

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

**Public Hearing - Case Study 44
(Day 207)**

Level 17, Governor Macquarie Tower
1 Farrer Place, Sydney

On Monday, 12 September 2016 at 10am

Before:

The Chair: Justice Peter McClellan AM
Commissioner: Justice Jennifer Ann Coate

Counsel Assisting: Ms Gail Furness SC

1 THE CHAIR: Ms Furness, before we commence today there are
2 just a few matters I want to discuss.

3
4 MS FURNESS: Thank you, your Honour.

5
6 THE CHAIR: It is now almost three years since the
7 Commission held its first public hearing. In that time, we
8 have been able to complete the hearings and provide reports
9 to the Governor-General and Governors in 26 case studies.
10 Twenty-two of those reports have been publicly released and
11 four await publication by government. A further 13 case
12 studies have been conducted and are at various stages of
13 completion. Reports in those case studies will be provided
14 to government in due course.

15
16 I have previously indicated that it is not possible
17 for the Royal Commission to conduct the public hearing in
18 relation to every institution about which we have received
19 allegations of the sexual abuse of children. The
20 Commission has received information about more than 4,000
21 institutions. Because of the impossibility of conducting
22 a public hearing in relation to each of these institutions,
23 we have carefully selected the institutions we have
24 publicly investigated with a view to providing the
25 government, the institutions and the public with an
26 understanding of the nature of the problems which we have
27 identified.

28
29 The case studies have been selected to ensure an
30 appropriate geographical spread and also an appropriate
31 reflection of the type of institution where survivors were
32 abused.

33
34 A breakdown of the institutions examined in our public
35 hearings reveals the following, and this I don't think is
36 presently well understood: 29 case studies have examined
37 at least one State institution - that's 70 per cent of all
38 case studies; in 11 case studies, State institutions were
39 examined as the primary institution. Faith-based
40 institutions have been examined in 26 of our case studies -
41 that is, 63 per cent of all case studies. Obviously, some
42 case studies involve both the State and faith-based
43 institutions.

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45 Catholic institutions have been examined in 14 case
46 studies - 34 per cent of all case studies; and Anglican
47 institutions have been examined in five case studies, which

1 is 12 per cent of all case studies.

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1 Commission, these reports will be an authoritative source
2 for other research and policy work long after the
3 Commission has completed its final report.
4

5 I have previously mentioned that the Commission has
6 worked cooperatively with police. Section 6P of the Royal
7 Commissions Act 1902 authorises the Royal Commission to
8 provide information to the police with respect to possible
9 criminal offences. The Royal Commission has now referred
10 1,659 matters to police to consider for further
11 investigation with a view to prosecution. Because of the
12 volume of references, the resources of the various police
13 forces have been placed under significant pressure.
14 Although I understand a great many references are awaiting
15 investigation, or the investigations are under way but not
16 complete, so far, prosecutions have been brought against 71
17 people.
18

19 After the present case study has been completed, the
20 Commission will turn its attention in a public hearing to
21 harmful sexual behaviours of children within schools.
22 There may be a limited number of other further
23 factual-based case studies. These will be followed by
24 a series of review hearings in relation to various
25 institutions and selected topics. I anticipate at this
26 stage that our final hearing, which has been given the
27 working title "Nature, Cause and Impact of Child Sexual
28 Abuse", will focus, amongst other matters, on the "why"
29 question, and that hearing is currently programmed to take
30 place in March 2017.
31

32 Yes, Ms Furness.
33

34 MS G FURNESS SC: Your Honour, I appear to assist the
35 Royal Commission today with Ms Hahn, Ms Doyle, Ms Bozym,
36 Mr Winter and Ms Charters.
37

38 Your Honour, I understand that there are some
39 applications that are to be made this morning.
40

41 THE CHAIR: First of all, what about the appearances, whom
42 do we have?
43

44 MR J ELLIS: Your Honours, Ellis. I appear for
45 Michael McGroder and Karolyn Graham and leave has been
46 granted.
47

1 MR P O'BRIEN: My name is O'Brien. I appear for the
2 witness [CPA]. Leave has been granted.
3
4 MR I BOURKE SC: May it please the Commission, Bourke,
5 I appear with Ms Wright, instructed by Ms Hainsworth, for
6 the State of New South Wales, pursuant to leave already
7 granted.
8
9 MR D CARROLL: My name is Carroll. I appear for
10 John Farrell. Leave has been granted.
11
12 THE CHAIR: You are for Mr Farrell?
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14 MR CARROLL: Yes.
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16 THE CHAIR: Very well, yes.
17
18 MR S RUSHTON SC: Commissioner, I appear with my learned
19 friend Mr Duggan for Monsignor John Usher. Leave has been
20 granted.
21
22 MR P GRAY SC: May it please the Commission, my name is
23 Gray. I appear with Mr Pintos-Lopez for the Truth, Justice
24 and Healing Council, the Diocese of Armidale and the
25 Diocese of Parramatta. Leave has been granted.
26
27 THE CHAIR: Thank you.
28
29 MR P SKINNER: May it please the Commission, Skinner,
30 I appear for Father Brian Lucas. I understand leave has
31 been granted.
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33 MS M GERACE: May it please the Commission, I appear for
34 Bishop Manning, Ms Gerace, and I understand leave has been
35 granted.
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37 THE CHAIR: Yes. No-one else? Yes, Ms Furness.
38
39 MS FURNESS: Your Honour, I understand there are some
40 applications to be made this morning.
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42 THE CHAIR: Is that correct?
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44 MR BOURKE: Yes, may it please the Commission.
45 Your Honour would have received a confidential submission
46 that was provided to the Commission pursuant to a request a
47 little over a week or so ago that outlined a number of

1 concerns that --
2
3 THE CHAIR: I am sorry, you have done what?
4
5 MR BOURKE: A submission was provided to the Commission,
6 that I trust your Honour has seen --
7
8 THE CHAIR: I have seen it but I'm not sure it is
9 appropriate that I receive it.
10
11 MR BOURKE: I will lay out the concerns that the State
12 has, then, if I might, your Honour.
13
14 THE CHAIR: You understand what I'm saying? I don't think
15 there should be a private communication with
16 a Commissioner.
17
18 MR BOURKE: Might I then pursue the application that
19 I make --
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21 THE CHAIR: You can certainly do that, but everyone should
22 understand that a document was received, and, yes, I have
23 looked at it, without appreciating what its content would
24 be, but I don't propose, nor does Justice Coate, to take
25 any regard to what was in that document.
26
27 MR BOURKE: Very well. Your Honour, as the Commission may
28 well be aware, there is a trial that is listed for 10 April
29 2017 involving further charges against Mr Farrell.
30
31 THE CHAIR: Mr Farrell has been convicted, as I understand
32 it, of how many offences?
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34 MR BOURKE: 62 offences, I think, your Honour.
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36 THE CHAIR: 62. And those convictions were entered
37 in May; is that right?
38
39 MR BOURKE: 2 May 2016.
40
41 THE CHAIR: Right. He was sentenced to?
42
43 MR BOURKE: 29 years, with a minimum term of 18 years.
44
45 THE CHAIR: And he is what age?
46
47 MR BOURKE: I think he is about 62 years of age,

