

Response of Reverend Father William Burston to “Formal Advice to the Bishop of Maitland – Newcastle from his Independent Advisory Panel regarding Rev. William Burston” dated 16 December 2014.

1. The conclusions of the Independent Advisory Panel appointed by the Bishop of Maitland-Newcastle in its “Formal Advice” document dated 16 December 2014 are that I:

“should be asked to resign from (my) parish, and should (I) refuse (my) faculties should be withdrawn.” (p.11)
2. No other course, compromise or mitigation is proposed.
3. The courses proposed are only available after due process, involving procedural fairness, under Canon Law.
4. The Panel was not clothed with any authority to conduct any such process; and did not recommend that any such process be undertaken.
5. So far as due process is concerned, the Panel does not acknowledge or advise the Bishop that it might be necessary to establish a formal process under Canon Law – with openness and genuine procedural fairness – before the adverse consequences it recommends could be put into effect.
6. At no stage has there been any communication with me about whether the steps proposed to the Bishop be undertaken and how to achieve the suggested results would safeguard my rights in any way; or what code, rules, standards or system of regulation would govern such deliberations.
7. No legal framework for the Panel’s activities was ever spelled out or communicated prior to the “show cause/case to answer” process, let alone negotiated as being fair and acceptable to all parties.

8. No mediation process has been proposed by the Bishop or the Panel; and no compromise position has been explored. Mediation was proposed by my Solicitor, but the suggestion was not taken up by the Bishop. Mediation is a modern, developed procedure for settling differences, with rules and safeguards designed to ensure that any settlement is reached on a “level playing field.”
9. Once it was established and my Submissions were completed, the Panel did not approach me to clarify any points of difference before reporting to the Bishop.
10. The identity and credentials of two Panel members have not been disclosed; and none of the other Panel members disclose any expertise, qualifications or experience in Canon Law. The Panel does not recommend that any civil law action (as opposed to Canon Law) should be undertaken – or civil law sanctions be sought.
11. Any properly constituted process could not be conducted with any appearance of fairness by any body the identity of any of whose members is nameless and faceless, relying only on their own assurances as to their probity and neutrality.
12. In all the circumstances, for the Panel to refer to its Advice to the Bishop as “Formal” is misleading. The Panel was invested with no formal function or power whatever, and its recommendations to the Bishop are made in an advisory capacity only. It was up to the Bishop to follow through on any recommendations in any formal way.
13. No Canon Law proceedings have been conducted; or are in preparation as far as I am aware. The Panel does not state that formal processes under Canon Law might be necessary before such findings could be made, with due process, openness and procedural fairness.
14. The expert Canon Law advice which I have obtained indicates that withdrawal of faculties and resignation are sanctions only able to be imposed as a consequence of some proven misfeasance or misdemeanour under Canon Law; or if I was to become incapable of fulfilling the duties of office in the parish to which I am appointed, e.g. due to a health issue such as dementia.

15. No issue arises that I am not fulfilling adequately the canonical obligations of my present office as Parish Priest. Indeed my continued public ministry in my parish work is far from being “fatally compromised” (Panel Report, p. 11) and is well supported across the communities which I serve.

16. The Panel sought its own independent expert Canon Law advice from Very Reverend Professor Ian Waters who, after reviewing a large quantity of documentation relevant to the Cunneen Commission’s proceedings, came to the following conclusions about me:

“I cannot find evidence that Father Burston failed to fulfill (sic) the canonical obligations of the offices he held.” (Waters Report, 20.8.14, p. 12).

Those offices included that of Vicar-General, which I occupied for five years from 1996; and Assistant Vicar-General from 2001 for a further four and a half years.

17. The Panel sought no further Canon Law Advice, that I have been made aware of, yet appears to have leapt to a conclusion that it was not invested or qualified to make, that Canon Law sanctions be invoked against me, directly contrary to its own (and only) advice that there was no evidence to support adverse findings.

