

Submissions for Bishop Manning In Reply to Submissions in Response of the Truth Justice Healing Council 15 August 2017¹ (TJHC Submissions) and Submissions of John Joseph Usher² (Usher Submissions)

Reply to THJC Submissions

1. In paragraphs 8 – 10, the Church parties seek to acknowledge matters “As to Bishop Manning” that affect his interests. In paragraphs 194 and 199 – 245, the Church authorities seek to ‘accept’ submissions made against Bishop Manning’s interests that are challenged by those that represent Bishop Manning’s interests. The Church parties do not represent Bishop Manning and have no warrant or instruction that would permit them to ‘accept’ or ‘acknowledge’ matters against his interest where the underlying facts have not been found and are put in contest by the submissions made for Bishop Manning. The approach has been taken without the consent of Bishop Manning.
2. These submissions respond to the matters set out in paragraph 10 and certain of the submissions set out paragraphs 199-245 where the Church authorities seek to accept submissions made against Bishop Manning. Bishop Manning relies otherwise on the Submissions provided to the Commission³.
3. **Background Events** - the following are established by the evidence:
 - a. The issue of how Bishops and the Church should respond to allegations of criminal behaviour by Priests (including sexual offending) had been discussed at ACBC Meetings on 27 November – 1 December 1989 and 1 May 1990 -8 May 1990.
 - b. Australian Bishops resolved to establish the Special Issues Committee at the ACBC Meeting on 27 November – 1 December 1989⁴.
 - c. At the ACBC Meeting 1 May – 8 May 1990, Australian Bishops adopted the “Protocol for Dealing with Allegations of Criminal Behaviour” dated 30 November 1989⁵.
 - d. Bishop Heather is noted to have been in attendance at both ACBC Meetings⁶. Bishop Kennedy had a proxy, Bishop Daly, in attendance.⁷

¹ SUBM.2481.001.0001

² SUBM.2480.001.0001_R

³ Subm.2479.001.0001

⁴ Ex 44- 5 [CTJH.301.02001.1537](#) ACBC Meeting Minutes 27 November 1989 – 1 December 1989

⁵ Ex 44-5 [CTJH.301.02002.0001](#)

⁶ Ex 44- 5 [CTJH.301.02001.1537](#) ACBC Meeting Minutes 27 November 1989 – 1 December 1989 and Ex 44-5 [CTJH.301.02001.1562](#) ACBC Meeting Minutes 1 May 1990 – 8 May 1990.

⁷ Ex 44- 5 [CTJH.301.02001.1537](#) ACBC Meeting Minutes 27 November 1989 – 1 December 1989 and Ex 44-5 [CTJH.301.02001.1562](#) ACBC Meeting Minutes 1 May 1990 – 8 May 1990.

- e. By 22 August 1990, Father Farrell had been referred to the Special Issues Committee of the Church and had been interviewed by Father Usher⁸.
 - f. On 22 August 1990, Father Usher advised Father Peters at the Bishops House Armidale:
 - i. He had interviewed Father Farrell; and
 - ii. Given the seriousness of the allegations against Father Farrell and Father Usher's assessment of a personality disorder, that the Bishop should not rely on Garry Boyle's assessment alone and it was recommended that some further assessment be undertaken of Father Farrell before considering Father Farrell for appointment to any position.
 - g. Father Farrell wrote to Bishop Heather on 3 October 1989⁹ seeking a place in the Parramatta Diocese and Bishop Heather took the request to a meeting of Consultors on 25 October 1989¹⁰.
 - h. As noted in paragraph 61 of Bishop Manning's Submissions and 226 - 227 of the TJHC Submissions, in the period 1989 -1992 there was no requirement that relevant information be communicated between Dioceses when a priest incardinated in one diocese moved to another.
4. Accepting the Background Events, and the evidence of steps taken by Bishop Manning, the following submissions are made for Bishop Manning:
- a. Bishop Heather asked the Consultors to consider a 12-month placement for John Farrell in Parramatta before Kevin Manning became Bishop Manning at Armidale. At all times, Bishop Heather permitted John Farrell to exercise ministry in the Parramatta Diocese.
 - b. Bishop Manning arrived in Armidale in July 1991. As at July 1991, Bishop Manning was a new Bishop.
 - c. Bishop Manning is entitled to have operated on an assumption that Bishop Heather and Bishop Kennedy were both aware the Church's Protocol for Dealing with Allegations of Criminal Behaviour and of the existence of the Special Issues Committee.
 - d. Bishop Manning is entitled to have operated on an assumption that Bishop Kennedy and Bishop Heather were aware of the allegations against Father Farrell and that Father Farrell had been referred to the Special Issues Committee -all of which occurred before Bishop Manning arrived in Armidale in July 1991.