1 your Honour.
2
3 THE CHAIR: And that all occurred in May and there was
4 a fair bit of publicity; is that right?
5
6 MR BOURKE: There was initially a non-publication order.
7 However, the sentencing judge lifted that order once
8 his Honour imposed those sentences.
9
10 THE CHAIR: There was publicity associated with it?
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12 MR BOURKE: There was publicity, that's correct.
13
14 THE CHAIR: Both print and on --
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16 MR BOURKE: The internet.
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18 THE CHAIR: The internet and on television, I assume?
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20 MR BOURKE: Probably television as well, I suspect, yes.
21
22 THE CHAIR: Yes. Very well.
23
24 MR BOURKE: As the State understands it, there is
25 a proposal in this case study for evidence to be looked at
26 that is likely to be or almost certainly is of relevance to
27 matters that are to be canvassed in the trial listed
28 for April 2017.
29
30 THE CHAIR: You will need to explain that to me. What are
31 the charges listed for April next year?
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33 MR BOURKE: The charges that are faced --
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35 THE CHAIR: I take it there has been public knowledge of
36 the charges being laid; is that right?
37
38 MR BOURKE: Yes, that's correct.
39
40 THE CHAIR: What are the charges then for April next year?
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42 MR BOURKE: The charges, your Honour, relate to matters
43 from 1982 to 1983, and there are also some allegations
44 involving 1975, involving a number of complainants, some of
45 whom will be referred to by pseudonyms, as we understand
46 it, in this case study.
47

1 THE CHAIR: How many counts are to be prosecuted in April
2 next year?

3

4 MR BOURKE: I think it is about 23 counts in total,
5 your Honour, involving five different complainants.

6

7 THE CHAIR: Are any of those complainants common with
8 those matters for which he has been convicted?

9

10 MR BOURKE: I don't believe so, no.

11

12 THE CHAIR: So they are fresh complainants?

13

14 MR BOURKE: That's right. One of them relates to
15 a complainant in respect of whom Mr Farrell faced
16 a committal proceeding in 1988, I think it was. That
17 matter is being re-enlivened.

18

19 THE CHAIR: That is a matter that has received
20 considerable publicity in the past, I think, hasn't it?

21

22 MR BOURKE: It has received some publicity, yes.

23

24 Your Honours, the application that we seek to make has
25 a number of aspects to it. One of them is that Mr Farrell
26 not be called as a witness in this case study because of
27 the potential for prejudice to the trial charges, which he
28 is due to face in April of 2017. As I understand it --

29

30 THE CHAIR: Do we know whether this case study will
31 involve discussion of any of the matters relating to those
32 charges?

33

34 MR BOURKE: It is likely, as I understand it, that some of
35 the material --

36

37 THE CHAIR: Ms Furness can, no doubt, tell us in due
38 course whether that is so.

39

40 MR BOURKE: No doubt Ms Furness can do that, but that is
41 our understanding.

42

43 As we understand it, presently, there is no proposal
44 to call Mr Farrell in this case study, and so if there is
45 to be any change in that position, then the State would
46 appreciate being informed so that it can reargue the
47 question, if necessary.

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THE CHAIR: May I just ask you this: in April this year, did Mr Farrell plead guilty or was there a contested hearing?

MR BOURKE: He pleaded guilty to a large percentage of the charges - something like three-quarters of them. However, there was a trial in the District Court involving another number of charges - I think it was something less than 20 or so - and he was convicted of some of those charges by a jury and found not guilty of other charges by a jury. The majority of charges for which he was sentenced on 2 May this year were pleas of guilty, but not all of them.

Your Honours, as I've said, as we would currently understand it, there is no proposal for Mr Farrell to be called, given that there is this outstanding trial.

Also given the outstanding trial, it is likely that the State will be making submissions to the Commission that certain documents that might become exhibits in this case study not be placed upon the Commission's website.

THE CHAIR: What category of documents is that?

MR BOURKE: Essentially, documents that are likely to be relevant in the upcoming trial in 2017. Most specifically, those relating to what are said to be alleged admissions that were made in 1992.

THE CHAIR: Have those documents been in the public domain before?

MR BOURKE: Some of them have been.

THE CHAIR: I think you can get some of them off the ABC's website, can't you?

MR BOURKE: I certainly have seen one of them there in a redacted form.

THE CHAIR: Why would we suppress publication of something that is already in the public domain?

MR BOURKE: For a number of reasons. Firstly, the current version is in a redacted form. Presumably, the version which is tendered in this Commission is unlikely - well,

1 may not be in that form.
2
3 THE CHAIR: Is that redacted because of the names of
4 alleged victims?
5
6 MR BOURKE: No, I don't think it is. I think the
7 redaction relates to the alleged perpetrator, but the more
8 pressing concern --
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10 THE CHAIR: That would be surprising because the whole
11 program was about Mr Farrell, wasn't it?
12
13 MR BOURKE: Yes, but he was referred to, as your Honour
14 might recall, as "Father F", in that program, but the more
15 pressing concern, from the State's perspective, with
16 respect to this upcoming trial is that although some of
17 these documents may have been in the public domain already
18 and some of them may still be, if it is proposed that
19 certain witnesses who are to be called, as we understand
20 it, in this case study, are to be examined in detail about
21 matters within those documents or topics that relate to
22 those documents, then that form of questioning in the
23 public domain, and especially if transcripts and documents
24 are placed on the Commission's website, will have the risk
25 of prejudice to the upcoming trial because of that level of
26 detail.
27
28 THE CHAIR: What is the submission, then? In relation to
29 documents and transcript --
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31 MR BOURKE: And transcript of certain witnesses if they
32 are called to give evidence in these proceedings --
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34 THE CHAIR: They should not go on to our website; is that
35 the submission?
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37 MR BOURKE: That's right.
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39 THE CHAIR: But otherwise the hearing proceeds in public?
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41 MR BOURKE: Yes.
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43 THE CHAIR: And is live-streamed?
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45 MR BOURKE: We would be seeking in respect of certain
46 witnesses that it not be done in a live-stream form.
47

