



Submissions in Response
to the Submissions of
Counsel Assisting –
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

15 August 2017



Case Study No. 44 – John Joseph Farrell Submissions in Response

- 1 These submissions are made on behalf of the Truth Justice and Healing Council (**TJHC**), the Catholic Diocese of Armidale and the Catholic Diocese of Parramatta (together, the **Church parties**), who were each granted leave to appear in Case Study 44.
- 2 The submissions of the Church parties respond to the Submissions of Senior Counsel Assisting dated 30 June 2017 in relation to case Study 44 concerning John Joseph Farrell (**Farrell**) (**CA Submissions**).
- 3 The evidence in this case study has made plain a succession of grave failures by Church leaders, when confronted with information and complaints about Farrell in and after the 1980s. Those failures resulted in Farrell being repeatedly permitted to continue to exercise public ministry as a priest, and thereby to have access to children, when the information available should have resulted in his being prevented from doing so.
- 4 The Church parties profoundly regret the devastating impact of the sexual abuse committed by Farrell upon all of his victims. The Church parties again apologise to all the victims of Farrell's abuse, and to their families, for that abuse and its ongoing effects, and for the failures of Church leaders to act effectively on available information so as to prevent further abuse.

Peter Gray SC
Blackstone Chambers

Hernan Pintos-Lopez
Greenway Chambers

15 August 2017



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1 General Submissions

1.1 Witnesses who were not available to give evidence

- 5 Most of the key events within the scope of Case Study 44 (apart from those surrounding and following the 2012 'Four Corners' program) occurred more than 25 years ago. Some of the Church personnel with personal knowledge of those events were unable to be witnesses because they are deceased. That is the case, for example, in relation to Bishop Harry Kennedy, Mgr Frank Ryan and Mgr Wayne Peters. Bishop Kevin Manning, although still alive, is very elderly and was unable to give evidence for health reasons.
- 6 Such witnesses are not able to provide their own account of what occurred and of the reasons for their actions. The Church parties submit that the Royal Commission should not make findings against deceased individuals, or others unable to give evidence, without clear and compelling objective evidence. They refer also in this regard to the Commission's Practice Guideline No. 1, at paragraphs 91 and 92, as to the standard of proof.

1.2 The approach of the Church parties in these submissions

"Submissions" and "findings"

- 7 In written submissions following previous case studies, counsel assisting has put forward specific proposed findings. In this case study, that practice has not been adopted by counsel assisting. Instead, the CA Submissions have separate sections for "submissions" (so identified and headed) as distinct from sections recounting the evidence. Accordingly, the Church parties have approached the CA Submissions on the basis that all of the paragraphs headed as "submissions" are advanced in effect as proposed findings.

The Church parties endorse many of the "submissions" of counsel assisting

- 8 The Church parties accept, and indeed fully endorse, many of the "submissions" so identified in the CA Submissions.
- 9 Accordingly, the general approach of the Church parties in these submissions is to respond, specifically, only to those of such "submissions" (made by counsel assisting) with which the Church parties disagree, or in respect of which the Church parties consider that there are additional matters (of context or otherwise) that should be considered by the Royal Commission before making findings.
- 10 Against that background, the Church parties specifically acknowledge, with deep regret, the following matters in respect of Bishop H Kennedy, Bishop Manning and Bishop Heather respectively:

As to Bishop H Kennedy (see paragraphs 59-138 and 171-172 below):



- (a) He ordained Farrell as a priest in 1981 despite receiving advice from a number of senior priests that Farrell was unsuited for ordination for reasons of personality.
- (b) In about April 1984, he failed to investigate allegations against Farrell of sexual misconduct towards boys in Moree, and failed to encourage victims and their parents to come forward and/or to go to the police.
- (c) In 1984 he transferred Farrell from Moree to East Tamworth notwithstanding that he knew that Farrell was “a big risk” in relation to children.
- (d) In 1989 he requested and encouraged Bishop Heather to take Farrell on as a priest in the Parramatta diocese, notwithstanding that he knew, at least:
 - (i) the nature of the accusations against Farrell in Moree in 1984;
 - (ii) the seriousness of the criminal charges against Farrell in 1987;
 - (iii) the deep community disquiet that the dismissal of those charges in 1988 was unsatisfactory;
 - (iv) that he himself had undertaken no investigation of Farrell's case.
- (e) He failed to tell Gary Boyle, the psychologist, any of these things.
- (f) He failed to tell Bishop Heather any of these things, other than that there had been one set of criminal charges of which Farrell had been “acquitted”.
- (g) He failed to tell Bishop Heather of the views of Fr Usher as expressed in his letter of 22 August 1990.¹

As to Bishop Manning: (see paragraphs 184 and 199-245 below):

- (a) He permitted Farrell to continue exercising priestly ministry in Parramatta from July 1991 to June 1992, notwithstanding that he knew by no later than 30 July 1991 that Farrell was doing so, and notwithstanding that he had refused permission to Farrell to celebrate Mass or perform public liturgical functions in Armidale: see his letter of 30 July 1991.²
- (b) He failed to tell Bishop Heather of any of the information available to him, from the Armidale files or elsewhere, including as to the 1984 Moree accusations and the 1990 views of Fr Usher.
- (c) He failed to tell Bishop Heather of the damning assessment of Farrell by Professor Blaszczyński in April 1992.
- (d) He failed to withdraw Farrell's faculties until 1 July 1992.

¹ Ex 44-5, Tab 93.

² Ex 44-5, Tab 113.



As to Bishop Heather: (see paragraphs 134-198 below):

- (a) Bishop Heather was not told by either Bishop H Kennedy or Bishop Manning of numerous critical features of Farrell's history. Instead he was told that Farrell had been "acquitted" of the only charges (as Bishop Heather understood) that had ever been raised against him.
- (b) On that basis, Bishop Heather dealt with Farrell on the footing that Farrell was innocent and was not a risk to children.
- (c) Bishop Heather, as he readily conceded, was completely wrong in both those respects. His understanding and approach in those respects were naïve, even by the standards of 1989-92, and the result (which obviously weighed heavily on Bishop Heather) was that Farrell had the opportunity to abuse at least one child, CPK, in Parramatta.

The three meetings of late 1992, and the events of 2012

- 11 The Church parties note that of the 395 pages of the CA Submissions, some 209 pages (pages 164-291, and 305-387) are devoted to:
 - (a) Farrell's referral to the Special Issues Resources Group;
 - (b) the three resulting meetings between Farrell and Fr Lucas, Mgr (then Fr) Usher and Mgr (then Fr) Peters in late 1992; and
 - (c) the various accounts given by Fr Lucas, Mgr Usher and Mgr Peters in and after 2012 in relation to their meetings with Farrell in 1992.
- 12 As both Fr Lucas and Mgr Usher were and are separately represented in this case study, the Church parties do not make any submissions in respect of those matters, or in respect of the particular "submissions" advanced by counsel assisting in relation to them, except to the extent that it is necessary to do so in respect of other persons, such as Mgr Peters, who are deceased or who otherwise were unable to give evidence.

Procedural fairness

- 13 It is well-established that commissions of inquiry, including statutory commissions of inquiry such as royal commissions, are subject to obligations of procedural fairness.³ In *Ainsworth v Criminal Justice Commission*,⁴ the majority (Mason CJ, Dawson, Toohey and Gaudron JJ) cited with approval the statement of Brennan J in *Annetts v McCann* (1990) 170 CLR 596, where his Honour said at 608 (emphasis added) that:

Personal reputation has now been established as an interest which should not be damaged by an official finding after a statutory inquiry unless the person whose reputation is likely to be affected has had a full and fair opportunity to show why the finding should not be made.

³ *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564, 574-577.

⁴ (1992) 175 CLR 564, 578.



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- 14 It is submitted that such a “full and fair opportunity” is not afforded merely by providing a right to make submissions after a finding has been proposed.
- 15 Paragraph 69 of the Royal Commission's Practice Guideline No. 1 provides that although the Royal Commission will not usually apply the rule in *Browne v Dunn*, it will do so where the Commission is to be invited to disbelieve a witness. In such circumstances, and also where either it is contended that deliberately false evidence has been given, or it is contended that there has been a mistake on the part of the witness on a significant issue, the Guideline requires the grounds of such a contention to be put to the witness.
- 16 Accordingly, where it is to be submitted that the account of a witness either is false, or is wrong or mistaken, the factual basis (grounds) for such a submission must be put to that witness. Failure to do so will mean that the witness will not have had a “full and fair opportunity” to show why a particular finding should not be made, and procedural fairness will not have been afforded to that witness.

2 Response to Specific "Submissions" Made by Counsel Assisting

2.1 The ordination of Farrell

- 17 There is no doubt, on the evidence, that concerns were raised during Farrell's time as a seminarian about his suitability for the priesthood, and that these concerns were known to Fr Collins, Bishop Murphy and Bishop H Kennedy.⁵
- 18 With the benefit of hindsight, it is obvious that it would have been infinitely better for the children of the dioceses of Armidale and Parramatta, their families and their communities, if Farrell had never been ordained.
- 19 However, the Church parties submit that there is also no doubt, on the evidence, that the concerns so expressed in relation to Farrell prior to his ordination related to his attitude, personality and manner,⁶ and that there was not, at that time, any suspicion - on the part of anyone - that Farrell had a disposition to commit sexual offences against children.⁷
- 20 As was submitted by the TJHC in connection with Case Study 50,⁸ the Church in more recent times has made significant improvements to its procedures in relation to the evaluation and screening of potential clergy.

2.2 Moree: Evidence of Michael McGroder, Karolyn Graham and Patrick McGroder

- 21 The Church parties acknowledge the courage and strength of CPA, Michael McGroder, and his mother Karolyn Graham, who gave evidence during the hearing of Case Study 44.
- 22 Counsel assisting submits, at CA [161] and [276], that Michael McGroder's evidence is consistent with the evidence of Karolyn Graham and the written statement of Patrick McGroder dated 4 January 2013.⁹
- 23 The Church parties did not and do not seek to challenge the evidence of Michael McGroder or Karolyn Graham. They fully accept that both witnesses were honest and credible.
- 24 Similarly, the Church parties accept that the Police Statement given by Patrick McGroder dated 4 January 2013 reflected at that time his best recollection of the relevant events and conversations.¹⁰

⁵ CA Submissions, [68].

⁶ Ex 44-5, Vol 1, Tabs 2, 3, 4, 19; T20916: 11 - T20917: 23 (Flood); T21238: 33-44 (Lucas).

⁷ See, eg, T20916: 40-46 (Flood).

⁸ See generally TJHC Submission in connection with Case Study 50 "The Catholic Church: Then and Now" dated 22 December 2016, pp 52-53.

⁹ See CA Submissions, [161] and [276].

¹⁰ Ex 44-5, Vol 3, Tab 324.



- 25 That said, a degree of caution is required in relation to the proposition advanced by counsel assisting to the effect that the relevant evidence of these three witnesses is consistent, or consistent “in material respects”.¹¹
- 26 The Church parties submit that in fact there are some material inconsistencies in the evidence of these witnesses, especially in relation to:
- (a) What was said by Michael McGroder to each of his parents in relation to the conduct of Farrell. In this regard:
- (i) Michael McGroder said: “I think I told Mum that Father Farrell touched me on the knee and the genitals”.¹²
- (ii) Patrick McGroder said that Karolyn Graham had told him that Michael had told her that Farrell had touched him on the genitals, and also said that Michael had told both Ms Graham and himself that Farrell had touched him on the genitals.¹³
- (iii) However, Ms Graham’s evidence was very different. She said: “Michael was adamant that Father Farrell had just touched him on the knee and nothing more happened. I now know that Father Farrell did more than touch Michael on the knee. ... If Patrick knew, he did not tell me.”¹⁴
- (b) Whether Fr Flood spoke to Michael McGroder. In this regard:
- (i) Patrick McGroder said that Fr Flood spoke to Michael.¹⁵
- (ii) However, both Karolyn Graham, and Michael McGroder himself, said that while Ms Graham and Patrick McGroder met with Fr Flood, Michael did not.¹⁶
- (iii) In this context, it should also be noted that, for his part, Fr Flood had no recollection of ever having spoken with any of the McGroders at the time.¹⁷
- (c) The timing of reporting to Mgr Ryan and Farrell’s subsequent removal from Moree. In this regard:
- (i) Michael McGroder suggested that Farrell did not leave Moree until some months after the incident was raised by Patrick McGroder with Mgr Ryan.¹⁸
- (ii) However, Patrick McGroder said that he complained about Farrell to Mgr Ryan on two occasions, about a week apart, and that Farrell had left Moree within about two weeks of his first complaint to Mgr Ryan.¹⁹

¹¹ See CA Submissions, [276].

¹² Statement of Michael McGroder dated 9 September 2016, [45].

¹³ Police Statement of Patrick McGroder dated 4 January 2013, [24], [26], [38].

¹⁴ Statement of Karolyn Graham dated 9 September 2016, [23], [25].

¹⁵ Police Statement of Patrick McGroder dated 4 January 2013, [38].

¹⁶ Statement of Karolyn Graham dated 9 September 2016, [29]; Statement of Michael McGroder dated 9 September 2016, [53], [55], [57].

¹⁷ T20973: 31-45.

¹⁸ Statement of Michael McGroder dated 9 September 2016, [48]-[56].