⁸ Ex 44-05 [CTJH.400.40003.2138](#) Letter from Father John Usher to Father Wayne Peters dated 22 August 1990

⁹ [CTJH.280.03010.0168](#) R Letter from John Farrell to Bishop Heather

¹⁰ [CTJH.280.03010.0271](#) R Meeting of Consultors 25 October 1989

- e. Bishop Manning was entitled to operate on the assumption that the referral of John Farrell to the Special Issues Committee meant that those who needed to know were informed of the views of Father Usher in 1990.
- f. There was no requirement of Church Protocol or law that required Bishop Manning to seek to investigate decisions made by Bishop Heather or Bishop Kennedy before his appointment to Armidale.
- g. Bishop Manning would have known that each Bishop is personally responsible for the propriety of any appointment of a Priest to a position within the Bishop's Diocese.
- h. Bishop Manning was entitled to operate on the assumption that Bishop Heather and Bishop Kennedy were both aware of their obligations under the Protocol for Dealing with Allegations of Criminal Behaviour in particular their personal obligation to investigate any allegations of criminal behaviour and to satisfy themselves after investigation of the matters before placing John Farrell in any position in their Diocese. Bishop Manning would have known Bishop Heather as a Bishop of considerable experience and seniority. Bishop Heather never contacted Bishop Manning to discuss Farrell.
- i. If there were gaps in Bishop Heather's understanding of the matters pertaining to John Farrell (either in relation to the 1984 Moree Allegations or the views of Father Usher in 1990) there is not a scintilla of evidence that Bishop Manning knew of the gaps in Bishop Heather's knowledge of those matters. Rather, any gaps are a result of Bishop Heather's failure to investigate and the information provided to him by Bishop Kennedy.
- j. Bishop Manning was involved in the early progress of the Special Issues Committee as the then Secretary of the Australian Catholics Bishops Conference and was aware of Protocol for Dealing with Allegations of Criminal Behaviour. Upon his appointment to the Armidale Diocese, Bishop Manning undertook steps to investigate what had happened in the Diocese and the suitability of John Farrell to remain in the priesthood in accordance with his own personal obligations and the recommended steps outlined in the Protocol for Dealing with Allegations of Criminal Behaviour. Upon recognising that no further assessment (other than Boyle's assessment) had been undertaken of John Farrell, Bishop Manning organised for an assessment by Blaczynski.
- k. Bishop Manning inherited the problem of John Farrell and was the first of the Church leaders who sought to address the problem thoroughly and decisively.

- l. Bishop Manning never gave John Farrell the benefit of any doubt and never yielded to Farrell's manipulations or agitations.
- m. Bishop Manning sought to gather information to try and investigate the allegations of criminal behaviour and sought the advice of his Monsignor and the Special Issues Committee (or SIRG) on how he as a Bishop should respond and deal with John Farrell. It is evident that at least by April 1992, he had formed the view that John Farrell was a risk and unsuitable to be a priest and thereafter tried every method available to him – refusal of appointment and declining permission to officiate clerically, invalidation of ordination, pressuring Farrell to leave ministry and laicisation to remove Farrell from the Priesthood and to seek to minimise the risks that Farrell appeared to pose to the community. There could be no criticism of his conduct before April 1992. To suggest that somehow Bishop Manning could get to the bottom of the Farrell problem immediately upon his appointment to Armidale is preposterous.
- n. Bishop Manning consistently and unrelentingly sought to invoke and follow the processes available to him under Canon Law and the process adopted by the Church through the ACBC for dealing with allegations of criminal behaviour.
- o. Given the approach taken by Bishop Manning and his demonstrated genuine concern to address the risk and allegations involving John Farrell, it is not open to be satisfied to the requisite standard that Bishop Manning knew John Farrell was working as a Priest in the Parramatta Diocese and in the face of that knowledge elected not to tell Bishop Heather about the information he received after July 1991. That scenario is entirely at odds with his conduct and approach and is inconsistent with the state of mind demonstrated by his determination to minimise risk and to have Farrell removed from the priesthood.
- p. The most likely explanation for any omission in communication is as Bishop Manning told Mr Whitlam QC "That was my understanding, that he was just living there and he had no faculties."¹¹ That position would explain any omission in communication and is consistent with his demonstrated actions and commitment to investigating and responding to John Farrell.