1 THE CHAIR: Do we know who those witnesses would be?
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3 MR BOURKE: If they are to be called, the members of the
4 clergy - Manning, Lucas and Usher.
5
6 THE CHAIR: As I understand it presently, they are
7 important figures, as it were, in this study?
8
9 MR BOURKE: As we understand it. However, I note that our
10 understanding is that Bishop Manning is not proposed --
11
12 THE CHAIR: That is a different question and I will leave
13 that to one side, but what you are saying is we shouldn't
14 live-stream what may be the central evidence in the study?
15
16 MR BOURKE: I am unable to say whether it is the central
17 evidence, but certainly that's the application.
18 Your Honours, in order to --
19
20 THE CHAIR: Why would we not live-stream it?
21
22 MR BOURKE: In order to answer that question from
23 your Honour in an appropriately detailed way, I would seek
24 to be heard in a private hearing.
25
26 THE CHAIR: Because you want to talk about the content of
27 what they might say?
28
29 MR BOURKE: And the potential prejudice that that evidence
30 might have on court proceedings.
31
32 THE CHAIR: You have already told us that what you expect
33 to come would be a challenge or evidence as to whether or
34 not Mr Farrell made admissions; is that right?
35
36 MR BOURKE: Yes.
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38 THE CHAIR: So is that the concern that you have about it
39 being live-streamed?
40
41 MR BOURKE: That is one of the concerns, it's not the only
42 one.
43
44 THE CHAIR: It is hard for me to see any other concern.
45 What is the other one?
46
47 MR BOURKE: The other one is the one that I would seek to

1 agitate in a private hearing. If I'm forced to do that --
2
3 THE CHAIR: Could you write it down for me, so I can
4 understand whether or not a private hearing is justified?
5 What is the topic?
6
7 MR BOURKE: We can certainly do that. There are some
8 submissions that were provided to my learned friend that
9 set out those concerns, if your Honour would be minded to
10 look at those.
11
12 THE CHAIR: Do I have a copy of these?
13
14 MS FURNESS: You should have, your Honour. My friend has
15 provided two documents. Is he referring to each of them or
16 just one?
17
18 MR BOURKE: At this stage, I'm referring to a submission
19 of 2 September 2016. I have a copy here, if that assists.
20
21 THE CHAIR: If you have a copy of that, it would be
22 useful.
23
24 MR BOURKE: I hand up two copies.
25
26 MS FURNESS: The document is called "Crown Application".
27
28 JUSTICE COATE: I do have it.
29
30 THE CHAIR: Which paragraphs?
31
32 MR BOURKE: Paragraphs 43 through to 46. On the final
33 page it really gets to the nub of the problem.
34
35 THE CHAIR: I am not sure we should even be told that,
36 either.
37
38 MR BOURKE: I am concerned, your Honour, to make
39 submissions on behalf of the State so as to protect
40 possible future proceedings.
41
42 THE CHAIR: There are no proceedings of the relevant
43 character on foot now, are there?
44
45 MR BOURKE: Certainly, there are proceedings against
46 Mr Farrell.
47

1 THE CHAIR: But no-one else?
2
3 MR BOURKE: That's right, no-one else.
4
5 THE CHAIR: The law is fairly clear in that, isn't it?
6
7 MR BOURKE: The law in this area is somewhat developing,
8 is the submission I would be making.
9
10 THE CHAIR: It is pretty clear in relation to the public
11 interest in a royal commission proceeding to discharge its
12 obligations under its letters patent. The law is clear,
13 yes, if someone has been charged then the Royal Commission
14 must stay out of it, but not otherwise. Indeed,
15 royal commissions commonly - and we have throughout this -
16 investigated conduct of various people that could result in
17 criminal charges.
18
19 MR BOURKE: Indeed. And the State, for whom I appear,
20 acknowledges the importance of this proceeding being heard
21 in public so far as that is possible, but as your Honours
22 would be aware, the Letters Patent also make it clear that
23 these proceedings should be conducted in a manner that
24 avoids, if possible, risk of harm to other proceedings.
25
26 THE CHAIR: There are no other proceedings, Mr Bourke.
27
28 MR BOURKE: There are proceedings on foot in relation to
29 Mr Farrell. It cannot be ruled out that other proceedings
30 might be brought at a later stage.
31
32 THE CHAIR: Maybe, but that's the case with every
33 royal commission. I mean, consider what the
34 Honourable Dyson Heydon was doing. Consider multiple royal
35 commissions which have looked at conduct of people because
36 the State was concerned that there may be misbehaviour,
37 including criminal conduct; that's inevitable.
38
39 MR BOURKE: No doubt that is true, but for the reasons set
40 out in paragraph 43 and following, this case has advanced a
41 little bit further than the cases which your Honour might
42 be referring to.
43
44 THE CHAIR: I am not sure we are entitled to know that.
45 Obviously, any case that is brought by anyone will be the
46 subject of consideration before it is initiated, but I'm
47 not sure that a royal commission should determine how it

1 functions by reason of "the possibility" that something
2 might happen. Is there any authority to that effect?

3
4 MR BOURKE: Your Honours, there have been recent
5 decisions, including the Court of Criminal Appeal's
6 decision in *Seller v the Queen* and *McCarthy v the Queen*,
7 which have looked at the potential consequences to criminal
8 proceedings from investigators being exposed to
9 compulsorily obtained evidence and so it cannot be ruled
10 out that --

11
12 THE CHAIR: That is in the context of quite different
13 statutory bodies to a royal commission.

14
15 MR BOURKE: No doubt that is true, your Honour. However,
16 that does not take away the risk of applications being made
17 in relation to the matters referred to in paragraph 43 to
18 paragraph 46 of our submissions, or in relation to the
19 upcoming trial in relation to Mr Farrell. It may not be
20 the case that there is a strong basis for any permanent
21 stay of the Farrell trial, but the State is concerned to do
22 all it can to ensure that that trial proceeds, as it is
23 expected to proceed, in April of next year, and that it not
24 be adjourned or be the subject of a temporary stay or
25 anything of that kind.

26
27 THE CHAIR: That mixes two issues. One is the trial of
28 Farrell. The other is other proceedings if they were ever
29 commenced. The two are different issues.

30
31 MR BOURKE: With respect, your Honour, the issues are
32 brought together by reason of the likelihood that in these
33 proceedings the September 1992 alleged admissions will be
34 examined in detail.

35
36 THE CHAIR: Which could affect Mr Farrell's trial, you
37 understand?

38
39 MR BOURKE: Yes, and may affect other matters that I have
40 related to.

41
42 THE CHAIR: That is what happens in royal commissions;
43 that's different. As I say, there are two issues. Yes,
44 the evidence is the same, but there are two issues. One is
45 the impact upon the Farrell trial and the other is some
46 possibility not currently realised. They are two different
47 issues.

