



Further Submissions in Response  
to Submissions on behalf of  
State of New South Wales and  
Bishop Kevin Manning –  
Case Study 44

from

the Truth Justice and Healing Council

**Royal Commission into Institutional Responses to Child Sexual Abuse**

Case Study No. 44 | John Joseph Farrell

**22 September 2017**



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## 1 State of New South Wales: Further Submissions dated 23 August 2017

- 1 The State refers to paragraph 105 of the TJHC submissions of 15 August 2017 (“the principal TJHC submissions”), where it was submitted on behalf of the Church parties that *“so far as is known, on the evidence, Farrell did not sexually abuse any child during the three years (July 1984 - August 1987) he was in East Tamworth”*.
- 2 The State refers to three documents, as being documents of which the Commission is aware, namely:
  - (a) an “Agreed Statement of Facts”;
  - (b) an “Acquitted Charges Table”; and
  - (c) the Remarks on Sentence of Judge Zahra on 2 May 2016;

and submits that those documents constitute evidence that in that period Farrell did commit offences against children.
- 3 The second of those documents is in evidence, at Ex 44-5, tab 334, but contains no reference to any dates.
- 4 The first and third of those documents are not in evidence. The Church parties do not have the first document, the “Agreed Statement of Facts”, and so do not know what it contains.
- 5 However, the Church parties have now had the opportunity to consider the Remarks on Sentence of Judge Zahra. They immediately accept that the State is correct in asserting that those remarks indicate that between July 1984 and August 1987, Farrell did commit offences against a child, one of which offences occurred in Tamworth: see page 11.
- 6 To the extent that their earlier submission, at paragraph 105, suggested to the contrary, the Church parties withdraw any such suggestion.
- 7 The Church parties respectfully add that their original submission was that *“so far as is known, on the evidence,”* Farrell had not offended in that period. That submission was accurate, so far as the evidence in this case study allowed. In that regard the Church parties again note that, at CA [358], counsel assisting submitted that Bishop Hanna’s evidence - which included his evidence cited at CA [357] that *“I’m led to believe that in the three years he was with me he didn’t offend ... it appears he didn’t [offend]”* - was not challenged, and should be accepted.



## 2 Bishop Manning: Further Submissions dated 4 September 2017

8 Counsel for Bishop Manning rightly notes that the Church parties do not represent Bishop Manning. It is of course appropriate for Bishop Manning's own counsel to make submissions on his behalf.

9 There are two aspects of those submissions to which the Church parties wish to respond briefly.

### 2.2 Factual errors and misconceptions in paragraph 4, and paragraph 7 (the second paragraph 7 so numbered within the submissions, on p 6)

10 Paragraph 4, in several sub-paragraphs, conflates the Special Issues Committee (SIC) with the Special Issues Resource Group (SIRG).

11 The SIC was originally formed in November 1988.<sup>1</sup> The SIRG did not come into existence until after April 1992, upon the 1992 Protocol being adopted.<sup>2</sup>

12 At paragraphs 4(d) and (e), it is asserted that Farrell was referred to the SIC and that that occurred prior to July 1991. Both of those assertions are incorrect. First, although in August 1990 Fr Usher interviewed Farrell at the request of Fr Peters, Fr Usher does not seem to have done so as a member of the SIC.<sup>3</sup>

13 Second, Farrell was eventually referred to the SIRG, by Bishop Manning. However, that did not occur until 27 August 1992,<sup>4</sup> by which time Bishop Heather had already terminated Farrell's appointment in Parramatta.<sup>5</sup>

14 As to paragraph 4(h): the 1990 Protocol (and for that matter the 1991 Protocol) set out steps which a priest's Bishop should take in the event of a complaint being made. That Bishop, in Farrell's case, was at all times the Bishop of Armidale - Bishop H Kennedy prior to July 1991, and Bishop Manning thereafter.

15 Moreover, the Protocols dealt with how to respond to a complaint when made: that is, they were to be investigated; there were provisions in relation to criminal proceedings which might result; and so on. The Protocols were not directed at re-investigating complaints which had already been investigated, or in respect of which criminal proceedings had already been brought and concluded. It is accordingly not to the point to suggest that the Protocol somehow gave rise to an obligation on Bishop Heather to do something in 1989 or 1990 about a complaint which (as he was told) had been made several years previously, and had already been dealt with by criminal proceedings.

<sup>1</sup> Ex 44-5, tab 74.

<sup>2</sup> Ex 44-5, tab 139: see paragraph 5.

