issue, below).

### **Unsatisfactory and unimpressive**

62. In relation to Commissioner Cunneen's finding that Monsignor Hart was "an unsatisfactory and unimpressive witness", Monsignor Hart must accept, and does accept, that his presentation as a witness justified that conclusion in some respects. He repeats, however, that it was not his intention, and that he deeply regrets that the manner in which he gave his evidence, or some of it, ultimately led to that finding.
63. For abundant caution, it is submitted that there were many respects in which Monsignor Hart's evidence was entirely satisfactory.

### **Inconsistent evidence**

64. The finding, referred to by the Commissioner (at v2 para 20.2), relates specifically to Monsignor Hart's evidence about whether or not he had had discussions with Bishop Clarke about the allegations of sexual abuse that had been made against Father McAlinden. Whilst the Commissioner's finding that Monsignor Hart initially denied any such discussion cannot be challenged, Monsignor Hart apparently had a subjective misunderstanding of the question originally put to him which resulted in an inaccurate answer (the denial) being given to Counsel assisting. When the inconsistency in Monsignor Hart evidence became apparent, the inconsistency was squarely put to him and he replied to the effect that he had interpreted the earlier question as relating to a different, and later, point in time. (19/7/13 T 1389.6-17).
65. Objectively, there is little doubt that Ms Lonergan's initial question was unambiguous. It is a question a disinterested observer would have expected that Monsignor Hart to have been able to answer, accurately, in the first instance. He accepts that he did not do so. However the IAP is asked to take into account what appears to be a subjective, but genuine, misunderstanding on his part.

### **Misleading evidence**

66. This finding by the Commissioner appears principally to be founded on her view that Monsignor Hart sought to downplay the "*true extent of his involvement in managing the allegations against McAlinden*" (v2 20.24) (emphasis added). These submissions have already dealt with that issue above, and it is not proposed to repeat in detail what has already been said.
67. However for completeness, the short position is that Monsignor Hart has never denied involvement in the arrangements for McAlinden's departure to the United Kingdom; only in the decision-making process and the funding arrangements. The Commissioner has conflated the two concepts, as the quote subject to emphasis above demonstrates. Further, the Commissioner's view was clearly informed by her conclusion that Monsignor Hart sought to draw a distinction between his role as administrator, and his role as vicar-general, which did not exist (although the report of Professor Ian Waters, which was not available to the Commissioner, makes it abundantly clear that the distinction was a very real one indeed, as is discussed below).

### **Honesty & Candour/Confession of past shortcomings**

68. This issue is one raised by the IAP itself and does not flow directly from a finding of the Special Commission. In relation to the issue of honesty and candour or, Monsignor Hart repeats what was said earlier, to the effect that he accepts at least some of his evidence gave rise to an impression that he was not being wholly frank about his role; but that it was never his intention to do so.
69. As to the issue of "past shortcomings" is respectfully submitted that this is inextricably tied up with the earlier analysis of Monsignor Hart's actual conduct in 1993. For the reasons already given, his conduct in 1993, measured against the applicable standards in 1993 cannot fairly be criticised. Whilst a quite different approach may have been adopted if AJ had come to Monsignor Hart in 2013, the proper approach is to look at the events that unfolded, at the time they unfolded.
70. On that basis, it is submitted that there were no "past shortcomings" to which Monsignor Hart should have confessed: he received a complaint from AJ and he immediately reported the complaint to his bishop. That is what was required of him under the 1992 protocol. In addition, he at least asked AJ if she wished to report to police and, on his evidence, actually advised her to report to police. That goes beyond what was required of him under the 1992 protocol. He continued to be a point of pastoral liaison with AJ. AJ has acknowledged that, in contrast with other church officials, she considered Monsignor Hart to have been compassionate and sympathetic. To Monsignor Hart's knowledge and belief, the complaint was being actioned by Bishop Clarke, in conjunction with Father Lucas.