1
2 MR BOURKE: It is that second issue with respect to which
3 I am seeking a private hearing.
4
5 THE CHAIR: You mean you want to make submissions beyond
6 what you have made?
7
8 MR BOURKE: I do.
9
10 THE CHAIR: When you say "a private hearing", who do you
11 contemplate will be there?
12
13 MR BOURKE: Counsel Assisting and the lawyers for the
14 three persons that I referred to.
15
16 THE CHAIR: Why not the other lawyers? Why should we
17 start to discriminate?
18
19 MR BOURKE: To do otherwise has the potential to frustrate
20 future proceedings; that's as far as I can put it,
21 your Honour.
22
23 THE CHAIR: That is not very persuasive. I mean, counsel
24 would be bound by obligations in relation to a private
25 hearing. Do you still suggest that we should exclude some?
26
27 MR BOURKE: That is a matter for the tribunal, I suppose.
28 I can't put it any higher than that, your Honour.
29
30 THE CHAIR: All right. Does that exhaust what you want to
31 say?
32
33 MR BOURKE: I may wish to be heard in connection with
34 particular exhibits and as to the publication of those
35 particular exhibits once they are tendered, assuming they
36 are. Would your Honour just pardon me one moment? At this
37 stage, I don't have anything further.
38
39 THE CHAIR: Can I just try to make sure that we have it
40 clear. You say that if we proceed, Farrell should not be
41 called?
42
43 MR BOURKE: Yes.
44
45 THE CHAIR: But otherwise, we can proceed in public,
46 provided the evidence of Usher, Lucas and Manning is not
47 live-streamed?

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2 MR BOURKE: My primary application is that those three
3 persons not be called. However, if I'm unsuccessful in
4 that application, then we would be seeking that it not be
5 live-streamed and that any evidence that they give not be
6 published on the website.
7
8 THE CHAIR: But otherwise the hearing could be reported?
9
10 MR BOURKE: I would be seeking certain non-publication
11 orders in relation to the evidence of those witnesses if
12 they are called.
13
14 THE CHAIR: But otherwise, the proceedings can be
15 reported?
16
17 MR BOURKE: Yes.
18
19 THE CHAIR: It gets complex, doesn't it?
20
21 MR BOURKE: It is.
22
23 THE CHAIR: What role do you say the public interest in a
24 royal commission proceeding in public so that everyone has
25 and maintains confidence in its processes should play in
26 the decision that we should make as to how the proceedings
27 should go forward?
28
29 MR BOURKE: Clearly, there is an exercise in balancing
30 competing considerations.
31
32 THE CHAIR: Yes, and what weight should we give to what
33 Justice Mason said in the BLF case about the role of
34 a public hearing and, as a consequence, the maintenance of
35 public confidence in both the hearing and also the
36 determination by the Commissioners and the advice they give
37 to government? How much weight should we give that?
38
39 MR BOURKE: No doubt the Commission would give significant
40 weight to that aspect, but in this particular case, as
41 your Honour is aware, we have a trial listed in April 2017
42 and other considerations that I've referred to in
43 paragraphs 43 and following of the submissions.
44
45 THE CHAIR: Yes. Thank you.
46
47 MR BOURKE: One further matter, I am just reminded.

1 Certainly, I would also be seeking to make submissions, if
2 this is an issue, that any findings that the
3 Royal Commission might make in relation to this case study
4 not be published prior to the trial.

5
6 THE CHAIR: We would have no difficulty with that, but,
7 of course, it's ultimately a matter for government.

8
9 MR BOURKE: Yes.

10
11 THE CHAIR: We don't have control over what is done in the
12 parliament.

13
14 MR BOURKE: Very good. At this stage, I don't have
15 anything further I can add.

16
17 THE CHAIR: Does anyone else want to be heard on this
18 application?

19
20 MR RUSHTON: Could I say something, Commissioner, on
21 behalf of my client, Monsignor Usher?

22
23 THE CHAIR: Yes.

24
25 MR RUSHTON: I can indicate to your Honour, or
26 Commissioner, that it is quite clearly a matter between the
27 State and the Commission, but our position is this, that we
28 don't support the application. My client recognises the
29 important work that this Commission has done and will
30 continue to do and wants to cooperate fully. If the
31 Commission wants to hear from him then he thinks he should
32 be heard.

33
34 THE CHAIR: And no restriction on publication?

35
36 MR RUSHTON: None whatsoever.

37
38 THE CHAIR: All right. Well, that's clear.

39
40 MR RUSHTON: Thank you.

41
42 THE CHAIR: Does anyone else want to be heard? In that
43 event, what we had best do now is adjourn so as to
44 constitute a private hearing, Mr Bourke, if that's what you
45 want, but all counsel will be present and, of course, will
46 accept the obligation that, being a private hearing, they
47 must not tell anyone about what occurs in the course of the

1 private hearing, but it does mean that I am going to have
2 to exclude the media and everyone else from the room during
3 the course of that private discussion. I am sure those who
4 have been listening understand why I'm doing that, it's an
5 unusual step, but it is one that Mr Bourke wants us to take
6 and it is appropriate that we do so. We will adjourn until
7 the room is reconstituted.

8
9 **SHORT ADJOURNMENT**

10
11 THE CHAIR: The Commission is back in public hearing.
12 Mr Bourke, there is nothing more you want to say?

13
14 MR BOURKE: No, I have nothing further, your Honour.

15
16 THE CHAIR: I think Mr Skinner, you had something to say?

17
18 MR SKINNER: Yes, thank you, Commissioner. I have had an
19 opportunity to get some instructions from my client,
20 Father Brian Lucas, on this application. He does not
21 support it. He is summonsed to appear before the
22 Commission and he intends to do so and do his best to
23 assist within the Terms of Reference in answering any
24 questions asked of him that are admissible.

25
26 THE CHAIR: Thank you. Mr Carroll, you don't wish to be
27 heard in relation to the matter?

28
29 MR CARROLL: No.

30
31 THE CHAIR: Very well.

32
33 MR GRAY: Your Honour, may I say on behalf of my clients
34 that they take the view it is a matter for the Commission,
35 but, for their part, they also do not support the
36 application.

37
38 THE CHAIR: Very well.

39
40 MS GERACE: Commissioner, I appear for Bishop Manning who
41 would be affected by the application being made. For
42 separate reasons, I appear to make an application that
43 Bishop Manning be excused from giving evidence on medical
44 grounds. In relation to the application presently before
45 the Commission, because of those medical grounds, I am not
46 able to obtain instruction in relation to it.

