



**ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES
TO CHILD SEXUAL ABUSE**

AT SYDNEY

COMMONWEALTH OF AUSTRALIA

Royal Commissions Act 1902

PUBLIC INQUIRY INTO

**THE RESPONSES OF CATHOLIC CHURCH AUTHORITIES TO ALLEGATIONS OF CHILD SEXUAL
ABUSE MADE AGAINST JOHN JOSEPH FARRELL**

SUPPLEMENATRY SUBMISSIONS OF SENIOR COUNSEL ASSISTING THE ROYAL COMMISSION

Part 1	The Society of St Gerard Majella	2
1.1	Evidence of Bishop Bede Heather	2
	Allegations of sexual misconduct received against members of the Society	2
1.2	Evidence of Monsignor John Usher	3
1.3	Police investigation and execution of search warrant	4
1.4	Destruction of documents	5

Part 1 The Society of St Gerard Majella

- 1 The Society of St Gerard Majella (the ‘Society’) was an Australian male religious order founded by Brother John Sweeney in the Archdiocese of Sydney. When the diocese changed it became based in the Diocese of Parramatta. Bishop Bede Heather told the Royal Commission that as a lay religious institute, the Parramatta diocese was ‘responsible for the oversight of the order.’¹

1.1 Evidence of Bishop Bede Heather

Allegations of sexual misconduct received against members of the Society

- 2 Bishop Heather gave evidence that a canonist, Father Rodger Austin, assisted the Brothers in overseeing the procedures of their chapter. He said that a number of Brothers went to Father Austin with ‘allegations of misconduct against several of the Brothers in the community.’ Bishop Heather accepted that this included allegations of misconduct by older Brothers against younger Brothers who were minors, but gave evidence that ‘very few’ joined the society under the age of 18. Bishop Heather believed that the reports were ‘probably prompted’ by the sexual abuse conviction of Brother Joseph Pritchard, deputy head of the Order, against a naval apprentice in May 1993.²
- 3 Bishop Heather gave evidence that both members of the Society³ and Father Austin brought allegations of sexual misconduct within the Society to him. Bishop Heather subsequently set up an administrative inquiry to investigate the allegations and to ‘look at the Society more generally.’ Bishop Heather appointed Father Peter Blayney and Father Austin to conduct the inquiry and report to him at the end of August 1993. Bishop Heather said that this report verified the allegations and he ‘took action accordingly.’⁴
- 4 When asked whether he went to the police after receiving the report from Father Austin, Bishop Heather said ‘no, I didn’t, because it was never clear to me whether there had been any sexual abuse of persons under 18 years of age.’⁵
- 5 Brothers Pritchard and Robinson were stood down from priestly ministry with immediate effect. Brother Sweeney was allowed to continue in restricted priestly ministry and was not stood down until February 1994, after further, ‘quite serious’ allegations against him were investigated by Monsignor Usher.⁶ Bishop Heather told

¹ Transcript of B Heather, Case Study 44, T21133:44 – 21134:23; 21134:39 – 41 (Day 210).

² Transcript of B Heather, Case Study 44, T21135: 17-43 (Day 210)

³ Transcript of B Heather, Case Study 44, T21135: 10-15 (Day 210).

⁴ Transcript of B Heather, Case Study 44, T21136: 15-37 (Day 210).

⁵ Transcript of B Heather, Case Study 44, T21137: 8-13 (Day 210).

⁶ Transcript of B Heather, Case Study 44, T21136: 1 – 21137: 6 (Day 210).

the Royal Commission that he was aware that this allegation related to a person under 18 and that person took the matter to the police in March 1994.⁷

- 6 When asked whether he considered that he had an obligation to report these matters to police, Bishop Heather said ‘I did not see myself as bound to take those complaints to the police.’ Bishop Heather said that he was ‘principally concerned about the impact on the community’,⁸ although did not agree this concern was for the adverse effect that the publicity would have on the church.⁹

