



SPARK AND CANNON

**TRANSCRIPT
OF PROCEEDINGS**

Telephone:

Adelaide	(08) 8110 8999
Hobart	(03) 6220 3000
Melbourne	(03) 9248 5678
Perth	(08) 6210 9999
Sydney	(02) 9217 0999

PROTECTING VICTORIA'S VULNERABLE CHILDREN INQUIRY

THE HON P. D. CUMMINS, Chair
PROF D. SCOTT OAM
MR W. SCALES AO

MORWELL

10.08 AM, WEDNESDAY, 8 JUNE 2011

huge catastrophes.

5 There's a lot to be said for the old busy-nosed grandpa around what's a name
that went in there and actually did something quietly. A lot, you know. But
when you've got a whole stack of people arriving and the police arriving at the
front doorstep and all the rest of it, and the children today are about 10 times in
10 front of where we were at the same age, you can't expect them not to notice,
you know. Children today are bright because they have everything in front of
them from - well, they put them in front of the telly in their bassinets. They're
learning from day one and unfortunately they're learning a lot of wrong things
in a lot of cases and they take on a lot more than we believe.

15 MR CUMMINS: Gerald, you've given a lot of thought for this and you've
presented it very clearly, so thank you very much for that and we've recorded
what you've said and we'll take that away and work on it, so thank you for
coming forward very much.

MR LAWS: Thank you. Thank you for the time.

20 MR CUMMINS: Next, we'd be pleased to invite Mr Steven Unthank to come
forward. Steven, just take a seat, settle yourself in and we'll be very pleased to
hear you. Steven, you take it in the sequence that's convenient to you.

25 MR UNTHANK: Thank you, Mr Chairman. Just at the outset, I wish to make
a reference to the guidelines for making verbal submissions, and it mentions
the Inquiry is not about reviewing individual cases or organisations, it's
forward looking rather than looking back to allocate liability or blame, and it is
about reviewing the service system as a whole and focused on seeking
30 solutions for future, so that is what my submission's about. Even though there
are some organisations that are identified in the documents, it's not my
intention to bring out those organisations, but rather the system that has been
put in place that has resulted in me making this submission today.

35 MR CUMMINS: We follow that. Thank you.

MR UNTHANK: This morning I met with the senior registrar of the Latrobe
Valley Magistrates' Court to confirm that the organisation that is referred to in
the documents is not in any way going to interfere with this submission, so I
was assured that that is before the chief magistrate now so I'm okay to make a
40 submission regarding the process.

45 Firstly, this is about the Working With Children Check system. This month
concludes the five-year intake of organisations regarding compliance with the
Working With Children laws. The Working With Children Act 2005 states in
section 1(1):

5 *The main purpose of this act is to assist in protecting children from sexual or physical harm by ensuring that people who work with or care for them have their suitability to do so checked by a government body.*

10 As of the latest statistics, over 730,000 Victorian adults have complied with the Working With Children laws. Unfortunately, there's one organisation that isn't complying with the Working With Children laws for some 600 employees and agents in teaching, child minding, child services and this has been ongoing for the last entire three years that the Working With Children laws have been in place for religious organisations.

15 On the recommendation of the Honourable Frank Maguire, Member for Broadmeadows - that's why I'm here, he recommended I appear before this Panel - the documents in front of you contain a letter from the attorney-general which was issued last month and it was addressed to Mr James Merlino MP, State Member for Monbulk, who is the opposition police minister. He was the police minister during the process of this matter, so he's taken the initiative to try and fix up some oversights from his previous department, which is actually commendable.