27 Accordingly, the third sentence of CA [161] is not accurate and should not be accepted.

2.3 Moree: Father Gleeson

Conversations with Karolyn Graham and Patrick McGroder

28 Karolyn Graham gave evidence that, a few weeks after Farrell had left the parish, she had a conversation with Fr Gleeson.²⁰ She said that, during that conversation, Fr Gleeson said to her *"Nobody has the right to ruin another person's reputation"*.²¹ Although Fr Gleeson could not remember having such a conversation with Ms Graham, he accepted Ms Graham's evidence.²²

29 Michael McGroder gave evidence of a conversation between Patrick McGroder and Fr Gleeson. He said that Fr Gleeson said to Patrick McGroder that Mr McGroder *"had driven a huge wedge through the community and divided it"*.²³ Although again he had no recollection of such a conversation, Fr Gleeson accepted that it probably did take place.²⁴

30 In his Police Statement, Patrick McGroder stated that he met with Fr Gleeson and that, during that meeting, Fr Gleeson said to him *"You can't act on allegations"* and *"You have no right to accuse a priest of these things"*.²⁵ Fr Gleeson had no recollection of such a conversation.²⁶

31 Counsel assisting submits, at CA [286], that Fr Gleeson's responses to Ms Graham and Patrick McGroder were *"insensitive and inappropriate"* and *"prioritised the reputation of the Church over the interests of Michael McGroder and his family"*.²⁷

32 Such propositions were not put to Fr Gleeson. Rather, Fr Gleeson was asked a vague question about his attitude at the time and whether he *"would have put the church first"*:

Q. *Leaving aside the actual language of "driving a wedge", from what you have been saying earlier, the attitude at that time would have been similar to the concept in that comment, wouldn't it?*

A. *I think - I mean, I can't excuse myself now, knowing what I am, but looking back then, I think it's a lack of information. I don't think we had a clue what we were talking about or what we were dealing with, you know? I think --*

Q. *It is likely you would have put the church first?*

¹⁹ See Police Statement of Patrick McGroder dated 4 January 2013, [27]-[30]; Statement of Karolyn Graham dated 9 September 2016, [31]; see also inconsistencies in the three accounts in relation to the timing of the incident with Farrell and the motorcycle: Statement of Michael McGroder dated 9 September 2016, [52]; Statement of Karolyn Graham dated 9 September 2016, [34]; Police Statement of Patrick McGroder dated 4 January 2013, [31].

²⁰ Statement of Karolyn Graham dated 9 September 2016, [32].

²¹ Statement of Karolyn Graham dated 9 September 2016, [32].

²² T21012: 15-28.

²³ Statement of Michael McGroder dated 9 September 2016, [57]; see also CA Submissions, [219]-[220].

²⁴ T21010: 28-35.

²⁵ Police Statement of Patrick McGroder dated 4 January 2013, [32]-[33]; see also CA Submissions, [218].

²⁶ T21027: 12-27.

²⁷ CA Submissions, [286].



A. *Oh, I would have, yes, I'm sure, because I would assume that it was; like, I've learnt a lot since, but I would have assumed it was.*²⁸

33 Fr Gleeson was not given the opportunity to explain or respond to the specific propositions now being advanced at CA [286]. For example, there is no reason to assume that *“putting the Church first”* necessarily meant, in Fr Gleeson’s mind, in 1984, any lack of care, or lessening of care, for the interests of Michael McGroder or his family.

34 In any event, it is not correct to suggest that Fr Gleeson was seeking to defend the reputation of the Church. The words said to have been used by Fr Gleeson to Ms Graham were not directed to the reputation of the Church but rather to the personal reputation of an individual namely Farrell.²⁹ Fr Gleeson’s evidence suggests that his responses to Ms Graham reflected a view, as part of a particular moral philosophy, that a person should not say things with the intention of harming the reputation of another person even if those things were true.³⁰ Fr Gleeson accepted without hesitation that Ms Graham and Patrick McGroder were in fact protecting children and not seeking to destroy anyone’s reputation.³¹

35 In these circumstances, it is submitted that while the view might be taken that the remarks were insensitive or inappropriate, a finding that Fr Gleeson *“prioritised the reputation of the Church over the interests of Michael McGroder and his family”* should not be made.

2.4 Absence of specific knowledge in relation to Farrell’s abuse

36 What Fr Gleeson was told by Mgr Ryan was that Farrell had been *“mucking around with boys”*. He willingly conceded that he inferred or assumed that the conduct referred to was in some way sexual in nature.³² However, Fr Gleeson’s evidence made plain that he was never told anything of what such *“mucking around”* consisted of; and that he *“made it up in his mind”* what it might have involved. He was at all relevant times up to and including 1984 *“unaware of any specifics other than [Farrell] touching Pat McGroder’s son on the knee”*.³³

37 Accordingly, what the evidence establishes is that Fr Gleeson *inferred* that Farrell had engaged in conduct with boys that was sexual in nature, but that he had no specific knowledge of what such conduct by Farrell may have been in respect of any boy.

2.5 Findings in respect of Fr Gleeson

38 Fr Gleeson was, it is submitted, a transparently honest and very candid witness, who was sincerely doing his best to assist the Royal Commission in relation to events which occurred more

²⁸ T21010: 41 - T21011: 7.

²⁹ See, eg, Statement of Karolyn Graham dated 9 September 2016, [32].

³⁰ See Fr Gleeson’s reference to the concepts of detraction and calumny at T21008: 5-42; see also T21025: 13-26.

³¹ See T21025: 3-11.

³² T20993: 19 - T20994: 33.

³³ Police Statement of Fr Gleeson dated 9 September 2015, [29], Ex 44-5, Vol 3, Tab 327.



than thirty years earlier. He was very frank in relation to his past shortcomings and readily made numerous concessions.

39 It is submitted that any findings in relation to Fr Gleeson should have regard to those matters.

2.6 Moree: Father Flood

Whether Fr Flood was told by Fr Gleeson that children had been “sexually assaulted”

40 Counsel assisting submits, at CA [273], that it should be accepted that Fr Flood was told by Fr Gleeson that “six or seven” children had been “sexually assaulted”.³⁴

41 The terms “sexual assault” and “sexually assaulted” in this context are found only in the 2015 Police Statement of Fr Flood.³⁵ Those terms do not reflect either Fr Gleeson’s or Fr Flood’s actual present recollection of the words used at the time.

42 Fr Flood gave the following evidence in relation to the use of the words “sexually assaulted” in his Police Statement:

Q. In the same sentence, do you see, going on, it says that Father Gleeson told you that he was aware that a number of children had been sexually assaulted by John Farrell - do you see that?

A. I see that.

Q. Is it your recollection that Father Gleeson used the words "sexually assaulted", or that he used some other words from which you drew that inference?

A. I don't remember the conversation. I wonder whether it was generally as "interfered with", which I took as sexual abuse.

Q. Do you think he may have said that Farrell had interfered with children?

A. I don't recall.

Q. The words "sexually assaulted" there - are they words that you said to the police or that the police wrote down as reflecting whatever you had said to them?

A. The police typed it there. I don't recall that particular part of the conversation.

THE CHAIR: Q. But you accepted that to be a true statement, didn't you, in accepting the statement?

A. I signed it as a true record, yes, on each page.

MR GRAY: Q. Accepting that, but looking at it now, what is your recollection as to whether Father Gleeson used the words "sexually assaulted" or "sexual assault"?

³⁴ CA Submissions, [273].

³⁵ Police Statement of Fr Flood, 9 September 2015, at [24], [26] and [28].



*A. I have no clear memory, sorry.*³⁶

- 43 Fr Gleeson's evidence, as noted above at paragraphs 36 and 37, was that he did not in fact have any knowledge as to what Farrell had actually done in relation to any boy, although he did infer that the "mucking around with boys" referred to by Mgr Ryan was in some way sexual.
- 44 In Fr Gleeson's Police Statement dated 9 September 2015 he described, at paragraph 27, a conversation where he asked Fr Flood to speak with CPF. The words "sexual assault" are not found anywhere in the Police Statement of Fr Gleeson.
- 45 Fr Gleeson gave unchallenged evidence that in speaking to Fr Flood in 1984 he did not use, and would not have used, the term "sexual assault":

Q. Did you, in speaking to Father Flood, use the words "sexual assault" or "sexual" --

*A. No, that's really formal and all that. I wouldn't have - wouldn't have known that.*³⁷

- 46 Accordingly it is submitted that the propositions advanced at CA [273] are not correct, and that no such findings should be made. Fr Flood did not give evidence "consistent with" his 2015 Police Statement, so far as the use of the words "sexually assaulted" is concerned. Rather, as outlined above, his evidence was in fact that he did not recall what words were used. Moreover, Fr Gleeson's evidence, which was not challenged, was that he definitely did not use such words.
- 47 The appropriate finding is that Fr Gleeson told Fr Flood, some time after Farrell left Moree in about April 1984, that there were concerns that a number of boys had been sexually interfered with in some way by Farrell.
- 48 Further, Fr Flood's "vague" recollection³⁸ that Fr Gleeson may have referred to "six or seven" boys should not be regarded as reliable in terms of the numbers of possible victims then known. Fr Flood himself made clear that his "vague" recollection was that Fr Gleeson "didn't give an exact number, but he indicated that it was more than just two or three, type of thing".³⁹ For his part, Fr Gleeson's evidence was that Mgr Ryan mentioned four names to him, not "six or seven", namely CPF, CPD, CPH and Michael McGroder.⁴⁰

Alleged conversation between Farrell and Fr Flood about Michael McGroder

- 49 Counsel assisting submits, at CA [280] and [281], that shortly after the meeting with Monsignor Ryan, Fr Flood met with the McGroder family and was informed of Michael McGroder's allegations; that Ms Graham gave evidence that Farrell told Fr Flood that he had "only made a pass at Michael" and that that evidence should be accepted; and that Farrell's comment to Fr Flood "must have been regarded by him (Fr Flood) as an admission of the conduct alleged".
- 50 The Church parties make two submissions in relation to what appears at CA [279] - [281].

³⁶ T20982: 38 - T20983: 21.

³⁷ T21026: 31-34.

³⁸ Police Statement of Fr Flood dated 9 September 2015, at [27].

³⁹ T20930: 16-20.

⁴⁰ Police Statement of Fr Gleeson dated 9 September 2015, [24], Ex 44-5, Tab 327.



- 51 First, Ms Graham did not give evidence that Farrell had told Fr Flood anything (a matter of which she had no personal knowledge). What Ms Graham recounted in her evidence was that Mr McGroder had told her something, as to what he (Mr McGroder) said that Fr Flood had told him, as to what Farrell had said to Fr Flood. Ms Graham's evidence in this regard was thus third-hand hearsay.
- 52 The Church parties reiterate that they fully accept that Ms Graham was a truthful witness. But this does not make third-hand hearsay any more reliable, merely because it is she who has conveyed it.
- 53 Second, the "submission" at CA [279], that "[w]hile Father Flood did not recall the conversation with Karolyn Graham or Patrick McGroder, he did not deny that it occurred", does not fully or fairly reflect the evidence.⁴¹ Fr Flood gave repeated evidence that he had no recollection that any such conversation with the McGroders had ever occurred,⁴² and he specifically *denied* having spoken to Farrell.⁴³ Accordingly his polite concession⁴⁴ as to Ms Graham's having an honest recollection of a conversation with him (Fr Flood) is not a sufficient basis for findings to the effect proposed at CA [280] and [281].
- 54 Moreover, there is no basis for a finding that Fr Flood "must have" regarded the comment allegedly made by Farrell "as an admission".⁴⁵ No such proposition was put to Fr Flood, and he flatly denied having had the alleged conversation with Farrell at all. Such a finding should not be made.
- 55 Counsel assisting submits, at CA [282], that it should be accepted that Fr Flood told Ms Graham that he had been sent to investigate by Bishop Kennedy. This was also expressly denied by Fr Flood.⁴⁶ That denial was not challenged. Fr Flood elsewhere gave evidence, also unchallenged, that the only discussion "*around sexual matters*" that he ever had with Bishop Kennedy was "*years later*" when he (Fr Flood) was at West Tamworth [from 1986 to 1993].⁴⁷
- 56 As noted by counsel assisting at CA [237] - [244], Fr Flood in fact was approached in April 1984 by Fr Gleeson (not Bishop Kennedy) to speak with boys and parents.⁴⁸
- 57 Accordingly the Church parties do not accept the submission at CA [282].

Fr Flood's letter of 22 July 1984

- 58 Counsel assisting submits at CA [334] that certain references in Fr Flood's letter dated 22 July 1984 to Bishop Kennedy related to allegations of child sexual abuse against Farrell at Moree.⁴⁹ However, while that may be so, the Church parties note that for the reasons explained above

⁴¹ CA Submissions, [279].

⁴² T20973: 18 - T20974: 31.

⁴³ T20973: 37 - T20974: 1.

⁴⁴ T20974: 19 - T20974: 31.

⁴⁵ CA Submissions, [281].

⁴⁶ T20973: 26-29.

⁴⁷ T20933: 39 - T20934: 27; see also Police Statement of Fr Flood dated 9 September 2015 at [29].

⁴⁸ T20927: 13-32.

⁴⁹ CA Submissions, [334]. The letter is at Ex 44-5, Vol 1, Tab 37.



(and also below at paragraph 67), the evidence does not establish that Fr Flood had any specific knowledge in respect of the conduct that was the subject of those allegations.