### **Distinction Between Vicar General and Administrator**

71. A matter of concern to Monsignor Hart, and which is relevant to the adverse impression which Commissioner Cunneen formed of him, is an aspect of the content of the report of canon lawyer, the Very Reverend Professor Ian Waters. It forms tab 69 of the materials before the IAP.
72. It concludes, as the IAP would know, that Monsignor Hart has no case to answer in canon law.

73. However it also sets out, in some detail, the distinction between the role of a vicar general and the role of a parochial administrator in a mensal parish. It also sets out that from Professor Waters' personal knowledge of the late Bishop Clarke, it is 'very likely' that the late Bishop Clarke did not consult with, or seek confidential advice from Monsignor Hart (report page 3 and footnote 8). The report expresses a strong opinion that neither a vicar general nor a parochial administrator can act contrary to the mind and will of his Bishop.
74. Commissioner Cunneen found there was no real distinction between Monsignor Hart's role as vicar general and his role as "administrator" (as the function is described in the final report); and that in seeking to draw the distinction, Monsignor Hart was endeavouring to distance himself from involvement. It is a matter of concern to the Monsignor that the Diocese, which is presumed to have a proper understanding of its structure and of the role of various officials within it, did not seek to adduce evidence of this kind before the Commission itself. Had it done so, it is submitted, there is a very real prospect that Commissioner Cunneen's ultimate criticism of Monsignor Hart for seeking to draw a 'non existent' distinction, would not have been made.
75. She felt it was an aspect of Monsignor Hart trying to 'distance' himself from responsibility. This finding self evidently affected the Commissioner's assessment of Monsignor Hart's evidence as a whole.
76. Monsignor Hart is not a cannon lawyer and has very limited training or understanding of it. The matters in Professor Waters' report are not matters he would independently have been aware of. At one level, at least, it is submitted the Diocese, by failing to commission or tender to the Special Commission, a report of the kind now before the IAP, failed to properly assist the Monsignor to present his position before the Commission and caused or contributed to at least one of the adverse findings made against the Monsignor and which he is now required to show cause for.

### **Briefing Papers**

77. It is not proposed to address the briefing paper dated 20 July 2014 comprising tab 68 of the panel material in any detail. It appears to have been created in accordance with the briefing note dated 23 June 2014 referred to earlier; but he does not fulfil two critical purposes of the advice paper recommended by that briefing note; namely it does not identify or comment on the existence of nature and extent of any applicable church protocols; and it provides no advice to the IAP as to whether Monsignor Hart may have breached such protocols as existed.
78. In fact, it is submitted, this briefing paper has no true relevance to the IAP's deliberations. As was eloquently put by Mr Giles SC, on behalf of and on the instructions of the Diocese, to Commissioner Cunneen, it is not the function of the Commission (or of this panel) to make findings based on general assertions or on "the vibe"<sup>17</sup>. Conclusions must be drawn on the basis of evidence. A generalised document about changed practices in relation to various matters associated with child sexual abuse is not "evidence" and should be disregarded or accorded little weight.

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<sup>17</sup> 25/9/13 T 2559.40 – 2560.5.

79. The briefing paper dated 30 August 2014 at tab 70 of the panel material should certainly be disregarded in its entirety. It is submitted that a 'measure' of the kind referred to in that paper cannot possibly be regarded as even remotely persuasive evidence for the proposition that anything that was done, or not done, by Monsignor Hart (or his evidence) has "caused" a change in behaviour by parishioners.
80. The briefing paper asserts, but provides absolutely no rationale for, the proposition that "*the use of first collection returns for each parish is a reliable, independent measure*". Such an assertion is plainly wrong if it is said to measure the impact of Monsignor Hart's evidence or conduct. The data measures only the variation in the dollar amounts received. It says nothing at all about the cause of any variation. There are innumerable variables that might impact on collection returns.
81. Further, it defies logic, and is patently unfair to Monsignor Hart, to seek to correlate any variation in first collection returns, to him *personally*. Even if, which is not accepted, a variation in the collection returns is the consequence of the final report of the Cunneen Commission itself, it is impossible to 'tease out' any impact associated with the evidence or conduct of Monsignor Hart personally, as opposed to other criticisms of the Church, the Diocese, or individual clergy that are referred to in the report.
82. If further reason for wholly rejecting this briefing paper is required, it is submitted that what was measured is obviously inaccurate: measurements were taken for the parishes of Broadmeadow, Hamilton, Newcastle and Tighes Hill. Monsignor Hart, at relevant times, also celebrated Mass at Merewether and Newcastle churches and they have not been measured. Finally, all that has been provided to the panel is a summary. The raw data is not included in the material and therefore cannot be independently checked or tested. It is a fatal flaw of due process.
83. The panel should wholly disregard this briefing note as being irrelevant.

