



Our reference: ADM/3524

19 September 2006

Sr Moya Hanlen OLSH
Diocesan Chancellor
Diocese of Wollongong
Catholic Church Offices
PO Box 1239
WOLLONGONG NSW 2500

Level 24 580 George Street
Sydney NSW 2000
Phone 02 9286 1000
Fax 02 9283 2911
Tollfree 1800 451 524
TTY 02 9264 8050
Web www.ombo.nsw.gov.au
ABN 76 325 886 267

Dear Sr Hanlen

Statutory reporting requirements regarding Fr John Nestor

I refer to your letter of 15 September 2006 to me, which was a further request for advice as to the Diocese's responsibilities under the *Ombudsman Act 1974* in respect of the allegations made against Fr John Nestor.

I have examined the additional information that you provided and am able to advise that the allegations against Fr Nestor are reportable to the Ombudsman. The basis for my advice follows.

The Ombudsman's power to deal with reportable allegations or convictions that arose before the commencement of Part 3A is found in s.25A(3) -

(3) A reference in this Part to a reportable allegation or a reportable conviction extends to any such allegation or conviction in respect of a matter occurring before the commencement of this Part.

Fr Nestor was an employee of the Diocese when it received the allegations against him in April 1996. We note that the criminal charges were found proved in Wollongong Local Court on 12 December 1996, but that Fr Nestor was acquitted on appeal to the District Court on 22 October 1997. Action to address the risk that the Diocese believed Fr Nestor could pose to children was taken by the Diocese and by the NSW Professional Standards Resource Group through 1997 and up to 29 June 1998, when the Professional Standards Resource Group issued its report and final advice to the Bishop following completion of the *Towards Healing* investigation. The Bishop issued a decree on 7 August 1998 restricting Fr Nestor from celebrating the liturgy publicly until the decree was abrogated by further decree from the Bishop.

After considering the effect of that decree, we consider that it placed Fr Nestor in a position analogous to being suspended with pay. It therefore did not constitute a final resolution of the allegations against Fr Nestor, but was a risk management strategy to have effect until a final resolution was reached.

We note that a second decree, issued by the Bishop on the same date, required Fr Nestor to undergo assessment by *Encompass Australasia* as a prerequisite to any further ecclesiastical appointment. This is consistent with Fr Nestor being a current employee on suspension and being able to resume his duties when the 'suspension' is lifted.

As the allegations against Fr Nestor had not been dealt with to finality when Part 3A of the *Ombudsman Act 1974* commenced on 3 May 1999, the allegations should have been notified to us within 30 days. This responsibility was not fulfilled by the 'head of agency' for the Diocese at that time, which was the Executive Director of the Catholic Commission for Employment Relations (CCER).

We also note that additional reportable allegations against Fr Nestor were made in February 2004 but that the CCER advised the Diocese that the additional allegations were not reportable to the Ombudsman.

Although the then head of agency did not fulfill his responsibility to notify us of either set of the allegations against Fr Nestor, the protective action taken by the Diocese has remained in effect while Fr Nestor pursued avenues of appeal under canon law. We note that those avenues appear to have been exhausted following the recent decision of the Apostolic Signatura regarding the matter.

We therefore consider that the allegations against Fr Nestor should now be notified formally to us and investigated by the Diocese as required by Part 3A. Although the notification of the original allegations will be some 7 years late, and the notification of the additional allegations some two years late, we are aware that the Bishop only resumed the responsibility of head of agency for the Diocese in July 2005. Fortunately, the delay does not appear to have had any negative effect due to the protective action taken by the Diocese. The 'suspension with pay' of Fr Nestor by the Diocese has managed any possible risk to children while ensuring that Fr Nestor did not suffer financially. We also note Fr Nestor's comment in his letter to the Diocese of 6 July 2006:

Not directly concerned with the Ombudsman's Office, but of importance too, is that the Diocese is apparently proposing to start an inquiry on matters being presently judged by the Apostolic Signaturae, and thus preempting that body as well as causing a complication in the connection between Church and Civil Law' (my emphasis).

This comment indicates to us that Fr Nestor would not have wished this matter to be notified to us while he was pursuing his options in the canon law system. While we expect that allegations will be notified to us even though the subject of the allegations is involved in legal proceedings related to the allegations, we generally advise agencies to defer the agency's investigation of the allegations until the related legal proceedings are completed. We therefore would not have expected the Diocese to commence investigating the allegations against Fr Nestor until this time.

Please contact me on 9286-1047 should you wish to discuss any aspect of this letter.

Yours sincerely



Anne Barwick
Assistant Ombudsman (Children and Young People)