1.2 Evidence of Monsignor John Usher

- 7 Monsignor John Usher gave evidence that in January 1994 Bishop Heather commissioned him to conduct an inquiry into an allegation made in December 1993 that Brother Sweeney had sexually abused a 16 year old boy.¹⁰
- 8 In February 1994, Father Usher provided his report to Bishop Heather and soon after Brother Sweeney was stood down by Bishop Heather.¹¹ Monsignor Usher agreed with Counsel Assisting that the reason why Bishop Heather approached him to provide a report was because of his knowledge of child sexual assault by clergy and religious.¹²
- 9 Monsignor Usher said that his report was a private report and provided to Bishop Heather. Monsignor Usher recalled that he was not satisfied that Brother Sweeney had sexually misconducted himself in relation to the child.¹³ Monsignor Usher said:

I wasn't convinced because [Brother Sweeney] denied it. He said... he had sexual relationships with that man, as an adult, but he denied having a relationship with him when he was a boy...

I drew a conclusion that he made no admissions on that occasion, but I wrote the report to Bishop Heather in such a way that he needed to look into it further, take it very seriously.¹⁴

- 10 Monsignor Usher's evidence was that he did not make any recommendations as to what Bishop Heather should do, but he recalled following the matter up with Father McGuckin on the telephone a few days after he delivered his report. Monsignor Usher's evidence was that Father McGuckin told him that the matter was being investigated by the police.¹⁵

⁷ Transcript of B Heather, Case Study 44, T21137: 8-44 (Day 210).

⁸ Transcript of B Heather, Case Study 44, T21137: 8-44 (Day 210).

⁹ Transcript of B Heather, Case Study 44, T21137: 34 – 21138: 15 (Day 210).

¹⁰ Transcript of J Usher, Case Study 44, T21605: 15-30 (Day 214).

¹¹ Transcript of J Usher, Case Study 44, T21605: 32-38 (Day 214).

¹² Transcript of J Usher, Case Study 44, T21605: 45-47 (Day 214).

¹³ Transcript of J Usher, Case Study 44, T21606: 10-22 (Day 214).

¹⁴ Transcript of J Usher, Case Study 44, T21606: 16-28 (Day 214).

¹⁵ Transcript of J Usher, Case Study 44, T21606: 31-41 (Day 214).

- 11 Monsignor Usher said that he called Father McGuckin because he wanted to find out whether Brother Sweeney had been reported to the police, and because he was concerned that Brother Sweeney would not be removed from ministry.¹⁶
- 12 In April 1994, Brother Sweeney underwent a psychological assessment conducted by Professor Blaszczyński. On 20 April 1984, Father Usher sent a letter to Professor Blaszczyński thanking Professor Blaszczyński for his report on Brother Sweeney.¹⁷ The letter states:

The report will be very helpful to Bishop Bede Heather of the Diocese of Parramatta. Br Sweeney, who is also an ordained priest, has been stood down from all active roles for a period of three years. Any reinstatement to a LIMITED pastoral role will not be considered until he has undergone therapy, as you recommended, and on the condition that he carries out certain other requirements placed on him by the Bishop.

In fact, the Religious Society that was founded by John Sweeney has now almost disbanded. It is most likely that it will not be possible for him to return to any work in the Religious Society in which he was previously involved, even if it was thought to be acceptable in three years' time.

His former Religious Society (The Brothers of St Gerard Majella) has many disaffected ex-members in the community, many of whom are seeking financial compensation from the Religious Society for a variety of psychological, emotional and sexual abuses. Br John Sweeney, himself, is now being interviewed by the police in the wake of the allegations by the former member whom he discussed with you. This man was 16 years of age when he met John Sweeney. It is a very sad situation which was unknown and hidden from the rest of the Church until recently.

- 13 Monsignor Usher said in his evidence that he recalled that there was a second page of this letter which was not produced to the Royal Commission.¹⁸ Monsignor Usher's evidence was that his statement that Brother Sweeney was being interviewed by police was based on his discussion with Father McGuckin.¹⁹

1.3 Police investigation and execution of search warrant

- 14 Bishop Heather gave evidence that he informed the Diocesan solicitors, Makinson & d'Apice, of the police investigations in relation to Brother Sweeney and the Society more generally. Bishop Heather said that he sought legal advice as he was anxious to know the Diocese's obligation in the matter. Makinson & d'Apice informed Bishop Heather that there was a possibility of a search warrant being issued by the police to

¹⁶ Transcript of J Usher, Case Study 44, T21607: 33-41 (Day 214).