#### **Public Submissions**

84. Six submissions have been provided to Monsignor Hart and, as noted earlier, only when they had been expressly requested. It is assumed that the redacted versions supplied to him are identical to what has been provided to the IAP – if not that would be another failure of process.
85. All of them are, in broad overview, in unflattering terms either of Monsignor Hart personally, or of 'the church'. They broadly fall into two categories: submissions citing no illustration at all of the complaints or 'impressions' of the author; or submissions which mis-describe or misrepresent the evidence cited in support of the complaints or 'impressions'.
86. Submission 13 comprises a single un-redacted paragraph. It identifies no specific criticism of Monsignor Hart, or indeed of any cleric. Submission 15 baldly asserts Monsignor Hart put self interest before truth; without citing a single proposition in support. Submission 19 complains, in essence of a lack of 'detail' or 'empathy'. Again, no single example is given. The author expresses an opinion that evidence given was 'unbelievable' however, as the apparent rationale for that view is redacted in the document supplied to Monsignor Hart; the necessary inference is that it pertains to persons *other than* him. If this is incorrect, the failure to supply this part of the submission is a further failure of process.

87. Submission 23 is more detailed, however it is patently inaccurate in many respects. It claims or infers that Monsignor Hart 'claimed' (contrary to the fact) to have reported information to his superiors. As is clear, he actually reported AJ's complaints, promptly, to Bishop Clarke. It asserts Monsignor Hart claimed to have 'abrogated responsibility'. No such claim has ever been made by Monsignor Hart. It asserts it was 'common knowledge' that Monsignor Hart was Bishop Clarke's 'right hand man', without in any way attempting to verify the assertion or to relate it to any relevant evidence (and the claim is clearly absurd for the period prior to 1993 when Bishop Clarke had other Vicars General) .
88. It asserts Monsignor Hart 'approved and signed' cheques for McAlinden's travel when this was clearly not so, and no such finding was ever made. It asserts Monsignor Hart played a 'prominent role' in 'protecting (McAlinden) from apprehension'. This is not only *not* what the evidence disclosed, it is a statement which, if made outside this enquiry would be actionable in defamation.
89. Submission 38 repeats the (untrue) assertion that Monsignor Hart signed cheques for McAlinden's overseas travel. It wrongly asserts Monsignor Hart knew, 'by McAlinden's own admission', that he (McAlinden) had sexually abused a child. It is clear on the evidence that if any admission was made, it was made to Father Lucas, not to Monsignor Hart. It wrongly asserts Monsignor Hart tried to 'deny any wrongdoing'. This mischaracterises and misrepresents Monsignor Hart's evidence, as has been set out in detail above. It seeks to claim, or infer, that because Monsignor Hart was Bishop Clarke's 'right hand man' 'for many years' he must have had knowledge about McAlinden greater than that to which Hart deposed. That is not a proposition that has any support in evidence or findings at the Commission. It is a swingeing and impermissible generalisation. It is also, incidentally, contrary to the view expressed by the very Reverend Ian Waters, that Bishop Clarke was unlikely to have 'shared' knowledge.
90. Submission 40 says nothing at all about Monsignor Hart and indeed it is not apparent the author was even present for his evidence.
91. The IAP should accord no weight at all to the six submissions. To the extent they are included in the papers as being indicative of 'community standards' they are clearly so unreliable or lacking in evidential support for claims made that they could not be said to be representative of a fair minded view, regardless of what constitutes the 'community'.

