

# Foott, Law & Co.

Est. 1868  
SOLICITORS

Foott, Law & Co. Pty. Limited  
trading as Foott Law & Co.,  
DIRECTORS -  
PETER JOHN ROLAND - B.A. LL.B. (Syd)  
LL.B.(Cantab.)  
JOSEPH ANTHONY FAHEY - B.A. LL.B. (Qld)



Liability limited by  
a scheme approved under  
Professional Standards  
Legislation

Telephone: (02) 6642 1900  
(02) 6642 1729  
Fax: (02) 6642 5070  
Email: [admin@foottlaw.com.au](mailto:admin@foottlaw.com.au)

56 Victoria Street  
GRAFTON, 2460  
(PO Box 18)  
DX 7602 GRAFTON  
ABN 90 120 596 689

Our Ref: PJR:REB 06-0030  
Your Ref: SJH:HM:856432

22 February 2007

Messrs. Nicol Robinson Halletts,  
Lawyers,  
Box 380 GPO  
BRISBANE, QLD 4001

Dear Sirs,

**RE: THE CORPORATE TRUSTEES & NORTH COAST CHILDREN'S HOME**

We refer to your letters dated 6 February 2007 and 15 February 2007 respectively.

As previously advised, the above matter was included in the business papers for a scheduled meeting of Bishop-in-Council on 22 February 2007. Following consideration of the matters set forth in your letters of 6 February and 15 February respectively, we are instructed to make the following specific comments:-

Letter dated 6 February 2007

- a. The claim that the Diocese has already offered the sum of \$70,000.00 to an abuse claimant consequent upon the prosecution of Mr. Kitchingman is, we have ascertained totally without substance.
- b. It is not correct that the Church has forwarded Statutory Declarations of each and every one of your clients to the Police. The only matters referred to Police were Declarations which contained allegations against members of the Clergy.
- c. With regard to the question of potential fines for breach of privacy, we would refer you to s316 (1) of the Crimes Act 1900 (NSW) which is in the following terms:-

"If a person has committed a serious indictable offence and another person who knows or believes that the offence has been committed and that he or she has information which might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for it fails without reasonable excuse to bring that information to the attention of a member of the Police Force or other appropriate authority, that other person is liable to imprisonment for 2 years."

- 2 -

Messrs. Nicol Robinson Halletts,

22 February 2007

- d. With regard to alleged breaches of privacy, we do not believe that the Privacy and Personal Information Act 1998 (NSW) or the Privacy Act 1998 (Cth) would apply to any person or body within the Diocese of Grafton.

Letter dated 15 February 2007

- ~~a. With regard to the suggestion that "the present claims if litigated would clarify a number of areas of law relating to the role of the Anglican Church in terms of delegable duties and the legal status of the Diocese", it is our opinion as previously advised that neither the Bishop nor the Corporate Trustees had any measure of control over or assumed responsibility for the management of the North Coast Childrens' Home. As such, the questions of delegable duties or the legal status of the Diocese simply do not arise~~
- b. With regard to the position of the Primate, the Authority of the Primate is specified in the Constitution and various Canons of the Anglican Church of Australia and does not include responsibility for the affairs of the Diocese of Grafton. In this regard, you are referred to the following Statutes, namely *The Anglican Church of Australia Constitutions Act 1902 (NSW)*; *Anglican Church of Australia Trust Property Act 1917 NSW* and *The Anglican Church of Australia Act 1961 (NSW)*.
- c. It is our client's contention that the principles regarding legal liability in tort for various organs of the Anglican Church are well settled. The allegations are very different from those in *Davidson v Queensland* and recent abuse cases involving The Roman Catholic Church.
- d. It is our understanding that any evidence of Dr. Roger Austin would be inadmissible in any proposed proceedings and in the opinion of our client there is no issue of Canon Law applicable. Moreover Dr. Austin would not have "specialized knowledge" within s79 of the Evidence Act 1995 NSW of the Canon Law of the Anglican Church of Australia and its predecessor the Church of England.

Having regard to the above matters, our instructions are to advise that the offer set out in your letter of 6 February 2007 is rejected.

Yours faithfully,  
**FOOTT, LAW & CO.**

Per:

Peter Roland