¹⁷ Exhibit 44-10 Letter from John Usher to Dr Alex Blaszczyński IND.0533.001.0001.

¹⁸ Transcript of J Usher, Case Study 44, T21608: 18-24 (Day 214).

¹⁹ Transcript of J Usher, Case Study 44, T21608: 41-47 (Day 214).

search his office. Bishop Heather accepted that as the Society was part of the Diocese, the Diocese may hold records relating to the Society.²⁰

- 15 Bishop Heather told the Royal Commission that he had asked Father Breslan, the chancellor, to establish the Diocesan archive. Father Breslan did so at Guildford. This archive held all of the Diocese's foundational documents, as well as the reports of Fathers Austin and Blayney and Father Usher. Other documents more regularly referred to were held separately in the Diocesan office in Parramatta.²¹
- 16 Bishop Heather gave evidence that a search warrant was executed by police at the Parramatta office on 13 December 1994, and a further warrant was executed at the office of Father Austin.²² Bishop Heather said that after this warrant was executed, he did not believe that he had further dealings with the police or his lawyers about what was seized.²³

1.4 Destruction of documents

- 17 Almost two years after the execution of the search warrant, Bishop Heather wrote to solicitors Makinson d'Apice, on 15 August 1996.²⁴ The letter was in relation to a civil claim in respect of a priest of the Diocese of Parramatta, Father Cattell, who had been convicted of child sexual abuse offences.

- 18 Bishop Heather wrote:

*Following the police raid on our offices, shortly afterwards I took the precaution of destroying all papers of mine which could have been to the disadvantage of persons with whom I deal.*²⁵

- 19 Bishop Heather gave evidence that the execution of the search warrant in relation to the Society made him reconsider the security of the Diocesan files. When asked by Counsel Assisting if, prior to the execution of the search warrant, he was conscious that records held by the Diocese could be obtained by the State by way of some legal means, he said he had never heard of that happening, and he thought the possibility of that happening seemed extremely remote.²⁶

- 20 When asked what he did in relation to the concern about the security of Diocesan files, Bishop Heather said:²⁷

Well, from that point onwards I became a bit cautious about what I kept on file - maybe irrationally, as I look back on it now. I would say, in hindsight, I was traumatised by the event on December 13, 1995. It is one of the dates that stands

²⁰ Transcript of B Heather, Case Study 44, T21138:28-21140:4 (Day 210).

²¹ Transcript of B Heather, Case Study 44, T21139:44-21140:30 (Day 210).

²² Transcript of B Heather, Case Study 44, T21141:24-21142:6 (Day 210).

²³ Transcript of B Heather, Case Study 44, T21142:27-30 (Day 210).

²⁴ Exhibit 44-008, Letter from Bishop Heather to Mr A Kohn of Makinson d'Apice CTJH.280.01008.0144_R.

²⁵ Exhibit 44-008, Letter from Bishop Heather to Mr A Kohn of Makinson d'Apice CTJH.280.01008.0144_R.

²⁶ Transcript of B Heather, Case Study 44, T21143: 11 – 17 (Day 210).

²⁷ Transcript of B Heather, Case Study 44, T21143: 28 – 41 (Day 210).

out as a black day in my history. I would say I was traumatised and suffered stress disorder as a result. I'd say, in hindsight, I should have taken counselling.

21 The following exchange took place with Counsel Assisting:

Q. Did you destroy any documents that you had, that you didn't want anyone else, including the State, to get hold of?

A. Not from the past, no, but I did, from that point, became cautious about what I filed. I didn't keep everything that could have been filed.

Q. So that you made notes from time to time as you ordinarily would and then disposed of those notes rather than keep them in the file?

A. I kept as much as I could in my head, yes.

Q. Did that include material in relation to complaints of a sexual nature against priests?

A. By that time, I was aware that if there were any such complaints regarding minors, that I would be bound to report them, so I --

Q. Report to whom?

...