1 THE CHAIR: We had better come to that in due course.
2 There is a medical report; is that right?

3
4 MS GERACE: Yes, two reports.

5
6 THE CHAIR: They are not in evidence at the moment,
7 are they?

8
9 MS FURNESS: No, your Honour.

10
11 THE CHAIR: It doesn't arise just now but I understand
12 what you say. There is nothing to be said in relation to
13 this application.

14
15 MS GERACE: Precisely.

16
17 THE CHAIR: Yes. Ms Furness, is there anything you want
18 to say?

19
20 MS FURNESS: Just briefly, your Honour.

21
22 As your Honour has indicated, it is not proposed to
23 call John Joseph Farrell to give evidence in these hearings
24 because to do so is likely to commit a contempt of court by
25 the Commission given that Farrell --

26
27 THE CHAIR: I think it probably would.

28
29 MS FURNESS: I think it would do, given that Farrell has
30 been charged and given the scope and purpose of this
31 hearing, questions would clearly be asked of him relevant
32 to matters for which he has been charged.

33
34 Secondly, in relation to Fathers Lucas and Usher and
35 Bishop Manning, the submission has been made that to call
36 each of those to answer questions would potentially
37 prejudice Farrell's trial to be heard in April, and
38 alternatively, that if they were to be called, the hearing
39 should be in private.

40
41 Firstly, in relation to the general submission as to
42 who should or shouldn't be called, it is my submission that
43 there is no legal impediment to this Royal Commission
44 calling any witness, leaving aside Farrell, and the test as
45 to whether or not there will be prejudice or potential
46 prejudice to Farrell's hearing in April - there has to be
47 a real risk of prejudice, it can't just be a remote

1 possibility or a theoretical tendency; it must be
2 a practical reality.

3
4 The issue for the State is the publicity which may be
5 generated by the broadcast of evidence generally and, in
6 particular, the three priests to whom I referred, and that
7 their evidence would have the propensity to cause
8 prejudice.

9
10 Firstly, it is clear that a permanent stay will only
11 be ordered in an extreme case, and by reference to the
12 Dupas decision in the High Court, pre-trial publicity is
13 not an extreme case, and that is, essentially, the argument
14 of the Crown, that their evidence would provide pre-trial
15 publicity which would give rise to the prejudice.

16
17 Secondly, there must be nothing that a trial judge can
18 do to relieve or otherwise minimise that prejudice, and as
19 is clear, and your Honour indicated earlier, directions can
20 be given to the jury. One must assume that juries will do
21 their job conscientiously and follow those directions.
22 There may be a judge-alone trial. The trial could be
23 vacated or moved to another location. There is a variety
24 of things that could be done were it to be thought that,
25 indeed, there was possible prejudice.

26
27 Thirdly, and your Honour indicated, there is a deal of
28 material already in the public domain in relation to
29 Farrell. As your Honour indicated, there are hundreds of
30 thousands of matters that can be found by a simple Google.
31 The issues of his recent trial were well publicised in May.
32 The ABC ran a story last week about the new charges. The
33 Whitlam Report is available online; ABC Four Corners is
34 available on line; and the key letter in question is
35 available online. I understand that the only redaction
36 that has been made is in relation to the name
37 Father Farrell. There are no other redactions in that
38 letter.

39
40 Having said that, in my submission, there can be no
41 prejudice from these proceedings, effectively, being in
42 public in relation to the Farrell trial.

43
44 There are, however, steps that, in my submission,
45 should and have been taken in relation to that trial.
46 Firstly, there is no complainant being called in these
47 proceedings who is a complainant in the criminal

1 proceedings. Secondly, any reference to any complainant in
2 those proceedings will be masked by a pseudonym as well as
3 an order not to publish their names. Finally, any evidence
4 that relates them to any charges will be masked or
5 redacted.

6
7 It is also the case that documents which relate to
8 those complainants and the role they play in the
9 proceedings can equally be masked so as not to disclose any
10 relevant connection. Now, I understand that that has
11 already been done, but we can certainly check to ensure
12 that that, indeed, is the case.

13
14 Can I conclude, your Honours, by referring to the
15 judgment your Honour referred to earlier in relation to the
16 BLF case. In that case, a restraint was sought to be
17 placed on those proceedings being heard in public, and what
18 was said was:

19
20 *However, this restraint, limited though it*
21 *is, seriously undermines the value of the*
22 *inquiry. It shrouds the proceedings with*
23 *a cloak of secrecy, denying to them the*
24 *public character which to my mind is an*
25 *essential element in public acceptance of*
26 *an inquiry of this kind and of its report.*
27 *An atmosphere of secrecy readily breeds the*
28 *suspicion that the inquiry is unfair or*
29 *oppressive. Especially is this so when the*
30 *inquiry has power to compel attendance and*
31 *testimony.*

32
33 They are my submissions.

34
35 THE CHAIR: Thank you. We will adjourn very briefly just
36 to consider what has been said further, but don't go away,
37 we won't be long.

38
39 **SHORT ADJOURNMENT**

40
41 THE CHAIR: We have carefully considered the issues that
42 have been aired before us this morning. We have determined
43 that the matter will proceed to a public hearing and will
44 be live-streamed, but we do that upon the assumption, as
45 Counsel Assisting's submission has indicated, that any
46 documents that are tendered can be redacted and the
47 evidence of any witness can be confined so that there will

1 not be, in these proceedings, any evidence capable of
2 linking a particular allegation to any of the charges which
3 will be the subject of the criminal proceedings in April
4 next year.

5
6 We will prepare reasons in relation to that
7 determination, which we will publish in due course, but
8 unless anyone says otherwise, we propose that the hearing
9 should now proceed at 2 o'clock this afternoon. Does
10 anyone oppose that course? No?

11
12 MS FURNESS: Your Honour, might I just say, I will open at
13 2 this afternoon. However, I don't propose to call any
14 witnesses until tomorrow morning.

15
16 THE CHAIR: Very well, but you will open this afternoon?

17
18 MS FURNESS: I will, your Honour.

19
20 THE CHAIR: All right. We will adjourn until 2 o'clock.

21
22 **LUNCHEON ADJOURNMENT**

23
24 MS FURNESS: Thank you, your Honour. Your Honours, this
25 is the 44th case study the subject of a public hearing in
26 the Royal Commission. This hearing of the Royal Commission
27 is pursuant to the Commonwealth and the NSW State
28 legislation.

29
30 This is the last case study concerning the response of
31 Catholic institutions to allegations of child sexual abuse.
32 In February 2017 there will be a final hearing concerning
33 the institutional responses of the Catholic Church to child
34 sexual abuse, including any factors which may have
35 contributed to the occurrence of child sexual abuse in
36 Catholic institutions or may have affected the
37 institutional response of the Catholic Church to child
38 sexual abuse.