18. The Panel was clear that it accepted the Canon Law advice of Professor Waters after he had reviewed all of the relevant evidence and Cunneen findings. (Panel Report 16.12.14 p. 1; and letter to me dated 30.10.14).

19. That said, unless there is other evidence or opinion under Canon Law to the contrary, there is no case to answer. I am not aware of any such other evidence or opinion.

20. Commissioner Cunneen, in the manner of anyone conducting an inquiry, or a tribunal, or a court, properly constituted, had the opportunity to see and hear me and all other witnesses give oral evidence under oath.

21. It is a fundamental principle of our justice system that anyone appointed to conduct a formal proceeding such as the Commission of Inquiry sees and hears sworn evidence with safeguards ensuring fairness to witnesses before drawing conclusions about their evidence.

22. In relation to one of its findings, the Panel draws its own conclusions from a transcript of what Commissioner Cunneen actually saw, heard and evaluated, then states equivocally:

“We probably could not have made that finding without seeing Father Burston give evidence.” (Panel Report, 16.12.14, p. 9).

23. The Panel then goes on to state that:

“The Commissioner’s adverse findings are fully supported by the transcript”.

24. Those adverse findings, in sum, go no further than stating that I was “an unimpressive witness in certain respects.” (Cunneen Report, Paragraph 20.26).

25. Commissioner Cunneen made no finding of any dishonesty or untruthfulness against me.

26. Yet the Panel – which did not see me, or hear me give evidence under oath over a number of days, or ask me for any clarification on any point (which it could have done) – leaps to a conclusion far more damning than that of the Commissioner:

“...the Diocese was on trial, in full view of the media and the public, and this called for clergy to give their evidence with conspicuous candour and honesty. Father Burston manifestly failed to do so. In fact he did the opposite.” (Panel Report, p. 11)

27. To me, that is a finding of dishonesty, which the Commissioner, who did see me and hear me give oral evidence under oath over a number of days, while I was under great and unfamiliar pressure both inside and outside the Commission (which is referred to in the Transcript) was not prepared to make. It was not the Panel’s function to “re-try” the evidence, having neither seen nor heard it – and without asking any further questions of me.

28. Sweepingly, the Panel rejects paragraphs 5, 6, 7 and 8 of my submissions. (Panel Report, p. 9).

29. In relation to paragraph 5 of those Submissions, the only meaning the Panel's statement can have is that it expressly rejects Commissioner Cunneen's conclusion – after seeing and hearing me under oath – that I was an unimpressive witness in certain respects.
30. In relation to paragraph 6, in rejecting the contents of the paragraph in entirety, it rejects the statement that "more extensive findings were made against other witnesses at the Commission".
31. In drawing this conclusion, it seems to me that the Panel is directly at odds with the Bishop's very recent public statement that at least one other witness (DCI Peter Fox) was:
- "... the subject of much more adverse comment by Cunneen (sic) than either Hart or Burston." (Bishop Bill Wright, "The Church and the Herald" Aurora, February 2015, p.5)
32. In relation to paragraph 8, I fail to see how the Panel could reject out of hand a plea that the conclusion of the Commissioner who saw and heard me under oath be read in context. Yet that seems to be the literal meaning of the Panel's sweeping rejection – despite the apparent acknowledgement of the panel as to the difficulty (and I would say unsatisfactory nature) of reaching trenchant conclusions without seeing or hearing evidence. (Paragraph 22 above).
33. The extent of my unhesitating cooperation, candour and honesty in giving statements to the police on three occasions separated by years – which drew virtually no criticism, adverse comment or action from any quarter, including from Commissioner Cunneen, is simply swept aside by the Panel, without any real consideration that two of those statements at least were made much, much closer to the time when the events about which I was asked took place – certainly much closer in time to being questioned at the Commission of Inquiry.
34. As to that evidence, having reflected on the manner in which it was given, with hindsight, I made – and make – the concession that I " ...may well have answered some questions without giving adequate thought to the question before answering."