A. To the police. Yes, I was conscious by that time that I would be so bound.²⁸

22 Bishop Heather clarified that 'by that time' meant '1995/1996', and said 'by that time...nothing of that nature was destroyed, but a number of other matters of a confidential nature were destroyed.'²⁹ When examined by Mr Gray SC, Bishop Heather agreed that the criteria he had in mind included private matters referable to alcohol or depression.³⁰

23 When asked for an example of documents he destroyed, Bishop Heather said he destroyed his letter to Makinson d'Apice of 15 August 1996, in which he refers to taking the precaution of destroying papers. He also gave the example of the other to CCI, which he refers to his in his 15 August 1996 letter, which he did not keep.³¹

24 Bishop Heather said he destroyed these to 'respect the confidentiality of things that were conveyed to me as Bishop.'³² Bishop Heather did not accept the suggestion from the Chair that he was trying to keep the documents undiscoverable from the police. Instead, Bishop Heather said that he was keeping the documents confidential from 'anyone who could invade the office.' When asked who he thought might raid the office, Bishop Heather said that thefts could occur as the office was in a public

²⁸ Transcript of B Heather, Case Study 44, TT21143: 43 – T21144: 19 (Day 210).

²⁹ Transcript of B Heather, Case Study 44, T21144: 21 - 24 (Day 210).

³⁰ Transcript of B Heather, Case Study 44, T21159: 38 – 21160: 3 (Day 210).

³¹ Transcript of B Heather, Case Study 44, T21144: 30-40; 21146:12-21147: 6 (Day 210).

³² Transcript of B Heather, Case Study 44, T21144: 30-47 (Day 210).

building.³³ Bishop Heather accepted, however, that aside from the Royal Commission no one else has sought by compulsion documents from the Diocese.³⁴

- 25 When asked whether he destroyed documents that provided the basis to write to CCI about potential claims against Father Cattell, Bishop Heather initially could not recall and said that he did not destroy anything that he received prior to the execution of the police warrant, in December 1994.³⁵ However, the following exchange then occurred between Bishop Heather and the Chair:

Q. This letter suggests to the contrary, Bishop. Have you read the letter carefully?

A. I did. I think in 1994, I say, yes, he was --

Q. You say:

Following the police raid on our offices, shortly afterwards I took the precaution of destroying all papers of mine which could have been to the disadvantage of persons with whom I deal.

Now, that includes, of course, the document that you had created in this matter before the police raid, doesn't it?

A. Yes, "This I did" - the letter I wrote to Father Connors was in 1994, yes.

Q. So you did destroy documents which were created before the police executed the warrant, didn't you?

A. I'm not sure what the date of that was, whether it is before or after 13 December.

Q. This letter suggests, plainly, that you created the document, the police then executed a warrant and you destroyed it?

A. Well, that's an interpretation, yes. Yes, I notice that --

Q. Is it the true position that you did destroy documents that had been created before the police raid?

A. Yes, well, I have no recollection of that, your Honour.

MS FURNESS: Q. But you accept that that's what you've done?

*A. Yes, yes.*³⁶

- 26 It was put to Bishop Heather that he likely destroyed 'source documents' on which notifications to CCI were based, as well as advice to CCI, which contained information relevant to potential claims. Bishop Heather said 'Yes. Yes, I think so, yes.'³⁷ When it

³³ Transcript of B Heather, Case Study 44, T21144: 47-21145: 23 (Day 210).

³⁴ Transcript of B Heather, Case Study 44, T21145: 25 – 34 (Day 210).

³⁵ Transcript of B Heather, Case Study 44, T21147: 21-46 (Day 210).

³⁶ Transcript of B Heather, Case Study 44, T21148: 1 – 36 (Day 210).

³⁷ Transcript of B Heather, Case Study 44, T21148: 38 – 47 (Day 210).

was put to Bishop Heather by the Chair that this was evidence that suggested criminal offending by priests, he said 'I don't have a recollection of destroying a lot of documents at all, but I agree that the evidence of this letter is that I did destroy at least that document, yes.'³⁸ Bishop Heather said he could not recall destroying the source documents, but accepted that was 'an interpretation.'³⁹ When asked if it was likely that those documents related to complaints of a sexual nature against priests, Bishop Heather said 'it's possible', but 'I can't recall that and I'm not prepared to commit myself to it.'⁴⁰

27 The Chair put to Bishop Heather that he had a very clear recollection of many events of the time, yet he did not recall the character of the documents he destroyed. Bishop Heather said 'No, no, I don't, no.'⁴¹