39
40 The scope and purpose of this hearing is to inquire
41 into, firstly, the responses of the Catholic Diocese of
42 Armidale and the Catholic Diocese of Parramatta to
43 allegations of child sexual abuse made against John Joseph
44 Farrell; secondly, the response of the Special Issues
45 Resource Group for the Province of Sydney into allegations
46 of child sexual abuse against John Joseph Farrell; and,
47 finally, any related matters.

1
2 This case study considers the approach taken by the
3 Australian Catholic Bishops Conference from the late 1980s
4 until 1996 in responding to child sexual abuse by clergy
5 and religious. It is a period that has not yet been the
6 subject of a detailed case study in the Royal Commission.
7 It was an important time in the evolution of the church's
8 approach to child sexual abuse. The facts of this case
9 study go beyond the initial response of the church to
10 Farrell allegations in 1992 to events in 2012 and after,
11 about which I'll say more later.
12

13 The evidence is expected to be as follows:
14 John Joseph Farrell entered the Springwood Seminary in
15 1974. He was 21. Shortly after, he took 12 months leave
16 from the seminary and in 1979 he sought and was granted
17 permission from Bishop Henry Kennedy, the then Bishop of
18 Armidale, to be readmitted to the seminary.
19

20 The Diocesan Consultors at the time were adamantly
21 opposed to his being ordained and the seminary authorities
22 didn't recommend his ordination. Nevertheless, Farrell was
23 ordained as a deacon in 1980.
24

25 In 1981 he arrived in Moree, a parish in the Diocese
26 of Armidale, as assistant priest. He was appointed to
27 Moree until July 1984. His spiritual adviser at the time
28 was Father Rex Brown from Lismore. In 1996 Father Brown
29 pleaded guilty in relation to a child pornography charge.
30 Father Brown is also the subject of three child sexual
31 abuse claims made to the Diocese of Lismore.
32

33 In April 1984, a boy from Moree disclosed to his
34 father that Farrell had touched him on his genitals. That
35 night, his father told Monsignor Frank Ryan, the then
36 Vicar General in the Diocese of Armidale, what his son had
37 said. Other parents then came forward to make similar
38 complaints about Farrell and their children to
39 Monsignor Ryan.
40

41 Monsignor Ryan told Father Richard Gleeson, the
42 assistant parish priest at St Francis Xavier's Church in
43 Moree, of the complaints. He told him that Farrell had
44 been "mucking around with some boys". Farrell also spoke
45 to Father Gleeson and told him he had done something
46 stupid.
47

1 Father Gleeson asked Father Bernard Flood, the
2 previous assistant parish priest in Moree, who at the time
3 was Diocesan Director of Education, to talk to some of the
4 parents of the boys who were thought to have been abused.
5 At that time, there were thought to be six or seven boys.
6

7 Bishop Kennedy, the Bishop of Armidale, knew of these
8 complaints. After the complaints had been made to
9 Monsignor Ryan, Farrell went to live with Bishop Kennedy in
10 Armidale. At that time, there were rumours among the
11 clergy about there being trouble with altar boys. However,
12 the clergy were not told the actual reasons for why Farrell
13 went to live with the Bishop and left his role.
14

15 Bishop Kennedy then sent Farrell for treatment by a
16 psychologist, Gary Boyle. Mr Boyle had studied to be a
17 priest. Mr Boyle was later to be described by Father Usher
18 as "very Catholic". The treatment he provided to Farrell
19 was in relation to sexual misconduct with children.
20

21 After one session with Mr Boyle, at the end of May
22 1984, Farrell declared to Bishop Kennedy that he was "a new
23 man".
24

25 Farrell was then appointed to Tamworth East in July
26 1984, a few months after the complaints had been made.
27 Father Gerard Hanna was the parish priest at Tamworth East.
28 Father Hanna later said that the Bishop told him that
29 Farrell had "made a mess of things in Moree and he needs a
30 new start."
31

32 It was clear that a number of parishioners in
33 Tamworth East had heard about the allegations against
34 Farrell in Moree. Concern was expressed about the
35 appointment and Father Flood advised against the
36 appointment. Nevertheless, the appointment stood.
37

38 Farrell remained in Tamworth East until August 1987
39 when he was arrested and charged with child sexual offences
40 in relation to one boy in Moree. The news of his arrest
41 found its way to Ottawa in Canada.
42

43 Farrell went to Sydney, where he remained on leave
44 until the 11 charges against him were heard in the Narrabri
45 Local Court. The charges were dismissed in February 1988.
46

47 There was controversy over the charges being dismissed

1 by the magistrate. The Director of Public Prosecutions
2 considered bringing an ex officio indictment. However, in
3 August 1988 he advised that this would not happen.
4

5 As Bishop Manning later said, people felt a grave
6 injustice had been done because "there were young men named
7 around about that same time". Bishop Kennedy did not
8 investigate or inquire into the conduct the subject of the
9 charges.
10

11 The details of the charges and the outcome of them
12 were widely known around Australia and they were discussed
13 at the Australian Catholic Bishops Conference.
14

15 In July 1988, some months after the charges had been
16 dismissed, Bishop Kennedy received a report from Mr Boyle.
17 Mr Boyle expressed the opinion that Farrell did not present
18 as a man with true paedophilia.
19

20 Farrell remained on leave during this time and he
21 undertook studies towards a Bachelor of Arts in 1988 and
22 1989. Bishop Kennedy was finding it difficult to place
23 Farrell after his leave because of the widespread knowledge
24 of the allegations.
25

26 Bishop Bede Heather, who was the Bishop of Parramatta,
27 was approached by Bishop Kennedy. Bishop Heather asked the
28 priest running the tribunal in his Diocese to have Farrell
29 work with him. That priest informed the Bishop that, "he
30 would not have anywhere near him." This priest knew of the
31 charges against Farrell. That priest told Mr Whitlam,
32 about whom I'll say more, that he didn't think there was
33 much happening among clergy in New South Wales that people
34 didn't know about.
35

36 In late 1989 Bishop Kennedy gave permission for
37 Farrell to be appointed for 12 months to a parish in
38 Kenthurst in the Diocese of Parramatta. Bishop Heather
39 agreed to the appointment. Bishop Heather knew that
40 criminal charges against Farrell had been dismissed. He
41 also knew of the 1988 report of Mr Boyle.
42

43 In 1990 it came to Father Usher's attention that
44 Mr Boyle had prepared a report on Farrell.
45 Father John Usher is a priest of the Archdiocese of Sydney
46 with qualifications in social work. He was at that time
47 Director of Centacare a Catholic welfare agency.