<sup>3</sup> Ex 44-5 tabs 93 and 99; see also CA submissions, [583] - [614].

<sup>4</sup> Ex 44-5, tab 160.

<sup>5</sup> Ex 44-5, tabs 149, 150, 154.



- 16 As to paragraph 4(m): Bishop Manning did not seek advice from the SIC. He did seek advice from the SIRG, but not until August 1992. Further, the Church parties have not made any such suggestion as that described in the last sentence of paragraph 4(m).
- 17 As to paragraphs 4(o) and (p): soon after his arrival in July 1991 Bishop Manning evidently reviewed, with concern, the Armidale “files” on Farrell.<sup>6</sup> In doing so he inevitably saw, among other documents:
- (a) Bishop Heather’s letter to Farrell of 10 November 1989, cc Bishop Kennedy, appointing Farrell to Kenthurst for 12 months “*with the approval of your Ordinary, Bishop Kennedy of Armidale*”;<sup>7</sup>
  - (b) Bishop Heather’s letter to Bishop Kennedy of 28 September 1990, as to Farrell’s continuing at Kenthurst “*as a supply*” until the end of October, after which Farrell’s situation would be reviewed “*in consultation with you*”;<sup>8</sup>
  - (c) Bishop Heather’s letter to Farrell of 9 January 1991, cc Bishop Kennedy, appointing Farrell “*as Assistant Pastor to the parish of Merrylands*” until 30 November 1991 “*with the approval of your Ordinary, Bishop Kennedy of Armidale*”;<sup>9</sup>
  - (d) Bishop Kennedy’s letter to Bishop Heather of 11 January 1991, thanking Bishop Heather for a copy of his 9 January letter to Farrell “*appointing him as Assistant Priest at Merrylands*”.<sup>10</sup>
- 18 In relation to paragraph 4(p), the only Bishop who could withdraw Farrell’s faculties was the Bishop of Armidale, Farrell’s ordinary. Bishop Heather, as Bishop of Parramatta, had no power to do so. The Bishop of Armidale had not done so, as the Armidale files made clear. Thus Farrell did indeed retain his faculties, a state of affairs which continued until Bishop Manning himself withdrew those faculties on 1 July 1992.<sup>11</sup>
- 19 It is thus submitted that the documents which are in evidence indicate that Bishop Manning did know by late July 1991 that Farrell was working as a priest at Merrylands. The Church parties accordingly maintain the submissions at paragraphs 220-224 of the principal TJHC submissions.
- 20 As to paragraph 7 (on p 6): Bishop Heather told Bishop H Kennedy what he was doing with Farrell, at Bishop H Kennedy’s request, in the Parramatta diocese. Bishop Heather was entitled to assume, as the evidence shows to have occurred, that Bishop Manning would see that correspondence after taking up his appointment in Armidale in July 1991.

<sup>6</sup> Ex 44-9, tab 11 at T7.5-18, T8.15-20, 28-43, T10.14-47

<sup>7</sup> Ex 44-5, tab 79.

<sup>8</sup> Ex 44-5, tab 97.

<sup>9</sup> Ex 44-5, tab 103.

<sup>10</sup> Ex 44-5, tab 104.

<sup>11</sup> Ex 44-5, tabs 151, 154.



### 2.3 As to the assertion in paragraph 8(iii) (on page 5)

- 21 The Church parties have not adopted the approach asserted. The person with ultimate authority in any diocese is the bishop. The Church parties have sought to address the ways in which, on the evidence, the bishops in question in this case study, Bishops H Kennedy, Manning and Heather, dealt with the information available to each of them respectively.
- 22 The Church parties were and are acutely aware of the risk of unfairness to a person who is unable to give evidence, such as (in this case) Bishop H Kennedy and Bishop Manning. For that reason the approach of the Church parties in the principal TJHC submissions was as outlined at paragraphs 5 and 6 of those submissions.
- 23 Where evidence including documentary evidence establishes the existence of a fact, the Church parties have acknowledged that to be so. With sadness, it is the Church parties' submission that that is what has occurred in relation to the issues relevant to Bishop Manning acknowledged at paragraph 10 of the principal TJHC submissions.
- 24 Bishop Heather's evidence in these respects was not challenged, it is consistent with the available contemporaneous documents, and counsel assisting has numerous times submitted that it should be accepted: see for example CA [476], [527], [669]-[670], [707]-[710]. The Church parties concur.

**Peter Gray SC**

**Hernan Pintos-Lopez**

Counsel for the Church parties  
22 September 2017