

DIOCESE OF WOLLONGONG



DIOCESAN CURIA

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Your reference: C/2006/7161
 Our reference: mh/815005

11 June 2008

Ms Natasha Mewing
PRIVATE AND CONFIDENTIAL
 Senior Investigation Officer
 NSW Ombudsman's Office
 Level 24, 580 George St
 SYDNEY NSW 2000

Dear Natasha

Re: Ombudsman notification Fr John Nestor (Priest, Parish of Fairy Meadow) and various alleged victims.

In your letter of 25 March 2008 you offered a number of comments regarding the preliminary investigation report prepared by Kamira Stacey Consulting in relation to allegations against Fr John Nestor. You also requested further information.

The Diocese is most appreciative of the thoroughness of your response and your comments. I offer the following response.

1. Investigation Report prepared by Kamira Stacey Consulting

In the context of allegation 4, the Diocese found your explanation of grooming behaviour and sexual misconduct clear and informative. It will assist the Diocese in making a finding in this matter.

In relation to the wording in allegation 4, "it is most likely", you have correctly assumed that it refers to the nominated timeframe for each alleged incident. In the final report, it has been modified to read "in or around" the particular year.

2. Jurisdiction in regard to Allegation 3

The Diocese notes your judgement that allegation 3 meets the threshold of a reportable allegation, despite the identity of the victim being unknown to the Diocese. As you observe, Fr Nestor has conceded that he is aware of the identity of the alleged victim but has refused to divulge this information to the investigator.

3. Concerns raised by Fr Nestor

i. Fr Nestor's right to copy of report and concerns regarding procedural fairness, independence of Kamira Stacey Consulting, the alleged harassment of a witness

In a letter dated 18 April 2008, the Diocese informed Fr Nestor of his right to obtain a copy of the investigation report via a Freedom of Information request. In the letter the Diocese also addressed Fr Nestor's concerns in relation to procedural fairness. The Diocese also sought to respond to Fr Nestor's comments about the independence of Kamira Stacey Consulting vis-à-vis the Diocese. Finally, the Diocese referred to Fr Nestor's claim to have a letter complaining that a Diocesan official had harassed a person in attempting to have that person make an allegation against Fr Nestor. In this context, the Diocese indicated that it did not have a copy of this letter.

A copy of the letter of 18 April 2008 from the Diocese to Fr Nestor is attached for your information. The Diocese has not received an acknowledgement of this letter nor any response.

ii. Fr Nestor's proven character prior to and after the alleged incidents

The Diocese has noted your comments in relation to Fr Nestor's complaint that there has been a "lack of consideration of proven character and context" during the investigation.

Prior to the alleged incidents, the Diocese has no evidence to suggest that there were concerns in relation to sexual misconduct or abuse. It should be noted though, that Diocesan records indicate other concerns in relation to John Nestor's years in the seminary prior to ordination. On 9 August 1989, the year of John Nestor's intended ordination, the President of the Seminary, Fr Gerald Iverson, wrote to Bishop William E Murray, then Bishop of Wollongong, and recommended that John Nestor's ordination be deferred and that he be given a further "substantial period of diaconal ministry". This seems to have been provoked by the perception of John Nestor as "excessively self-confident and arrogant, highly critical of anyone who holds different opinions to his own,"¹ concerns which had been expressed in some reports relating to John Nestor's diaconal year and which had "surfaced repeatedly during John Nestor's seminary years".²

Bishop Murray evidently spoke with John Nestor about this and claims to have made further investigations among people who had been "closely associated" with John Nestor during his years of preparation for the priesthood. Bishop Murray concluded that the deferral of John Nestor's ordination was not merited and he was ordained on 11 November 1989 by Bishop Murray.³

These concerns of the seminary staff were confirmed in a telephone conversation the Diocese had with Fr Gerald Iverson on 4 April 2008, a record of which is attached. During the conversation Fr Gerald Iverson observed that "John Nestor is a cousin of

¹ G. Iverson, *Letter to Bishop Murray*, 9 August 1989.

² G. IVERSON, *Letter to Bishop Murray*, 9 August 1989.

³ MOST REV WILLIAM E MURRAY, *Letter to Father Iverson*, 18 August 1989.

Bishop Murray's". Actually, Fr John Nestor's mother and Bishop Murray were first cousins.

In relation to the years 1994 to the present, the Diocese has not made attempts to confirm or otherwise Fr Nestor's claims of proven character. The Diocese was not aware of any allegations against Fr Nestor until that made by ABA [redacted] in April 1996. This allegation and others made subsequently are the focus of the present investigation. Following the allegation relating to ABA [redacted] Fr Nestor was stood aside from the exercise of public ministry until further notice. Fr Nestor was found guilty of aggravated indecent assault (person under 16 years) in the Wollongong Local Court on 12 December 1996. He was subsequently acquitted in the NSW District Court of Appeal – Criminal Jurisdiction on 22 October 1997.