¹¹ Exhibit 44-9 Confidential Interview of Bishop Kevin Manning (Tab W11)
CTJH.280.03011.0064_R at T33:21 -21

Further submissions in relation to the matters set out in paragraph 10 and 199-245 of the THJ Submissions

5. There should have been communication between the Bishops of Armidale and Parramatta between July 1991 and June 1992. This finding can and should be made and can be made without any criticism of either Bishop.
6. The protection of the community and effective and decisive action in respect of John Farrell would have been aided by communication between the Bishops of Armidale and Parramatta and between the Special Issues Committee and the Bishops. This finding can and should be made and can be made without any criticism of either Bishop.
7. The failures in communication were a product of the Church structure and the limitations of the Protocol for Dealing with Allegations of Criminal Behaviour. This finding can and should be made and can be made without any criticism of either Bishop.
8. In relation to the matters set out in paragraph 10 of the THJ Submissions:
 - i. The Church parties only seek to 'acknowledge' matters in relation to the conduct of 3 priests – Bishop Kennedy, Bishop Heather, and Bishop Manning.
 - ii. It is noted that of those 3 priests – one was dead by the time of the public hearings and one was medically incapacitated and unable to give evidence.
 - iii. On analysis, the Church parties when seeking 'to acknowledge' the matters set out, have urged the Commission to find facts that favour the only witness who was alive and able to give evidence – Bishop Heather. Where there was any contest or the possibility of attribution of responsibility to one or more priests, the Church authorities attribute responsibility to the priests who were either dead or unable to speak for themselves. This is disappointing. It also bespeaks the unconscious or conscious bias in favour of the testimony that was heard and the facility in interpreting events and inferring matters unfavourably and to the disadvantage of a witness who not able to give evidence in his defence. This is patently unfair to Bishop Manning. Findings critical of Bishop Manning should not be made because he has not had an opportunity to speak or explain or challenge.
 - iv. The only evidence available from Bishop Manning as to his knowledge of what Farrell was doing in Parramatta is his evidence to Mr Whitlam QC that he did not know that Farrell

was exercising ministry in Parramatta between July 1991 and June 1992. That statement and there is no incontrovertible evidence against it explain any failure in communication (if there was such a failure) and explain why Bishop Manning did not withdraw Farrell's faculties until 1 July 1992.

- v. The Background Events provide context for Bishop Manning's actions and support the evidence given by Bishop Manning to Mr Whitlam QC.
6. Paragraph 218 of TJHC Submissions: The view of the Church Authorities is not advanced on the instructions of Bishop Manning but on an acceptance of Bishop Heather's evidence (who could give evidence) and without the benefit of Bishop Manning's evidence (who could not give evidence) and in respect of which Bishop Manning may have been in a position to deny or alternatively, to explain. The Commission should not make the proposed findings.
 7. In paragraph 220, TJHC note the letter to Father John dated 30 July 1991 at the Catholic Presbytery at Merrylands and rely upon it in aid of a finding that Bishop Manning knew Farrell was working as priest. The fact that the letter was addressed to Father Farrell at the Catholic Presbytery at Merrylands is not proof that Bishop Manning knew that John Farrell was working as a priest. The evidence is replete with letters from John Farrell from various presbyteries including from the Catholic Presbytery at Carlingford (in the Diocese of Broken Bay) during periods when he was not in active ministry¹². The correspondence refers to 'work' it does not otherwise indicate the understanding of Bishop Manning. The fact that there is no suggestion in the evidence that Farrell was 'working' other than as a priest, is not proof of knowledge by Bishop Manning that Farrell was working as priest. Bishop Manning told Mr Whitlam QC that he did not know Farrell had faculties in Parramatta. There is no reason to reject this and it is not fair to Bishop Manning to do so when he now cannot give evidence or be tested on what he told Mr Whitlam QC.
 8. Paragraph 221- 224 – Bishop Manning relies on the Submissions already provided to the Commission and the matters set out above. Bishop Heather never contacted Bishop Manning. Bishop Heather never told Bishop Manning of the decisions he took in respect of John Farrell. If it is true that there was no communication between the Bishops, there could have been better communication and with the benefit of hindsight there should have been. It is unfortunate that rather than acknowledging the limitations of Church structure and processes adopted by the Church, attribution for responsibility