(My Submissions to the Panel, December 2014, paragraph 25; Panel Report, page 10).

35. I adhere strongly to the balance of those Submissions concerning my evidence and the manner in which it was given in entirely unfamiliar and extraordinarily stressful circumstances about events which had occurred years before.
36. The evidence of my general practitioner, Dr Adam Frost, was the best and only relevant medical evidence available at the time of the Commission.
37. The Panel itself, when it met in July 2014, contemplated obtaining an expert report "ASAP". Their proposal was not proceeded with and I was neither approached nor consulted about participating in such an exercise. If the Panel saw fit not to proceed with its own proposal – and did not approach me to participate in any assessment – it can hardly be critical of me for not doing so.
38. I adhere to the contents of Paragraph 17 of my Submissions of December 2014, especially: "it is reasonable to expect significant imperfect recall in anyone of (my) age, even without the medical interventions detailed by Dr Frost." There is ample evidence available in the public domain as to the effects of anaesthetics on some parts of memory. It is again emphasised that it is almost 19 years since I took over as Vicar-General – and the information which was dealt with in that office related in some cases to events which had taken place years before that.
39. The Panel is not entitled, in the circumstances in which my oral evidence was given, to draw a conclusion, based on evidence it did not hear, imputing that I was giving the stock answers "of those who seek to evade questions." (Panel Report, p. 5) This broad-brush conclusion, attempting no analysis or consideration of how any witness let alone one in the second half of his 70s, could be expected to fare, being asked to give evidence over a number of days under pressure not only from within, but from outside an inquiry, about events which took place years before, seems singularly to lack balance.
40. Professor Waters, an impartial source commissioned by the Panel itself and briefed with Commission-related documentation, further comments:

“I was also surprised that Father Burston appears to have been treated unsympathetically in connection with memory loss.”
(Waters Report, p. 9)

41. In a footnote to his Report, he adds:

“Within the last year, in conversation with a retired Melbourne priest friend of mine, he spoke in general about his coping with the deaths and debilitation due to age of his seminary classmates. He described one classmate, “Bill Burston of Newcastle”, by words to the effect of illness that has resulted in significant memory deterioration.” (Waters Report, pp9 and 10, n 33.)

42. I make no claim about this other than part of the debilitation associated with the ageing process and being a 79 year old is that there are significant gaps in my memory e.g. I could not initially recall when it was put to me at the Commission that DCI Fox had in fact taken two statements from me (concerning James Fletcher), seeing a copy of the second brought back the memory.

43. None of this prevents me from functioning in my parish work on a day-to-day basis. Dr Frost did not suggest to me at any time prior to my giving evidence that a specialist or expert assessment would be necessary to check out how well I was functioning for my age.

44. In my view, there is no basis for suggesting that I was giving the stock answers “of those who seek to evade questions.” If a question was put to me and I could not remember what had occurred I said so. If a proposition was put to me in a closed fashion that demanded an answer of “not necessarily” then I said so. Again, I make the concession that I may not have thought sufficiently about some answers under pressure, even where a question, or variant of it, was put to me more than once.

45. I adhered to the oath which I took and the Commissioner, having seen and heard me, did not conclude that I was untruthful. I have read the Bishop’s Statement concerning my disagreement with some of the Panel’s conclusions and I am grateful to him for publicly acknowledging my concerns about the Panel. To my mind, a finding that I

manifestly failed to give my evidence “with conspicuous candour and honesty (but) did the opposite” is a finding that I gave my evidence dishonestly.