28 Bishop Heather later gave evidence that confidentiality was his principal concern and a criterion he used to determine what could be destroyed. Bishop Heather said that this did not include destroying documents that indicated a possibility of criminal behaviour with minors. It was put to Bishop Heather that he now seemed to have recall over the documents he destroyed, to which he said:

*No. What I'm aware of is that in 1996 I was quite conscious of the obligations to report offences, sexual offences against minors.*⁴²

29 It was put to Bishop Heather that the position appeared to be that he destroyed documents which would be adverse to an individual, including potential criminal offences, to which he agreed.⁴³ Bishop Heather was further questioned about this by the Chair:

Q. But the matters that were relevant to CCI were all potential claims against the church for failing in its duty of care to individuals, weren't they?

A. The matters of the CCI, yes, they were.

Q. And central to those was sexual abuse, wasn't it?

A. Yes.

30 The St Gerard Majella Society was closed by Bishop Heather in December 1994. Bishop Heather said that he wrote to the Vatican to get approval for the Society's dispersal due to the 'breakdown of the religious life and its [sic] standards in the community' after the conviction of three members for sexual offences.⁴⁴

³⁸ Transcript of B Heather, Case Study 44, T21149: 12-14 (Day 210).

³⁹ Transcript of B Heather, Case Study 44, T21149: 26 – 39 (Day 210).

⁴⁰ Transcript of B Heather, Case Study 44, T21149: 41 - 211510: 16 (Day 210).

⁴¹ Transcript of B Heather, Case Study 44, T21150:22-26 (Day 210).

⁴² Transcript of B Heather, Case Study 44, T21158:43-47; 21159:44 – 21160:3 (Day 210).

⁴³ Transcript of B Heather, Case Study 44, T21159:8-28 (Day 210).

⁴⁴ Transcript of B Heather, Case Study 44, T21151:4-21152:22 (Day 210).

Submissions

- 31 It is submitted that Bishop Heather's evidence was not frank or honest in relation to the specifics of his conduct, and he sought to obfuscate and minimise his culpability in relation to the kinds of documents he destroyed. It is submitted that Bishop Heather's evidence was less than forthcoming about whether he destroyed documents which recorded allegations of criminal conduct, including sexual misconduct, against priests and religious.
- 32 His evidence initially was that he only destroyed documents created after the execution of the search warrant in December 1994. However, when pressed by Counsel Assisting and the Chair that his letter of 15 August 1996 made it plain that he destroyed at least one document created in 1994, being a CCI notification in relation to allegations against Father Cattell, Bishop Heather eventually conceded he destroyed that document.
- 33 Bishop Heather's evidence was that he could not recall the specific documents that he destroyed. However, when examined by Mr Gray SC, Bishop Heather's evidence was that he did not destroy documents indicating the possibility of criminal behaviour with minors.
- 34 It is submitted that in about December 1994, after police had executed a search warrant on the Diocese of Parramatta, Bishop Heather destroyed documents held by the Diocese that contained information which was adverse to priests and religious in the Diocese. It is submitted this included documents recording complaints and allegations of criminal conduct by priests and religious, including allegations of sexual misconduct, for the following reasons:
- a. Bishop Heather conceded it was the execution of the search warrant by police in relation to allegations of sexual misconduct against religious which prompted his destroying documents. It follows that documents of this nature must have been front of mind for Bishop Heather in December 1994.
 - b. Bishop Heather conceded that he destroyed his letter to Makinson d'Apice dated 15 August 1996, and his 1994 notification to CCI, both of which related to possible claims against Father Cattell, who had been convicted of child sexual abuse offences.
- 35 It is further submitted that Bishop Heather's practice of destroying documents must have continued from at December 1994 to at least August 1996.
- 36 It is submitted that Bishop Heather's evidence that he was concerned to protect documents from intruders should be rejected. The catalyst for the destruction of documents was the execution by NSW police of a search warrant on Diocesan premises. It is submitted that Bishop Heather's conduct was intended primarily to prevent State agencies, including police, from discovering information which disclosed possible criminal conduct by priests and religious, including allegations of sexual misconduct with children. This was wrong, and prioritised the reputation of clergy and

religious, and the Catholic Church, over the safety of children and the proper conduct of the criminal justice system.

Gail Furness SC

3 July 2017