¹² Ex 44-005 [CTJH.280.03010.0168_R](#) Letter from Farrell to Bishop Heather.

for any omission is aimed at the Bishop who cannot speak for himself and could not give evidence at the public hearings.

Reply to Usher Submissions

9. These submissions involve speculation and conjecture:
 - a. about the content of documents (some authored by Bishop Manning but many not) and inferences to be drawn from the documents and
 - b. about 'meetings' and 'discussions' between witnesses not examined (Bishop Manning and Monsignor Peters) and about which there is not a scintilla of evidence or even any evidence that they took place interpreted through the lens of the arguments sought to be advanced by those representing Monsignor Usher. This is the same vice complained about in the Submissions for submissions of Counsel Assisting put against Monsignor Usher.

10. The submissions describe the steps taken by Bishop Manning as a 'strategy' and that Bishop Manning and Monsignor Peters 'collaborated' (paragraph 192) to get rid of Farrell. The precise meaning of those submissions is not clear but the words seek to impute some sense of conniving and should be rejected. What may be found is that Bishop Manning determined to investigate the matters himself, unconvinced that the outcome of the trial was the end of the matter and assured him of the safety of Farrell. The steps taken by Bishop Manning are consistent with the approach recommended by the Special Issues Committee and the Protocol (drafted by the Special Issues Committee) as adopted by the ACBC. Bishop Manning's actions were entirely consistent with and obedient to his obligation as the Bishop of Armidale and the Protocol adopted at the ACBC

11. Speculation about conversations between Monsignor Peters and Bishop Manning remain speculation – not facts or proof. Given the death of Monsignor Peters and Bishop Manning's incapacity, those matters cannot be found. Given the steps being taken by Bishop Manning and Monsignor Peters, and the involvement of the Special Issues Committee by August 1990, it is inherently unlikely that anything was kept from the Special Issues Committee – this is raised not to invite speculation but as argument against the speculation in the Submissions. By way of example:
 - a. In paragraph 192, it is suggested that "information was freely exchanged between the two" – this is an invention and should be rejected.
 - b. The suggestion in paragraph 214 that Bishop Manning wanted to speak to Farrell about an "outstanding allegation" is also an invention and should be rejected.
 - c. In relation to the submissions set out in 224 and following on the file note of 9/10/91, it is clear that Bishop Manning did not accept the outcome of the trial as determinative of the risk posed by Farrell. It is suggested, *"Although the details of the "incidents" are not disclosed*

in the Summary, it is likely that some detail was discussed” – this is pure speculation. It is further argued: “This entry assumed that Bishop Manning knew that Farrell had offended in the past. Either admissions were made during the course of the meeting of 9 October 1991 or such information which had caused Bishop Manning to conclude that Farrell had offended and might “offend again” came from Father Peters.” This is also speculation and should be rejected. The obvious and unobjectionable interpretation is that Bishop Manning had determined that Farrell was a risk and where there was ‘smoke there was fire’.

- d. There is no evidence as is suggested in paragraph 227 that Bishop Manning discussed concrete acts of abuse at the meeting of 9/10/91 and the matters set out in paragraph 228 are also speculation, not inferences reasonably drawn and incontrovertibly established against Bishop Manning and should be rejected.
- e. The submissions are also illogical – to suggest that Bishop Manning knew of concrete incidents of proven abuse but did not tell Father Lucas or the Special Issues Committee whom he had called in aid to seek to remove Farrell from the priesthood makes no sense.

12. Any submissions that involve speculation and conjecture about what Bishop Manning knew or didn’t know should be rejected.

Maria Gerace
Counsel for Bishop Manning
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