1
2 Father Wayne Peters, now deceased, was then Episcopal
3 Vicar of the Tribunal for the Diocese of Armidale. At
4 Father Peters' request, Father Usher interviewed Farrell.
5 Father Usher came to a different conclusion from that of
6 Mr Boyle. He offered the opinion that Farrell's ongoing
7 need to spend time with children was a matter of grave
8 concern. He expressed concerns at Farrell's appointment in
9 the Diocese of Parramatta and said the Bishop should make a
10 personal assessment irrespective of the outcome of the
11 court case. He suggested that Farrell should see
12 Dr Blaszcynski, a psychiatrist with an expertise in the
13 area of sexual offending by priests and religious.

14
15 Farrell remained in the Diocese of Parramatta.
16 However, in later 1990 he left Kenthurst under a cloud. In
17 1991 he was given a temporary position in the Parish of
18 Merrylands, still within the Diocese of Parramatta.

19
20 In April of that year, Bishop Kevin Manning replaced
21 Bishop Kennedy as the Bishop of Armidale. Bishop Manning
22 knew of the complaints in Moree, he knew of the court case
23 in Narrabri, and he knew of the widespread knowledge of
24 each of those events.

25
26 Some years later, Bishop Manning told
27 Bishop Luc Matthys, his successor as Bishop of Armidale,
28 that he was well aware of the allegations through the
29 clerical grapevine.

30
31 In October 1991, Bishop Manning sent Farrell to
32 Dr Blaszcynski. In April 1992, Dr Blaszcynski reported
33 verbally to Bishop Manning. He said that Farrell posed a
34 potential risk to children, and prepubescent children are
35 in danger "where he is". Farrell had refused permission
36 for Dr Blaszcynski to provide a written report, and hence
37 the oral account to Bishop Manning.

38
39 It seems that Bishop Heather, who still had Farrell
40 there in Merrylands, did not know of the opinion expressed
41 by Dr Blaszcynski. In the early months of 1992, a number
42 of complaints were made in the Diocese of Parramatta about
43 Farrell's behaviour and use of language with children.

44
45 Ultimately, on 30 June 1990, Bishop Heather terminated
46 Farrell's appointment because of those complaints. The
47 next day, Bishop Manning also withdrew Farrell's faculties

1 and said he could not exercise any public ministry
2 anywhere.
3

4 In December 1992, Bishop Manning confirmed that
5 Farrell had a leave of absence from the priesthood for five
6 years. As a consequence, he was to refrain from all
7 ecclesial ministry, from referring to himself as a priest,
8 and from wearing clerical dress.
9

10 Turning to the Special Issues Resource Group, in 1988
11 Fathers Lucas and Usher presented to the Australian
12 Catholic Bishops Conference on clergy and child sexual
13 abuse. Father Brian Lucas is a lawyer who was at the time
14 assistant priest at St Mary's Cathedral and also the
15 official media spokesman for the Archdiocese of Sydney. It
16 was the first presentation of its type.
17

18 Fathers Lucas and Usher effectively became the
19 architects of the Church's approach for this issue from
20 then until the introduction of Towards Healing in 1996.
21

22 A group, known as the Special Issues Resource Group,
23 was established in each ecclesiastical province in
24 Australia. Members of the Special Issues Resource Group
25 were required to be available to leaders of all dioceses
26 and religious orders operating within the province to
27 provide advice, conduct and assist in investigations and
28 manage contact with media in relation to child sexual
29 abuse.
30

31 In the 1990s, in NSW, Father Lucas in particular
32 became the person that bishops and congregational leaders
33 would call when a complaint or problem relating to sexual
34 abuse surfaced in their diocese or order. When there was a
35 reasonable suspicion of truth, his job - that is,
36 Father Lucas's job - was, as he described it, to "help the
37 Bishop, or Major Superior ... manage the person who was
38 making the complaint, to make sure that whatever their
39 needs were being heard and met, and to get the man out
40 of the business."
41

42 Father Usher generally provided pastoral support to
43 the victims of those priests and religious.
44

45 Bishop Manning referred Father Farrell, as he then
46 was, to Father Lucas with a view to him evaluating the
47 situation and advising on ways of proceeding. At the time

1 of the referral, when Farrell was told of it, Farrell told
2 Bishop Manning that there were three other incidents which
3 could have "brought him 14 years a piece." Bishop Manning
4 did not question him about that statement, although he has
5 since accepted that it was an admission of criminal
6 behaviour.

7
8 Father Lucas asked Father Usher to accompany him in
9 the meetings with Farrell. Father Wayne Peters attended
10 those meetings as a representative of the Bishop of
11 Armidale.

12
13 There were three meetings. Father Peters wrote to
14 Bishop Manning a few days after the first meeting, which
15 was held on 3 September 1992. In that letter he described
16 admissions that Farrell had made in the meeting. He
17 recorded them as "there had been five boys around the age
18 of 10 and 11 that he had sexually interfered with in
19 varying degrees", between 1982 and 1984 when an assistant
20 priest at Moree.

21
22 Details of the sexual interference were provided and
23 that included fondling genitals and oral sex. There will
24 be evidence about what was said at that meeting between
25 Farrell and Fathers Lucas, Usher and Peters.

26
27 There were later meetings between the priests and
28 Farrell at which options available to Farrell were
29 presented. Those options included laicisation. Farrell
30 was laicised 13 years later, in 2005. He remained without
31 faculties during that time.

32
33 In 1998, Farrell was charged with sexual assaults
34 against children whom he did not meet during his time as a
35 priest. All charges were dismissed in 1999.

36
37 In 2004, Farrell gave evidence in a trial in relation
38 to extortion charges brought by the police. Those charges
39 were against a person who, it had been claimed, had
40 extorted money from Farrell in exchange for not reporting
41 Farrell to the police for Farrell's sexual abuse of him.

42
43 During that evidence, Farrell agreed with the
44 proposition that when meeting with the three priests,
45 Lucas, Usher and Peters, in September 1992, he made certain
46 admissions that he had had oral sex with young boys.

47

1 In 2012, a producer from the ABC program Four Corners
2 contacted Cardinal Pell, Father Lucas, Father Usher and
3 Father Peters seeking an interview in relation to the
4 meeting in September 1992 between Farrell and the three
5 priests, among other matters that the program was seeking
6 comment on.

7
8 Father Usher prepared a file note for the Cardinal in
9 which he advised that Farrell had made no admissions at
10 those meetings. However, he said, Farrell was judged to be
11 a person who, on the balance of probabilities, could become
12 too closely involved with children and young people. The
13 Cardinal was interviewed by Four Corners and gave answers
14 consistent with the file note.