2.7 Moree: Knowledge of allegations in “early 1984” on the part of Fr Gleeson, Fr Flood, Mgr Ryan and Bishop H Kennedy

59 At CA [288], it is submitted that “by early 1984, at least four priests in the Diocese of Armidale knew of allegations that Farrell had sexually abused boys”. Based on the preceding paragraphs of the CA Submissions, it appears that the four priests referred to are Bishop H Kennedy, Mgr Ryan, Fr Gleeson and Fr Flood.

60 The Church parties make two submissions in respect of CA [288].

61 First, the date by which there was knowledge of any such allegations was, on the evidence, April 1984, and not any earlier than that.

62 Counsel assisting has submitted, at CA [272], that the conversation between Mgr Ryan and Fr Gleeson in which Mgr Ryan referred to “*mucking around with boys*” is most likely to have occurred in around April 1984.⁵⁰ The Church parties concur.

63 The use of the expression “early 1984” in CA [288] may create the mistaken impression that Frs Gleeson and Flood knew about incidents involving Farrell and boys at some time prior to the time of his departure from Moree in about April 1984. In fact the evidence makes clear that that is not so.

64 Fr Gleeson’s evidence, that he had no knowledge of sexual conduct by Farrell towards boys prior to his discussion with Mgr Ryan (which it is accepted by counsel assisting was in about April 1984) about Farrell “*mucking around with boys*”, is recounted by counsel assisting, without any comment or demur, at CA [209].⁵¹

65 Similarly Fr Flood gave evidence that the first time he heard of children having been abused by Farrell was when Fr Gleeson raised with him the topic of speaking to the affected families.⁵² That must have occurred no earlier than April 1984.

66 Second, what each of these four priests knew as at April 1984 needs to be considered separately with respect to each of them.

67 As to Fr Gleeson and Fr Flood, the evidence has established that at this time, April 1984, each of them had some, but limited, knowledge about Farrell’s alleged conduct. They had the following knowledge only:

- (a) Fr Gleeson *inferred* from the vague information provided to him by Mgr Ryan (“*mucking around with boys*”) that Farrell’s alleged conduct was sexual in nature;

⁵⁰ CA Submissions, [272].

⁵¹ See CA Submissions [208]-[209]; T21000: 32-36.

⁵² T20929: 5-30.



- (b) it is reasonable to suppose that Fr Gleeson conveyed that surmise to Fr Flood;
- (c) Fr Gleeson was given four names by Mgr Ryan, namely CPF, CPD, CPH and Michael McGroder;⁵³
- (d) Fr Gleeson was told by Mr McGroder, at some time after this, that Farrell had touched Michael McGroder on the knee;⁵⁴
- (e) after Fr Gleeson had spoken to him, Fr Flood was told, by CPF and CPG, that Farrell had touched CPF in some way that Fr Flood presumed (without asking) was sexual;⁵⁵
- (f) Fr Flood also learned at about the time of Farrell's departure from Moree that CPE (the mother of CPD) had made a complaint to Mgr Ryan;⁵⁶
- (g) other than his conversation with CPF and CPG, Fr Flood did not speak to any other boys or their families at that time.⁵⁷
- 68 As to Mgr Ryan, who is deceased, the evidence of CPA and Ms Graham, and the accounts by Patrick McGroder and CPE in their respective Police Statements, are sufficient to establish that by the time Farrell left Moree in April 1984 Mgr Ryan knew at least:
- (a) that CPA told him in about late 1981 that Farrell had "hurt" him (although CPA did not tell Mgr Ryan that Farrell's conduct was sexual in nature);⁵⁸
- (b) that Patrick McGroder had told him in about April 1984 that Farrell had touched his son Michael on the genitals, that other boys at the school were frightened of Farrell, and that if Mgr Ryan did not remove Farrell from contact with the children he (Patrick McGroder) would go to the police;⁵⁹
- (c) that CPE had told him in about April 1984 that Farrell was "*interfering with the boys*";⁶⁰
- (d) that the parents (not identified) of an altar boy had told him (evidently in about April 1984) of "*school yard rumours*" about Farrell "*providing sex lessons for altar boys*".⁶¹
- 69 In addition, Mgr Ryan also had the knowledge that enabled him to tell Fr Gleeson in April 1984:
- (a) that Farrell had been "mucking around with boys"; and
- (b) that "some of the victims were CPF, CPD, CPH and Michael McGroder".⁶²

⁵³ Police Statement of Fr Gleeson dated 9 September 2015, [24], Ex 44-5, Tab 327.

⁵⁴ Police Statement of Fr Gleeson dated 9 September 2015, [29], Ex 44-5, Vol 3, Tab 327.

⁵⁵ T20932: 18-39.

⁵⁶ T20927: 9-32.

⁵⁷ T20931: 39 - T20932: 11.

⁵⁸ Ex 44-2, Statement of CPA dated September 2016, at [19].

⁵⁹ Police Statement of Patrick McGroder dated 4 January 2013, at [27], [28].

⁶⁰ Police Statement of CPE dated 18 November 2012, at [16], [17].

⁶¹ Ex 44-5, Tab 204A.

⁶² Police Statement of Fr Gleeson dated 9 September 2015, at [24], [26]; see also T20993: 19-43, 20998: 5-38.



- 70 Whether Mgr Ryan had knowledge beyond the matters referred to in the preceding two paragraphs is not known, on the evidence.
- 71 As to Bishop H Kennedy, who is also deceased, it is not possible, on the evidence, to identify with certainty the extent of what he knew as at April 1984. What the evidence does establish is:
- (a) that Mgr Ryan told him (evidently in about April 1984) of the “*school yard rumours*” about Farrell “*providing sex lessons for altar boys*”;⁶³
 - (b) that he “*directed*” Farrell to attend the psychologist, Gary Boyle, “*once the strength of the allegations became known*”;⁶⁴
 - (c) that Farrell said, in his letter to Bishop Kennedy of 31 May 1984, “*I sincerely regret the distress caused to those who have been hurt and inconvenienced ... I am now a new man ...*”⁶⁵
 - (d) that he (Bishop H Kennedy) told Fr Hanna that the reason for Farrell’s being moved from Moree was “*that usual thing, he was messing around with altar boys*”;⁶⁶ and
 - (e) that he told Fr Hanna that “*Well, you have got to regard him as a big risk and you have to just give him restricted ministry and keep an eye on him*”.⁶⁷
- 72 There is no evidence as to what Mgr Ryan said to Bishop H Kennedy at the time (other than telling him of the “*school yard rumours*” about “*sex lessons*”), and thus no evidence as to how much Bishop H Kennedy was actually told of what Mgr Ryan knew. There is no evidence that anyone else, other than Mgr Ryan, said anything to Bishop H Kennedy about these matters at that time.
- 73 Accordingly the Church parties submit that, as to Mgr Ryan, the evidence does permit a finding, in the terms of CA [288], that he knew of allegations that Farrell had “*sexually abused*” boys. As to Bishop H Kennedy, a finding in such terms goes further than the evidence permits. As to Father Gleeson and Father Flood, this modern expression does not capture the extent of their knowledge, or the nature of their understanding, in 1984.

Moree: Reporting to police

- 74 Counsel assisting submits, at CA [291], that none of “*Father Flood, Father Gleeson, Monsignor Ryan nor Bishop Kennedy reported any of the allegations to the police*”.⁶⁸ The Church parties accept the accuracy of that statement, as a matter of fact.
- 75 However, the Church parties note the following matters.

⁶³ Ex 44-5, Tab 204A.

⁶⁴ File note of Bishop H Kennedy dated 19 November 1996, Ex 44-5, Tab 201.

⁶⁵ Ex 44-5, Tab 33.

⁶⁶ Bishop Hanna, T21037: 13-30.

⁶⁷ Bishop Hanna, T21037: 13-30.

⁶⁸ CA Submissions, [291].

- 76 First, neither Fr Gleeson nor Fr Flood had any clear information as to what Farrell had done, or even as to what was specifically alleged against him. The evidence as to the limited information that each of them respectively did have is summarised above at paragraph 67. There is no sufficient basis for finding that either of them knew or even believed that a serious crime had been committed.
- 77 Second, as to his conversation with CPF and CPG, Fr Flood gave evidence that he *presumed* that the “touching” referred to by CPF was sexual, that on that basis he understood that the conduct *could* be criminal, and that accordingly he told CPF and his mother, CPG, that they had the right to report Farrell to the Police.⁶⁹
- 78 Third, given their positions as junior assistant priests, it is submitted that each of Frs Flood and Gleeson reasonably believed and expected that it was Bishop Kennedy (or Mgr Ryan acting on the Bishop’s behalf), who would take, and would be obliged to take, any required measures in relation to Farrell, including undertaking any further inquiries and any reporting to the police.⁷⁰
- 79 Fourth, Fr Gleeson’s understanding was not only that, if Mgr Ryan had known of genital touching, Mgr Ryan would have had to report to the police, but that the parents also had a say in whether such reporting to the police should occur, and he was aware that Patrick McGroder was himself an ex-policeman.⁷¹
- 80 Fifth, the conduct of Farrell in relation to Michael McGroder was, in fact, reported to the Police by Patrick McGroder about a month after Farrell was sent from Moree by Mgr Ryan.⁷²
- 81 At the time Mr McGroder spoke to Police, one of the detectives said that they knew of Farrell’s activities *“but as this was not a serious matter they would like to get more information on him so that they could have a more ‘weighty charge’ to proceed against him”*.⁷³
- 82 Mr McGroder’s statement suggests that the Police did not undertake any serious or comprehensive investigation in 1984.⁷⁴ No one from the Police was called to give evidence to the Royal Commission in relation to what steps the Police took in 1984.
- 83 Sixth, as to Mgr Ryan, he undoubtedly had more information, and more detail, than either Fr Gleeson or Fr Flood: see paragraphs 68-70 above.
- 84 Seventh, as to Bishop H Kennedy, it is not possible to reach any definite conclusion as to the extent of what he knew: see paragraphs 71 and 73 above.

Moree / East Tamworth, 1984-85: Farrell’s treatment with Gary Boyle

- 85 Counsel assisting submits, at CA [300], that Bishop H Kennedy sent Farrell to Gary Boyle for treatment.⁷⁵

⁶⁹ T20976: 9-41.

⁷⁰ See, eg, as to Fr Gleeson: T20999: 6-9; T21023: 38 – T21024:6; and as to (Fr Flood: T20980: 1-12).

⁷¹ T21002: 29-46.

⁷² Police Statement of Patrick McGroder dated 4 January 2013, [35]; see also [40].

⁷³ Police Statement of Patrick McGroder dated 4 January 2013, [35].

⁷⁴ Police Statement of Patrick McGroder dated 4 January 2013, [35], [40].

- 86 The Church parties note that Bishop H Kennedy said in a handwritten note in 1996 that he “directed [Farrell] to attend clinical psychologist Gary Boyle in Sydney”.⁷⁶ Bishop H Kennedy recorded in the same note that “I cannot recall whether I made the arrangements for him to see Boyle or whether I told John Farrell to contact Boyle himself.” It seems likely to have been the latter: Mr Boyle asserted, in a statement to Police in May 2016, that Farrell was a “self-referral, not referred by the Bishop”.⁷⁷
- 87 Counsel assisting further submits, at CA [301], that there is no evidence that Bishop Kennedy followed up the results of Farrell’s treatment with Mr Boyle, and that Bishop Kennedy accepted Farrell’s assurances without seeking confirmation from Mr Boyle as to whether Farrell should return to parish duties.⁷⁸
- 88 The Church parties submit that this submission to some extent overstates the true position, as explained in the following paragraphs.
- 89 Mr Boyle in his 2016 Police Statement stated that he saw Farrell about five or six times over a 12 month period, starting in 1984.⁷⁹
- 90 Mr Boyle was not treating Farrell in 1988.⁸⁰ Indeed he had not done so since 1985. Accordingly Farrell’s letter to Bishop H Kennedy of 30 March 1988, in which he said “My doctor ... recommended that I continue to see Mr Boyle, the psychologist, in order that he may give professional help as I work through the effects of recent happenings”,⁸¹ was misleading if not dishonest.
- 91 It is clear from Mr Boyle’s Police Statement⁸² that Farrell’s earlier letters to Bishop H Kennedy dated 31 May 1984,⁸³ 29 June 1984⁸⁴ and 11 December 1984⁸⁵ had also been misleading and dishonest.
- 92 The only letter from Mr Boyle to Bishop H Kennedy is the one dated 30 July 1988.⁸⁶ In that letter, the opening words are “Further to my phone call of July 1984,” (four years earlier). Mr Boyle was not called to give evidence. However, it is reasonable to suppose that he discussed Farrell’s treatment with the Bishop in July 1984.
- 93 In that 30 July 1988 letter, after the opening words cited at paragraph 92 above, Mr Boyle wrote (emphasis added): “Rev. John Farrell has requested that I write to you concerning my opinion of his problem and the prognosis following my interviews with him **over these years**”.⁸⁷ This

⁷⁵ CA Submissions, [300].

⁷⁶ Ex 44-5, Vol 2, Tab 201.

⁷⁷ Police Statement of Gary Boyle dated 10 May 2016, [12], Ex 44-5, Vol 3, Tab 332; see also CA Submissions, [292].

⁷⁸ CA Submissions, [301].

⁷⁹ Police Statement of Gary Boyle dated 10 May 2016, [14], Ex 44-5, Vol 3, Tab 332.