On 19 December 1997, in the light of new information received by the Diocese, Bishop Philip Wilson, then Bishop of Wollongong, repeated his personal request for Fr Nestor to continue to stand aside from public ministry.

On 29 June 1998, as a result of an investigation in accordance with *Towards Healing*,⁴ Bishop Wilson was advised by the NSW Professional Standards Resource Group that Fr Nestor should not return to ministry until he had undergone a full appraisal by *Encompass Australasia* to determine his suitability for ministry. Bishop Wilson accepted this advice and requested Fr Nestor to attend *Encompass Australasia*. Fr Nestor chose not to cooperate with this request of Bishop Wilson and, as a consequence, Fr Nestor was not permitted to exercise his ministry in public.

Because Fr Nestor was not allowed to resume his ministry, he appealed Bishop Wilson's decision to the Congregation for the Clergy (Vatican). The Congregation for the Clergy upheld Fr Nestor's appeal and directed Bishop Wilson to allow Fr Nestor to resume ministry in full. This directive from the Congregation for the Clergy coincided with the appointment of Bishop Wilson as Archbishop of Adelaide. He was replaced in Wollongong by Bishop Peter Ingham and the decision of the Congregation for the Clergy was appealed to the Apostolic Signatura (Vatican). In July 2006 the Apostolic Signatura notified the Diocese that its appeal was upheld. The matter is to be taken to the Congregation for the Doctrine of the Faith for final resolution when the current civil process has been concluded.

In January 2001 Fr John Nestor, without the necessary permission of the Bishop of Wollongong, moved to the United States of America. He evidently gained employment there without the Bishop concerned contacting the Bishop of Wollongong for the customary reference. Subsequently, Fr Nestor sought employment in a number of other Dioceses in the United States, however, these Bishops contacted the Bishop of Wollongong and Fr Nestor's applications for employment were not successful.

⁴ In December 1996, the Australian Catholic Bishops' Conference and the Australian Conference of Leaders of Religious Institutes published a document, *Towards Healing*, that set out the principles that must form the basis of the Church's response to complaints of abuse and the procedures to be followed in responding to individual complaints. The NSW Professional Standards Resource Group was established to advise and assist in matters concerning Church-related abuse.

While the Diocese has not received any complaint regarding Fr Nestor's conduct during his time in the United States, it has not approached the US Bishop who gave Fr Nestor employment. It would be regarded as both prudent and necessary for the US Bishop to have sought a reference prior to appointing Fr Nestor to public ministry. Given this and recognising the current climate in the United States with regard to sexual abuse and the Church, any attempt to check whether the US Bishop is aware of concerns in relation to Fr Nestor, and then to use this as a basis to be confidently assured that there was no basis for concern in more recent times, would be problematic. The weight any such assurance could be given is questionable and may be of little value. Even so, it would in no way diminish the seriousness of the concerns that have come to the attention of the Diocese from multiple sources, which relate to the earlier time frame, before Fr Nestor was withdrawn from public ministry.

Fr Nestor returned to Australia on 23 March 2006. He remains under decree of the Bishop not to exercise his ministry in public.

4. Information required

The Diocese has now received the final copy of the report from Kamira Stacey Consulting. The Diocese has had the opportunity to consider the report carefully and will communicate the proposed finding to Fr Nestor and invite him to respond in writing. If Fr Nestor avails himself of this opportunity, the Diocese will carefully consider his response in reaching a final finding. The Diocese will communicate this finding and a report on the matter to the Office of the Ombudsman. This communication with the Office of the Ombudsman will include:

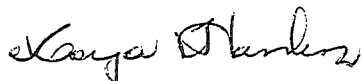
- a. the full reasons for either accepting or rejecting the recommendations made by Kamira Stacey Consulting;
- b. a copy of any advice to Fr Nestor about proposed finding, any response from Fr Nestor and any final advice to Fr Nestor about the findings and action taken.

The Diocese will also forward any other information relevant in order for you to consider whether or not the reportable allegations against Fr Nestor were properly investigated and whether or not appropriate action was taken at the conclusion of the investigation.

Should you have any questions or wish to discuss this matter, please do not hesitate to contact me. I note that I shall be on leave from 18 June 2008 to 4 July 2008 inclusive.

Thank you again for your assistance.

Yours sincerely



(Sr) Moya Hanlen OLSH
DIOCESAN CHANCELLOR

Enc. Copy of letter to Fr Nestor dated 18 April 2008
Copy of record of telephone conversation with Fr Gerard Iverson, dated 4 April 2008