20 The letter reads:

25 *Re Working With Children Check. The Department of Justice takes Mr Unthank's allegations seriously and has dealt directly with both Mr Unthank and the name of the religious organisation on a number of occasions. Mr Unthank first wrote to the department alleging breaches of the act by the organisation in July 2008. The department responded by referring Mr Unthank to the Sexual Offences and Child Abuse Unit of Victoria Police, emphasising the importance that he report his allegations to the police. Correspondence was also sent at this time to the management of the religious organisation in Australia, informing them of their obligations under the act. Ministers or elders within this religious organisation aren't required to undergo a Working With Children Check under section 9(3)(i) of the act, religious organisations, if their work satisfies the definition of child-related work under section 9(1) of the act. The department has written to the management of the religious organisation in Australia on a number of occasions, most recently in November 2010, informing them of their obligations under the act and offering to meet and conduct information sessions for their staff and ministers. Victoria Police have responsibility for investigations and enforcement of the act.*

30
35
40
45

In the last three years that I've been working on this particular case, it involves 2500 children. Each child receives ongoing internal ministry advice from church leaders and senior church elders and local church elders, who all have been instructed by the organisation not to comply with the Working With Children laws. This is actually a tragedy as it places these children at heightened vulnerable risk because the Working With Children laws were set up to stop convicted sex offenders, convicted murderers, convicted child rapists, convicted drug dealers from having easy access to children, and this particular organisation does not want to have to comply with preventing convicted drug dealers, child molesters from having access within the organisation. So over the last three years I've dealt with all departments within the Victorian Government, Department of Human Services, Department of Justice, Victoria Police, the attorney-general's office. It's been a merry-go-round. From day one they still have not been able to get this organisation to comply and it's being handballed around and around in circles.

On 15 August I received a letter from the Department of Justice that said - it is referred to in the documents:

Thank you for your email of 30 July 2008 to the attorney-general highlighting alleged breaches of the Working With Children Act (the Act). If you believe that criminal offences have occurred, then the Victoria Police SOCA unit is the most appropriate body to investigate the complaint.

So following that advice a complaint was lodged with the Victoria Police SOCA unit. Nothing happened. Another complaint was lodged and I had a meeting with a number of detectives from the CIU and they said they would look into the matter and then it was stopped. So, therefore, I wrote to the newly appointed Chief Commissioner of Police to bring him up-to-date on the matter and received a letter from the chief commissioner's office, which is dated 10 March 2009:

Dear Mr Unthank, I write on behalf of the chief commissioner to acknowledge receipt of your correspondence regarding alleged breaches of the Working With Children Act 2005.

A few weeks later I received a letter from the assistant commissioner crime dated 27 March 2009:

Dear Mr Unthank, I refer to your letter received by Victoria Police regarding alleged breaches of the Working With Children Act 2005. The matters that you have raised have been assessed by members of the crime department. I am advised that the matter you raise in relation to the alleged breaches of the Working With

Children Act 2005 are presently under consideration by the Department of Justice.

5 And since that time I've now dealt with two assistant commissioners of crime and we've got a third acting assistant commissioner now, so through all of those there's been no response regarding that. Then on further advice an information was sent to the child safety commissioner and received a letter of reply on 29 June 2009:

10 *Dear Mr Unthank, thank you for your letter dated 9 June 2009 and the materials enclosed with it detailing your concerns that the church has failed to comply with the requirements of the Working With Children Act 2005. My staff have contacted the Department of Justice's Working With Children Check unit and Victoria Police,*
15 *seeking more information about the concerns you have raised. I expect to receive further information from these organisations over the next few weeks and will write to you again at that time. Thank you for bringing this matter to my attention. Signed, Child Safety Commissioner.*

20

That was June 2009. I'm still waiting for a reply. A few months later, in August 2009, I received a letter from the Department of Justice Working With Children Check unit:

25 *Dear Mr Unthank, thank you for your letter of 7 April 2009. I understand that Victoria Police have since been in contact with you and clarified the respective roles of the police and the Department of Justice. I am pleased to have received advice that you are now in continuing communication as to how the police may proceed in*
30 *responding to your allegations of noncompliance with the act.*

35 This is now over one year of noncompliance with the Working With Children laws and still nothing has been done to protect any of the children. Then my local MP contacted the officer or the Director of Public Prosecutions and brought the matter up with him, so the Director of Public Prosecutions replied in a letter which gave some very helpful hints. It said this:

40 *State Member for Hastings, dated 21 September 2009. I refer to your letter dated 13 September 2009 and the enclosed two reports on alleged breaches of the Working With Children Act 2005. I have to confess to have experienced some difficulty in comprehending the nature of Mr Unthank's complaint. I have perused the material forwarded to me, but I am not sure I have fully understood the basis of the complaint. However, it does seem*
45 *that he is alleging the commission of criminal offences, namely*

breaches of the Working With Children Act 2005. If so, it is a matter which must be thoroughly investigated by Victoria Police before my office or I can become involved. Neither my office nor I have any investigative powers. Until an investigation into Mr Unthank's complaint has been conducted and completed, I have no power to act in this matter.

The submission that I made in one of the two reports did contain some errors and as the Director of Public Prosecutions brought that out to me, I was able to address those, so I'm stumbling because I'm not a lawyer, I'm actually a carpenter by trade and no-one is helping me in the matter of protecting this. No government departments have come forward and said, "We will help you. We will assist you to protect these children." Everybody passed the buck. Then I received a letter on 25 November 2009 from the Office of the Attorney-General.

MR CUMMINS: I've actually read ahead now through all your documentation. Can I just take you to the letter of the attorney-general of 5 May 2011, second paragraph. Just take a moment and you'll get it, it's the last document in your file. I'm a couple of years ahead of you on these documents, so forgive me for taking you ahead.

MR UNTHANK: Sure. That's okay.

MR CUMMINS: But 5 May 2011, second paragraph, second sentence, is that the matter you referred to when you started this morning when you said that you'd been up to the registrar of the court. Is that right? The second paragraph, second sentence, that you've filed documents, et cetera.

MR UNTHANK: Yes, so just confirm that the documents are before the chief magistrate, but they haven't been filed or stamped, otherwise I would not make an appearance. So they're for consideration only. There's no - - -

MR CUMMINS: They haven't actually commenced as such.

MR UNTHANK: No, there's no SH number assigned. That's what I had confirm.

MR CUMMINS: All right, thank you. Now, go back to the sequence which you were taking.

MR UNTHANK: Okay. The letter dated 25 November 2009 from the Office of the attorney-general:

Dear Mr Unthank, thank you for your correspondence dated

5 *16 November 2009 to the attorney-general. Responsibilities for the matter raised in your correspondence rests with Minister For Community Services. Accordingly, I forwarded a copy of correspondence to the minister's office for consideration and response.*

I then received a letter from the Office of the Minister For Community Services:

10 *Dear Mr Unthank, thank you for your letter received 26 November 2009. Your letter is currently under consideration and a response will be forthcoming shortly.*

15 Since that time, there's been no response. I then believe that I may possibly have made a complete and total mistake of all my allegations concerning not the compliance with that, so I had it reviewed by local federal member Mr Darren Chester for our area and he forwarded the information on to the Prime Minister, Julia Gillard, who then passed it on to the Honourable Brendan O'Connor, MP Minister for Justice and that was reviewed by him and I
20 received a personal reply from him:

25 *Dear Mr Unthank, thank you for your correspondence dated 17 October 2010 to Mr Darren Chester MP and dated 16 October 2010 to the Prime Minister, the Honourable Julia Gillard MP. Your correspondence was referred to me as I have portfolio responsibility for the Australian Federal Police. The particular concerns you have raised are very important concerns and as such I suggest you forward your correspondence to the Office of the Victorian Minister for Police.*

30 So I knew that I wasn't losing my mind in this matter, so that I did, and what I found in the whole process was that nobody was willing to meet with me to discuss the risk that any of these children faced. I did accompany a parent along to the police, who the parent made a complaint regarding the matter, and
35 the officer that the parent dealt with instructed his best advice is to leave the church; but that's not good enough when we have legislation that's designed to protect children, but that there's nobody that's willing to enforce or police that legislation. Even though the legislation has been very successful, over
40 730,000 adults have complied, it only takes a small number of people to refuse to comply that still have access to children that is of great concern.