⁸⁰ Police Statement of Gary Boyle dated 10 May 2016, [14], [21], [22], Ex 44-5, Vol 3, Tab 332.
⁸¹ Ex 44-5, Vol 1, Tab 58.

⁸² Police Statement of Gary Boyle dated 10 May 2016, [19], [20], Ex 44-5, Vol 3, Tab 332.

⁸³ Ex 44-5, Vol 1, Tab 33.

⁸⁴ Ex 44-5, Vol 1, Tab 34.

⁸⁵ Ex 44-5, Vol 1, Tab 40.

⁸⁶ Ex 44-5, Vol 1, Tab 65.

⁸⁷ Ex 44-5, Vol 1, Tab 65.



wording would suggest a continuing program of treatment from 1984 to 1988. In fact, however, it would appear from Mr Boyle's Police Statement that there was no treatment at all after some time in 1985.

- 94 It would appear that in the years between 1984 and Mr Boyle's letter of 30 July 1988, Bishop H Kennedy understood or believed that Farrell was participating in a continuing program of treatment with Mr Boyle. So much seems to be implicit in his reply to Mr Boyle on 10 August 1988, in which Bishop H Kennedy said (emphasis added): *"Many thanks for your letter of the 30th ultimo as requested by Rev John Farrell outlining your opinion of his problem and the prognosis following your many interviews with him over several years."*⁸⁸
- 95 Moreover, according to Mr Boyle's Police Statement,⁸⁹ Farrell did not tell him in 1984-85, and he (Mr Boyle) did not know, that Farrell had actually engaged in physical sexual conduct with boys. It would seem that Farrell told Mr Boyle that he was consulting him for reasons other than having "acted out" any sexual interest in children. It would also seem that Bishop H Kennedy had not told Mr Boyle that there were accusations of actual sexual misconduct by Farrell with children.
- 96 Further, Mr Boyle's Police Statement also makes clear⁹⁰ both that Farrell never asked or authorised him to make a report to Bishop H Kennedy until mid-1988, and also that, without such authorisation from the patient, Mr Boyle could not have provided such a report to the Bishop.
- 97 In the light of the foregoing, the following submissions are made about the propositions advanced in CA [301].
- 98 First, since Farrell was a 'self-referral', Mr Boyle could not report to the Bishop without Farrell's consent. At the time, in the mid-1980s (as distinct from the time of his 1996 note, when he was 81, retired, and did not recall), Bishop H Kennedy may have been aware of that and thus aware that he was not able to "follow up" directly with Mr Boyle. As Bishop H Kennedy is long deceased, there was no opportunity for him to give evidence on this (or any other) aspect of the matter.
- 99 Second, Bishop H Kennedy said in his 1996 note that he *"had great difficulty in getting any sort of written report from Boyle"*, that Farrell *"would report to him (the Bishop) that he was doing well"*, and that he (the Bishop) did ask Farrell *"to have Boyle supply me with a report"*, but with no success until 1988.⁹¹ Two letters written by Farrell in 1984, in which he promised to provide a report from Mr Boyle,⁹² are consistent with this.
- 100 Third, even if Bishop H Kennedy had followed up separately with Mr Boyle, it is clear that Mr Boyle would not have shared information with the Bishop without Farrell's approval. As explained by Mr Boyle in his Police Statement: *"Unless I had the authority of the client, I was unable to report to anybody either verbally or in writing"*.⁹³

⁸⁸ Ex 44-5, Vol 1, Tab 68.

⁸⁹ Police Statement of Gary Boyle dated 10 May 2016, [12], [13], [16], [19], [22], Ex 44-5, Vol 3, Tab 332.

⁹⁰ Police Statement of Gary Boyle dated 10 May 2016, [11], [19], [22], Ex 44-5, Vol 3, Tab 332.

⁹¹ Ex 44-5, Vol 2, Tab 201.

⁹² See letters from Farrell to Bishop Kennedy dated 31 May 1984 and 11 December 1984: Ex 44-5, Vol 1, Tabs 33 and 40.

⁹³ Police Statement of Gary Boyle dated 10 May 2016, [11], Ex 44-5, Vol 3, Tab 332.



- 101 Fourth, if Bishop H Kennedy had been able to procure a report from Mr Boyle earlier than July 1988, for example in 1985, it seems clear - both from Mr Boyle's Police Statement and from his 30 July 1988 letter - that Mr Boyle would have expressed views substantially similar to those he did in fact express in that 30 July 1988 letter - including that *"In my opinion Fr Farrell does not have a paedophilia problem and no longer presents any problems for children or yourself"*, and that *"It is my hope that Fr Farrell be given every assistance in putting this difficult period behind him and is allowed to return to full ministry in the Church."*⁹⁴
- 102 Fifth, as the evidence in other Case Studies has established, it was widely understood and accepted, up to and including the 1980s, including by psychologists, that paedophilia was a treatable condition which could be "cured".⁹⁵
- 103 However, the Church parties also acknowledge that:
- (a) Bishop H Kennedy should have told Mr Boyle, himself, what was the context in which Farrell was being asked to see Mr Boyle, including - at least - the 1984 Moree accusations and the 1987 criminal charges; and
 - (b) Bishop Kennedy should have either
 - (i) made the arrangements with Mr Boyle himself, so that Mr Boyle would report to him, or
 - (ii) obtained Farrell's consent, at the outset, to Mr Boyle's reporting to the Bishop.

East Tamworth 1984-1987: Bishop Hanna

- 104 When Farrell was appointed to East Tamworth, where Fr Hanna (now Bishop Hanna) was the parish priest, Fr Hanna was given by Bishop H Kennedy only the very limited information referred to above at paragraphs 71(d) and (e).
- 105 Nevertheless, as counsel assisting has acknowledged at CA [345] - [358], and [360] - [363], Fr Hanna did place Farrell under strict supervision, and did do all that he could to keep him away from children, with the result 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.
- 106 The Church parties respectfully submit that Bishop Hanna's staunch determination to do all in his power to protect the children of East Tamworth should be reflected in the findings to be made by the Royal Commission.
- 107 Moreover, when Farrell was arrested in August 1987, Bishop (then Fr) Hanna insisted that Farrell not continue to function as a priest in East Tamworth. In Bishop Hanna's words, he *"stood him down from all public ministry"*.⁹⁶

⁹⁴ Ex 44-5, Vol 1, Tab 65.

⁹⁵ See for example the evidence cited in the submissions of the Church parties in Case Study 28, at paragraphs 82-92.

⁹⁶ T21050: 6-26; T21051: 33 – T21052: 16; T21053: 19-44.



- 108 Accordingly counsel assisting has submitted, at CA [462], that Bishop (then Fr) Hanna “took the appropriate steps to supervise [Farrell], to advise Bishop Kennedy and ultimately to stand Farrell down”.⁹⁷
- 109 The Church parties concur.

2.8 East Tamworth 1984-1987: Bishop H Kennedy

What Bishop H Kennedy did, and did not, tell Fr Hanna at the time of Farrell’s appointment to East Tamworth

- 110 When Farrell was appointed to East Tamworth, as noted above, Bishop H Kennedy gave Fr Hanna only the very limited information referred to above at paragraphs 71(d) and (e).
- 111 While it may be that Bishop Kennedy knew more detail, such as the number of possible victims, or as to the actual nature of Farrell’s alleged behaviour, the evidence does not permit a definite finding as to what such further knowledge may have been, although the Church parties acknowledge that it seems likely that Mgr Ryan would have told the Bishop (in addition to the “school yard rumours” about “sex lessons”) at least something of what he himself knew. What Mgr Ryan knew included the specific and definite allegations noted at paragraphs 68 and 69 above.
- 112 In those circumstances the Church parties make the following responses to various particular “submissions” made by counsel assisting.
- 113 Counsel assisting, at CA [324], makes three submissions: that Bishop Kennedy “believed that Farrell posed a serious risk to the safety of children at Tamworth East parish”, that notwithstanding that belief he appointed Farrell to the parish, and that in doing so Bishop Kennedy “acted in total disregard for the safety and welfare of the children at Tamworth East, and this was wrong”.⁹⁸
- 114 The Church parties acknowledge that the first and second of those three propositions are established on the evidence. However, it is submitted that the third of those propositions goes too far. The evidence does not establish that Bishop Kennedy acted in “total disregard” for the children. Rather:
- (a) he told Fr Hanna that that the reason for Farrell’s being moved from Moree was that “he was messing around with altar boys”;⁹⁹
 - (b) he told Fr Hanna that “Well, you have got to regard him as a big risk and you have to just give him restricted ministry and keep an eye on him”;¹⁰⁰

⁹⁷ CA Submissions, [462].

⁹⁸ CA Submissions, [324].

⁹⁹ Bishop Hanna, T21037: 13-30.

¹⁰⁰ Bishop Hanna, T21037: 13-30.



- (c) as counsel assisting has elsewhere conceded,¹⁰¹ Fr Hanna proceeded to act on those instructions - he did supervise Farrell on the basis that he was a big risk, he did give him restricted ministry, and he did keep an eye on him;
- (d) he (Bishop Kennedy) required Farrell to undergo treatment with Mr Boyle.
- 115 However, the Church parties acknowledge and submit that Bishop H Kennedy, being aware that Farrell was “a big risk” in relation to children, should not have appointed him to any position of public ministry where he would have access to children.
- 116 The Church parties accept the submissions of counsel assisting at CA [359].
- 117 Counsel assisting also submits, at CA [398], that the “failure of Bishop Kennedy to pass on relevant information [to then Fr Hanna] indicates a significant failure in the management of the risk posed by Farrell and precluded any proper supervision of him”.¹⁰²
- 118 The Church parties accept the first limb of that submission, but note that the second limb is contradicted by other “submissions” made by counsel assisting: see the following two paragraphs.
- 119 As noted above, what Bishop H Kennedy did say to Fr Hanna made very clear that Farrell was a “big risk” in relation to children, and that Fr Hanna had to ensure that Farrell’s ministry was “restricted” appropriately. Fr Hanna, as the evidence has amply shown, understood that risk, took it very seriously, and managed it very effectively, with the result that during the whole East Tamworth period from about July 1984 until August 1987, there is no evidence that Farrell offended.
- 120 Thus the Bishop’s failure to tell Fr Hanna more than he did plainly did not, on counsel assisting’s own analysis, “preclude any proper supervision of [Farrell].” On the contrary, proper and effective supervision was achieved, and counsel assisting has expressly acknowledged that to be so.¹⁰³

Whether any of Fr Gleeson, Fr Flood or Mgr Ryan had an obligation to tell Fr Hanna what they knew about Farrell at the time of Farrell’s appointment to East Tamworth

- 121 Counsel assisting submits, at CA [460] that not only Bishop H Kennedy but also Fr Gleeson, Fr Flood and Mgr Ryan did not tell Fr Hanna what they knew about allegations concerning Farrell. Counsel assisting does not go on to submit that any of those three should have done so.
- 122 Fr Flood was asked why he did not speak to Fr Hanna. His evidence indicated that he did not regard it as his place to do so, as he was not Farrell’s Bishop.¹⁰⁴ It is submitted that as at 1984, when among other things the non-curable, repetitive, compulsive aspects of the behaviour of sexual abusers had not become widely known (even among the medical and psychiatric professions¹⁰⁵), that would have been a not unreasonable view for a junior priest to take.

¹⁰¹ CA Submissions, [345] - [358], [360] - [363], [462].

¹⁰² CA Submissions, [398].

¹⁰³ CA Submissions, [345] - [358], [360] - [363], [462].

¹⁰⁴ T20950: 46 - T20951: 2.

¹⁰⁵ See for example the evidence cited in the submissions of the Church parties in Case Study 28, at paragraphs 82-92.



- 123 Fr Flood gave evidence that he would take a very different approach today, based on a “[b]etter understanding of what the issues are; better understanding of how people like Farrell tend to keep abusing and therefore, the need for vigilance in any setting and in all settings”.¹⁰⁶
- 124 Fr Gleeson was not asked about whether he provided information to Fr Hanna, or, if not, why not. Mgr Ryan did not give evidence as he is long deceased. .

Bishop H Kennedy’s failure to undertake inquiries or investigations in relation to Farrell

- 125 Counsel assisting submits, at CA [441], that it was a serious failure, on the part of Bishop H Kennedy, to fail to undertake his own inquiries or investigations into the allegations against Farrell following the dismissal of criminal charges against Farrell, in relation to one alleged victim, in February 1988.¹⁰⁷
- 126 The Church parties accept that submission. They acknowledge that Bishop H Kennedy should have undertaken further inquiries, or directed that such inquiries be made, to attempt to ascertain the facts in relation to the allegations known to the Bishop about Farrell, including by encouraging the boys and parents involved to come forward. The Church parties submit, further, that such inquiries should have been made when allegations against Farrell first came to Bishop H Kennedy’s attention in about April 1984.
- 127 However, counsel assisting goes on to submit, also at CA [441], that the absence of further inquiry by Bishop Kennedy at the time of the dismissal of charges in 1988 was “illustrative of the approach of the Church at the time to do nothing unless forced to by publicity or successful police action”.¹⁰⁸ That submission has no proper basis in the evidence and the Church parties do not accept it. No such finding as to “the approach of the Church” should be made.
- 128 In 1988, Farrell was the responsibility of the Diocese of Armidale. No question to the effect of the above proposition in relation to the “approach of the Church” at the time was put to Bishop Hanna. Nor was any such question put to Fr Flood or Fr Gleeson. No other witness from the Diocese of Armidale at the relevant time was called to give evidence.
- 129 Moreover, the submission as to some supposed generic “approach of the Church” is at odds with the actual evidence in this case study. Although the actions taken by the Diocese of Armidale, in response to the various pieces of information about Farrell that became known in the period 1984 - 1987, were quite inadequate (as the present submissions acknowledge), it is not the case that the diocese “did nothing”. Fr Gleeson reached out to families. He enlisted Fr Flood’s help, who did so as well. Fr Flood stressed to CPF and CPG their right to go to the police.¹⁰⁹ Neither Fr Gleeson nor Fr Flood was “forced to act by publicity or police action”.
- 130 For his part, Bishop Heather of Parramatta gave evidence that, if a child sexual assault matter had been reported to him, he would have immediately stood the priest down pending investigation.¹¹⁰ This evidence was not challenged. And indeed Bishop Heather did withdraw

¹⁰⁶ T20950: 23-26.