46. Having seen and heard that evidence, Commissioner Cunneen did not make any such finding. Having not seen nor heard me, the Panel is not in my view entitled to go beyond the Commissioner’s findings, having access only to the documentary evidence from the Commission.
47. However, the statement referred to by the Bishop is objectionable in another very significant sense: It is virtually applied to the whole of my evidence.
48. The Commissioner was careful not to make any adverse finding about the evidence which I gave other than in certain respects. She heard and saw me give that evidence. The Panel did not.
49. The Panel’s findings are entirely out of keeping with the manner in which I have lived my priestly life over 50 years; and the way in which I have conducted my public ministry.
50. The full report of Professor Waters of 20 August 2014 only became available to me in the week commencing 26 January 2015. It was not offered to me in the documents made available through Zimmerman Services at the commencement of the “Show Cause” process; and it was not made available to me at any earlier time. The only mention of it in the Panel Report is that concerning fulfilment of canonical offices.
51. In a number of crucial respects, the Waters Report in fact supports the written submissions made on my behalf. There is no indication in their Report that the Panel considered any other matter in the Waters Report than its Canon Law conclusion, which it says it accepted, then side-lined.
52. While Professor Waters is careful not to go beyond his field of expertise in Canon Law, he does comment on the processes associated with the conduct of the offices previously held by me and the nature of cross-examination and evidence given about those processes – matters about which he might be expected to have some direct experience and credentials:

“Without wishing to be or appear critical of the hearings in any way, I formed the distinct impression that many questions were posed without accurate understanding of the functioning of the Catholic Church.” (Waters, p.8)

“I was surprised to read that Ms Gerace asserted to the Commissioner on 24 September 2013 that Father Burston and Monsignor Hart sought to minimise their roles as vicars general, and that they were almost in effect administrative or perfunctory or limited to various different things ...”

“Conceding that Dr Rodger Austin was asked merely to provide a concise definition of some terms, it is regrettable that the concise definitions made reference only in passing to the provision that the vicar general may not deal with those matters which the bishop reserves to himself, and omitted to state that the vicar general’s loyalty to the bishop is stated forcefully as he is never to act against the will and mind of the diocesan bishop, and that the bishop determines the agenda of matters discussed at the council of priests.”

(Waters, p.9)

53. There is no mention in the Panel Report that the material contained in paragraphs 12 and 13 of my Show Cause Submissions relating to how Bishops relate to their Vicars-General, utilise their assistance and allocate tasks to them is exceptionable in any way; and in the absence of any comment from the Panel concerning this material, it must be taken that its content was accepted.
54. Substantially, that particular submission echoes Professor Waters’ informed observations. My Submissions were made almost 2 months before the Waters Report of 20 August 2014 became available.
55. I have been advised that the nature of forensic cross-examination in most circumstances is that it consists of closed questioning, to tightly control the answers the witness gives. It was so in this case. The problem this creates is that if such questioning proceeds on false premises e.g. an assumption on the part of the questioner, other counsel or even the tribunal of fact that, say, there was a system in place where Vicars-General passed on a workload or caseload to their successor with

a general “handover”, witnesses are potentially powerless to correct incorrect assumptions or impressions, especially if they are under cross-examination for a lengthy period of time (in this case, days) and disallowed, under the normal rules that apply, from conferring with counsel or anyone else about their evidence, while giving it.

56. Notwithstanding the strong objections which I have to the perverse manner in which the Panel has gone far beyond the expert advice which the Panel itself commissioned to come to its Canon Law conclusions; and the way in which it has gone far beyond the findings of Commissioner Cunneen in her conclusions about my evidence, I have decided to bow to the wishes of the Bishop that I retire from my current offices for the communities of Mayfield, Mayfield West and Stockton.

57. I will turn 80 in November this year and as is generally known, I have not enjoyed full health over a number of years. I look back on 50 years as a priest with great satisfaction and I am grateful for the challenges which were given to me over the years.

58. Finally, I am grateful to Bishop Bill for the opportunity to complete my fulltime ministry in the communities which I know and love at the Easter Season.

.....(Signed) *William J Burston*.....

Father William (Bill) Burston

13.2.15