## Summary

92. It is Monsignor Hart's position that he did not act contrary to the 1992 protocol in relation to any of his dealings concerning Father McAlinden in 1993. Further that his conduct generally in relation to AJ's complaint was not only consistent with, but strictly complied with the protocol and with what appears to have been common practice with respect to allegations of sexual abuse at about that time. There is a grave danger of considering past events through the lens of present standards and the IAP should not fall into the error of doing so with respect to Monsignor Hart.

93. Monsignor Hart concedes and regrets that some of his evidence before the Special Commission was unsatisfactory. He says, however, that it was never his intention to give other than a full and candid account to the Special Commission; and that although there are instances where he initially rejected or denied propositions, it was universally the case that, when those propositions were approached and/or put to him in a different way he accepted them (which might possibly be seen in contrast to other church officials who maintained denials, or loss of memory).
94. Further, he says that whilst Commissioner Cunneen exercised her undoubted prerogative to form assessments of witnesses, including Monsignor Hart, he believes that in several respects she has mischaracterised his evidence or misunderstood the true state of affairs (for example in relation to the distinction between his role as administrator and his specific role as vicar-general to Bishop Leo Clark) and that this has resulted in at least some adverse findings which should not have been made. The diocese played its part, by omission, in the impression the Commissioner formed.
95. It is submitted the IAP's advice to Bishop should be to the effect that, with respect to his conduct in 1993, Monsignor Hart has satisfactorily answered the case set out in the letter of 30 October 2014.
96. It is submitted the IAP's advice to Bishop, with respect to his evidence at the special commission, should be to the effect that although the Monsignor's evidence was unsatisfactory in some respects: –
  - a. the Bishop should be satisfied there was no intent on the part of Monsignor Hart to mislead the Special Commission or to conceal his actual role in relation to Father McAlinden,
  - b. a significant factor in the adverse impression formed by the Special Commissioner was her misunderstanding of the true distinction between the role of administrator, and the role of the general to Bishop Leo Clark (a misunderstanding which the diocese could readily have assisted to dispel, had it tendered Canon Law advice of the kind now available to the IAP from Prof Ian Waters),
  - c. that despite the admitted failings by Monsignor Hart in relation to his evidence before the Special Commission, no further or other action should be taken in relation to the Monsignor, by Bishop Wright.
97. It is submitted there have been real failings of fairness and equity to Monsignor Hart in the IAP process. It is stressed that this is not intended as a criticism of the members of the IAP itself but rather of how the Bishop's decision has been communicated and implemented. Despite those grave concerns Monsignor Hart has fully cooperated, and has done his best to address the issues upon which he has been asked to show cause.
98. It is submitted that the Bishop would fall into grave error in disciplining or sanctioning Monsignor Hart. There is undoubtedly a 'clamour' in some sections of the media and in the diocese for the Bishop to do so; but this should be resisted. Monsignor Hart has already suffered a significant penalty by reason of the adverse findings made by Commissioner Cunneen – some of which, it is submitted, ought not to have been made on a proper understanding of the evidence and/or resulted in part from failings by the Diocese itself in the conduct of the Special Commission. The just and equitable outcome of this diocesan process is to take no further steps in relation to the Monsignor – regardless of 'public opinion' which, as the public submissions received by the IOP clearly show, is largely uninformed and inaccurate.

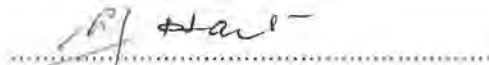


99. Due to ongoing and serious ill health, Monsignor Hart has decided to bring forward his retirement, which in the ordinary course would have commenced in February 2015. Bishop Wright has been or shortly will be directly informed of that decision and the retirement may well have taken effect by the time this submission is considered in detail by the IAP.
100. His retirement is not, and should not be interpreted as, a concession by Monsignor Hart beyond the terms of this submission.

DATED 21 November 2014



**Tony Cavanagh**  
Solicitor for Monsignor Alan Hart



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**Monsignor Allan Hart**