¹⁰⁷ CA Submissions, [441].

¹⁰⁸ CA Submissions, [441].

¹⁰⁹ T20931: 16 - T20932: 47.

¹¹⁰ T21102: 18-26.



Farrell's capacity to function as a priest in the Parramatta diocese as soon as he had an actual allegation of inappropriate behaviour on Farrell's part (which did not involve any assault): see paragraph 190 and 197-198 below.

- 131 Bishop Manning, in Armidale, withdrew Farrell's faculties in July 1992 (although the Church parties acknowledge that he should have done so earlier).
- 132 Neither Bishop Heather nor Bishop Manning, in taking those steps, was "forced to act by publicity or police action" either.
- 133 The wide, general proposition advanced by counsel assisting at CA [441] in relation to "the approach of the Church" lacks any proper foundation in the evidence. No such finding should be made.

2.9 Parramatta 1989-1992: Bishop Heather

Whether Bishop Heather understood Farrell to be a risk to boys in 1989

- 134 Bishop Heather gave consistent evidence that at the time (1989) that he agreed to Bishop H Kennedy's request to find a place for Farrell in the Parramatta diocese, he did not believe or understand Farrell to be a risk to boys. On the contrary, his genuine understanding and belief were (mistakenly, as Bishop Heather readily conceded) that Farrell was **not** a risk. His belief and understanding (again, mistaken, as he conceded) were that Farrell had been acquitted of the only charges made against him (Bishop Heather having no knowledge of the existence of any other allegations or complaints against him), and was in fact an innocent man. He appointed Farrell in Parramatta on that basis. As acknowledged above at paragraph 10, Bishop Heather's understanding and approach in these respects was naïve, and had terrible consequences for CPK; however, Bishop Heather's evidence as to his understanding should be accepted.
- 135 Counsel assisting has submitted that Bishop Heather did understand Farrell to be a risk to boys, that he should have made more inquiries himself to check whether that was so, and that he was more concerned to protect Farrell's reputation than to protect children from a known risk. The Church parties submit that those propositions have not been positively established on the evidence.
- 136 The evidence, and the submissions advanced by counsel assisting, are discussed in the following paragraphs.
- 137 At CA [463] - [475], counsel assisting summarises some of the evidence as to what Bishop Heather knew, and did not know, prior to Farrell's being appointed in Parramatta, and as to what inquiries Bishop Heather made before accepting Farrell. Counsel assisting submits, at CA [476], that Bishop Heather's evidence in that regard should be accepted. The Church parties concur.
- 138 Counsel assisting next submits, at CA [477], that Bishop H Kennedy did not tell Bishop Heather that there had been other allegations about Farrell's sexual misconduct with children, prior to the 1987 Narrabri charges. The Church parties concur.



- 139 Counsel assisting then submits, at CA [478], that Bishop Heather's inquiries were inadequate, that he should have done more to satisfy himself that Farrell did not pose a threat to children before accepting him into his diocese, that he should not have simply accepted the fact of Farrell's 'acquittal', and that he should have sought much stronger assurances than he did.
- 140 The Church parties make the following submissions in relation to CA [478].
- 141 At the relevant time (1989), Bishop Heather had little information about, and had never had to deal with, priests who had allegations against them of offending against children sexually.¹¹¹
- 142 At the time, Bishop Heather took the view that Farrell was coming to Parramatta with a "clean slate" because he had been acquitted. He considered, and "took it", that Farrell was "innocent".¹¹²
- 143 Bishop Heather's understanding that Farrell was innocent was based, as he said, on three main factors, all of which Bishop H Kennedy, Farrell's Bishop, told him:¹¹³ first, the fact of Farrell's "acquittal";¹¹⁴ second, the personal assurance of Bishop H Kennedy as Farrell's Bishop, who "had no fear of the things of which Farrell had been accused",¹¹⁵ and was "commending him for a short time to service in our diocese"¹¹⁶ on the basis that Farrell would "be welcome back in the [Armidale] diocese in twelve months"¹¹⁷ and, third, that the Bishop's assurance was supported by the opinion of a respected psychologist.¹¹⁸
- 144 The Church parties submit that, in 1989, those three factors constituted a reasonable basis for Bishop Heather to proceed, as he did, to agree to Bishop H Kennedy's request.
- 145 Bishop Heather gave compelling evidence that "it weighs heavily on my conscience" that at least one child in the Parramatta Diocese was abused as a result of his giving permission to Farrell to work in the diocese;¹¹⁹ and he offered the remorseful view that he had been "negligent" in that regard.¹²⁰ Bishop Heather also said, as cited by counsel assisting at CA [466]: "I'm afraid I didn't make the careful inquiries that I should have made, and that is a cause of great regret to me. It led to one of the great mistakes of my life."¹²¹ Bishop Heather reiterated this self-assessment later in his evidence.¹²²
- 146 The Church parties submit that the following three matters should be taken into account in this regard.

¹¹¹ T21089: 21-23.

¹¹² T 21082: 23-27; T21089: 25-28.

¹¹³ T21082: 11-27.

¹¹⁴ T21081: 37-47; T21082: 11-27. Although Bishop Heather now understands the distinction between dismissal of charges and acquittal, he did not understand this at the time: see T20187: 28-30; see also T21089: 25-28.

¹¹⁵ Ex 44-5, Tab 247C.

¹¹⁶ T21082: 11-27.

¹¹⁷ T21090: 35-40.

¹¹⁸ T21082: 11-27.

¹¹⁹ T21085: 25-31; T21088: 8-13.

¹²⁰ T21085: 30.

¹²¹ T21082: 6-9.

¹²² T21106: 1-10.



- 147 First, the three factors on which Bishop Heather relied were of obvious weight, and seemingly convincing. There was no reason why he should not have accepted, in 1989, “the fact of the acquittal” as it was communicated to him, and there could have been no “stronger assurance” for a Bishop in Bishop Heather’s position than the “commendation” from Farrell’s own Bishop, supported by the emphatic professional opinion of a respected psychologist.
- 148 Second, he had no idea that there had been other allegations besides the ones of which Farrell had been (as he was told) “acquitted”,¹²³ and no reason to imagine that there might have been any such allegations, or that there was anything else to “inquire” about. Nothing was put to Bishop Heather, and there is no suggestion in the CA submissions, as to what such hypothetical inquiries should have been, or to whom such hypothetical inquiries should have been made.
- 149 Third, he did in fact speak to Mr Boyle, in 1989. His recollection was that Bishop H Kennedy had suggested that he do so, and he did.¹²⁴ Mr Boyle confirmed to Bishop Heather what Bishop H Kennedy had told him.¹²⁵ As noted above, in July 1988 Mr Boyle had advised Bishop Kennedy that Farrell did not “*present any problem for children*”, that he should be “*returned to active ministry*”, and that he should (emphasis added) “*receive the care and support **he justly deserves after all this time***”.¹²⁶ It is reasonable to suppose that he would have expressed those same views to Bishop Heather in 1989.

Conversation with Fr McGuckin

- 150 At CA [479] - [491], counsel assisting deals with the recollection of Bishop McGuckin, as conveyed to Mr Whitlam QC in 2012, of a conversation with Bishop Heather in 1989. At that time, then-Fr McGuckin was working in the Marriage Tribunal of the Diocese of Parramatta.¹²⁷
- 151 Bishop McGuckin’s recollection to Mr Whitlam QC in 2012 was that in that 1989 conversation Bishop Heather raised the possibility of Farrell being appointed as a chaplain to the Marist Brothers school at Westmead. According to Bishop McGuckin in 2012, that suggestion
- brought a more violent reaction from me - from my expression. And Bishop Heather said, “I don’t know why I said that.” So I think there was an awareness that this guy needed to be watched.*¹²⁸
- 152 Mr Whitlam QC interviewed Bishop McGuckin after he had interviewed Bishop Heather.¹²⁹ No doubt for that reason, Bishop Heather was not asked by Mr Whitlam QC about the conversation which Bishop McGuckin recalled.
- 153 Bishop Heather gave evidence in this case study, when questioned about the McGuckin conversation, that “*in my view at this time, Father Farrell was innocent. I had no reason to believe otherwise.*”¹³⁰ He reiterated this position a few questions later, when he said that while it might

¹²³ T21087: 35 - T21088: 4.

¹²⁴ T21090: 17 – T21091:35.

¹²⁵ T21090: 17 – T21091: 35.

¹²⁶ Letter from Mr Boyle to Bishop Kennedy dated 30 July 1988, Ex 44-5, Vol 1, Tab 65.

¹²⁷ T21094: 34-47.

¹²⁸ Ex 44-9, Tab 13 page 13.

¹²⁹ Ex 44-9, Tabs 12 (4.10.12) and 13 (8.10.12).

¹³⁰ T21097: 35 - T21098: 21.



have been prudent not to appoint someone to a position where he had access to children if that person was a risk, *"I didn't think he was a risk. I thought he was innocent."*¹³¹

- 154 Counsel assisting then put it to Bishop Heather that his asserted comment to Bishop McGuckin, *"I don't know why I said that"*, suggests that he did know of *"the inherent risk of putting Farrell in a boys' school"*.¹³² However, Bishop Heather recalled no such conversation having occurred at all.¹³³
- 155 Bishop McGuckin was not called to give evidence. His recollection of the 1989 conversation, and of the expression on his face, could therefore not be tested. Nor was his recollection, or his statement *"So I think there was an awareness that this guy needed to be watched"*, tested by Mr Whitlam QC.
- 156 The suggestion that Bishop Heather did know that Farrell was a risk is entirely inconsistent with Bishop Heather's repeated sworn evidence, including the passages referred to at paragraphs 141-149, 153 and 154 above, and at paragraphs 164 and 195 below. It is submitted that there is no sufficient basis for finding that Bishop Heather's evidence in that regard is not to be accepted.

Conversation with Fr Dixon as to Farrell's appointment to Kenthurst

- 157 Counsel assisting deals with this topic at CA [498] - [513], and then makes a number of submissions, at CA [514] - [517].
- 158 As a preliminary matter, the Church parties note that the view of Bishop McGuckin (as expressed to Mr Whitlam QC) cited at CA [501], that Fr Dixon "would have been aware" that Farrell was "under a cloud" for "something to do with sexual abuse of boys" was flatly contradicted by Fr Dixon himself, who told Mr Whitlam QC that he had no such awareness. Counsel assisting properly records this at CA [504].
- 159 The essential contention of counsel assisting, at CA [515] and [516], is that Bishop Heather misled Fr Dixon by not telling him that Farrell's "trouble in Armidale" was the criminal proceedings which had been brought against him.¹³⁴
- 160 Counsel assisting further submits, at CA [517] that "Bishop Heather placed emphasis on preserving Farrell's reputation, as against protecting children from the risk posed by Farrell. His first priority should have been the safety and welfare of the children in his Diocese. It was not, and this was a serious failure on his part".¹³⁵
- 161 The Church parties submit that none of the submissions in CA [515], [516] or [517] has been established on the evidence, and that no findings to such effect should be made. They draw attention to the following matters.

¹³¹ T21099: 6-8.

¹³² T21099: 21-30.

¹³³ T21099: 21-30.

¹³⁴ CA Submissions, [515], [516].

¹³⁵ CA Submissions, [517].



- 162 Bishop Heather's evidence was that for him to say to Fr Dixon, as he accepted it was likely he did, "*He has had a bit of trouble up in Tamworth, in Armidale, and he is just coming here for respite for about a year*", was not misleading, but "*respected the right of Father Farrell [an innocent man, on Bishop Heather's understanding] to his reputation.*"
- 163 For the reasons summarised at paragraphs 141 - 149 above, it is submitted that that was a reasonable view for Bishop Heather to take, in 1989.
- 164 In relation to whether he considered he was placing the children of Kenthurst at risk, by not telling Fr Dixon what he knew, Bishop Heather's evidence included the following passages (emphasis added):

*In 1989 he was a priest who was innocent of such matters, coming to our diocese, whose name I felt I had a duty to respect, and I did not see that I should warn Fr Dixon in any special way about a risk that he posed, because I didn't see him as posing a risk.*¹³⁶

"Well, if I had considered him a person of risk that would be true, and indeed had I seen him as a person of risk, I wouldn't have accepted him as a priest to work in the Parramatta Diocese, but I didn't see him as a person of risk.