15
16 Four Corners was aired on 2 July 2012 and the letter
17 from Father Peters containing a record of the meeting and
18 referring to the making of admissions was revealed.

19
20 There were various communications between those
21 involved in the meetings, their lawyers and other advisers.
22 Media releases were issued by the Archdiocese of Sydney,
23 the Diocese of Armidale, Father Lucas and Father Usher.
24 Father Lucas was interviewed on the ABC's AM program.

25
26 A fortnight after the program was aired, an
27 independent inquiry by The Honourable Antony Whitlam, a
28 former Federal Court judge, was commissioned by
29 Bishop Michael Kennedy, the Bishop of Armidale, and
30 Bishop Anthony Fisher, the Bishop of Parramatta, to inquire
31 into the management of "Father F". "Father F" is Farrell.

32
33 Mr Whitlam interviewed various individuals, including
34 the three priests. In relation to what was said in the
35 meetings with Farrell in September 1992, Mr Whitlam found
36 "nothing sinister" in the situation that Fathers Lucas and
37 Usher did not recollect the admissions being made as set
38 out in Father Peters' letter. He did not consider that the
39 letter must "necessarily be accepted as a more accurate
40 record of the discussion". He did not disbelieve
41 Fathers Lucas and Usher. He said there was no cover-up in
42 1992.

43
44 Your Honours, there has been no witness list published
45 in relation to this hearing thus far because of the
46 application this morning and the application which will be
47 shortly made by Ms Gerace, representing Bishop Manning.

1 However, there will be a witness list posted after
2 your Honours have adjourned this afternoon.

3
4 THE CHAIR: Ms Gerace, do you have an application?

5
6 MS GERACE: Yes, Commissioner, on behalf of
7 Bishop Manning. The application is that Bishop Manning be
8 excused from being required to give evidence pursuant to
9 the summons, or excused from the summons to give evidence
10 to the Commission, on medical grounds. Those instructing
11 me have provided to the solicitors assisting today further
12 copies of two reports of a neuropsychologist, Dr Jamie
13 Berry, and the application was made initially in writing on
14 2 September.

15
16 THE CHAIR: I think those reports should come into
17 evidence, Ms Furness.

18
19 MS FURNESS: Certainly, your Honour.

20
21 THE CHAIR: What do you say?

22
23 MS GERACE: In relation to that, I've indicated to my
24 learned friend and those assisting that we seek a
25 non-publication order in relation to the reports. I don't
26 know if you wish to hear me now or after the tender.

27
28 THE CHAIR: What do you say as to non-publication?

29
30 MS FURNESS: There should be a non-publication order in
31 respect of the reports. However, your Honour may wish my
32 friend to indicate the nature of the condition, in broad
33 terms, that it is said that Bishop Manning suffers from, in
34 order for him not to attend in accordance with the summons.

35
36 THE CHAIR: Ms Gerace, I have previously taken the view
37 that the general public is entitled to know the essence of
38 the problem. What do you say as to that? First of all,
39 I'll mark this exhibit 44-001.

40
41 **EXHIBIT #44-001 MEDICAL REPORT DATED 29/08/2016 AND**
42 **SUPPLEMENTARY REPORT DATED 29/08/2016 BY DR JAMIE BERRY**
43 **REGARDING BISHOP MANNING**

44
45 MS GERACE: The basis of the application is that
46 Bishop Manning has been diagnosed as suffering from a major
47 neurocognitive disorder which affects his ability to give

1 reliable evidence and his competence as a witness. The
2 application proceeds on the basis of the reports that are
3 part of exhibit 44-001, which the Commission has ordered
4 should not be published.

5
6 Those conditions appear to have commenced several
7 years ago and have been confirmed by independent testing in
8 terms of loss of cerebral volume and microvascular and
9 other underlying medical conditions that affect his
10 executive function and his cognitive function.

11
12 In particular, the condition with which he has been
13 diagnosed affects his function across a number of cognitive
14 domains, including memory, the ability to retrieve memory,
15 the ability to process new environments and new information
16 and word-finding difficulties. It is difficult to expand
17 on more of those matters without revealing the content --

18
19 THE CHAIR: Isn't the essence of the doctor's opinion that
20 the Bishop is unlikely to be able to give reliable
21 evidence?

22
23 MS GERACE: Precisely. In a nub, that's what it is.

24
25 THE CHAIR: That's ultimately where it rests, isn't it?

26
27 MS GERACE: Yes, it is.

28
29 THE CHAIR: He is 82 years of age, I think?

30
31 MS GERACE: He is.

32
33 THE CHAIR: The reports then make plain the material that
34 the doctor has relied upon in coming to that view.

35
36 MS GERACE: Precisely, yes.

37
38 THE CHAIR: Yes. I don't think we need to hear from you
39 further. Does anyone else want to be heard on this issue?
40 No?

41
42 I think the sensible thing for me to say is that on
43 behalf of Bishop Manning an application is made that he be
44 excused from giving evidence in this case study hearing.
45 Justice Coate and I have both considered two reports from
46 Dr Jamie Berry who is a clinical neuropsychologist. The
47 doctor has drawn upon a medical history of the Bishop and

1 has also examined him in some detail. He has the benefit
2 of objective tests conducted in relation to the Bishop's
3 cognitive function and, having regard to his own
4 observations and the evidence available from those tests,
5 expresses the view that the deficits which the Bishop is
6 presently suffering from are such as to make him unlikely
7 to be a reliable witness.

8
9 In those circumstances, we are satisfied that there is
10 presently no purpose in calling Bishop Manning to give
11 evidence. Of course, if something arises in the course of
12 the proceedings which makes it appropriate to revisit that
13 determination, we would do so, but I don't presently
14 believe that to be very likely at all. For present
15 purposes, the Bishop is excused from giving evidence in
16 this hearing.

17
18 MS GERACE: If the Commission please.

19
20 MS FURNESS: Your Honour, could I just confirm that
21 exhibit 44-001 covers the report dated 29 August by
22 Dr Berry and the supplementary report dated 29 August by
23 Dr Berry.

24
25 THE CHAIR: It does, and I order that both of them not be
26 published.

27
28 MS FURNESS: Thank you, your Honour.

29
30 THE CHAIR: Is there anything more today?

31
32 MS FURNESS: No, your Honour. There will be two survivor
33 witnesses and one of their mothers giving evidence tomorrow
34 at 10.

35
36 THE CHAIR: Very well. We will adjourn until 10 in the
37 morning.

38
39 **AT 2.31PM THE COMMISSION WAS ADJOURNED TO TUESDAY,**
40 **13 SEPTEMBER 2016 AT 10AM**

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