45 So in line with the guidelines for making a submission, it is the end of the five-year intake for people to comply. Everyone must have complied with the Working With Children laws and child protection laws by the end of this month. My submission is that a Panel be established to make sure that the laws

are policed and are enforced, that responsibility is ascertained directly as to who is to do those things. The attorney-general wrote that it is for the police to police the legislation and to enforce the act, but at the moment they are unwilling to police and enforce and this places children at potential risk.

5

I'm not making any references to any children that may or may not have been physically or sexually abused. This is about prevention. We've had five years to get it right. There was one major amendment made which allowed the Australian Federal Police to be exempt from the Working With Children laws because at the time when they were travelling to Victoria for cases involving matters concerning them, they had to be accompanied by someone who did have a working with children licence just to work with children, yet we have ministers of religion that are taking other parents' children out from door to door preaching within the community, they don't have a working with children card. We have ministers of religion that are providing discipline to children within the church setting.

This religious organisation operates over 150 schools and secondary schools within Victoria and none of their instructors are registered with the Teachers Association, nor do any of them have working with children cards. The police are aware of that, the Victorian Government's aware, so now that we're at the end of the five year intake, my recommendation is that somebody now take the necessary steps to make sure that we look to the future and that the laws are enforced rather than just have them sitting in everyone's bottom shelf, they're actually out at the front and they're being taken care of and our children are protected in that area.

MR CUMMINS: Well, we follow that, Mr Unthank, and thank you for progressing your submission in a way which is consistent with the guidelines and that you obviously considered the guidelines. It's plain that no organisation is above the law and it's also plain that the law needs to be enforced across the board, not just 90 per cent of the time, but a hundred per cent of the time, so you've made that point very clearly about the system, which is what we are looking at. We also take on board your point about the five years having run, you know, that the time has well and truly come for the proper application of the law.

MR UNTHANK: But what I've noticed is that there's no actual strategy in place from 1 July to police - - -

40

MR CUMMINS: And that's your point about the system, that the system needs to be able to progress it, so it's a point about the system. We understand that and take that on board. I don't think I can usefully ask Mr Unthank any particular questions. I've got the point that he's making very clearly and also the history that he's spelt out very clearly.

45

PROF SCOTT: Yes, I'd just like to say that I appreciate you bringing this to our awareness, this issue of compliance with the act, and I believe it is within our terms of reference and I think this has been very helpful. In my reading of the submissions to date, I think this is the first time that this matter has been raised as clearly as this, so I thank you for that.

MR SCALES: I just had one question just for clarification, are you also arguing that those people, in this case you've raised it in relation to a particular organisation, but in more general you're saying that those people are working across the breadth of work with children, for example in schools, kindergartens, all of these other areas - - -

MR UNTHANK: Just a correction, they operate their own internal church schools for training and teaching and education. They're not schools and kindergartens as we understand, like a primary school or a private school. Each school operates on 50 days per year and a normal school, as children attend for education by law, operates I believe on over 200 days per year, so these are small church-run schools.

MR SCALES: Yes, and there seem to be two elements of what you seem to be saying. You seem to be making a specific case of a particular religious organisation that you've mentioned, but you were also generalising the point, weren't you?

MR UNTHANK: Absolutely.

MR SCALES: So I was talking about the more generalised position that you seem to be making, and in the more generalised position you seem to be arguing that there ought to be a set of regulatory arrangements within each of those activities, whether it's in health, education or whatever where any person who doesn't have the appropriate Working With Children Checks simply is not able to work in those areas, as distinct from some sort of criminal case against the individuals for not applying within the act. Am I right in saying that's what you're alluding to?