Q. *You should have, looking back now, shouldn't you?*

A. *What we've come to know of Father Farrell since then, of course, is quite compelling and in many ways disgusting.*¹³⁷

- 165 That evidence was followed shortly thereafter by an exchange with the Chair in the course of which Bishop Heather said:

*[W]hen appointing a priest to any parish, consideration is given to the wellbeing of everyone concerned, the married couples, the children, the youth, the elderly folk, everyone in the parish; so in appointing Father Farrell to Kenthurst, I did take into consideration the general wellbeing of the Catholic community in that parish.*¹³⁸

- 166 Thus, as he repeatedly and consistently made clear, Bishop Heather did not understand Farrell to constitute "a potential risk to children" (the term used in CA [515]).
- 167 That being so, he was not prioritising Farrell's reputation over "protecting children from the risk posed by Farrell" (the term used in CA [517]). He did not know or believe that Farrell did "pose a risk" to children, based on what he had been told by Bishop H Kennedy and Mr Boyle, and in the absence of any indicator (known to him) that further investigation or checking might be needed.¹³⁹

¹³⁶ At T21103: 16-22 - T21106: 10.

¹³⁷ At T21105: 14 - T21106: 10.

¹³⁸ T21106: 12-42.

¹³⁹ T21106: 12-42.



June 1990: the views of the College of Consultors of the Diocese of Armidale

- 168 The College of Consultors in Armidale discussed Farrell's future in June 1990. The minutes record that this discussion occurred "as his twelve months stay in the Diocese of Parramatta was drawing to a close." There followed the next sentence in the minutes: "Opinions varied on the matter".¹⁴⁰
- 169 Counsel assisting submits, at CA [534], that the reason for these differing views was "related to the knowledge among priests in the Diocese of Armidale about the court case at Narrabri against Farrell and the risks he posed in the parish".¹⁴¹
- 170 The only evidence in relation to the meeting of Consultors was the minutes, which contain only the one sentence quoted above: "Opinions varied on the matter".¹⁴² There is no evidence from any witness who attended the meeting. It follows that the explanation advanced at CA [534] as to why "opinions varied" is mere speculation. It cannot provide a proper basis for the finding proposed.

1991-92: Extension of Farrell's appointment in Parramatta

- 171 In February 1991, following a request by Farrell which had been approved by Bishop H Kennedy, Bishop Heather appointed Farrell as assistant priest at Merrylands, for the period from 1 January 1991 to 30 November 1991.¹⁴³
- 172 As acknowledged by counsel assisting at CA [622], Bishop Heather was not aware, and was not informed by Bishop H Kennedy, either of the "grave concerns" expressed by Fr Usher in his report of 22 August 1990, or of the "camping trip incident" which had occurred in April 1990. The Church parties concur.
- 173 Bishop Heather informed Fr Bray and Fr Gavranovic, the Merrylands priests, that Farrell had been the subject of the 1987 criminal charges, that those charges had been dismissed, and that they should tell him if anything happened of an untoward nature (including of a sexual nature).¹⁴⁴
- 174 Counsel assisting submits, at CA [650]: that Bishop Heather appointed Farrell for a further 12 months, notwithstanding that he knew that the Consultors (in Parramatta) were uncomfortable with Farrell's presence in the diocese, for reasons including their awareness that allegations of a sexual nature had been the subject of the court proceedings; that Farrell was alleged to have made suggestive remarks to a female teacher [an adult]; and that Farrell did not get on with Fr Dixon [for reasons unrelated to any sexual topic].
- 175 The Church parties accept each of the three components of that submission.
- 176 However, counsel assisting goes on to submit, at CA [651] and [652], that by late 1990 or early 1991, Bishop Heather "had concerns about Farrell's continuing presence in the Diocese of

¹⁴⁰ Ex 44-5, Vol 1, Tab 87.

¹⁴¹ CA Submissions, [534].

¹⁴² Ex 44-5, Vol 1, Tab 87.

¹⁴³ Ex 44-5, tabs 98, 100, 103, 106; see CA [615]-[620].

¹⁴⁴ T21123: 6-26.



Parramatta, and understood that he may pose a risk of sexually abusing children”, and that he reappointed Farrell notwithstanding such “concerns” and such “understanding”.¹⁴⁵

- 177 The Church parties submit that there is no sufficient basis in the evidence for such findings.
- 178 First, Bishop Heather’s evidence was consistent throughout, that he did not understand Farrell to pose a risk at any relevant time prior to the termination of his Merrylands appointment in June 1992, for the reasons identified previously in these submissions.
- 179 Second, when it was suggested to Bishop Heather by counsel assisting that “*it was all building up*” (a reference by counsel assisting to three factors namely (i) Farrell’s unappealing personality as recalled by people who had known him at the seminary, (ii) the awareness of the Parramatta Consultors of the Narrabri criminal charges, and (iii) the suggestive remarks to the adult woman teacher), his answer was

*I grant, yes, it was adding up and I was becoming nervous about the presence of Fr Farrell in the diocese, but I didn’t have any evidence of any sexual impropriety, especially with children, in our diocese.*¹⁴⁶

Of the three factors cited by counsel assisting, the first two (unappealing personality, and the existence of the criminal proceedings) were already known to Bishop Heather, while it is submitted that the third (inappropriate words spoken to an adult woman) was not such as to be likely to have caused Bishop Heather to conclude that Farrell “may pose a risk of sexually abusing children”.

- 180 Third, It was not put to Bishop Heather, either by Mr Whitlam QC in 2012, or by counsel assisting in 2016, that his “understanding” as to Farrell’s posing a risk had somehow changed between 1989 and late 1990 / early 1991, or that he had such an understanding at the latter time even if not at the former. As a result, he has had no opportunity to respond to any such suggestion.

Bishop Heather’s state of knowledge as at April 1991

- 181 Counsel assisting submits, at CA [653], that as at April 1991 Bishop H Kennedy knew eight listed facts. The Church parties accept that submission.
- 182 Counsel assisting then submits, at CA [654], that as at April 1991 Bishop Heather knew three (different) listed facts, namely that Farrell had been acquitted of criminal charges, that Bishop Kennedy considered that Farrell had made “a great recovery” following treatment with Mr Boyle, and that a [female, adult] teacher had complained that Farrell had made an inappropriate suggestion or remark to her. The Church parties also accept that submission.
- 183 At CA [655], counsel assisting submits that Bishop H Kennedy did not tell Bishop Heather the five significant facts listed at CA [655](a)-(e). The Church parties also accept that submission.
- 184 The Church parties submit further that Bishop Heather’s unawareness, at all material times, of each of the following matters:

¹⁴⁵ CA Submissions, [652]; see also Ex 44-5, Vol 1, Tab 106.

¹⁴⁶ T21120: 25-28



- (a) the five significant facts known to Bishop H Kennedy, listed at CA [655](a)-(e);
- (b) the four significant facts known to Fr Usher, listed at CA [613](c), (e), (f) and (g);
- (c) the six significant facts known to Bishop Manning, listed at CA [681](c)-(h);
- (d) the view formed by Bishop Manning in October 1991 - by which time Bishop Heather had already, at the request of Bishop H Kennedy, to the knowledge of Bishop Manning, “*taken Farrell on in his Diocese for some two years*” - that “*I required a further testimony from a psychiatrist to the effect that he was unlikely to offend again before I could ask another Bishop to take him on in his Diocese*”,¹⁴⁷
- (e) the damning opinions of Professor Blaszczynski, conveyed to Bishop Manning in April 1992;¹⁴⁸

is of very considerable importance in considering the appropriateness of the decisions he made in relation to Farrell.

185 It is submitted that, in all the circumstances, no adverse finding should be made against Bishop Heather in relation to his acceptance and appointments of Farrell in the Diocese of Parramatta.

Whether Bishop Heather told Bishop Manning that Farrell was “under suspicion of having offended with boys”

- 186 Counsel assisting submits, at CA [769], that in mid-1992 Bishop Manning was told by Bishop Heather that Farrell was “under suspicion of having offended with boys” in the Diocese of Parramatta.¹⁴⁹ This submission is also repeated at CA [774](e) and [775](d).
- 187 The Church parties submit that there is no sufficient basis for these submissions, and that in fact the overwhelming weight of evidence is to the contrary, and that no such finding should be made.
- 188 The only source for these submissions is a letter written thirteen years after the event by Bishop Manning to Bishop Matthys, on 8 July 2005, in which he stated:

*Mid-year 1992, Most Rev. Bishop Heather, Bishop of Parramatta, advised me that he had withdrawn John’s faculties in the Diocese of Parramatta. There were instances quoted where he was under suspicion of having offended with boys. This turned out to be true, as I have only recently paid out \$60,000 in compensation on one offence here in the Diocese of Parramatta.*¹⁵⁰

- 189 The final sentence, it is clear, refers to the case of CPK, the details of which emerged during the extortion proceedings in about 2004.¹⁵¹ Bishop Heather did not become aware of these details

¹⁴⁷ Ex 44-5, Tab 120, quoted at CA [691].

¹⁴⁸ Ex 44-5, Tabs 133 and 135, quoted at CA [716] and [718]; and see CA submission at [741].

¹⁴⁹ CA Submissions, [769].

¹⁵⁰ Ex 44-5, Vol 3, Tab 259A.

¹⁵¹ Ex 44-5, Vol 2, Tab 244.



until about January 2005, when he was asked to prepare a statement for the purposes of civil proceedings brought by CPK.¹⁵²

- 190 The weight of the contemporaneous evidence is heavily against the submissions made, and findings proposed, at CA [769], [774](e) and [775](d):
- (a) Bishop Heather in fact terminated Farrell, in “*mid-year 1992*”, for using inappropriate language with altar boys. This is recorded in Bishop Heather’s handwritten note dated 29 June 1992.¹⁵³ It is implausible that Bishop Heather would have terminated Farrell on the basis of using inappropriate language if he had any reason to suspect Farrell of having “offended with boys” (in the sense of sexually abusing them) at the time.
 - (b) On 29 June 1992 Bishop Manning made a contemporaneous file note of what Bishop Heather actually said to him on that day, 29 June 1992, in relation to the termination of Farrell’s appointment by Bishop Heather.¹⁵⁴ It is entirely consistent with Bishop Heather’s note referred to at (a) above. It refers to language only, and it makes no mention of Farrell being “under suspicion of having offended with boys” in Parramatta.
 - (c) The same contemporaneous file note by Bishop Manning also records conversations with Farrell at around the same time.¹⁵⁵ None of these notes say anything about Farrell being “under suspicion of having offended with boys” in Parramatta;
 - (d) There is no other contemporaneous record, from Bishop Manning or otherwise, that gives support to the notion that in mid-1992 Farrell was “under suspicion of having offended with boys” in the Diocese of Parramatta, or to the notion that Bishop Heather said such a thing to Bishop Manning.
- 191 The likely explanation for the language used in Bishop Manning’s 2005 letter is that it was a reconstruction based on more recent information acquired by Bishop Manning in the context of the CPK extortion proceedings.
- 192 Bishop Heather was not questioned in relation to the suggestion now made, based on Bishop Manning’s 2005 letter, that Farrell was “under suspicion of having offended with boys” in the Diocese of Parramatta in 1992. It was not put to Bishop Heather that he had said such a thing to Bishop Manning at the time.
- 193 For all these reasons, the findings proposed by counsel assisting at paragraphs 769, 774(e) and 775(d) of the CA Submissions should not be made.

Findings in relation to Bishop Heather

- 194 Bishop Heather was very candid as to his deep regret and remorse that his decision to accept Farrell in the diocese resulted in at least one boy being abused there, and also about his limited understanding at that time in relation to child sexual abuse.¹⁵⁶

¹⁵² T21092: 24-35; T21099: 6-19.

¹⁵³ Ex 44-5, Vol 2, Tab 149.

¹⁵⁴ Ex 44-5, Vol 2, Tab 154.

¹⁵⁵ Ex 44-5, Vol 2, Tab 154.



195 However, as has been submitted above, on an objective assessment, Bishop Heather should not be judged so harshly as he has judged himself. Bishop Heather gave honest and credible evidence that he simply did not consider Farrell to be a risk to children at the time:

Q: You didn't think he was a risk at all?

A: I didn't think he was a risk. I thought he was innocent.¹⁵⁷

196 Bishop Heather's evidence should be accepted. And his honest albeit naïve view at the time, that Farrell was an innocent man and not a risk to children, was one which - although it is now known to have been wrong - it was reasonable for him to hold at that time, given what he was told by Bishop H Kennedy and by Mr Boyle, given the critical facts which he was not told, and given his limited understanding at the time about child sexual abuse and the secretive, compulsive behaviour of abusers such as Farrell.

197 When Farrell was reported to have used inappropriate language of a sexual nature with altar boys, Bishop Heather acted swiftly to terminate his appointment within the Diocese of Parramatta.¹⁵⁸ Bishop Heather also spoke to the Bishop of Armidale, Bishop Manning, and told him the reason why he had terminated Farrell.

198 Given the Bishop's prompt and decisive action in removing Farrell in June 1992 for inappropriate language, it is reasonable to suppose that he would have taken decisive action at an earlier time if he had genuinely considered Farrell to pose any kind of risk to children.

2.10 1991-1992: Bishop Manning and Fr Flood

199 Although Bishop Manning was separately represented at hearing, he was unable to give evidence, for medical reasons. Accordingly, it has not been possible for him to give his recollection of events or to provide an explanation for his actions. It is submitted that any findings critical of Bishop Manning should only be made on the basis of clear and compelling evidence.

Knowledge and/or belief of Bishop Manning after he commenced as Bishop of Armidale

200 Counsel assisting submits, at CA [681], that Bishop Manning knew or believed the various matters set out in that paragraph by soon after April 1991.

201 The Church parties accept that that Bishop Manning knew or believed those matters by some time in or soon after July 1991. Bishop Manning was not ordained as Bishop of Armidale until 11 July 1991.¹⁵⁹

202 As the relevant file note is undated, it is not possible to be sure when it was written, or the date by which Bishop Manning knew these things. However, the Church parties accept that the date is likely to be some time in or after late July 1991.¹⁶⁰

¹⁵⁶ See paragraphs 134-149 above, and the evidence there cited.

¹⁵⁷ T21099: 6-8.

¹⁵⁸ T21127: 16 - T21129: 17.

¹⁵⁹ Ex 44-9, Tab 11, p 3.



- 203 As to Fr Flood, however, it is submitted that it is far from clear that all of the information in Bishop Manning's handwritten note, or even all of the information specifically recorded against his name within the note, could have come from Fr Flood. Fr Flood had no recollection of any such conversation with Bishop Manning or with anyone else,¹⁶¹ and his evidence was that while some of the matters recorded against his name were matters that were within his knowledge at the time, others were not.¹⁶²
- 204 Fr Flood was not asked to identify which of the matters he did not know. However, an example is that, as noted above at paragraphs 48 and 67(c), the evidence strongly suggests that Fr Flood knew the names of no more than four possible victims as at 1984. Accordingly it is unlikely that he could have provided ten names of known, suspected or possible victims to Bishop Manning.
- 205 Another example is that one of the matters cited at CA [681](f) is that "there were still children around in Moree who were silenced at the time of the court case by Rev. Monsignor Ryan". Counsel assisting submits that this asserted fact was communicated to Bishop Manning by Fr Flood.
- 206 Yet in October 1991, Bishop Manning recorded - in another note - certain matters said to be based on advice from Fr Peters (not from Fr Flood), including the statement "There are still children around who were silenced at the time of the court case".¹⁶³ The October 1991 note necessarily casts doubt on the proposition that Fr Flood was the source for this piece of information, as advanced at CA [679] and [680].
- 207 Indeed, that doubt is implicitly acknowledged by counsel assisting at CA [694], where counsel assisting submits that "the source of that information [as to children being silenced by Mgr Ryan] cannot be satisfactorily determined".
- 208 The Church parties concur, and submit that a similar uncertainty surrounds the source of all of the information seemingly attributed to Fr Flood in Bishop Manning's undated note.
- 209 It is submitted that given Fr Flood's evidence and the other matters noted in the preceding paragraphs, the submission advanced at CA [679], that there is no credible evidence to the contrary (of the proposition that Fr Flood provided all the information recorded by Bishop Manning in the note), is not correct.
- 210 It is also submitted that, in the light of Fr Flood's evidence cited above, the submission at CA [680] is only partly correct: Fr Flood knew some, but not all, of the information recorded in the file note.

¹⁶⁰ Ex 44-9, Tab 11, pp 6-7; Ex 44-5, Tab 113.

¹⁶¹ T20957: 15 – 28.

¹⁶² T20957: 35-42.

¹⁶³ Ex 44-5, Vol 1, Tab 119. During his interview with Mr Whitlam QC, Mgr Peters denied that he knew or told that information to Bishop Manning.



The report of Professor Blaszczyński

- 211 Counsel assisting submits, at CA [704], that Bishop Manning was seeking to keep the report of Professor Blaszczyński from public view to protect the reputation of the church and avoid scandal.¹⁶⁴ That submission is based on Bishop Manning's file note of 16 October 1991.¹⁶⁵
- 212 The Church parties submit that such a conclusion cannot be reached in the absence of any opportunity for Bishop Manning to explain his file note and his thinking at the time.
- 213 No such proposition was put to Bishop Manning by Mr Whitlam QC.
- 214 The file note of Bishop Manning dated 17 August 1992 demonstrates that Bishop Manning was motivated by a desire to find a way to remove Farrell from the Church, whether by invalidating his ordination or otherwise.¹⁶⁶
- 215 Thus, it is perhaps equally likely, if not more likely, that Bishop Manning was attempting to assuage Farrell's concerns as to the possible use of such a written opinion in a court proceeding, so as to ensure that he could actually obtain a written opinion from Professor Blaszczyński, which would provide him with concrete material to take further action in respect of Farrell's removal from the Church.
- 216 The Church parties submit that no finding to the effect of CA [704] should be made.

Advice of Professor Blaszczyński in April 1992

- 217 In April 1992 Professor Blaszczyński advised Bishop Manning that Farrell was a manipulative person, that he would not recommend an appointment for him, that he needed to be kept away from children, and that prepubescent children were in danger from Farrell.¹⁶⁷
- 218 Counsel assisting submits, at CA [741], that the failure of Bishop Manning to convey to Bishop Heather the opinion of Professor Blaszczyński was "inexcusable". The Church parties accept that submission, and refer to their submissions above at paragraph 184. Bishop Heather, as a result, was placed in an impossible position.

Submissions at CA [769] - [777]

- 219 For the reasons explained above at paragraphs 186-192, the findings proposed by counsel assisting at paragraphs 769, 774(e) and 775(d) of the CA Submissions should not be made.
- 220 The Church parties accept the submissions made at CA [772] and [773]. The Church parties accept that Bishop Manning was aware that Farrell was exercising priestly ministry in Parramatta. They note that in his letter to Farrell of 30 July 1991,¹⁶⁸ addressed to "Father John" at the Catholic Presbytery at Merrylands, Bishop Manning referred to his awareness that Farrell was

¹⁶⁴ CA Submissions, [704].

¹⁶⁵ Ex 44-5, Tab 122, extracted at CA Submissions, [702].

¹⁶⁶ See Ex 44-5, Vol 2, Tab 158; see also Confidential interview of Bp Kevin Manning dated 2 October 2012, Whitlam Inquiry Tender Bundle, Tab W11, at T33: 32-47.

¹⁶⁷ Ex 44-5, Tabs 133 and 135, extracted at CA Submissions, [716] and [718].

¹⁶⁸ Ex 44-5, Tab 113.



“working” in Parramatta, and that in his 2005 letter to Bishop Matthys,¹⁶⁹ Bishop Manning referred again to that awareness. There is no suggestion in the evidence that Farrell was “working” other than as a priest.

- 221 The Church parties accept the submissions made at CA [774] (a), (b), (c) and (d).
- 222 The Church parties accept the submissions made at CA [775] (a), (b) and (c).
- 223 The Church parties accept the submissions made at CA [776], and again refer to their submissions above at paragraphs 184 and 218.
- 224 Counsel assisting submits, at CA [777], that Bishop Manning failed to communicate important and relevant information about Farrell to Bishop Heather.¹⁷⁰ The Church parties, again, accept that submission.
- 225 However, counsel assisting goes on in CA [777] to submit that: “That failure stemmed from the dysfunctional structure of the Church whereby each diocese was separately managed and there was no process or requirement that relevant matters be communicated when a priest incardinated in one diocese moves to another”.¹⁷¹ The Church parties do not accept that submission in those terms.
- 226 The Church parties accept that as at the period in question, 1989 - 1992, there was no express requirement that relevant information be communicated when a priest incardinated in one diocese moved to another, and they also accept that the lack of communication in this case between diocesan authorities in the Dioceses of Armidale and Parramatta was indefensible. Clearly there should have been such a requirement, and there certainly should have been such communication.
- 227 However, the Church parties make two further points.
- (a) First, since 1996, successive editions of *Towards Healing* have contained just such an express requirement. Indeed Mr Whitlam QC, in his 2012 report,¹⁷² made the point that

“... had the procedures for reporting child abuse laid down in that document [Towards Healing] been in force in 1984 and observed in Moree at the time, Farrell would have been stopped in his tracks. ... If those procedures had been in place in 1989 and followed in Farrell’s case, there is no chance that Bishop Heather would have agreed to take him on.”

The Church parties adopt that assessment.

- (b) Second, in any event, even prior to 1996, the absence of such an express requirement did not indicate, much less establish, that the whole structure of the Church was

¹⁶⁹ Ex 44-5, Tab 259A.

¹⁷⁰ CA Submissions, [777].

¹⁷¹ CA Submissions, [777].

¹⁷² Ex 44-9, Tab 1, paragraph [177].



“dysfunctional”. There is no proper basis in the evidence for making such a sweeping statement about the structure of the Church.

As explained in the TJHC Submissions in response to Issues Paper No 2 *“Towards Healing”*, the Church as a community of faith has always been made up of an intricate complex of disparate groups and individuals.¹⁷³ There has never been, and there is not, one single or discrete entity which is “the Catholic Church”, either in Australia or worldwide. Rather, each individual diocese (through its bishop) and each individual religious institute (through its respective leader) is substantially autonomous and independent.

2.11 September - December 1992: Bishop Manning

Bishop Manning’s notes of the 1 September 1992 meeting with Farrell

228 The Church parties accept the submissions made by counsel assisting at CA [809] and [810].

Father Peters’ letter to Bishop Manning dated 11 September 1992

- 229 This letter (“the 11 September 1992 Peters letter”), the meeting of 3 September 1992 to which it referred, and the various accounts subsequently given in relation to the letter and the meeting by Fr Lucas and Mgr Usher, occupy well over 100 pages of the CA submissions.
- 230 For the reasons outlined at paragraphs 8-12 above, the Church parties respond only to certain limited aspects of those parts of the CA submissions, in relation to Bishop Manning (who was medically unable to give evidence) and Mgr Peters (who is deceased).
- 231 Counsel assisting submits, at CA [1234], that Bishop Manning received and read the 11 September 1992 Peters letter, and that he did so on or shortly after that date.¹⁷⁴ Two bases for that conclusion are suggested: the Arrow Insurance letter of 29 May 1996,¹⁷⁵ and Bishop Manning’s letter to Bishop Matthys of 8 July 2005.¹⁷⁶
- 232 The Church parties submit that the first of those two suggested bases, the Arrow Insurance letter of 29 May 1996, is ambivalent as to whether and when Bishop Manning had received, and read, the 11 September 1992 Peters letter. The Arrow Insurance letter (the relevant extract from which is set out at CA [931]) could be read as Mgr Peters telling the insurance investigator that he had “advised” the Bishop of the matters in the letter; or it could be read as simply the insurance investigator’s paraphrasing of the contents of the letter itself, which was on the file then in front of him. Mgr Peters’ interview with Mr Whitlam QC is similarly ambivalent on this point.¹⁷⁷
- 233 The second of those two suggested bases, Bishop Manning’s letter to Bishop Matthys of 8 July 2005, provides some support for the view that Bishop Manning had read the 11 September 1992 Peters letter at some stage. The relevant extract from that letter is set out at CA [1229]. However,

¹⁷³ TJHC Submissions in response to Issues Paper No 2 “Towards Healing” dated 30 September 2013: see generally the matters outlined in section 2 of those submissions.

¹⁷⁴ CA Submissions, [1234].

¹⁷⁵ Ex 44-5, Tab 200.

¹⁷⁶ Ex 44-5, Tab 259A.

¹⁷⁷ Ex 44-9, Tab W5, at T23.5-24.4, discussed at CA [932]-[935].



the 2005 letter is unclear as to when Bishop Manning had read the letter. It is also possible that the reference in the 2005 letter to Mgr Peters' "report" having been "relayed" to Bishop Manning may indicate that Mgr Peters gave an oral account to the Bishop of the matters the subject of his 11 September 1992 letter. Without evidence from Mgr Peters or Bishop Manning, it is submitted that it is not possible to be sure what Bishop Manning meant by his 2005 letter to Bishop Matthys.

- 234 Moreover, the Church parties also note that Bishop Manning told Mr Whitlam QC in 2012 both
- (a) that he could not recall reading the 11 September 1992 Peters letter at the time,¹⁷⁸ and
 - (b) that he did not use that letter as the basis for his discussion with Farrell on 19 October 1992, but in fact used Fr Lucas' letter of 25 September 1992¹⁷⁹ (which related to the second meeting of 24 September, not the first meeting of 3 September), for that purpose.¹⁸⁰

The clear implication is that he would have used the 11 September 1992 Peters letter for his discussion with Farrell if he had read the letter at the time.

- 235 Counsel assisting has submitted, at CA [1235], that if Bishop Manning had not received and read the 11 September 1992 Peters letter at around that date, the subsequent two meetings between Farrell and Frs Lucas, Usher and Peters (on 24 September 1992 and 12 November 1992) could not have occurred as recorded in contemporaneous documents.¹⁸¹
- 236 The proposition advanced by counsel assisting seems to be that the two options explored in the second and third meetings (laicisation and therapy) necessarily depended upon the admissions made by Farrell at the first meeting. For example, at CA [1281], it is submitted that "the principal purpose of the second meeting was to secure Farrell's removal from the priesthood as a result of his admissions of criminal conduct at the first meeting". A similar submission is made at CA [1343] and [1344] in relation to the object of the third meeting.¹⁸²
- 237 However, that proposition does not withstand scrutiny. In particular, it overlooks a handwritten note prepared by Bishop Manning recording a discussion with Fr Lucas on about 13 May 1992¹⁸³ which shows that the two options (laicisation and therapy) were already being considered well before the first meeting with Farrell. In that note, Bishop Manning records: "Brian is prepared as Bishops Committee to confront him [Farrell] as to his future, offering alternatives of counselling, or application for dispensation".¹⁸⁴ Thus both relevant options to manage Farrell were in contemplation prior to the first meeting on 3 September 1992, and did not depend upon whether Farrell made any admissions at the first meeting.
- 238 Finally, it may be noted that there is what seems to be an internal inconsistency in the 11 September 1992 Peters letter. If Farrell had made the clear admissions in relation to five boys

¹⁷⁸ Ex 44-9, Tab W11 at T38: 5-44.