MR UNTHANK: You are hitting the nail exactly on the head in that area. The Working With Children Act does make it an indictable criminal offence to work with children if you do not have the working with children licence. It's up to two years imprisonment and substantial fines, but it's also a criminal offence for the organisation that engages you. However, in a religious structure if a church hierarchy or a religious corporate hierarchy instructs members to disobey the obtaining of a working with children licence, the church members will obey over the government and that's an area that's very, very serious because you're turning genuine citizens into potential criminals

and that's the sort of thing that then the ongoing effects of having 600 people who would comply with the laws in normal circumstances are being told not to. If any of them were individually prosecuted, they could face gaol and really its fear of a religion that's causing that. That was discussed - I've got a copy -
5 there was a report by Graeme Hammond in the Sunday Herald Sun, 10 April 2011, that discussed those matters and those concerns. That's in the public domain so I'm happy to make a reference to that matter there.

The teaching profession does not have to have working with children licences.
10 They're one of the categories that are exempt, in the same manner that Victoria Police are exempt because their process of screening is much more stricter, but they work with the working with children unit and part of their disciplinary body is linked in with the Department of Justice. But other organisations that aren't part of the teaching federation, they're not linked into the Department
15 of Justice, so if one of their teachers is charged with a criminal offence, there is no provision in place to withdraw their working with children card because they don't have one, so they continue to work with children and it can be covered over. But if you've got someone that you trust to work with your children and they can show you their working with children card and then it's
20 withdrawn, you are then aware that that person isn't qualified at the moment to work with children. So that with the end of the five years intake for the Working With Children laws, there's now a very strong reason to put in place a system that clarifies through education, that clarifies through possibly whether it's brochures, one-on-one contact with organisations that you must comply
25 with these, there's no exceptions. No exceptions were granted, except to police, the Australian Federal Police and teachers and anyone that says otherwise, then that's a serious claim.

MR CUMMINS: The bottom line of it really is that every individual and
30 every organisation, religious or otherwise, has to comply with the law. That's the bottom line.

MR UNTHANK: There's no way around it. The law is the law.

35 MR CUMMINS: Understood. Well, Mr Unthank, that's been most helpful. Anything else you'd like to ask?

MR SCALES: No, that's fine thanks, Bill.

40 MR CUMMINS: Thank you for presenting it and thank you for doing it in the careful way that you have done it - - -

MR UNTHANK: It was very hard.

45 MR CUMMINS: - - - consistent with our requirements, so thank you very

much, Mr Unthank, and we've got your material here.

MR UNTHANK: Thank you, Mr Chairman.

5 MR CUMMINS: Well, ladies and gentlemen, we've been going an hour and a half now so it might be a convenient time to take a 10-minute break and get yourself a cup of coffee and try and warm up a little bit. See you shortly.

ADJOURNED [11.37 am]

10

RESUMED [12 noon]

15 MR CUMMINS: Ladies and gentlemen, we're pleased to invite Narie Anderson to come forward. Take a seat, Narie, and thank you very much for being here and coming forward. As you'd appreciate, we are looking at the system as a whole and if you'd direct your submission to the systemic questions, rather than individual cases, we'd be most obliged.

20 MS ANDERSON: Certainly, okay. Look, thank you for the opportunity and I do apologise that we haven't had the opportunity to provide you with a formal response - - -

MR CUMMINS: That's quite all right.

25 MS ANDERSON: - - - but I did want to take the opportunity to say a few words today.

MR CUMMINS: Well we're glad you've come forward.

30 MS ANDERSON: Obviously in this area, Latrobe Valley, unfortunately we have very high figures in child protection, in family violence, in gambling, in unemployment, particularly in the youth area. I think that we see the need for effective services and I think that generally the services that are on the ground provide very, very efficient services. I think the part of the issue as the system
35 has evolved over recent years has been in fact that the service system has become streamlined, which I think initially was extremely effective and it needed to happen. Historically services were delivering the same service and duplicating services all over the place, but I think as it's become streamlined it's
40 in fact caused some other spinoffs.

40

The services that are working alongside child protection are very, very limited to only being able to respond to those children and families that have got direct child protection involvement. I think a classic example of this is in the changes that have occurred with the rollout of the Child First and Integrated Family
45 Services system which in this area, I will add, is a highly successful and