¹⁷⁹ Ex 44-5, Tab 167.

¹⁸⁰ Ex 44-9, Tab W11 at T38: 17-44.

¹⁸¹ CA Submissions, [1235].

¹⁸² See CA Submissions, [1344].

¹⁸³ Ex 44-5, Vol 1, Tab 136.

¹⁸⁴ Ex 44-5, Vol 1, Tab 136.



described at page 1 of the letter, it is difficult to understand why Fr Peters would write later in the same letter *“Appointment to another diocese was also seen as impossible given that the whole matter of the allegations was an unresolved matter. Without resolution no recommendation could come for an appointment to another diocese from the Bishop of Armidale”*.

- 239 If Farrell had made explicit admissions at the first meeting, such matters could hardly be treated and dealt with thereafter merely as *“allegations”* which were *“unresolved”*.
- 240 Given the state of the evidence as summarised above, in circumstances where neither Bishop Manning nor Mgr Peters was able to give evidence on the matter, it is submitted that there should be no positive finding as to whether, or when, Bishop Manning read the 11 September 1992 Peters letter.
- 241 Counsel assisting also submits, at CA [1236], that Bishop Manning’s recollection as given to Mr Whitlam QC was *“mistaken”*.¹⁸⁵ It would appear that this submission is made in relation to Bishop Manning’s not recalling having read the 11 September 1992 Peters letter at the time.
- 242 The Church parties submit that there is no proper basis for finding that Bishop Manning was *“mistaken”*.
- 243 Bishop Manning was asked about whether he remembered receiving the 11 September 1992 Peters letter. He said that he did not recall receiving it. Even if it be assumed that he did in fact receive that letter at the time it was sent, no part of his response is a *“mistake”*. His answers simply reflect that, in 2012, he did not remember receiving and reading that letter twenty years earlier in 1992.

Bishop Manning’s undated note

- 244 Counsel assisting refers at CA [1357] to an undated, handwritten note, apparently prepared by Bishop Manning. Counsel assisting submits that *“the evidence is not sufficient to establish what Bishop Manning’s note was intended to record”*.¹⁸⁶
- 245 The Church parties concur.

2.12 1992: Monsignor Peters

- 246 Mgr Peters died in 2015. It is submitted that, as with any deceased person, who has had no opportunity to explain himself or his actions, any findings critical of Mgr Peters should only be made on the basis of clear and compelling evidence.

Alleged knowledge of criminal conduct by Farrell as at June 1992

- 247 Counsel assisting submits, at CA [885], that Fr Peters *“knew of credible allegations of criminal conduct against Farrell”* by June 1992.¹⁸⁷

¹⁸⁵ CA Submissions, [1236].

¹⁸⁶ CA Submissions, [1360].

¹⁸⁷ CA Submission, [885].



- 248 The Church parties submit that no such finding should be made in relation to Mgr Peters.
- 249 At the relevant time, Fr Lucas knew of allegations by CPS, which he had been investigating.¹⁸⁸ A letter from Fr Lucas to Bishop Manning on 10 June 1992 states that he had shown the original statement from CPS to Mgr (then Fr) Peters.¹⁸⁹ However, Mgr Peters' answer to Mr Whitlam QC's question would appear to indicate that he did not know of CPS' allegations at the relevant time.¹⁹⁰
- 250 Otherwise, the evidence shows that, as at June 1992, Mgr Peters knew about: Fr Usher's letter of 22 August 1990 (which referred only to the previous proceedings against Farrell);¹⁹¹ the incident described in the letter from Fr Hayes dated 16 September 1990 (which did not contain any allegation of sexual misconduct);¹⁹² and the matters referred to in Bishop Manning's note of October 1991 (which did not contain any specific allegations as to Farrell's conduct with children).¹⁹³
- 251 None of that material revealed or indicated "credible allegations of criminal conduct".

2.13 Admissions of criminal conduct by Farrell in September 1992

- 252 Counsel assisting submits, at CA [1347], that Fr Peters "knew that Farrell had made admissions as to criminal conduct with children" (in the 3 September 1992 meeting).¹⁹⁴
- 253 The Church parties accept that the third to eighth paragraphs on the first page of the 11 September 1992 Peters letter record admissions of what was certainly criminal conduct. Moreover, when reminded of his 11 September 1992 letter¹⁹⁵ in 2012, Mgr Peters said that he stood by its contents.¹⁹⁶
- 254 However, the Church parties also note that later in the same letter, on the second page, Fr Peters said that "*the whole matter of the allegations was an unresolved matter. Without resolution no recommendation could come for an appointment to another diocese from the Bishop of Armidale*". As observed at paragraphs 238-239 above, that latter statement seems to be inconsistent with what is contained in the third to eighth paragraphs on the first page of the letter.
- 255 The Church parties note that Mr Whitlam QC did not ask Mgr Peters whether Farrell did actually make the admissions recorded on the first page of his 11 September 1992 letter.
- 256 Given the apparent internal inconsistency in the letter, given that Mgr Peters has had no opportunity to give evidence, and given the length and complexity of the evidence surrounding the recollections of Fr Lucas and Mgr Usher (who did give evidence), it is submitted that no positive

¹⁸⁸ Ex 44-5, Vol 2, Tabs 142-144.

¹⁸⁹ Ex 44-5, Vol 2, Tab 146.

¹⁹⁰ Transcript of confidential interview with Mgr Peters, 5 September 2012, p 15: 42-47, Ex 44-9, Tab W5.

¹⁹¹ Ex 44-5, Vol 1, Tab 93; see also Tab 99.

¹⁹² Ex 44-5, Vol 1, Tab 94.

¹⁹³ Ex 44-5, Vol 1, Tab 119.

¹⁹⁴ CA Submission, [885].

¹⁹⁵ Ex 44-5, Tab 165.

¹⁹⁶ Ex 44-5, Tab 285, at [16] and [19].



finding could or should be made as to what Mgr Peters understood to have been the true purport of what Farrell said at the meeting of 3 September 1992.

2.14 2012: Monsignor Peters

- 257 Counsel assisting submits, at CA [1455] and [1456], that after receiving the email of 31 May 2012 from Ms Jolley of Four Corners,¹⁹⁷ Fr Lucas, Mgr Usher and Mgr Peters “put their heads together to come up with an account which was in each of their own interests”, regardless of their individual recollections,¹⁹⁸ and that they did so because they knew that they may have been subject to criminal charges for not reporting Farrell’s admissions to the Police.¹⁹⁹
- 258 Counsel assisting further submits, at CA [1598e], that Mgr Peters was party to “a deliberate strategy by at least the three priests to knowingly put inaccurate information in the public domain to protect their personal interests and avoid any potential liability for not reporting Farrell’s admissions to the police”.²⁰⁰
- 259 The Church parties submit that no such findings should be made in respect of Mgr Peters, for the following reasons.
- 260 First, Mgr Peters has had no opportunity to provide an explanation of his role and state of mind in relation to any of the communications with Four Corners.
- 261 Second, it is apparent that Mgr Peters did not initially recall his 11 September 1992 letter, at the time of his 2012 discussions with Fr Lucas and Mgr Usher.²⁰¹ It seems very possible that Mgr Peters may have agreed with Mgr Usher because he did not have a clear recollection of his own. There would be nothing dishonest or inappropriate, or even noteworthy, about this.
- 262 Third, once Mgr Peters was reminded of, and saw again, his 11 September 1992 letter, he stood by the account in his letter in meetings with other Church personnel in 2012.²⁰² He was not asked, in his interview with Mr Whitlam QC in 2012, whether he stood by his letter.
- 263 Fourth, it is submitted that it is unrealistic to suggest that it is somehow illegitimate for persons to discuss their respective recollections, and a possible joint response to an enquiry from the media, about events that had occurred twenty years earlier. There was no reason why, following the approaches by Four Corners, Fr Lucas, Mgr Usher and Mgr Peters should not have discussed with each other their recollections of the 1992 meetings.
- 264 The Church parties submit that the evidence in relation to Mgr Peters falls well short of being clear and compelling and that no such findings as those put forward at CA [1455], [1456] and [1598e] should be made.

¹⁹⁷ The text of the email is set out at CA Submissions, [1401]. See also CA Submissions, [1436]-[1438].

¹⁹⁸ CA Submissions, [1455]; see also CA Submissions, [1437].

¹⁹⁹ CA Submissions, [1456].

²⁰⁰ CA Submissions, [1598e].

²⁰¹ T21293: 10-17; Ex 44-5, Tab 285 at p 3, [19].

²⁰² Ex 44-5, tab 285 at p 3, [19], [25], [28].



2.15 2012: Cardinal Pell

- 265 Counsel assisting submits, at CA [1476], that “Cardinal Pell’s statements made in the interview with Four Corners were incorrect in that he said or implied that there were files which supported the account of the priests”.²⁰³
- 266 The Church parties submit that no such finding should be made.
- 267 Cardinal Pell was not asked to give evidence. Consequently, he had no opportunity to explain his recollection of the Four Corners interview or to explain the basis of his understanding at the time in relation to the Church records referred to in his responses in respect of Farrell.²⁰⁴
- 268 Further, it is respectfully submitted that the high probability is that when Cardinal Pell referred (in the Four Corners interview) to the “*file note of that meeting*”, he was referring to Mgr Usher’s file note to him.²⁰⁵ Mgr Usher plainly regarded that as being obviously the case.²⁰⁶

2.16 Bishop Matthys

- 269 Counsel assisting submits, at CA 1734 that “[n]otwithstanding his knowledge that Farrell posed an unacceptable risk to children, Bishop Matthys did not put in place any measures to ensure that Farrell did not have access to children”.²⁰⁷
- 270 The Church parties submit that that submission overstates the evidence.
- 271 First, Bishop Matthys gave evidence that restrictions were already in place preventing Farrell from going “*to schools and all that sort of thing*”, which the Bishop maintained and continued.²⁰⁸
- 272 Second, Bishop Matthys took into account that Farrell’s faculties had been withdrawn for years.²⁰⁹
- 273 Third, Bishop Matthys did put in train the laicisation process.²¹⁰ As is well-known, the process of laicisation was a long and difficult process, especially where the priest in question was resistant. Farrell’s resistance clearly pre-dated the arrival of Bishop Matthys,²¹¹ who was required to take steps within the procedures available to him at the time in accordance with Canon Law.
- 274 Fourth, at this time Farrell was not working in any priestly capacity.²¹² He could not say Mass in public, and could not hear confessions or undertake visitation of parishioners.²¹³

²⁰³ CA Submissions, [1476].

²⁰⁴ The transcript of interview with Cardinal Pell is at Ex 44-5, Vol 3, Tab 266.

²⁰⁵ Ex 44-5, Tab 265.

²⁰⁶ T21499: 15-23; CA [1475].

²⁰⁷ CA Submissions, [1738]; see also CA Submissions [1734].

²⁰⁸ T21179: 23 - T21180: 47; Ex 44-5, Tab 220.

²⁰⁹ T21181: 8-26.

²¹⁰ T21179: 23 - T21180: 47.

²¹¹ See Ex 44-5, Vol 2, Tab 211. In his note of 15 August 1998, Mgr Peters refers to Mgr Ryan offering to send Farrell to Encompass. According to the note, Farrell was “not keen” on attending Encompass.

²¹² T21167: 1-16.

²¹³ T21167: 18-20.



- 275 Counsel assisting submits, at CA [1785], that by various particular dates, Bishop Matthys knew certain matters about Farrell, including that Farrell had been the subject of multiple allegations of sexual abuse against boys. The Church parties accept that submission.
- 276 Counsel assisting submits, at CA [1786], that Bishop Matthys knew that Farrell could still “dress in priestly garb, call himself a priest and practice *[sic]* private Mass”.
- 277 The Church parties accept that submission. However, they note that it was not suggested to Bishop Matthys that the ability of Farrell to dress in priestly garb or say mass in private would pose a risk to children.²¹⁴ As can be seen from the 2005 incident of which there is evidence,²¹⁵ the risk posed by Farrell did not depend upon his being a priest.
- 278 Counsel assisting further submits, at CA [1787], that “notwithstanding this knowledge, Farrell was not laicised for a further six years from Bishop Matthys first learning of Farrell’s history, and three years from learning that Farrell continued to pose a serious risk to children”, and that this “was an unacceptable delay, and it placed further children at risk of sexual abuse”.
- 279 While the Church parties accept that the periods cited are accurate, and that delays of such lengths were unsatisfactory, it is submitted that once Bishop Matthys initiated the laicisation of Farrell, he promptly did all that was in his power to achieve that objective. It is further submitted that the delays in the laicisation process did not themselves “place further children at risk”.

²¹⁴ See T21167: 22-41; T21181: 8-22.

²¹⁵ Ex 44-5, Tabs 255, 256, 257.